



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

Michael A. Gonzalez, R.P.A.
Vice Chair

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

PUBLIC

October 13, 2004

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

D. Terry Whitney, R.P.A.
35 Sherwood Drive
Brockport, NY 14420

RE: License No. 000651

Dear Mr. Whitney:

Enclosed please find Order #BPMC 04-232 of the New York State Board for Professional Medical Conduct. This Order and any penalty provided therein goes into effect October 20, 2004.

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 or receipt of the 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

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,

A handwritten signature in black ink, appearing to read 'Ansel R. Marks', written over a horizontal line.

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

Executive Secretary

Board for Professional Medical Conduct

cc: Margaret E. Somerset, Esq.
The Somerset Firm, LLC
Parkside Gardens
2525 Rochester Road
Canandaigua, NY 14424

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

**IN THE MATTER
OF
D. TERRY WHITNEY, R.P.A.-C.**

CONSENT
ORDER

BPMC No. 04-232

Upon the application of D. Terry Whitney, R.P.A.-C. 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: 10/11/04


MICHAEL A. GONZALEZ, R.P.A.
Vice Chair
State Board for Professional Medical Conduct

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

**IN THE MATTER
OF
D. TERRY WHITNEY, R.P.A.-C**

**CONSENT
AGREEMENT
AND
ORDER**

D. TERRY WHITNEY, R.P.A.-C., representing that all of the following statements are true, deposes and says:

That on or about July 22, 1977, I was issued license number 000651 by the New York State Education Department to practice as a Physician Assistant (P.A.) in the State of New York.

My current address is 35 Sherwood Drive, Brockport, New York, 14420, 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 eight specifications of professional misconduct.

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

I agree not to contest the first, second, third and fourth specifications, in full satisfaction of the charges against me, and agree to the following penalty:

1. A Censure and Reprimand.
2. I shall be subject to a fine in the amount of five thousand dollars (\$5,000.00), pursuant to §230-a(7) and (9) of the Public Health Law, to be paid in full within one hundred and eighty (180) days of the effective date of this order. Payments must be submitted to: Bureau of Accounts Management, New York State Department of Health, Empire State Plaza,

Corning Tower, Room 1245, Albany, New York 12237.

3. Pursuant to §230-a(3) of the Public Health Law, my license to practice as a Physician Assistant in the state of New York shall be limited so as to preclude me from recommending herbal remedies to patients without documenting the recommendation in the patient's medical record.

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.

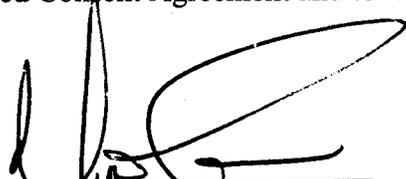
DATED 9.16.04



D. TERRY WHITNEY, R.P.A.-C.
Respondent

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

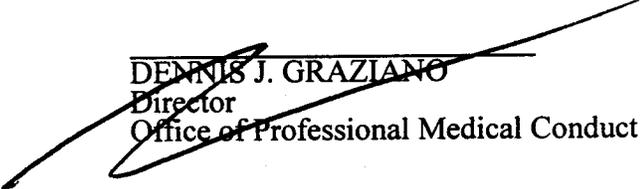
DATE: Sept 16, 2004


MARCARETE B. SOMERSET
Attorney for Respondent

DATE: Sept. 28, 2004


VALERIE B. DONOVAN
Assistant Counsel
Bureau of Professional Medical Conduct

DATE: Oct 8, 2004


DENNIS J. GRAZIANO
Director
Office of Professional Medical Conduct

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

IN THE MATTER
OF
D. TERRY WHITNEY, R.P.A.-C.

STATEMENT
OF
CHARGES

D. TERRY WHITNEY, R.P.A.-C, the Respondent, was issued license number 000651 to practice as a Physician Assistant (PA) in New York State on or about July 22, 1977, by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. On or about March 3, 2003, Respondent treated Patient A (patients are identified in Appendix A, attached hereto) for an injured ankle at Unity-Health Park Ridge Hospital (PRH) Emergency Department, Rochester, New York. Respondent, without Patient A's treating physician's knowledge, informed Patient A that natural medications for treatment of Patient A's depression were available from Starlight International (Starlight), a distribution business for which Respondent was a distributor.
- B. On or about March 3, 2003, while treating Patient A at PRH, Respondent suggested natural treatments from Starlight for Patient A without obtaining the knowledge, consent or approval of either his supervising physician or PRH. Respondent had previously been told by PRH that it was inappropriate for him to solicit sales of herbal supplements, medications or vitamins from PRH patients.
- C. On or about March 3, 2003, while treating Patient A at PRH, Respondent told Patient A that he was a dealer and customer of Starlight and/or discussed the use of Starlight products

in Patient A's business.

- D. On or about March 3, 2003, in the PRH Emergency Department waiting room, Respondent provided a card with the web-site address for Starlight to Patient A and/or to her business partners and others who were with her.
- E. On or about March 3, 2003, in the PRH Emergency Department waiting room, Respondent told Patient A that on or about March 6, 2003, he would stop by her place of business to provide her with literature regarding Starlight.
- F. Respondent failed to document in the March 3, 2003, PRH Emergency Department records for Patient A, that he discussed herbal supplements, vitamins, Patient A's depression and/or Starlight with Patient A.
- G. On or about March 6, 2003, in the parking lot of Patient A's business, Respondent provided Patient A with paperwork regarding Starlight, with dietary supplement samples and/or with a cassette tape.
- H. On or about March 6, 2003, Respondent arranged for a telephone conference with Patient A, himself and a Starlight representative.
- I. A conference between Patient A, Respondent and a Starlight representative took place on or about March 11, 2003. Respondent arranged to meet Patient A and her business associates for lunch later that month to discuss Starlight.
- J. In or about 1998, Respondent, while providing medical treatment to Patient B at PRH, told Patient B that he was involved in an organization that carried weight loss products, and

provided her with a Starlight pamphlet and/or sample diet aid supplements.

- K. In or about 1998, while treating Patient B at PRH, Respondent initiated alternative medical care for Patient B without the knowledge, consent or approval of either his supervising physician or PRH.
- L. Respondent failed to document in Patient B's PRH medical record that he discussed weight loss with Patient A and/or that he provided her with dietary supplements.
- M. After Patient B's 1998 appointment with respondent at PRH, Respondent telephoned her at her home regarding Starlight products and/or to provide her with information regarding an upcoming meeting with Starlight.

SPECIFICATION OF CHARGES

FIRST AND SECOND SPECIFICATIONS

PRACTICING BEYOND SCOPE PERMITTED BY LAW

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(24) by practicing beyond the scope permitted by law and/or performing professional responsibilities without adequate supervision, as alleged in:

1. The facts in paragraph B.
2. The facts in paragraph K.

THIRD AND FOURTH SPECIFICATIONS

FAILURE TO MAINTAIN ADEQUATE 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 evaluation and treatment of the patient, as alleged in:

3. The facts in paragraph F.
4. The facts in paragraph L.

FIFTH AND SIXTH SPECIFICATIONS

UNDUE INFLUENCE

Respondent is charged with committing professional misconduct as defined by N.Y. Educ. Law §6530(17) by exercising undue influence on a patient in such a manner as to exploit the patient for Respondent's financial gain, as alleged in:

5. The facts in paragraphs A, B, C, D, E, G, H and/or I.
6. That facts in paragraphs J, K and/or M.

SEVENTH AND EIGHTH SPECIFICATIONS

PATIENT HARASSMENT

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(31) by willfully intimidating a patient, as alleged in the facts of:

5. The facts in paragraphs C, D, E, G, H and/or I.
6. The facts in paragraphs J and/or M..

DATED: *September 28*, 2004
Albany, New York


PETER D. VAN BUREN
Deputy Counsel
Bureau of Professional
Medical Conduct