



Department of Health

KATHY HOCHUL
Governor

JAMES V. McDONALD, M.D., M.P.H.
Commissioner

MEGAN E. BALDWIN
Acting Executive Deputy Commissioner

June 15, 2023

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Scott Podolsky, M.D.


Re: License No. 183558

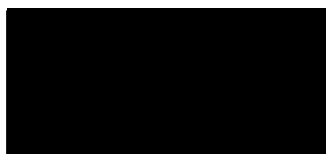
Dear Dr. Podolsky:

Enclosed is a copy of the New York State Board for Professional Medical Conduct (BPMC) Order No. 23-128. This order and any penalty provided therein goes into effect June 22, 2023.

The Board Order checklist requires your review and compliance as it relates to your Order.

Please direct any questions to: Board for Professional Medical Conduct, Riverview Center, 150 Broadway, Suite 355, Albany, New York 12204, telephone # 518-402-0846.

Sincerely,



David Besser, M.D.
Executive Secretary
Board for Professional Medical Conduct

Enclosure

cc: Daniel R. Ryan, Esq.
Smith, Sovick, Kendrick & Sugnet, P.C.
250 S. Clinton Street, Suite 600
Syracuse, New York 13202

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

BPMC No. 23-128

IN THE MATTER
OF
SCOTT PODOLSKY, M.D.

CONSENT
ORDER

Upon the application of Scott Podolsky, M.D. (Respondent) 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: 6/14/2023


THOMAS T. LEE, M.D.
Chair
State Board for Professional Medical Conduct

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

IN THE MATTER
OF
SCOTT PODOLSKY, M.D.

CONSENT
AGREEMENT

Scott Podolsky, M.D., represents that all of the following statements are true:

That on or about August 16, 1990, I was licensed to practice as a physician in the State of New York, and issued License No. 183558 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 one or more 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 assert that I cannot successfully defend against at least one of the acts of misconduct alleged, in full satisfaction of the charges against me, and agree to the following penalty:

Pursuant to N.Y. Pub. Health Law § 230-a(6), Respondent shall be subject to a limitation precluding registration or issuance of any further license.

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

That Respondent shall comply with each and every penalty imposed by this Order pursuant to N.Y. Pub. Health Law § 230-a; and

That Respondent shall be precluded from practicing medicine in New York State, from practicing in any setting where the Respondent's practice is based solely on the Licensee's New York license, and from further reliance upon Respondent's New York license to practice medicine to exempt Respondent from the licensure, certification or other requirements set forth in statute or regulation for the practice of any other profession licensed, regulated or certified by the Board of Regents, Department of Education, Department of Health or the Department of State; and

That if Respondent is currently registered to practice medicine in New York State, Respondent shall, within 30 days of the issuance of the Consent Order, notify the New York State Education Department, Division of Professional Licensing Services, that Respondent's license status is "inactive," shall provide proof of such notification to the Director of OPMC immediately upon having done so, and shall not reactivate or reregister the license at any time; and

That Respondent shall provide the Director, Office of Professional Medical Conduct (OPMC), Riverview Center, 150 Broadway, Suite 355, Albany, New York 12204-2719, with the following information, in writing, and ensure that this information is kept current: a full description of Respondent's employment and practice; all professional and residential addresses and telephone numbers within and outside New York State; and all investigations, arrests, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility. Respondent shall notify OPMC, in writing, within 30 days of any additions to or changes in the required information. This condition shall take effect 30 days after the Order's effective date and shall continue at all times until Respondent receives written notification from the Office of Professional Medical Conduct, Physician Monitoring Program, that OPMC has determined that Respondent has fully complied with and satisfied the requirements of the Order, regardless of tolling; and

That Respondent shall cooperate fully with the Office of Professional Medical Conduct (OPMC) in its administration and enforcement of this 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 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; and

That Respondent shall comply with all conditions set forth in attached Exhibit "B" ("Requirements for Closing a Medical Practice").

I stipulate that my failure to comply with any conditions of this Order shall constitute misconduct as defined in 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 the 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 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 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. OPMC shall report this action to the National Practitioner Data Bank and the Federation of State Medical Boards, and any other entities that the Director of OPMC shall deem appropriate.

I stipulate that the proposed sanction and Order are authorized by N.Y. Pub. Health Law §§ 230 and 230-a, and that the Board for Professional Medical Conduct and the Office of Professional Medical Conduct 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 ask that the Board adopt this Consent Agreement.

I am aware and agree that, regardless of prior communication, the attorney for the Department, the Director of the Office of Professional Medical Conduct, and the Chairperson of the State Board for Professional Medical Conduct each reserve full discretion to enter into the Consent Agreement that I propose in this application, or to decline to do so.


DATE

6/9/23



SCOTT PODOLSKY, M.D.
RESPONDENT

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

DATE: 6/9/23


DANIEL R. RYAN, ESQ.
Attorney for Respondent

DATE: 6/9/23


PAUL TSUI
Associate Counsel
Bureau of Professional Medical Conduct

DATE: 6/14/2023



SHELLY WANG BANDAGO
Director
Office of Professional Medical Conduct

Exhibit A

IN THE MATTER

OF

SCOTT PODOLSKY, M.D.

STATEMENT
OF
CHARGES

SCOTT PODOLSKY, M.D., the Respondent, was authorized to practice medicine in New York State on or about August 16, 1990, by the issuance of license number 183558 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. Respondent provided medical care to Patient A (Patients are identified in attached Appendix A), a 70-year-old female at the time of treatment at Rome Memorial Hospital, 1500 North James Street, Rome, NY 13440, on or about June 1, 2021. Patient A was admitted for a laparoscopic repair of a diaphragmatic hernia. Patient A had a history of asthma, bronchiectasis, hypertension, sarcoidosis, osteoarthritis and depression. Patient A expired following the procedure after suffering a cardiac arrest while in the PACU. Respondent's medical of Patient A deviated from accepted standards of care preoperatively, intraoperatively, and postoperatively as follows:

1. Respondent failed to perform an adequate preoperative evaluation of Patient A by failing to include a physical examination, preoperative vital signs, and the American Society of Anesthesiologists (ASA) classification and/or failed to document such an evaluation.

2. Respondent failed to review and consider Patient A's prior surgical history and reaction to anesthesia.
3. Respondent failed to review and/or document Patient A's preoperative medications and history.
4. Respondent failed to keep legible notes so that it was unclear what anesthetic agents were administered.
5. Respondent failed to sign, date, and note the time of the evaluation
6. Respondent failed to monitor and/or document Patient A's temperature during the procedure.
7. Respondent failed to utilize Train-of-Four neuromuscular monitoring during the procedure.
8. Respondent failed to observe and/or document Patient A's postoperative vital signs.
9. Respondent failed to timely treat Patient A who was critically hypotensive upon arrival in the PACU with a blood pressure of 51/21 and an oxygen saturation in the range of 70% to 80%.
10. Respondent recorded a post-operative note that Patient A was "stable and back to baseline" when Patient A's vitals were 50% below baseline.
11. Respondent recorded a post-operative note that Patient A was "mildly hypotensive and mildly hypoxic" when Patient A was profoundly hypotensive and hypoxic.

12. Respondent left Patient A in the PACU and proceeded to evaluate his next patient until called to return to the PACU.
13. Respondent failed to timely administer ephedrine and administered a second dose despite the first dose being ineffective and/or failed to document his justification for administering a second dose.
14. Respondent failed to timely use a vasopressor.
15. Respondent failed to adequately treat Patient A by administering a fluid bolus after Patient A had received over a liter of fluids and had not suffered blood loss during the procedure.
16. Respondent failed to immediately administer a bolus of phenylephrine instead administering it as an infusion after Patient A had been hypotensive for more than an hour.
17. Respondent failed to timely initiate airway control and circulatory support.
18. Respondent failed to timely intubate Patient A after suffering a cardiac arrest.
19. Respondent improperly administered sufentanil to Patient A and/or failed to document his justification for administering sufentanil.
20. Respondent failed to adequately assess reversal of muscle relaxation and/or failed to adequately administer naloxone.
21. Respondent failed to maintain a record that accurately reflected the evaluation and treatment of Patient A.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

GROSS NEGLIGENCE

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

1. The facts of Paragraphs A and A1, A and A2, A and A3, A and A4, A and A5, A and A6, A and A7, A and A8, A and A9, A and A10, A and A11, A and A12, A and A13, A and A14, A and A15, A and A16, A and A17, A and A18, A and A19, A and A20, and/or A21.

SECOND SPECIFICATION

GROSS INCOMPETENCE

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

2. The facts of Paragraphs A and A1, A and A2, A and A3, A and A4, A and A5, A and A6, A and A7, A and A8, A and A9, A and A10, A and A11, A and A12, A and A13, A and A14, A and A15, A and A16, A and A17, A and A18, A and A19, A and A 20, and/or A and A21.

THIRD SPECIFICATION

FAILURE TO MAINTAIN RECORDS

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(32) by failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient, as alleged in the facts of:

3. The facts of Paragraphs A and A1, A and A3, A and A4, A and A5, A and A6, A and A8, A and A10, A and A11, A and A13, A and A19, and/or A and A21.

DATE: June 17, 2023
Albany, New York


JEFFREY J. CONKLIN
Deputy Director
Bureau of Professional Medical Conduct

EXHIBIT "B"

**Requirements for Closing a Medical Practice
(Following Agreement to Never Register/Never Practice)**

1. Licensee shall immediately cease and desist from engaging in the practice of medicine in New York State, or under Licensee's New York license, in accordance with the terms of the Order. In addition, Licensee shall refrain from providing an opinion as to professional practice or its application and from representing that Licensee is eligible to practice medicine in New York or pursuant to a New York license.
2. Within 5 days of the Order's effective date, Licensee shall deliver Licensee's current biennial registration, if any, to the Office of Professional Medical Conduct (OPMC) at Riverview Center, 150 Broadway, Suite 355, Albany, New York 12204-2719.
3. Within 15 days of the Order's effective date, Licensee shall, with regard to New York practice or practice anywhere pursuant to Licensee's New York license, notify all patients of the cessation of Licensee's medical practice, and shall refer all patients to another licensed practicing physician for continued care, as appropriate. Licensee shall notify, in writing, each health care plan with which the Licensee contracts or is employed, and each hospital where Licensee has privileges, that Licensee has ceased medical practice. Within 45 days of the Order's effective date, Licensee shall provide OPMC with written documentation that all patients and hospitals have been notified of the cessation of Licensee's medical practice.
4. Licensee shall, with regard to New York practice or practice anywhere pursuant to Licensee's New York license, make arrangements for the transfer and maintenance of all patient medical records. Within 30 days of the Order's effective date, Licensee shall notify OPMC of these arrangements, including the name, address, and telephone number of an appropriate and acceptable contact persons who shall have access to these records. Original records shall be retained for at least 6 years

after the last date of service rendered to a patient or, in the case of a minor, for at least 6 years after the last date of service or 3 years after the patient reaches the age of majority, whichever time period is longer. Records shall be maintained in a safe and secure place that is reasonably accessible to former patients. The arrangements shall include provisions to ensure that the information in the record is kept confidential and is available only to authorized persons. When a patient or a patient's representative requests a copy of the patient's medical record, or requests that the original medical record be sent to another health care provider, a copy of the record shall be promptly provided or forwarded at a reasonable cost to the patient (not to exceed 75 cents per page.) Radiographic, sonographic and similar materials shall be provided at cost. A qualified person shall not be denied access to patient information solely because of an inability to pay.

5. In the event that Licensee holds a Drug Enforcement Administration (DEA) certificate for New York State, Licensee shall, within fifteen (15) days of the Order's effective date, advise the DEA, in writing, of the licensure action and shall surrender the Licensee's DEA controlled substance privileges for New York State to the DEA. Licensee shall promptly surrender any unused DEA #222 U.S. Official Order Forms Schedules 1 and 2 for New York State to the DEA. All submissions to the DEA shall be addressed to Diversion Program Manager, New York Field Division, U.S. Drug Enforcement Administration, 99 Tenth Avenue, New York, NY 10011.
6. Within 15 days of the Order's effective date, Licensee shall return any unused New York State official prescription forms to the Bureau of Narcotic Enforcement of the New York State Department of Health. If no other licensee is providing services at Licensee's practice location, Licensee shall properly dispose of all medications.
7. Within 15 days of the Order's effective date, Licensee shall, with regard to New York practice or practice anywhere pursuant to Licensee's New York license, remove from the public domain any representation that Licensee is eligible to practice medicine, including all related signs, advertisements, professional listings (whether in telephone directories, internet or otherwise), professional stationery or

billings. Licensee shall not share, occupy, or use office space in which another licensee provides health care services.

8. Licensee shall not, with regard to New York practice or practice anywhere pursuant to Licensee's New York license, charge, receive or share any fee or distribution of dividends for professional services rendered by Licensee or others while Licensee is barred from engaging in the practice of medicine. Licensee may be compensated for the reasonable value of services lawfully rendered, and disbursements incurred on a patient's behalf, prior to the Order's effective date.
9. If Licensee is a shareholder in any professional service corporation organized to engage in the practice of medicine in New York, Licensee shall divest all financial interest in the professional services corporation, in accordance with New York Business Corporation Law. Such divestiture shall occur within 90 days. If Licensee is the sole shareholder in a professional services corporation, the corporation must be dissolved or sold within 90 days of the Order's effective date.
10. Failure to comply with the above directives may result in a civil penalty or criminal penalties as may be authorized by governing law. Under N.Y. Educ. Law § 6512, it is a Class E Felony, punishable by imprisonment of up to 4 years, to practice the profession of medicine when a professional license has been suspended, revoked or annulled. Such punishment is in addition to the penalties for professional misconduct set forth in N.Y. Pub. Health Law §230-a, which include fines of up to \$10,000 for each specification of charges of which the Licensee is found guilty, and may include revocation of a suspended license.