



New York State Board for Professional Medical Conduct

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

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

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Denise M. Bolan, R.P.A.
Vice Chair
Ansel R. Marks, M.D., J.D.
Executive Secretary

July 14, 1999

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Thomas V. Gullo, M.D.
1301 North Forest Rd.
Williamsville, NY 14221

RE: License No. 089320

Dear Dr. Gullo:

Enclosed please find Order #BPMC 99-169 of the New York State Board for Professional Medical Conduct. This Order and any penalty provided therein goes into effect **July 14, 1999**.

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: Carmen P. Tarantino, Esq.
Brown and Tarantino
1500 Rand Building
14 Lafayette Square
Buffalo, NY 14203

Kevin B. Donovan, Esq.

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

IN THE MATTER
OF
THOMAS V. GULLO, M.D.

CONSENT
AGREEMENT
AND
ORDER
BPMC #99-169

THOMAS V. GULLO, M.D., (Respondent) hereby affirms that: On or about September 10, 1962, I was licensed to practice as a physician in the State of New York, having been issued License No. 089320 by the New York State Education Department.

My current address is 1301 North Forest Road, Williamsville, New York 14221 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 seventeen specifications of professional misconduct.

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

I do not contest those specifications pertaining to Patients B, C, D and E contained in the attached Statement of Charges marked as Exhibit "A", in full satisfaction of the charges against me. I hereby agree to the following penalties:

1. A two year period of probation during which time I must fully comply with the Terms of Probation as set forth in Exhibit "B" including a practice monitor for the duration of probation.

2. A permanent restriction on my license wherein my gynecological surgical practice shall be limited to the following procedures: diagnostic dilation and curettage, diagnostic hysteroscopy, simple diagnostic laparoscopy and tubal ligation. During the period of my probation, any and all of these procedures shall be performed only after my practice monitor has reviewed the documented justification for such procedure(s) and has approved same in writing. No additional surgical procedure(s) may be performed during a caesarean section or other obstetrical procedure until after an appropriate written consultation is obtained, except in an emergency, which must be reported to OPMC within 24 hours after the emergency procedure.

I shall be permitted to assist at surgeries other than those specified above only under the following conditions: 1) I shall assist only when the surgery is performed by a physician who is board certified in the specialty (surgery, obstetrics or gynecology) in which the surgery is being performed; and 2) I shall not engage in or direct any care, treatment, or surgery unless the primary surgeon is physically present in the operating room.

I further agree that the Consent Order for which I hereby apply shall impose the following conditions:

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 will continue while the licensee possesses his/her license; 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 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 and will continue while the licensee possesses his license.

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.

Any practice of medicine by me in the State of New York in violation of this Order shall be unauthorized and shall constitute professional misconduct within the meaning of N.Y. Education Law §6530(2). I understand that unauthorized medical practice is a felony defined in N.Y. Education Law §6512.

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.

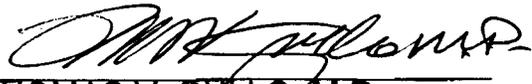
I agree that, in the event the Board grants my Application, as set forth herein, an order of the Chairperson of the Board shall be issued in accordance with same. I agree that such order shall be effective upon issuance by the Board, which may be accomplished by mailing, by first class mail, a copy of 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.

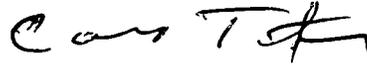
AFFIRMED:

DATED 6/28/99


THOMAS V. GULLO, 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: 10/28/99



CARMEN P. TARANTINO
Attorney for Respondent

DATE: 6/29/99



KEVIN P. DONOVAN
Associate Counsel
Bureau of Professional
Medical Conduct

DATE: July 1, 1999



ANNE F. SAILE
Director
Office of Professional
Medical Conduct

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

IN THE MATTER
 OF
 THOMAS V. GULLO, M.D.

CONSENT
 ORDER

Upon the proposed agreement of THOMAS V. GULLO, 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: 7/3/99

Denise M. Bolan, R.P.A.

 DENISE M. BOLAN, R.P.A.
 Vice Chair
 State Board for Professional
 Medical Conduct

EXHIBIT A

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

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IN THE MATTER : STATEMENT

OF : OF

THOMAS V. GULLO, M.D. : CHARGES

-----X

THOMAS V. GULLO, M.D., the Respondent, was authorized to practice medicine in New York State on September 10, 1962 by the issuance of license number 089320 by the New York State Education Department. The Respondent is currently registered with the New York State Education Department.

FACTUAL ALLEGATIONS

A. Respondent provided medical care to Patient A (patients are identified in Appendix), a female patient thirty-five years old when he first treated her, at his office located at 1301 North Forest Road, Williamsville, New York 14221, (hereafter, "office"), and at Children's Hospital of Buffalo, Buffalo, New York, (hereafter, "Children's Hospital"), from on or about May 8, 1996 to on or about December 1996. Respondent's care and treatment of Patient A failed to meet accepted standards of medical care in that:

1. Respondent failed to perform and/or document an adequate evaluation of Patient A's complaints including irregular menstrual periods, heavy menstrual bleeding, pain, and/or painful intercourse.
2. Respondent failed to adequately inform and/or document that he informed Patient A of the risks and benefits of

non-surgical treatment alternatives for her complaints including irregular menstrual periods, heavy menstrual bleeding, pain and/or painful intercourse.

3. Respondent failed to attempt to use and/or document an attempt to use non-surgical treatment alternatives prior to performing a total abdominal hysterectomy on Patient A.
4. Respondent failed to perform and/or document the performance of an adequate pre-operative evaluation prior to performing a total abdominal hysterectomy on Patient A.
5. Respondent failed to provide adequate post-operative care to Patient A and/or document such care.
6. Respondent failed to maintain an adequate record of his evaluation and treatment of Patient A.

B. Respondent provided medical care to Patient B at his office, at Children's Hospital and at Buffalo General Hospital , Buffalo, New York, (hereafter Buffalo General Hospital) from on or about November 1988 to on or about May 1997. Patient B was born on September 20, 1962. Respondent's care and treatment of Patient B failed to meet accepted standards of medical care in that:

1. Respondent failed to adequately inform and/or document that he informed Patient B of the risks and benefits of non-surgical treatment alternatives for her complaint of left-sided pain in April, 1997.
2. Respondent failed to attempt to use and/or document an attempt to use non-surgical alternatives prior to performing a left salpingo-oophorectomy on Patient B.
3. Respondent performed a left salpingo-oophorectomy on Patient B without sufficient evidence of ovarian pathology at the time of surgery.
4. Respondent failed to provide adequate post-operative care to Patient B and/or document such care.
5. Respondent failed to maintain an adequate record of his evaluation and treatment of Patient B.

C. Respondent provided medical care to Patient C, a thirty-eight year old female patient when he first treated her, at his office and Children's Hospital from on or about February 21, 1996 to on or about March 1997. Respondent's care and treatment of Patient C failed to meet accepted standards of medical care in that:

1. Respondent failed to adequately inform and/or document that he informed Patient C of the risks and benefits of non-surgical treatment alternatives for her complaints of increased menstrual bleeding and/or pain.
2. Respondent failed to attempt and/or document an attempt to use non-surgical treatment alternatives prior to performing a laparoscopically assisted vaginal hysterectomy on Patient C.
3. Respondent failed to adequately inform and/or document that he informed Patient C of non-surgical treatment alternatives for her complaints of pain prior to performing a bilateral salpingo-oophorectomy.
4. Respondent failed to attempt to use and/or document an attempt to use non-surgical treatment alternatives prior to performing a bilateral salpingo-oophorectomy on Patient C.
5. Respondent showed Patient C photographs of her removed ovaries and informed her that her left ovary was diseased which was without adequate medical justification.
6. Respondent failed to maintain an adequate record of his evaluation and treatment of Patient C.

D. Respondent provided medical care to Patient D, a forty-two year old female patient when he first treated her, at his office and at Children's Hospital from on or about January 16, 1997 to on or about April 6, 1997. Respondent's care and treatment of Patient D failed to meet accepted standards of medical care in that:

1. Respondent failed to adequately inform and/or document that he informed Patient D of the risks and benefits of non-surgical treatment alternatives for her complaints

of increased menstrual bleeding and/or pain.

2. Respondent failed to attempt to use and/or document an attempt to use non-surgical treatment alternatives for Patient D's complaints of increased menstrual bleeding and/or pain prior to performing a diagnostic laparoscopy on Patient D.
3. Respondent failed to adequately treat Patient D's chronic endometritis and/or failed to document such treatment.
4. Respondent, despite having diagnosed Patient D with endometriosis, failed to adequately treat such and/or document such treatment.
5. Respondent, despite having diagnosed Patient D with uterine prolapse, failed to offer and/or attempt non-surgical measures to treat this condition and/or failed to document such information.
6. Respondent failed to attempt and/or document an attempt to use non-surgical treatment alternatives prior to performing a total vaginal hysterectomy on Patient D.
7. Respondent failed to maintain an adequate record of his evaluation and treatment of Patient D.

E. Respondent provided medical care and treatment to Patient E at his office and at Children's Hospital from on or about July 1985 to on or about November 1996. Patient E was born on June 2, 1958. Respondent's care and treatment of Patient E failed to meet accepted standards of medical care, in that:

1. Respondent failed to perform and/or document an adequate evaluation of Patient E's complaints of increased menstrual bleeding.
2. Respondent failed to adequately inform and/or document that he informed Patient E of the risks and benefits of non-surgical alternatives to treat her complaints of increased menstrual bleeding.
3. Respondent failed to attempt to use and/or document an attempt to use non-surgical alternatives prior to performing a total abdominal hysterectomy on Patient E.

4. Respondent failed to maintain an adequate record of his evaluation and treatment of Patient E.

SPECIFICATIONS

FIRST THROUGH FIFTH SPECIFICATIONS

GROSS NEGLIGENCE

Respondent is charged with professional misconduct under N.Y. Education Law § 6530(4) by reason of his having practiced the profession with gross negligence in that Petitioner charges:

1. The facts in Paragraphs A and A.1, A and A.2, A and A.3, and/or A and A.5.
2. The facts in Paragraphs B and B.1, B and B.2, B and B.3, and/or B and B.4.
3. The facts in Paragraphs C and C.1, C and C.2, C and C.3, C and C.4, and/or C and C.5.
4. The facts in Paragraphs D and D.1, D and D.2, D and D.3, D and D.4, D and D.5, and/or D and D.6.
5. The facts in Paragraphs E and E.1, E and E.2, and/or E and E.3.

SIXTH THROUGH TENTH SPECIFICATIONS

GROSS INCOMPETENCE

Respondent is charged with professional misconduct under N.Y. Education Law § 6530(6) by reason of having practiced the profession with gross incompetence in that Petitioner charges:

6. The facts in Paragraphs A and A.1, A and A.2, A and A.3, A and A.4, and/or A and A.5.
7. The facts in Paragraphs B and B.1, B and B.2, B and B.3 and/or B and B.4.
8. The facts in Paragraphs C and C.1, C and C.2, C and C.3, C and C.4, and/or C and C.5.
9. The facts in Paragraphs D and D.1, D and D.2, D and D.3, D and D.4, D and D.5, and/or D and D.6.
10. The facts in Paragraphs e and E.1, E and E.2, and/or E and E.3.

ELEVENTH SPECIFICATION**NEGLIGENCE ON MORE THAN ONE OCCASION**

Respondent is charged with professional misconduct under N.Y. Education Law § 6530(3) by reason of his practicing the profession of medicine with negligence on more than one occasion in that Petitioner charges that Respondent committed two or more of the following :

11. The facts in Paragraphs A and A.1, A and A.2, A and A.3, A and A.4, A and A.5, A and A.6, B and B.1, B and B.2, B and B.3, B and B.4, B and B.5, C and C.1, C and C.2, C and C.3, C and C.4, C and C.5, C and C.6, D and D.1, D and D.2, D and D.3, D and D.4, D and D.5, D and D.6, D and D.7, E and E.1, E and E.2, E and E.3, and/or E and E.4.

TWELFTH SPECIFICATION**INCOMPETENCE ON MORE THAN ONE OCCASION**

Respondent is charged with professional misconduct under N.Y. Education Law § 6530(5) by reason of his having practiced the profession with incompetence on more than one occasion in that Petitioner charges:

12. The facts in Paragraphs A and A.1, A and A.2, A and A.3, A and A.4, A and A.5, B and B.1, B and B.2, B and B.3, B and B.4, C and C.1, C and C.2, C and C.3, C and C.4, C and C.5, D and D.1, D and D.2, D and D.3, D and D.4, D and D.5, D and D.6, E and E.1, E and E.2, and/or E and E.3.

THIRTEENTH THROUGH SEVENTEENTH SPECIFICATIONS**INADEQUATE RECORD KEEPING**

Respondent is charged with professional misconduct under N.Y. Education Law § 6530(32) by reason of his having failed to maintain a record for each patient which accurately reflects the evaluation and treatment of each patient in that Petitioner

charges:

13. The facts in Paragraphs A and A.1, A and A.2, A and A.3, A and A.4, A and A.5, and/or A and A.6.
14. The facts in Paragraphs B and B.1, B and B.2, B and B.3, B and B.4 and/or B and B.5
15. The facts in Paragraphs C and C.1, C and C.2, C and C.3, C and C.4, C and C.5, and/or C and C.6.
16. The facts in Paragraphs D and D.1, D and D.2, D and D.3, D and D.4, D and D.5, D and D.6, and/or D and D.7.
17. The facts in Paragraphs E and E.1, E and E.2, E and E.3, and/or E and E.4.

DATED: *June 29*, 1999

Albany, New York

Peter D. Van Buren

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/her 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. 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].
4. 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.
5. 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 staff at practice locations or OPMC offices.
6. 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.
7. 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. Approval of a monitor or supervisor is a condition precedent to the Respondent's further practice of medicine and any practice of medicine without a pre-approved monitor is unauthorized within the meaning of N.Y. Educ. Law §6512, and may lead to criminal prosecution.

- 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 less than 25 per cent) 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.
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.