



New York State Board for Professional Medical Conduct

433 River Street, Suite 303 • Troy, New York 12180-2299 • (518) 402-0863

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NYS Department of Health

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NYS Department of Health

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Office of Professional Medical Conduct

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Michael A. Gonzalez, R.P.A.
Vice Chair

Ansel R. Marks, M.D., J.D.
Executive Secretary

Public

August 9, 2005

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Ayodeji Lukula, M.D.
143 North Street
Auburn, NY 13021

Re: License No. 193051

Dear Dr. Lukula:

Enclosed is a copy of Order #BPMC 05-172 of the New York State Board for Professional Medical Conduct. This order and any penalty provided therein goes into effect August 16, 2005.

If the penalty imposed by the Order is a surrender, revocation or suspension of this license, you are required to deliver to the Board the license and registration within five (5) days of receipt of the Order to the Board for Professional Medical Conduct, New York State Department of Health, Hedley Park Place, Suite 303, 433 River Street, Troy, New York 12180.

Sincerely,

Ansel R. Marks, M.D., J.D.
Executive Secretary
Board for Professional Medical Conduct

Enclosure

cc: Susan Fortin Lesser, Esq.
Scolaro, Shulman, Cohen, Fetter & Burstein, P.C.
507 Plum Street, Suite 300
Syracuse, NY 13204

IN THE MATTER
OF
AYODEJI LUKULA, M.D.

CONSENT
ORDER

BPMC No. 05-172

Upon the application of AYODEJI LUKULA, M.D. (Respondent), in the attached Consent Agreement and Order, which is made a part of this Consent Order, it is

ORDERED, that the Consent Agreement, and its terms, are adopted and it is further

ORDERED, that this Order shall be effective upon issuance by the Board, either

- by mailing of a copy of this Consent Order, either by first class mail to Respondent at the address in the attached Consent Agreement or by certified mail to Respondent's attorney, OR
- upon facsimile transmission to Respondent or Respondent's attorney, whichever is first.

SO ORDERED.

DATE: 8-9-2005


KENDRICK A. SEARS, M.D.
Chair
State Board for Professional Medical Conduct

IN THE MATTER
OF
AYODEJI LUKULA, M.D.

CONSENT
AGREEMENT
AND
ORDER

AYODEJI LUKULA, M.D., representing that all of the following statements are true, deposes and says that:

On or about July 22, 1993, I was licensed to practice as a physician in the State of New York, and issued License No. 193051 by the New York State Education Department.

My current address is 143 North Street, Auburn, New York 13021, and I will advise the Director of the Office of Professional Medical Conduct of any change of address.

I understand that the New York State Board for Professional Medical Conduct has charged me with thirteen specifications of professional misconduct.

A copy of the Statement of Charges, marked as Exhibit "A", is attached to and part of this Consent Agreement.

I do not contest the First Specification concerning factual allegations C and C.1, D, and E and E.1 in full satisfaction of the charges against me, and agree to the following penalty:

a one year suspension of my license to practice medicine in New York, stayed, and probation for a period of three years in accordance with the terms of probation attached hereto as Exhibit B. Should I fully comply with the Terms of Probation during the first two years, I may at that time apply to the Director of the

Office of Professional Medical Conduct ("OPMC") for termination of the probation, although I understand that the Director of OPMC shall have full discretion to act on such application as the Director of OPMC deems appropriate.

I further agree that the Consent Order shall impose the following conditions:

That Respondent shall maintain active registration of Respondent's license with the New York State Education, Department Division of Professional Licensing Services (except during periods of actual suspension), and shall pay all registration fees. This condition shall take effect thirty (30) days after the Consent Order's effective date and will continue so long as Respondent remains licensed in New York State; and

That Respondent shall cooperate fully with the Office of Professional Medical Conduct (OPMC) in its administration and enforcement of this Order and in its investigations of matters concerning Respondent. Respondent shall respond in a timely manner to all OPMC requests for written periodic verification of Respondent's compliance with this Order. Respondent shall meet with a person designated by the Director of OPMC, as directed. Respondent shall respond promptly and provide all documents and information within Respondent's control, as directed. This condition shall take effect upon the Board's issuance of the Consent Order and will continue so long as Respondent remains licensed in New York State.

I stipulate that my failure to comply with any conditions of this Order shall constitute misconduct as defined by New York State Education Law §6530(29).

I agree that if I am charged with professional misconduct in future, this Consent Agreement and Order shall be admitted into evidence in that proceeding.

I ask the Board to adopt this Consent Agreement.

I understand that if the Board does not adopt this Consent Agreement, none of its terms shall bind me or constitute an admission of any of the acts of alleged misconduct; this Consent Agreement shall not be used against me in any way and shall be kept in strict confidence; and the Board's denial shall be without prejudice to the pending disciplinary proceeding and the Board's final determination pursuant to the Public Health Law.

I agree that, if the Board adopts this Consent Agreement, the Chair of the Board shall issue a Consent Order in accordance with its terms. I agree that this Order shall take effect upon its issuance by the Board, either by mailing of a copy of the Consent Order by first class mail to me at the address in this Consent Agreement, or to my attorney by certified mail, OR upon facsimile transmission to me or my attorney, whichever is first. The Order, this agreement, and all attached Exhibits shall be public documents, with only patient identities, if any, redacted.

I stipulate that the proposed sanction and Order are authorized by Public Health Law Sections 230 and 230-a and that the Board for Professional Medical Conduct and the Office of Professional Medical Conduct have the requisite powers to carry out all included terms. I ask the Board to adopt this Consent Agreement of my own free will and not under duress, compulsion or restraint. In consideration of the value to me of the Board's adoption of this Consent Agreement, allowing me to resolve this matter without the various risks and burdens of a hearing on the merits, I knowingly waive my right to contest the Consent Order for which I apply, whether administratively or judicially, I agree to be bound by the Consent Order, and ask that the Board adopt this Consent Agreement.

DATE: 7/20/05



AYODEJI LUKULA, M.D.
RESPONDENT

The undersigned agree to Respondent's attached Consent Agreement and to its proposed penalty, terms and conditions.

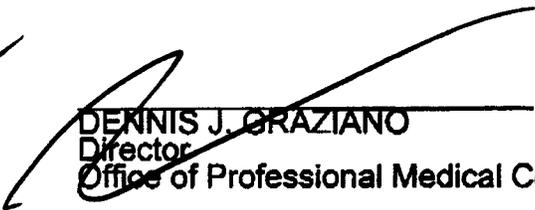
DATE: 7/20/05


SUSAN FORTIN LESSER
Attorney for Respondent

DATE: 7/22/05


KEVIN P. DONOVAN
Associate Counsel
Bureau of Professional Medical Conduct

DATE: August 8 2005


DENNIS J. GRAZIANO
Director
Office of Professional Medical Conduct

STATE OF NEW YORK : DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

-----X
IN THE MATTER : STATEMENT
OF : OF
AYODEJI LUKULA, M.D. : CHARGES
-----X

AYODEJI LUKULA, M.D., the Respondent, was authorized to practice medicine in New York State on or about December 8, 1993, by the issuance of license number 193051 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. Respondent treated Patient A, a 42 year old female (for reasons of confidentiality, patients are identified only in the attached Appendix), from around September 8, 1999, until around October 19, 1999, at his office, Cayuga Women's Health Services located at 143 North Street, Auburn, New York. Respondent's care of Patient A did not meet acceptable standards of care in that:

1. On September 8, 1999, Respondent failed to perform an adequate physical examination for Patient A, who reported having an inflamed hemorrhoid, bleeding and very painful for two weeks or failed to recognize upon rectal examination that the patient had a rectal mass.
2. On September 8, 1999, Respondent inaccurately and/or without adequate evaluation diagnosed hemorrhoids as being the cause of Patient A's symptoms.
3. Respondent fraudulently or inappropriately created a medical record indicating a rectal examination had been performed when he had not performed one or he fraudulently wrote to staff of the Office of Professional Medical Conduct (OPMC) that he had not performed one due to patient refusal.
4. On October 11, 1999, Respondent prescribed suppositories without adequate evaluation or referral.

5. Respondent fraudulently wrote to staff of OPMC that he referred the patient to a surgeon when he had not.
6. Respondent fraudulently or inappropriately documented that he had referred the patient for a surgical consultation when he had not.

B. Respondent treated Patient B, a 45 year old female, from around October 27, 1995, until at least October 2001, at his office and at Auburn Memorial Hospital, Auburn, New York. Respondent's care of Patient B did not meet acceptable standards of care in that:

1. Respondent failed to perform an adequate history and physical examination when the patient developed post-operative pain after a hysterectomy performed on or around May 18, 2001.
2. Respondent failed to timely respond after receipt of an IVP that indicated high grade obstruction, left kidney.
3. Respondent provided inadequate care to resolve a ureteral obstruction during a procedure on June 18, 2001 and failed to take adequate steps after the procedure to resolve it.

C. Respondent treated Patient C, a 37 year old female, from around June 22, 2000, until around April 21, 2001, at his office and at Auburn Memorial Hospital. Respondent's care of Patient C did not meet acceptable standards of care in that:

1. On or about June 23, 2000, the day after the first recorded office visit, Respondent performed a hysterectomy and bilateral salpingectomy oophorectomy without adequate attempts at medical management, adequate evaluation or indication.
2. Respondent failed to write an office note which adequately reflects adequate attempts at medical management, a treatment plan or treatment options for patient complaints of pain, cramping and bleeding.

D. Respondent treated Patient D, a 42 year old female from around January 1999, until around March 1999, at his office, and at Auburn Memorial Hospital. Respondent's care of Patient D did not meet acceptable standards of care in that Respondent failed to timely respond or seek consult for signs and symptoms

that could indicate a complication from a hysterectomy he performed on or around March 19, 1999.

E. Respondent treated Patient E, a 37 year old female, from around May 6, 1998, until around May 26, 1999, at his office and at Auburn Memorial Hospital. Respondent's care of Patient E did not meet acceptable standards of care in that:

1. Respondent's office record and hospital record entries are inconsistent regarding the reason for a hysterectomy, stating in his office chart that the patient had a polyp but stating in the pre-operative hospital record that the patient had a submucous myoma.
2. On November 16, 1998, Respondent performed a hysterectomy without adequate evaluation, treatment, or patient refusal of discussed alternatives.
3. Respondent failed to observe or document a rectocele or symptoms of a rectocele pre-operatively.
4. On November 16, 1998, Respondent performed a posterior repair without adequate patient consent.

F. Respondent treated Patient F, a 46 year old female, from around July 26, 2001, until at least February 26, 2002, at his office and at Auburn Memorial Hospital. Respondent's care of Patient F did not meet acceptable standards of care in that:

1. Patient F's history as recorded by Respondent is inconsistent concerning the patient's menstrual history and status, stating that she has painful periods and is post-menopausal.
2. Respondent performed a hysterectomy and bilateral salpingectomy oophorectomy on January 11, 2002, without adequate attempts at medical management, adequate evaluation or indication.
3. Respondent inaccurately stated as indication for the hysterectomy that the patient had a 14 week size uterus despite a finding on ultrasound that the uterus was 9.7 x 4.7 x 4.8 cm.
4. Respondent failed to adequately assure safety of the ureters while performing a hysterectomy.
5. Respondent failed to maintain an office record that adequately reflected the patient's pertinent history or progress concerning contraindications for hormone treatment, the patient's request

that he perform a hysterectomy, her emergency department visit due to pain, and pre- and post-stent placement surgery to correct a complication post-hysterectomy.

G. Respondent treated Patient G, a female born September 3, 1957, from around February 7, 1995, until at least September 13, 2001, at his office and at Auburn Memorial Hospital. Respondent's care of Patient G did not meet acceptable standards of care in that:

1. Respondent stated as indication for the hysterectomy that the patient had endometriosis and uterine fibroid, but pathology reported neither in the tissue submitted by Respondent.
2. Respondent failed to attempt adequate medical treatment for endometriosis before proceeding to surgery on or around August 26, 2000.
3. On or around August 26, 2000, Respondent performed a hysterectomy for endometriosis without attempting to biopsy or remove what he stated to be endometriosis.

SPECIFICATIONS OF MISCONDUCT

FIRST SPECIFICATION

PRACTICING WITH NEGLIGENCE ON MORE THAN ONE OCCASION

The Respondent is charged with practicing the profession with negligence on more than one occasion within the meaning of New York Educ. Law Section 6530 (3) in that Petitioner charges two or more of the following:

1. The facts of paragraphs A and A.1, A and A.2, A and A.3, A and A.4, A and A.6, B and B.1, B and B.2, B and B.3, C and C.1, C and C.2, D, E and E.1, E and E.2, E and E.3, E and E.4, F and F.1, F and F.2, F and F.3, F and F.4, F and F.5, G and G.1, G and G.2, and/or G and G.3.

SECOND SPECIFICATION

PRACTICING WITH INCOMPETENCE ON MORE THAN ONE OCCASION

The Respondent is charged with practicing with incompetence on more than one occasion within the meaning of New York Educ. Law Section 6530(5) in that the Petitioner charges two or more of the following:

2. The facts of paragraphs A and A.1, A and A.2, A and A.3, A and A.4, A and A.6, B and B.1, B and B.2, B and B.3, C and C.1, C and C.2, D, E and E.1, E and E.2, E and E.3, E and E.4, F and F.1, F and F.2, F and F.3, F and F.4, F and F.5, G and G.1, G and G.2, and/or G and G.3.

THIRD THROUGH NINTH SPECIFICATIONS

PRACTICING WITH GROSS NEGLIGENCE

The Respondent is charged with practicing the profession with gross negligence on a particular occasion within the meaning of New York Educ. Law Section 6530(4) in that Petitioner charges:

3. The facts of paragraphs A and A.1, A and A.2, A and A.3, A and A.4 and/or A and A.6.
4. The facts of paragraphs B and B.1, B and B.2 and/or B and B.3.
5. The facts of paragraphs C and C.1 and/or C and C.2.
6. The facts of paragraph D.
7. The facts of paragraphs E and E.1, E and E.2, E and E.3 and/or E and E.4.
8. The facts of paragraphs F and F.1, F and F.2, F and F.3, F and F.4 and/or F and F.5.
9. The facts of paragraphs G and G.1, G and G.2, and/or G and G.3.

TENTH SPECIFICATION

PRACTICING WITH GROSS INCOMPETENCE

Respondent is charged with practicing the profession with gross incompetence within the meaning of New York Educ. Law Section 6530(6) in that Petitioner charges:

10. The facts of paragraphs A and A.1, A and A.2, A and A.3, A and A.4, A and A.6, B and B.1, B and B.2, B and B.3, C and C.1, C and C.2, D, E and E.1, E and E.2, E and E.3, E and E.4, F and F.1, F and F.2, F and F.3, F and F.4, F and F.5, G and G.1, G and G.2, and/or G and G.3.

ELEVENTH THROUGH THIRTEENTH SPECIFICATIONS

MORAL UNFITNESS

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(20) by engaging in conduct in the practice of the profession of medicine that evidences moral unfitness to practice as set forth in the following:

11. The facts of paragraphs A and A.3. -
12. The facts of paragraphs A and A.5.
13. The facts of paragraphs A and A.6.

FOURTEENTH THROUGH SIXTEENTH SPECIFICATIONS

FRAUD

Respondent is charged with practicing the profession fraudulently as defined in N.Y. Educ. Law § 6530(2) as set forth in the following:

14. The facts of paragraphs A and A.3.
15. The facts of paragraphs A and A.5.
16. The facts of paragraphs A and A.6.

SEVENTEENTH THROUGH TWENTIETH SPECIFICATIONS

FAILURE TO MAINTAIN RECORDS

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(32) by failing to maintain a record for each patient which accurately reflects the care and treatment of the patient in that Petitioner charges:

17. The facts of paragraphs A and A.3 and/or A and A.6.
18. The facts of paragraphs C and C.2.
19. The facts of paragraphs E and E.1.

20. The facts of paragraphs F and F.1 and/or F and F.5.

Dated: June 22, 2005
Albany, New York


BRIAN M. MURPHY
Counsel
Bureau of Professional
Medical Conduct

EXHIBIT "B"

Terms of Probation

1. Respondent's conduct shall conform to moral and professional standards of conduct and governing law. Any act of professional misconduct by Respondent as defined by New York State Education Law §6530 or §6531 shall constitute a violation of probation and may subject Respondent to an action pursuant to New York State Public Health Law §230(19).
2. Respondent shall maintain active registration of Respondent's license (except during periods of actual suspension) with the New York State Education Department Division of Professional Licensing Services, and shall pay all registration fees.
3. Respondent shall provide the Director, Office of Professional Medical Conduct (OPMC), Hedley Park Place, 433 River Street Suite 303, Troy, New York 12180-2299 with the following information, in writing, and ensure that such information is kept current: a full description of Respondent's employment and practice; all professional and residential addresses and telephone numbers within and outside New York State; and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty (30) days of each action.
4. Respondent shall cooperate fully with, and respond in a timely manner to, OPMC requests to provide written periodic verification of Respondent's compliance with the terms of this Consent Order. Upon the Director of OPMC's request, Respondent shall meet in person with the Director's designee.
5. The probation period shall toll when Respondent is not engaged in active medical practice in New York State for a period of thirty (30) consecutive days or more. Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in, or intends to leave, active medical practice in New York State for a consecutive thirty (30) day period. Respondent shall then notify the Director again at least fourteen (14) days before returning to active practice. Upon Respondent's return to active practice in New York State, the probation period will resume and Respondent shall fulfill any unfulfilled probation terms and such additional requirements as the Director may impose as reasonably relate to the matters set forth in Exhibit "A" or are necessary to protect the public health.
6. The Director of OPMC may review Respondent's professional performance. This review may include but shall not be limited to: a review of office records, patient records and/or hospital charts; and interviews with or periodic visits with Respondent and staff at practice locations or OPMC offices.
7. Respondent shall maintain complete and legible medical records that accurately reflect his evaluation, treatment, and plan for patients, and contain all information required by State rules and regulations concerning controlled substances.
8. Respondent shall enroll in and complete a continuing education program in the area of gynecology, including assessment and medical and surgical management of pelvic pain and uterine bleeding; management of post-operative complications, and record keeping. This continuing education

program is subject to the Director of OPMC's prior written approval and shall be completed within the first year of the probation period.

9. Within thirty days of the effective date of the order, Respondent shall practice medicine only when monitored by a licensed physician, board certified in an appropriate specialty, ("practice monitor") proposed by Respondent and subject to the written approval of the Director of OPMC.
 - a. Respondent shall make available to the monitor any and all records or access to the practice requested by the monitor, including on-site observation. The practice monitor shall visit Respondent's medical practice at each and every location, on a random unannounced basis at least monthly and shall examine a selection (no fewer than 20) of records maintained by Respondent, including patient records, prescribing information and office records. The review will determine whether the Respondent's medical practice is conducted in accordance with the generally accepted standards of professional medical care. Any perceived deviation of accepted standards of medical care or refusal to cooperate with the monitor shall be reported within 24 hours to OPMC.
 - b. During the first year of probation, Respondent shall not perform any hospital based gynecologic surgery until the practice monitor has reviewed the entire patient record and provides, before the surgery takes place, a written concurrence with the reasons for surgery, with the adequacy of prior patient work up and attempts at medical management of the patient problem, and the surgical plan. Respondent shall also notify the practice monitor within 72 hours of re-admission of a post-surgical patient. Also during the first year, the monitor shall perform a post-operative review of all hospital based gynecological or obstetric operative cases.
 - c. Respondent shall be solely responsible for all expenses associated with monitoring, including fees, if any, to the monitoring physician.
 - d. Respondent shall cause the practice monitor to report quarterly, in writing, to the Director of OPMC.
 - e. Respondent shall maintain medical malpractice insurance coverage with limits no less than \$2 million per occurrence and \$6 million per policy year, in accordance with Section 230(18)(b) of the Public Health Law. Proof of coverage shall be submitted to the Director of OPMC within thirty days of the effective date of this Order.
10. Respondent shall comply with this Order and all its terms, and shall bear all associated compliance costs. Upon receiving evidence of noncompliance with, or violation of, these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding, and/or any other such proceeding authorized by law, against Respondent.