



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.
*Commissioner
NYS Department of Health*
Dennis P. Whalen
*Executive Deputy Commissioner
NYS Department of Health*
Anne F. Saile, Director
Office of Professional Medical Conduct

William P. Dillon, M.D.
Chair

Denise M. Bolan, R.P.A.
Vice Chair

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

May 23, 2000

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Harvey A. Sauer, M.D.
8212 Turnstone Drive
Manlius, New York 13014

RE: License No. 199703

Dear Dr. Sauer:

Enclosed please find Order #BPMC 00-159 of the New York State Board for Professional Medical Conduct. This Order and any penalty provided therein goes into effect **May 23, 2000.**

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 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: Susan Fortin Lesser, Esq.
Scolaro, Shulman, Cohen, Lawler and Burstein, P.C.
90 Presidential Plaza
Syracuse, New York 13202-2200

Kevin Donovan, Esq.

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

IN THE MATTER
OF
HARVEY A. SAUER, M.D.

CONSENT
ORDER
BPMC 00-159

Upon the proposed agreement of HARVEY A. SAUER, M.D. (Respondent) for Consent Order, which application is made a part hereof, it is agreed to and

ORDERED, that the application and the provisions thereof are hereby adopted and so ORDERED, and it is further

ORDERED, that this order shall be effective upon issuance by the Board, which may be accomplished by mailing, by first class mail, a copy of the Consent Order to Respondent at the address set forth in this agreement or to Respondent's attorney by certified mail, or upon transmission via facsimile to Respondent or Respondent's attorney, whichever is earliest.

SO ORDERED.

DATED: 5/17/00

William P. Dillon, M.D.

WILLIAM P. DILLON, 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
HARVEY A. SAUER, M.D.

CONSENT
AGREEMENT
AND
ORDER

HARVEY A. SAUER, M.D., (Respondent) says:

That on or about June 20, 1995, I was licensed to practice as a physician in the State of New York, having been issued License No. 199703 by the New York State Education Department.

My current address is 739 Irving Avenue, Suite 600, Syracuse, New York 13210, and I will advise the Director of the Office of Professional Medical Conduct of any change of my address.

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

A copy of the Statement of Charges is annexed hereto, made a part hereof, and marked as Exhibit "A".

I admit guilt to the first specification in full satisfaction of the charges against me. I hereby agree to the following penalty, the entirety of which shall begin the effective date of this order:

a two year suspension of my license to practice medicine in New York State, which suspension shall be stayed in its entirety conditioned upon my full compliance with the Terms of Probation attached hereto as Exhibit B, during a probationary period of

two years; and

my performance of 200 hours of community service according to the conditions in the attached Terms of Probation.

I further agree that the Consent Order for which I hereby apply shall impose the following conditions, which shall be effective during the period this order is in effect:

That, except during periods of actual suspension, Respondent shall maintain current registration of Respondent's license with the New York State Education Department Division of Professional Licensing Services, and pay all registration fees. This condition shall be in effect beginning thirty days after the effective date of the Consent Order; and

That Respondent shall fully cooperate in every respect with the Office of Professional Medical Conduct (OPMC) in its administration and enforcement of this Order and in its investigation of all matters regarding Respondent. Respondent shall respond in a timely manner to each and every reasonable request by OPMC to provide written periodic verification of Respondent's compliance with the terms of this Order.

Respondent shall meet with a person designated by the Director of OPMC as directed. Respondent shall respond promptly and provide any and all documents and information within Respondent's control upon the direction of OPMC. This condition shall be in effect beginning upon the effective date of the Consent Order.

I hereby stipulate that any failure by me to comply with such conditions shall constitute misconduct as defined by New York State Education Law §6530(29).

I agree that in the event I am charged with professional misconduct in the future, this agreement and order shall be admitted into evidence in that proceeding.

I hereby make this Application to the State Board for Professional Medical Conduct (the Board) and request that it be granted.

I understand that, in the event that this Application is not granted by the Board, nothing contained herein shall be binding upon me or construed to be an admission of any act of misconduct alleged or charged against me, such Application shall not be used against me in any way and shall be kept in strict confidence during the pendency of the professional misconduct disciplinary proceeding; and such denial by the Board shall be made without prejudice to the continuance of any disciplinary proceeding and the final determination by the Board pursuant to the provisions of the

Public Health Law.

I agree that, in the event the Board grants my Application, as set forth herein, an order of the Chairperson of the Board shall be issued in accordance with same.

I agree that such order shall be effective upon issuance by the Board, which may be accomplished by mailing, by first class mail, a copy of the Consent Order to me at the address set forth in this agreement, or to my attorney, or upon transmission via facsimile to me or my attorney, whichever is earliest.

I am making this Application of my own free will and accord and not under duress, compulsion or restraint of any kind or manner. In consideration of the value to me of the acceptance by the Board of this Application, allowing me to resolve this matter without the various risks and burdens of a hearing on the merits, I knowingly waive any right I may have to contest the Consent Order for which I hereby apply, whether administratively or judicially, and ask that the Application be granted.

AFFIRMED:

DATED: 4/28/00



HARVEY A. SAUER, M.D.
RESPONDENT

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

DATE: 4/27/00

Susan Fortin Lesser
SUSAN FORTIN LESSER
Attorney for Respondent

DATE: 5/15/00

Kevin P. Donovan
KEVIN P. DONOVAN
Associate Counsel
Bureau of Professional
Medical Conduct

DATE: May 17, 2000

Anne F. Saile
ANNE F. SAILE
Director
Office of Professional
Medical Conduct

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

-----X
IN THE MATTER : STATEMENT
OF : OF
HARVEY A. SAUER, M.D. : CHARGES
-----X

HARVEY A. SAUER, M.D., the Respondent, was authorized to practice medicine in New York State on June 20, 1995, by the issuance of license number 199703 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. Respondent treated Patient A (the patient is identified in the attached Appendix A), a 71 year old male, during an admission to Crouse Hospital, Syracuse, New York, beginning in December 1998, to surgically correct a bladder obstruction.

Respondent's care and treatment of Patient A did not meet acceptable standards of care in that:

1. Despite the patient having a constricted bladder neck, Respondent made an inappropriate number of attempts to pass a cystoscope and used an inappropriately sized instrument, causing trauma to the bladder.
2. Respondent failed to appropriately monitor the amount of bladder distending fluid that was absorbed by Patient A.
3. Respondent failed to timely recognize and respond to the severity of the operative injury to the neck of Patient A's bladder.
4. Respondent inappropriately left Patient A and the Hospital before re-operating on Patient A.

Exhibit A

SPECIFICATIONS OF MISCONDUCT

FIRST SPECIFICATION

NEGLIGENCE ON MORE THAN ONE OCCASION

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

1. The facts of paragraphs A and A.1, A and A.2, A and A. 3 and/or A and A.4.

SECOND SPECIFICATION

ABANDONMENT

Respondent is charged with abandoning or neglecting a patient in need of immediate professional care without making reasonable arrangements for transfer of care within the meaning of New York Education Law § 6530(30), in that Petitioner charges:

2. The facts of paragraphs A and A.1, A and A.2, A and A. 3 and/or A and A.4.

DATED: *May 15*, 2000
Albany, New York


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

EXHIBIT "B"

Terms of Probation

1. Respondent shall conduct himself in all ways in a manner befitting his professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his profession.
2. Respondent shall submit written notification to the New York State Department of Health addressed to the Director of the Office of Professional Medical Conduct, New York State Department of Health, 433 River Street, Suite 303, Troy, NY 12180-2299; said notice is to include a full description of any employment and practice, professional and residential addresses and telephone numbers within or without New York State, and any and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty days of each action.
3. The period of probation shall be tolled during periods in which Respondent is not engaged in the active practice of medicine in New York State. Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in or intends to leave the active practice of medicine in New York State for a period of thirty (30) consecutive days or more. Respondent shall then notify the Director again prior to any change in that status. The period of probation shall resume and any terms of probation which were not fulfilled shall be fulfilled upon Respondent's return to practice in New York State.
4. Respondent's professional performance may be reviewed by the Director of OPMC. This review may include, but shall not be limited to, a review of office records, patient records and/or hospital charts, interviews with or periodic visits with Respondent and his/her staff at practice locations or OPMC offices.
5. Respondent shall maintain legible and complete medical records which accurately reflect the evaluation and treatment of patients. The medical records shall contain all information required by State rules and regulations regarding controlled substances.
6. Respondent shall perform 200 hours of community service within 6 months of the effective date of this Order. The service must be medical in nature, and delivered in a facility or with an organization equipped to provide medical services and serving a needy or medically underserved population. A written proposal for community service must be submitted to, and is subject to the written approval of the Director of OPMC. Community service performed prior to written approval shall not be credited toward compliance with this Order.

7. Within thirty (30) 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 and 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 of no less than 10 percent of records maintained by Respondent of patients seen in his office and 20% of patients on whom procedures were performed in either an inpatient or ambulatory setting. 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.
8. Respondent shall comply with all terms, conditions, restrictions, limitations and penalties to which he or she is subject pursuant to the Order and shall assume and bear all costs related to compliance. Upon receipt of evidence of noncompliance with, or any violation of these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding and/or any such other proceeding against Respondent as may be authorized pursuant to the law.