



New York State Board for Professional Medical Conduct

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

Dennis P. Whalen
Executive Deputy Commissioner of Health
Anne F. Saile, Director
Office of Professional Medical Conduct
William J. Comiskey, Chief Counsel
Bureau of Professional Medical Conduct

William P. Dillon, M.D.
Chair
Denise M. Bolan, R.P.A.
Vice Chair
Ansel R. Marks, M.D., J.D.
Executive Secretary

December 1, 1998

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Samir Malek, M.D.
416 72nd Street
Brooklyn, New York 11209

RE: License No. 117655

Dear Dr. Malek:

Enclosed please find Order #BPMC 98-287 of the New York State Board for Professional Medical Conduct. This Order and any penalty provided therein goes into effect **December 1, 1998.**

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
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 1315
Empire State Plaza
Albany, New York 12237

Sincerely,



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

Enclosure

cc: Stanley D. Friedman, Esq.
McAloon & Friedman
116 John Street
New York, New York 10038-3498

Silvia P. Finkelstein, Esq.

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

IN THE MATTER
OF
SAMIR MALEK, M.D.

CONSENT
AGREEMENT
AND
ORDER

BPMC #98-287

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

SAMIR MALEK, M.D., being duly sworn, deposes and says:

That on or about September 9, 1973, I was licensed to practice as a physician in the State of New York, having been issued License No. 117655 by the New York State Education Department.

My current address is 416 72nd Street, Brooklyn, NY 11209, and 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 one specification of professional misconduct.

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

I agree not to contest the allegations set forth in the Statement of Charges, in full satisfaction of the charges against me. I hereby agree to the following penalty:

My license shall be placed on probation for a period of two years and a ten thousand dollar (\$10,000.00) fine, subject to the terms and conditions set forth in Exhibit B (Terms of Probation).

I further agree that the Consent Order for which I hereby apply shall impose a condition that, except during periods of actual

suspension, I maintain current registration of my license with the New York State Education Department Division of Professional Licensing Services, and pay all registration fees. This condition shall be in effect beginning thirty days after the effective date of the Consent Order and continuing until the full term of the Order has run, and until any associated period of probation and all probation terms have been completed and satisfied. I hereby stipulate that any failure by me to comply with such condition shall constitute misconduct as defined by New York State Education Law §6530(29)(McKinney Supp 1997).

I agree that in the event I am charged with professional misconduct in the future, this agreement and order shall be admitted into evidence in that proceeding.

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 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 agree that such order shall be effective upon issuance by the Board, which may be accomplished by mailing, by first class mail, a copy of the Consent Order to me at the address set forth in this agreement, or to my attorney, or upon transmission via

facsimile to me or my attorney, whichever is earliest.

I am making this Application of my own free will and accord and not under duress, compulsion or restraint of any kind or manner. In consideration of the value to me of the acceptance by the Board of this Application, allowing me to resolve this matter without the various risks and burdens of a hearing on the merits, I knowingly waive any right I may have to contest the Consent Order for which I hereby apply, whether administratively or judicially, and ask that the Application be granted.

AFFIRMED:

DATED 10/22/98

Samir Malek M.D.
SAMIR MALEK, M.D.
RESPONDENT

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

DATE: 10/22/98



STANLEY D. FRIEDMAN, ESQ.
Attorney for Respondent

DATE: 11/1/98



SILVIA P. FINKELSTEIN
Associate Counsel
Bureau of Professional Medical Conduct

DATE: November 12, 1998



ANNE F. SAILE
Director
Office of Professional Medical Conduct

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

IN THE MATTER
OF
SAMIR MALEK, M.D.

CONSENT
ORDER

Upon the proposed agreement of SAMIR MALEK, M.D. (Respondent) for Consent Order, which application is made a part hereof, it is agreed to and ORDERED, that the application and the provisions thereof are hereby adopted and so ORDERED, and it is further

ORDERED, that this order shall be effective upon issuance by the Board, which may be accomplished by mailing, by first class mail, a copy of the Consent Order to Respondent at the address set forth in this agreement or to Respondent's attorney by certified mail, or upon transmission via facsimile to Respondent or Respondent's attorney, whichever is earliest.

SO ORDERED.

DATED: 11/15/98


PATRICK F. CARONE, M.D., M.P.H.
Chairperson
State Board for Professional
Medical Conduct

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

IN THE MATTER
OF
SAMIR F. MALEK, M.D.

STATEMENT
OF
CHARGES

SAMIR F. MALEK, M.D., the Respondent, was authorized to practice medicine in New York State on or about September 6, 1973, by the issuance of license number 117655 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. On three occasions, on or about May 26, 1995, March 28, 1996 and September 28, 1996, Respondent submitted bills to a medical insurance carrier, for services rendered to Patients A, B, and C that, for a single procedure, falsely claimed entitlement to payment for both the entire procedure and each of its separate components.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

WILLFULLY MAKING OR FILING A FALSE REPORT

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(21)(McKinney Supp. 1998) by willfully filing a false

report, or inducing another person to do so, as alleged in the facts of:

1. Paragraph A

DATED: October , 1998
New York, New York

ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct

EXHIBIT "B"

Terms of Probation

1. Respondent 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 and obligations imposed by law and by his/her profession.
2. Respondent shall submit written notification to the New York State Department of Health addressed to the Director of the Office of Professional Medical Conduct, New York State Department of Health, 433 River Street, Suite 303, Troy, NY 12180-2299; said notice is to include a full description of any employment and practice, professional and residential addresses and telephone numbers within or without New York State, and any and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty days of each action.
3. Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of Respondent's compliance with the terms of this Order. Respondent shall personally meet with a person designated by the Director of OPMC as requested by the Director.
4. The fine, or any portion thereof, shall be paid by check made payable to the NYS Department of Health and mailed to the Bureau of Accounts Management, NYS Department of Health, Corning Tower Building, Empire State Plaza, Albany, NY 12237-0030. I agree to pay \$2,000 of the fine within 30 days of the effective date of the order, \$3,000 on or before March 31, 1999, \$2,500 on or before September 31, 1999, and \$2,500 on or before March 31, 2000.
5. Any civil penalty not paid by the date prescribed herein shall be subject to all provisions of law relating to debt collection by New York State. 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 section 171(27)]; State Finance Law section 18; CPLR section 5001; Executive Law section 32].
6. The period of probation shall be tolled during periods in which Respondent is not engaged in the active practice of medicine in New York State. Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in or intends to leave the active practice of medicine in New York State for a period of thirty (30) consecutive days or more. Respondent shall then notify the Director again prior to any change in that status. The period of probation shall resume and any terms of probation which were not fulfilled shall be fulfilled upon Respondent's return to practice in New York State.
7. Respondent's professional performance may be reviewed by the Director of OPMC. This review may include, but shall not be limited to, a review of office records, patient records and/or hospital charts, billing records, interviews with or periodic visits with Respondent and his/her staff at practice locations or OPMC offices.
8. Respondent shall maintain legible and complete medical records which accurately reflect the evaluation and treatment of patients. The medical records shall contain all information required by State rules and regulations regarding controlled substances.

9. Respondent shall comply with all terms, conditions, restrictions, limitations and penalties to which he or she is subject pursuant to the Order and shall assume and bear all costs related to compliance. Upon receipt of evidence of noncompliance with, or any violation of these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding and/or any such other proceeding against Respondent as may be authorized pursuant to the law.