New York State Board for Professional Medical Conduct
433 River Street, Suite 303 • Troy, New York 12180-2299 • (518) 402-0863

Richard F. Daines, M.D.
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NYS Department of Health
James W. Clyne, Jr.
Executive Deputy Commissioner
Keith W. Servis, Director
Office of Professional Medical Conduct

Public

Kendrick A. Sears, M.D.
Chair
Carmela Torrelli
Vice Chair
Katherine A. Hawkins, M.D., J.D.
Executive Secretary

December 23, 2010

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Franklin L. Di Spaltro, M.D.

REDACTED

Re: License No. 096919

Dear Dr. Di Spaltro:

Enclosed is a copy of BPMC #10-276 of the New York State Board for Professional Medical Conduct. This order and any penalty provided therein goes into effect December 30, 2010.

Sincerely,

REDACTED

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

Enclosure

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

IN THE MATTER OF FRANKLIN LOUIS DI SPALTRO, M.D. CO-09-10-6937-A	SURRENDER ORDER BPMC No. #10-276

Upon the application of **FRANKLIN LOUIS DI SPALTRO, M.D.,** (Respondent), to Surrender his license to practice medicine in the State of New York, which is made a part of this Surrender Order, it is

ORDERED, that the Surrender, and its terms, are adopted and it is further

ORDERED, that Respondent's name be stricken from the roster of physicians in the State of New York; it is further

ORDERED, that this Surrender Order shall be effective upon issuance by the Board, either by mailing of a copy of this Surrender Order, either by first class mail to Respondent at the address in the attached Surrender of License or by certified mail to Respondent's attorney, or upon facsimile transmission to Respondent or Respondent's attorney, whichever is first.

SO ORDERED.

DATE: 12/22/10

REDACTED

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

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

IN THE MATTER OF FRANKLIN LOUIS DI SPALTRO, M.D. CO-07-06-3273-A	SURRENDER OF LICENSE

FRANKLIN LOUIS DI SPALTRO, M.D., (Respondent), representing that all of the following statements are true, deposes and says:

That on or about July 11, 1966, I was licensed to practice medicine in the State of New York and issued license number 096919 by the New York State Education Department.

My current address is , REDACTED

I understand that the New York State Board for Professional Medical Conduct has charged me with two (2) Specifications of professional misconduct.

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

I am applying to the State Board for Professional Medical Conduct for permission to surrender my license to practice medicine in the State of New York on the grounds that I do not contest the two (2) Specifications.

I ask the Board to accept the surrender of my license, and I agree to be bound by all of the terms set forth in attached Exhibit "B."

I understand that if the Board does not accept my Surrender of License none of its terms shall bind me or constitute an admission of any of the acts of alleged misconduct; this Surrender of License 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 Public Health Law.

I agree that, if the Board accepts the surrender of my license, the Chair of the Board shall issue a Surrender Order in accordance with its terms. I agree that the Surrender Order shall take effect upon its issuance by the Board, either by mailing of a copy of the Surrender Order by first class mail to me at the address in this Surrender of License, or to my attorney by certified mail, or upon facsimile transmission to me or my attorney, whichever is first. The Surrender Order, this Surrender of License, 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 ask the Board to accept this Surrender of License, which I submit of my own free will and not under duress, compulsion or restraint. In consideration of the value to me of the Board's acceptance of this Surrender of License, 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 Surrender Order for which I apply, whether administratively or judicially, and I agree to be bound by the Surrender Order.

I understand and agree that the attorney for the Department of Health, the Director of the Office of Professional Medical Conduct, and the Chair of the State Board for Professional Medical Conduct each retain complete discretion either to enter into the proposed Surrender of License and Surrender Order, 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: Dec 5, 2010

REDACTED

FRANKLIN LOUIS DI SPALTRO, M.D.
Respondent

The undersigned agree to Respondent's attached Surrender of License and to its proposed penalty, terms and conditions.

Date: Dec. 13, 2010

REDACTED

RICHARD J. ZAHNLEUTER
Associate Counsel
Bureau of Professional Medical Conduct

Date: 12/22, 2010

REDACTED

KEITH W. SERVIS
Director, Office of Professional
Medical Conduct

EXHIBIT A

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

IN THE MATTER OF FRANKLIN LOUIS DI SPALTRO, M.D. CO-07-06-3273-A	STATEMENT OF CHARGES

FRANKLIN LOUIS DI SPALTRO, M.D., Respondent, was authorized to practice medicine in New York State on July 11, 1966, by the issuance of license number 096919 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about September 11, 2006, in the United States District Court, District of New Jersey, Respondent was convicted, based on a plea of guilty, of Tax Evasion, in violation of 26 USC §7201, a felony, and was sentenced to 5 months imprisonment, 2 years supervised release upon release from imprisonment with the first 5 months consisting of residence confinement and also including 300 hours uncompensated community service, and a $250,000.00 fine, based on receiving $166,649 income in 1996 from patients of his medical practice, failing to report this income on his 1996 tax returns, and signing and filing a false and fraudulent 1996 federal income tax return.

B. On or about April 19, 2007, the New Jersey State Board of Medical Examiners, (hereinafter "New Jersey Board"), by a Consent Order (hereinafter "New Jersey Order"), suspended Respondent's license to practice medicine for 5 years, with the first 2 years served as an active suspension and the remainder served as a period of probation, effective nunc pro tunc March 21, 2007, and required him to complete an ethics course and to pay $10,000.00 in penalties and $13,422.82 costs, based on the Federal criminal conviction set forth in Paragraph A above involving "moral turpitude," "dishonesty, fraud and deception," and lack of "good moral character."

C. On or about November 12, 2009, the New Jersey Board, by a Consent Order Granting Restricted License (hereinafter "Second New Jersey Order"), granted a restricted license for the remainder of the 5 year period of suspension, until April 18, 2012, such that Respondent "shall only be permitted to practice in a hospital or institutional setting and/or a setting pre-approved by the Board... Respondent shall be precluded from engaging in surgery in the private practice setting and shall be restricted to performing pre and post operative care in the private practice setting." The Second New Jersey Order also required Respondent, upon the April 18, 2012 conclusion of the restricted license, "shall appear before a Committee of the Board, if so requested by the Board, to demonstrate... fitness to practice without restrictions."

D. The conduct resulting in the New Jersey Order and Second New Jersey Order would constitute misconduct under the laws of New York State, pursuant to the following sections of New York State law:

1. New York State Education Law §6530(9)(2) (practicing the profession fraudulently);
2. New York State Education Law §6530(20) (conduct which evidences moral unfitness to practice medicine); and/or
3. New York State Education Law §6530(21) (willfully making or filing a false report, or failing to file a report required by law).

SPECIFICATIONS OF MISCONDUCT

FIRST SPECIFICATION

Respondent violated New York Education Law §6530(9)(a)(ii) by being convicted of committing an act constituting a crime under federal law, in that Petitioner charges:

1. The facts in Paragraph A.

SECOND SPECIFICATION

Respondent violated New York State Education Law §6530(9)(d) by having his license to practice medicine suspended or having other disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the license

suspension and/or other disciplinary action would, if committed in New York State, constitute professional misconduct under the laws of New York State, in that the Petitioner charges:

2. The facts in Paragraphs A, B, C, D, D(1), D(2), and/or D(3).

DATED: November 30, 2010

REDACTED

PETER D. VAN BUREN
Deputy Counsel
Bureau of Professional Medical Conduct

EXHIBIT "B"

REQUIREMENTS FOR CLOSING A MEDICAL PRACTICE FOLLOWING A REVOCATION, SURRENDER OR SUSPENSION (of six months or more) OF A MEDICAL LICENSE

1. Respondent shall immediately cease and desist from engaging in the practice of medicine (in New York State) in accordance with the terms of the Order. In addition, Respondent shall refrain from providing an opinion as to professional practice or its application and from representing himself as being eligible to practice medicine.

2. Respondent shall have delivered, to OPMC at Hedley Park Place, 433 River Street Suite 303, Troy, NY 12180-2299, Respondent's original license to practice medicine in New York State and current biennial registration within five (5) days of the effective date of the Order.

3. Respondent shall within fifteen (15) days of the Order, notify all patients of the cessation of his medical practice and will refer all patients to another licensed practicing physician for their continued care, as appropriate.

4. Respondent shall make arrangements for the transfer and maintenance of the medical records of his patients. Within thirty days of the effective date of the Order, Respondent shall notify OPMC of these arrangements including the appropriate and acceptable contact person's name, address, and telephone number who shall have access to these records. Original records shall be retained for at least six years after the last date of service rendered to a patient or, in the case of a minor, for at least six years after the last date of service or three 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 include provisions to ensure that the information on the record is kept confidential and made available only to authorized persons. When a patient and/or his/her authorized representative requests a copy of the patient's medical record, or requests that the original medical record be forwarded to another health care provider, a copy of the record shall be promptly provided or forwarded at a reasonable cost to the patient (not to exceed seventy-five 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 his/her inability to pay.

5. In the event that Respondent holds a Drug Enforcement Agency (DEA) certificate for New York State, Respondent shall, within fifteen (15) days of the Order's effective date, advise the DEA, in writing, of the licensure action and shall surrender his/her DEA controlled substance privileges for New York State to the DEA. Respondent shall promptly surrender any unused DEA #222 U.S. Official Order Forms Schedules 1 and 2 for New York State to the DEA. All submissions to the DEA shall be addressed to Diversion Program Manager, New York Field Division, U.S. Drug Enforcement Administration, 99 Tenth Avenue, New York, NY 10011.

6. Respondent shall within fifteen (15) days of the Order's effective date, return any unused New York State official prescription forms to the Bureau of Narcotic Enforcement, New York State Department of Health at 433 River Street, Suite 303, Troy, NY 12180-2299. Respondent shall cause all prescription pads bearing his/her name to be destroyed. If

no other licensee is providing services at Respondent's practice location, all medications shall be properly disposed of.

7. Respondent shall not share, occupy or use office space in which another licensee provides health care services. Respondent shall cause all signs to be removed within fifteen (15) days and stop all advertisements, professional listings whether in telephone directories, on the internet or otherwise, professional stationery or billings by which his/her eligibility to practice is represented.

8. Respondent shall not charge, receive or share any fee or distribution of dividends for professional services rendered (by Respondent or others) while barred from engaging in the practice of medicine. Respondent may be compensated for the reasonable value of services lawfully rendered and disbursements incurred on a patient's behalf prior to the effective date of this Order.

9. If Respondent is a shareholder in any professional service corporation organized to engage in the practice of medicine and if Respondent's license is revoked, surrendered or suspended for a term of six months or more under the terms of this Order, Respondent shall divest himself/herself of all financial interest in the professional services corporation in accordance with New York Business Corporation Law. Such divestiture shall occur within ninety (90) days of the effective date of this Order. If Respondent is the sole shareholder in a professional services corporation, the corporation must be dissolved or sold within ninety (90) days of the effective date of this Order.

10. Failure to comply with the above directives may result in a civil penalty or further criminal penalties as may be authorized pursuant to the law. Under Section 6512 of the Education Law it is a Class E Felony, punishable by imprisonment of up to 4 years, to practice the profession of medicine when such professional license has been suspended, revoked or annulled. Such punishment is in addition to the penalties for professional misconduct set forth in Section 230-a of the Public Health Law, which includes fines of up to $10,000 for each specification of charges of which Respondent is found guilty and may include revocation of a suspended license.