



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.
Commissioner
NYS Department of Health
Wendy E. Saunders
Executive Deputy Commissioner
Keith W. Servis, Director
Office of Professional Medical Conduct

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Chair
Michael A. Gonzalez, R.P.A.
Vice Chair
Katherine A. Hawkins, M.D., J.D.
Executive Secretary

July 2, 2009

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Michael Blab, M.D.

Redacted Address

Re: License No. 178966

Dear Dr. Blab:

Enclosed is a copy of BPMC #09-127 of the New York State Board for Professional Medical Conduct. This order and any penalty provided therein goes into effect July 9, 2009.

If the penalty imposed by this Order is a surrender, revocation or suspension, you are required to deliver your license and registration within five (5) days of receipt of this Order and return it to the Office of Professional Medical Conduct, New York State Department of Health, 433 River Street, Suite 303, Troy, NY 12180-2299

Sincerely,

Redacted Signature

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

Enclosure

cc: Danielle Mikalajuanas Fogel, Esq.
Sugarman Law Firm
360 South Warren Street
Syracuse, New York 13202-2680

**IN THE MATTER
OF
MICHAEL BLAB, M.D.**

CONSENT
ORDER

#09-127

Upon the application of (Respondent) MICHAEL BLAB, 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: 7/2/09

Redacted Signature

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

before I return to practice medicine in New York State, I will submit to a Clinical Competency Assessment as set forth in attached Exhibit "C".

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 cooperate fully with OPMC in its administration and enforcement of this Consent Order and in its investigation of all matters concerning Respondent. Respondent shall respond promptly to all OPMC requests for written periodic verification of Respondent's compliance with the terms of this Consent Order. Respondent shall meet with a person designated by the Director of OPMC, and shall promptly provide OPMC with 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).

If I am charged with professional misconduct in future, I hereby stipulate and agree that this Application and Consent Order, and/or related Modification Orders, shall be admitted into evidence in that proceeding as part of the

**IN THE MATTER
OF
MICHAEL BLAB, M.D.**

**CONSENT
AGREEMENT
AND
ORDER**

MICHAEL BLAB, M.D., represents that all of the following statements are true:

That on or about July 5, 1989, I was licensed to practice as a physician in the State of New York, and issued License No. 178966 by the New York State Education Department.

My current address is *Redacted Address*, and I will advise the Director of the Office of Professional Medical Conduct ("OPMC") of any change of address.

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

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

I agree not to contest paragraphs A and A.1, and A and A.2 of the First Specification, and paragraphs B and B.2, B and B.3, and B and B.4 of the Second Specification, in full satisfaction of the charges against me, and agree to the following penalty:

My license shall be suspended for 36 months, stayed, and pursuant to N.Y. Pub. Health Law § 230-a(9), I shall be placed on probation for a period of 36 months, subject to the terms set forth in attached Exhibit "B." I also agree that

Department's case-in-chief, at the sole discretion of the Department. 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 the Public 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 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. This Consent Order, this Consent 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. 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 for Professional Medical Conduct and the Office of Professional Medical Conduct 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 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 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 June 8, 2009

Redacted Signature

MICHAEL BLAB, M.D.
RESPONDENT

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

DATE: June 12th, 2009

Redacted Signature

DANIELLE MIKALAJUNAS FOGEL, ESQ.
Attorney for Respondent

DATE June 18, 2009

Redacted Signature

JOEL E. ABELOVE
Associate Counsel
Bureau of Professional Medical Conduct

DATE: 7/1/09

Redacted Signature

KEITH W. SERVIS
Director
Office of Professional Medical Conduct

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

IN THE MATTER
OF
MICHAEL BLAB, M.D.

STATEMENT
OF
CHARGES

MICHAEL BLAB, M.D., Respondent, a orthopedic surgeon, was authorized to practice medicine in New York State on July 5, 1989, by the issuance of license number 178966 by the New York State Education Department, with a current registration address of Redacted Address

FACTUAL ALLEGATIONS

- A. Respondent provided medical care to Patient A, from May 4, 2006 - approximately one week following an injury to her right knee in a motor vehicle accident - until March 2, 2007. Respondent eventually performed a diagnostic arthroscopy in October 2006, and an ACL reconstruction on January 11, 2007, following Patient A's re-injury of her right knee. Respondent's care and treatment of Patient A failed to meet accepted standards of medical care in that:
1. During reconstruction of Patient A's right knee ACL, a large interference screw was left loose in the soft tissue posterior to the patellar tendon. It should have been repositioned, or removed if the peg was to be used alone. Respondent failed to take an intra-operative x-ray.
 2. X-rays taken at 7:46 p.m., post-operatively to the ACL reconstruction on January 11, 2007, revealed the presence of a large interference screw in the

proximal tibia lying in the soft tissue. Respondent failed to attempt to reposition this screw. Respondent failed to assure proper tensioning of the ACL and the interference screw should have been placed back in its proper position; alternatively.

3. During the surgery on January 11, 2007, Respondent failed to place the bone graft that he harvested in the proper position.

B. Respondent provided medical care to Patient B from April 17, 2006, until March 9, 2007. Respondent's care and treatment of Patient B failed to meet accepted standards of medical care in that:

1. Respondent failed to obtain an adequate history from Patient B, who had previously been seen for various conditions dating back to 1991, when he was first seen by Dr. Pierz, who was active in Respondent's office.
2. During surgery on Patient B's right knee on April 18, 2006, Respondent repaired a tear in the patellar tendon, utilizing 5mm Mersilene tape, with #5 Ethibond and #2 Ethibond for supplemental suture. Respondent's choice for procedure was inadequate, in that he should have reinforced the repair by use of a circumferential tension suture of wire, and should have augmented the repair with a tendon graft. Respondent also failed to flex the knee to test the repair and/or failed to document that he did so. Post-operatively, Patient B should have been placed in a cylinder cast, or at least a plaster splint and then a cast for at least six weeks, as opposed to the locking brace utilized by Respondent.
3. During a second surgery to repair Patient B's right knee, on July 14, 2006,

Respondent used an 18-gauge wire up and around the patella, through the quadriceps tendon, through the retinaculum, and then through a 2mm drill hole through the proximal tibia. Respondent then used #5 Ethibond for direct repair of the tendon. Respondent failed to augment the repair with a tendon graft. Respondent failed to flex the knee to test the repair and/or failed to document that he did so. Post-operatively, Patient B should have been placed in a cylinder cast, as opposed to the locking brace utilized by Respondent.

4. While hospitalized following surgery, Patient B's leg slid off a leg rest, causing the wire to break. On July 17, 2006, Respondent performed a third operative procedure, to repair the broken wire. Respondent placed a Dall-Miles cable through holes in the proximal tibia and around the patella, which was an inappropriate use of this cable. Respondent failed to run the cable directly through the patella as well as through the tibial tubercle, and Respondent failed to reinforce the patellar tendon repair with a graft. Respondent placed Patient B in a locking brace rather than a cylinder cast, which was inappropriate.

SPECIFICATIONS

FIRST SPECIFICATION

PRACTICING THE PROFESSION WITH NEGLIGENCE ON MORE THAN ONE OCCASION

Respondent is charged with Practicing The Profession With Negligence On More Than One Occasion, in violation of N.Y. Education Law § 6530(3), in that Petitioner charges the following:

1. The facts in Paragraphs A and A.1, A and A.2, A and A.3.

SECOND SPECIFICATION

PRACTICING THE PROFESSION WITH INCOMPETENCE ON MORE THAN ONE

OCCASION

Respondent is charged with Practicing The Profession With Incompetence On More Than One Occasion, in violation of N.Y. Education Law § 6530(5), in that Petitioner charges the following:

1. The facts in Paragraphs B and B.1, B and B.2, B and B.3, B and B.4.

THIRD SPECIFICATION

FAILING TO MAINTAIN A RECORD FOR EACH PATIENT WHICH ACCURATELY REFLECTS THE EVALUATION OR TREATMENT OF THE PATIENT

Respondent is charged with Failing To Maintain A Record For Each Patient Which Accurately Reflects The Evaluation Or Treatment Of The Patient, in violation of N.Y. Education Law § 6530(32), in that Petitioner charges the following:

1. The facts in Paragraphs B and B.1, B and B.2, B and B.3.

DATED: *June 18*, 2009
Albany, New York

Redacted Signature

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

EXHIBIT "B"

Terms of Probation

1. Respondent's conduct shall conform to moral and professional standards of conduct and governing law. Any act of professional misconduct by Respondent as defined by N.Y. Educ. Law §§ 6530 or 6531 shall constitute a violation of probation and may subject Respondent to an action pursuant to N.Y. Pub. Health Law § 230(19).
2. Respondent shall maintain active registration of Respondent's license (except during periods of actual suspension) with the New York State Education Department Division of Professional Licensing Services, and shall pay all registration fees.
3. Respondent shall provide the Director, Office of Professional Medical Conduct (OPMC), Hedley Park Place, 433 River Street Suite 303, Troy, New York 12180-2299 with the following information, in writing, and ensure that this information is kept current: a full description of Respondent's employment and practice; all professional and residential addresses and telephone numbers within and outside New York State; and all investigations, arrests, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility. Respondent shall notify OPMC, in writing, within 30 days of any additions to or changes in the required information.
4. Respondent shall cooperate fully with, and respond in a timely manner to, OPMC requests to provide written periodic verification of Respondent's compliance with the terms of this Consent Order. Upon the Director of OPMC's request, Respondent shall meet in person with the Director's designee.
5. Respondent's failure to pay any monetary penalty by the prescribed date shall subject Respondent to all provisions of law relating to debt collection by New York State, including but 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].
6. The probation period shall toll when Respondent is not engaged in active medical practice in New York State for a period of 30 consecutive days or more. Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in, or intends to leave, active medical practice in New York State for a consecutive 30 day period. Respondent shall then notify the Director again at least 14 days before returning to active practice. Upon Respondent's return to active practice in New York State, the probation period shall resume and Respondent shall fulfill any unfulfilled probation terms and such additional requirements as the Director may impose as reasonably relate to the matters set forth in Exhibit "A" or as are necessary to protect the public health.

7. The Director of OPMC may review Respondent's professional performance. This review may include but shall not be limited to: a review of office records, patient records, hospital charts, and/or electronic records; and interviews with or periodic visits with Respondent and staff at practice locations or OPMC offices.
8. Respondent shall adhere to federal and state guidelines and professional standards of care with respect to infection control practices. Respondent shall ensure education, training and oversight of all office personnel involved in medical care, with respect to these practices.
9. Respondent shall maintain complete and legible medical records that accurately reflect the evaluation and treatment of patients and contain all information required by State rules and regulations concerning controlled substances.
10. Respondent shall enroll in and complete a continuing education program as directed by the Director. This continuing education program is subject to the Director of OPMC's prior written approval and shall be completed within the first 90 days of the probation period.
11. Within thirty days of the effective date of the order, 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 fewer than 20) 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.
12. Respondent shall comply with this Consent Order and all its terms, and shall bear all associated compliance costs. Upon receiving evidence of noncompliance with, or a violation of, these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding, and/or any other such proceeding authorized by law, against Respondent.

EXHIBIT "C"

CLINICAL COMPETENCY ASSESSMENT

1. Respondent shall obtain a clinical competency assessment performed by a program for such assessment as directed by the Director of OPMC. Respondent shall cause a written report of such assessment to be provided directly to the Director of OPMC.
 - a. Respondent shall be responsible for all expenses related to the clinical competency assessment and shall provide to the Director of OPMC proof of full payment of all costs that may be charged. This term of probation shall not be satisfied in the absence of actual receipt, by the Director, of such documentation, and any failure to satisfy shall provide a basis for a Violation of Probation proceeding.
2. At the direction of the Board, if the Respondent is not deemed competent following his assessment, and within 60 days following the completion of the clinical competency assessment (CCA) the Respondent shall identify a Preceptor, preferably a physician who is board certified in the same specialty, to be approved in writing, by the Director of OPMC. The Respondent shall cause the Preceptor to:
 - a. Develop and submit to the Director of OPMC for written approval a remediation plan, which addresses the deficiencies /retraining recommendations identified in the CCA. Additionally, this proposal shall establish a timeframe for completion of the remediation program.
 - b. Submit progress reports at periods identified by OPMC certifying whether the Respondent is fully participating in the personalized continuing medical education program and is making satisfactory progress towards the completion of the approved remediation plan.
 - c. Report immediately to the Director of OPMC if the Respondent withdraws from the program and report promptly to OPMC any significant pattern of non-compliance by the Respondent.
 - d. At the conclusion of the program, submit to the Director of OPMC a detailed assessment of the progress made by the Respondent toward remediation of all identified deficiencies.
3. Respondent shall be solely responsible for all expenses associated with these terms, including fees, if any, for the clinical competency assessment, the personalized continuing medical education program, or to the monitoring physician.