



New York State Board for Professional Medical Conduct
433 River Street, Suite 303 • Troy, New York 12180-2299 • (518) 402-0863

Antonio C. Novello, M.D., M.P.H., Dr. P.H.
Commissioner
NYS Department of Health

Dennis P. Whalen
Executive Deputy Commissioner
NYS Department of Health

Dennis J. Graziano, Director
Office of Professional Medical Conduct

Kendrick A. Sears, M.D.
Chairman

Michael A. Gonzalez, R.P.A.
Vice Chair

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

Public

January 20, 2006

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

John Halpenny, M.D.
20 Elm Street
Suite 6
Hornell, NY 14843

Re: License No. 194702

Dear Dr. Halpenny:

Enclosed is a copy of Order #BPMC 06-09 of the New York State Board for Professional Medical Conduct. This order and any penalty provided therein goes into effect January 27, 2006.

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 to the Board for Professional Medical Conduct, New York State Department of Health, Hedley Park Place, Suite 303, 433 River Street, Troy, New York 12180.

Sincerely,

REDACTED

Ansel R. Marks, M.D., J.D.
Executive Secretary
Board for Professional Medical Conduct

Enclosure

cc: Richard S. Tubiolo, Esq.
Hirsch & Tubiolo, P.C.
1000 Reynolds Arcade Building
16 East Main Street
Rochester, NY 14614-1796

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

IN THE MATTER
OF
JOHN HALPENNY, M.D.

CONSENT
ORDER

BPMC No. #06-09

Upon the application of JOHN HALPENNY, 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 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: 1-18-06

REDACTED

KENDRICK A. SEARS, 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
JOHN HALPENNY, M.D.

CONSENT
AGREEMENT
AND
ORDER

JOHN HALPENNY, M.D., representing that all of the following statements are true, deposes and says:

That on or about January 7, 1994, I was licensed to practice as a physician in the State of New York, and issued License No. 194702 by the New York State Education Department.

My current address is *20 Elm Street, Suite G*, Homell, New York 14843, and I will advise the Director of the Office of Professional Medical Conduct of any change of address.

JSK.

I understand that the New York State Board for Professional Medical Conduct has charged me with Eight 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 First Specification concerning patients A and B in full satisfaction of the charges against me, and agree to the following penalty:

an eighteen month suspension of my license to practice medicine in New York, stayed, and probation for a period of three years in accordance with the terms of probation attached hereto as Exhibit B; further, my license shall be limited so that I shall not engage in the practice of chronic pain management.

I further agree that the Consent Order shall impose the following conditions:

That Respondent shall maintain active registration of Respondent's license with the New York State Education, Department Division of Professional Licensing Services (except during periods of actual suspension), and shall pay all registration fees. This condition shall take effect thirty (30) days after the Consent Order's effective date and will continue so long as Respondent remains licensed in New York State; and

That Respondent shall cooperate fully with the Office of Professional Medical Conduct (OPMC) in its administration and enforcement of this Order and in its investigations of matters concerning Respondent. Respondent shall respond in a timely manner to all OPMC requests for written periodic verification of Respondent's compliance with this Order. Respondent shall meet with a person designated by the Director of OPMC, as directed. Respondent shall respond promptly and provide 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 Order shall constitute misconduct as defined by New York State 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 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 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 Order, this agreement, and all attached Exhibits shall be public documents, with only patient identities, if any, redacted.

I stipulate that the proposed sanction and Order are authorized by Public Health Law Sections 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 ask that the Board adopt this Consent Agreement.

DATE: 12/28/05

REDACTED

~~JOHN HALPENNY, M.D.~~
RESPONDENT

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

DATE: 12/29/05

REDACTED

RICHARD S. TUBIOLLO
Attorney for Respondent

DATE: 1/3/06

REDACTED

KEVIN P. DONOVAN
Associate Counsel
Bureau of Professional Medical Conduct

DATE: 1/17/06

REDACTED

DENNIS J. GRAZIANO
Director
Office of Professional Medical Conduct

EXHIBIT A

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

IN THE MATTER : STATEMENT
OF : OF
JOHN HALPENNY, M.D. : CHARGES

JOHN HALPENNY, M.D., the Respondent, was authorized to practice medicine in New York State on or about January 7, 1994, by the issuance of license number 194702 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. Respondent treated Patient A, a 25 year old female (for reasons of confidentiality, patients are identified only in the attached Appendix), from around February 2002, until at least June 2002, at his office, 20 Elm Street, Homell, New York, and at St. James Mercy Hospital, Homell, New York. Respondent's care of Patient A did not meet acceptable standards of care in that Respondent concluded an operative procedure on February 4, 2002, without achieving adequate reduction of a comminuted fracture of the distal fibula.

B. Respondent treated Patient B, a 30 year old male, from around May 2001 until around December 2001, at his office and at St. James Mercy Hospital. Respondent's care of Patient B did not meet acceptable standards of care in that:

1. On or around May 21, 2001, Respondent concluded an operative procedure of the right knee without achieving adequate repair of the patient's meniscus.
2. Post-operatively, Respondent permitted the patient to resume weight bearing too soon.

C. Respondent treated Patient C, a 57 year old male, from around May 2000, until around March 2003, at his office and at St. James Mercy Hospital. Respondent's care of Patient C did not meet acceptable standards of care in that Respondent failed to timely and appropriately respond to indications of infection after a knee replacement on November 27, 2000.

D. Respondent treated Patient D, a 45 year old male, from around July 2001, until at least February 2005, at his office and at St. James Mercy Hospital. Respondent's care of Patient D did not meet acceptable standards of care in that:

1. Respondent prescribed inappropriate amounts of controlled medications to Patient D.
2. Respondent failed to timely refer or seek consultation for Patient D concerning his reports of pain.

E. Respondent treated Patient E, a 79 year old male, from around July 2001, until at least January 2002, at his office and at St. James Mercy Hospital. Respondent's care of Patient E did not meet acceptable standards of care in that:

1. During an open reduction of a fracture of the right distal fibula on November 18, 2001, Respondent did not adequately fixate Patient E's proximal fibula fracture.
2. Approximately four weeks after reduction of the fracture, Respondent inappropriately removed external stabilization of the right leg and/or permitted weight bearing on that leg by Patient E, who had significant co-morbid conditions that could affect soft tissues.

SPECIFICATIONS OF MISCONDUCT

FIRST SPECIFICATION

PRACTICING WITH NEGLIGENCE ON MORE THAN ONE OCCASION

The Respondent is charged with practicing the profession with negligence on more than one occasion within the meaning of New York Educ. Law Section 6530 (3) in that Petitioner charges two or more of the following:

1. The facts of paragraphs A, B and B.1, B and B.2, C, D and D.1, D and D.2, E and E.1 and/or E and E.2.

SECOND SPECIFICATION

PRACTICING WITH INCOMPETENCE ON MORE THAN ONE OCCASION

The Respondent is charged with practicing with incompetence on more than one occasion within the meaning of New York Educ. Law Section 6530(5) in that the Petitioner charges two or more of the following:

2. The facts of paragraphs A, B and B.1, B and B.2, C, D and D.1, D and D.2, E and E.1 and/or E and E.2.

THIRD THROUGH SEVENTH SPECIFICATIONS

PRACTICING WITH GROSS NEGLIGENCE

The Respondent is charged with practicing the profession with gross negligence on a particular occasion within the meaning of New York Educ. Law Section 6530(4) in that Petitioner charges:

3. The facts of paragraph A.
4. The facts of paragraphs B and B.1, B and/or B and B.2.
5. The facts of paragraphs C.
6. The facts of paragraph D and D.1 and/or D and D.2.
7. The facts of paragraphs E and E.1 and/or E and E.2.

EIGHTH SPECIFICATION

PRACTICING WITH GROSS INCOMPETENCE

Respondent is charged with practicing the profession with gross incompetence within the meaning of New York Educ. Law Section 6530(6) in that Petitioner charges:

8. The facts of paragraphs A, B and B.1, B and B.2, C, D and D.1, D and D.2, E and E.1 and/or E and E.2.

Dated: January 5, 2006
Albany, New York

REDACTED

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 New York State Education Law §6530 or §6531 shall constitute a violation of probation and may subject Respondent to an action pursuant to New York State Public 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 such 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, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty (30) days of each action.
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. The probation period shall toll when Respondent is not engaged in active medical practice in New York State for a period of thirty (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 thirty (30) day period. Respondent shall then notify the Director again at least fourteen (14) days before returning to active practice. Upon Respondent's return to active practice in New York State, the probation period will 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 are necessary to protect the public health.
6. 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 and/or hospital charts; and interviews with or periodic visits with Respondent and staff at practice locations or OPMC offices.
7. 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.

8. 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.
9. Respondent shall comply with this Order and all its terms, and shall bear all associated compliance costs. Upon receiving evidence of noncompliance with, or 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.