



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

March 8, 2000

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Mary Catherine Fogarty, M.D.
126 Gilbert Road
New Hartford, NY 13413

RE: License No. 121482

Dear Dr. Fogarty:

Enclosed please find Order #BPMC 00-67 of the New York State Board for Professional Medical Conduct. This Order and any penalty provided therein goes into effect **March 8, 2000**.

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: Barry C. Plunkett, Esq.

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

IN THE MATTER
OF
MARY CATHERINE FOGARTY, MD

CONSENT
AGREEMENT
AND
ORDER
BPMC #00-67

MARY CATHERINE FOGARTY, M.D., (Respondent) states:

That on or about September 16, 1974, I was licensed to practice as a physician in the State of New York, having been issued License No. 121482 by the New York State Education Department.

My current address is 126 Gilbert Road, New Hartford, New York 13413, 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 three specifications of professional misconduct.

A copy of the Statement of Charges is annexed hereto, made a part hereof, and marked as Exhibit "A."

I do not contest the allegations to the charge contained in the First Specification as it relates to the following factual paragraphs set forth in Exhibit A: C and C.1; D and D.1; E and E.1; F and F.1; G and G.1; L and L.1; and/or M and M.1.

That I receive a Censure and Reprimand upon the one specification set forth in Exhibit "A", annexed hereto and made a part hereof, and I shall be subject to a term of probation for a period of two (2) years in accordance with the terms and conditions set forth herein and as set forth in a copy of the terms of probation which is annexed hereto, made a part hereof and marked as Exhibit "B".

I agree to complete 50 hours of Continuing Medical Education (CME) courses on medical issues related to my medical practice, including topics on or related to medical record keeping, to be approved in advance by the Director of the Office of Professional Medical Conduct (OPMC) for each year of the two (2) year period of probation, and I shall bear all costs and expenses relating to the completion of said courses.

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

That Respondent shall maintain current registration of Respondent's license with the New York State Education Department Division of Professional Licensing Services, and pay all registration fees. This condition shall be in effect beginning thirty days after the effective date of the Consent Order and will continue while Respondent possesses his license; and

That Respondent shall fully cooperate in every respect with the Office of Professional Medical Conduct (OPMC) in its

administration and enforcement of this Order and in its investigation of all matters regarding Respondent. Respondent shall respond in a timely manner to each and every request by OPMC to provide written periodic verification of Respondent's compliance with the terms of this Order. Respondent shall meet with a person designated by the Director of OPMC as directed. Respondent shall respond promptly and provide any and all documents and information within Respondent's control upon the direction of OPMC. This condition shall be in effect beginning upon the effective date of the Consent Order and will continue while the licensee possesses her license.

I hereby stipulate that any failure by me to comply with such conditions shall constitute misconduct as defined by New York State Education Law §6530(29).

I agree that in the event I am charged with professional misconduct in the future, this agreement and order shall be admitted into evidence in that proceeding.

I hereby make this application to the State Board for Professional Medical Conduct (the Board) and request that it be granted.

I understand that, in the event that this application is not granted by the Board, nothing contained herein shall be binding upon me or construed to be an admission of any act of misconduct alleged or charged against me, such application shall not be used against me in any way and shall be kept in strict confidence during the pendency of the professional misconduct disciplinary proceeding; and such denial by the Board shall be made without prejudice to the continuance of any disciplinary proceeding and the final determination by the Board pursuant to the provisions of the Public Health Law.

I agree that, in the event the Board grants my application, as set forth herein, an order of the Chairperson of the Board shall be issued in accordance with same. I agree that such order shall be effective upon issuance by the Board, which may be accomplished by mailing, by first class mail, a copy of the Consent Order to me at the address set forth in this agreement, or to my attorney, or upon transmission via facsimile to me or my attorney, whichever is earliest.

I am making this application of my own free will and accord and not under duress, compulsion or restraint of any kind or manner. In consideration of the value to me of the acceptance by the Board of this application, allowing me to resolve this matter without the various risks and burdens of a hearing on the merits, I knowingly waive any right I may have to contest the Consent Order for which I hereby apply, whether administratively or judicially, and ask that the application be granted.

AFFIRMED


MARY CATHERINE FOGARTY, M.D.
Respondent

DATED 02-22-00


NANCY A. CZUPRYNA
Notary Public in the State of New York
Appointed in Oneida County
Reg. No. 4985879
My Commission Expires Sept. 3, 2001

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

DATE: _____

NA
XXXXXXXXXXXXXXXXXXXXX
Respondent's Counsel

DATE: 2/24/00

Barry C Plunkett
BARRY C. PLUNKETT
Associate Counsel
Bureau of Professional Medical Conduct

DATE: 2/29/00

Anne F. Saile
ANNE F. SAILE
Director
Office of Professional Medical Conduct

Nancy A Czupryna

Nancy A. Czupryna
Notary Public in the State of New York
Appointed in Oneida County
Reg. No. 4935879
My Commission Expires Sept. 3, 2001

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

IN THE MATTER
OF
MARY CATHERINE FOGARTY, M.D.

CONSENT
ORDER

Upon the proposed agreement of, MARY CATHERINE FOGARTY M.D.
(Respondent) for Consent Order, which application is made a part hereof, it is agreed to
and

ORDERED, that the application and the provisions thereof are hereby adopted; and
it is further

ORDERED, that this order shall be effective upon issuance by the Board, which
may be accomplished by mailing, by first class mail, a copy of the Consent Order to
Respondent at the address set forth in this agreement or to Respondent's attorney by
certified mail, or upon transmission via facsimile to Respondent or Respondent's attorney,
whichever is earliest.

SO ORDERED.

DATED: 3/5/00


WILLIAM P. DILLON, M.D.
Chair
State Board for Professional
Medical Conduct

EXHIBIT "A"

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

-----X

IN THE MATTER : STATEMENT
OF : OF
MARY CATHERINE FOGARTY, M.D. : CHARGES

-----X

MARY CATHERINE FOGARTY, M.D., Respondent, was authorized to practice medicine in New York State on September 16, 1974 by the issuance of license number 121482 by the New York State Education Department. The Respondent is currently registered with the New York State Education Department to practice medicine for the period November 1, 1998, through October 31, 2000, with a registration address of 126 Gilbert Road, New Hartford, NY.

FACTUAL ALLEGATIONS

A. Respondent treated Patient A in the hospital (patients are identified by name in Appendix A hereto) from in or around March 20, 1993 through in or around April 9, 1993.

Respondent's treatment of Patient A did not meet acceptable standards of care in that:

1. Respondent failed to maintain a record for Patient A which accurately reflected the evaluation and/or treatment of Patient A.

B. Respondent treated Patient B in the hospital from in or around January 17, 1991 through in or around February 21, 1991. Respondent's treatment of Patient B did not meet acceptable standards of care in that:

1. Respondent failed to maintain a record for Patient B which accurately reflected the evaluation and/or treatment of Patient B.

C. Respondent treated Patient C in the hospital from in or around August 1, 1990 through in or around August 5, 1990. Respondent's treatment of Patient C did not meet acceptable standards of care in that:

1. Respondent failed to maintain a record for Patient C which accurately reflected the evaluation and/or treatment of Patient C.

D. Respondent treated Patient D in the hospital from in or around October 25, 1993 through in or around November 8, 1993. Respondent's treatment of Patient D did not meet acceptable standards of care in that:

1. Respondent failed to maintain a record for Patient D which accurately reflected the evaluation and/or treatment of Patient D.

E. Respondent treated Patient E in the hospital from in or around October 24, 1993 through in or around November 6, 1993. Respondent's treatment of Patient E did not meet acceptable standards of care in that:

1. Respondent failed to maintain a record for Patient E which accurately reflected the evaluation and/or treatment of Patient E.

F. Respondent treated Patient F in the hospital from in or around October 9, 1992 through in or around October 22, 1992. Respondent's treatment of Patient F did not meet acceptable standards of care in that:

1. Respondent failed to maintain a record for Patient F which accurately reflected the evaluation and/or treatment of Patient F.

G. Respondent treated Patient F in the hospital from in or around February 3, 1993 through in or around February 8, 1993. Respondent's treatment of Patient F did not meet acceptable standards of care in that:

1. Respondent failed to maintain a record for Patient F which accurately reflected the evaluation and/or treatment of Patient F.

H. Respondent treated Patient G in the hospital from in or around November 24, 1990 through in or around December 7, 1990. Respondent's treatment of Patient G did not meet acceptable standards of care in that:

1. Respondent failed to maintain a record for Patient G which accurately reflected the evaluation and/or treatment of Patient G.

I. Respondent treated Patient G in the hospital from in or around December 8, 1990 through in or around December 24, 1990. Respondent's treatment of Patient G did not meet acceptable standards of care in that:

1. Respondent failed to maintain a record for Patient G which accurately reflected the evaluation and/or treatment of Patient G.

J. Respondent treated Patient H in the hospital from in or around May 9, 1993 through in or around May 21, 1993. Respondent's treatment of Patient H did not meet acceptable standards of care in that:

1. Respondent failed to maintain a record for Patient H which accurately reflected the evaluation and/or treatment of Patient H.

K. Respondent treated Patient I in the hospital from in or around January 11, 1993 through in or around January 21, 1993. Respondent's treatment of Patient I did not meet acceptable standards of care in that:

1. Respondent failed to maintain a record for Patient I which accurately reflected the evaluation and/or treatment of Patient I.

L. Respondent treated Patient J in the hospital from in or around October 12, 1993 through in or around October 31, 1993. Respondent's treatment of Patient J did not meet acceptable standards of care in that:

1. Respondent failed to maintain a record for Patient J which accurately reflected the evaluation and/or treatment of Patient J.

M. Respondent treated Patient K in the hospital from in or around June 23, 1993 through in or around July 1, 1993. Respondent's treatment of Patient K did not meet acceptable standards of care in that:

1. Respondent failed to maintain a record for Patient K which accurately reflected the evaluation and/or treatment of Patient K.

N. Respondent treated Patient L in the hospital from in or around October 21, 1993 through in or around October 26, 1993. Respondent's treatment of Patient L did not meet acceptable standards of care in that:

1. Respondent failed to maintain a record for Patient L which accurately reflected the evaluation and/or treatment of Patient L.

O. Respondent treated Patient M in the hospital from in or around October 18, 1993 through in or around November 3, 1993. Respondent's treatment of Patient M did not meet acceptable standards of care in that:

1. Respondent failed to maintain a record for Patient M which accurately reflected the evaluation and/or treatment of Patient M.

P. Respondent treated Patient N in the hospital from in or around August 27, 1992 through in or around September 19, 1992. Respondent's treatment of Patient N did not meet acceptable standards of care in that:

1. Respondent failed to maintain a record for Patient N which accurately reflected the evaluation and/or treatment of Patient N.

SPECIFICATIONS

FIRST SPECIFICATION

INADEQUATE RECORDS

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

1. The facts in Paragraphs A and A.1 and/or B and B.1, and/or C and C.1, and/or D and D.1, and/or E and E.1, and/or F and F.1, and/or G and G.1, and/or H and H.1, and/or I and I.1, and/or J and J.1, and/or K and K.1, and/or L and L.1, and/or M and M.1, and/or N and N.1, and/or O and O.1, and/or P and P.1.

DATED: *February 24*, 2000
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 shall conduct himself/herself in all ways in a manner befitting his/her professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his/her profession.
2. Respondent shall submit written notification to the New York State Department of Health addressed to the Director of the Office of Professional Medical Conduct, New York State Department of Health, 433 River Street, Suite 303, Troy, NY 12180-2299; said notice is to include a full description of any employment and practice, professional and residential addresses and telephone numbers within or without New York State, and any and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty days of each action.
3. Any civil penalty not paid by the date prescribed herein shall be subject to all provisions of law relating to debt collection by New York State. This includes but is 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].
4. The period of probation shall be tolled during periods in which Respondent is not engaged in the active practice of medicine in New York State. Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in or intends to leave the active practice of medicine in New York State for a period of thirty (30) consecutive days or more. Respondent shall then notify the Director again prior to any change in that status. The period of probation shall resume and any terms of probation which were not fulfilled shall be fulfilled upon Respondent's return to practice in New York State.

5. Respondent's professional performance may be reviewed by the Director of OPMC. This review may include, but shall not be limited to, a review of office records, patient records and/or hospital charts, interviews with or periodic visits with Respondent and his/her staff at practice locations or OPMC offices.
6. Respondent shall maintain legible and complete medical records which accurately reflect the evaluation and treatment of patients. The medical records shall contain all information required by State rules and regulations regarding controlled substances.
7. Respondent shall comply with all terms, conditions, restrictions, limitations and penalties to which he or she is subject pursuant to the Order and shall assume and bear all costs related to compliance. Upon receipt of evidence of noncompliance with, or any violation of these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding and/or any such other proceeding against Respondent as may be authorized pursuant to the law.