New York State Board for Professional Medical Conduct
433 River Street, Suite 303 • Troy, New York 12180-2299 • (518) 402-0863

Antonia C. Novello, M.D.,M.P.H., Dr. P.H.
Commissioner
NYS Department of Health

Dennis P. Whalen
Executive Deputy Commissioner
NYS Department of Health

Dennis J. Graziano, Director
Office of Professional Medical Conduct

Public

Kendrick A. Sears, M.D.
Chairman

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

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

February 23, 2006

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Herbert Louis Gould, M.D.
REDACTED

Re: License No. 083214

Dear Dr. Gould:

Enclosed is a copy of Order #BPMC 06-32 of the New York State Board for Professional Medical Conduct. This order and any penalty provided therein goes into effect March 2, 2006.

If the penalty imposed by this Order is a surrender, revocation or suspension, you are required to deliver your license and registration within five (5) days of receipt of this 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,

REDACTED

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

Enclosure

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

IN THE MATTER

OF

HERBERT LOUIS GOULD, M.D.

CONSENT
ORDER

BPMC No. 06-32

Upon the application of (Respondent) HERBERT LOUIS GOULD, M.D. 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: 2-22-06

REDACTED

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

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

IN THE MATTER

OF

HERBERT LOUIS GOULD, M.D.

CONSENT
AGREEMENT
AND
ORDER

HERBERT LOUIS GOULD, M.D., representing that all of the following statements are true, deposes and says:

That on or about September 17, 1959, I was licensed to practice as a physician in the State of New York, and issued License No. 083214 by the New York State Education Department.

My current address is REDACTED , 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 three specifications of professional misconduct: Failure to Maintain Records (First Specification) and Violating Any Condition or Limitation Imposed (Second and Third Specification).

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

I cannot successfully defend against at least one of the acts of misconduct alleged and agree to the following penalty in full satisfaction of the charges against me:

My license to practice medicine shall be limited, pursuant to N.Y. Pub. Health Law § 230-a, to preclude patient contact and any practice of medicine, clinical or otherwise. I shall be precluded from diagnosing, treating, operating, or prescribing for any human disease, pain, injury, deformity, or physical condition.

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

- That Respondent shall, within 30 days of the issuance of the Consent Order, notify the New York State Education Department, Division of Professional Licensing Services, that Respondent's license status is "inactive," and shall provide proof of such notification to the Director of OPMC within 30 days thereafter; and

- That Respondent shall return any and all official New York State prescriptions to the Bureau of Narcotic Enforcement, and shall surrender Respondent's Controlled Substance Registration Certificate to the United States Department of Justice, Drug Enforcement Administration, within 15 days of the effective date of this Order. Further, within 30 days of returning these prescriptions and surrendering this registration, Respondent shall provide documentary proof of these transaction(s) to the Director of OPMC; and

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

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; and

Respondent shall comply with all conditions set forth in attached Exhibit "B" ("Guidelines for Closing a Medical Practice") which is attached.

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. As public documents, they may be posted on the Department's website.

I stipulate that the proposed sanction and Order are authorized by N.Y. Pub. Health Law §§ 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.

I am aware and agree that regardless of prior communication, the attorney for the Department, the Director of the Office of Professional Medical Conduct, and the Chairperson of the State Board for Professional Medical Conduct each reserve full discretion to enter into the agreement which I propose and this application which I submit, or to decline to do so.

REDACTED

DATE_____

HERBERT LOUIS GOULD, M.D.
RESPONDENT

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

DATE: _____

_____, ESQ.
Attorney for Respondent

DATE: February 9, 2006

REDACTED
MARCIA E. KAPLAN
Associate Counsel
Bureau of Professional Medical Conduct

DATE: February 21, 2006

REDACTED
DENNIS J. GRAZIANO
Director
Office of Professional Medical Conduct

EXHIBIT "A"

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

IN THE MATTER

OF

HERBERT LOUIS GOULD, M.D.

STATEMENT

OF

CHARGES

HERBERT LOUIS GOULD, M.D., the Respondent, was authorized to practice medicine in New York State on or about September 17, 1959, by the issuance of license number 083214 by the New York State Education Department. During periods on or after December 24, 2003, Licensee has been subject to conditions imposed upon his license pursuant to a Nondisciplinary Order of Conditions issued pursuant to N.Y. Pub. Health Law Sec. 230.

FACTUAL ALLEGATIONS

A. During the period from in or about February 2004 through in or about September 2005, Respondent issued prescriptions to individuals A-I.

1. Respondent failed to maintain a medical record for each of Individuals A-I.
2. Respondent issued prescriptions to Individuals A-I in violation of a condition previously placed upon his license permitting medical practice only as an opthalmologic consultant.

B. During a period of time after December 25, 2003, Respondent inappropriately authorized a non-physician to use his license number in connection with the start-up of an internet pharmacy business.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

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, as alleged in the facts of:

1. Paragraphs A and A.1.

SECOND AND THIRD SPECIFICATION

VIOLATING ANY CONDITION OR LIMITATION IMPOSED

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(29) by violating any condition or limitation imposed on the licensee pursuant to section two hundred thirty of the public health law, as alleged in the facts of the following:

2. Paragraphs A and A.2.
3. Paragraph B.

DATE: Feb 14 January , 2006
New York, New York

REDACTED

ROY NEMERSON
Deputy Counsel
Bureau of Professional Medical Conduct

EXHIBIT "B"

GUIDELINES FOR CLOSING A MEDICAL PRACTICE FOLLOWING A REVOCATION, SURRENDER OR SUSPENSION (of six months or more) OF A MEDICAL LICENSE

1. Respondent shall immediately cease the practice of medicine in compliance with the terms of the Consent Order. Respondent shall not represent himself as eligible to practice medicine and shall refrain from providing an opinion as to professional practice or its application.

2. Within 15 days of the Consent Order's effective date, Respondent shall notify all patients that he has ceased the practice of medicine, and shall refer all patients to another licensed practicing physician for their continued care, as appropriate.

3. Respondent shall arrange for the transfer and maintenance of all patient medical records. Within 30 days of the Consent Order's effective date, Respondent shall notify OPMC of these arrangements, including the name, address, and telephone number of an appropriate contact person, acceptable to the Director of OPMC, who shall have access to these records. Original records shall be retained for patients for at least six years after the last date of service, and, for minors, at least six years after the last date of service or three years after the patient reaches the age of majority, whichever time period is longer. Records shall be maintained in a safe and secure place that is reasonably accessible to former patients. The arrangements shall ensure that all patient information is kept confidential and is available only to authorized persons. When a patient or authorized representative requests a copy of the patient's medical record, or requests that the original medical record be sent to another health care provider, a copy of the record shall be promptly provided or sent at reasonable cost to the patient (not to exceed 75 cents per page.) Radiographic, sonographic and like materials shall be provided at cost. A qualified person shall not be denied access to patient information solely because of inability to pay.

4. Within 15 days of the Consent Order's effective date, if Respondent holds a Drug Enforcement Agency (DEA) certificate, Respondent shall advise the DEA in writing of the licensure action and shall surrender his DEA controlled substance certificate, privileges, and any used DEA #222 U.S. Official Order Forms Schedules 1 and 2, to the DEA.

5. Within 15 days of the Consent Order's effective date, Respondent shall return any unused New York State official prescription forms to the Bureau of Narcotic Enforcement of the New York State Department of Health. Respondent shall have all prescription pads bearing Respondent's name destroyed. If no other licensee is providing services at Respondent's practice location, Respondent shall dispose of all medications.

6. Within 15 days of the Consent Order's effective date, Respondent shall remove from the public domain any representation that Respondent is eligible to practice medicine, including all related signs, advertisements, professional listings whether in telephone directories or otherwise, professional stationery or billings. Respondent shall not share, occupy or use office space in which another licensee provides health care services.

7. Respondent shall not charge, receive or share any fee or distribution of dividends for professional services rendered (by himself or others) while barred from practicing medicine. Respondent may receive compensation for the reasonable value of services lawfully rendered, and disbursements incurred on a patient's behalf, prior to the Consent Order's effective date.

8. If Respondent is a shareholder in any professional service corporation organized to engage in the practice of medicine and Respondent's license is revoked, surrendered or suspended for six months or more pursuant to this Consent Order, Respondent shall, within 90 days of the Order's effective date, divest himself of all financial interest in such professional services corporation in accordance with New York Business Corporation Law. If Respondent is the sole shareholder in a professional services corporation, the corporation must be dissolved or sold within 90 days of the Consent Order's effective date.

9. Failure to comply with the above directives may result in civil or criminal penalties. Practicing medicine when a medical license has been suspended, revoked or annulled is a Class E Felony, punishable by imprisonment for up to four years, under § 6512 of the Education Law. Professional misconduct may result in penalties including revocation of the suspended license and/or fines of up to $10,000 for each specification of misconduct, under N.Y. Pub. Health Law § 230-a.