



New York State Board for Professional Medical Conduct

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

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NYS Department of Health

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NYS Department of Health

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Vice Chair

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

November 5, 2001

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Thomas S. Hartzheim, M.D.
4740 Edgeworth Drive
Manlius, NY 13104

RE: License No. 181994

Dear Dr. Hartzheim :

Enclosed please find Order #BPMC 01-258 of the New York State Board for Professional Medical Conduct. This Order and any penalty provided therein goes into effect November 5, 2001.

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: Paul A. Brown, Esq.
Martin, Gonotis, Brown, Mould & Currie, P.C.
5790 Widewaters Parkway
DeWitt, New York 13214

Michael Hiser, Esq.

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

IN THE MATTER
OF
THOMAS S. HARTZHEIM, M.D.

CONSENT
ORDER

BPMC No. 01-258

Upon the proposed agreement of THOMAS S. HARTZHEIM, 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: 11/3/01


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
THOMAS S. HARTZHEIM, M.D.**

**CONSENT
AGREEMENT
AND
ORDER**

THOMAS S. HARTZHEIM, M.D., representing all statements herein made to be true, deposes and says:

That on or about May 2, 1990, I was licensed to practice as a physician in the State of New York, having been issued License No. 181994 by the New York State Education Department.

My current address is Central New York Medical Center, 739 Irving Avenue, Syracuse, New York 13210, 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 Seven 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 Fifth Specification to the extent of admitting Factual Allegations A.1 and A.5, in full satisfaction of the charges against me. I hereby agree to the following penalty:

That I shall receive a Censure and Reprimand; that I shall be placed on probation for twenty four (24) months from the effective date of the order herein; that I shall attend and satisfactorily complete Continuing Medical Education in accordance with the Terms of Probation attached hereto in Exhibit B; and that during that 24 month period of probation, my practice of medicine shall

be monitored in accordance with the Terms of Probation 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 active 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).

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.

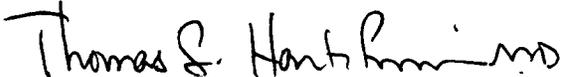
I hereby make this Application to the State Board for Professional Medical Conduct (the Board) and request that it be granted.

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.

DATED 10/24/01


THOMAS S. HARTZHEIM, 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: 10/24/01


PAUL A. BROWN, ESQ.
Attorney for Respondent

DATE: 10/25/01


MICHAEL A. HISER, ESQ.
Associate Counsel
Bureau of Professional
Medical Conduct

DATE: 11/01/01


DENNIS J. GRAZIANO
Director
Office 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. Respondent acknowledges that if s/he commits professional misconduct as enumerated in New York State Education Law §6530 or §6531, those acts shall be deemed to be a violation of probation and that an action may be taken against Respondent's license pursuant to New York State Public Health Law §230(19).
2. Respondent shall submit written notification to the New York State Department of Health addressed to the Director, Office of Professional Medical Conduct (OPMC), Hedley Park Place, 433 River Street Suite 303, Troy, New York 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. 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].
5. 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.
6. 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.
7. 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

8. After 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 less than 20%) of records of Respondent's surgical patients 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.

9. Respondent shall perform major abdominal surgeries done on a non-emergency basis only when pre-approved by a licensed physician, board certified in an appropriate specialty, ("pre-surgical monitor") proposed by Respondent and subject to the written approval of the Director of OPMC.
 - a. Respondent shall make available to the pre-surgical monitor any and all records or access to the practice requested by the monitor, including on-site observation. Such pre-surgical approval shall indicate, among others, whether the surgery proposed by the Respondent for the patient is medically indicated and whether all appropriate pre-operative testing has been performed. The pre-surgical monitor shall review the indications for surgery at least 48 hours before each such procedure, and shall record the monitor's written approval for the proposed procedure prior to the procedure. 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 pre-surgery monitoring physician.
 - c. Respondent shall cause the pre-surgical monitor to report quarterly, in writing, to the Director of OPMC.

- d. Upon successful performance of major abdominal surgeries for 12 consecutive months, the requirement of a pre-surgical monitor may be modified at the discretion of the Director of OPMC.
10. Respondent shall ensure that the pre-surgical monitor is familiar with the Order and terms of probation, and willing to report to OPMC. Respondent shall ensure that the pre-surgical monitor is in a position to regularly observe and assess Respondent's medical practice. Respondent shall cause the pre-surgical monitor to report within 24 hours any suspected impairment, inappropriate behavior, questionable medical practice or possible misconduct to OPMC.
11. Respondent shall enroll in and complete a continuing education program in the area of documentation and pre-operative evaluation to be equivalent to at least 20 credit hours of Continuing Medical Education, over and above the recommended minimum standards set by the Respondent's specialty accrediting body. Said continuing education program shall be subject to the prior written approval of the Director of OPMC and be completed within the period of probation or as otherwise specified in the Order.
12. 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.

IN THE MATTER
OF
THOMAS S. HARTZHEIM, M.D.

STATEMENT
OF
CHARGES

THOMAS S. HARTZHEIM, M.D., the Respondent, was authorized to practice medicine in New York State on or about May 2, 1990, by the issuance of license number 181994 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. Respondent provided medical care to Patient A (patients are identified in the attached Appendix), a 68 year old male, in early 1998 at the Respondent's office at 739 Irving Avenue, Syracuse, New York ("Respondent's office") and at the Community General Hospital, Broad Road, Syracuse, New York ("Community General"). Respondent performed surgery on Patient A on March 2, 1998 consisting of an exploratory laparotomy of suspected gastric cancer, lysis of adhesions, and placement of gastrostomy and jejunostomy tubes. Respondent's medical care of Patient A failed to meet accepted standards of medical practice in the following respects:
1. Respondent failed to obtain an abdominal CT scan prior to performing surgery on 3/2/98.
 2. Respondent failed to order adequate pre-operative laboratory tests, including tests of blood clotting, and liver function tests, prior to performing surgery on 3/2/98.
 3. Respondent failed to adequately respond to or treat the patient's low hematocrit of 20 % prior to performing surgery on 3/2/98.

4. Respondent failed to appropriately monitor and treat the patient's low hematocrit post-operatively, despite medical indications.
5. Respondent failed to maintain a medical record for the patient that accurately reflects the evaluation and the treatment of the patient, in that, for example, the chart contains no complete admission history and physical examination, and the "attending admission" note purports to have been written on "3/2/98", when in fact it was written on or about 4/5/98.

B. Respondent provided medical care to Patient B, a 73 year old male, at various times from 1994 through May 1998 at Respondent's office and at Community General. Respondent performed elective surgery on Patient B on May 3, 1999, consisting of a Nissen Fundoplication, laparoscopic cholecystectomy, and lysis of adhesions. Patient B remained hospitalized continuously from May 3, 1999 through June 6, 1999, and expired on the latter date. Respondent's medical care of Patient B failed to meet accepted standards of medical practice in the following respects:

1. Respondent, prior to performing elective surgery on Patient B on May 3, 1999, failed to adequately investigate a radiology finding of a chest lesion on Patient B.
2. Respondent, prior to performing elective surgery on Patient B on May 3, 1999, failed to adequately investigate and/or confirm the diagnoses of cholelithiasis and the extent of Barrett's Esophagus.
3. Respondent failed to perform the laparoscopic cholecystectomy appropriately, in that, among others, Respondent did not appropriately secure the cystic artery and the cystic duct.
4. Respondent failed to adequately manage Patient B's post-operative care, in that Respondent failed to timely recognize, evaluate, and treat the patient's post-operative bile leak.

SPECIFICATION OF CHARGES
FIRST THROUGH SECOND SPECIFICATIONS
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 in Paragraphs A and A.1, A and A.2, A and A.3, and/or A and A.4.
2. The facts in Paragraphs B and B.1, B and B.2, B and B.3, and/or B and B.4.

THIRD THROUGH FOURTH SPECIFICATIONS
GROSS INCOMPETENCE

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

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

FIFTH 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 two or more of the following:

5. The facts in Paragraphs A and A.1, A and A.2, A and A.3, A and A.4, A and A.5, A and A.6, B and B.1, B and B.2, B and B.3, and/or B and B.4.

SIXTH SPECIFICATION

INCOMPETENCE ON MORE THAN ONE OCCASION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(5) 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:

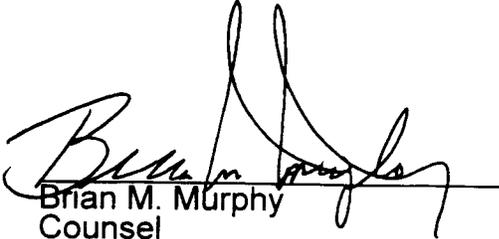
6. The facts in Paragraphs A and A.1, A and A.2, A and A.3, A and A.4, A and A.5, B and B.1, B and B.2, B and B.3, and/or B and B.4.

SEVENTH SPECIFICATION
FAILURE TO MAINTAIN RECORDS

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(32) by failing to maintain a record for each patient which accurately reflects the care and treatment of the patient, as alleged in the facts of:

7. The facts in Paragraph A and A.5.

DATED: October 2, 2001
 Albany, New York


Brian M. Murphy
Counsel
Bureau of Professional
Medical Conduct