



New York State Board for Professional Medical Conduct

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

Antonia C. Novello, M.D., M.P.H., Dr. P.H.
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NYS Department of Health*

Dennis P. Whalen
*Executive Deputy Commissioner
NYS Department of Health*

Dennis J. Graziano, Director
Office of Professional Medical Conduct

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Chairman

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

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

Public

August 4, 2005

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

David Haim Ostad, M.D.
7 Coachman Court
Old Westbury, NY 11568

Re: License No. 191028

Dear Dr. Ostad:

Enclosed is a copy of Order #BPMC 05-161 of the New York State Board for Professional Medical Conduct. This order and any penalty provided therein went into effect July 21, 2005.

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 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,

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

Enclosure

cc: Rudolph C. Gabriel, Esq.
Kern, Augustine, Conroy & Schoppman, P.C.
420 Lakeville Road
Lake Success, NY 11042

IN THE MATTER
OF
DAVID HAIM OSTAD, M.D.

SURRENDER
ORDER

BPMC No. #05-161

Upon the application of (Respondent) DAVID HAIM OSTAD, M.D. to Surrender his license as a physician in the State of New York, effective close of business August 31, 2005, and his agreement to be subject to a Limitation of his license, effective immediately, (application and agreement are incorporated in this Surrender Order) it is

ORDERED, that the Surrender, the Limitation, and all terms and conditions, are adopted and it is further

ORDERED, that effective close of business August 31, 2005, Respondent's name be stricken from the roster of physicians in the State of New York; it is further

ORDERED, that this Order shall be effective upon issuance by the Board, either

- by mailing of a copy of this Surrender Order, either by first class mail to Respondent at the address in the attached Surrender Application or by certified mail to Respondent's attorney, OR
- upon facsimile transmission to Respondent or Respondent's attorney,

Whichever is first.

SO ORDERED.

DATED: 7-21-2005


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
DAVID HAIM OSTAD, M.D.**

**SURRENDER
of
LICENSE**

DAVID HAIM OSTAD, M.D., representing that all of the following statements are true, deposes and says:

That on or about January 4, 1993, I was licensed to practice as a physician in the State of New York, and issued License No. 191028 by the New York State Education Department.

My current address is 7 Coachman Court, Old Westbury, New York, 11568, and I will advise the Director of the Office of Professional Medical Conduct of any change of address.

I understand that the New York State Board for Professional Medical Conduct has charged me with eleven specifications of professional misconduct.

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

I am applying to the State Board for Professional Medical Conduct for permission to surrender my license as a physician in the State of New York, effective close of business August 31, 2005, on the grounds that I agree not to contest the factual allegations of the Statement of Charges and all the specifications with the sole exception of the second specification which I deny, in full satisfaction of the charges against me.

I further agree that, effective immediately, and continuing until the effective date of the surrender of my license, Pursuant to §230-a(3) of the Public Health Law my license to practice medicine in the state of New York shall be limited so as to preclude the clinical practice of medicine with the sole exception of such activities that are necessary for the orderly closing of my practice. This exception will permit the referral of patients and only medically necessary post-operative care of my pre-existing patients, and shall not include the performance of any surgical procedure.

I ask the Board to accept my offer of Surrender of my License and my agreement to be subject to a license limitation until the effective date of surrender, and further agree to be subject to the following Condition:

Respondent shall be required to 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 comply 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 and shall, at the Direction of the Director of OPMC, permit inspection of his places of medical practice by representative of OPMC. This condition shall take effect upon the Board's issuance of this Order and will continue so long as Respondent remains licensed in New York State.

I understand that if the Board does not accept this Surrender, none of its terms shall bind me or constitute an admission of any of the acts of alleged

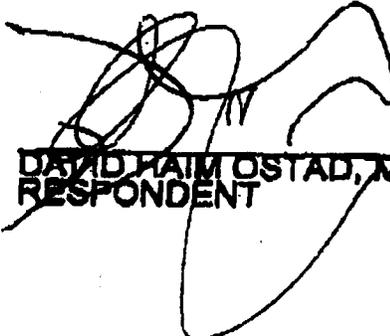
misconduct; this application shall not be used against me in any way and shall be kept in strict confidence; and the Board's denial shall be without prejudice to the pending disciplinary proceeding and the Board's final determination pursuant to the Public Health Law.

I agree that, if the Board accepts the Surrender of my License, the Chair of the Board shall issue a Surrender 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 Surrender Order by first class mail to me at the address in this Surrender of License, 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 ask the Board to accept this Surrender of License of my own free will and not under duress, compulsion or restraint. In consideration of the value to me of the Board's acceptance of this Surrender of License, 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 Surrender Order for which I apply, whether administratively or judicially, and I agree to be bound by the Surrender Order.

DATED

2/10/05


DAVID HAIM OSTAD, M.D.
RESPONDENT

The undersigned agree to Respondent's attached Surrender of License and to its proposed penalty, terms and conditions.

DATE: 7/21/05


RUDOLPH C. GABRIEL, ESQ.
KERN, AUGUSTINE, CONROY AND
SCHOPPMANN
Attorney for Respondent

DATE: 7/21/05


DANIEL GUENZBURGER
Associate Counsel
Bureau of Professional Medical Conduct

DATE: July 21, 2005


DENNIS J. GRAZIANO
Director
Office of Professional Medical Conduct

EXHIBIT "A"

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

IN THE MATTER
OF
DAVID HAIM OSTAD, M.D.

STATEMENT
OF
CHARGES

DAVID HAIM OSTAD, M.D., the Respondent, was authorized to practice medicine in New York State on or about January 4, 1993 by the issuance of license number 191028 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. On or about October 1, 2003, at the Parkway Hospital, Elmhurst, New York, the Respondent performed bilateral reduction mammoplasty on Patient A, a 43 year old female. Respondent:
1. Deviated from medically accepted standards in that he:
 - a. Failed to comply with minimally accepted standards for controlling blood loss.
 - b. Inaccurately estimated that the Patient's intra-operative blood loss was 425 cubic centimeters.
- B. On or about April 10, 2001, the Respondent performed liposuction of the thighs on Patient B, a 36 year old female, at 30 Central Park South, New York, New York. Respondent evaluated Patient B at her home on April 11 and April 12, 2001. Respondent :

1. Deviated from medically accepted standards in the performance of the liposuction in that he:
 - a. Failed to comply with minimally accepted standards for controlling blood loss.
 - b. Failed to recognize medically significant intra-operative blood loss.
 - c. Caused an unacceptable cosmetic result, including but not limited to inappropriate scarring of the thighs.
 2. Failed to adequately manage the patient post-operatively, including but not limited to:
 - a. Failing to have the patient admitted to a hospital.
 - b. Failing to adequately evaluate the patient, including failing to order a complete blood count and other testing.
- C. On or about April 28, 2004 the Respondent performed a bilateral cheek implant exchange and other plastic surgery procedures on Patient C, a 35 year old female. Patient C's post surgical course was complicated by swelling in the mid face region and facial numbness. On or about May 10, 2004 the Respondent removed both cheek implants. The patient continued to complain of facial numbness and was subsequently diagnosed with a right cranial injury of the seventh nerve. Respondent deviated from medically accepted standards in that he:
1. Improperly placed the cheek implants in the soft tissues of the face.
 2. Inappropriately caused a right cranial nerve injury.

3. Failed to maintain a record that accurately reflects the evaluation and treatment of the patient.
- D. On or about February 11, 2004 the Respondent performed a facelift and other cosmetic procedures on Patient D, a 60 year old male, at his office.
Respondent:
1. Deviated from medically accepted standards in that he:
 - a. Inappropriately caused an injury to a facial nerve.
 - b. Failed to maintain copies of pre-operative photographs.
 2. Failed to provide OPMC with pre-operative photographs in response to a written request.
- E. On or about August 26, 2002 the Respondent performed a breast reduction on Patient E, a 56 year old female. Respondent:
1. Failed to obtain a pre-operative mammogram.
 2. Failed to note the amount of breast tissue removed.
 3. Failed to obtain a pathological evaluation of the breast tissue.
 4. Caused an unacceptable surgical result in that the Patient's breasts were significantly different in shape and size.
 5. Failed to provide OPMC, in response to a written request, with pre-operative photographs for the breast augmentation procedure performed on December 9, 2002.

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) 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. A, A1, A1(a), A1(b), B, B1, B1(a), B1(b), B1(c), B2, B2(a), B2(b), C, C1, C2, C3, D, D1, D1(a), D1(b), E, E1, E2, E3, and/or E4.

SECOND 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:

2. A, A1, A1(a), A1(b), B, B1, B1(a), B1(b), B1(c), B2, B2(a), B2(b), C, C1, C2, C3, D, D1, D1(a), D1(b), E, E1, E2, E3, and/or E4.

THIRD THROUGH SEVENTH 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:

3. A, A1, A1(a), and/or A1(b).

4. B, B1, B1(a), B1(b), B1(c) B2, B2(a) and/or B2(b).
5. C1, C2 and/or C3.
6. D, D1, D1(a) and/or D1(b).
7. E, E1, E2, E3, and/or E4.

EIGHTH AND NINTH SPECIFICATIONS

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:

8. C and C3
9. D, D1, and D1(b).

TENTH AND ELEVENTH SPECIFICATIONS

FAILING TO PROVIDE RECORDS

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(28) by failing to respond within thirty days to written communications from the department of health and to make available any relevant records with respect to an inquiry or complaint about the licensee's professional misconduct as alleged in the facts of:

10. D and D2.
11. E and E5.

DATED: July 21, 2005
New York, New York



Roy Nemerson
Deputy Counsel
Bureau of Professional
Medical Conduct

EXHIBIT "B"

GUIDELINES FOR CLOSING A MEDICAL PRACTICE FOLLOWING A REVOCATION, SURRENDER OR SUSPENSION (of 6 months or more) OF A MEDICAL LICENSE

1. Respondent shall immediately cease the practice of medicine in compliance with the terms of the Surrender Order. Respondent shall not represent himself or herself as eligible to practice medicine and shall refrain from providing an opinion as to professional practice or its application.
2. Within fifteen (15) days of the Surrender Order's effective date, Respondent shall notify all patients that he or she has ceased the practice of medicine, and shall refer all patients to another licensed practicing physician for their continued care, as appropriate.
3. Within thirty (30) days of the Surrender Order's effective date, Respondent shall have his or her original license to practice medicine in New York State and current biennial registration delivered to the Office of Professional Medical Conduct (OPMC) at 433 River Street Suite 303, Troy, NY 12180-2299.
4. Respondent shall arrange for the transfer and maintenance of all patient medical records. Within thirty (30) days of the Surrender Order's effective date, Respondent shall notify OPMC of these arrangements, including the name, address, and telephone number of an appropriate contact person, acceptable to the Director of OPMC, who shall have access to these records. Original records shall be retained for patients for at least six (6) years after the last date of service, and, for minors, at least six (6) years after the last date of service or three (3) years after the patient reaches the age of majority, whichever time period is longer. Records shall be maintained in a safe and secure place that is reasonably accessible to former patients. The arrangements shall ensure that all patient information is kept confidential and is available only to authorized persons. When a patient or authorized representative requests a copy of the patient's medical record, or requests that the original medical record be sent to another health care provider, a copy of the record shall be promptly provided or sent at reasonable cost to the patient (not to exceed seventy-five cents per page.) Radiographic, sonographic and like materials shall be provided at cost. A qualified person shall not be denied access to patient information solely because of inability to pay.
5. Within fifteen (15) days of the Surrender Order's effective date, if Respondent holds a Drug Enforcement Agency (DEA) certificate, Respondent shall advise the DEA in writing of the licensure action and shall surrender his or her DEA controlled substance certificate, privileges, and any used DEA #222 U.S. Official Order Forms Schedules 1 and 2, to the DEA.
6. Within fifteen (15) days of the Surrender Order's effective date, Respondent shall return any unused New York State official prescription forms to the Bureau of Narcotic Enforcement of the New York State Department of Health. Respondent shall have all prescription pads bearing Respondent's name destroyed. If no other licensee is providing services at Respondent's practice location, Respondent shall dispose of all medications.
7. Within fifteen (15) days of the Surrender Order's effective date,

Respondent shall remove from the public domain any representation that Respondent is eligible to practice medicine, including all related signs, advertisements, professional listings whether in telephone directories or otherwise, professional stationery or billings. Respondent shall not share, occupy or use office space in which another licensee provides health care services.

8. Respondent shall not charge, receive or share any fee or distribution of dividends for professional services rendered (by himself or others) while barred from practicing medicine. Respondent may receive compensation for the reasonable value of services lawfully rendered, and disbursements incurred on a patient's behalf, prior to the Surrender Order's effective date.
9. If Respondent is a shareholder in any professional service corporation organized to engage in the practice of medicine and Respondent's license is revoked, surrendered or suspended for six (6) months or more pursuant to this Order, Respondent shall, within ninety (90) days of the Order's effective date, divest himself/herself of all financial interest in such professional services corporation in accordance with New York Business Corporation Law. If Respondent is the sole shareholder in a professional services corporation, the corporation must be dissolved or sold within ninety (90) days of the Order's effective date.
10. Failure to comply with the above directives may result in civil or criminal penalties. Practicing medicine when a medical license has been suspended, revoked or annulled is a Class E Felony, punishable by imprisonment for up to four (4) years, under Section 6512 of the Education Law. Professional misconduct may result in penalties including revocation of the suspended license and/or fines of up to \$10,000 for each specification of misconduct, under Section 230-a of the Public Health Law.