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

October 13, 2004

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Henry Samuel Metz, M.D.
2318 Fillmore Street
San Francisco, CA 94115

Re: License No. 088081

Dear Dr. Metz:

Enclosed please find Modification Order #BPMC 03-224 of the New York State Board for Professional Medical Conduct. This modification order and any penalty provided therein goes into effect October 20, 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

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

IN THE MATTER OF HENRY SAMUEL METZ, M.D.	MODIFICATION ORDER BPMC No.03-224

Upon the proposed Application for a Modification Order of **HENRY SAMUEL METZ, M.D.,** (Respondent) for Consent Order, that is made a part of this Modification Order, it is agreed to and

ORDERED, that the attached Application, and its terms, are adopted SO ORDERED, and it is further

ORDERED, that this Modification Order shall be effective upon issuance by the Board, either by mailing of a copy of this Modification Order, by either first class mail, to Respondent at the address in the attached Application or certified mail to Respondent's attorney, or upon transmission via facsimile to Respondent or Respondent's attorney, whichever is earliest.

SO ORDERED.

DATED: 10/11/04

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

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

IN THE MATTER OF HENRY SAMUEL METZ, M.D.	APPLICATION TO MODIFY CONSENT ORDER BMPC NO. 03-224

HENRY SAMUEL METZ, M.D., (Respondent) deposes and says:

That on or about August 21, 1962, I was licensed to practice as a physician in the State of New York, having been issued License No. 088081 by the New York State Education Department.

My current address is 2318 Fillmore Street, San Francisco, CA 94115 and I will advise the Director of the Office of Professional Medical Conduct of any change of my address within thirty (30) days thereof.

I am currently subject to COSENT ORDER BPMC NO. 03-224, dated August 25, 2003, annexed hereto, made a part hereof, and marked as Exhibit I (hereinafter "Original Order"), that was issued upon a Consent Agreement and Order signed by me on July 25, 2003, (hereinafter "July 25, 2003, Order"), adopted by the Original Order.

I apply, hereby, to the State Board for Professional Medical Conduct for a Modification Order (hereinafter "Modification Order"), modifying the Original Order, as follows: to delete the language in the Original Order that states:

> " Censure and Reprimand
> Pursuant to §230a(9) of the Public Health Law, I shall be placed on probation for a period of three years."

As well as the conditions imposed thereafter.

substituting therefore:

> "I shall never activate my registration to practice medicine in New York state or seek to reapply for a license to practice medicine in New York state."

The Modification Order to be issued will not constitute a new disciplinary action against me, but will substitute the proposed language for the above described language in the Original Order.

I am making this Application of my own free will and accord and not under duress, compulsion or restraint of any kind or manner, and seek the anticipated benefit of the requested Modification. In consideration of the value to me of the acceptance by the Board of this Application, I knowingly waive any right I may have to contest the Original Order or the Modification Order for which I apply, whether administratively or judicially, and ask that the Board grant this Application.

AFFIRMED:

DATED: 3/27/04

HENRY SAMUEL METZ, M.D.
Respondent

The undersigned agree to the attached application of Respondent and to the proposed penalty based on the terms and conditions thereof.

DATE: 28 September 2004

ROBERT BOGAN
Associate Counsel
Bureau of Professional Medical Conduct

DATE: 08 October 2004

DENNIS J. GRAZIANO
Director
Office of Professional Medical Conduct

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

PUBLIC

IN THE MATTER OF HENRY SAMUEL METZ, M.D.	CONSENT ORDER BPMC No. 03-224

Upon the application of Henry Samuel Metz, 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:

Michael A. Gonzalez

DATED: 8/25/03

Michael A. Gonzalez, R.P.A.
Vice Chair
Board for Professional Medical Conduct

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

IN THE MATTER OF HENRY SAMUEL METZ, M.D.	CONSENT AGREEMENT AND ORDER

Henry Samuel Metz, M.D., representing that all of the following statements are true, deposes and says:

That on or about August 21, 1962, I was licensed to practice as a physician in the State of New York, and issued License No. 088081 by the New York State Education Department.

My current address is 26 Wood Hill Drive, Pittsford, New York 14534, 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 plead guilty to the first specification, in full satisfaction of the charges against me, and agree to the following penalty:

- Censure and Reprimand
- Pursuant to § 230a(9) of the Public Health Law, I shall be placed on probation for a period of three years.

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 7/25/03

HENRY SAMUEL METZ, M.D.
RESPONDENT

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

DATE: 7/28/03

RICHARD TUBIOLO, ESQ.
Attorney for Respondent

DATE: 7-30-03

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

DATE: August 20, 2003

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 HENRY SAMUEL METZ, M.D.	STATEMENT OF CHARGES

Henry Samuel Metz, M.D., Respondent, was authorized to practice medicine in New York State on or about August 21, 1962 , by the issuance of license number 88081 by the New York State Education Department. Respondent is currently registered to practice medicine with the New York State Education Department with an address of 1425 Portland Avenue, Rochester, New York, 14621.

FACTUAL ALLEGATIONS

A. Respondent provided medical care and treatment at his office located at 1425 Portland Avenue, Rochester, New York to Patient A between October 1994 and April 2001. Patient A was a 71 year old male in April of 2001. Respondent's care and treatment of Patient A failed to meet accepted standards of medical care in the following respect:

1. Respondent failed to adequately visualize Patient A's optic nerves by the use of dilated fundus examinations or similar diagnostic studies on multiple occasions.
2. Respondent failed to perform formal visual field tests on Patient A, who had elevated or borderline elevated intraocular lens pressures.
3. Respondent failed to schedule timely follow-up visits to assess Patient A's optic nerve condition related to possible glaucoma.

B. Respondent provided medical care and treatment at his office to Patient B, a then 69 year old female with a 20 year history of primary open angle glaucoma. Respondent treated Patient B from approximately May 1999 through at least February 2001. Respondent's care and treatment of Patient B failed to meet accepted standards of medical care in that:

1. Respondent failed to perform timely disc examinations.
2. Respondent failed to adequately examine Patient B's anterior chamber angle using gonioscopy or a similar diagnostic study.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

Negligence on More than One Occasion

Respondent is charged with negligence on more than one occasion in violation of N.Y. Education Law § 6530(3), in that Petitioner charges two or more of the following:

1. The facts in Paragraphs A. and A.1, A. and A.2, A. and A.3, B. and B.1, B. and B. 2.

DATED: July ~~8~~ 30, 2003
Albany, New York

Peter D. Van Buren
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 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 enroll in and complete a continuing education program in the areas of treatment of glaucoma and record keeping for a minimum of 30 credit hours. This continuing education program is subject to the Director of OPMC's prior written approval and shall be completed within the probation period, unless the Order specifies otherwise.

10. PRACTICE MONITOR

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. 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. 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.

11. 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.