



***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.  
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NYS Department of Health*

Dennis P. Whalen  
*Executive Deputy Commissioner  
NYS Department of Health*

Dennis J. Graziano, Director  
*Office of Professional Medical Conduct*

William P. Dillon, M.D.  
*Chair*

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

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

**PUBLIC**

June 3, 2003

***CERTIFIED MAIL-RETURN RECEIPT REQUESTED***

James Foit, M.D.  
47 Erie Street  
Tonowanda, NY 14150

RE: License No. 216073

Dear Dr. Foit:

Enclosed please find Order #BPMC 03-141 of the New York State Board for Professional Medical Conduct. This Order and any penalty provided therein goes into effect June 10, 2003.

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 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: Lawlor Quinlan III, Esq.  
Connors & Vilaro, LLP  
1020 Liberty Building  
420 Main Street  
Buffalo, NY 14202

NEW YORK STATE  
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

DEPARTMENT OF HEALTH

IN THE MATTER

OF

JAMES FOIT, M.D.

CONSENT

ORDER

BPMC No. 03-141

Upon the application of (Respondent) James Foit, 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  
SO ORDERED, 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.

DATED: 6/2/03

*William P. Dillon, M.D.*

WILLIAM P. DILLON, M.D.

Chair

State Board for Professional Medical Conduct

**NEW YORK STATE  
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT**

**DEPARTMENT OF HEALTH**

**IN THE MATTER  
  
OF  
  
JAMES FOIT, M.D.**

**CONSENT  
AGREEMENT  
AND  
ORDER**

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

That on or about October 14, 1999, I was licensed to practice as a physician in the State of New York, and issued License No. 216073 by the New York State Education Department.

My current address is 47 Erie Street Tonowanda, New York, 14150, 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 one specification 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, in full satisfaction of the charges against me, and agree to the following penalty:

Pursuant to Section 230-a(2) of the Public Health Law, my license to practice medicine in the State of New York shall be suspended for a period of six months.

Pursuant to Section 230-a(9) of the Public Health Law, I shall be placed on probation for a period of 5 years, to begin following the period of actual suspension subject to the terms set forth in attached Exhibit "B".

My license to practice medicine in the State of New York shall be permanently limited in the following respects:

1. Respondent shall, in the course of practicing medicine in New York State, examine and/ treat any female patient only in the presence of a chaperone.
2. Respondent shall not be permitted to perform pelvic examinations on female patients. In the event a female patient presents with a medical condition which is urgent and requires an immediate pelvic examination Respondent shall be permitted to perform such examination only in the presence of a chaperone. Respondent shall notify OPMC in writing of any such pelvic examination within 48 hours of performance, detailing the facts and medical justification and forwarding a copy of pertinent patient medical records. Respondent shall refer non-emergency pelvic examinations of female patients to an appropriate physician or specialist as indicated by the patient's medical condition.

Prior to resuming practice Respondent shall cause his treating therapist to provide a letter to OPMC providing his/her medical judgement that Respondent's return to practice under the terms contained herein does not pose a significant safety threat to patients regarding his sexual behavior.

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

That Respondent shall maintain current registration of licensure 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.

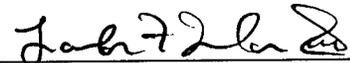
I ask the Board to adopt this Consent Agreement of my own free will and not under duress, compulsion or restraint. In consideration of the value to me of the Board's adoption of this Consent Agreement, allowing me to resolve this matter without the various risks and burdens of a hearing on the merits, 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.

DATED: 5/22/03

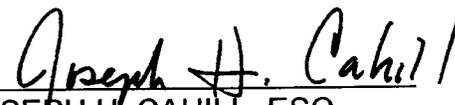
James Foit, M.D.  
JAMES FOIT, M.D.  
RESPONDENT

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

DATED: 5/22/03

  
LAWLOR QUINLAN, III, ESQ.  
Attorney for Respondent

DATED: 5/23/03

  
JOSEPH H. CAHILL, ESQ.  
Associate Counsel  
Bureau of Professional Medical Conduct

DATED: 5/29/03

  
DENNIS J. GRAZIANO  
Director  
Office of Professional Medical Conduct

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

IN THE MATTER  
OF  
JAMES FOIT, M.D.

STATEMENT  
OF  
CHARGES

James Foit, M.D., Respondent, was authorized to practice medicine in New York State on October 14, 1999, by the issuance of license number 216703 by the New York State Education Department. The Respondent is currently registered to practice medicine with the New York State Education Department.

**FACTUAL ALLEGATIONS**

- A. Respondent provided medical care and treatment to Patient A, a then 22 year old female during March of 2001. Respondent, during a physical examination of Patient A, engaged in significant inappropriate touching of Patient A, which constituted a boundary violation of appropriate physician-patient physical contact.

**SPECIFICATION OF CHARGES**

**FIRST SPECIFICATION**

Respondent is charged with professional misconduct within the meaning of N.Y. Education Law § 6530(20) by reason of his conduct in the practice of medicine which evidences moral unfitness to practice medicine, in that Petitioner charges:

1. The facts in Paragraph A.

DATED: May 23, 2003  
Albany, New York

  
Peter Van Buren  
Deputy 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 section 6530 or section 6531 shall constitute a violation of probation and may subject Respondent to an action pursuant to New York State Public Health Law section 230(19).
2. Respondent shall maintain current registration of licensure with the New York State Education Department Division of Professional Licensing Services (except during periods of actual suspension), 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. Respondent's failure to pay any monetary penalty by the prescribed date shall subject Respondent to all provisions of law relating to debt collection by New York State, including but not limited to: the imposition of interest, late payment charges and collection fees; referral to the New York State Department of Taxation and Finance for collection; and non-renewal of permits or licenses [Tax Law section 171(27)]; State Finance Law section 18; CPLR section 5001; Executive Law section 32].
6. 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.
7. 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.

8. Respondent shall maintain complete and legible medical records that accurately reflect the evaluation and treatment of patients and contain all information required by State rules and regulations concerning controlled substances.
9. Respondent shall obtain a clinical competency assessment performed by a program for such assessment as directed by the Director of OPMC. Respondent shall cause a written report of such assessment to be provided directly to the Director of OPMC, prior to Respondent resuming the active practice of medicine.
  - a. Respondent shall be responsible for all expenses related to the clinical competency assessment and shall provide to the Director of OPMC proof of full payment of all costs that may be charged.
10. In the event Respondent is found to be deficient in any areas of medical practice through the assessment above, the Director may impose conditions for the completion of a program of retraining. If directed, Respondent shall enroll in and successfully complete a course of personalized continuing medical education designed to address such deficiencies. Such education shall include an assigned preceptor, board certified in an appropriate specialty, to be approved in writing, by the Director of OPMC. Respondent shall cause the preceptor to:
  - a. Submit reports on a regular basis to OPMC certifying whether Respondent is fully participating in the personalized continuing medical education program.
  - b. Report immediately to the Director of OPMC if Respondent withdraws from the program and report promptly to OPMC any significant pattern of non-compliance by Respondent.
  - c. At the conclusion of the program, submit to the Director of OPMC a detailed assessment of the progress made by Respondent toward remediation of all identified deficiencies.

Respondent shall be solely responsible for all expenses associated with the assessment, medical education program, supervision and monitoring terms herein.

11. The Respondent shall not engage in the solo practice of medicine subject to the following exception. Respondent may practice medicine in office space occupied solely by Respondent provided the healthcare staff, including the chaperone working in such office, are under the control and supervision of another physician licensed by the State of New York.

Respondent shall notify such other physician and his/her staff of the terms and conditions of this order as a condition precedent to occupying such space and utilizing such personnel.

12. Respondent shall, in the course of practicing medicine in New York State, examine and/or treat any female patient only in the presence of a chaperone. The chaperone shall be a female licensed or registered health care professional, shall not be a family member, personal friend, or be in a professional relationship with Respondent which could pose a conflict with the chaperone's responsibilities. The chaperone shall be proposed by Respondent and subject to the written approval of the Director of OPMC.

Prior to the approval of any individual as chaperone, Respondent shall cause the proposed chaperone to execute and submit to the Director of OPMC an acknowledgment of her agreement to undertake all of the responsibilities of the role of chaperone. Said acknowledgment shall be made upon a form provided by and acceptable to the Director. Respondent shall provide the chaperone with a copy of the Order and all of its attachments and shall, without fail, cause the approved chaperone to:

- a. Report quarterly to OPMC regarding her chaperoning of Respondent's practice.
  - b. Report within 24 hours any failure of Respondent to comply with the Order, including, but not limited to, any failure by Respondent to have the chaperone present when required, any sexually suggestive or otherwise inappropriate comments by Respondent to any patient, and any actions of a sexual nature by Respondent in the presence of any patient.
  - c. Confirm the chaperone's presence at each and every examination and treatment of a female patient by Respondent, by placing her name, title and date in the patient record for each and every visit, and by maintaining a separate log, kept in her own possession, listing the patient name and date of visit for each and every patient visit chaperoned.
  - d. Provide copies of the log described in paragraph c. above, to OPMC at least quarterly and also immediately upon the Director's request.
13. Prior to resuming practice, Respondent shall cause his treating therapist to provide a letter to OPMC providing his/her medical judgment that Respondent's return to practice under the terms contained herein does not pose a significant safety risk to Respondent's patients regarding his sexual behavior.
  14. Respondent shall continue in treatment with a health care professional, proposed by Respondent and approved, in writing, by the Director of OPMC, for as long as the health care professional determines it is necessary.
    - a. Respondent shall ensure that said treating health care professional or program submits to OPMC quarterly reports certifying that Respondent is complying with the treatment.

- a. Said treating health care professional shall report to OPMC immediately if Respondent is non-compliant with the treatment plan.
  - b. Said treating health care professional shall acknowledge his/her willingness to comply with the above-mentioned reporting by executing the acknowledgment provided by OPMC.
15. Respondent shall fully and promptly comply with all treatment recommendations from the Behavioral Medical Institute of Atlanta, (Dr. Gene Abel and Dr. Tracey L. Irvin) as well as Respondent's own therapist.
16. Respondent shall be subject to a behavior monitor in his medical practice for a period of five (5) years. The behavior monitor shall be proposed by Respondent and subject to the written approval of the Director of OPMC. The behavior monitor shall not be a family member or personal friend, or be in a professional relationship which could pose a conflict with supervision responsibilities. The behavior monitor should be a licensed or certified health care professional with experience dealing with professional behavior issues. The behavior monitor shall distribute and collect the survey form, attached as Exhibit "B1." The behavior monitor shall submit quarterly written reports to the Director of OPMC. These narrative reports shall address the information compiled on the form, Respondent's on-duty conduct toward patients and staff, and other matters regarding Respondent's practice as the behavior monitor deems appropriate to report, and as may be requested by OPMC.
  - a. Respondent shall ensure that the behavior monitor is familiar with the terms and conditions of the Order and willing to report to OPMC. Respondent shall ensure that the behavior monitor is in a position to regularly observe and assess Respondent's behavior in his medical practice and to have access to patients and staff working with Respondent. The behavior monitor shall report within 24 hours any suspected impairment, inappropriate behavior, patient or staff complaints regarding behavior, or possible misconduct to OPMC.
17. 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.