



STATE OF NEW YORK  
DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

NYS DEPT. OF HEALTH  
DIVISION OF LEGAL AFFAIRS - NYS  
PROFESSIONAL MEDICAL CONDUCT

APR 6 2005

Antonia C. Novello, M.D., M.P.H., Dr.P.H.  
Commissioner

RECEIVED  
Dennis P. Whalen  
Executive Deputy Commissioner

Public

April 4, 2005

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Paul Stein, Esq.  
NYS Department of Health  
90 Church Street - 4<sup>th</sup> Floor  
New York, New York 10007-2919

Richard Jay Apple, M.D.  
25 Seaside Drive  
Port Jefferson, New York 11777

Anthony Z. Scher, Esq.  
Wood & Scher  
222 Bloomingdale Road  
White Plains, New York 10605

**RE: In the Matter of Richard Jay Apple, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 05-60) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), and §230-c subdivisions 1 through 5, (McKinney Supp. 1992), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the licensee or the Department may seek a review of a committee determination.

All notices of review must be served, by certified mail, upon the Administrative Review Board and the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Administrative Law Judge  
New York State Department of Health  
Bureau of Adjudication  
Hedley Park Place  
433 River Street, Fifth Floor  
Troy, New York 12180

The parties shall have 30 days from the notice of appeal in which to file their briefs to the Administrative Review Board. Six copies of all papers must also be sent to the attention of Mr. Horan at the above address and one copy to the other party. The stipulated record in this matter shall consist of the official hearing transcript(s) and all documents in evidence.

Parties will be notified by mail of the Administrative Review Board's Determination and Order.

Sincerely,

A handwritten signature in cursive script that reads "Sean D. O'Brien".

Sean D. O'Brien, Director  
Bureau of Adjudication

SDO:cah

Enclosure

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

COPY

-----X  
IN THE MATTER : DETERMINATION  
: :  
OF : AND  
: :  
RICHARD JAY APPLE, M.D. : ORDER  
-----X  
BPMC 05-60

A Notice of Hearing and Statement of Charges, both dated August 2, 2004, were served upon the Respondent, Richard Jay Apple, M.D. LINDA PRESCOTT WILSON, (CHAIR), FLORENCE KAVALER, M.D., AND MARVIN HARTSTEIN, M.D., duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to Section 230(10) (Executive) of the Public Health Law. LARRY G. STORCH, ADMINISTRATIVE LAW JUDGE, served as the Administrative Officer. The Department of Health appeared by Paul Stein, Esq., Associate Counsel. The Respondent appeared by Wood & Scher, Anthony Z. Scher, Esq., of Counsel. Evidence was received and witnesses sworn and heard and transcripts of these proceedings were made.

After consideration of the entire record, the Hearing Committee issues this Determination and Order.

PROCEDURAL HISTORY

Date of Notice of Hearing and Statement of Charges: August 2, 2004  
Answer Filed: September 14, 2004  
Pre-Hearing Conference: September 22, 2004  
Hearing Dates: September 29, 2004  
October 7, 2004  
November 16, 2004  
November 22, 2004  
Deliberations Held: January 26, 2005

STATEMENT OF CASE

Petitioner has charged Respondent, a board-certified anesthesiologist, with Material redacted specifications of professional misconduct. Material redacted

The charges include allegations of

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failure to maintain accurate medical records. Respondent denied the allegations.

A copy of the Statement of Charges is attached to this Determination and Order in Appendix I.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers in parentheses refer to transcript page numbers or exhibits. These

citations represent evidence found persuasive by the Hearing Committee in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence.

1. Richard Jay Apple, M.D. (hereinafter "Respondent"), was authorized to practice medicine in New York State by the New York State Education Department's issuance of license number 178131 on May 2, 1989. (Ex. #2).

Patient A

2. Respondent treated Patient A, a twenty-four year old male, at Central Suffolk Hospital in Riverhead, New York, on or about April 12, 2001. (Ex. 3).

3. Patient A weighed 270 pounds, and was 5 feet 8 inches tall. His body mass index (BMI) was in excess of 40. Patient A was morbidly obese. (T. 31-33; Ex. 3).

4. Patient A was taking Glucotrol to treat diabetes. (T. 32; Ex. 3, p. 46).

5. Patient A presented to the emergency room at Central Suffolk on April 12, 2001 with complaints of right lower quadrant pain radiating to the umbilicus. He had been previously seen in the emergency room two days earlier, with symptoms of gastritis. (Ex. 3, p. 46).

6. The patient was admitted to the hospital for surgery, with a preoperative diagnosis of acute appendicitis with questionable perforation and localized peritonitis. (T. 34; Ex. 3, p. 15).

7. Respondent provided anesthesia management for Patient A's surgery. (Ex. 3).

8. Respondent failed to document the presence or absence of any pertinent family history of anesthetic problems on the pre-anesthetic evaluation form. (T. 42; Ex. 3, p. 4).

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10. During the course of the two hour surgical procedure, Respondent administered approximately 6 liters of intravenous fluid to the patient. (Ex. 3, p. 5).

11. Although Patient A had a Foley catheter in place, Respondent did not record the patient's urine output during the surgery. (T. 48-49, 867; Ex. 3, p. 5).

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Patient C

27. Respondent provided anesthesia care to Patient C, a forty-nine year old male, at Long Beach Memorial Hospital in Long Beach, New York, on or about January 7, 1999 and/or January 9, 1999. (Ex. 5).

28. Patient C was admitted with complaints of nausea, and vomiting of bright red blood. The patient underwent endoscopy on January 9, 1999, for which Respondent provided anesthesia. (Ex. 5, pp. 9, 142).

29. Respondent failed to document the presence or absence of any pertinent medical history on the pre-anesthesia consultation and evaluation form. (Ex. 5, p. 29).

30. The anesthesia record notes that anesthesia began at 7:10 p.m. and ended at 8:25 p.m. on January 9, 1999. Respondent failed to fill in the grid entries for vital signs for the final twenty minutes of the procedure. (Ex. 5, p. 142).

31. Patient C was discharged from the hospital on January 15, 1999 (Ex. 5, p. 9).

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CONCLUSIONS OF LAW

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Respondent is charged with specifications

alleging professional misconduct within the meaning of Education

Law §6530.

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the Hearing Committee made the following conclusions of law pursuant to the factual findings listed above. All conclusions resulted from a unanimous vote of the Hearing Committee unless noted otherwise.

The Hearing Committee first considered the credibility of the various witnesses, and thus the weight to be accorded their testimony.

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Respondent also testified on his own behalf. The Committee very carefully considered his testimony, given his obvious stake in the outcome of these proceedings. Dr. Apple spoke well on his own behalf, and the Committee found him to be a generally credible witness.

Patient A

Patient A was a 24 year old morbidly obese male admitted to the hospital through the emergency room for an appendectomy. When completing the pre-anesthesia evaluation, Respondent failed to document the presence or absence of any pertinent family history of anesthesia problems. Although the case was urgent, Respondent should have been able to document

such potentially crucial information. The Committee found this to be a failure to accurately document the evaluation of Patient A, and sustained the Eighth specification of professional medical conduct set forth in the Statement of Charges.

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Patient C

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Ultimately, this case involved a failure of record-keeping. The anesthesia note and the anesthesia vital signs grid are not in agreement. Respondent acknowledged failing to enter the vital signs for the last twenty minutes of the procedure. Respondent also failed to document the presence or absence of any pertinent medical history on the pre-anesthesia evaluation form.

The Hearing Committee concluded that Respondent failed to maintain an accurate medical record for Patient C, and voted to sustain the Tenth specification of misconduct.

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Based upon the evidence, the Hearing Committee sustained two specifications of failure to maintain accurate records, in violation of Education Law § 6530(32) (Eighth and Tenth Specifications).

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DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determined that Respondent should be placed on probation for a period of one year following the effective date of this determination and order. During the period of probation, Respondent's medical records shall be reviewed for accuracy and completeness. In addition, Respondent shall be required to undertake a minimum of five (5) hours of continuing medical

education, acceptable to the Office of Professional Medical Conduct, in the area of medical record-keeping. This determination was reached upon due consideration of the full spectrum of penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties. The complete terms of probation are set forth in Appendix II which is attached to this Determination and Order and incorporated herein.

The only charges against Respondent which have been sustained concern his failure to accurately document his evaluation and treatment of his patients. Under those circumstances, the Hearing Committee determined that Respondent would benefit from continuing medical education in the area of medical record-keeping. In addition, his record-keeping practices must be monitored for a period of time in order to verify that he can practice in compliance with generally accepted standards of record-keeping practices. The Committee unanimously determined that a one year term of probation is the appropriate sanction, given the totality of the circumstances.

ORDER

Based upon the foregoing, IT IS HEREBY ORDERED THAT:

1. The Eighth and Tenth Specifications of professional misconduct, as set forth in the Statement of Charges, (Petitioner's Exhibit #1) are SUSTAINED;

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3. Respondent's license to practice medicine as a physician in New York State be and hereby is placed on PROBATION for a term of ONE (1) year from the effective date of this Determination and Order. The complete terms of probation are set forth in Appendix II which is attached to this Determination and Order and incorporated herein;

4. Respondent shall undertake and successfully complete a minimum of five (5) hours of continuing medical education, acceptable to the Office of Professional Medical Conduct, in the area of medical record-keeping;

5. This Determination and Order shall be effective upon service. Service shall be either by certified mail upon Respondent at Respondent's last known address and such service shall be effective upon receipt or seven days after mailing by

**APPENDIX I**

certified mail, whichever is earlier, or by personal service and such service shall be effective upon receipt.

DATED: Troy, New York

30 March, 2005



LINDA PRESCOTT WILSON (CHAIR)

FLORENCE KAVALER, M.D.

MARVIN L. HARTSTEIN, M.D.

TO: Paul Stein, Esq.  
Associate Counsel  
New York State Department of Health  
90 Church Street, 4<sup>th</sup> Floor  
New York, New York 10007-2919

Richard Jay Apple, M.D.  
25 Seaside Drive  
Port Jefferson, NY 11777

Anthony Z. Scher, Esq.  
Wood & Scher  
222 Bloomingdale Road  
White Plains, New York 10605

### **Terms of Probation**

- 1. Respondent shall conduct himself in all ways in a manner befitting his professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his profession.**
- 2. Respondent shall submit written notification to the New York State Department of Health addressed to the Director, Office of Professional Medical Conduct (OPMC), Hedley Park Place, 433 River Street Suite 303, Troy, New York 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. Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of Respondent's compliance with the terms of this Order. Respondent shall personally meet with a person designated by the Director of OPMC as requested by the Director.**
- 4. 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].**
- 5. 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.**
- 6. 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.**
- 7. 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.**

## APPENDIX II

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

IN THE MATTER  
OF  
RICHARD JAY APPLE, M.D.

STATEMENT  
OF  
CHARGES

RICHARD JAY APPLE, M.D., the Respondent, was authorized to practice medicine in New York State on or about May 2, 1989, by the issuance of license number 178131 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

- A. Respondent treated Patient A, a twenty-four year old, two hundred and seventy pound male, at Central Suffolk Hospital in Riverhead, New York, on or about April 12, 2001.

*Material redacted*

2. Respondent failed to maintain a record which accurately reflected the evaluation and treatment of the Patient A.

*Material redacted*

- C. Respondent treated Patient C, a forty-nine year old, one hundred and eighty pound male, at Long Beach Memorial Hospital in Long Beach, New York, on or

about January 7, 1999, and/or January 9, 1999.

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2. Respondent failed to maintain a record which accurately reflected the evaluation and treatment of the Patient C.

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**SPECIFICATION OF CHARGES**

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**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:

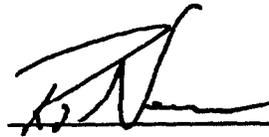
8. Paragraphs A and A2;

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10. Paragraphs C and C2;

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DATED: August 2, 2004  
New York, New York



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Roy Nemerson  
Deputy Counsel  
Bureau of Professional  
Medical Conduct

- 8. Respondent shall enroll in and complete a minimum of five hours of continuing education in the area of medical records. Said continuing education program shall be subject to the prior written approval of the Director of OPMC and be completed within the year of probation.**
  
- 9. Respondent shall comply with all terms, condition, restrictions, limitations and penalties to which he 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.**