

NEW YORK
state department of
HEALTH

Nirav R. Shah, M.D., M.P.H.
Commissioner

Sue Kelly
Executive Deputy Commissioner

PUBLIC

May 26, 2011

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Matthew J. Mitsch, M.D.

REDACTED

Re: License No. 186797

Dear Dr. Mitsch:

Enclosed is a copy of the New York State Board for Professional Medical Conduct (BPMC) Order No. 11-132. This order and any penalty provided therein goes into effect June 2, 2011.

Please direct any questions to: Board for Professional Medical Conduct, 433 River Street, Suite 303, Troy, NY 12180, telephone # (518)402-0863.

Sincerely,

REDACTED

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

Enclosure

cc: Carolyn Shearer, Esq.
Bond Schoeneck & King
111 Washington Avenue
Albany, New York 12210-2211

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

IN THE MATTER
OF
MATTHEW JAMES MITSCH, M.D.

CONSENT
ORDER

BPMC: 11-132

Upon the application of **MATTHEW JAMES MITSCH, M.D.**, (Respondent), in the attached Consent Agreement, that 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 or email transmission to Respondent or Respondent's attorney, whichever is first.

SO ORDERED.

DATED: May 25, 2011

REDACTED

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

IN THE MATTER

OF

MATTHEW JAMES MITSCH, M.D.
CO-10-07-4423-A
CO-09-11-7547-A

CONSENT

AGREEMENT

MATTHEW JAMES MITSCH, M.D., (Respondent), representing that all of the following statements are true, deposes and says:

That on or about September 5, 1991, I was licensed to practice medicine in the State of New York and issued license number 186797 by the New York State Education Department. I have not practiced medicine in New York since I completed my residency program in 1994.

My current address is REDACTED, and I will advise the Director (Director) of the Office of Professional Medical Conduct (OPMC) of any change of my address within thirty (30) days, thereof.

I understand that the New York State Board for Professional Medical Conduct (Board) has charged me with four (4) 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 do not contest the Fourth Specification as it relates to Paragraphs B and D(2). I deny all other Factual Allegations, and:

I agree to never practice medicine in New York state as a physician, activate my registration to practice medicine as a physician in New York state or seek to reapply for a license to practice medicine as a physician in New York state. [Limitation on registration or issuance of any further license pursuant to Public Health Law Section 230-a(6)].

I stipulate that my failure to comply with any conditions of the 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 the Consent 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 the 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 or email transmission to me or my attorney, whichever is first. The 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 of Health 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, administratively and/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, OPMC, and the Chair of the Board each retain complete discretion either to enter into the proposed Consent 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: 11 MAY 2011

REDACTED

MATTHEW JAMES MITSCH, M.D.
Respondent

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

DATE: 5/12/11

REDACTED

PATRICK C. DEVINE, JR., ESQ
Attorney for Respondent

DATE: 5/16/11

REDACTED

CAROLYN SHEARER
Attorney for Respondent

DATE: 5/18/11

REDACTED

MICHAEL G. BASS
Assistant Counsel
Bureau of Professional Medical Conduct

DATE: 5/25/11

REDACTED

KEITH W. SERVIS
Director
Office of Professional Medical Conduct

EXHIBIT A

IN THE MATTER
OF
MATTHEW JAMES MITSCH, M.D.
CO-10-07-4423-A
CO-09-11-7547-A

STATEMENT
OF
CHARGES

MATTHEW JAMES MITSCH, M.D., Respondent, was authorized to practice medicine in New York state on September 5, 1991, by the issuance of license number 186797 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about September 1, 2009, Virginia Board of Medicine (hereinafter "Virginia Board"), by Consent Order, (hereinafter "Virginia Board Order I"), issued Respondent a REPRIMAND and fined him \$3,000. The Virginia Board found that during 2008, Respondent aided and abetted, had a professional connection with, and/or lent his name to persons engaged in the unlicensed practice of medicine. Specifically, Respondent served as medical director of five (5) clinic facilities located throughout the Commonwealth, whose staff performed, among other things, laser skin treatments. Further, although Respondent served as medical director for these clinics, he had no direct day to day contact with technicians performing laser skin treatments, did not know what protocols were in place for such treatment, was not involved in or aware of the training provided to staff performing laser skin treatments, was unaware of the brand of lasers being used or the settings utilized by technicians, and did not provide any supervision of such staff or their performance of laser skin treatments.

B. On or about June 2, 2010, the Virginia Board by Order, (hereinafter "Virginia Board Order II"), issued Respondent a REPRIMAND, restricted Respondent from performing full incisional body contouring procedures, other than oculoplastic procedures, and required Respondent to perform at least fifteen (15) hours of continuing medical education in the subject of medical recordkeeping within six (6) months of the entry of the Virginia Board Order II. The Virginia Board found that from on or about 2007 to on or about 2008, Respondent improperly planned and executed brachioplasties on the upper right and left arms of a patient and improperly managed the postoperative skin graft loss and nerve injury to right arm.

C. The conduct resulting in the Virginia Board disciplinary action (Virginia Board Order I) 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 Sec.6530(3) (negligence on more than one occasion); and/or
2. New York Education Law Sec. 6530(11) (aiding or abetting an unlicensed person to perform activities requiring a license).

D. The conduct resulting in the Virginia Board disciplinary action (Virginia Board Order II) 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 Sec. 6530(4) (gross negligence); and/or
2. New York Education Law Sec. 6530(32) (failure to maintain a record).

SPECIFICATIONS

FIRST AND SECOND SPECIFICATIONS

Respondent violated New York Education Law Sec. 6530(9)(b) by having been found guilty of improper professional misconduct by a duly authorized 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 C.
2. The facts in Paragraphs B and D.

THIRD AND FOURTH SPECIFICATIONS

Respondent violated New York Education Law Sec. 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:

3. The facts in Paragraphs A and C.

4. The facts in Paragraphs B and D.

DATED: *February 23*, 2011
Albany, New York

REDACTED

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