

*Public*  
**New York State Board for Professional Medical Conduct**  
433 River Street, Suite 303 • Troy, New York 12180-2299 • (518) 402-0863

*Richard F. Daines, M.D.*  
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*NYS Department of Health*  
*James W. Clyne, Jr.*  
*Executive Deputy Commissioner*  
*Keith W. Servis, Director*  
*Office of Professional Medical Conduct*

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

December 14, 2009

**CERTIFIED MAIL-RETURN RECEIPT REQUESTED**

Francis Malachi Powers, Jr, M.D.

Redacted Address

Re: License No. 114239

Dear Dr. Powers:

Enclosed is a copy of BPMC #09-219 of the New York State Board for Professional Medical Conduct. This order and any penalty provided therein goes into effect December 21, 2009.

**If the penalty imposed by this Order is a surrender, revocation or suspension, you are required to deliver your license and registration within five (5) days of receipt of this Order** and return it to the Office of Professional Medical Conduct, New York State Department of Health, 433 River Street, Suite 303, Troy, NY 12180-2299

Sincerely,

Redacted Signature

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

Enclosure

cc: Alison Tanchyk Dante, Esq  
Morgan, Lewis & Bockius, LLP  
1701 Market Street  
Philadelphia, PA 19103-2921

IN THE MATTER  
OF  
FRANCIS MALACHI POWERS, JR., M.D.

CONSENT  
ORDER

BPMC No. #09-219

Upon the application of **FRANCIS MALACHI POWERS, JR., M.D.**, (Respondent), in the attached Consent Agreement and Order, that 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.

DATED: 12-11-2009

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

CONSENT

OF

AGREEMENT

FRANCIS MALACHI POWERS, JR., M.D.  
CO-08-01-0036-A

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**FRANCIS MALACHI POWERS, JR., M.D.**, (Respondent), representing that all of the following statements are true, deposes and says:

That on or about October 11, 1972, I was licensed to practice medicine as a physician in the State of New York, and issued license number 114239 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 my address within thirty (30) days, thereof.

I understand that the New York State Board for Professional Medical Conduct (Board) has charged me with three (3) 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 do not contest the First and Third Specifications, in full satisfaction of the charges against me, and agree to the following penalty:

Censure and Reprimand.

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

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 Education Law § 6502(4) to avoid registration and payment of fees. This condition shall take effect 30 days after the effective date of the Consent Order 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 Agreement. Respondent shall meet with a person designated by the Director, 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 New York Education Law § 6530(29).

I agree that, if I am charged with professional misconduct in future, this Consent Agreement and Consent 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 New York Public 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 New York Public 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, OPMC, and the Chair of the Board each retain complete discretion either to enter into the proposed Consent 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.

AFFIRMED:

DATED: 11/30/09

< Redacted Signature

FRANCIS MALACHI POWERS, JR., M.D.  
Respondent

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


DATE: 12/3/2009

Redacted Signature

  
ALISON DANTE  
Attorney for Respondent


DATE: 07 Dec 2009

Redacted Signature

  
ROBERT BOGAN  
Associate Counsel  
Bureau of Professional Medical Conduct

DATE: 12/10/09

Redacted Signature

  
KEITH W. SERVIS  
Director  
Office of Professional Medical Conduct

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

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IN THE MATTER  
OF  
FRANCIS MALACHI POWERS, JR., M.D.  
CO-08-01-0036-A

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STATEMENT  
OF  
CHARGES

**FRANCIS MALACHI POWERS, JR., M.D.**, Respondent, was authorized to practice medicine in New York state on October 11, 1972, by the issuance of license number 114239 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

- A. On or about October 5, 2006, in the United States District Court, Middle District of Pennsylvania, Respondent was found guilty, based on a plea of guilty, of Filing False Corporate Tax Return, in violation of 26 USC §7206(1), a felony, and on February 7, 2007, was sentenced to one (1) year probation with terms, a \$100.00 assessment, and a \$10,000.00 fine.
- B. On or about December 18, 2007, the Commonwealth of Pennsylvania, Bureau of Professional and Occupational Affairs, State Board of Medicine (hereinafter "Pennsylvania Board"), by an Order (hereinafter "Pennsylvania Order"), inter alia, PUBLICLY REPRIMANDED Respondent and placed his license to practice medicine on ONE YEAR PROBATION, based on the criminal conviction set forth in Paragraph A, above.
- C. The conduct resulting in the Pennsylvania 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(9)(a)(ii) (being convicted of committing an act constituting a crime under federal law.

**SPECIFICATIONS**

**FIRST SPECIFICATION**

Respondent violated New York Education Law §6530(9)(a)(ii) by being convicted of committing an act constituting a crime under federal law, in that Petitioner charges:

1. The facts in Paragraph A.

**SECOND 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:

2. The facts in Paragraphs A, B, and/or C.

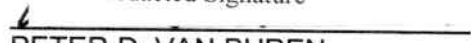
**THIRD SPECIFICATION**

Respondent violated New York Education Law §6530(9)(d) by having disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the disciplinary action would, if committed in New York state, constitute professional misconduct under the laws New York state, in that Petitioner charges:

3. The facts in Paragraphs A, B, and/or C.

DATED: *Aug. 21*, 2009  
Albany, New York

Redacted Signature

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