



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.
Commissioner
NYS Department of Health
Dennis P. Whalen
Executive Deputy Commissioner
NYS Department of Health
Anne F. Saile, Director
Office of Professional Medical Conduct

William P. Dillon, M.D.
Chair
Denise M. Bolan, R.P.A.
Vice Chair
Ansel R. Marks, M.D., J.D.
Executive Secretary

February 11, 2000

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Garth E. Brink, R.P.A.
434 Stone Street
Oneida, NY 13421

RE: License No. 000257

Dear Mr. Brink:

Enclosed please find Order #BPMC 00-43 of the New York State Board for Professional Medical Conduct. This Order and any penalty provided therein goes into effect **February 11, 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: Kevin C. Roe, Esq.

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

IN THE MATTER
OF
GARTH E. BRINK, P.A.

CONSENT
AGREEMENT
AND
ORDER
BPMC #00-43

GARTH E. BRINK, P.A., (Respondent) says:

That on or about July 17, 1975, I was licensed to practice as a physician's assistant in the State of New York, having been issued license number 000257 by the New York State Education Department.

My current addresses are 434 Stone Street, ^{ONEIDA}~~India~~, New York 13421 and Winfield Medical Center, East Main Street, West Winfield, New York, 13491

I understand that the New York State Board for Professional Medical Conduct has charged me with five 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 third, fourth, and fifth specifications of the Statement of Charges in full satisfaction of the charges against me, the balance of which I deny.

I agree to the following penalty:

My license to practice medicine shall be suspended for three years with the suspension stayed on condition that I comply with the terms of probation attached hereto, made part hereof, and marked as Exhibit B.

Respondent shall maintain current registration of his license with the New York State Education Department Division of Professional Licensing Services, and pay all registration fees.

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 his 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.

I stipulate that any failure by me to comply with the terms of probation 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 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, whether administratively or judicially, and ask that the application be granted.

AFFIRMED:

DATED: 1/31/00


GARTH E. BRINK, P.A.

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

DATE: 2/2/00



KEVIN C. ROE
Associate Counsel
Bureau of Professional
Medical Conduct

DATE: 2/7/00



ANNE E. SAILE
Director
Office of Professional
Medical Conduct

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

IN THE MATTER
OF
GARTH E. BRINK, P.A.

CONSENT
ORDER

Upon the proposed agreement of **GARTH E. BRINK, P.A.**, (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 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: 2/8/00


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

Exhibit A

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

-----X

IN THE MATTER : STATEMENT
OF : OF
GARTH E. BRINK, P.A. : CHARGES

-----X

GARTH E. BRINK, P.A., the Respondent, was licensed to practice as a physician assistant in New York State on July 17, 1975, by the issuance of license number 000257 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. Respondent treated Patient A (patients are identified in the attached appendix) at the Winfield Medical Center in West Winfield, New York, from on or about January 3, 1995, to on or about April 26, 1996. Respondent's care and treatment of Patient A failed to meet acceptable standards of medical care, in that:

1. Respondent failed to perform and/or document an adequate physical examination.
2. Respondent failed to obtain and/or document an adequate history.
3. Respondent failed to order mammogram(s).
4. Respondent failed to order and or perform timely PAP smear(s).
5. Respondent prescribed estrogen without adequate medical

justification and/or adequate evaluation.

6. Respondent prescribed Ritalin and Stadol inappropriately and without consulting the treating psychiatrist.
7. Respondent failed to consult with his supervising physician.
8. Respondent evaluated and treated Patient A without appropriate supervision.

B. Respondent treated Patient B at the Winfield Medical Center on or about December 12, 1995. Respondent's care and treatment of Patient B failed to meet acceptable standards of medical care, in that:

1. Respondent failed to order and/or obtain a repeat PAP smear following the abnormal PAP smear on October 25, 1995.
2. Respondent failed to consult with his supervising physician.
3. Respondent evaluated and treated Patient B without appropriate supervision.

C. Respondent treated Patient C at the Winfield Medical Center from on or about July 28, 1994, to on or about November 3,

1995. Respondent's care and treatment of Patient C failed to meet acceptable standards of medical care in that:

1. Respondent failed to adequately evaluate recurring complaints of cough.
2. Respondent failed to maintain an adequate growth chart.
3. Respondent failed to consult with his supervising physician.
4. Respondent evaluated and treated Patient C without appropriate supervision.

SPECIFICATIONS

FIRST SPECIFICATION

NEGLIGENCE ON MORE THAN ONE OCCASION

Respondent is charged with negligence on more than one occasion in violation of New York Education Law §6530(3), in that Petitioner charges two or more of the following:

1. The facts in Paragraphs A and A.1, A.2, A.3, A.4, A.5, A.6, A.7, A.8; B and B.1, B.2, B.3; C and C.1, C.2, C.3, C.4.

SECOND SPECIFICATION

INCOMPETENCE ON MORE THAN ONE OCCASION

Respondent is charged with incompetence on more than one

occasion in violation of New York Education Law §6530(5), in that
Petitioner charges two or more of the following:

2. The facts in Paragraphs A and A.1, A.2, A.3, A.4, A.5, A.6, A.7, A.8; B and B.1, B.2, B.3; C and C.1, C.2, C.3, C.4.

THIRD THROUGH FIFTH SPECIFICATIONS
PRACTICING BEYOND SCOPE AUTHORIZED

Respondent is charged with practicing beyond the scope permitted by law and/or performing professional services without adequate supervision in violation of New York Education Law §6530(24), in that Petitioner charges:

9. The facts in Paragraphs A and A.8.
10. The facts in Paragraphs B and B.3.
11. The facts in Paragraphs C and C.4.

DATED: _____, 1999
Albany, New York

PETER D. VANBUREN
Deputy Counsel
Bureau of Professional
Medical Conduct

EXHIBIT B

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 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 three year period of 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 the Office of Professional Medical Conduct (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 condition 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 law, rules, and regulations regarding controlled substances.
7. Except during periods of actual suspension, Respondent shall maintain current registration of his 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 continuing until the full term of the Order has run, and until any associated period of probation and all probation terms have been completed and satisfied.
8. Respondent shall cooperate fully 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.
9. Respondent shall practice as a physician's assistant only when monitored by a licensed physician, board certified in family practice, proposed by Respondent and subject to the written approval of the Director of OPMC.
 - 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 unannounced basis at least monthly and shall examine a random selection 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. 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.
 - 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.
10. Respondent shall comply with all terms, conditions, restrictions, limitations and penalties to which he or she is subject pursuant to this 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 proceeding as described in NY Public Health Law §230(19) and/or any such other proceeding as may be authorized pursuant to the law. Upon written notification to Respondent by the Director of OPMC that she/he has determined that he has violated the terms of probation and/or is not in compliance with the terms of probation, the stay of the suspension is vacated and Respondent's licence shall be actively suspend until final resolution of the alleged violations of the terms of probation pursuant to the procedure set forth in NY Public Health Law §230(19).