



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

Public

Kendrick A. Sears, M.D.
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Michael A. Gonzalez, R.P.A.
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Ansel R. Marks, M.D., J.D.
Executive Secretary

June 1, 2005

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Paul Erwin Brody, M.D.
144-53 72nd Road
Flushing, NY 11367-2405

RE: License No. 143755

Dear Dr. Brody:

Enclosed is a copy of Order #BPMC 05-105 of the New York State Board for Professional Medical Conduct. This Order and any penalty provided therein goes into effect June 8, 2005.

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 or receipt of the 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

If the penalty imposed by the Order is a fine, please write the check payable to the New York State Department of Health. Noting the BPMC Order number on your remittance will assist in proper crediting. Payments should be directed to the following address:

Bureau of Accounts Management
New York State Department of Health
Corning Tower, Room 1258
Empire State Plaza
Albany, New York 12237

Sincerely,

A handwritten signature in black ink, appearing to read "Ansel R. Marks". The signature is written in a cursive style with a large initial "A" and "M".

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

Executive Secretary

Board for Professional Medical Conduct

cc: Douglas M. Nadjari, Esq.
Kern, Augustine, Conroy & Schoppman, P.C.
420 Lakeville Road
Lake Success, NY 11042

IN THE MATTER
OF
PAUL ERWIN BRODY, M.D.

CONSENT
ORDER

BPMC No. 05-105

Upon the application of (Respondent) PAUL ERWIN BRODY, 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.

DATED: 5-31-2005


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

**IN THE MATTER
OF
PAUL ERWIN BRODY, M.D.**

**CONSENT
AGREEMENT
AND
ORDER**

PAUL ERWIN BRODY, M.D., representing that all of the following statements are true, deposes and says:

That on or about October 10, 1980, I was licensed to practice as a physician in the State of New York, and issued License No. 149755 by the New York State Education Department.

My current address is 144-63 72nd Road, Flushing, Queens, 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 twenty-two 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 assert that I cannot successfully defend against at least one of the acts of misconduct alleged, in full satisfaction of the charges against me, and agree to the following penalty:

Pursuant to §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 thirty-six months, with the first six months to be served as a period of actual suspension and with the last thirty months of said suspension to be stayed.

Pursuant to §230-a(9) of the Public Health Law, I shall be placed on probation for a period of thirty months, commencing at the completion of the six month period of actual suspension, subject to the terms set forth in attached Exhibit "B."

I shall be subject to a fine in the amount of \$30,000.00, pursuant to §230-a(7) and (9) of the Public Health Law, to be paid as follows: One payment of \$10,000.00 shall be made no later than 30 days after the effective date of this order, a second payment of \$10,000.00 shall be made no later than 12 months after the effective date of this order; a third payment of \$10,000.00 shall be made no later than 24 months after the effective date of this order. Payments must be submitted to:

**Bureau of Accounts Management
New York State Department of Health
Empire State Plaza
Corning Tower, Room 1245
Albany, New York 12237**

I shall be subject to a condition that I comply with Exhibit "C," "Guidelines For Closing a Medical Practice Following a Revocation, Surrender or Suspension (Of 6 Months or More) of a Medical License," attached hereto.

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

That Respondent shall comply with all OSHA regulations regarding the disposal of infectious waste and shall adhere to all

scientifically accepted barrier precautions and infection control practices, and shall permit representatives of the Office of Professional Medical Conduct to inspect any and all of his practice locations to ensure such compliance. 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.

That Respondent shall maintain active registration of Respondent's license 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. The Order, this agreement, and all attached Exhibits shall be public documents, with only patient identities, if any, redacted.

I stipulate that the proposed sanction and Order are authorized by Public Health Law Sections 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.

DATED 5/17/05

Paul E. Brody, M.D.

PAUL ERWIN BRODY, M.D.
RESPONDENT

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

DATE:

5/17/05


DOUGLAS NADJARI, ESQ.
Attorney for Respondent

DATE:

5/18/05


DIANNE ABELOFF
Associate Counsel
Bureau of Professional Medical Conduct

DATE:

5/23/05

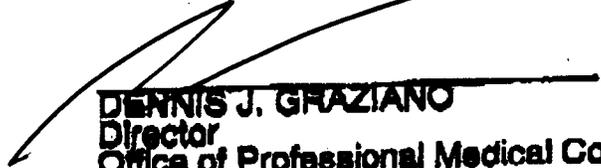

DENNIS J. GRAZIANO
Director
Office of Professional Medical Conduct

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 active registration of Respondent's license (except during periods of actual suspension) with the New York State Education Department Division of Professional Licensing Services, 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. Payment of the \$30,000.00 fine imposed, as set forth in the Order, is also a term probation.
7. 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 and such additional requirements as the Director may impose as reasonably relate to the matters set forth in Exhibit "A" or are necessary to protect the public health. Tolling shall not defer any requirement that Respondent pay any fine as imposed.
8. 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.

9. 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.

PRACTICE MONITOR

10. 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 enroll in and complete a continuing education program in such area(s) as shall be determined by the Director of OPMC. Respondent shall propose specific courses within the areas determined by the Director, but such program is subject to the Director of OPMC's prior written approval. Such program shall be completed within the first year of the probation period.
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.

EXHIBIT "C"

**GUIDELINES FOR CLOSING A MEDICAL PRACTICE FOLLOWING A
REVOCATION, SURRENDER OR SUSPENSION (of 6 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 or herself as eligible to practice medicine and shall refrain from providing an opinion as to professional practice or its application.
2. Within fifteen (15) days of the Consent Order's effective date, Respondent shall notify all patients that he or she has ceased the practice of medicine, and shall refer all patients to another licensed practicing physician for their continued care, as appropriate.
3. Within thirty (30) days of the Consent Order's effective date, Respondent shall have his or her original license to practice medicine in New York State and current biennial registration delivered to the Office of Professional Medical Conduct (OPMC) at 433 River Street Suite 303, Troy, NY 12180-2299.
4. Respondent shall arrange for the transfer and maintenance of all patient medical records. Within thirty (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 (6) years after the last date of service, and, for minors, at least six (6) years after the last date of service or three (3) 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 seventy-five 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.
5. Within fifteen (15) days of the 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 or her DEA controlled substance certificate, privileges, and any used DEA #222 U.S. Official Order Forms Schedules 1 and 2, to the DEA.
6. Within fifteen (15) days of the 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.
7. Within fifteen (15) days of the 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.

8. 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 Order's effective date.
9. 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 (6) months or more pursuant to this Order, Respondent shall, within ninety (90) days of the Order's effective date, divest himself/herself 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 ninety (90) days of the Order's effective date.
10. 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 (4) years, under Section 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 Section 230-a of the Public Health Law.

IN THE MATTER
OF
PAUL ERWIN BRODY, M.D.

STATEMENT
OF
CHARGES

PAUL ERWIN BRODY, M.D., the Respondent, was authorized to practice medicine in New York State on or about October 10, 1980, by the issuance of license number 143755 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. From at least on or about August 2000 through July 31, 2003, Respondent failed to follow infection control standards, in that :
1. Respondent failed to use sterile technique when performing surgical procedures.
 2. Respondent injected local anesthetics using the same syringe from patient to patient.
- B. From on or about May 24, 2001 through on or about December 9, 2002, Respondent treated Patient A, a 55 year old man, (the identity of the patients is contained in the Appendix) at his office, 73-05 Metropolitan Avenue, Queens, N.Y.
- Respondent's care deviated from accepted medical standards, in that:
1. During the course of treatment, Respondent performed approximately 60 biopsies on Patient A.

- a. This treatment was without medical indication and/or justification.
 - b. This treatment was knowingly and intentionally performed and/or billed by Respondent as a medically necessary service, when in fact, Respondent knew that there was no medical justification for these services. Respondent intended to mislead.
2. On at least 70 occasions during the course of treatment, Respondent used electro-desiccation for "chronic actinic damage".
- a. This treatment was without medical indication and/or justification.
 - b. This treatment was knowingly and intentionally performed and/or billed by Respondent as a medically necessary service, when in fact, Respondent knew that there was no medical justification for these services. Respondent intended to mislead.
3. On at least 70 occasions during the course of treatment, Respondent performed acne surgery.
- a. This treatment was without medical indication and/or justification
 - b. This treatment was knowingly and intentionally performed and/or billed by Respondent as a medically necessary service, when in fact, Respondent knew that there was no medical need for these services. Respondent intended to mislead.

4. Respondent failed to maintain a record for Patient A which accurately reflected his care and treatment of the patient.

C. From on or about August 29, 1994 through on or about December 2, 1997 and from on or about January 31, 2002 through June 29, 2003, Respondent treated Patient B, a man in his forties, at his office, 73-05 Metropolitan Avenue, Queens, N.Y.

Respondent's care deviated from accepted medical standards, in that:

1. During the course of treatment, Respondent performed 31 biopsies on Patient B.
 - a. This treatment was without medical indication and/or justification
 - b. This treatment was knowingly and intentionally performed and or billed by Respondent as a medically necessary service, when in fact, Respondent knew that there was no medical justification for these services. Respondent intended to mislead.

2. On approximately 60 occasions during the course of Patient B's treatment, Respondent used electro-desiccation for rosacea.
 - a. This treatment was without medical indication and/or justification
 - b. This treatment was knowingly and intentionally performed and or billed by Respondent as a medically necessary service, when in fact, Respondent knew

that there was no medical justification for these services. Respondent intended to mislead.

3. On approximately 60 occasions during the course of treatment, Respondent performed acne surgery.

a. This treatment was without medical indication and/or justification

b. This treatment was knowingly and intentionally billed by Respondent as a medically necessary service, when in fact, Respondent knew that there was no medical need for these services. Respondent intended to mislead.

4. Respondent failed to maintain a record for Patient B which accurately reflected his care and treatment of the patient.

D. From on or about November 11, 2001 through on or about February 2, 2003, Respondent treated Patient C, a 30 year old man, in his office, 73-05 Metropolitan Avenue, Queens, N.Y.

Respondent's care deviated from accepted medical standards, in that:

1. During the course of treatment, Respondent performed approximately 41 biopsies on Patient C.

a. This treatment was without medical indication and/or justification

b. This treatment was knowingly and intentionally performed and/or billed by Respondent as a medically

necessary service, when in fact, Respondent knew that there was no medical justification for these services. Respondent intended to mislead.

2. On approximately 36 occasions during the course of Patient C's treatment, Respondent used electro-desiccation for rosacea.
 - a. This treatment was without medical indication and/or justification
 - b. This treatment was knowingly and intentionally performed and/or billed by Respondent as a medically necessary service, when in fact, Respondent knew that there was no medical justification for these services. Respondent intended to mislead.

3. On approximately 33 occasions during the course of Patient C's treatment, Respondent performed acne surgery.
 - a. This treatment was without medical indication and/or justification.
 - b. This treatment was knowingly and intentionally performed and/or billed by Respondent as a medically necessary service, when in fact, Respondent knew that there was no medical need for these services. Respondent intended to mislead.

4. Respondent failed to maintain a record for Patient C which accurately reflected his care and treatment of the patient.

E. From on or about June 6, 2002 through on or about July 14, 2003, Respondent treated Patient D, a 34 year old man, 73-05 Metropolitan Avenue, N.Y. Respondent's care deviated from accepted medical standards, in that:

1. During the course of treatment, Respondent performed approximately 13 biopsies on Patient D.
 - a. This treatment was without medical indication and/or justification.
 - b. This treatment was knowingly and intentionally performed and/or billed by Respondent as a medically necessary service, when in fact, Respondent knew that there was no medical justification for these services. Respondent intended to mislead.

2. On approximately 27 occasions during the course of treatment, Respondent used electro-desiccation for "chronic actinic damage".
 - a. This treatment was without medical indication and/or justification.
 - b. This treatment was knowingly and intentionally performed and/or billed by Respondent as a medically necessary service, when in fact, Respondent knew that there was no medical justification for these services. Respondent intended to mislead.

3. On approximately 27 occasions during the course of treatment, Respondent performed acne surgery.
 - a. This treatment was without medical indication and/or

justification.

- b. This treatment was knowingly and intentionally performed and/or billed by Respondent as a medically necessary service, when in fact, Respondent knew that there was no medical need for these services. Respondent intended to mislead.

4. Respondent failed to maintain a record for Patient D which accurately reflected his care and treatment of the patient.

F. From on or about November 13, 2001 through on or about April 17, 2002, Respondent treated Patient E, a 46 year old woman, at his office, 73-05 Metropolitan Avenue, Queens, N.Y. Respondent's care deviated from accepted medical standards, in that:

1. During the course of treatment, Respondent performed approximately 12 biopsies on Patient E.
 - a. This treatment was without medical indication and/or justification
 - b. This treatment was knowingly and intentionally performed and/or billed by Respondent as a medically necessary service, when in fact, Respondent knew that there was no medical justification for these services. Respondent intended to mislead.
2. On approximately 12 occasions during the course of treatment, Respondent used electro-desiccation for "chronic actinic damage".

- a. This treatment was without medical indication and/or justification
 - b. This treatment was knowingly and intentionally performed and/or billed by Respondent as a medically necessary service, when in fact, Respondent knew that there was no medical justification for these services. Respondent intended to mislead.
3. On at least 12 occasions during the course of treatment, Respondent performed acne surgery.
- a. This treatment was without medical indication and/or justification
 - b. This treatment was knowingly and intentionally performed and/or billed by Respondent as a medically necessary service, when in fact, Respondent knew that there was no medical need for these services. Respondent intended to mislead.
4. Respondent failed to maintain a record for Patient E which accurately reflected his care and treatment of the patient.

G. WITHDRAWN

H. From on or about November 12, 2001 through on or about March 4, 2002, Respondent treated Patient G at his office, 73-05 Metropolitan Avenue, Queens, N.Y.

Respondent's care deviated from accepted medical standards, in that:

1. During the course of treatment, Respondent performed approximately 4 biopsies on Patient G.
 - a. This treatment was without medical indication and/or justification.
 - b. This treatment was knowingly and intentionally performed and/or billed by Respondent as a medically necessary service, when in fact, Respondent knew that there was no medical need for these services. Respondent intended to mislead.

 2. Respondent failed to maintain a record for Patient G which accurately reflected his care and treatment of the patient.
- I. From on or about June 1, 1999 through on or about June 8, 1999, Respondent treated Patient H, a 26 year old woman, at his office, 73-05 Metropolitan Avenue, Queens, N.Y.
- Respondent's care deviated from accepted medical standards, in that:
1. At each of Patient H's visits, Respondent performed a biopsy.
 - a. This treatment was without medical indication and/or justification.
 - b. This treatment was knowingly and intentionally performed and/or billed by Respondent as a medically necessary service, when in fact, Respondent knew that there was no medical need for these services. Respondent intended to mislead.

2. **WITHDRAWN**

3. At each of Patient H's visits, Respondent used electro-desiccation on Patient H's "chronic actinic damage".

- a. This treatment was without medical indication and/or justification
- b. This treatment was knowingly and intentionally performed and/or billed by Respondent as a medically necessary service, when in fact, Respondent knew that there was no medical justification for these services. Respondent intended to mislead.

4. At each of Patient H's visits, Respondent performed acne surgery.

- a. This treatment was without medical indication and/or justification
- b. This treatment was knowingly and intentionally performed an/or billed by Respondent as a medically necessary service, when in fact, Respondent knew that there was no medical need for these services. Respondent intended to mislead.

5. Respondent failed to maintain a record for Patient H which accurately reflected his care and treatment of the patient.

J. From on or about May 8, 2002 through on or about June 19, 2002, Respondent treated Patient I, a 39 year old woman, at his office, 73-05 Metropolitan Avenue, Queens, N.Y.

Respondent's care deviated from accepted medical standards, in that:

1. At each of Patient I's four visits, Respondent used electro-desiccation on Patient I's "chronic actinic damage".
 - a. This treatment was without medical indication and/or justification
 - b. This treatment was knowingly and intentionally performed and/or billed by Respondent as a medically necessary service, when in fact, Respondent knew that there was no medical justification for these services. Respondent intended to mislead.
2. Respondent failed to maintain a record for Patient I which accurately reflected his care and treatment of the patient.

K. From on or about June 11, 2002 through on or about May 8, 2003, Respondent treated Patient J, an 8 year old boy, at his office, 73-05 Metropolitan Avenue, Queens, N.Y.

Respondent's care deviated from accepted medical standards, in that:

1. During the course of treatment, Respondent performed 4 biopsies on Patient J.
 - a. This treatment was performed without medical indication and/or justification.
 - b. This treatment was knowingly and intentionally performed and/or billed by Respondent as a medically necessary service, when in fact, Respondent knew

that there was no medical need for these services.

Respondent intended to mislead.

2. Respondent failed to maintain a record for Patient J which accurately reflected his care and treatment of the patient.

L. From on or about June 11, 2002 through on or about May 8, 2003, Respondent treated Patient K, a 13 year old boy, at his office, 73-05 Metropolitan Avenue, Queens, N.Y.

Respondent's care deviated from accepted medical standards, in that:

1. During the course of treatment, Respondent performed 3 biopsies on Patient K.

- a. This treatment was performed without medical indication and/or justification.

- b. This treatment was knowingly and intentionally performed and/or billed by Respondent as a medically necessary service, when in fact, Respondent knew that there was no medical need for these services.

Respondent intended to mislead.

2. Respondent failed to maintain a record for Patient K which accurately reflected his care and treatment of the patient.

M. From on or about June 3, 2002 through on or about October 30, 2002, Respondent treated Patient L, a 40 year old man, at his office, 73-05 Metropolitan Avenue, N.Y.

Respondent's care deviated from accepted medical standards, in that:

1. During the course of treatment, Respondent performed 4 biopsies on Patient L.
 - a. This treatment was performed without medical indication and/or justification.
 - b. This treatment was knowingly and intentionally performed and/or billed by Respondent as a medically necessary service, when in fact, Respondent knew that there was no medical need for these services. Respondent intended to mislead.

2. On four occasions during the course of treatment, Respondent used electro-desiccation for "chronic actinic damage".
 - a. This treatment was without medical indication and/or justification.
 - b. This treatment was knowingly and intentionally performed and/or billed by Respondent as a medically necessary service, when in fact, Respondent knew that there was no medical justification for these services. Respondent intended to mislead.

3. On four occasions during the course of treatment, Respondent performed acne surgery.
 - a. This treatment was without medical indication and/or justification.
 - b. This treatment was knowingly and intentionally performed and/or billed by Respondent as a medically

necessary service, when in fact, Respondent knew that there was no medical need for these services. Respondent intended to mislead.

4. Respondent failed to maintain a record for Patient L which accurately reflected his care and treatment of the patient.

N. From on or about July 27, 2000 through on or about August 3, 2000, Respondent treated Patient M at his office, 73-05 Metropolitan Avenue, Queens, N.Y.

Respondent's care deviated from accepted medical standards, in that:

1. At each of her visits, Respondent performed a biopsy on Patient M.

- a. This treatment was without medical indication and/or justification.
- b. This treatment was knowingly and intentionally performed and/or billed by Respondent as a medically necessary service, when in fact, Respondent knew that there was no medical need for these services. Respondent intended to mislead.

2. On each of her visits, Respondent used electro-desiccation for "chronic actinic damage".

- a. This treatment was without medical indication and/or justification.
- b. This treatment was knowingly and intentionally performed and/or billed by Respondent as a medically

necessary service, when in fact, Respondent knew that there was no medical justification for these services. Respondent intended to mislead.

3. On each of her visits, Respondent performed acne surgery.
 - a. This treatment was without medical indication and/or justification
 - b. This treatment was knowingly and intentionally performed and/or billed by Respondent as a medically necessary service, when in fact, Respondent knew that there was no medical need for these services. Respondent intended to mislead.
 4. Respondent injected the patient with a previously used syringe.
 5. Respondent failed to maintain a record for Patient M which accurately reflected his care and treatment of the patient.
- O. From in or about February 1993 through June 2003, Respondent practiced medicine without completing and documenting completion of course work in infection control in violation of N.Y. Public Health Law § 239.

SPECIFICATION OF CHARGES

FIRST THROUGH FOURTEENTH SPECIFICATION GROSS NEGLIGENCE

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(4) by practicing the profession of medicine with gross negligence on a particular occasion as alleged in the facts of the following:

1. Paragraph A
2. Paragraph B, B(1), B(1)(a), B(2), B(2)(a), B(3), B(3)(a)
3. Paragraph C, C(1), C(1)(a), C(2), C(2)(a), C(3), C(3)(a)
4. Paragraph D, D(1), D(1)(a), D(2), D(2)(a), D(3), D(3)(a)
5. Paragraph E, E(1), E(1)(a), E(2), E(2)(a), E(3), E(3)(a)
6. Paragraph F, F(1), F(1)(a), F(2), F(2)(a), F(3), F(3)(a)
7. Withdrawn
8. Paragraph H, H(1), H(1)(a)
9. Paragraph I, I(1), I(1)(a), I(3), I(3)(a)
10. Paragraph J, J(1), J(1)(a)
11. Paragraph K, K(1), K(1)(a)
12. Paragraph L, L(1)
13. Paragraph M, M(1), M(1)(a), M(2), M(2)(a), M(3), M(3)(a)
14. Paragraph N, N(1), N(1)(a), N(2), N(2)(a), N(3), N(3)(a), N(4)

FIFTEENTH SPECIFICATION NEGLECTANCE ON MORE THAN ONE OCCASION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(3) by practicing the profession of medicine with negligence on more than one occasion as alleged in the facts of two or more of the following:

15. Paragraph A; Paragraph B, B(1), B(1)(a), B(2), B(2)(a), B(3), B(3)(a); Paragraph C, C(1), C(1)(a), C(2), C(2)(a), C(3), C(3)(a); Paragraph D, D(1), D(1)(a), D(2), D(2)(a), D(3), D(3)(a); Paragraph E, E(1), E(1)(a), E(2), E(2)(a), E(3), E(3)(a); Paragraph F, F(1), F(1)(a), F(2), F(2)(a), F(3), F(3)(a); Paragraph H, H(1), H(1)(a); Paragraph I, I(1), I(1)(a), I(3), I(3)(a); Paragraph J, J(1), J(1)(a); Paragraph K, K(1), K(1)(a); Paragraph L, L(1), L(1)(a); Paragraph M, M(1), M(1)(a), M(2), M(2)(a), M(3), M(3)(a); and/or Paragraph N, N(1), N(1)(a), N(2), N(2)(a), N(3), N(3)(a), N(4).

SIXTEENTH SPECIFICATION GROSS INCOMPETENCE

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(6) by practicing the profession of medicine with gross incompetence as alleged in the facts of the following:

16. Paragraph A; Paragraph B, B(1), B(1)(a), B(2), B(2)(a), B(3), B(3)(a); Paragraph C, C(1), C(1)(a), C(2), C(2)(a), C(3), C(3)(a); Paragraph D, D(1), D(1)(a), D(2), D(2)(a), D(3), D(3)(a); Paragraph E, E(1), E(1)(a), E(2), E(2)(a), E(3), E(3)(a); Paragraph F, F(1), F(1)(a), F(2), F(2)(a), F(3), F(3)(a); Paragraph H, H(1), H(1)(a); Paragraph I, I(1), I(1)(a), I(3), I(3)(a); Paragraph J, J(1), J(1)(a); Paragraph K, K(1), K(1)(a); Paragraph L, L(1), L(1)(a); Paragraph M, M(1), M(1)(a), M(2), M(2)(a), M(3), M(3)(a); and/or Paragraph N, N(1), N(1)(a), N(2), N(2)(a), N(3), N(3)(a), N(4).

SEVENTEENTH SPECIFICATION
INCOMPETENCE ON MORE THAN ONE OCCASION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(5) by practicing the profession of medicine with incompetence on more than one occasion as alleged in the facts of two or more of the following:

17. Paragraph A; Paragraph B, B(1), B(1)(a), B(2), B(2)(a), B(3), B(3)(a); Paragraph C, C(1), C(1)(a), C(2), C(2)(a), C(3), C(3)(a); Paragraph D, D(1), D(1)(a), D(2), D(2)(a), D(3), D(3)(a); Paragraph E, E(1), E(1)(a), E(2), E(2)(a), E(3), E(3)(a); Paragraph F, F(1), F(1)(a), F(2), F(2)(a), F(3), F(3)(a); Paragraph H, H(1), H(1)(a); Paragraph I, I(1), I(1)(a), I(3), I(3)(a); Paragraph J, J(1), J(1)(a); Paragraph K, K(1), K(1)(a); Paragraph L, L(1), L(1)(a); Paragraph M, M(1), M(1)(a), M(2), M(2)(a), M(3), M(3)(a); and/or Paragraph N, N(1), N(1)(a), N(2), N(2)(a), N(3), N(3)(a), N(4).

EIGHTEENTH SPECIFICATION
UNWARRANTED TESTS/TREATMENT

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(35) by ordering of excessive tests, treatment, or use of treatment facilities not warranted by the condition of the patient, as alleged in the facts of:

18. Paragraph B, B(1), B(1)(a), B(2), B(2)(a), B(3), B(3)(a); Paragraph C, C(1), C(1)(a), C(2), C(2)(a), C(3), C(3)(a); Paragraph D, D(1), D(1)(a), D(2), D(2)(a), D(3), D(3)(a); Paragraph E, E(1), E(1)(a), E(2), E(2)(a), E(3), E(3)(a); Paragraph F, F(1), F(1)(a), F(2), F(2)(a), F(3), F(3)(a); Paragraph H, H(1), H(1)(a); Paragraph I, I(1), I(1)(a), I(3), I(3)(a); Paragraph J, J(1), J(1)(a); Paragraph K, K(1), K(1)(a); Paragraph L, L(1), L(1)(a); Paragraph M, M(1), M(1)(a), M(2), M(2)(a), M(3), M(3)(a); and/or Paragraph N, N(1), N(1)(a), N(2), N(2)(a), N(3), N(3)(a).

**NINETEENTH SPECIFICATIONS
FRAUDULENT PRACTICE**

Respondent is charged with committing professional misconduct as defined by N.Y. Educ. Law §6530(2) by practicing the profession of medicine fraudulently as alleged in the facts of the following:

19. Paragraph B, B(1), B(1)(b), B(2), B(2)(b), B(3), B(3)(b); Paragraph C, C(1), C(1)(b), C(2), C(2)(b), C(3), C(3)(b); Paragraph D, D(1), D(1)(b), D(2), D(2)(b), D(3), D(3)(b); Paragraph E, E(1), E(1)(b), E(2), E(2)(a), E(3), E(3)(b); Paragraph F, F(1), F(1)(b), F(2), F(2)(b), F(3), F(3)(b); Paragraph H, H(1), H(1)(b); Paragraph I, I(1), I(1)(b), I(3), I(3)(b); Paragraph J, J(1), J(1)(b); Paragraph K, K(1), K(1)(b); Paragraph L, L(1), L(1)(b); Paragraph M, M(1), M(1)(b), M(2), M(2)(b), M(3), M(3)(b); and/or Paragraph N, N(1), N(1)(b), N(2), N(2)(b), N(3), N(3)(b).

**TWENTIETH 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:

20. Paragraph B, B(4); Paragraph C, C(4); Paragraph D, D(4); Paragraph E, E(4); Paragraph F, F(4); Paragraph H, H(2); Paragraph I, I(5); Paragraph J, J(2); Paragraph K, K(2); Paragraph L, L(2); Paragraph M, M(4); Paragraph N, N(5).

**TWENTY FIRST SPECIFICATION
FAILING TO USE ACCEPTED INFECTION CONTROL PRACTICES**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(47) by failing to use scientifically accepted barrier precautions and infection control practices, as alleged in the facts of:

21. Paragraphs A and N, N(4).

**TWENTY SECOND SPECIFICATION
FAILING TO COMPLY WITH STATE LAW**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(16) by a willful or grossly negligent failure to comply with substantial provisions of state law governing the practice of medicine, as alleged in the facts of:

22. Paragraph O.

DATED: *Oct 25*, 2004
New York, New York



ROY NEMERSON
Deputy Counsel
Bureau of Professional Medical