



New York State Board for Professional Medical Conduct

433 River Street, Suite 303 • Troy, New York 12180-2299 • (518) 402-0863

Kendrick A. Sears, M.D.
Chair

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

January 8, 2007

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Vivian Gina Giovanna Mihailescu, M.D.
150 E. 85th Street, Apt. 5-1
New York, NY 10028

Re: License No. 217491

Dear Dr. Mihailescu:

Enclosed is a copy of Order #BPMC 07-02 of the New York State Board for Professional Medical Conduct. This order and any penalty provided therein goes into effect January 15, 2007.

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. If the document(s) are lost, misplaced or destroyed, you are required to submit to this office an affidavit to that effect. Enclosed for your convenience is an affidavit. Please complete and sign the affidavit before a notary public and return it to: Office of Professional Medical Conduct, New York State Department of Health, 433 River Street, Suite 303, Troy, NY 12180-2299

Sincerely,

Ansel R. Marks, M.D., J.D.
Executive Secretary
Board for Professional Medical Conduct

Enclosure

cc: Amy Kulb, Esq.
Jacobson, Goldberg & Kulb, LLP
585 Stewart Avenue, Suite 720
Garden City, NY 11530

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

**IN THE MATTER
OF
VIVIAN GINA GIOVANNA MIHAILESCU, M.D.**

**CONSENT
ORDER**

BPMC No. #07-02

Upon the application of (Respondent) VIVIAN GINA GIOVANNA MIHAILESCU, 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: 1/8/07


KENDRICK A. SEARS, 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
VIVIAN GINA GIOVANNA MIHAILESCU, M.D.**

**CONSENT
AGREEMENT
AND
ORDER**

VIVIAN GINA GIOVANNA MIHAILESCU, M.D., representing that all of the following statements are true, deposes and says:

That on or about May 18, 2000, I was licensed to practice as a physician in the State of New York, and issued License No. 217491 by the New York State Education Department.

My current address is Interfaith Medical Center, 1545 Atlantic Avenue, Brooklyn, N.Y. 11213, 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 two specifications of professional misconduct.

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

I do not contest the First and Second Specifications of misconduct, in full satisfaction of the charges against me, and agree to the following penalty:

Pursuant to N.Y. Pub. Health Law § 230-a(2), my license to practice medicine in New York State shall be suspended for 12 months, to be served as a period of actual suspension.

After the conclusion of the period of actual suspension, I shall be subject to Conditions, as set forth in attached Exhibit "B" for a period of 60 months.

Upon the effective date of this Order, I shall be subject to the Conditions set forth in attached "Exhibit C" ("Guidelines For Closing a Medical Practice Following a Revocation, Surrender or Suspension (Of 6 Months or More) of a Medical License.")

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 30 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.

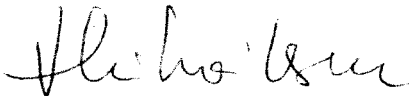
I agree that, if the Board adopts this Consent Agreement, the Chair of the Board shall issue a Consent Order in accordance with its terms. I agree that this Consent Order shall take effect upon its issuance by the Board, either by mailing of a copy of the Consent Order by first class mail to me at the 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.

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 12/20/06

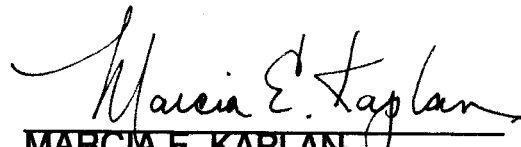

VIVIAN GINA GIOVANNA MIHAILESCU, M.D.
RESPONDENT

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

DATE: 12-13-06


AMY KULB, ESQ.
Attorney for Respondent

DATE: December 27, 2006


MARCIA E. KAPLAN
Associate Counsel
Bureau of Professional Medical Conduct

DATE: January 3, 2007


DENNIS J. GRAZIANO
Director
Office of Professional Medical Conduct

EXHIBIT "A"

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

IN THE MATTER

OF

VIVIAN GINA GIOVANNA MIHAILESCU, M.D.

**STATEMENT
OF
CHARGES**

VIVIAN GINA GIOVANNA MIHAILESCU, M.D., the Respondent, was authorized to practice medicine in New York State on or about May 18, 2000, by the issuance of license number by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. In or about 2003-2004, Respondent, a psychiatrist, failed to provide appropriate care and treatment to Patients A and B in that she committed boundary violations with respect to these patients.
1. Respondent, a psychiatrist, engaged in inappropriate sexual contact with Patient A.

SPECIFICATION OF CHARGES

FIRST 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 two or more of the following:

1. Paragraph A.

SECOND SPECIFICATION

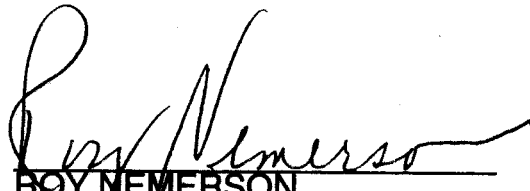
SEXUAL CONTACT BETWEEN A PSYCHIATRIST AND A PATIENT

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(44) by, in the practice of psychiatry, any physical contact of a sexual nature between licensee and patient, as alleged in the facts of:

2. Paragraph A and A.1.

DATE:

Jan 7 2007
~~December~~, 2006
New York, New York



ROY NEMERSON
Deputy Counsel
Bureau of Professional Medical Conduct

EXHIBIT "B"

Conditions

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 this Order and may subject Respondent to an action pursuant to N.Y. Pub. Health Law § 230.
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 303, 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 60 month period of Conditions 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 period of Conditions shall resume and Respondent shall fulfill any unfulfilled Conditions 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 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.
9. Before resuming the practice of medicine, the Respondent shall provide the Director of OPMC with the report of a current, independent, in-depth psychiatric evaluation by a board-certified psychiatrist, who shall be pre-approved by the Director, showing that she is fit and clinically competent to practice as a physician. Respondent shall follow any further or continuing recommendations of the evaluating psychiatrist.
10. Respondent shall engage and continue in therapy with a board-certified psychiatrist or other licensed mental health care practitioner (hereafter "Therapist"). Respondent shall cause the Therapist to submit a proposed treatment plan addressing Respondent's major issues and Respondent shall cause the Therapist to provide quarterly reports to OPMC certifying whether Respondent is in compliance with the treatment plan. Respondent shall follow any further or continuing recommendations of the Therapist. OPMC, at its discretion, may provide information or documentation from its investigative files concerning Respondent to Respondent's Therapist. The Therapist shall report to OPMC immediately if Respondent leaves treatment against medical advice or displays any symptoms of a suspected or actual relapse of inappropriate behavior.
11. Unless determined and pre-approved otherwise by the Director of OPMC, Respondent shall work only in a supervised setting, such as a facility licensed by New York State, where close practice oversight is available on a daily basis and where quality assurance and risk management protocols are in effect. Respondent shall not practice medicine until the supervised setting proposed by Respondent is approved, in writing, by the Director of OPMC.
 - a. Respondent shall propose an appropriate supervisor or administrator in all practice settings, who shall be subject to the written approval of the Director of OPMC. Respondent shall cause the supervisor or administrator to submit reports, as requested (or quarterly), regarding Respondent's overall quality of medical practice.
 - b. Respondent shall provide the supervisor/administrator in all settings with the Order, and its Conditions, and shall cause the supervisor/administrator, in writing, to comply with OPMC schedules and requests for information.
 - c. Respondent shall submit semi-annually a signed Compliance Declaration to the Director of OPMC which truthfully attests whether Respondent has been in compliance with the employment setting and required supervision.

12. Respondent shall enroll in and complete a continuing education program in the area of physician-patient boundaries. This continuing education program is subject to the Director of OPMC's prior written approval and shall be completed within the first year of the Conditions period.
13. 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 any proceeding authorized by law against Respondent.

EXHIBIT "C"

**GUIDELINES FOR CLOSING A MEDICAL PRACTICE FOLLOWING A
REVOCATION, SURRENDER OR SUSPENSION (of 6 months or more)
OF A MEDICAL LICENSE**

1. Respondent shall immediately cease the practice of medicine in compliance with the terms of the Consent Order. Respondent shall not represent herself as eligible to practice medicine and shall refrain from providing an opinion as to professional practice or its application.
2. Within 15 days of the Consent Order's effective date, Respondent shall notify all patients that she has ceased the practice of medicine, and shall refer all patients to another licensed practicing physician for their continued care, as appropriate.
3. Within 30 days of the Consent Order's effective date, Respondent shall have her original license to practice medicine in New York State and current biennial registration delivered to the Office of Professional Medical Conduct (OPMC) at 433 River Street Suite 303, Troy, NY 12180-2299.
4. Respondent shall arrange for the transfer and maintenance of all patient medical records. Within 30 days of the Consent Order's effective date, Respondent shall notify OPMC of these arrangements, including the name, address, and telephone number of an appropriate contact person, acceptable to the Director of OPMC, who shall have access to these records. Original records shall be retained for patients for at least 6 years after the last date of service, and, for minors, at least 6 years after the last date of service or 3 years after the patient reaches the age of majority, whichever time period is longer. Records shall be maintained in a safe and secure place that is reasonably accessible to former patients. The arrangements shall ensure that all patient information is kept confidential and is available only to authorized persons. When a patient or authorized representative requests a copy of the patient's medical record, or requests that the original medical record be sent to another health care provider, a copy of the record shall be promptly provided or sent at reasonable cost to the patient (not to exceed 75 cents per page.) Radiographic, sonographic and like materials shall be provided at cost. A qualified person shall not be denied access to patient information solely because of inability to pay.
5. Within 15 days of the Consent Order's effective date, if Respondent holds a Drug Enforcement Agency (DEA) certificate, Respondent shall advise the DEA in writing of the licensure action and shall surrender her DEA controlled substance certificate, privileges, and any used DEA #222 U.S. Official Order Forms Schedules 1 and 2, to the DEA.
6. Within 15 days of the Consent Order's effective date, Respondent shall return any unused New York State official prescription forms to the Bureau of Narcotic Enforcement of the New York State Department of Health. Respondent shall have all prescription pads bearing Respondent's name destroyed. If no other licensee is providing services at Respondent's practice location, Respondent shall dispose of all medications.

7. Within 15 days of the Consent Order's effective date, Respondent shall remove from the public domain any representation that Respondent is eligible to practice medicine, including all related signs, advertisements, professional listings whether in telephone directories or otherwise, professional stationery or billings. Respondent shall not share, occupy or use office space in which another licensee provides health care services.
8. Respondent shall not charge, receive or share any fee or distribution of dividends for professional services rendered (by himself or others) while barred from practicing medicine. Respondent may receive compensation for the reasonable value of services lawfully rendered, and disbursements incurred on a patient's behalf, prior to the Consent Order's effective date.
9. If Respondent is a shareholder in any professional service corporation organized to engage in the practice of medicine and Respondent's license is revoked, surrendered or suspended for 6 months or more pursuant to this Consent Order, Respondent shall, within 90 days of the Consent Order's effective date, divest herself of all financial interest in such professional services corporation in accordance with N.Y. Bus. Corp. Law. If Respondent is the sole shareholder in a professional services corporation, the corporation must be dissolved or sold within 90 days of the Consent Order's effective date.
10. Failure to comply with the above directives may result in civil or criminal penalties. Practicing medicine when a medical license has been suspended, revoked or annulled is a Class E Felony, punishable by imprisonment for up to four years, under N.Y. Educ. Law § 6512. Professional misconduct may result in penalties including revocation of the suspended license and/or fines of up to \$10,000 for each specification of misconduct, under N.Y. Pub. Health Law § 230-a.