



***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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*Katherine A. Hawkins, M.D., J.D.*  
*Executive Secretary*

March 5, 2010

***CERTIFIED MAIL-RECEIPT REQUESTED***

Donald P. Orofino, MD

Redacted Address

Re: License #099254

Dear Dr. Orofino:

Enclosed is a copy of your **Interim Non-disciplinary Order of Conditions** pursuant to Public Health Law Section 230. The order is effective March 12, 2010.

Sincerely,

Redacted Signature

Katherine A. Hawkins, M.D., J.D.  
Executive Secretary  
Board for Professional Medical Conduct

cc: Michael Kelton, Esq.  
Abrams, Fensterman, et.al.  
630 Third Avenue, 5th Floor  
New York, New York 10017

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

IN THE MATTER  
OF  
DONALD OROFINO , M.D.

INTERIM  
ORDER  
OF CONDITIONS  
PURSUANT TO  
N.Y. PUB. HEALTH  
LAW § 230

Upon the application of DONALD OROFINO , M.D. (Licensee) in the attached Stipulation and Application for an Interim Order of Conditions Pursuant to N.Y. Pub. Health Law § 230, which is made a part of this Interim Order of Conditions Pursuant to N.Y. Pub. Health Law § 230, it is agreed that

- the Application, and its terms, are adopted, and
- this Order shall be effective upon issuance by the Board, either by mailing of a copy of this Order by first class mail to Licensee at the address in the attached Application or by certified mail to Licensee's attorney, or upon facsimile transmission to Licensee or Licensee's attorney, whichever is first.

**SO ORDERED.**

DATE: 3-4-2010

Redacted Signature

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

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

IN THE MATTER  
OF  
DONALD OROFINO , M.D.

STIPULATION AND  
APPLICATION  
FOR AN INTERIM  
ORDER OF  
CONDITIONS  
PURSUANT TO  
N.Y. PUB. HEALTH  
LAW § 230

DONALD OROFINO , M.D., ("Licensee") represents that all of the following statements are true:

That on or about July 14, 1967, I was licensed to practice as a physician in the State of New York, and issued License No. 099254 by the New York State Education Department.

My current home address is: Redacted Address, and  
my current office address is: 100 Manetto Hill Road, Suite 309, Plainview, N.Y. 11803.

I am not currently affiliated with any hospitals or facilities.

I will notify the Director of the Office of Professional Medical Conduct ("the Director") of any change in my residence, employment, medical practice addresses or hospital affiliations.

I understand that the New York State Board for Professional Medical Conduct ("the Board") has investigated alleged misconduct by me, and is pursuing a proceeding against me pursuant to N.Y. Pub. Health Law § 230(10) with respect to the issues set forth in attached Exhibit "A" ("Statement of Charges"). I deny all the charges contained in the Statement of Charges and have actively defended against them.

Based solely upon my current medical condition, which inhibits my capacity to practice medicine, I agree to the Board's issuance of an Interim Order of Conditions precluding me from practicing medicine in New York State; my preclusion from the practice of medicine shall take effect 45 days after the effective date of this Order. I agree to be bound by the Interim Order of Conditions, which shall continue in effect until:

- the resolution by consent order of the matters under investigation; or

- issuance and service of a Hearing Committee's Determination and Order after the conclusion of a hearing held pursuant to a determination of the Commissioner of Health or the Director of the Office of Professional Medical Conduct. The Hearing Committee's Determination and Order shall replace this Interim Order of Conditions. If either party requests review by the Administrative Review Board, the Hearing Committee's Determination and Order, and any sanction, terms or conditions imposed upon me, shall remain in effect until the ARB renders its determination and shall, in the same manner as a Commissioner's Order pursuant to N.Y. Pub. Health Law § 230-c(4), not be subject to a stay.

I understand that nothing in this Application shall be construed as an admission by me of any act of alleged misconduct, or as a finding of misconduct, as to the matters set forth in Exhibit A. I am currently ill, incapacitated from the practice of medicine by my illness, and have provided documentation of my illness to the Director. My application for the proposed Interim Order is made in consideration of the value to me of the Board's allowing me to pursue medical treatment for my current illness. My current illness is also the basis of the adjournment that has been granted to me of the pending professional medical conduct hearing as to the issues set forth in Exhibit A. I agree that the terms of the proposed Interim Order shall include a Condition that I shall not seek, and shall not be granted, further adjournment of the hearing after the effective date of the Interim Order for which I apply, and that, unless the Interim Order is no longer in effective because the matters under investigation have been resolved by Consent Order, as set forth above, the disciplinary hearing shall resume six months from the effective date of the proposed Interim Order. I deny any acts of misconduct and reserve my right to assert all defenses on my behalf should the disciplinary hearing resume. I understand and agree that, should the disciplinary hearing resume, under the terms of the Interim Order for which I apply, my preclusion from the practice of medicine shall remain in effect pending issuance and service of a Hearing Committee's Determination and Order after the conclusion of a hearing, or until the ARB renders its determination, as further set forth above.

The Interim Order shall set the following Conditions upon my licensure, which shall take effect upon issuance of the Order:

1. Licensee's conduct shall conform to moral and professional standards of conduct and governing law. Any act of professional misconduct by

Licensee as defined in N.Y. Educ. Law §§ 6530 or 6531 shall constitute a violation of this Order and may subject Licensee to an action pursuant to N.Y. Pub. Health Law § 230.

2. Licensee 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 this information is kept current: a full description of Licensee's employment and practice; all professional and residential addresses and telephone numbers within and outside New York State; all current and past affiliations and/or privileges, with hospitals, institutions, facilities, medical practices, managed care organizations, and/or applications for such affiliations and/or privileges; and all investigations, arrests, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility. Licensee shall notify OPMC, in writing, within 30 days of any additions to or changes in the required information.
3. Licensee shall cooperate fully with OPMC in its administration and enforcement of this Interim Order and in its investigation of Licensee. Licensee shall respond in a timely manner to all OPMC requests for written periodic verification of compliance with the terms of this Interim Order. Licensee shall meet in person with the Director's designee, as directed. Licensee shall respond promptly and provide all documents and information within Licensee's control, as directed. This condition shall take effect upon the effective date of the Interim Order and shall continue while Licensee possesses a license.
4. Licensee shall maintain complete and legible medical records that accurately reflect the evaluation and treatment of patients.
5. Licensee shall provide access for DOH personnel to Licensee's office(s) to verify Licensee's compliance with this Interim Order; this access shall include, but not be limited to, on-site inspections, observation and interviews.
6. Licensee shall comply with all conditions set forth in attached Exhibit "B" (Requirements for Closing a Medical Practice) while he is precluded from practicing medicine pursuant to this Interim Order of Conditions.

7. Licensee shall comply with this Order and all its terms, and shall bear all associated compliance costs.

I stipulate that:

My failure to comply with the Conditions imposed by this Interim Order shall constitute professional misconduct as defined in N.Y. Educ. Law § 6530(29); and

Any practice of medicine by me in New York State in violation of this Interim Order shall be unauthorized and constitute professional misconduct as defined in N.Y. Educ. Law § 6530(2); and

Unauthorized medical practice is a felony as defined in N.Y. Educ. Law § 6512.

I understand and agree that my failure to comply with any of the terms of this Interim Order shall authorize the Director, exercising reasonable discretion, to vacate the Interim Order and to continue the prosecution of the pending misconduct charges against me.

I understand that an Interim Order issued upon this Application does not limit the Department's authority to investigate or pursue proceedings pursuant to N.Y. Pub. Health Law § 230(12) based upon allegations of violations of N.Y. Educ. Law § 6530 unrelated to the issues under investigation, whether those alleged violations occurred before or after the date of this Application.

I agree that, if the Board grants this Application, the Chair of the Board shall issue an Interim Order of Conditions in accordance with its terms. I further agree that the Department of Health shall notify the National Practitioner Data Bank and the Federation of State Medical Boards of this Interim Order of Conditions pursuant to N.Y. Pub. Health Law § 230 and that the change in my licensure status is not disciplinary in nature. This Interim Order of Conditions shall be posted on the Department of Health website(s).

I make this Application of my own free will and not under duress, compulsion or restraint. In consideration of the value to me of the Board's acceptance of this Application, I waive my right to contest the Interim Order for which I apply, whether administratively or judicially, I agree to be bound by the Interim Order, and I ask that the Board grant this Application.

I understand and agree that the attorney for the Department, the Director of the Office of Professional Medical Conduct and the Chair of the State Board for Professional Medical Conduct each retain complete discretion either to enter into the proposed agreement and Interim Order, based upon my Application, or to decline to do so. I further understand and agree that no prior or separate written or oral communication can limit that discretion.

2/14/10

DATE

Redacted Signature

DONALD OROFINO, M.D.  
Licensee

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

IN THE MATTER  
OF  
DONALD OROFINO, M.D.

STIPULATION AND  
APPLICATION  
FOR AN INTERIM  
ORDER  
OF CONDITIONS  
PURSUANT TO  
N.Y. PUB. HEALTH LAW  
§230

The undersigned agree to Licensee's attached Application and to the issuance of the proposed Interim Order of Conditions Pursuant to N.Y. Pub. Health Law § 230.

DATE: 2/15/10

Redacted Signature

MICHAEL KELTON, ESQ.  
Attorney for Licensee

DATE: 2/17/10

Redacted Signature

NANCY STROHMEYER  
Assistant Counsel  
Bureau of Professional Medical Conduct

DATE: 3/4/10

Redacted Signature

KEITH W. SERVIS  
Director  
Office of Professional Medical Conduct

**EXHIBIT "A"**

**Statement of Charges**

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

IN THE MATTER  
OF  
DONALD OROFINO, M.D.

STATEMENT  
OF  
CHARGES

DONALD OROFINO, M.D., the Respondent, was authorized to practice medicine in New York State on or about July 14, 1967, by the issuance of license number 099254 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

- A. On or about December 10, 2007, Patient A, a 41 year-old female (all patients are identified in "Appendix A" herein), went to Respondent's office in Plainview, New York.
1. During the office visit, Respondent inappropriately touched Patient A for other than a good faith medical purpose.
  2. During the office visit, Respondent inappropriately questioned Patient A about her sexual activity for other than a good faith medical purpose.
- B. On or about and between May 30, 2006 and December 27, 2007, Patient B, who was a 38 year-old female at the outset of treatment, was treated by Respondent at his office in Plainview, New York.
1. During the course of treatment, Respondent inappropriately touched Patient B for other than a good faith medical purpose.
  2. During the course of treatment, Respondent made inappropriate comments to Patient B.
- C. On or about and between May 26, 2005 and September 20, 2007, Patient C,

who was a 50 year-old female at the outset of treatment, was treated by Respondent at his office in Plainview, New York.

1. During the course of treatment, Respondent inappropriately touched Patient C for other than a good faith medical purpose.
2. During the course of treatment, Respondent made inappropriate comments to Patient C.

D. On or about and between April 13, 2006 and October 12, 2006, Patient D, who was a 50 year-old female at the outset of treatment, was treated by Respondent at his office in Plainview, New York.

1. During the course of treatment, Respondent inappropriately touched Patient B for other than a good faith medical purpose.

### **SPECIFICATION OF CHARGES**

#### **FIRST THROUGH FOURTH SPECIFICATIONS**

#### **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 and its subparagraphs.
2. Paragraph B and its subparagraphs.
3. Paragraph C and its subparagraphs.
4. Paragraph D and its subparagraph.

#### **FIFTH SPECIFICATION**

#### **NEGLECT 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:

5. Paragraphs A through D and their subparagraphs.

#### **SIXTH SPECIFICATION**

##### **PATIENT ABUSE**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(31) by willfully harassing, abusing or intimidating a patient either physically or verbally as alleged in the facts of:

6. Paragraphs A through D and their subparagraphs.

#### **SEVENTH SPECIFICATION**

##### **MORAL UNFITNESS**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(20) by engaging in conduct in the practice of the profession of medicine that evidences moral unfitness to practice as alleged in the facts of the following:

7. Paragraphs A through D and their subparagraphs.

DATE: August 17, 2009  
New York, New York

Redacted Signature

\_\_\_\_\_  
Roy Nemerson  
Deputy Counsel  
Bureau of Professional Medical Conduct

## **EXHIBIT "B"**

### **Requirements for Closing a Medical Practice**

1. Licensee shall cease and desist from engaging in the practice of medicine in New York State, or under Licensee's New York license, in accordance with the terms of the Order. In addition, Licensee shall refrain from providing an opinion as to professional practice or its application and from representing eligibility to practice medicine.
2. Within 45 days of the Order's effective date, Licensee shall have delivered to the Office of Professional Medical Conduct (OPMC) at Hedley Park Place, 433 River Street 4th Floor, Troy, NY 12180-2299, Licensee's original license to practice medicine in New York State and current biennial registration.
3. Within 70 days of the Order's effective date, Licensee shall notify all patients that Licensee has ceased medical practice, and shall refer all patients to another licensed practicing physician for continued care, as appropriate. Licensee shall give written notice to each health care plan with which Licensee contracts or is employed, and each hospital where Licensee has privileges, that Licensee has ceased medical practice. Within 70 days of the Order's effective date, Licensee shall provide OPMC with written documentation that all patients and hospitals have been notified that Licensee has ceased medical practice.
4. Licensee shall make arrangements for the transfer and maintenance of all patient medical records. Within 70 days of the Order's effective date, Licensee shall notify OPMC of these arrangements, including the name, address, and telephone number of an appropriate and acceptable contact person who shall have access to these records. Original records shall be retained for at least 6 years after the last date of service rendered to a patient, or, in the case of a minor, for at least 6 years after the last date of service or 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 include provisions to ensure that the information in the records is kept confidential and is only made available to authorized persons. When a patient or a patient's representative requests a copy of the patient's medical record, or requests that the original medical record be forwarded to another health care provider, a copy of the record shall be promptly provided or forwarded at a reasonable cost to the patient (not to exceed 75 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 an inability to pay.

5. If Licensee holds a Drug Enforcement Administration (DEA) certificate, within 70 days of the Order's effective date, Licensee shall advise the DEA in writing of the licensure action, and shall surrender to the DEA any DEA controlled substance privileges issued pursuant to Licensee's New York license. Licensee shall promptly surrender to the DEA any unused DEA #222 U.S. Official Order Forms Schedules 1 and 2.
6. Within 70 days of the Order's effective date, Licensee shall return any unused New York State official prescription forms to the Bureau of Narcotic Enforcement of the New York State Department of Health. Licensee shall cause all prescription pads bearing Licensee's name to be destroyed. If no other licensee is providing services at Licensee's practice location, Licensee shall properly dispose of all medications.
7. Within 70 days of the Order's effective date, Licensee shall remove from the public domain any representation that Licensee is eligible to practice medicine, including all related signs, advertisements, professional listings (whether in telephone directories, internet or otherwise), professional stationery or billings. Licensee shall not share, occupy, or use office space in which another licensee provides health care services.
8. Licensee shall not charge, receive or share any fee or distribution of dividends for professional services rendered by Licensee or others while barred from engaging in the practice of medicine. Licensee may be compensated for the reasonable value of services lawfully rendered and disbursements incurred on a patient's behalf prior to the Order's effective date.
9. Failure to comply with the above directives may result in a civil penalty or criminal penalties, as authorized by governing law. Under N.Y. Educ. Law § 6512, it is a Class E Felony, punishable by imprisonment of up to 4 years, for a Licensee to practice the profession of medicine when the Licensee is not authorized to do so. This punishment is in addition to the penalties for professional misconduct set forth in section N.Y. Pub. Health Law § 230-a, which include fines of up to \$10,000 for each specification of charges of which the Licensee is found guilty, and may include revocation of a suspended license.