



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

PUBLIC

March 16, 2000

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Wayne Wertheim, M.D.
21 Bonaire Drive
Dix Hills, NY 11746

RE: License No. 137692

Dear Dr. Wertheim:

Enclosed please find Order #BPMC 00-81 of the New York State Board for Professional Medical Conduct. This Order and any penalty provided therein goes into effect **March 16, 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: Laurence J. Weingard, Esq.
Hayt, Hayt & Landau
600 Northern Boulevard
Great Neck, NY 11021

Barry Kaufman, Esq.

**IN THE MATTER
OF
WAYNE WERTHEIM, M.D.**

CONSENT
AGREEMENT
AND
ORDER
BPMC #00-81

STATE OF NEW YORK)
COUNTY OF NASSAU) ss.:

Wayne Wertheim, M.D., (Respondent) being duly sworn, deposes and says:

That on or about March 30, 1979, I was licensed to practice as a physician in the State of New York, having been issued License No. 137692 by the New York State Education Department.

My current address is 21 Bonaire Drive, Dix Hills, New York, 11746, 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 sixteen (16) specifications of professional misconduct.

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

I hereby enter a plea of no contest to the following specifications in the Statement of Charges, in full satisfaction of the charges against me:

1. The First Specification, paragraph A in its entirety and paragraph A(1) to the extent that Respondent is charged with habitual use of the medication Fioricet;

2. The Second, Fourth, Fifth, Sixth, and Seventh Specifications in their entirety;
3. The Sixteenth Specification, paragraph E in its entirety and paragraph E(1) to the extent that Respondent is charged with grossly negligently failing to retain and/or preserve copies of the official New York state prescriptions as required by Public Health Law §§ 3332 (4) and 3343 (1) (a).

I hereby agree to the following penalty:

1. I shall be subject to a Censure and Reprimand;
2. I shall be placed on probation for a period of five (5) years subject to the terms set forth in Exhibit "B";

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

That Respondent shall be subject to the condition that he shall be prohibited from prescribing any medications for himself, his spouse, children, parents, siblings, mother-in-law and father-in-law. This condition shall be in effect beginning upon the effective date of the Consent Order and will continue while the licensee possesses his license; and

That, except during periods of actual suspension, 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 the licensee 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 his license.

I hereby stipulate that any failure by me to comply with any of the aforesaid conditions shall constitute misconduct as defined by New York State Education Law §6530(29)(McKinney Supp 2000).

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.


WAYNE WERTHEIM, M.D.
RESPONDENT

Sworn to before me
on this 15th day of
March 2000



NOTARY

CLIFFORD J. CHU
Notary Public, State of New York
No. 4796404
Qualified in Nassau County
Term Expires DEC. 31. 2001

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

DATE: 3/2/00


LAURENCE JEFFREY WEINGARD, ESQ.
Attorney for Respondent

DATE: 3/8/00


BARRY KAUFMAN
Associate Counsel
Bureau of Professional
Medical Conduct

DATE: March 8, 2005


ANNE F. SAILE
Director
Office of Professional
Medical Conduct

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

IN THE MATTER
OF
WAYNE WERTHEIM, M.D.

CONSENT
ORDER

Upon the proposed agreement of Wayne Wertheim, 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 so ORDERED, 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: 3/13/00



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

EXHIBIT "A"

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

IN THE MATTER
OF
WAYNE H. WERTHEIM, M.D.

STATEMENT
OF
CHARGES

WAYNE H. WERTHEIM, M.D., the Respondent, was authorized to practice medicine in New York State on or about March 30, 1979, by the issuance of license number 137692 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. Respondent, an internist who had a private practice in Roslyn and Huntington, New York, prescribed Fioricet for his own use between in or about June 1994 and in or about June 1997. Fioricet contains a barbiturate, butalbital, which may be a habit-forming medication. Respondent:
1. Was dependent on and/or habitually used Fioricet.
 2. Inappropriately prescribed Fioricet and the generic equivalent.
 3. Failed to create and maintain a medical record for himself which accurately reflects his evaluation and treatment.
 4. Knowingly concealed from the Office of Professional Medical Conduct (OPMC), with the intent to deceive, the extent to which he self-prescribed Fioricet.
- B. Between in or about January 1995 and in or about February, 1998

Respondent treated Patient A. Respondent:

1. Inappropriately prescribed Fioricet and the generic equivalent.
2. Inappropriately prescribed appetite suppressant medications, including, but not limited to, Tenuate Dospan, Ionamin, Pondimin, Fastin and Apidex, as well as the generic equivalents of these medications.
3. Inappropriately prescribed Ambien, a hypnotic medication indicated for short-term treatment of insomnia.
4. Failed to create and maintain a medical record which accurately reflects the evaluation and treatment of Patient A.
5. Knowingly concealed from the Office of Professional Medical Conduct (OPMC), with the intent to deceive, the extent to which he prescribed Fioricet for Patient A.
6. Failed to take appropriate measures to guard against the dangers of dependence and habituation to potentially abusable medications.

C. Between in or about January 1995 and in or about February 1997, Respondent treated Patient B. Respondent:

1. Inappropriately prescribed Stadol.
2. Failed to create and maintain a medical record which accurately reflects the evaluation and treatment of Patient B.
3. Knowingly concealed from the Office of Professional Medical Conduct (OPMC), with the intent to deceive, the extent to which he prescribed Stadol for Patient B.

D. Between in or about May 1997 and in or about June 1997, Respondent

treated Patient C and prescribed Fioricet for her. Respondent:

1. Inappropriately prescribed Fioricet.
2. Failed to create and maintain a medical record which accurately reflects the evaluation and treatment of Patient C.
3. Knowingly concealed from the Office of Professional Medical Conduct (OPMC), with the intent to deceive, the fact that he prescribed Fioricet for Patient C.

E. Between on or about January 1, 1994 and on or about April 28, 1997, Respondent wrote at least three hundred forty nine (349) official New York State prescriptions. On or about July 10, 1997, Respondent failed to comply with the request of an investigator of the New York State Department of Health, Bureau of Controlled Substances, to produce for inspection copies of these prescriptions. Again, on or about September 24, 1997, Respondent failed to produce copies of the aforementioned prescriptions.

1. Respondent willfully or grossly negligently failed to retain and/or preserve copies of the official New York state prescriptions as required by Public Health Law §§ 3332 (4) and 3343 (1) (a).
2. In the alternative, Respondent willfully failed to make the copies of the prescriptions available, during business hours, for inspection and copying by an officer or employee of the Health Department who was charged with the enforcement of Public Health Law Article 33; said conduct violated Public Health Law § 3370 (2).

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

BEING AN HABITUAL USER OF A BARBITURATE

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(8)(McKinney Supp. 1998) by being an habitual user of barbiturates as alleged in the facts of the following:

1. A and A1.

SECOND SPECIFICATION

NEGLIGENCE ON MORE THAN ONE OCCASION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(3)(McKinney Supp. 2000) 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:

2. A, A2, A3, B, B1, B2, B3, B4, B6, C, C1, C2, D1, and/or D2.

THIRD SPECIFICATION

INCOMPETENCE ON MORE THAN ONE OCCASION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(5)(McKinney Supp. 2000) 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:

3. A, A2, A3, B, B1, B2, B3, B4, B6, C, C1, C2, D, D1, and/or D2.

FOURTH THROUGH SEVENTH SPECIFICATIONS

FAILURE TO MAINTAIN RECORDS

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(32)(McKinney Supp. 1998) 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:

4. A and A3;
5. B and B4;
6. C and C2;
7. D and D2.

EIGHTH THROUGH ELEVENTH SPECIFICATIONS

FALSE REPORT

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(21)(McKinney Supp. 1998) by wilfully making or filing a false report, or failing to file a report required by law or by the department of health or the education department, as alleged in the facts of:

8. A and A4;
9. B and B5;
10. C and C3;
11. D and D3.

TWELFTH THROUGH FIFTEENTH SPECIFICATIONS

FRAUDULENT PRACTICE

Respondent is charged with committing professional misconduct as defined by

N.Y. Educ. Law §6530(2)(McKinney Supp. 2000) by practicing the profession of medicine fraudulently as alleged in the facts of the following:

12. A and A4;
13. B and B5;
14. C and C3;
15. D and D3.

SIXTEENTH SPECIFICATION
FAILURE TO COMPLY WITH LAW

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(16)(McKinney Supp. 2000) by reason of his willful or grossly negligent failure to comply with substantial provisions of state law regulating the practice of medicine, as alleged in the facts of:

16. E, E(1) and/or E(2).

DATED: January , 2000
New York, New York

ROY NEMERSON
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 only take prescription medication as prescribed by another health care professional as part of a therapeutic regimen which does not impair Respondent's ability to practice medicine.
8. Respondent shall notify all treating physicians of his history of use of the medication Fioricet. Respondent shall advise OPMC of the name of his treating physician(s) and give OPMC access to the physician(s) and medical records at the discretion of OPMC. Respondent shall advise OPMC of any controlled or mood-altering substance given or prescribed by a treating physician. Respondent shall cause the physician(s) to report to OPMC within 24 hours if a physician suspects Respondent is impaired or abusing a controlled or abusable substance.
9. Respondent shall practice only when monitored by a qualified practice monitor and a qualified therapist (as described below) proposed by Respondent and approved, in writing, by the Director of OPMC. Monitors shall not be family members or personal friends, or be in professional relationships which would pose a conflict with monitoring responsibilities.
10. Respondent shall ensure that the monitors are familiar with Respondent's Fioricet use and any controlled or mood-altering substance given or prescribed by treating physicians or other health care professional and with the terms of this Order. Respondent shall cause the monitors to report any deviation from compliance with the terms of this Order to OPMC. Respondent shall cause the monitors to submit required reports on a timely basis.
11. Respondent shall submit, at the request of a monitor who suspects possible substance abuse, to observed blood, breath and/or urine screens for the presence of drugs/alcohol. Respondent shall report for a drug screen within four (4) hours of being directed by a monitor. Respondent shall cause the monitor to report to OPMC within 24 hours if a test is refused or delayed by

Respondent or a test is positive for any unauthorized substance.

12. 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. The monitoring shall be focused upon, but not limited to, prescribing and record keeping.
 - 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 less than 10 per month) 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 and to review Respondent's practice regarding the prescribing, administering, dispensing, inventorying, and disposal of abusable and controlled substances. 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. Respondent shall cause the practice monitor in the quarterly reports to OPMC to report the quality of Respondent's medical practice including the evaluation and treatment of patients, prescribing practices, any unusual or unexplained changes in the Respondent's physical and/or mental condition, signs of impairment or substance abuse and compliance or failure to comply with any term of probation.
 - 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.

13. Respondent shall engage in and continue in counseling or other therapy with a therapist as long as the therapist determines is necessary, or for the period of time dictated in the Order.
14. Respondent shall cause the therapist to submit a proposed treatment plan and quarterly reports to OPMC certifying whether Respondent is in compliance with the treatment plan. Respondent shall cause the therapist to report to OPMC within 24 hours if Respondent leaves treatment against medical advice, or displays any symptoms of a suspected or actual impairment or abuse of a controlled or abusable substance.
15. Respondent shall comply with any request from OPMC to obtain an independent psychiatric/chemical dependency evaluation by a health care professional proposed by the Respondent and approved, in writing, by the Director of OPMC.
16. 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.

Order.

13. Respondent shall engage in and continue in counseling or other therapy with a therapist as long as the therapist determines is necessary, or for the period of time dictated in the Order.
14. Respondent shall cause the therapist to submit a proposed treatment plan and quarterly reports to OPMC certifying whether Respondent is in compliance with the treatment plan. Respondent shall cause the therapist to report to OPMC within 24 hours if Respondent leaves treatment against medical advice, or displays any symptoms of a suspected or actual impairment or abuse of a controlled or abusable substance.
15. Respondent shall comply with any request from OPMC to obtain an independent psychiatric/chemical dependency evaluation by a health care professional proposed by the Respondent and approved, in writing, by the Director of OPMC.
16. 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.