

Public

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

IN THE MATTER

CONSENT

OF

ORDER

HOWARD B. SOMERS, M.D.

BPMC No. #09-105

Upon the application of **HOWARD B. SOMERS, M.D.**, (Respondent), 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.

DATED: 6-4-09

, Redacted Signature

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

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

IN THE MATTER
OF
HOWARD B. SOMERS, M.D.
CO-08-10-6530-A

CONSENT
AGREEMENT
AND ORDER

HOWARD B. SOMERS, M.D., (Respondent), representing that all of the following statements are true, deposes and says:

That on or about March 24, 1978, I was licensed to practice as a physician in the State of New York, and issued license number 134033 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 of any change of my address thirty (30) days, thereof.

I understand that the New York State Board for Professional Medical Conduct (Board) has charged me with two (2) Specifications of professional misconduct, based solely on the October 9, 2008, Arizona Medical Board, Consent Agreement.

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

The New York State Department of Health has offered to settle this matter by my agreeing to a Censure and Reprimand, a \$5,000 fine, that I appear before the Director prior to practicing in New York state, and that I keep my New York state license registration active.

As I have not practiced medicine in New York state in many years and I do not intend to return to practice medicine in New York state, I do not contest Factual Allegations A and B(2) and the Second Specification, in full satisfaction of the charges against me, and:

I agree, in lieu of the settlement offered by the State of New York:

to never practice medicine in New York state
or activate my registration to practice medicine in New York state
or seek to reapply for a license to practice medicine in New York state.

I stipulate that my failure to comply with any conditions of this Consent Order shall constitute misconduct as defined by New York Education 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 New York 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 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.

I stipulate that the proposed sanction and Consent Order are authorized by New York Public 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.

AFFIRMED:

DATED: May 28, 2009

Redacted Signature

HOWARD B. SOMERS, M.D.
Respondent

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

DATE: 01 June 2009

Redacted Signature

ROBERT BOGAN
Associate Counsel
Bureau of Professional Medical Conduct

DATE: 6/4/09

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	STATEMENT
OF	OF
HOWARD B. SOMERS, M.D.	CHARGES
CO-08-10-6530-A	

HOWARD B. SOMERS, M.D., Respondent, was authorized to practice medicine in New York state on March 24, 1978, by the issuance of license number 134033 by the New York State Education Department.

FACTUAL ALLEGATIONS

A On or about October 9, 2008, the Arizona Medical Board (hereinafter "Arizona Board"), by a Consent Agreement (hereinafter "Arizona Agreement"), issued Respondent a Letter of Reprimand, based on removing the incorrect testicle while performing an orchiectomy.

B. The conduct resulting in the Arizona Board disciplinary actions against Respondent would constitute misconduct under the laws of New York State, pursuant to the following sections of New York State law:

1. New York Education Law §6530(4) (gross negligence); and/or
2. New York Education Law §6530(26) (performing professional services which have not been duly authorized by the patient).

SPECIFICATIONS

FIRST SPECIFICATION

Respondent violated New York Education Law §6530(9)(b) by having been found guilty of improper professional practice or professional misconduct by a duly professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York state, constitute professional misconduct under the laws of New York state, in that Petitioner charges:

1. The facts in Paragraphs A and/or B.

SECOND SPECIFICATION

Respondent violated New York Education Law §6530(9)(d) by having disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the disciplinary action would, if committed in New York state, constitute professional misconduct under the laws of New York state, in that Petitioner charges:

2. The facts in Paragraphs A and/or B.

DATED: *May 6*, 2009
Albany, New York

Redacted Signature

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