

**NEW YORK**  
state department of  
**HEALTH**

Nirav R. Shah, M.D., M.P.H.  
Commissioner

Sue Kelly  
Executive Deputy Commissioner

August 19, 2013

***CERTIFIED MAIL-RETURN RECEIPT REQUESTED***

Franklin S. Cohen, M.D.

REDACTED

RE: License No. 184797

Dear Dr. Cohen:

Enclosed is a copy of the New York State Board for Professional Medical Conduct (BPMC) Order No. 13-255. This Order and any penalty provided therein goes into effect August 26, 2013.

If the penalty imposed by the Order is a fine, please write the check payable to the New York State Department of Health. Noting the BPMC Order number on your remittance will assist in proper crediting. Payments should be directed to the following address:

Bureau of Accounts Management  
New York State Department of Health  
Corning Tower, Room 2784  
Empire State Plaza  
Albany, New York 12237

Please direct any questions to: Board for Professional Medical Conduct, 90 Church Street, 4th Floor, New York, NY 10007-2919, telephone # 212-417-4445.

Sincerely,

REDACTED

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

cc: Robert Asher, Esq.  
43 Drake Road  
Scarsdale, NY 10583

IN THE MATTER  
OF  
FRANKLIN COHEN, M.D.

CONSENT  
ORDER

Upon the application of (Respondent) FRANKLIN COHEN, 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: 8/17/2013

REDACTED

\_\_\_\_\_  
ARTHUR S. HENGERER, M.D.  
Chair  
State Board for Professional Medical Conduct

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

IN THE MATTER  
OF  
FRANKLIN COHEN, M.D.

CONSENT  
AGREEMENT  
AND  
ORDER

FRANKLIN COHEN, M.D., represents that all of the following statements are true:

That on or about 1/17/1991, I was licensed to practice as a physician in the State of New York, and Issued License No. 184797 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 five specifications of professional misconduct, as set forth in a Statement of Charges, marked as Exhibit "A", which is attached to and part of this Consent Agreement.

I admit guilt to the second specification of the Charges in that I committed professional misconduct as defined by N.Y. Educ. Law Section 6530(35) by ordering excessive tests, treatment or use of treatment facilities not warranted by the condition of the patient as alleged in the facts of paragraph A and each of its subparagraphs, in full satisfaction of the Charges made against me, and agree to the following penalty:

Pursuant to N.Y. Pub. Health Law § 230-a(1), I shall be subject to a Censure and Reprimand.

Pursuant to N.Y. Pub. Health Law § 230-a(9), I shall be placed on probation for a period of 36 months, subject to the terms set forth in attached Exhibit "B," provided however that if at least 25 abdominal procedures (first condition set forth below) are not completed before the 36 month period has run and if the Director of OPMC finds that the number of such procedures completed is insufficient to assure that remediation was successful, the Director shall have the authority, in the reasonable exercise of discretion, to extend the period of probation and any of its terms until successful remediation is established to the Director's satisfaction.

Pursuant to N.Y. Pub. Health Law §§ 230-a(7) and (9), I shall be subject to a fine in the amount of \$40,000.00, to be paid in full within one year of the effective date of this Consent Order. Payments must be submitted to:

Bureau of Accounts Management  
New York State Department of Health  
Empire State Plaza  
Corning Tower, Room 2784  
Albany, New York 12237

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

That, after the effective date of this Consent Order, Respondent shall perform abdominal procedures only in a facility licensed pursuant to Article 28 of the New York Public Health Law.

With respect to the first 25 open abdominal procedures that Respondent performs after the effective date of this Consent Order, (whether planned as open or upon conversion from planned laparoscopic procedures) Respondent shall perform these planned or conversion open procedures only after he: (i) has consulted with another Board-certified general surgeon on staff at the facility where the procedure is to be performed, and (ii) has obtained that surgeon's agreement that the planned open abdominal procedure, or conversion to open procedure, is the medically appropriate procedure under the circumstances. Respondent shall note the identity of the surgeon consulted and the advice given by that surgeon in the medical record.

The term "abdominal procedure" shall include but not be limited to the following procedures: bowel resections, common bile duct explorations, complicated gall bladder removals, and all other operative procedures of similar complexity.

After Respondent has demonstrated compliance with these conditions for at least one year, and including successful completion of 25 open abdominal procedures, Respondent may petition the Director, in the

reasonable exercise of his discretion, to terminate that part of this Condition which restricts abdominal procedures to a Public Health Law Article 28 facility.

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 remain in continuous compliance with all requirements of N.Y. Pub. Health Law § 2995-a(4) and 10 NYCRR 1000.5, including but not limited to the requirements that a licensee shall : report to the Department all information required by the Department to develop a public physician profile for the licensee; continue to notify the Department of any change in profile information within 30 days of any change (or in the case of optional information, within 365 days of such change); and, in addition to such periodic reports and notification of any changes, update his or her profile information within six months prior to the expiration date of the

licensee's registration period. Licensee shall submit changes to his or her physician profile information either electronically using the Department's secure web site or on forms prescribed by the Department, and licensee shall attest to the truthfulness, completeness and correctness of any changes licensee submits to the department. This condition shall take effect 30 days after the Order's effective date and shall continue so long as Respondent remains a licensee in New York State. Respondent's failure to comply with this condition, if proven and found at a hearing pursuant to N.Y. Pub. Health Law § 230, shall constitute professional misconduct as defined in N.Y. Educ. Law § 6530(21) and N.Y. Educ. Law § 6530(29). Potential penalties for failure to comply with this condition may include all penalties for professional misconduct set forth in N.Y. Pub. Health Law §230-a, including but not limited to: revocation or suspension of license, Censure and Reprimand, probation, public service and/or fines of up to \$10,000 per specification of misconduct found; 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. 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 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 6/7/13

REDACTED  
\_\_\_\_\_  
FRANKLIN COHEN, M.D.  
RESPONDENT

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

DATE: 8/7/2013

REDACTED

ROBERT ASHER, ESQ.  
Attorney for Respondent

DATE: 8/8/13

REDACTED

CHRISTINE M. RADMAN  
Associate Counsel  
Bureau of Professional Medical Conduct

DATE: 8/16/13

REDACTED

KEITH W. SERVIS  
Director  
Office of Professional Medical Conduct

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

EXHIBIT "A"

IN THE MATTER  
OF  
FRANKLIN COHEN

STATEMENT  
OF  
CHARGES

FRANKLIN COHEN, M.D., the Respondent, was authorized to practice medicine in New York State on or about January 17, 1991, by the issuance of license number 184797 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

- A. Patient A, a 56 year-old woman, was admitted to Lenox Hill Hospital (LHH) in New York, New York on November 28, 2006, via the Emergency Department where she presented complaining of a leaking enterocutaneous fistula with exposed surgical mesh. Her white count was normal, she was afebrile and on a regular diet. Patient A's history was significant for recurrent ovarian cancer, diagnosed in 2003 when she was treated with a total abdominal hysterectomy with bilateral salpingo-oophorectomy and chemotherapy. Patient A then developed a ventral incisional hernia, which was repaired in 2004, and subsequently underwent a surgical debulking of tumor in 2005. In early 2006, a supraumbilical hernia was repaired and in August of that same year she began to develop fistulization from her small bowel to her skin. On December 6, 2007, Respondent, a general surgeon, operated on Patient A and deviated from the standard of care in that he:
1. Failed to provide Patient A with adequate pre-operative preparation and medical support;
  2. Performed a medically contraindicated laparoscopy;
  3. Failed to abandon further surgical intervention when the laparoscopy identified extensive metastatic lesions; and

4. Performed an inappropriate and medically unwarranted extensive procedure, including a radical resection of Patient A's small bowel and sigmoid colectomy, after which Patient A presented to the recovery room in shock with a systolic blood pressure of 50 mm Hg, necessitating an emergency re-operation which revealed diffuse bleeding from all raw surfaces from which Patient A did not recover.
- B. Patient B, a 67 year-old man, was admitted to LHH on August 6, 2007, via the Emergency Department where he presented complaining of abdominal pain. Patient B's history was significant for end stage renal disease and multiple co-morbidities. On August 8, 2007, Respondent operated on Patient B and deviated from the standard of care in that he:
1. Performed the cholecystectomy and common bile duct exploration on Patient B in a surgically and medically inappropriate manner ; and
  2. Failed to appropriately manage Patient B's care beginning after he re-operated on him, 10 hours after the first surgery for an Intra-abdominal hemorrhage, until the patient's death on October 24, 2007.
- C. Patient C, a 75 year-old woman, was admitted to LHH on March 22, 2007, via the Emergency Department where she presented with severe abdominal pain beginning the day before. Patient C's history was significant for emphysema, vascular dementia, transient ischemic attacks, osteoarthritis and a prior hysterectomy. Respondent operated on Patient C on March 23, 2007, and deviated from the standard of care in that he:
1. Failed to operate emergently on Patient C once her life threatening surgical diagnosis was made; and
  2. Inappropriately prolonged the operation and performed an inappropriately extensive resection on Patient C despite hemodynamic instability, including acidosis and vasopressor dependence.

D. Patient D, a 53 year-old woman, was admitted to LHH on January 4, 2008, for ambulatory surgery for an inguinal hernia repair. Respondent operated on Patient D and deviated from the standard of care in that he performed such surgery in an inappropriate manner resulting in a 5 centimeter injury to the dome of Patient D's bladder.

### 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. Paragraph A and each of its subparagraphs.

#### SECOND SPECIFICATION

##### UNWARRANTED TESTS/TREATMENT

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(35) by ordering of excessive tests, treatment, or use of treatment facilities not warranted by the condition of the patient, as alleged in the facts of:

2. Paragraph A and each of its subparagraphs.

**THIRD 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:

3. Paragraph B and each of its subparagraphs.

**FOURTH SPECIFICATION**

**NEGLIGENCE ON MORE THAN ONE OCCASION**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(3) by practicing the profession of medicine with negligence on more than one occasion as alleged in the facts of:

4. Paragraphs A through D and their respective subparagraphs.

**FIFTH SPECIFICATION**

**INCOMPETENCE ON MORE THAN ONE OCCASION**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(5) by practicing the profession of medicine with incompetence on more than one occasion as alleged in the facts of:

1. Paragraphs B through D and their respective subparagraphs.

DATE: April 27, 2013  
New York, New York

REDACTED

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Roy Nemerson  
Deputy Counsel  
Bureau of Professional Medical Conduct

## EXHIBIT "B"

### Terms of Probation

- 1) Respondent's conduct shall conform to moral and professional standards of conduct and governing law. Any act of professional misconduct by Respondent as defined by N.Y. Educ. Law §§ 8530 or 8531, or failure to comply with the terms of this order and/or any commitment I have made to the Office of Professional Medical Conduct, shall constitute a violation of probation and may subject Respondent to an action pursuant to N.Y. Pub. Health Law § 230(19).
- 2) Respondent shall maintain active registration of Respondent's license (except during periods of actual suspension) with the New York State Education Department Division of Professional Licensing Services, and shall pay all registration fees.
- 3) 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.
- 4) Respondent shall cooperate fully with, and respond in a timely manner to, OPMC requests to provide written periodic verification of Respondent's compliance, both with regard to the terms of this Consent Order and with any other requirements of OPMC. Upon the Director of OPMC's request, Respondent shall meet in person with the Director's designee and provide signed confidentiality releases.
- 5) Respondent's failure to pay any monetary penalty by the prescribed date shall subject Respondent to all provisions of law relating to debt collection by New York State, including but 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 § 171(27); State Finance Law § 18; CPLR § 5001; Executive Law § 32]. Payment of the \$40,000.00 fine imposed pursuant to this Consent Order is also a term of probation. The \$40,000 fine is payable in full within one year of the effective date of this Consent Order. Payments must be submitted to:



Bureau of Accounts Management  
New York State Department of Health  
Empire State Plaza  
Corning Tower, Room 2784  
Albany, New York 12237.

- 6) The probation period shall toll when Respondent is not engaged in active medical practice in New York State for a period of 30 consecutive days or more. Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in, or intends to leave, active medical practice in New York State for a consecutive 30 day period. Respondent shall then notify the Director again at least 14 days before returning to active practice. Upon Respondent's return to active practice in New York State, the probation period shall resume and Respondent shall fulfill any unfulfilled probation terms and such additional requirements as the Director may impose as reasonably relate to the matters set forth in Exhibit "A" or as are necessary to protect the public health.
- 7) The Director of OPMC may review Respondent's professional performance. This review may include but shall not be limited to: a review of office records, patient records, hospital charts, and/or electronic records; and interviews with or periodic visits with Respondent and staff at practice locations or OPMC offices.
- 8) Respondent shall adhere to federal and state guidelines and professional standards of care with respect to infection control practices. Respondent shall ensure education, training and oversight of all office personnel involved in medical care, with respect to these practices.
- 9) Respondent shall maintain complete and legible medical records that accurately reflect the evaluation and treatment of patients and contain all information required by State rules and regulations concerning controlled substances.
- 10) Within thirty days of the Consent Order's effective date, 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. Any medical practice in violation of this term shall constitute the unauthorized practice of medicine.
  - 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 fewer than 20) 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) In addition to the 20 records referred to in subparagraph (a) above, the practice monitor shall review the complete medical (hospital and office) records of the next 20 patients upon whom Respondent performs laparoscopic hernia repair procedures after the issuance of this Order.
  - c) Respondent shall be solely responsible for all expenses associated with monitoring, including fees, if any, to the monitoring physician.
  - d) Respondent shall cause the practice monitor to report quarterly, in writing, to the Director of OPMC.
  - e) 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.
- 11) Respondent shall enroll in and successfully complete 25 category 1 credit hours in an oncologic surgery review course and 25 category 1 credit hours in a surgical board review course. These continuing education programs are subject to the Director of OPMC's prior written approval and shall be successfully completed within the first 180 days of the probation period.
- 12) Respondent shall comply with this Consent Order and all its terms, and shall bear all associated compliance costs. Upon receiving evidence of noncompliance with, or a violation of, these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding, and/or any other such proceeding authorized by law, against Respondent.