



New York State Board for Professional Medical Conduct

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

Dennis P. Whalen
Executive Deputy Commissioner of Health
Anne F. Saile, Director
Office of Professional Medical Conduct
William J. Comiskey, Chief Counsel
Bureau 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

December 23, 1998

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Rocco DeSimone, M.D.
45 Park Drive
Rye, NY 10580

RE: License No. 085423

Dear Dr. DeSimone:

Enclosed please find Order #BPMC 98-309 of the New York State Board for Professional Medical Conduct. This Order and any penalty provided therein goes into effect **December 30, 1998.**

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: Anthony Benigno, Esq.

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

IN THE MATTER	:	APPLICATION TO
OF	:	MODIFY ORDER
	:	and
ROCCO DeSIMONE, M.D.	:	SURRENDER LICENSE
	:	BPMC #98-309

ROCCO DeSIMONE, M.D., the Respondent, states that I was authorized to practice medicine in New York State on February 20, 1961, by the issuance of License No. 085423 by the New York State Education Department.

I am currently registered with the New York State Education Department to practice in the State of New York. My address is 45 Park Drive, Rye, NY 10580.

I am the subject to Order No. BPMC 97-300, annexed hereto, made a part hereof, and marked as Exhibit 1. I am applying to the State Board for Professional Medical Conduct for an Order (henceforth "Modification/Surrender Order"), modifying the original order and to surrender my license to practice medicine in the State of New York. This application to modify the prior order is based upon the fact that I do not intend to practice medicine again in the State of New York, and upon the understanding that this modification/surrender order will be a revision of the original order, with the surrender predicated upon the same matter as was the original order. The modification/surrender order to be issued will not constitute a new disciplinary action against me, but will substitute license surrender for the sanction imposed by the original order.

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

I understand that, in the event that the 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.

I make this application to the Board and request that it be granted by execution by the Chairperson of the Board of the attached modification/surrender order. I agree that, in the event the Board grants my application, an order shall be issued striking my name from the roster of physicians in the State of New York without further notice to me.

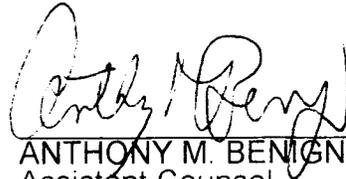
I am making this application of my own free will and accord and not under duress, compulsion or restraint of any kind or manner. In consideration of the Board's granting of this application modify my prior consent order, I fully, freely waive any right I may have to appeal or otherwise challenge the validity of the said modification/surrender order.



ROCCO DeSIMONE, M.D.
Respondent

The undersigned agree to the attached application of the Respondent to modify the original order and to surrender his license to practice medicine in the State of New York.

Date: Dec. 14, 1998



ANTHONY M. BENIGNO, ESQ.
Assistant Counsel
Bureau of Professional
Medical Conduct

Date: December 1998



ANNE F. SAILE
Director, Office of
Professional Medical Conduct

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

IN THE MATTER : MODIFICATION/
OF : SURRENDER ORDER
ROCCO DeSIMONE, M.D. : BPMC #

Upon the application of ROCCO DeSIMONE, M.D., (Respondent) to modify a prior order and to surrender his license as a physician in the State of New York, which application is made a part hereof, it is agreed to and

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

ORDERED, that Order BPMC 97-300 is modified to replace the sanction imposed with the surrender of Respondent's license to practice medicine in the State of New York; it is further

ORDERED, that Respondent's name shall be stricken from the roll of physicians in the State of New York; and it is further

ORDERED, that this order shall take effect as of the date of the personal service of this order upon Respondent, upon receipt by Respondent of this order via certified mail, or seven days after mailing of this order via certified mail, whichever is earliest.

SO ORDERED

Dated: 12/21/98



WILLIAM P. DILLON, M.D.
Chairperson
State Board for Professional Medical Conduct

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

**IN THE MATTER
OF
ROCCO J. De SIMONE, M.D.**

**CONSENT
ORDER**
BPMC #97-300

Upon the proposed agreement of ROCCO J. De SIMONE, 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 take effect as of the date of the personal service of this order upon Respondent, upon receipt by Respondent of this order via certified mail, or seven days after mailing of this order by certified mail, whichever is earliest.

SO ORDERED.

DATED: 12/8/97


PATRICK F. CARONE, M.D., M.P.H.
Chairperson
State Board for Professional
Medical Conduct

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

IN THE MATTER
OF
ROCCO J. De SIMONE, M.D.

CONSENT
AGREEMENT
AND
ORDER

STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss.:

ROCCO J. De SIMONE, M.D., being duly sworn, deposes and says:

That on or about February 20, 1961, I was licensed to practice as a physician in the State of New York, having been issued License No. 085423 by the New York State Education Department.

My current address is 45 Park Drive, Rye, New York 10580, 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 eleven specifications of professional misconduct.

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

I agree not to contest the allegations set forth in the Statement of Charges, in full satisfaction of the charges against me. I hereby agree to the following penalty:

My license to practice medicine in the State of New York shall be limited pursuant to § 230-a (3) of the New York Public Health Law, to preclude the practice of Obstetrics for a period of six months. Thereafter, pursuant to § 230-a (3) of the New York Public Health Law, my license to practice medicine shall be permanently limited to prohibit me from clinical practice and to preclude my diagnosing, prescribing for or operating upon any patients. Further,

I shall be placed on probation for as long as I hold my license pursuant to the Terms of Probation set forth in Exhibit "B".

I further agree that the Consent Order for which I hereby apply shall impose a condition that, except during periods of actual suspension, I maintain current registration of my 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 continuing until the full term of the Order has run, and until any associated period of probation and all probation terms have been completed and satisfied. I hereby stipulate that any failure by me to comply with such condition shall constitute misconduct as defined by New York State Education Law §6530(29)(McKinney Supp 1997).

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 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.


ROCCO J. De SIMONE, M.D.
RESPONDENT

Sworn to before me this

19 day of Nov, 19 97



NOTARY PUBLIC

ROGER PAGANELLI
Notary Public, State of N.Y.
No. 5004753
Certificate Filed in Westchester County
Commission Expires 11-17-98

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

DATE: 11/24/97


SILVIA P. FINKELSTEIN
Associate Counsel
Bureau of Professional Medical Conduct

DATE: December 3, 1997


ANNE F. SAILE
Director
Office of Professional
Medical Conduct

Medical Conduct

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

IN THE MATTER
OF
ROCCO J. De SIMONE, M.D.

STATEMENT
OF
CHARGES

ROCCO J. De SIMONE, M.D., the Respondent, was authorized to practice medicine in New York State on or about February 20, 1961, by the issuance of license number 085423 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. On or about June 3, 1990, Patient A, a 21 year old female, was admitted at Our Lady of Mercy Medical Center, Bronx, New York. Respondent, an attending obstetrician at said institution, undertook the care and treatment of Patient A. Respondent had rendered pre-natal care to Patient A.
1. On admission, the Patient's cervix was 1 cm dilated and 50% effaced. The fetal heart rate monitoring strip showed recurrent decreased and minimal beat to beat variability and recurrent late and variable decelerations, noted at 2:40 a.m. and 3:10 a.m. Respondent was informed. At 9:40 a.m. Respondent reviewed the fetal heart monitoring strips and found that there were no decelerations and that continued labor was indicated. Subsequently, the fetal monitor strip showed a flat tracing and a Cesarean section was performed. At the time of delivery, heavy Meconium stained amniotic fluid was noted.

Apgar scores were 5, 6, and 8 at 1, 5 and 10 minutes respectively. The infant suffered meconium aspiration and was placed on a ventilator. Thereafter he had increased muscle tone and remained in the hospital for a prolonged period of time. (The Patients are identified in the annexed Appendix).

Respondent engaged in conduct as follows:

- a. failed to recognize and adequately manage Patient A's high risk intrapartum course;
- b. failed to respond to an abnormal heart rate tracing;
- c. did not perform an immediate delivery via cesarean section;
- d. failed to maintain a hospital record for Patient A which accurately reflects the condition of the Patient, the condition of the fetus, the procedures performed and the circumstances surrounding delivery;
- e. failed to maintain an antepartum record for Patient A which accurately reflects the condition of the Patient and/or the condition of the fetus.

- B. On or about July 27, 1990, Patient B a 37 year old female, was admitted at Union Hospital of the Bronx, Bronx, New York. Respondent, an attending obstetrician at said institution, had rendered pre-natal care to Patient B.

1. On admission, the Patient's cervix was 1 fingertip dilated and 80% effaced, with a vertex at S-3, with ruptured membranes and in active labor at term. Patient B was Respondent's patient and he was notified of her arrival and status at 4:15 a.m. Respondent replied that the Patient either go to Our Lady of Mercy Hospital or be taken care of by the resident staff at Union Hospital. The next morning, Respondent came to Union Hospital and examined Patient B at 11:55 a.m. at which time the cervix was noted to be 6 cm dilated and the Patient was medicated with Demerol and Phenergan. Respondent started Pitocin at 12:05 p.m. and discontinued it at 1:50 p.m. Thereafter Respondent left the hospital. The Patient had an episode of fetal bradycardia at 3:05 p.m. and was attended to by the house physician at Union Hospital. Patient B was subsequently delivered by the resident staff at 3:27 p.m. Respondent engaged in conduct as follows:
 - a. abandoned a patient in need of immediate medical care;
 - b. failed to adequately monitor and attend to Patient B's intrapartum care;
 - c. failed to maintain an antepartum record for Patient B which accurately reflects the condition of the Patient and/or the condition of the fetus.
- C. On or about July 25, 1990, Respondent, an attending obstetrician at Our Lady of Mercy Medical Center, Bronx, New York, undertook the care and treatment of Patient C, a 26 year old female.

1. Upon admission, Patient C presented with spontaneous rupture of the membranes and contractions. Labor progressed uneventfully and she had a normal spontaneous delivery at 10:36 a.m. Within two hours, Patient C experienced severe peritoneal bleeding. Respondent noted at 12:00 noon that the Patient developed small hematoma of the episiotomy which was surgically repaired under general anesthesia. He further noted at that time that there was some oozing from the uterus and the vagina was packed and 2 units of blood were administered. Subsequently additional transfusions were administered. Patient C became shocky due to approximately 1 liter of hemorrhagic blood loss. The bleeding continued and a total abdominal hysterectomy was performed by another physician. Pathology of the uterus revealed a perforation of the anterior wall. Respondent engaged in conduct as follows:

- a. failed to expeditiously address Patient C's post-partum hemorrhage;
- b. failed to locate and repair the uterine perforation within a reasonable period of time;
- c. failed to appropriately act in response to Patient C's emergent condition post delivery;
- d. failed to maintain a hospital record for Patient C which accurately reflects the condition of the Patient, the procedures performed and the steps taken to diagnose and address Patient C's emergent condition;

- e. failed to maintain an antepartum record for Patient C which accurately reflects the condition of the Patient and/or the condition of the fetus.

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)(McKinney Supp. 1997) 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. The facts in paragraphs A, A.1, A.1.a through A.1.e; B, B.1, B.1.a through B.1.c and/or C, C.1, C.1.a through C.1.e

SECOND SPECIFICATION

INCOMPETENCE ON MORE THAN ONE OCCASION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(5)(McKinney Supp. 1997) 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. The facts in paragraphs A, A.1, A.1.a through A.1.e; B, B.1, B.1.a through B.1.c and/or C, C.1, C.1.a through C.1.e

THIRD THROUGH FIFTH SPECIFICATIONS

GROSS NEGLIGENCE

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(4)(McKinney Supp. 1997) by practicing the profession of medicine with gross negligence as alleged in the facts of the following:

3. The facts in paragraphs A, A.1, A.1.a through A.1.e;
4. The facts in paragraphs B, B.1, B.1.a through B.1.c;
5. The facts in paragraphs C, C.1, C.1.a through C.1.e.

SIXTH THROUGH EIGHTH SPECIFICATIONS

GROSS INCOMPETENCE

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(6)(McKinney Supp. 1997) by practicing the profession of medicine with gross incompetence as alleged in the facts of the following:

6. The facts in paragraphs A, A.1, A.1.a through A.1.e;
7. The facts in paragraphs B, B.1, B.1.a through B.1.c;
8. The facts in paragraphs C, C.1, C.1.a through C.1.e.

NINTH THROUGH ELEVENTH SPECIFICATIONS
FAILURE TO MAINTAIN ACCURATE RECORDS

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §(32)(McKinney Supp. 1997) 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:

9. The facts in paragraphs A, A.1.d and/or A.1.e;
10. The facts in paragraphs B, and B.1.c;
11. The facts in paragraphs C, C.1.d and/or C.1.e.

DATED: July , 1997
New York, New York

ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct

EXHIBIT "B"

Terms of Probation

1. Respondent shall conduct himself/herself 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. Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of Respondent's compliance with the terms of this Order. Respondent shall personally meet with a person designated by the Director of OPMC as requested by the Director.
4. Any civil penalty not paid by the date prescribed herein shall be subject to all provisions of law relating to debt collection by New York State. This includes but is 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 section 171(27)]; State Finance Law section 18; CPLR section 5001; Executive Law section 32].
5. 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.
6. 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.
7. 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.
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.