



New York State Board for Professional Medical Conduct

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

Public

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Office of Professional Medical Conduct

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

March 16, 2011

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Donald H. Frank, M.D.



Re: License No. 093621

Dear Dr. Frank:

Enclosed is a copy of BPMC #11-63 of the New York State Board for Professional Medical Conduct. This order and any penalty provided therein goes into effect March 23, 2011.

Sincerely,



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

Enclosure

cc: Peter J. Millock, Esq.
Nixon, Peabody, LLP
677 Broadway, 10th Floor
Albany, NY 12207

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

IN THE MATTER
OF
DONALD H. FRANK, M.D.

CONSENT
ORDER

BPMC No. #11-63

Upon the application of **DONALD H. FRANK, 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.

DATE: 3/15/11



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

IN THE MATTER
OF
DONALD H. FRANK, M.D.
CO-09-08-5204-A

CONSENT
AGREEMENT
AND
ORDER

DONALD H. FRANK, M.D., Respondent, represents that all of the following statements are true:

That on or about December 9, 1964, I was licensed to practice medicine in the State of New York, and issued license number 093621 by the New York State Education Department.

My current address is [REDACTED] 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 two ("2") 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, DONALD H. FRANK, M.D., agree not to contest the First Specification, in full satisfaction of the charges against me, and agree to the following penalty:

Pursuant to New York Pub. Health Law § 230-a(3), my license to practice medicine in New York State shall be limited to my practicing in a state or federally licensed facility. Further, my surgical activities shall be limited to functioning as a First Assistant Surgeon;

Pursuant to N.Y. Pub. Health Law §§ 230-a(2), my license to practice shall be Suspended for a period of 24 months, Stayed; and

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.

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 120 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

3/2/11



DONALD H. FRANK, M.D.
RESPONDENT

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

DATE: 3/7/11


PETER J. MILLOCK, Esq.
Attorney for Respondent

DATE: 3/9/11


MICHAEL G. BASS, Esq.
Assistant Counsel
Bureau of Professional Medical Conduct

DATE: 3/14/11


KEITH W. SERVIS
Director
Office of Professional Medical Conduct

EXHIBIT A

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

IN THE MATTER
OF
DONALD H. FRANK, M.D.
CO-09-08-5204-A

STATEMENT
OF
CHARGES

DONALD H. FRANK, M.D., Respondent, was authorized to practice medicine in New York State on December 9, 1964, by the issuance of license number 093621 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about June 26, 2009, the New Jersey State Board of Medical Examiners (hereinafter "New Jersey Board"), by an "Interim Consent Order" (hereinafter "New Jersey Order"), pending a full hearing, limited Respondent's "surgical activities ... to functioning as a First Assistant Surgeon" to certain physicians approved by the New Jersey Board, required Respondent to have each of his own patients pre-approved for surgery by said certain physicians, and required Respondent to undergo "an assessment of surgical skills by an independent entity" within 3 months, based on uncontested allegations that Respondent's care of 4 certain patients with gross negligence, gross incompetence, negligence, and/or incompetence "presents a clear and imminent danger to the public health, safety, and welfare warranting the immediate temporary suspension of his license..."

B. On or about March 11, 2010, the New Jersey Board, by a "Final Consent Order," based on the same conduct referred to in Paragraph A above:

1. suspended Respondent's license to practice medicine and surgery for 2 years with the first 6 months constituting an active suspension and the remaining 18 months constituting a stayed suspension and active probation;
2. required Respondent to "hold privileges solely in Ambulatory Surgical Centers made known in advance to the [New Jersey] Board";
3. permanently limited Respondent's surgical activities "to functioning as a First Assistant Surgeon in the performance of surgeries by a surgeon approved in advance by the

[New Jersey] Board” and to functioning as a “First Assistant Surgeon in surgeries on the patients of his practice if said surgeries are subject to the pre-approval and advice” of said certain surgeons;

4. assessed to Respondent a civil penalty of \$5,000;00;
5. assessed to Respondent costs of \$20,812.18; and
6. required Respondent to successfully complete 1 coding and billing course approved by the New Jersey Board.

C. The conduct resulting in the New Jersey Board disciplinary action against Respondent would constitute misconduct under the laws of New York State, pursuant to the following sections of New York State law:

1. New York Education Law §6530(3) (practicing the profession with negligence on more than one occasion);
2. New York Education Law §6530(4) (practicing the profession with gross negligence on a particular occasion);
3. New York Education Law 6530(5) (practicing the profession with incompetence on more than one occasion); and/or
4. New York Education Law 6530(6) (practicing the profession with gross incompetence).

SPECIFICATIONS OF MISCONDUCT

FIRST SPECIFICATION

Respondent violated New York Education Law §6530(9)(b) by having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York State, constitute professional misconduct under the laws of New York State, in that Petitioner charges:

1. The facts in Paragraphs A, B, C, C(1), C(2), C(3) and/or C(4).

SECOND SPECIFICATION

Respondent violated New York Education Law §6530(9)(d) by having his license to practice medicine revoked, suspended or having other disciplinary action taken by a duly

authorized professional disciplinary agency of another state, or having voluntarily or otherwise surrendered his license after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state where the conduct resulting in the revocation, suspension or other disciplinary action would, if committed in New York State, constitute professional misconduct under the laws New York State, in that Petitioner charges:

2. The facts in Paragraphs A, B, C, C(1), C(2), C(3) and/or C(4).

DATED: *December 21*, 2010
Albany, New York



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