



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

April 27, 2000

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Jack Wagner, M.D.
37 Wilputte Place
New Rochelle, NY 10804

RE: License No. 090773

Dear Dr. Wagner:

Enclosed please find Order #BPMC 00-123 of the New York State Board for Professional Medical Conduct. This Order and any penalty provided therein goes into effect **April 27, 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: Meiselman, Farber, Packman & Eberz, P.C.
118 North Bedford Road
PO Box 151
Mt. Kisco, NY 10549

Terrence Sheehan, Esq.

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

**IN THE MATTER
OF
JACK WAGNER, M.D.**

Consent Agreement
and
Order of License
Limitation

Surrender of all Clinical
Privileges

Complete Restriction
from Practice of
Medicine
BPMC #00-123

STATE OF NEW YORK)
COUNTY OF) ss.:

Jack Wagner, M.D., (Respondent) being duly sworn, deposes and says:

That on or about July 16, 1963, I was licensed to practice as a physician in the State of New York, having been issued License No. 90773 by the New York State Education Department.

My current address is 37 Wilputte Pl., New Rochelle, New York, 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 19 specifications of professional misconduct.

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

I do not contest the Thirteenth Specification as alleged in the facts of paragraphs F(1) and F(4) of the Statement of Charges, in full satisfaction of the charges against me. I hereby agree to the following penalty:

My license to practice medicine shall be limited, pursuant to §230-a of the Public Health Law, to preclude patient contact and any practice of medicine, clinical or otherwise. I shall be precluded from diagnosing, treating, operating, or prescribing for any human disease, pain, injury deformity, or physical condition.

I also understand and agree that I shall be precluded from serving as a medical director of a nursing home or any other type of medical facility or being employed in any position that requires a medical license.

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

- That Respondent shall, within 30 days of the issuance of the Order of Conditions, notify the New York State Education Department, Division of Professional Licensing Services, that Respondent's license status is "inactive," and shall provide proof of such notification to the Director of OPMC within 30 days thereafter; and
- That Respondent shall return any and all official New York State prescriptions to the Bureau of Controlled Substances, and shall surrender Respondent's Controlled Substance Registration Certificate to the United States Department of Justice, Drug Enforcement Administration, within 15 days of the effective date of this Order. Further, within 30 days of returning said prescriptions and surrendering said registration, Respondent shall provide documentary proof of such transaction(s) to the Director of OPMC; 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, and shall, during January of every year, submit to the Director of OPMC signed, notarized written statements setting forth whether or not Respondent has complied during the prior year with all conditions imposed by the Order of Conditions.

- Respondent shall comply with all conditions set forth in Exhibit "B" ("Guidelines for Closing a Medical Practice") which is attached.

These conditions shall be in effect beginning upon the effective date of the Consent Order and will continue while I possess my license. I hereby stipulate that any failure by me to comply with such conditions shall constitute misconduct as defined by New York State Education Law §6530(29).

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.

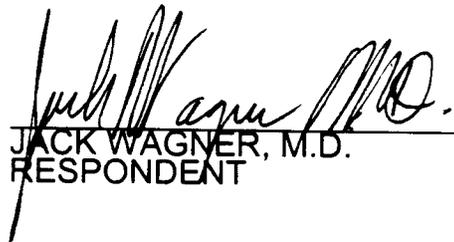
I understand that, in the event that this Application is not granted by the Board, nothing contained herein shall be binding upon me or construed to be an admission of any act of misconduct alleged or charged against me, such

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.

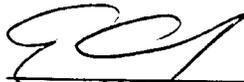
I am making this Application of my own free will and accord and not under duress, compulsion or restraint of any kind or manner. In consideration of the value to me of the acceptance by the Board of this Application, allowing me to resolve this matter without the various risks and burdens of a hearing 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.

DATED April 8, 2000



JACK WAGNER, M.D.
RESPONDENT

Sworn to before me
on this 8 day of
April 2000



NOTARY

ELIOT M. CHESTER
Notary Public, State of New York
No. 1341490
Appointed in Westchester
Commission Expires July 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: 4/10/00


MEISELMAN, FARBER, PACKMAN
& EBERZ
Attorney for Respondent

DATE: 4/13/00


TERRENCE SHEEHAN
Associate Counsel
Bureau of Professional
Medical Conduct

DATE: 4/17/00


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
JACK WAGNER, M.D.**

Consent
Order of License Limitation
Surrender of all Clinical
Privileges
Complete Restriction from
Practice of Medicine

Upon the proposed agreement of Jack Wagner, M.D. (Respondent) for a Consent Order of License Limitation, Surrender of all Clinical Privileges, and Complete Restriction from Practice of Medicine, 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: 4/20/00



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

IN THE MATTER
OF
JACK WAGNER, M.D.

STATEMENT
OF
CHARGES

JACK WAGNER, M.D., the Respondent, was authorized to practice medicine in New York State on or about July 16, 1963, by the issuance of license number 90773 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. Between on or about October 10, 1990 and on or about October 23, 1990 Patient A was treated for rectal bleeding at Montefiore Medical Center, Bronx, N.Y. (The names of the patients are contained in the attached Appendix).
1. On or about October 10, 1990, an abdomino-perineal resection was attempted by Respondent. This procedure was not indicated.
 2. Respondent failed to order necessary pre-operative studies, including a colonoscopy, documenting the need for abdomino-perineal resection.
 3. Prior to the operation, Patient A agreed to the use of a cell-saver. However, Respondent inappropriately failed to insure that a cell-saver was present at the time of surgery.

Exhibit "A"

4. During the procedure, Respondent encountered profuse bleeding from the presacral plexus, a known complication of this operation. Respondent inappropriately failed to control the bleeding. The patient left the operating room with uncontrolled hemorrhage and died as a direct consequence.
5. Respondent failed to maintain a medical record for Patient A which accurately reflects the evaluation and treatment he provided, including progress notes, treatment plans and rationales for the procedures performed.

B. Patient B was admitted to Montefiore Medical Center on or about April 13, 1992 for an elective gastrostomy.

1. On or about April 14, 1992 Respondent attempted to form a gastrostomy under general anesthetic. This procedure was not indicated.
2. During the operation Respondent palpated a large tumor in the stomach. Respondent converted the operation into a total gastrectomy. This procedure was not indicated.
3. During the total gastrectomy there was significant bleeding. Respondent inappropriately failed to control the bleeding.

C. On or about August 7, 1994 Patient C was admitted to Montefiore Medical Center for surgical treatment of morbid obesity.

1. On or about August 8, 1994 Respondent attempted to perform a vertical bonded gastroplasty. During the procedure, Respondent misapplied the staple line so that it impinged upon the esophagus.
 2. After attempting to remove the staples from the esophagus Respondent again misapplied the staple line so that it continued to impinge on the esophagus Respondent's action caused such extensive injury to the esophagus as to render it unsalvageable.
 3. Patient C experienced major intraoperative blood loss, which Respondent inappropriately failed to adequately control.
 4. Respondent failed to maintain a medical record for Patient C which accurately reflects his treatment plan and operative report.
- D. On or about May 3, 1995 Patient D was admitted to Montefiore Medical Center for surgical treatment of gastrointestinal bleeding. A gastroscopy showed a bleeding ulcer in the duodenal bulb, which the endoscopist could not control.
1. On or about May 22, 1995 Respondent performed a subtotal gastrectomy and a feeding jejunostomy. In this surgery, Respondent totally failed to address the duodenal ulcer.
 2. Postoperatively Patient D continued to bleed. Respondent

improperly failed to obtain an arteriogram to locate the site of the hemorrhage.

3. Instead Respondent performed a blind total gastrectomy which was not indicated.
 4. Respondent failed to maintain a medical record for Patient D which accurately reflects his treatment plan, rationales for surgery, operative notes and progress notes.
- E. On or about August 17, 1994, Patient E was admitted to Montifiore Medical Center for surgical treatment of morbid obesity. On the date of admission Respondent performed a vertical banded gastroplasty.
1. In the early postoperative period that Patient showed signs of sepsis, consistent with a leakage from the stapled closure line. Leakage is a known complication of this operation. Respondent inappropriately failed to timely consider and aggressively pursue a leakage as the cause of the Patient's deteriorating condition. Respondent improperly waited eight days before deciding to reoperate.
 2. Upon re-operation the patient was found to have a purulent peritonitis with over two liters of fluid in the abdomen. In this setting it was inappropriate and medically unwarranted for Respondent to have performed a jejunostomy tube placement.

F. On or about October 9, 1996 Patient F was admitted to Montefiore Medical Center with a history of weight loss, recurrent vomiting and dehydration.

1. Patient F had executed a directive prohibiting any aggressive treatment in the event she was found to have a terminal condition. During this admission, Patient F was determined to have probable advanced cancer. Yet Respondent improperly violated Patient F's directive by attempting to perform an esophagogastrectomy on or about November 12, 1996.
2. In addition, on a purely medical basis, the esophagogastrectomy was not indicated.
3. Aside from the lack of indications for the surgery, Respondent improperly attempted to perform the operation via an abdominal approach. Respondent improperly failed to understand that a left chest incision was the only feasible route.
4. Respondent improperly failed to assemble a team of surgeons, including a thoracic surgeon, before attempting the esophagogastrectomy.
5. Respondent failed to maintain a complete and accurate medical record for Patient F in that Respondent failed to ensure that an operative report was dictated for the esophagogastrectomy.

SPECIFICATION OF CHARGES

FIRST THROUGH SIXTH SPECIFICATIONS

GROSS NEGLIGENCE

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(4)(McKinney Supp. 1999) by practicing the profession of medicine with gross negligence as alleged in the facts of the following paragraphs:

1. A and A(1) through A(4)
2. B and B(1) through B(3)
3. C and C(1) through C(3)
4. D and D(1) through D(3)
5. E and E(1) and E(2)
6. F and F(1) through F(4)

SEVENTH THROUGH TWELFTH SPECIFICATIONS

GROSS INCOMPETENCE

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(6)(McKinney Supp. 1999) by practicing the profession of medicine with gross incompetence as alleged in the facts of the following paragraphs:

7. A and A(1) through A(4)
8. B and B(1) through B(3)
9. C and C(1) through C(3)
10. D and D(1) through D(3)
11. E and E(1) and E(2)

12. F and F(1) through F(4)

THIRTEENTH 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. 1999) 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 paragraphs:

13. A, A(1), A(2), A(3), A(4), B, B(1), B(2), B(3), C, C(1), C(2), C(3), D, D(1), D(2), D(3), E, E(1), E(2), E(3), F, F(1), F(2), F(3), F(4).

FOURTEENTH 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. 1999) 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 paragraphs:

14. A, A(1), A(2), A(3), A(4), B, B(1), B(2), B(3), C, C(1), C(2), C(3), D, D(1), D(2), D(3), E, E(1), E(2), E(3), F, F(1), F(2), F(3), F(4).

FIFTEENTH SPECIFICATION

FAILURE TO OBTAIN INFORMED CONSENT

Respondent is charged with committing professional misconduct under N.Y.

Educ. Law §6530(26)(McKinney Supp. 1998), in that he performed professional services which had not been duly authorized by the patient or his or her legal representative as alleged in the following paragraphs:

15. F(1)

SIXTEENTH THROUGH NINETEENTH 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 following paragraphs:

16. A(5)

17. C(4)

18. D(4)

19. F(5)

DATED: May 1999
New York, New York

ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct

EXHIBIT "B"

GUIDELINES FOR CLOSING A MEDICAL PRACTICE

1. Respondent shall immediately cease and desist from engaging in the practice of medicine in accordance with the terms of the Order. In addition, Respondent shall refrain from providing an opinion as to professional practice or its application and from representing himself as being eligible to practice medicine.
2. Respondent shall have delivered to the Office of Professional Medical Conduct (OPMC) at 433 River Street Suite 303, Troy, NY 12180-2299 his original license to practice medicine in New York State and current biennial registration within thirty (30) days of the effective date of the Order.
3. Respondent shall within fifteen (15) days of the Order notify his patients of the cessation of his medical practice and will refer all patients to another licensed practicing physician for their continued care, as appropriate.
4. Respondent shall make arrangements for the transfer and maintenance of the medical records of his patients. Within thirty days of the effective date of the Order, Respondent shall notify OPMC of these arrangements including the appropriate and acceptable contact person's name, address, and telephone number who shall have access to these records. Original records shall be retained for at least six years after the last date of service rendered to a patient or, in the case of a minor, for at least six years after the last date of service or three years after the patient reaches the age of majority whichever time period is longer. Records shall be maintained in a safe and secure place which is reasonably accessible to former patients. The arrangements shall include provisions to ensure that the information on the record is kept confidential and made available only to authorized persons. When a patient or and/or his or her 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 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 their inability to pay.
5. In the event that Respondent holds a Drug Enforcement Agency (DEA) certificate, Respondent shall within fifteen (15) days advise the DEA in writing of the licensure action and shall surrender his DEA controlled substance privileges to the DEA. Respondent shall promptly surrender any unused DEA #222 U.S. Official Order Forms Schedules 1 and 2 to the DEA.
6. Respondent shall within fifteen (15) days return any unused New York State official prescription forms to the Bureau of Controlled Substances of the New York State Department of Health. Respondent shall cause all prescription pads bearing his name to be destroyed. If no other licensee is providing services at his practice location, all medications shall be properly disposed.
7. Respondent shall not share, occupy or use office space in which another licensee provides health care services. Respondent shall cause all signs to be removed within fifteen (15) days and stop all advertisements, professional listings whether in telephone directories or otherwise, professional stationery or billings by which his eligibility to practice is represented.
8. Respondent shall not charge, receive or share any fee or distribution of

EXHIBIT "B"

dividends for professional services rendered by himself or others while barred from engaging in the practice of medicine. Respondent may be compensated for the reasonable value of services lawfully rendered and disbursements incurred on a patient's behalf prior to the effective date of this Order.

9. If Respondent is a shareholder in any professional service corporation organized to engage in the practice of medicine and if his license is revoked, surrendered or suspended for a term of six months or more under the terms of this Order, Respondent shall divest himself of all financial interest in the professional services corporation in accordance with New York Business Corporation Law. Such divestiture shall occur within 90 days. If Respondent is the sole shareholder in a professional services corporation, the corporation must be dissolved or sold within ninety (90) days of the effective date of this Order.

10. Failure to comply with the above directives may result in a civil penalty or further criminal penalties as may be authorized pursuant to the law. Under Section 6512 of the Education Law it is a Class E Felony, punishable by imprisonment of up to 4 years, to practice the profession of medicine when such professional license has been suspended, revoked or annulled. Such punishment is in addition to the penalties for professional misconduct set forth in section 230-a of the Public Health Law, which includes fines of up to \$10,000 for each specification of charges of which the Respondent is found guilty and may include revocation of a suspended license.