



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

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

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

January 29, 2004

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Salomon N. Epstein, M.D.
6910 Avenue U
Brooklyn, NY 11234

Re: License No. 129491

Dear Dr. Epstein:

Enclosed please find Order #BPMC 04-15 of the New York State Board for Professional Medical Conduct. This order and any penalty provided therein goes into effect February 5, 2004.

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: Anthony Z. Scher, Esq.
Wood & Scher
The Harwood Building
Scarsdale, NY 10583

IN THE MATTER
OF
SALOMON EPSTEIN, M.D.

CONSENT
ORDER

BPMC No. 04-15

Upon the application of SALOMON EPSTEIN, 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 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: 1/28/04


MICHAEL A. GONZALEZ, R.P.A.
Vice Chair
State Board for Professional Medical Conduct

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

IN THE MATTER
OF
SALOMON EPSTEIN, M.D.

CONSENT
AGREEMENT
AND
ORDER

SALOMON EPSTEIN, M.D. (Respondent), representing that all of the following statements are true, deposes and says:

On or about December 3, 1976, I was licensed to practice as a physician in the State of New York, having been issued License No. 129491 by the New York State Education Department.

My current address is 6910 Avenue U, Brooklyn, New York 11234, and I will advise the Director of the Office of Professional Medical Conduct of any change of my address.

I understand that the New York State Board for Professional Medical Conduct has charged me with Twenty 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 admit guilt to the Thirteenth and Twentieth Specifications in full satisfaction of the charges against me, and agree to the following penalty:

I will have permanent limitations on my license requiring me:

1) to have a physician with appropriate qualifications to provide coverage at all practice locations when I will be absent from the area or otherwise not available to promptly present to my office or a hospital in that area as necessary for patient

care, and

2) to use pulse oximetry during all terminations of pregnancy; and further

I will be on probation and fully comply with the Terms of Probation attached hereto as Exhibit B, until May 1, 2008.

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.

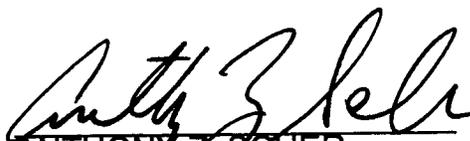
DATE: JAN 8th 2004



SALOMON EPSTEIN, M.D.
RESPONDENT

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

DATE: 1/15/04


ANTHONY J. SCHER
Attorney for Respondent

DATE: 1/20/04


KEVIN P. DONOVAN
ASSOCIATE COUNSEL
Bureau of Professional Medical Conduct

DATE: 1/29/04


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
SALOMON EPSTEIN, M.D. : CHARGES

-----X

SALOMON EPSTEIN, M.D., the Respondent, was authorized to practice medicine in New York State on or about December 3, 1976, by the issuance of license number 129491 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. Respondent treated Patient A (patients are identified in the attached Appendix A), a 28 year old female, by performing a termination of pregnancy (TOP) on or about May 26, 2000, at his office in Brooklyn, New York. Respondent's care and treatment of Patient A failed to meet acceptable standards of care in that:

1. Respondent failed to appropriately monitor the patient's oxygen saturation during the procedure.
2. Respondent failed to submit tissue from the procedure for pathology assessment.
3. Respondent failed to appropriately respond to post-discharge patient reports of pain, nausea and/or vomiting.
4. Respondent failed to be available to respond to post-operative complaints and/or have appropriate coverage.
5. Respondent failed to appropriately document telephone communication from the patient concerning post-operative pain, nausea and/or vomiting.
6. Respondent failed to appropriately create and maintain a document containing the patient's complete history, signs, symptoms, diagnosis, treatment, followup care and instructions and/or to provide a copy of such document to the patient within one week of the patient's office visit as required by the Terms of Probation in Board Order #00-131, dated April 28, 2000.

B. Respondent treated Patient B, a 24 year old female, by performing a TOP at his office in Binghamton, New York, on or around November 28, 2001. Respondent's care and treatment of Patient B failed to meet acceptable standards of care in that:

1. Respondent failed to appropriately monitor the patient's oxygen saturation during the procedure.
2. Respondent inappropriately performed a TOP in his office and/or without adequate access to a hospital, for what he reported to be a 16 week gestational age fetus.
3. Respondent inappropriately performed the procedure without use of osmotic dilators for the cervix.
4. Respondent failed to appropriately respond to patient complaints of post-operative pain made by telephone on or around Friday, November 30, and/or Monday, December 3.
5. Respondent failed to be available to respond to post-operative complaints.
6. Respondent failed to have appropriate coverage as required by acceptable standards of care and/or by paragraph 9 of the Terms of Probation in Board Order #00-131, dated April 28, 2000.
7. Respondent inappropriately or fraudulently wrote in an undated note in his chart and/or told a physician at Lourdes Hospital that he had a covering physician at UHS Wilson Hospital.
8. Respondent failed to appropriately create and maintain a document containing the patient's complete history, signs, symptoms, diagnosis, treatment, followup care and instructions and/or to provide a copy of such document to the patient within one week of the patient's office visit as required by the Terms of Probation in Board Order #00-131, dated April 28, 2000.
9. Respondent failed to promptly provide the patient's medical record to the physician treating Patient B at Lourdes Hospital, after Respondent was called by the physician who admitted her from the Emergency Department, as required by paragraph 7 of the Terms of Probation in Board Order #00-131, dated April 28, 2000.

C. Respondent treated Patient C, a 29 year old female, by performing a TOP at his office in Binghamton, New York, on or around December 22, 1999. Respondent's care and treatment of Patient C failed to meet acceptable standards of care in that:

1. Respondent failed to appropriately monitor the patient's oxygen saturation during the procedure.

2. Respondent discharged the patient from his office too soon after she was administered Midazolam (Versed).
3. Respondent failed to appropriately respond to telephone communications concerning post-operative pain and/or bleeding.

D. Respondent treated Patient D, a 20 year old female, by performing a TOP at his office in Binghamton, New York, on or around November 4, 1999. Respondent's care and treatment of Patient D failed to meet acceptable standards of care in that:

1. Respondent failed to appropriately monitor the patient's oxygen saturation during the procedure.
2. Respondent inappropriately performed a TOP in his office and/or without adequate access to a hospital, for what he reported to be an 18 week gestational age fetus.

E. Respondent treated Patient E, a 34 year old female, by performing a TOP at his office in Binghamton, New York, on or around February 20, 2002.

Respondent's care and treatment of Patient E failed to meet acceptable standards of care in that:

1. Respondent failed to appropriately monitor the patient's oxygen saturation during the procedure.
2. Respondent discharged the patient from his office too soon after she was administered Midazolam (Versed).
3. Respondent failed to appropriately create and maintain a document containing the patient's complete history, signs, symptoms, diagnosis, treatment, followup care and instructions and/or to provide a copy of such document to the patient within one week of the patient's office visit as required by the Terms of Probation in Board Order #00-131, dated April 28, 2000.

F. In an interview with personnel of the Office of Professional Medical Conduct on or around January 29, 2001, Respondent fraudulently or inappropriately named a physician who he claimed was providing coverage for him during his absences from his office in Binghamton, New York, when such physician had not agreed to be his covering physician.

G. By Board Order #00-131 of the State Board for Professional Medical Conduct, Respondent was required to comply with various terms of probation, including his conformance to the moral and professional standards of conduct and obligations imposed by law and by his profession. Respondent's care of Patients A, B, E and/or the conduct set forth in paragraph F failed to meet such standards.

H. By Board Order #00-131, of the State Board for Professional Medical Conduct, Respondent was required to comply with various terms of probation, including, when he was absent from the area of any of his offices, to have available a physician who is qualified to care for the patients who has agreed to cover for Respondent.

Respondent failed to have such a covering physician available at the time he treated:

1. Patient A.
2. Patient B.
3. Patient E.

I. By Adjudication and Order dated June 11, 2003, the Pennsylvania State Board of Medicine refused Respondent's application for licensure after finding him guilty of the unprofessional conduct of deliberately misrepresenting his disciplinary history on his application by not disclosing that New Jersey had taken disciplinary action against him. Such conduct, if committed in New York state would constitute professional misconduct, namely fraud in the practice of medicine [N.Y. Educ. Law § 6530(2)] and/or conduct in the practice of medicine which evidences moral unfitness to practice e medicine [N.Y. Educ. Law § 6530(21)].

SPECIFICATIONS OF MISCONDUCT

FIRST SPECIFICATION

NEGLIGENCE ON MORE THAN ONE OCCASION

Respondent is charged with practicing the profession with negligence on more than one occasion within the meaning of N.Y. Educ. Law § 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.5, A and A.6, B and B.1, B and B.2, B and B.3, B and B.4, B and B.4, B and B.5, B and B.6, B and B.7, B and B.8, C and C.1, C and C.2, C and C.3, D and D.1, D and D.2, E and E.1, E and E.2 and/or E and E.3.

SECOND SPECIFICATION

INCOMPETENCE ON MORE THAN ONE OCCASION

Respondent is charged with practicing the profession with incompetence on more than one occasion within the meaning of N.Y. Educ. Law § 6530(5) in that 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.5, A and A.6, B and B.1, B and B.2, B and B.3, B and B.4, B and B.4, B and B.5, B and B.6, B and B.7, B and B.8, C and C.1, C and C.2, C and C.3, D and D.1, D and D.2, E and E.1, E and E.2 and/or E and E.3.

THIRD THROUGH SEVENTH SPECIFICATIONS

GROSS NEGLIGENCE

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

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

EIGHTH SPECIFICATION

GROSS INCOMPETENCE

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

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

NINTH AND TENTH SPECIFICATIONS

FRAUD

Respondent is charged with practicing the profession fraudulently within the meaning of N.Y. Educ. Law § 6530(2) in that Petitioner charges:

9. The facts of paragraph B and B.6.
10. The facts of paragraph F.

ELEVENTH AND TWELFTH SPECIFICATIONS

CONDUCT EVIDENCING MORAL UNFITNESS

Respondent is charged with conduct evidencing moral unfitness within the meaning of N.Y. Educ. Law § 6530(20) in that Petitioner charges:

11. The facts of paragraph B and B.6
12. The facts of paragraph F.

THIRTEENTH THROUGH FIFTEENTH SPECIFICATIONS

VIOLATION OF A TERM OF PROBATION

Respondent is charged with violating a term of probation imposed on the licensee pursuant to section two hundred thirty of the public health law within the meaning of N.Y. Educ. Law § 6530(29) in that Petitioner charges:

13. The facts of paragraphs A and A.6.
14. The facts of paragraphs B and B.6.

15. The facts of paragraph G.

SIXTEENTH THROUGH EIGHTEENTH 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:

16. The facts of paragraphs A and A.6.
17. The facts of paragraphs B and B.7.
18. The facts of paragraphs C and C.3.

NINETEENTH SPECIFICATION

GUILTY OF MISCONDUCT IN ANOTHER STATE

Respondent is charged with having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York state, constitute professional misconduct under the laws of New York state within the meaning of N.Y. Educ. Law § 6530(9)(b) in that Petitioner charges:

19. The facts of paragraph I.

TWENTIETH SPECIFICATION

HAVING AN APPLICATION FOR A LICENSE REFUSED IN ANOTHER STATE

Respondent is charged with having had his application for a license refused by a duly authorized professional disciplinary agency of another state where the conduct upon which the refusal was based would, if committed in New York state, constitute professional misconduct under the laws of New York state within the meaning of N.Y. Educ. Law § 6530(9)(d) in that Petitioner charges:

20. The facts of paragraph I.

DATED: January 20, 2008
Albany, New York


PETER D. 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 § 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 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.
3. 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.
4. 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].
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.
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 the evaluation and treatment of patients and contain all information required by State rules and regulations concerning controlled substances.
8. Respondent shall create a document for each patient containing the patient's complete history, signs, symptoms, diagnosis, treatment, follow up care and instructions. This document shall be kept on file and available to be promptly provided to any future physicians or facilities to provide treatment to the

patient. Respondent shall provide each patient with a copy of this document within one week of each visit by the patient to Respondent.

9. If Respondent maintains any offices outside New York City, such offices shall be staffed during normal business hours. Respondent shall be physically present at such offices a minimum of two days per week.
10. On the days in which Respondent is absent from the area of any of his offices, Respondent shall have available a covering physician, proposed by Respondent and approved in writing by the Director. The covering physician must be one who is qualified to care for the patients Respondent has treated, and who has agreed to cover for Respondent in his absence. Respondent shall also have a staff person who will be available to contact Respondent or the covering physician so that the patient will be seen in a timely manner.
11. 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 of no less than 20% and up to 33% 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. Respondent shall be solely responsible for all expenses associated with monitoring, including fees, if any, to the monitoring physician.
 - c. Respondent shall cause the practice monitor to report quarterly, in writing, to the Director of OPMC.
 - d. Should the approved practice monitor be unable or unwilling to perform his/her duties, through no fault of Respondent, then Respondent may practice without an approved monitor for no more than thirty days. The new approved monitor shall review a sampling of cases handled during any time periods not covered in the reports of the preceding monitor.
 - 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 prior to Respondent's practice after the effective date of this Order.
12. 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.