

NEW YORK
state department of
HEALTH

Public

Nirav R. Shah, M.D., M.P.H.
Commissioner

Sue Kelly
Executive Deputy Commissioner

May 24, 2012

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Alexander Ostrovsky, M.D.
Island Medical Physicians, P.C.
88 Arkay Drive
Hauppauge, NY 11788

Re: License No. 205819

Dear Dr. Ostrovsky:

Enclosed is a copy of the New York State Board for Professional Medical Conduct (BPMC) Order No. 12-109. This order and any penalty provided therein goes into effect May 31, 2012.

Please direct any questions to: Board for Professional Medical Conduct, 90 Church Street, 4th Floor, New York, NY 10007-2919, telephone # 212-417-4445.

Sincerely,

REDACTED

Katherine A. Hawkins, M.D., J.D.
Executive Secretary
Board for Professional Medical Conduct

Enclosure

cc: Michael Kelton, Esq.
Abrams, Fensterman, Fensterman & Eisman
630 Third Avenue, 5th Floor
New York, NY 10017

**IN THE MATTER
OF
ALEXANDER OSTROVSKY, M.D.**

**CONSENT
ORDER**

Upon the application of (Respondent) ALEXANDER OSTROVSKY, M.D. 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

it is further

ORDERED, that this Consent 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.

DATE: 5/24/2012

REDACTED

KENDRICK A. SEARS, M.D.
Chair
State Board for Professional Medical Conduct

IN THE MATTER
OF
ALEXANDER OSTROVSKY, M.D.

CONSENT
AGREEMENT
AND
ORDER

ALEXANDER OSTROVSKY, M.D., represents that all of the following statements are true:

That on or about February 14, 1997, I was licensed to practice as a physician in the State of New York, and issued License No. 205819, by the New York State Education Department.

My current address is 88 Arkay Drive, Hauppauge, N.Y. 11788, 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 (Board) has charged me with one or more specifications of professional misconduct, as set forth in a Statement of Charges, marked as Exhibit "A", attached to and part of this Consent Agreement.

I assert that I cannot successfully defend against at least one of the acts of misconduct alleged, in full satisfaction of the charges against me, and agree to the following penalty:

- Pursuant to New York Pub. Health Law § 230-a(2), my license to practice medicine in New York State shall be suspended for one year, with that suspension to be entirely stayed.
- Pursuant to New York Pub. Health Law § 230-a(9), I shall be placed on probation for 36 months, subject to the terms set forth in attached Exhibit "B."

I further agree that the Consent Order shall impose the following conditions:

That Respondent shall remain in continuous compliance with all requirements of N.Y. Educ Law § 6502 including but not limited to the requirements that a licensee shall register and continue to be registered with the New York State Education Department (except during periods of actual suspension) and that a licensee shall pay all registration fees. Respondent shall not exercise the option provided in N.Y. Educ. Law § 6502(4) to avoid registration and payment of fees. This condition shall take effect 120 days after the Consent Order's effective date and will continue so long as Respondent remains a licensee 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 Consent 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 Consent 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 Consent Order shall constitute misconduct as defined by N.Y. Educ. 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 N.Y. Pub. 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 Consent 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. The Consent Order, this agreement, and all attached Exhibits shall be public documents,

with only patient identities, if any, redacted. As public documents, they may be posted on the Department's website. OPMC shall report this action to the National Practitioner Data Bank and the Federation of State Medical Boards, and any other entities that the Director of OPMC shall deem appropriate.

I stipulate that the proposed sanction and Consent Order are authorized by N.Y. Pub. Health Law §§ 230 and 230-a, and that the Board and OPMC have the requisite powers to carry out all included terms. 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 I ask that the Board adopt this Consent Agreement.

I understand and agree that the attorney for the Department, the Director of OPMC and the Chair of the Board each retain complete discretion either to enter into the proposed agreement and Consent Order, based upon my application, or to decline to do so. I further understand and agree that no prior or separate written or oral communication can limit that discretion.

DATE

5/21/12

REDACTED

~~_____~~
ALEXANDER OSTROVSKY, M.D.
RESPONDENT

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

DATE: 5/22/12

REDACTED

MICHAEL KELTON, ESQ.
Attorney for Respondent

DATE: 5/22/12

REDACTED

DIANNE ABELOFF
Associate Counsel
Bureau of Professional Medical Conduct

DATE: 5/23/12

REDACTED

KEITH W. SERVIS
Director
Office of Professional Medical Conduct

EXHIBIT A

IN THE MATTER

OF

ALEXANDER OSTROVSKY, M.D.

STATEMENT
OF
CHARGES

ALEXANDER OSTROVSKY, M.D., the Respondent, was authorized to practice medicine in New York State on or about February 14, 1997, by the issuance of license number 205819 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about October 30, 2008, Patient A (patients are identified in the attached Appendix) was brought to New Island Hospital Emergency Department with complaints of difficulty breathing. Respondent examined the patient upon arrival at 1:45 a.m. Respondent intubated the patient and inserted an NGT. The subsequent chest x-ray revealed a right lower lobe infiltrate and subcutaneous air.

Respondent's care and treatment deviated from accepted medical standards, in that he:

1. Failed to confirm the correct placement of the endotracheal tube;
2. Failed to recognize and treat a tracheal tear;
3. Failed to confirm the correct placement of the nasogastric tube;
4. Prescribed Amiodarone for Patient A without medical indication;
5. Failed to recognize the cause of the patient's deteriorating status and appropriately treat the patient;
6. Failed to accurately document the care and treatment rendered.

B. On or about December 2, 2008, Patient B was brought to the emergency department of New Island Hospital with complaints chest pain. Respondent examined the patient "upon arrival".

Respondent's care and treatment deviated from accepted medical standards, in that, he:

1. Failed to recognize and appropriately treat Patient B's acute myocardial infarction;
2. Failed to document that Patient B stopped taking his Plavix twelve days prior to presentation to the emergency department;
3. Failed to accurately document the care and treatment he rendered.

C. On or about December 26, 2008, Patient C was brought to the emergency department of New Island Hospital with complaints of pain in her right eye, arm and wrist from a fall. Respondent examined the patient "upon her arrival" to the emergency department.

Respondent's conduct deviated from accepted medical conduct; in that, he:

1. Failed to perform an adequate history and physical examination;
2. Prescribed an antibiotic to Patient C without medical indication;
3. Failed to accurately document the care and treatment he rendered.

D. On or about April 10, 2009, Patient D was brought to New Island Hospital emergency department with complaints of nausea, vomiting and diarrhea. The physician assistant (PA) examined the patient. The PA noted that the patient was

allergic to Levaquin. The physical exam noted abdominal tenderness and guarding at McBurney's Point with normal bowel sounds. The pelvic exam revealed a brownish discharge and menstruation blood, with left adnexal tenderness. The PA ordered a CBC, CMP, Abdominal Pain Panel and UA.

Respondent's care and treatment deviated from accepted medical standards, in that, he:

1. Failed to perform an adequate history and physical examination of the Patient ;
2. Failed to appropriately supervise the PA;
3. Failed to order a urine or serum pregnancy test;
4. Prescribed Cipro to a patient who is allergic to Levaquin;
5. Prescribed Ancef without medical indication ;
6. Failed to admit patient to the hospital;
7. Failed to accurately document the care and treatment he rendered.

E. On or about January 31, 2010, Patient E, a 39 year old female whose last menstrual period was one year earlier, arrived at the emergency department of New Island Hospital with complaints of mid abdominal pain radiating to the back and flank area for the past three hours. Respondent examined the patient "upon arrival". He ordered a CBC, CMP, Abdominal Pain Panel, UA, UCG, Chest x-ray, flat and upright x-ray of the abdomen, an EKG and an ultrasound to rule out common bile duct stone. Respondent's care and treatment deviated from accepted medical standards, in that, he:

1. Failed to perform an adequate history and physical
2. Failed to recognize that the patient was pregnant and treat accordingly;
3. Inappropriately ordered x-rays on a pregnant patient;
4. Ordered Dilaudid and Phenergan, medications that were contraindicated in a pregnant patient;
5. Failed to appropriately treat the patient's hypertension;
6. Failed to perform a pelvic exam;
7. Failed to accurately document the care and treatment he rendered.

SPECIFICATION OF CHARGES

FIRST THROUGH FIFTH SPECIFICATION

GROSS NEGLIGENCE

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

1. Paragraph A and its subparagraphs;
2. Paragraph B and its subparagraphs;
3. Paragraph C and its subparagraphs;
4. Paragraph D and its subparagraphs;
5. Paragraph E and its subparagraphs;

SIXTH SPECIFICATION

NEGLIGENCE ON MORE THAN ONE OCCASION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(3) by practicing the profession of medicine with negligence on more than one occasion as alleged in the facts of:

6. Paragraph A and its subparagraphs; Paragraphs B and its subparagraphs; Paragraphs C and its subparagraphs; Paragraphs D and its subparagraphs; and/or Paragraph E and its subparagraphs.

SEVENTH SPECIFICATION

INCOMPETENCE ON MORE THAN ONE OCCASION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(5) by practicing the profession of medicine with incompetence on more than one occasion as alleged in the facts of:

7. Paragraph A and its subparagraphs; Paragraph B and its subparagraphs; Paragraph C and its subparagraphs; Paragraph D and its subparagraphs; and/or Paragraph E and its subparagraphs.

EIGHTH THROUGH TWELFTH SPECIFICATION

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. Paragraph A and A(6);
9. Paragraph B and B (3);
10. Paragraph C and C (3);
11. Paragraph D and D (7);
12. Paragraph E and E (7).

DATE: April 3, 2012
New York, New York

REDACTED

ROY NEMERSON
Deputy Counsel
Bureau of Professional Medical Conduct

EXHIBIT "B"

Terms of Probation

- 1) Respondent's conduct shall conform to moral and professional standards of conduct and governing law. Any act of professional misconduct by Respondent as defined by N.Y. Educ. Law §§ 6530 or 6531 shall constitute a violation of probation and may subject Respondent to an action pursuant to N.Y. Pub. Health Law § 230(19).
- 2) Respondent shall maintain active registration of Respondent's license (except during periods of actual suspension) with the New York State Education Department Division of Professional Licensing Services, and shall pay all registration fees.
- 3) Respondent shall provide the Director, Office of Professional Medical Conduct (OPMC), Hedley Park Place, 433 River Street Suite 1000, Troy, New York 12180-2299 with the following information, in writing, and ensure that this information is kept current: a full description of Respondent's employment and practice; all professional and residential addresses and telephone numbers within and outside New York State; and all investigations, arrests, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility. Respondent shall notify OPMC, in writing, within 30 days of any additions to or changes in the required information.
- 4) Respondent shall cooperate fully with, and respond in a timely manner to, OPMC requests to provide written periodic verification of Respondent's compliance with the terms of this Consent Order. Upon the Director of OPMC's request, Respondent shall meet in person with the Director's designee.
- 5) Respondent's failure to pay any monetary penalty by the prescribed date shall subject Respondent to all provisions of law relating to debt collection by New York State, including but 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 § 171(27); State Finance Law § 18; CPLR § 5001; Executive Law § 32].
- 6) The probation period shall toll when Respondent is not engaged in active medical practice in New York State for a period of 30 consecutive days or more. Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in, or intends to leave, active medical practice in New York State for a consecutive 30 day period. Respondent shall then notify the Director again at least 14 days before returning to active practice. Upon Respondent's return to active practice in New York State, the probation period shall resume and Respondent shall fulfill any unfulfilled probation terms and such additional

requirements as the Director may impose as reasonably relate to the matters set forth in Exhibit "A" or as are necessary to protect the public health.

- 7) The Director of OPMC may review Respondent's professional performance. This review may include but shall not be limited to: a review of office records, patient records, hospital charts, and/or electronic records; and interviews with or periodic visits with Respondent and staff at practice locations or OPMC offices.
- 8) Respondent shall adhere to federal and state guidelines and professional standards of care with respect to infection control practices. Respondent shall ensure education, training and oversight of all office personnel involved in medical care, with respect to these practices.
- 9) Respondent shall maintain complete and legible medical records that accurately reflect the evaluation and treatment of patients and contain all information required by State rules and regulations concerning controlled substances.
- 10) Within thirty days of the Consent Order's effective date, Respondent shall practice medicine only when monitored by a licensed physician, board certified in an appropriate specialty, ("practice monitor") proposed by Respondent and subject to the written approval of the Director of OPMC. Any medical practice in violation of this term shall constitute the unauthorized practice of medicine.
 - 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 random unannounced basis at least monthly and shall examine a selection (no fewer than 20) 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.

- 11) Respondent shall enroll in and successfully complete continuing education programs as follows:
 - a) Respondent shall complete the Med-Challenger Course in Emergency Medicine. This continuing education program shall be commenced within the first 90 days of the probation period, pursued promptly, and completed within a period of time to be determined by the Director's office; and
 - b) Respondent shall complete the Case-Western Reserve CME Course in Medical Record Keeping. This continuing education program shall be successfully completed within the first 90 days of the probation period.

Enrollment and other relevant information regarding these programs will be provided by the Office of the Director.

- 12) Respondent shall comply with this Consent Order and all its terms, and shall bear all associated compliance costs. Upon receiving evidence of noncompliance with, or a violation of, these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding, and/or any other such proceeding authorized by law, against Respondent.