



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

William P. Dillon, M.D.
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Michael A. Gonzalez, R.P.A.
Vice Chair

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

April 4, 2003

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

RE: License No. 121800

Robert Gary Schwager, M.D.
927 Fifth Avenue
New York, NY 10021

Dear Dr. Schwager:

Enclosed please find Order #BPMC 03-87 of the New York State Board for Professional Medical Conduct. This Order and any penalty provided therein goes into effect April 4, 2003.

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.

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,



Ansel R. Marks, M.D., J.D.
Executive Secretary
Board for Professional Medical Conduct

Enclosure

cc: Robert L. Cucin, Esq.
120 Central Park South
Apartment 1F
New York, NY 10019-1508

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

**IN THE MATTER
OF
ROBERT GARY SCHWAGER, M.D.**

**CONSENT
ORDER**

BPMC No. 03-87

Upon the application of (Respondent) Robert Gary Schwager, M.D. in the attached Consent Agreement and Order, which is made a part of this Consent Order, it is

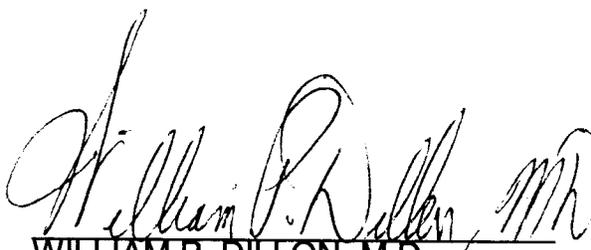
ORDERED, that the Consent Agreement, and its terms, are adopted and SO ORDERED, and it is further

ORDERED, that this Order shall be effective upon issuance by the Board, either

- by mailing of a copy of this Consent Order, either by first class mail to Respondent at the address in the attached Consent Agreement or by certified mail to Respondent's attorney, OR
- upon facsimile transmission to Respondent or Respondent's attorney, Whichever is first.

SO ORDERED.

DATED: 4/2/03



WILLIAM P. DILLON, 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
ROBERT GARY SCHWAGER, M.D.**

**CONSENT
AGREEMENT
AND
ORDER**

Robert Gary Schwager, M.D., representing that all of the following statements are true, deposes and says:

That in or about 1994, I was licensed to practice as a physician in the State of New York, and issued License No. 121800 by the New York State Education Department.

My current address is 927 Fifth Ave. New York, NY 10021, and I will advise the Director of the Office of Professional Medical Conduct of any change of address.

I understand that the New York State Board for Professional Medical Conduct has charged me with one specification of professional misconduct.

A copy of the Statement of Charges, marked as Exhibit "A", is attached to and made a part of this Consent Agreement.

I do not contest the misconduct alleged, in full satisfaction of the charges against me, and agree to the following penalty:

My license to practice medicine in the State of New York shall be suspended for three years, with such suspension to be stayed. I shall be subject to a three year period of probation in accordance with the terms set forth in the appended Exhibit "B". In addition, I will be required to pay a fine, which I hereby stipulate to be in accordance with Section 230 a(7) of the Public Health Law, of

\$100,000, payable in ten consecutive \$10,000 monthly payments with the first payment due 30 days after receipt of a duly executed copy of the within Consent Order. Checks shall be made payable to "New York State Department of Health" and forwarded to the following address:

Revenue Unit
New York State Department of Health
Empire State Plaza
Corning Tower, Rm 1258
Albany, N.Y. 12237

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

That Respondent shall maintain current registration of licensure with the New York State Education Department Division of Professional Licensing Services (except during periods of actual suspension), and shall pay all registration fees. This condition shall take effect thirty (30) days after the Consent Order's effective date and will continue so long as Respondent remains licensed in New York State; and

That Respondent shall cooperate fully with the Office of Professional Medical Conduct (OPMC) in its administration and enforcement of this Order and in its investigations of matters concerning Respondent. Respondent shall respond in a timely manner to all OPMC requests for written periodic verification of Respondent's compliance with this Order. Respondent shall meet with a person designated by the Director of OPMC, as directed. Respondent shall respond promptly and provide all documents

and information within Respondent's control, as directed. This condition shall take effect upon the Board's issuance of the Consent Order and will continue so long as Respondent remains licensed in New York State.

I stipulate that my failure to comply with any conditions of this Order shall constitute misconduct as defined by New York State Education Law §6530(29).

I agree that if I am charged with professional misconduct in future, this Consent Agreement and Order **shall** be admitted into evidence in that proceeding.

I ask the Board to adopt this Consent Agreement.

I understand that if the Board does not adopt this Consent Agreement, none of its terms shall bind me or constitute an admission of any of the acts of alleged misconduct; this Consent Agreement shall not be used against me in any way and shall be kept in strict confidence; and the Board's denial shall be without prejudice to the pending disciplinary proceeding and the Board's final determination pursuant to the Public Health Law.

I agree that, if the Board adopts this Consent Agreement, the Chair of the Board shall issue a Consent Order in accordance with its terms. I agree that this Order shall take effect upon its issuance by the Board, either by mailing of a copy of the Consent Order by first class mail to me at the address in this Consent Agreement, or to my attorney by certified mail, OR upon facsimile transmission to me or my attorney, whichever is first.

I ask the Board to adopt this Consent Agreement of my own free will and not under duress, compulsion or restraint. In consideration of the value to me of the Board's adoption of this Consent Agreement, allowing me to resolve this matter without the various risks and burdens of a hearing on the merits, I knowingly waive

my right to contest the Consent Order for which I apply, whether administratively or judicially, I agree to be bound by the Consent Order, and ask that the Board adopt this Consent Agreement.

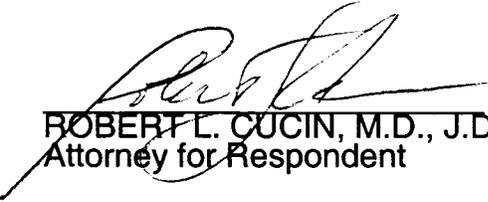


Robert Gary Schwager, M.D.
RESPONDENT

DATED 3/19/03

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

DATE: 3-20-03


ROBERT L. CUCIN, M.D., J.D..
Attorney for Respondent

DATE: 3/25/03


TERRENCE SHEEHAN
Associate Counsel
Bureau of Professional Medical Conduct

DATE: 3/30/03


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 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.
3. 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.
4. 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].
5. 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.
6. 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 Respondent's staff at practice locations or OPMC offices.
7. 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. Respondent shall maintain complete and accurate records regarding the purchase and administration of all vaccines.

8. Respondent shall enroll in and complete a continuing education program in the area of medical ethics for a minimum of 10 credit hours. This continuing education program is subject to the Director of OPMC's prior written approval and shall be completed within the probation period, unless the Order specifies otherwise.
9. 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.

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

IN THE MATTER
OF
ROBERT GARY SCHWAGER, M.D.

STATEMENT
OF
CHARGES

Robert Gary Schwager, M.D., the Respondent, was authorized to practice medicine in New York State on or about September 16, 1974, by the issuance of license number 121800 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. On or about February 20, 1997, Respondent provided plastic surgery services to Patient A at his private medical office at 927 Fifth Avenue New York, New York. Respondent's care and treatment of Patient A departed from accepted standards of practice in the following respects:
1. Respondent prepared and submitted, or caused to be prepared and submitted, insurance forms for the procedure he performed on 2/20/97. These documents were knowingly false in the following respects:
 - a) The sizes of the removed lesions are misstated.
 - b) The diagnoses are false.

Exhibit "A"

2. These false insurance forms were prepared by Respondent, or at his direction, in order that the Respondent or Patient A would receive additional payments to which Respondent knew he or Patient A were not entitled.
3. Respondent prepared "operative reports" for each procedure for which an insurance form was submitted. These documents are sham medical records designed by Respondent to falsely satisfy insurance company requirements that all surgical procedures be supported by specific documentation. In fact, Respondent's "operative reports" are forms used over and over again with little or no Patient-specific information.
4. Respondent failed to maintain a record for Patient A which accurately reflects the evaluation and treatment he provided, including patient complaints, physical examination, diagnoses, operative reports, size and location of excisions and insurance forms.

B. On or about May 16, 1996, December 15, 1997, September 22, 1998, March 9, 2000, and June 27, 2000, Respondent provided plastic surgery services to Patient B at his private medical office. Respondent's care and treatment of Patient B departed from accepted standards of practice in the following respects:

1. Respondent prepared and submitted, or caused to be prepared and submitted, insurance forms for each procedure he performed on these dates. These documents were knowingly false in the following respects:
 - a) The sizes of the removed lesions are misstated.
 - b) The diagnoses are false.

2. These false insurance forms were prepared by Respondent, or at his direction, in order that the Respondent or Patient B would receive additional payments to which Respondent knew he or Patient B were not entitled.

3. Respondent prepared "operative reports" for each procedure for which an insurance form was submitted. These documents are sham medical records designed by Respondent to falsely satisfy insurance company requirements that all surgical procedures be supported by specific documentation. In fact, Respondent's "operative reports" are forms used over and over again with little or no Patient-specific information.

4. Respondent failed to maintain a record for Patient B which accurately reflects the evaluation and treatment he provided, including patient complaints, physical examination, diagnoses, operative reports, size and location of excisions and insurance forms.

C. On or about February 1, 1999, April 19, 1999, July 12, 1999 and February 7, 2000, Respondent provided plastic surgery services to Patient C at his private medical office. Respondent's care and treatment of Patient C departed from accepted standards of practice in the following respects:

1. Respondent prepared and submitted, or caused to be prepared and submitted, insurance forms for each procedure he performed on these dates. These documents were knowingly false in the following respects:
 - a) The sizes of the removed lesions are misstated.
2. These false insurance forms were prepared by Respondent, or at his direction, in order that the Respondent or Patient C would receive additional payments to which Respondent knew he or Patient C were not entitled.

3. Respondent prepared "operative reports" for each procedure for which an insurance form was submitted. These documents are sham medical records designed by Respondent to falsely satisfy insurance company requirements that all surgical procedures be supported by specific documentation. In fact Respondent's "operative reports" are forms used over and over again with little or no Patient-specific information.
4. Respondent failed to maintain a record for Patient C which accurately reflects the evaluation and treatment he provided, including patient complaints, physical examination, diagnoses, operative reports, size and location of excisions and insurance forms.

D. On or about February 22, 2002, Respondent provided plastic surgery services to Patient D at his private medical office. Respondent's care and treatment of Patient D departed from accepted standards of practice in the following respects:

1. Respondent prepared and submitted, or caused to be prepared and submitted, insurance forms for the procedure he performed on February 22, 2002. These documents were knowingly false in the following respects:

- a) The sizes of the removed lesions are misstated.
2. These false insurance forms were prepared by Respondent, or at his direction, in order that the Respondent or Patient D would receive additional payments to which Respondent knew he or his Patient D were not entitled.
3. Respondent prepared "operative reports" for each procedure for which an insurance form was submitted. These documents are sham medical records designed by Respondent to falsely satisfy insurance company requirements that all surgical procedures be supported by specific documentation. In fact, Respondent's "operative reports" are forms used over and over again with little or no Patient-specific information.
4. Respondent failed to maintain a record for Patient D which accurately reflects the evaluation and treatment he provided, including patient complaints, physical examination, diagnoses, operative reports, size and location of excisions and insurance forms.

E. On or about July 16, 1998, Respondent provided plastic surgery services to Patient E at his private medical office. Respondent's care and treatment of Patient E departed from accepted standards of practice in the following respects:

1. Respondent prepared and submitted, or caused to be prepared and submitted, insurance forms for the procedure he performed on July 16, 1998. These documents were knowingly false in the following respects:
 - a) The sizes of the removed lesions are misstated.
 - b) The diagnoses are false.

2. These false insurance forms were prepared by Respondent, or at his direction, in order that the Respondent or Patient E would receive additional payments to which Respondent knew he or Patient E were not entitled.

3. Respondent prepared "operative reports" for each procedure for which an insurance form was submitted. These documents are sham medical records designed by Respondent to falsely satisfy insurance company requirements that all surgical

procedures be supported by specific documentation. In fact, Respondent's "operative reports" are forms used over and over again with little or no Patient-specific information.

4. Respondent failed to maintain a record for Patient E which accurately reflects the evaluation and treatment he provided, including patient complaints, physical examination, diagnoses, operative reports, size and location of excisions and insurance forms.

F. On or about May 7, 1997, April 30, 1998 and November 3, 2001, Respondent provided plastic surgery services to Patient F at his private medical office. Respondent's care and treatment of Patient F departed from accepted standards of practice in the following respects:

1. Respondent prepared and submitted, or caused to be prepared and submitted, insurance forms for the procedures he performed on these dates. These documents were knowingly false in the following respects:
 - a) The sizes of the removed lesions are misstated.
 - b) The diagnoses are false.

2. These false insurance forms were prepared by Respondent, or at his direction, in order that the Respondent or Patient F would receive additional payments to which Respondent knew he or Patient F were not entitled.
3. Respondent prepared "operative reports" for each procedure for which an insurance form was submitted. These documents are sham medical records designed by Respondent to falsely satisfy insurance company requirements that all surgical procedures be supported by specific documentation. In fact, Respondent's "operative reports" are forms used over and over again with little or no Patient-specific information.
4. Respondent failed to maintain a record for Patient F which accurately reflects the evaluation and treatment he provided, including patient complaints, physical examination, diagnoses, operative reports, size and location of excisions and insurance forms.

G. On or about October 5, 1998 and November 17, 1998, Respondent provided plastic surgery services to Patient G at his private medical office. Respondent's care and treatment of Patient G departed from accepted standards of practice in the following respects:

1. Respondent prepared and submitted, or caused to be prepared and submitted, insurance forms for the procedures he performed on these dates. These documents were knowingly false in the following respects:
 - a) The sizes of the removed lesions are misstated.
 - b) The diagnoses are false.

2. These false insurance forms were prepared by Respondent, or at his direction, in order that the Respondent or Patient G would receive additional payments to which Respondent knew he or Patient G were not entitled.

3. Respondent prepared "operative reports" for each procedure for which an insurance form was submitted. These documents are sham medical records designed by Respondent to falsely satisfy insurance company requirements that all surgical procedures be supported by specific documentation. In fact, Respondent's "operative reports" are forms used over and over again with little or no Patient-specific information.

4. Respondent failed to maintain a record for Patient G which accurately reflects the evaluation and treatment he provided, including patient complaints, physical examination, diagnoses, operative reports, size and location of excisions and insurance forms.

H. On or about January 3, 2001, Respondent performed breast reduction mammoplasty on Patient H at New York Hospital, New York, New York. Respondent's care and treatment of Patient A departed from accepted standards of practice in the following respects:

1. As a participating physician in the Oxford Health Plan Respondent is entitled to bill Oxford for services provided to Oxford subscribers such as Patient H. By the terms of his agreement with Oxford, Respondent is not permitted to also directly bill subscribers for covered services. Respondent deliberately violated his Oxford agreement by billing and accepting payment from Oxford for this mammoplasty, and, at the same time, billing Patient H and receiving \$4,500 from her in payment for the surgery. This financial transaction between Respondent and Patient H was the product of Respondent's exercise of undue influence on Patient H.

SPECIFICATION OF CHARGES

FIRST THROUGH EIGHTH 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 paragraphs:

1. A and A(1) - A(3)
2. B and B(1) - B(3)
3. C and C(1) - C(3)
4. D and D(1) - D(3)
5. E and E(1) - E(3)
6. F and F(1) - F(3)
7. G and G(1) - G(3)
8. H and H(1)

NINTH THROUGH FIFTEENTH SPECIFICATION

FALSE REPORT

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(21) 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:

9. A and A(1) - A(3)
10. B and B(1) - B(3)
11. C and C(1) - C(3)
12. D and D(1) - D(3)

13. E and E(1) - E(3)
14. F and F(1) - F(3)
15. G and G(1) - G(3)

SIXTEENTH SPECIFICATION
EXERCISING UNDUE INFLUENCE

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(17) by exercising undue on the patient, including the promotion of the sale of services, goods, appliances, or drugs in such manner as to exploit the patient for the financial gain of the licensee of a third party, as alleged in the facts of the following paragraphs:

16. H and H(1)

SEVENTEENTH THROUGH TWENTY-THIRD SPECIFICATIONS
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 the following paragraph:

17. A and A(3), A(4)
18. B and B(3), B(4)
19. C and C(3), C(4)
20. D and D(3), D(4)
21. E and E(3), E(4)
22. F and F(3), F(4)
23. G and G(3), G(4)

TWENTY-FOURTH SPECIFICATIONS

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 paragraph:

24. A and A(1) - A(3)
25. B and B(1) - B(3)
26. C and C(1) - C(3)
27. D and D(1) - D(3)
28. E and E(1) - E(3)
29. F and F(1) - F(3)
30. G and G(1) - G(3)

DATED: March 25, 2003
New York, New York



ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct