



STATE OF NEW YORK DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

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

Public

Dennis P. Whalen
Executive Deputy Commissioner

August 18, 2006

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Jordan Scher, M.D.
404 West 54th Street
Suite 2C
New York, New York 10019-4495

Francis R. Ruddy, Esq.
NYS Department of Health
Bureau of Professional Medical Conduct
90 Church Street – 4th Floor
New York, New York 10007

Denise Quarles, Esq.
Quarles & Associates, P.C.
The Bar Building
36 West 44th Street – suite 815
New York, New York 10036

RE: In the Matter of Jordan Scher, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 06-193) 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 Respondent 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:djh

Enclosure

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

COPY

IN THE MATTER
OF
JORDAN SCHER, M.D.

DETERMINATION
AND
ORDER

BPMC NO. 06-193

WALTER M. FARKAS, M.D., Chairperson, JINIL YOO, M.D. and JAMES DUCEY, duly designated members of the State Board for Professional Medical Conduct, appointed by the Commissioner of Health of the State of New York pursuant to Section 230(1) of the Public Health Law, served as the Hearing Committee in this matter pursuant to Section 230(10)(e) of the Public Health Law. CHRISTINE C. TRASKOS, ESQ., served as Administrative Officer for the Hearing Committee. The Department of Health appeared by DONALD P. BERENS, Jr., General Counsel, FRANCIS D. RUDDY, ESQ., Assistant Counsel, of Counsel. The Respondent appeared by QUARLES & ASSOCIATES, P.C., DENISE L. QUARLES, 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 submits this Determination and Order.

STATEMENT OF CHARGES

The accompanying Statement of Charges alleged one (1) specification of professional misconduct for failure to comply with an Order for a comprehensive review of medical records.

The charges are more specifically set forth in the Statement of Charges dated March 8, 2006, a copy of which is attached hereto as Appendix I and made a part of this Determination and Order. The record was closed upon receipt of the final transcript which was dated July 28, 2006.

WITNESSES

For the Petitioner:

Leslie Fisher

For the Respondent:

Jordan Scher, M.D.

FINDINGS OF FACT

1. Respondent was authorized to practice medicine in New York State on March 31, 1960 by the issuance of license number 08³941 by the New York State Education Department.
2. On or about May 24, 2005, the Director of the Office of Professional Medical Conduct (OPMC) issued an Order requiring Respondent to cooperate with OPMC in a Comprehensive Medical Review ("CMR") of Respondent's patient and office records. (Pet. Ex.6)
3. By letter dated June 13, 2005, Leslie Fisher, a health program nurse from OPMC notified Respondent's attorney at the time, Sheila Hurley about the Order and requested an appointment to randomly review Respondent's practice records. (Pet. Ex.5. T. 24-25)

4. By letter dated July 11, 2005, Ms. Hurley replied to Ms. Fisher's inquiries. Her letter stated in part that Respondent had advised her that Respondent's "private practice is effectively closed and he no longer sees patients in his home- office." (Pet. Ex. 7)
5. Ms. Fisher continued to leave repeated messages for Ms. Hurley about the CMR Order but she has never received a response from either Ms. Hurley or the Respondent. (T. 37)
6. Respondent was hospitalized from October 2005 to March 2006. He was also admitted on June 28, 2006, the first day of hearing and released on July 6, 2006. (T. 111, 115-116, 153)
7. Since 1997, Respondent resides in an assisted living apartment that consists of two rooms. (T.118,149)
8. Respondent has treated patients for detoxification in connection with a local methadone clinic. (T. 124-125)
9. Respondent testified that while he currently has no active patients, he would like to return to work, particularly in conjunction with the detoxification clinic run by Ray Sanchez, R.P.A. (T. 143)

10. On July 13, 2006, Respondent provided records to the Department which he identified as "past patients, inactive patients and Buprenorphine patients." (Resp. Exs. F, G and H, ; T. 138)

CONCLUSIONS OF LAW

The following conclusions were made pursuant to the Findings of Fact listed above. All conclusions resulted from a unanimous vote of the Hearing Committee unless noted otherwise. The Hearing Committee concluded that the following should be sustained.

FIRST SPECIFICATION

FAILURE TO COMPLY WITH AN ORDER FOR A COMPREHENSIVE REVIEW OF MEDICAL RECORDS SUSTAINED

DISCUSSION

Respondent is charged with one (1) specification alleging professional misconduct within the meaning of Education Law Section 6530. The Hearing Committee concluded, by a preponderance of the evidence, that one (1) specification of professional misconduct should be sustained. The rationale for the Committee's conclusions regarding each specification of misconduct is set forth below.

At the outset of deliberations, the Hearing Committee made a determination as to credibility of the witnesses presented. The Hearing Committee finds that the Department's nurse

investigator, Leslie Fisher testified about her attempts to contact Respondent and his former attorney. She has no stake in the outcome of this proceeding and the Committee finds her to be a credible witness.

Respondent testified on his own behalf. The Hearing Committee finds that Respondent had a selective memory particularly about his most recent hospitalization. They are further troubled by the July 2005 letter of his then attorney, Ms. Hurley that represented that Respondent no longer sees patients. (Pet. Ex.7) The Hearing Committee notes that the records that Respondent subsequently provided demonstrate that he has seen patients as recent as April 2006. (Resp. Ex. F) Respondent even told the Committee that he would like to return to his practice in the future. The Hearing Committee finds that Respondent has been untruthful about the status of his medical practice. They further find Respondent's explanation that he was unable to locate his records in his two room apartment as wholly incredible. Overall, the Hearing Committee gave Respondent's testimony little weight.

The Hearing Committee does not accept Respondent's "umbrella excuse" that his former attorney was incompetent. They believe that a physician has a duty to timely comply with an Order from the Board and cannot skirt responsibility by blaming his attorney. The Hearing Committee further notes that there was no persuasive proof that Respondent's records may have been removed by a third party during his hospitalization. The Hearing Committee finds that notwithstanding his six month hospitalization, Respondent willfully delayed turning over records pursuant to the Department's Order and is thus guilty of professional misconduct. The last minute attempt to provide "selected" records does not comport with the statute which requires a physician to cooperate with an investigation of random records that has been authorized under PHL § 230 (10)(a)(iv).

Although there was no evidence offered by the Department if the records provided met with their acceptance, the Hearing Committee notes upon cursory review that the records lack completeness and adequacy. They note that there are no reports of physical exams by any

physician, no lab reports, no mental status exams, no record of therapeutic interventions, no follow up and no record of where the patients are being discharged to. In light of the above, the Hearing Committee sustains the First Specification.

DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above determined by a unanimous vote that Respondent's license to practice medicine in New York State is suspended for a period of three years, the last two and one-half years are stayed and Respondent will be placed on probation with records monitoring by OPMC. 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 Hearing Committee concludes that Respondent has intentionally obstructed a statutorily authorized records investigation by OPMC. The overall incompleteness of the records ultimately produced warrant that future records be monitored by OPMC. Therefore, under the totality of the circumstances, the Hearing Committee finds that the three year license suspension with two and one-half years stayed probation with records monitoring is the appropriate penalty in this instance.

ORDER

Based upon the foregoing, **IT IS HEREBY ORDERED THAT:**

1. The First Specification of Professional Misconduct, as set forth in the Statement of Charges (Petitioner's Exhibit #1) is **SUSTAINED**; and
2. Respondent's license to practice medicine in New York State be and hereby is **SUSPENDED** for a period of **THREE (3) YEARS**, said suspension to be **STAYED for the remaining TWO and ONE-HALF years**; and
3. Respondent's license shall be placed on **PROBATION** during the period of suspension, and he shall comply with all Terms of Probation as set forth in Appendix II, attached hereto and made a part of this Order; and
4. This Order shall be effective upon service on the Respondent or the Respondent's attorney by personal service or by certified or registered mail.

DATED: New York, New York
August 17, 2006

Walter M. Farkas, M.D.
WALTER M. FARKAS, M.D.
(Chairperson)

JINIL YOO, M.D.
JAMES DUCEY

TO: Francis R. Ruddy, Esq.
Assistant Counsel
NYS Department of Health
Bureau of Professional Medical Conduct
90 Church Street
New York, New York 10007

Denise Quarles, Esq.
Quarles & Associates, P.C.
The Bar Building
36 West 44th Street - Suite 815
New York, N.Y. 10036

Jordan Scher, M.D.
404 West 54th Street
Suite 2C
New York, New York 10019-4495

APPENDIX I

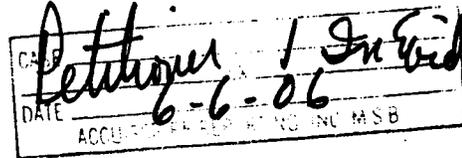
NEW YORK STATE DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

ORIGINAL

IN THE MATTER
OF
JORDAN SCHER, M.D.

NOTICE
OF
HEARING

TO: Jordan Scher, M.D.
404 West 54th Street
Suite 2C
New York, New York 10019-4495



PLEASE TAKE NOTICE:

A hearing will be held pursuant to the provisions of N.Y. Pub. Health Law §230 and N.Y. State Admin. Proc. Act §§301-307 and 401. The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on **Monday, April 10, 2006, at 10:00 a.m.**, at the Offices of the New York State Department of Health, 90 Church Street, 4th floor, New York, New York 10007, and at such other adjourned dates, times and places as the committee may direct.

At the hearing, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the hearing will be made and the witnesses at the hearing will be sworn and examined. You shall appear in person at the hearing and may be represented by counsel. You have the right to produce witnesses and evidence on your behalf, to issue or have subpoenas issued on your behalf in order to require the production of witnesses and documents, and you may cross-examine witnesses and examine evidence produced against you. A summary of the Department of Health Hearing Rules is enclosed.

The hearing will proceed whether or not you appear at the hearing. Please note that requests for adjournments must be made in writing and by telephone to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Hedley Park Place, 433 River Street, Fifth Floor South, Troy, NY 12180, ATTENTION: HON. SEAN D. O'BRIEN, DIRECTOR, BUREAU OF

ADJUDICATION, (henceforth "Bureau of Adjudication"), (Telephone: (518-402-0748), upon notice to the attorney for the Department of Health whose name appears below, and at least five days prior to the scheduled hearing date.

Adjournment requests are not routinely granted as scheduled dates are considered dates certain. Claims of court engagement will require detailed Affidavits of Actual Engagement. Claims of illness will require medical documentation.

Pursuant to the provisions of N.Y. Pub. Health Law §230(10)(c), you shall file a written answer to each of the charges and allegations in the Statement of Charges not less than ten days prior to the date of the hearing. Any charge or allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such answer. The answer shall be filed with the Bureau of Adjudication, at the address indicated above, and a copy shall be forwarded to the attorney for the Department of Health whose name appears below. Pursuant to §301(5) of the State Administrative Procedure Act, the Department, upon reasonable notice, will provide at no charge a qualified interpreter of the deaf to interpret the proceedings to, and the testimony of, any deaf person. Pursuant to the terms of N.Y. State Admin. Proc. Act §401 and 10 N.Y.C.R.R. §51.8(b), the Petitioner hereby demands disclosure of the evidence that the Respondent intends to introduce at the hearing, including the names of witnesses, a list of and copies of documentary evidence and a description of physical or other evidence which cannot be photocopied.

At the conclusion of the hearing, the committee shall make findings of fact, conclusions concerning the charges sustained or dismissed, and in the event any of the charges are sustained, a determination of the penalty to be imposed or appropriate action to be taken. Such determination may be reviewed by the Administrative Review Board for Professional Medical Conduct.

THESE PROCEEDINGS MAY RESULT IN A

DETERMINATION THAT YOUR LICENSE TO PRACTICE
MEDICINE IN NEW YORK STATE BE REVOKED OR
SUSPENDED, AND/OR THAT YOU BE FINED OR
SUBJECT TO OTHER SANCTIONS SET OUT IN NEW
YORK PUBLIC HEALTH LAW §§230-a. YOU ARE URGED
TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS
MATTER.

DATED: New York, New York
March 8, 2006



Roy Nemerson
Deputy Counsel
Bureau of Professional
Medical Conduct

Inquiries should be directed to: Francis Ruddy
Assistant Counsel
Bureau of Professional Medical Conduct
90 Church Street, 4th floor
New York, New York 10007
212-417-4450

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

IN THE MATTER
OF
JORDAN SCHER, M.D.

STATEMENT
OF
CHARGES

Jordan Scher, M.D., the Respondent, was authorized to practice medicine in New York State on or about March 31, 1960, by the issuance of license number 085³941 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. On or about May 24, 2005, pursuant to N.Y. Public Health Law § 230(10)(a)(iv), the Director of the Office of Professional Medical Conduct ("OPMC") of the New York State Department of Health issued an Order requiring Respondent to cooperate with OPMC in a Comprehensive Medical Review ("CMR") of Respondent's patient and office records. Respondent was duly served with said Order, and failed to comply with same.

SPECIFICATION OF CHARGES

**FAILURE TO COMPLY WITH AN ORDER FOR A COMPREHENSIVE
REVIEW OF MEDICAL RECORDS**

Respondent is charged with committing professional misconduct as defined in N.Y. Education Law § 6530(15) by failing to comply with an order issued pursuant to paragraph (a) of subdivision ten of section two hundred thirty of the

Public Health Law; as alleged in the facts of the following:

1. Paragraph A.

DATE: March 8, 2006
New York, New York



Roy Nemerson
Deputy Counsel
Bureau of Professional
Medical Conduct

APPENDIX II

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. Respondent acknowledges that if s/he commits professional misconduct as enumerated in New York State Education Law §6530 or §6531, those acts shall be deemed to be a violation of probation and that an action may be taken against Respondent's license pursuant to New York State Public Health Law §230(19).**
- 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. 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 make available for review by OPMC, and/or in OPMC's discretion, by a physician proposed by Respondent and approved, in writing, by the Director of OPMC, complete copies of any and all medical and office records selected by OPMC. Respondent shall fully cooperate in the review process.

8. 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.