



Board for Professional Medical Conduct

Corning Tower • Empire State Plaza • Albany, NY 12237 • (518) 474-8357

Barbara A. DeBuono, M.D., M.P.H.
Commissioner

C. Maynard Guest, M.D.
Executive Secretary

April 28, 1995

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mitchell Kurk, D.O.
310 Broadway
Lawrence, New York 11559

RE: License No. 084977

Dear Dr. Kurk:

EFFECTIVE DATE: 05/05/95

Enclosed please find Order #BPMC 95-95 of the New York State Board for Professional Medical Conduct. This Order and any penalty provided therein goes into effect upon receipt of this letter or seven (7) days after the date of this letter, whichever is earlier.

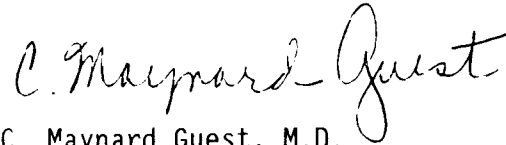
If the penalty imposed by the Order is a surrender, revocation or suspension of this license, you are required to deliver to the Board the license and registration within five (5) days of receipt of the Order.

Board for Professional Medical Conduct
New York State Department of Health
Empire State Plaza
Tower Building-Room 438
Albany, New York 12237-0756

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
Empire State Plaza
Tower Building-Room 1245
Albany, New York 12237

Sincerely,

A handwritten signature in cursive script that reads "C. Maynard Guest". The signature is written in black ink and is positioned above the typed name and title.

C. Maynard Guest, M.D.
Executive Secretary
Board for Professional Medical Conduct

Enclosure

cc: Marvin Lifshutz, Esq.
Lifshutz, Polland & Associates, P.C.
675 Third Avenue
New York, New York 10017

Daniel Guenzburger, Esq.

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

**IN THE MATTER
OF
MITCHELL KURK, D.O.**

**CONSENT
ORDER**
BPMC #95-95

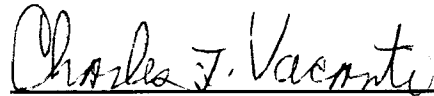
Upon the application of MITCHELL KURK, D.O. (Respondent) for Consent Order, which application is made a part hereof, it is

ORDERED, that the application and the provisions thereof are hereby adopted and so ORDERED, and it is further

ORDERED, that this order shall take effect as of the date of the personal service of this order upon Respondent, upon receipt by Respondent of this order via certified mail, or seven days after mailing of this order by certified mail, whichever is earliest.

SO ORDERED.

DATED: 24 April 1995



CHARLES J. VACANTI, M.D.
Chairperson
State Board for Professional
Medical Conduct

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

IN THE MATTER
OF
MITCHELL KURK, D.O.

APPLICATION
FOR
CONSENT ORDER

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

MITCHELL KURK, D.O., being duly sworn, deposes and says:

That on or about September 26, 1960, I was licensed to practice as a physician in the State of New York, having been issued License No. 084977 by the New York State Education Department.

My current address is 310 Broadway, Lawrence, New York, 11559. I will advise the Director of the Office of Professional Medical Conduct of any change of my address.

I understand that the New York State Board for Professional Medical Conduct has charged me with seven specifications of professional misconduct.

A copy of the Statement of Charges is annexed hereto, made a part hereof, and marked as Exhibit "A".

I admit guilt to the first, third, fourth, fifth, sixth and seventh specifications, in full satisfaction of the charges against me. I hereby agree to a penalty of five years suspension, stayed, with probation and a ten thousand dollar (\$10,000.00) which fine to be paid within one (1) year in equal quarterly payments of Two Thousand Five Hundred Dollars (\$2,500) per quarter of the effective date of this order. The terms of probation are set forth in the annexed Exhibit B.

I hereby make this Application to the State Board for Professional Medical Conduct (the Board) and request that it be granted.

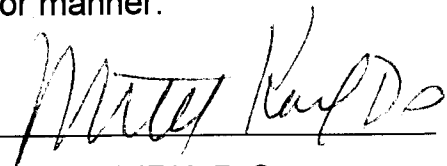
I understand that, in the event that this Application is not granted by the Board, nothing contained herein shall be binding upon me or construed to be an

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admission of any act of misconduct alleged or charged against me, such Application shall not be used against me in any way and shall be kept in strict confidence during the pendency of the professional misconduct disciplinary proceeding; and such denial by the Board shall be made without prejudice to the continuance of any disciplinary proceeding and the final determination by the Board pursuant to the provisions of the Public Health Law.

I agree that, in the event the Board grants my Application, as set forth herein, an order of the Chairperson of the Board shall be issued in accordance with same.

I am making this Application of my own free will and accord and not under duress, compulsion or restraint of any kind or manner.



MITCHELL KURK, D.O.
RESPONDENT

Sworn to before me this

 day of _____, 19____

NOTARY PUBLIC

JOSEPH J. LA BARBERA
Notary Public, State of New York
No. 24-4961854
Qualified in Kings County
Commission Expires February 5, 19____

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

**IN THE MATTER
OF
MITCHELL KURK, D.O.**

**APPLICATION
FOR
CONSENT ORDER**

The undersigned agree to the attached application of the Respondent and to the proposed penalty based on the terms and conditions thereof.

DATE: 7/6/95 *Mitchell Kurk*
MITCHELL KURK, D.O.
Respondent

DATE: 4/6/95 *Marvin Lifschutz*
MARVIN LIFSCHUTZ, ESQ.
Attorney for Respondent

DATE: 4/10/95 *Daniel Guenzburger*
DANIEL GUENZBURGER
Assistant Counsel
Bureau of Professional
Medical Conduct

DATE: April 18, 1995

Kathleen M. Tanner

KATHLEEN M. TANNER
Director
Office of Professional Medical
Conduct

DATE: 24 April 1995

Charles J. Vacanti

CHARLES J. VACANTI, M.D.
Chairperson
State Board for Professional
Medical Conduct

"EXHIBIT A"

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

-----X
IN THE MATTER : STATEMENT
OF : OF
MITCHELL KURK, D.O. : CHARGES
-----X

MITCHELL KURK, D.O., the Respondent, was authorized to practice medicine in New York State on September 26, 1960 by the issuance of license number 084977 by the New York State Education Department. The Respondent is currently registered with the New York State Education Department to practice medicine for the period January 1, 1995 to July 1, 1997 at 310 Broadway, Lawrence, New York.

FACTUAL ALLEGATIONS

- A. On or about March 27, 1986 and April 17, 1986 the Respondent treated Patient A at the North Nassau Mental Health Clinic, Division of Nutritional Medicine, located at 1691 Northern Boulevard, Manhasset, New York. (Patient A and the other patients in the Statement of Charges are identified in the Appendix.)

Patient A, a 52 year old male, complained of migraine like headaches accompanied by nose bleeds, which he had been

experiencing two to three times a week for approximately four months. Respondent attributed Patient A's headaches and nosebleeds to hypertension. Patient A's blood pressure was 154/90 at the initial visit and 136/84 at the second visit. Respondent ordered a hypoglycemic and no-salt diet, garlic pills, vitamins, and an eye examination.

At the second visit, 3 weeks later, Respondent recommended that Patient A see an ear, nose and throat specialist if his headaches and nosebleeds persisted for another month. He also prescribed a bioflavonoid and Vitamin K. Two days after the second office visit to Respondent, Patient A presented to the emergency department of Franklin General Hospital, Valley Stream, New York, with an acute cerebral hemorrhage secondary to a ruptured cerebral aneurysm. During the period of treatment regarding Patient A, Respondent:

1. Failed to take an adequate history.
2. Failed to perform an adequate physical examination.
3. Inappropriately considered hypertension as the primary cause of Patient A's headaches and nosebleeds.
4. Failed to order appropriate diagnostic studies.

5. Failed to refer Patient A to an appropriate specialist.
 6. Incorrectly diagnosed that Patient A had hypoglycemia.
 7. Failed to maintain a record which accurately reflected the evaluation and treatment of Patient A.
- B. On or about and between December 30, 1987 and May 27, 1988 Respondent treated Patient B, a 36 year old female, at his office located at 342 Beach 54th Street, Arverne, New York. Patient B had been in a motor vehicle accident several days before her initial visit to Respondent. She complained of headaches, pain in the neck, right shoulder and middle back. During the period of treatment regarding Patient B, Respondent:
1. Inappropriately ordered the following tests:
 - a. Sonogram of the skull on January 6, 1988.
 - b. Thermogram of the cervical spine on January 6, 1988.
 - c. Sonographic studies of the calf on January 13 and February 3, 1988.
 - d. Audiometry on January 27, 1988.

e. CAT scan on February 16, 1988.

2. Ordered 49 physical therapy treatments between December 31, 1987 and March 14, 1988 without adequate justification.

3. Failed to maintain a record which accurately reflected the evaluation and treatment of Patient B, including but not limited to inadequately documenting the type of physical therapy he had ordered and the results of the treatment.

C. On or about and between June 2, 1989 and November 20, 1990, Respondent treated Patient C, a 47 year old female, at his office. Respondent initially treated Patient C for injuries related to a motor vehicle accident which had occurred several weeks before she presented to Respondent. Respondent ordered SMA 12, chemistry and hematology laboratory screens. The laboratory results were normal with the exception of a slightly elevated calcium of 10.8 mg/dl.

Over the course of seventeen months of treatment, Patient C's blood glucose level rose from 127 mg/dl on June 2, 1989 to 381 mg/dl on November 20, 1990. During the period of treatment regarding Patient C, Respondent:

1. Incorrectly diagnosed hypercalcemia r/o hypothyroidism on June 20, 1989.
2. Incorrectly diagnosed hypothyroidism r/o parathyroid disease on June 27, 1989.
3. Inappropriately treated Patient C's hyperglycemia.
4. Ordered the following tests without adequate indication:
 - a. Serum calcium level test on June 20, 1989.
 - b. Parathyroid hormone test on June 20, 1989.
 - c. Anti-thyroid antibody test on June 20, 1989.
 - d. Microsomal thyroid antibody test on June 20, 1989.
 - e. Thyroid sonogram on June 20, 1989.
 - f. Thyroid sonogram on June 27, 1989.
 - g. Sonogram of the leg on July 11, 1989.
 - h. Sonogram of the leg on November 21, 1989.

5. Failed to maintain a record which accurately reflected the evaluation and treatment of Patient C.

D. On or about March 23, 1990 and April 3, 1990, the Respondent treated Patient D, a 31 year old male, at his office. Patient D had been in a motor vehicle accident several weeks before he presented to Respondent. He complained of pain in the neck, head and shoulder. During the period of treatment regarding Patient D, Respondent:

1. Failed to take an adequate history.

2. Inappropriately ordered the following tests:

a. EKG on March 23, 1990.

b. Audiogram on March 23, 1990.

c. Sonogram of the skull on March 23, 1990.

d. Blood chemistry tests including a thyroid profile and apolipoprotein tests on March 23, 1990.

3. Failed to maintain a record which accurately reflected the evaluation and treatment of Patient D.

E. On or about and between July 4, 1979 and November 16, 1989 the Respondent treated Patient E. Patient E, an 18 year old male, had been in a motor vehicle accident several days before his initial visit to Respondent. During the period of treatment regarding Patient E, Respondent:

1. Inappropriately ordered the following tests:

a. Sonographic study of the skull on July 12, 1989.

b. Sonographic study of the skull on November 16, 1989.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

NEGLIGENCE ON MORE THAN ONE OCCASION

Respondent is charged with professional misconduct by reason of practicing the profession with negligence on more than one occasion within the meaning of N.Y. Educ. Law Section 6530(3) (McKinney Supp. 1995), in that Petitioner charges that Respondent committed two or more of the following:

1. The facts in Paragraphs A and A1, A2, A3, A4, A5, A6, A7; B and B1, B1(a), B1(b), B1(c),

B1(d), B1(e), B2, B3; C and C1, C2, C3, C4,
C4(a), C4(b), C4(c), C4(d), C4(e), C4(f),
C4(g), C4(h), C5; D and D1, D2, D2(a), D2(b),
D2(c), D2(d), D3; and/or E and E1, E1(a),
E1(b).

SECOND SPECIFICATION

PRACTICING WITH INCOMPETENCE

Respondent is charged with professional misconduct by reason of practicing the profession of medicine with incompetence on more than one occasion within the meaning of N.Y. Educ. Law Section 6530(5) (McKinney Supp. 1995), in that Petitioner charges that Respondent committed two or more of the following:

2. The facts in Paragraphs A and A1, A2, A3, A4, A5, A6, A7; B and B1, B1(a), B1(b), B1(c), B1(d), B1(e), B2, B3; C and C1, C2, C3, C4, C4(a), C4(b), C4(c), C4(d), C4(e), C4(f), C4(g), C4(h), C5; D and D1, D2, D2(a), D2(b), D2(c), D2(d), D3; and/or E and E1, E1(a), E1(b).

THIRD THROUGH SIXTH SPECIFICATIONS ✓

EXCESSIVE TESTING AND TREATMENT

Respondent is charged with professional misconduct pursuant to N.Y. Educ. Law Section 6530(35) (McKinney Supp. 1995), by ordering excessive tests, treatment, or use of treatment facilities not warranted by the condition of the patient, in that Petitioner charges:

3. The facts in Paragraphs B and B1, B1(a), B1(b), B1(c), B1(d), B1(e), B2.
4. The facts in Paragraphs C and C4. C4(a), C4(b), C4(c), C4(d), C4(e), C4(f), C4(g), C4(h).
5. The facts in Paragraphs D and D2, D2(a), D2(b), D2(c), D2(d).
6. The facts in Paragraphs E and E1, E1(a), E1(b).

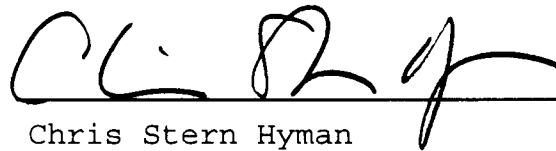
SEVENTH SPECIFICATION

FAILING TO MAINTAIN ADEQUATE RECORDS

Respondent is charged with professional misconduct pursuant to N.Y. Educ. Law Section 6530(32) (McKinney Supp. 1995), by failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient, in that Petitioner charges:

7. The facts in Paragraphs A and A7.
8. The facts in Paragraphs B and B3.
9. The facts in Paragraphs C and C5.
10. The facts in Paragraphs D and D3.

DATED: New York, New York
January 18, 1995



Chris Stern Hyman
Counsel
Bureau of Professional Medical
Conduct

"EXHIBIT B"

EXHIBIT "B"
TERMS OF PROBATION

1. MITCHELL KURK, D.O., during the period of probation, 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 imposed by law and by his/her profession;
2. Respondent shall submit written notification to the New York State Department of Health (NYSDOH), addressed to the Director, Office of Professional Medical Conduct, New York State Department of Health, Corning Tower Building, 4th Floor, Empire State Plaza, Albany, New York 12237 of any employment and practice, of Respondent's residence and telephone number, and of any change in Respondent's employment, practice, residence, or telephone number within or without the State of New York;
3. Respondent shall submit written proof from the Division of Professional Licensing Services (DPLS), New York State Education Department (NYSED), that Respondent has paid all registration fees due and owing to the NYSED and Respondent shall cooperate with and submit whatever papers are requested by DPLS in regard to said registration fees, said proof from DPLS to be submitted by Respondent to the New York State Department of Health, addressed to the Director, Office of Professional Medical Conduct, as aforesaid, within the first three months of the period of probation;
4. Respondent shall submit written proof to the NYSDOH, addressed to the Director, Office of Professional Medical Conduct, as aforesaid, that 1) Respondent is currently registered with the NYSED, unless Respondent submits written proof that Respondent has advised DPLS, NYSED, that Respondent is not engaging in the practice of Respondent's profession in the State of New York and does not desire to register, and that 2) Respondent has paid any fines which may have previously been imposed upon Respondent by the Board or by the Board of Regents; said proof of the above to be submitted no later than the first two months of the period of probation;
5. Respondent shall comply with all terms, conditions, restrictions, and penalties to which he is subject pursuant to the order of the Board;
6. The civil penalty imposed shall be paid by a check made payable to the NYS Department of Health and mailed to the Bureau of Accounts Management, NYS Department of Health, Corning Tower Building, Rm.1245, Empire State Plaza, Albany, New York 12237-0030 by the date prescribed herein. The civil penalty shall be subject to all provisions of law relating to debt collection by the State of New York. This includes but is 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);

7. During the period of probation, the Director of the Office of Professional Medical Conduct or her designee, may review the professional performance of the Respondent. This review may include but not be limited to a random selection of office records, patient records or hospital charts, interviews with or periodic visits with the Respondent at his or her office location or one of the offices of the Office of Professional Medical Conduct. See 7 (a)
8. The Respondent will make available for review by the Office of Professional Medical Conduct, or a physician selected by the Respondent and approved by the Office of Professional Medical Conduct, complete copies of any and all medical and office records selected by the Office of Professional Medical Conduct. The selection of records for this review shall be conducted no more than once every three months.
9. Any deviation from accepted medical practice identified during any of the reviews will be discussed with the Respondent. Any pattern of substandard care identified during the probation may result in an independent medical review and could lead to additional investigation or charges.
- 10.. Respondent will maintain legible and complete medical records which accurately reflect the evaluation and treatment of patients. Records will contain a comprehensive history, physical examination findings, chief complaint, present illness, diagnosis and treatment. In cases of prescribing, dispensing, or administering of controlled substances, the medical record will contain all information required by state rules and regulations regarding controlled substances.
11. So long as there is full compliance with every term herein set forth, Respondent may continue to practice his or her aforementioned profession in accordance with the terms of probation; provided, however, that upon receipt of evidence of noncompliance with, or any violation of these terms, the Director of the Office of Professional Medical Conduct and/or the Board may initiate a violation of probation proceeding and/or such other proceeding against Respondent as may be authorized pursuant to the Public Health Law.
7. (a) Notwithstanding Paragraph 7, in the event a random review is required by O.P.M.C. then in such event the Department shall conduct such review that will not obstruct or hinder the doctors practice, and they will reasonably accommodate the doctor's schedule.

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