



New York State Board for Professional Medical Conduct

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

Barbara A. DeBuono, M.D., M.P.H.
Commissioner of Health

Patrick F. Carone, M.D., M.P.H.
Chair
Ansel R. Marks, M.D., J.D.
Executive Secretary

August 18, 1998

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Harvey Manes, M.D.
256 N. Wellwood Avenue
Lindenhurst, New York 11757

RE: License No. 118939

Dear Dr. Manes:

Enclosed please find Order #BPMC 98-184 of the New York State Board for Professional Medical Conduct. This Order and any penalty provided therein goes into effect **August 25, 1998.**

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.

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: David A. Zarett, Esq.
Lederman, Abrahams, Lederman & Zarett, LLP
567 Broadway
Masapequa, New York 11758-5079

David W. Smith, Esq.

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

IN THE MATTER
OF
HARVEY MANES, M.D.

CONSENT
AGREEMENT
AND
ORDER

BPMC #98-184

STATE OF NEW YORK)
COUNTY OF) ss.:

HARVEY MANES, M.D., being duly sworn, deposes and says:

That on or about February 13, 1974, I was licensed to practice as a physician in the State of New York, having been issued License No. 118939 by the New York State Education Department.

My current address is 256 N. Wellwood Avenue, Lindenhurst, New York 11757, 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 thirteen 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 First Specification - negligence on more than one occasion - as it pertains to Paragraphs C and C1-3; D and D1-3 and E and E1-3. I also admit guilt to the Seventh and Ninth Specifications in full satisfaction of the charges against me. I hereby agree to the following penalty:

- a. A Censure and Reprimand.
- b. A three year probation in accordance with the "Terms of Probation" attached hereto as Exhibit "B".

I further agree that the Consent Order for which I hereby apply shall impose a condition that, except during periods of actual suspension, I maintain current registration of my 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 continuing until the full term of the Order has run, and until any associated period of probation and all probation terms have been completed and satisfied. I hereby stipulate that any failure by me to comply with such condition shall constitute misconduct as defined by New York State Education Law §6530(29)(McKinney Supp 1997).

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 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.


ⓧ HARVEY MANES, M.D.
RESPONDENT

Sworn to before me this

30th day of July, 1998.



NOTARY PUBLIC

ROBERT K. SWEENEY
Notary Public, State of New York
No. 52-4511658
Qualified in Suffolk County
Commission Expires 2/28/2000

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

DATE: 7/31/98



David A. Zarett ESQ.
Attorney for Respondent

DATE: 8/6/98



DAVID W. SMITH
Associate Counsel
Bureau of Professional
Medical Conduct

DATE: 8/6/98



ANNE F. SALE
Director
Office of Professional
Medical Conduct

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

IN THE MATTER
OF
HARVEY MANES, M.D.

CONSENT
ORDER

Upon the proposed agreement of HARVEY MANES, 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 take effect as of the date of the personal service of this order upon Respondent, upon receipt by Respondent of this order via certified mail, or seven days after mailing of this order by certified mail, whichever is earliest.

SO ORDERED.

DATED: August 11, 1988


PATRICK F. CARONE, M.D., M.P.H.
Chairperson
State Board for Professional
Medical Conduct

EXHIBIT "A"

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

**IN THE MATTER
OF
HARVEY MANES, M.D.**

**STATEMENT
OF
CHARGES**

HARVEY MANES, M.D., the Respondent, was authorized to practice medicine in New York State on or about February 13, 1974, by the issuance of license number 118939 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. Between in or about December, 1989 and July, 1990, Respondent treated Patient A for fracture of a left wrist in Good Samaritan Hospital and at his office at 256 North Wellwood Avenue, Lindenhurst, New York. ("Office". All patients are identified in the Appendix attached hereto.)
1. Respondent failed to perform an adequate closed reduction of Patient A's left wrist in or about December, 1989.

2. The final alignment of the deformity was inadequate yet Respondent failed to adequately follow-up on this condition or note such follow-up, if any.

3. Respondent deliberately and with intent to deceive billed Patient A and/or her insurance carrier for muscle testing procedures which were not done, and Respondent knew they were not done at the time he billed for them.

B. In or about March, 1992, Respondent treated Patient B at his Office for an injury of the right hand.

1. Respondent inappropriately diagnosed Patient B with a fracture of the proximal phalanx of the right index finger.

C. Between in or about June, 1989 and August, 1989, Respondent treated Patient C for an injured left knee.

1. Respondent failed to tell Patient C of the serious nature of the injury and the probability of less than full recovery or note such discussion, if any.
 2. Respondent failed to perform an adequate pre-operative work-up or note such work-up, if any.
 3. Respondent inappropriately operated on the left knee of Patient C.
- D. Between in or about July, 1991, and October, 1991, Respondent treated Patient D for left hip problems.
1. On or about August 20, 1991, Respondent inappropriately performed revision surgery on the left hip of Patient D.
 2. Prior to the operation of August 20, 1991, Respondent failed to perform an adequate pre-operative evaluation or note such

evaluation, if any.

3. Thereafter, during September, 1991, Respondent inappropriately performed both a closed and open reduction on Patient D.

E. In or about August, 1989, Respondent treated Patient E for herniated disc at Syosset Community Hospital, Syosset, New York.

1. Respondent failed to obtain an adequate medical history or note such history, if any.
2. Respondent inappropriately performed a chemonucleolysis on Patient E.
3. Respondent failed to perform an adequate post-operative evaluation on Patient E or note such evaluation, if any.

4. Respondent deliberately and with intent to deceive billed Patient E for muscle testing procedures which were not done and Respondent knew they were not done at the time he billed for them.

F. In or about October, 1987, Respondent treated Patient F for a herniated disc at Massapequa General Hospital.

1. Respondent failed to obtain an adequate medical history or note such history, if any.
2. Respondent inappropriately performed a chemonucleolysis on Patient F.
3. Respondent failed to perform an adequate post-operative evaluation or note such evaluation, if any.

SPECIFICATION OF CHARGES

FIRST 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. 1997) 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:

1. Paragraphs A and A1-2; B and B1; C and C1-3; D and D1-3; E and E1-3; and/or F and F1-3.

SECOND 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. 1997) 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:

2. Paragraphs A and A1-2; B and B1; C and C1-3; D and D1-3; E and E1-3; and/or F and F1-3.

THIRD AND FOURTH SPECIFICATIONS

PRACTICING FRAUDULENTLY

Respondent is charged with committing professional misconduct as defined by N.Y. Educ. Law §6530(2)(McKinney Supp. 1997) by practicing the profession of medicine fraudulently as alleged in the facts of the following:

3. Paragraphs A and A3.
4. Paragraphs E and E4.

FIFTH AND SIXTH SPECIFICATIONS

MORAL UNFITNESS

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(20)(McKinney Supp. 1997) by engaging in conduct in the practice of the profession of medicine that evidences moral unfitness to practice as alleged in the facts of the following:

5. Paragraphs A and A3.
6. Paragraphs E and E4.

SEVENTH THROUGH ELEVENTH SPECIFICATIONS

FAILURE TO MAINTAIN RECORDS

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(30)(McKinney Supp. 1997) by failing to maintain a record which accurately reflects the evaluation and treatment of each patient as alleged in the facts of:

7. Paragraphs A and A2.
8. Paragraphs C and C2.
9. Paragraphs D and D2.
10. Paragraphs E and E1, 3.
11. Paragraphs F and F1, 2, 3.

TWELFTH SPECIFICATION

GROSS NEGLIGENCE

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(4)(McKinney Supp. 1997) by practicing the profession of medicine with gross negligence as alleged in the facts of the following:

12. Paragraphs E and E1-3.

THIRTEENTH SPECIFICATION

GROSS INCOMPETENCE

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(6)(McKinney Supp. 1997) by practicing the profession of medicine with gross incompetence as alleged in the facts of the following:

13. Paragraphs E and E1-3

DATED: September , 1997
New York, New York

ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct

EXHIBIT "B"

TERMS OF PROBATION

HARVEY MANES, M.D.

1. Respondent shall conduct himself in all ways in a manner befitting his professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his 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 against him 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.
8. Respondent shall practice medicine only when monitored by a licensed physician, board certified in an appropriate specialty, ("practice monitor") who shall be proposed by Respondent and be 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 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 practice 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 practice monitor.
 - c. Respondent shall cause the practice monitor to report quarterly, in writing, to the Director of OPMC.
 - d. During the term of this probation, 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. The terms of this probation shall be for a period of three years from the date of the Order approving the Consent Agreement.