

NEW YORK
state department of
HEALTH

Public

Nirav R. Shah, M.D., M.P.H.
Commissioner

Sue Kelly
Executive Deputy Commissioner

October 10, 2013

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Janet S. Mackenzie, M.D.

REDACTED

Re: License No. 249985

Dear Dr. Mackenzie:

Enclosed is a copy of the New York State Board for Professional Medical Conduct (BPMC) Order No. 13-322. This order and any penalty provided therein goes into effect October 17, 2013.

Please direct any questions to: Board for Professional Medical Conduct, 90 Church Street, 4th Floor, New York, NY 10007-2919, telephone # 212-417-4445.

Sincerely,

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

Enclosure

cc: Wilfred T. Friedman, Esq.
60 E. 42nd Street, 40th Floor
New York, NY 10165

**IN THE MATTER
OF
JANET MACKENZIE, M.D.**

**CONSENT
ORDER**

Upon the application of (Respondent) JANET MACKENZIE, 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: 10/9/2013

REDACTED

ARTHUR S. HENGERER, M.D.

Chair

State Board for Professional Medical Conduct

IN THE MATTER
OF
JANET MACKENZIE, M.D.

CONSENT
AGREEMENT

JANET MACKENZIE, M.D., represents that all of the following statements are true:

That on or about August 14, 2008, I was licensed to practice as a physician in the State of New York, and issued License No. 249985 by the New York State Education Department.

My current address is REDACTED, 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 one or more 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 plead no contest to the second specification in full satisfaction of the charges against me, and agree to the following penalty:

My New York State medical license is currently not registered with the New York State Education Department and is inactive. I currently do not practice medicine

in New York, nor do I practice in any jurisdiction where my practice is based solely on my New York license.

Pursuant to N.Y. Pub. Health Law § 230-a (6) any future registration of my New York medical license shall be limited to require that I provide written notice to the Director of the Office of Professional Medical Conduct (OPMC) of an intention to renew the registration of my medical license 90 days prior to the submission of an application for registration renewal. At that time, the Director of OPMC, in his sole discretion, may set conditions for my future practice of medicine in New York State.

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 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 or her profile information within six months prior to the expiration date of the licensee's registration period. Licensee shall submit changes to his or her physician profile information either electronically using the department's secure web site or on forms prescribed by the department, and licensee shall attest to the truthfulness, completeness and correctness of any changes licensee 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 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. 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 10/2/13

REDACTED

JANET MACKENZIE, M.D.
RESPONDENT

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

DATE: 9/17/13

REDACTED

WILFRED T. FRIEDMAN, ESQ.
Attorney for Respondent

DATE: 10/7/13

REDACTED

TIMOTHY J. MAHAR
Associate Counsel
Bureau of Professional Medical Conduct

DATE: 10/9/13

REDACTED

KEITH W. SERVIS
Director
Office of Professional Medical Conduct

IN THE MATTER
OF
JANET MACKENZIE, M.D.

STATEMENT
OF
CHARGES

JANET MACKENZIE, M.D., the Respondent, was authorized to practice medicine in New York State on or about August 14, 2008, by the issuance of license number 249985 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. Respondent provided medical and surgical care to Patient A at medical offices at 2202 Genesee Street, Utica, New York (hereafter Rejuvenate!) during the period from February 27, 2009, until Patient A's death on or about March 24, 2009 due to acute fentanyl intoxication. On March 24, 2009, Respondent performed breast augmentation surgery on Patient A. Respondent's medical care of Patient deviated from accepted standards of medical and/or surgical care as follows:
1. Respondent inappropriately ordered Fentanyl Transdermal 50 micrograms (Fentanyl patch) for Patient A and/or ordered it applied to Patient A's body prior to surgery.
 2. Respondent failed to adequately educate and/or inform herself as to the indications, complications, side effects, warnings and/or contraindications of the Fentanyl patch prior to prescribing it for Patient A.
- B. Respondent provided medical care to Patient B at the Rejuvenate! offices during the period from approximately November 25, 2008 through March 2, 2009. Respondent performed liposuction surgery on Patient B on February 6, 2009. Respondent's medical care of Patient B deviated from accepted standards of medical care as follows:
1. Respondent failed to timely and/or adequately inform Patient B of the risks, benefits, complications and alternatives to the proposed surgery.

2. Respondent failed to document the volume of tumescent solution infused.
 3. Respondent failed to adequately evaluate Patient B prior to discharge and/or failed to adequately supervise others in the evaluation of Patient B prior to discharge.
 4. Respondent failed to maintain an adequate medical record for Patient B.
- C. Respondent provided medical care to Patient C at Rejuvenate! during the period from February 18, 2009 through April 1, 2009. On February 24, 2009, Respondent performed an abdominoplasty procedure on Patient C. Respondent's medical care of Patient C deviated from accepted standards of medical care as follows:
1. Respondent failed to perform timely pre-operative clearance of Patient C for surgery.
 2. Respondent failed to adequately evaluate Patient C post-operatively and prior to Patient C's discharge from the surgery facility.
 3. Respondent failed to adequately manage Patient C's post-operative urinary retention.
 4. Respondent failed to maintain an adequate medical record for Patient F.
- D. Respondent provided medical and surgical care to Patient D at Rejuvenate! during the period including December 10, 2008 to October 28, 2009. On April 10, 2009, Respondent performed an abdominoplasty on Patient D. Respondent's medical and/or surgical care of Patient D deviated from accepted standards of care as follows:
1. Respondent failed to obtain an adequate and/or timely informed consent from Patient D for the abdominoplasty procedure.
 2. Respondent failed to obtain a reasonably current and/or adequate medical clearance evaluation prior to surgery.
 3. Respondent failed to adequately evaluate Patient D in the recovery room.
 4. Respondent failed to adequately evaluate Patient D prior to discharge from the surgical facility.

5. Respondent failed to adequately evaluate Patient D following discharge from the surgical facility.
6. Respondent failed to document the volume of aspirate obtained during the liposuction portion of the surgery.
7. Respondent failed to maintain an adequate medical record for Patient D.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION GROSS NEGLIGENCE

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(4) by practicing the profession of medicine with gross negligence on a particular occasion as alleged in the facts of the following:

1. The facts as alleged in paragraphs A and A.1, A and A.2.

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. The facts as alleged in two or more of the following paragraphs: B and B.1, and/or B and B.2, and/or B and B.3, and/or B and B.4, C and C.1, and/or C and C.2, and/or C and C.3, and/or C and C.4, and/or D and D.1, and/or D and D.2, and/or D and D.3, and/or D and D.4, and/or D and D.5, and/or D and D.6, and/or D and D.7.

DATE: ^{October 7} August 7, 2013
Albany, New York

REDACTED

~~MICHAEL A. HISER~~
Acting Deputy Counsel
Bureau of Professional Medical Conduct