



Public

***New York State Board for Professional Medical Conduct***

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

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*Office of Professional Medical Conduct*

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*Vice Chair*  
*Katherine A. Hawkins, M.D., J.D.*  
*Executive Secretary*

October 13, 2009

***CERTIFIED MAIL-RETURN RECEIPT REQUESTED***

Allan R. Serviss, M.D.

Redacted Address

Re: License No. 204464

Dear Dr. Serviss:

Enclosed is a copy of Modification BPMC #08-132 of the New York State Board for Professional Medical Conduct. This order and any penalty provided therein goes into effect October 20, 2009.

Sincerely,

Redacted Signature

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

Enclosure

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IN THE MATTER  
OF  
ALLAN SERVISS, M.D.

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MODIFICATION  
ORDER

BPMC No. #08-132

Upon the proposed Application for a Modification Order of **ALLAN SERVISS, M.D.**,  
(Respondent), that is made a part of this Modification Order, it is agreed and

ORDERED, that the attached Application and its terms are adopted and it is further

ORDERED, that this Modification Order shall be effective upon issuance by the Board,  
either by mailing, by first class mail, a copy of the Modification Order to Respondent at the  
address in the attached Application or by certified mail to Respondent's attorney or upon  
transmission via facsimile to Respondent or Respondent's attorney, whichever is earliest.

SO ORDERED.

DATED: 10-10-2009

Redacted Signature

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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

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IN THE MATTER  
OF  
ALLAN SERVISS, M.D.

APPLICATION FOR  
MODIFICATION ORDER

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**ALLAN SERVISS, M.D.**, (Respondent) being duly sworn deposes and says:

That on or about September 4, 1996, I was licensed to practice as a physician in the State of New York, having been issued license number 204464 by the New York State Education Department.

My current address is Redacted Address i.

I am currently subject to Consent Order BPMC No. 08-132, (hereinafter "Original Order"), annexed hereto, made a part, hereof, and marked as Exhibit 1, that was issued on July 23, 2008.

I am currently not practicing medicine in New York state and I do not intend to return to practice medicine in New York state.

I apply, hereby, therefore, to the State Board for Professional Medical Conduct for a Modification Order (hereinafter "Modification Order"), modifying the Original Order, as follows: to delete the paragraphs in the Original Order that state:

"Should Respondent return to the practice of medicine in the State of New York or in any jurisdiction where that practice is predicated upon Respondent's New York State medical license, Respondent shall provide ninety (90) days notice in writing to the Director, OPMC. The Director in his sole discretion, may impose whatever limitations, or further conditions, he deems appropriate."

"That Respondent shall remain in continuous compliance with all requirements of New York Education Law § 6502 including but not limited to the requirements that a licensee shall register and continue to be registered with the New York State Education Department (except during periods of actual suspension) and that a licensee shall pay all registration fees. Respondent shall not exercise the option provided in New York

substituting for the former paragraph:

“ Respondent shall never practice medicine in New York state as a physician, activate his 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.”

The Modification Order to be issued will not constitute a new disciplinary action against me, but will substitute the proposed language for the above described language in the Original Order.

I make this Application of my own free will and accord and not under duress, compulsion or restraint, and seek the anticipated benefit of the requested Modification. In consideration of the value to me of the acceptance of the Board of this Application, I knowingly waive the right to contest the Original Order or the Modification Order for which I apply, both administratively and judicially, and ask that the Board grant this Application.

I understand and agree that the attorney for the Bureau of Professional Medical Conduct, the Director of the Office of Professional Medical Conduct, and the Chair of the State Board for Professional Medical Conduct each retain complete discretion to either enter into the proposed Agreement and Modification 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: 9/28/09

Redacted Signature

\_\_\_\_\_  
ALLAN SERVISS, M.D.  
Respondent

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

DATE: 6 Oct 2009

Redacted Signature

ROBERT BOGAN  
Associate Counsel  
Bureau of Professional Medical Conduct

DATE: Oct 7, 2009

Redacted Signature

for KEITH W. SERVIS  
Director  
Office of Professional Medical Conduct

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

IN THE MATTER  
OF  
ALLAN SERVISS, M.D.

CONSENT  
ORDER

BPMC No. 08-132

Upon the application of ALLAN SERVISS, M.D. 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.

Redacted Signature

DATE: 7-23-2008

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

**IN THE MATTER  
OF  
ALLAN SERVISS, M.D.**

**CONSENT  
AGREEMENT  
AND  
ORDER**

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

That on or about September 4, 1996, I was licensed to practice as a physician in the State of New York, and issued License No. 204464 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 address.

I understand that the New York State Board for Professional Medical Conduct (Board) has charged me with 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 Allan Serviss, do not contest the Fourth Specification relating to the factual allegations contained in paragraphs B and B.1, B and B.2 and/or B and B.3, C and C.1, C and C.2, C and C.3, and/or C and C.4 in full satisfaction of the charges against me, and agree to the following penalty:

My license shall be suspended for two years with said suspension stayed to become a two year period of probation under the terms and conditions attached hereto, made part hereof and marked as Exhibit B.

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

That Respondent shall remain in continuous compliance with all requirements of N.Y. Educ Law § 6502 including but not limited to the requirements that a licensee shall register and continue to be registered with the New York State Education Department (except during periods of actual suspension) and that a licensee shall pay all registration fees. Respondent shall not exercise the option provided in N.Y. Educ. Law § 6502(4) to avoid registration and payment of fees. This condition shall take effect 30 days after the Consent Order's effective date and will continue so long as Respondent remains a licensee 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 Consent 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 Consent 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 Consent Order shall constitute misconduct as defined by N.Y. Educ. 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 N.Y. Pub. 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 N.Y. Pub. 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.

DATE 7/14/02

Redacted Signature

ALLAN SERVISS, M.D.  
RESPONDENT

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

DATE: July 18, 2008

Redacted Signature

KAREN BUTLER, ESQ.  
Attorney for Respondent

DATE: July 18, 2008

Redacted Signature

THOMAS EVANICK  
Associate Counsel  
Bureau of Professional Medical Conduct

DATE: July 23, 2008

Redacted Signature

KEITH W. SERVIS  
Director  
Office of Professional Medical Conduct

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

IN THE MATTER  
OF  
ALLAN SERVISS, M.D.

STATEMENT  
OF  
CHARGES

ALLAN SERVISS, M.D., the Respondent, was authorized to practice medicine in New York State on or about September 4, 1996, by the issuance of license number 204464 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

- A. The Respondent provided medical care to Patient A at Delaware Valley Hospital in Walton, New York emergency department on March 29, 2000. The Respondent's care and treatment of Patient A deviated from accepted standards of medical care in the following respects:
1. Respondent failed to adequately evaluate Patient A's<sup>1</sup> condition.
  2. Respondent failed to adequately manage Patient A's care.
  3. Respondent failed to adequately clear Patient A's cervical spine.
  4. Respondent inappropriately discharged Patient A from the emergency department.
- B. The Respondent provided medical care to Patient B at the Health and Wellness Clinic in Harpursville, New York beginning September 8, 2004 and at The Hospital, 43 Pearl Street West, Sydney, New York from October 27,

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<sup>1</sup>To preserve privacy throughout this document, the patients are referred to by letter designation.  
An Appendix is attached hereto.

2004 through October 30, 2004. The Respondent's care and treatment of Patient B deviated from accepted standards of medical care in the following respects:

1. Respondent failed to adequately identify the location of the mass.
2. Respondent failed to design and implement an adequate treatment plan.
3. Respondent failed to either mark an endoscopically identified lesion or utilize an alternate procedure.

C. The Respondent provided medical care to Patient C at the Family Health Center, 2 Titus Place, Walton, New York beginning February 5, 2001 through February 21, 2001 and at Delaware Valley Hospital, Walton, New York, February 13, 2001 through February 19, 2001. The Respondent's care and treatment of Patient C deviated from accepted standards of medical care in the following respects:

1. Respondent failed to identify a common bile duct injury during a cholecystectomy.
2. The Respondent inadequately evaluated the patient post-operatively.
3. The Respondent inadequately managed the patient post-operatively.
4. The Respondent inappropriately discharged Patient C from the hospital.

**SPECIFICATION OF CHARGES**  
**FIRST THROUGH THIRD SPECIFICATION**  
**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:

1. The facts set forth in paragraphs A and A.1, A and A.2; A and A.3, and/or A and A.4.
2. The facts set forth in paragraphs B and B.1, B and B.2 and/or B and B.3.
3. The facts set forth in paragraphs C and C.1, C and C.2, C and C.3, and/or C and C.4.

**FOURTH 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:

4. The facts set forth in paragraphs A and A.1, A and A.2, A and A.3 and/or A and A.4, B and B.1, B and B.2 and/or B and B.3, C and C.1, C and C.2, C and C.3, and/or C and C.4.

**FIFTH THROUGH SEVENTH SPECIFICATION**

**GROSS INCOMPETENCE**

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

5. The facts set forth in paragraphs A and A.1, A and A.2 and/or A and A.3
6. The facts set forth in paragraphs B and B.1, B and B.2 and/or B and B.3.
7. The facts set forth in paragraphs C and C.1, C and C.2, C and C.3 and/or C and C.4.

**EIGHTH 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:

8. The facts set forth in paragraphs A and A.1, A and A.2 and/or A and A.3, and/or B and B.1, B and B.2 and/or B and B.3, and/or C and C.1, C and C.2, C and C.3, and/or C and C.4.

DATE: July 2, 2008  
Albany, New York

Redacted Signature

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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 N.Y. Educ. Law §§ 6530 or 6531 shall constitute a violation of probation and may subject Respondent to an action pursuant to N.Y. Pub. 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 this 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, arrests, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility. Respondent shall notify OPMC, in writing, within 30 days of any additions to or changes in the required information.
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. Respondent's failure to pay any monetary penalty by the prescribed date shall subject Respondent to all provisions of law relating to debt collection by New York State, including but 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 § 171(27); State Finance Law § 18; CPLR § 5001; Executive Law § 32].
6. The probation period shall toll when Respondent is not engaged in active medical practice in New York State for a period of 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 30 day period. Respondent shall then notify the Director again at least 14 days before returning to active practice. Upon Respondent's return to active practice in New York State, the probation period shall 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 as are necessary to protect the public health.

7. 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, hospital charts, and/or electronic records; and interviews with or periodic visits with Respondent and staff at practice locations or OPMC offices.
8. Respondent shall adhere to federal and state guidelines and professional standards of care with respect to infection control practices. Respondent shall ensure education, training and oversight of all office personnel involved in medical care, with respect to these practices.
9. 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.
10. Respondent shall enroll in and complete a continuing education program. This continuing education program is subject to the Director of OPMC's prior written approval and shall be completed within the first year of the probation period.
11. Respondent shall comply with this Consent Order and all its terms, and shall bear all associated compliance costs. Upon receiving evidence of noncompliance with, or a 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.

#### PRACTICE MONITOR

12. 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.