



Department of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

November 18, 2015

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Henry Philip Schwartz, M.D.
41 Union Square West, Room 402
New York, NY 10003

Re: License No. 169607

Dear Dr. Schwartz:

Enclosed is a copy of the New York State Board for Professional Medical Conduct (BPMC) Order No. 15-275. This order and any penalty provided therein goes into effect November 25, 2015.

If the penalty imposed by this Order is a surrender, revocation or suspension, you are required to deliver your license and registration within five (5) days of receipt of this Order to: c/o Physician Monitoring Unit, NYS DOH - OPMC, Riverview Center, Suite 355, 150 Broadway, Albany, NY 12204-2719.

If your license is framed, please remove it from the frame and only send the parchment paper on which your name is printed. Our office is unable to store framed licenses.

If the document(s) are lost, misplaced or destroyed, you are required to submit to this office an affidavit to that effect. Please complete and sign the affidavit before a notary public and return it to the Office of Professional Medical Conduct.

Please direct any questions to: NYS DOH - OPMC, Riverview Center, Suite 355, 150 Broadway, Albany, NY 12204-2719, telephone # (518)402-0855.

Sincerely,

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

cc: James Fabian, Esq.
Nixon Peabody
50 Jericho Quadrangle, Suite 300
Jericho, NY 11753

Enclosure

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

IN THE MATTER
OF
HENRY PHILIP SCHWARTZ, M.D.

CONSENT
ORDER

Upon the application of (Respondent) HENRY PHILIP SCHWARTZ, 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: 11/17/15


ARTHUR S. HENGERER, M.D.
Chair
State Board for Professional Medical Conduct

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

**IN THE MATTER
OF
HENRY PHILIP SCHWARTZ, M.D.**

CONSENT
AGREEMENT

HENRY PHILIP SCHWARTZ, M.D., represents that all of the following statements are true:

That on or about March 20, 1987, I was licensed to practice as a physician in the State of New York, and issued License No. 169607 by the New York State Education Department.

My current home address is: [REDACTED] and my current medical office address is : 41 Union Square West, Room 402, New York, N.Y. 10003, and I will advise the Director of the Office of Professional Medical Conduct of any change in these addresses.

I understand that the New York State Board for Professional Medical Conduct (Board) has charged me with two 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 agree not to contest the allegations, 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 three months, to be served as a period of actual suspension; the suspension shall commence upon the Consent Order's effective date. Pursuant to New York Pub. Health Law § 230-a(9), I shall be placed on probation for thirty-six 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's practice of medicine shall be limited to a professional office setting, which shall not be located in or adjacent to his residence. Commencing on this Order's effective date, Respondent's practice of medicine shall be located at his professional office at: 41 Union Square West, Room 402, New York, N.Y. 10003, and Respondent shall obtain the Director's written approval prior to practicing at any other location. Respondent's professional office shall be staffed by at least one administrative or professional person other than Respondent at the time of any medical practice. Respondent shall maintain a log, which shall be available for inspection on demand by the Director of OPMC, and copies of which shall be provided to the Director of OPMC on a quarterly basis, with the name of patients seen at his office each date, and the name, title, and signature of the administrative or professional staff person present at Respondent's professional office at the time of those patient visits. This condition shall take effect upon the Consent Order's

effective date and will continue so long as Respondent remains a licensee in New York State.

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 remain in continuous compliance with all requirements of N.Y. Pub. Health Law § 2995-a(4) and 10 NYCRR 1000.5, including but not limited to the requirements that a licensee shall: report to the department all information required by the Department to develop a public physician profile for the licensee; continue to notify the department of any change in profile information within 30 days of any change (or in the case of optional information, within 365 days of such change); and, in addition to such periodic reports and notification of any changes, update his profile information within six months prior to the expiration date of the licensee's registration period. Respondent shall submit changes to his

physician profile information either electronically using the department's secure web site or on forms prescribed by the department, and Respondent shall attest to the truthfulness, completeness and correctness of any changes that he submits to the department. This condition shall take effect 30 days after the Order's effective date and shall continue so long as Respondent remains a licensee in New York State. Respondent's failure to comply with this condition, if proven and found at a hearing pursuant to N.Y. Pub. Health Law § 230, shall constitute professional misconduct as defined in N.Y. Educ. Law § 6530(21) and N.Y. Educ. Law § 6530(29). Potential penalties for failure to comply with this condition may include all penalties for professional misconduct set forth in N.Y. Pub. Health Law §230-a, including but not limited to: revocation or suspension of license, Censure and Reprimand, probation, public service and/or fines of up to \$10,000 per specification of misconduct found; and

That Respondent shall provide the Director, Office of Professional Medical Conduct (OPMC), Riverview Center, 150 Broadway, Suite 355, Albany, New York 12204-2719, 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. This condition shall take effect 30 days after the Order's effective date and shall continue at all times until Respondent receives written notification from the Office of Professional Medical Conduct, Physician Monitoring Program, that OPMC has determined that Respondent has fully complied with and satisfied the requirements of the Order, regardless of tolling; 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 the 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 11/9/15

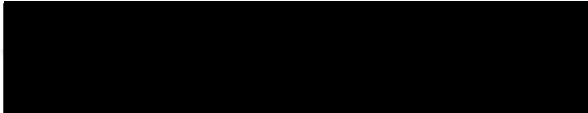

HENRY PHILIP SCHWARTZ, M.D.
RESPONDENT

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

DATE: 11/9/15


JAMES FABIAN, ESQ.
Attorney for Respondent

DATE: Nov. 12, 2015


MARCIA E. KAPLAN
Associate Counsel
Bureau of Professional Medical Conduct

DATE: 11/16/15


KEITH W. SERVIS
Director
Office of Professional Medical Conduct

EXHIBIT "A"
NEW YORK STATE DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER

OF

HENRY PHILIP SCHWARTZ, M.D.

STATEMENT
OF
CHARGES

HENRY PHILIP SCHWARTZ, M.D., the Respondent, was authorized to practice medicine in New York State on or about March 20, 1987 by the issuance of license number 169607 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. During periods in or about 2012 – 2014, Respondent, a psychiatrist, committed boundary violations in the course of his care and treatment of Patient A.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

**WILLFULLY HARASSING, ABUSING OR
INTIMIDATING A PATIENT EITHER PHYSICALLY OR VERBALLY**

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

1. Paragraph A.

SPECIFICATION OF CHARGES

SECOND 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:

2. Paragraph A.

November 13
DATE: ~~October~~, 2015
New York, New York



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 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.
- 3) 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].
- 4) 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.
- 5) 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.
- 6) 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.

- 7) 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.
- 8) Respondent shall engage and continue in therapy with a treating health care professional (hereafter "Therapist") throughout the period of probation. Respondent shall cause the Therapist to submit a proposed treatment plan and quarterly reports to OPMC certifying whether Respondent is in compliance with the treatment plan. OPMC, at its discretion, may provide information or documentation from its investigative files concerning Respondent to Respondent's Therapist. Respondent shall cause the Therapist to report to OPMC immediately if Respondent leaves treatment against medical advice or displays any symptoms of suspected or actual inappropriate conduct with a patient. Upon this Consent Order's effective date, Richard L. Munich, M.D. shall serve as Respondent's therapist within the meaning of this paragraph. Within 7 days of learning that his therapist is no longer willing or able to serve, Respondent shall submit the name of a proposed successor to the Director of OPMC for approval.
- 9) Respondent shall enroll in and successfully complete a continuing education program, subject to the Director of OPMC's prior written approval. The continuing education program shall include, but not be limited to, the area of appropriate boundaries between psychiatrist and patient, and shall be successfully completed within the first 90 days of the probation period.
- 10) Respondent shall seek enrollment in the Committee for Physician Health (CPH) and, if accepted for enrollment by CPH, shall engage in a contract with CPH that defines terms, conditions and duration of the contract. Respondent shall comply with the contract. Respondent shall give written authorization for CPH to provide the Director of OPMC with all information or documentation requested by OPMC to determine whether Respondent is in compliance with the contract and with this Order, including full access to all records maintained by CPH will respect to Respondent.
 - a) Respondent shall cause CPH to report to OPMC promptly if Respondent refuses to comply with the contract, refuses to submit to treatment or if Respondent's condition is not substantially alleviated by treatment.
 - b) Respondent shall cause CPH to report immediately to OPMC if Respondent is regarded at any time to be an imminent danger to the public.

In the event that Respondent seeks enrollment in CPH and is not accepted into the CPH Program, Respondent shall report such non-acceptance to OPMC. Within 30

days thereafter, the Director may impose a substitute term of probation and Respondent shall comply promptly with its terms and conditions, which may include but are not limited to quarterly evaluations with respect to Respondent's fitness to practice medicine, as directed by the Director of OPMC.

- 11) 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.