



New York State Board for Professional Medical Conduct

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

Antonia C. Novello, M.D., M.P.H.
Commissioner
NYS Department of Health

Dennis P. Whalen
Executive Deputy Commissioner
NYS Department of Health

Anne F. Saile, Director
Office of Professional Medical Conduct

PUBLIC

William P. Dillon, M.D.
Chair

Denise M. Bolan, R.P.A.
Vice Chair

Ansel R. Marks, M.D., J.D.
Executive Secretary

August 17, 1999

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Delfin Hamad, M.D.
167 Nassau Boulevard
Garden City, NY 11530

RE: License No.: 108366

Dear Dr. Hamad:

Enclosed please find Order #BPMC 99-207 of the New York State Board for Professional Medical Conduct. This Order and any penalty provided therein goes into effect **August 17, 1999**.

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 to Board for Professional Medical Conduct, New York State Department of Health, Hedley Park Place, Suite 303, 433 River Street, Troy, New York 12180.

Sincerely,

Ansel R. Marks, M.D., J.D.

Executive Secretary

Board for Professional Medical Conduct

Enclosure

cc: Kevin Porter, Esq.
Thurm & Heller, LLP
261 Madison Avenue
Suite 600
New York, NY 10010-2303

Steven J. Masef, Esq.

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

IN THE MATTER
OF
DELFIN HAMAD, M.D.

CONSENT
AGREEMENT AND
SURRENDER OF
SURGICAL
PRIVILEGES
AND
ORDER
BPMC #99-207

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

DELFIN HAMAD, M.D., (Respondent) being duly sworn, deposes and says:

That on or about March 25, 1971, I was licensed to practice as a physician in the State of New York, having been issued License No. 108366 by the New York State Education Department.

My current address is 167 Nassau Boulevard, Garden City, NY 11530, 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 Twelve 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 Ninth and Tenth Specifications and agree not to contest the Fifth Specification, in full satisfaction of the charges against me. I hereby agree to the following penalty:

My license shall be limited, pursuant to N.Y. Public Health Law §230-a(3) to effect a permanent surrender of my privilege and authority to perform surgery except for the suturing of wounds not involving plastic surgery. Further, I shall be placed on

Probation for a period of five years. subject to the terms set forth in Exhibit "B", attached hereto.

I further agree that the Consent Order for which I hereby apply shall impose the following conditions:

That, except during periods of actual suspension, Respondent shall maintain current registration of Respondent's 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 will continue while the licensee possesses his/her license; and

That Respondent shall fully cooperate in every respect with the Office of Professional Medical Conduct (OPMC) in its administration and enforcement of this Order and in its investigation of all matters regarding Respondent. Respondent shall respond in a timely manner to each and every request by OPMC to provide written periodic verification of Respondent's compliance with the terms of this Order. Respondent shall meet with a person designated by the Director of OPMC as directed. Respondent shall respond promptly and provide any and all documents and information within Respondent's control upon the direction of OPMC. This condition shall be in effect beginning upon the effective date of the Consent Order and will continue while the licensee

possesses his/her license.

I hereby stipulate that any failure by me to comply with such conditions shall constitute misconduct as defined by New York State Education Law §6530(29)(McKinney Supp 1999).

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.

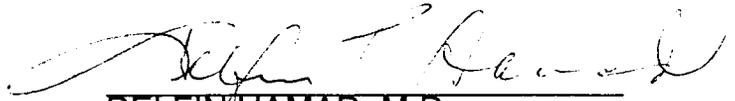
I hereby make this Application to the State Board for Professional Medical Conduct (the Board) and request that it be granted.

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.



DELFIN HAMAD, M.D.
RESPONDENT

DATED Aug. 4, 1999

Sworn to before me
on this 4th day of
August 1999



NOTARY



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

DATE: 8/4/99.



KEVIN PORTER, ESQ.
Attorney for Respondent

DATE: 8/4/99



STEVEN J. MASEF
Assistant Counsel
Bureau of Professional
Medical Conduct

DATE: Aug 10, 1999



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
DELFIN HAMAD, M.D.

CONSENT
AGREEMENT AND
SURRENDER OF
SURGICAL
PRIVILEGES
AND
ORDER

Upon the proposed agreement of DELFIN HAMAD, 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: 8/11/99


WILLIAM P. DILLON, 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
DELFIN HAMAD, M.D.

STATEMENT
OF
CHARGES

Delfin Hamad, M.D., the Respondent, was authorized to practice medicine in New York State on or about March 25, 1971, by the issuance of license number 108366 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. Between on or about August 9, 1996 and on or about October 7, 1996, Respondent treated Patient A, a 50 year old male, for abdominal pain and other medical conditions at Nassau County Medical Center (the "Hospital"), 2201 Hempstead Turnpike, East Meadow, N.Y. (All patients are identified in the Appendix). Respondent's conduct deviated from accepted medical standards in that:
1. On or about August 22, 1996, the Respondent performed a laparoscopic cholecystectomy on Patient A;
 - a. Respondent lacked the surgical privileges required by the Hospital to perform this procedure and, in fact, was not qualified to perform this procedure.
 - b. Respondent improperly failed to obtain a frozen section biopsy despite the suspicion of

Cholangiocarcinoma.

- c. Respondent failed to inform Patient A that he lacked the surgical privileges required by the Hospital to perform this procedure;
 - (1) Respondent knowingly withheld this information intending to mislead the Patient.
2. On or about September 17, 1996, the Respondent performed an open cholecystectomy on Patient A;
 - a. Respondent inappropriately failed to clearly delineate Patient A's anatomy during surgery;
 - b. Respondent inappropriately transected the hepatic duct;
 - c. Respondent inappropriately failed to timely detect and treat the hepatic duct injury, necessitating further surgical intervention.
- B. On or about August 8, 1996, Respondent surgically treated Patient B, an 85 year old male, for an aortic aneurysm at the Hospital. Respondent's conduct deviated from accepted medical standards in that;
 1. Respondent lacked the surgical privileges required by the

Hospital to perform this procedure and, in fact, was not qualified to perform this procedure;

2. Respondent inappropriately failed to timely consult or seek assistance from a vascular specialist.
3. Respondent failed to inform Patient B that he lacked the surgical privileges required by the Hospital to perform this procedure.
 - a. Respondent knowingly withheld this information intending to mislead the Patient.

SPECIFICATION OF CHARGES

FIRST AND SECOND SPECIFICATIONS

GROSS NEGLIGENCE

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(4)(McKinney Supp. 1999) by practicing the profession of medicine with gross negligence as alleged in the facts of the following:

1. Paragraphs A and A(1)a, A(1)b, A(2), A(2)a through A(2)c;
2. Paragraphs B and B(1), B(2).

THIRD AND FOURTH SPECIFICATIONS

GROSS INCOMPETENCE

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(6)(McKinney Supp. 1999) by practicing the profession of medicine with gross incompetence as alleged in the facts of the following:

3. Paragraphs A and A(1)a, A(1)b, A(2), A(2)a through A(2)c;
4. Paragraphs B and B(1), B(2).

FIFTH SPECIFICATION

NEGLIGENCE ON MORE THAN ONE OCCASION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(3)(McKinney Supp. 1999) 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:

5. Paragraphs A and A(1), A(1)b, A(2), A(2)a through A(2)c, B and B(1) and/or B(2).

SIXTH SPECIFICATION

INCOMPETENCE ON MORE THAN ONE OCCASION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(5)(McKinney Supp. 1999) by practicing the profession of medicine with incompetence on more than one occasion as alleged in the facts of two or more of the following:

6. Paragraphs A and A(1)a, A(1b), A(2), A(2)a through A(2)c and/or B, B(1) and B(2)

SEVENTH AND EIGHTH SPECIFICATIONS
PRACTICING BEYOND SCOPE

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(24)(McKinney Supp. 1999) by performing professional responsibilities which the licensee knows or has reason to know that he is not competent to perform as alleged in the facts of:

7. Paragraphs A, A(1), A(1)a;
8. Paragraphs B and B(1).

NINTH AND TENTH SPECIFICATIONS
LACK OF INFORMED CONSENT

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(26) by performing professional services which have not been authorized by the patient or his or her legal representative as alleged in the facts of:

9. Paragraphs A and A(1), A(1)a, A(1)c;
10. Paragraphs B and B(1), B(3).

ELEVENTH AND TWELFTH SPECIFICATIONS

FRAUDULENT PRACTICE

Respondent is charged with committing professional misconduct as defined by N.Y. Educ. Law §6530(2)(McKinney Supp. 1999) by practicing the profession of medicine fraudulently as alleged in the facts of the following:

11. A and A(1), A(1)a, A(1)c and A(1)c(1);
12. B and B(1), B(3), B(3)a and B(3)a(1).

DATED: August , 1999
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. 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].
4. 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. At the end of three years of satisfactory compliance with all terms of his active probation status, Respondent may Petition the OPMC for early termination of Probation. The Director shall have discretion to grant or deny such a request.
5. 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, interviews with or periodic visits with Respondent and his/her staff at practice locations or OPMC offices.
6. 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.

PRACTICE MONITOR

7. Respondent shall practice medicine only when monitored by a licensed

physician, board certified in an appropriate specialty, ("practice monitor") proposed by Respondent and subject to the written approval of the Director of OPMC.

- a. Respondent shall make available to the monitor any and all records or access to the practice requested by the monitor, including on-site observation. The practice monitor shall visit Respondent's medical practice at each and every location, on a random unannounced basis at least monthly and shall examine a selection (no less than 25) of records maintained by Respondent, including patient records, prescribing information and office records. The review will determine whether the Respondent's medical practice is conducted in accordance with the generally accepted standards of professional medical care. Any perceived deviation of accepted standards of medical care or refusal to cooperate with the monitor shall be reported within 24 hours to OPMC.
 - b. Respondent shall be solely responsible for all expenses associated with monitoring, including fees, if any, to the monitoring physician.
 - c. Respondent shall cause the practice monitor to report quarterly, in writing, to the Director of OPMC.
 - d. Respondent shall maintain medical malpractice insurance coverage with limits no less than \$2 million per occurrence and \$6 million per policy year, in accordance with Section 230(18)(b) of the Public Health Law. Proof of coverage shall be submitted to the Director of OPMC prior to Respondent's practice after the effective date of this Order.
8. 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.