



**Department  
of Health**

**KATHY HOCHUL**  
Governor

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

**JOHANNE E. MORNE, M.S.**  
Acting Executive Deputy Commissioner

August 23, 2023

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

Ernesto Marin, M.D.  

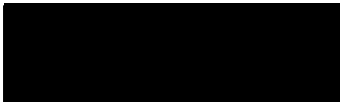

Re: License No. 192331

Dear Dr. Marin:

Enclosed is a copy of the New York State Board for Professional Medical Conduct (BPMC) Order No. 23-173. This order and any penalty provided therein goes into effect August 30, 2023.

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: David Rothenberg, Esq.  
Times Square Building  
45 Exchange Boulevard, Suite 800  
Rochester, New York 14614

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

IN THE MATTER  
OF  
ERNESTO MARIN, M.D.

BPMC No. 23-173  
CONSENT  
ORDER

Upon the application of Ernesto Marin, 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

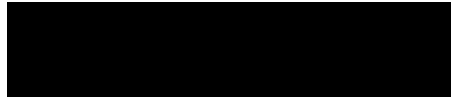
ORDERED, that this Consent Order shall be effective upon issuance by the Board,  
either

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: 8/21/2023

  
THOMAS T. LEE, 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  
ERNESTO MARIN, M.D.

CONSENT  
AGREEMENT

Ernesto Marin, M.D., represents that all of the following statements are true:

That on or about June 8, 1993, I was licensed to practice as a physician in the State of New York, and issued License No. 192331 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, as set forth in a Statement of Charges, marked as Exhibit "A", attached to and part of this Consent Agreement.

I agree not to contest the allegations, in full satisfaction of the charges against me, and agree to the following penalty:

Pursuant to New York Pub. Health Law § 230-a(2), my license to practice medicine in New York State shall be suspended for 36 months, and the full 36 months shall be stayed.

Pursuant to New York Pub. Health Law § 230-a(9), I shall be placed on probation for 36 months, subject to the terms set forth in attached Exhibit "B."

I further agree that the Consent Order 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.

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 the Licensee's profile information within six months prior to the expiration date of the licensee's registration period. Licensee shall submit changes to the Licensee's 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 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 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 the 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

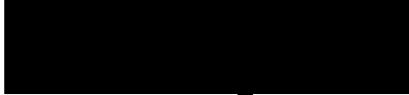
Order by first class mail to me at the address in this Consent Agreement, or to my attorney by certified mail, OR upon facsimile transmission to me or my attorney, whichever is first. The Consent Order, this agreement, and all attached Exhibits shall be public documents, with only patient identities or other confidential information, 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 August 17, 2023



ERNESTO MARIN, M.D.  
RESPONDENT

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

DATE: 8/15/23



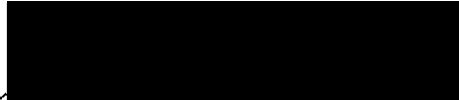
DAVID ROTHENBERG, ESQ.  
Attorney for Respondent

DATE: 8/15/23



PAUL TSUI  
Associate Counsel  
Bureau of Professional Medical Conduct

DATE: 8-2-23



SHELLY WANG BANDAGO  
Director  
Office of Professional Medical Conduct

# Exhibit A

IN THE MATTER  
OF  
ERNESTO MARIN, M.D.

STATEMENT  
OF  
CHARGES

Ernesto Marin, M.D., the Respondent, was authorized to practice medicine in New York State on or about June 8, 1993, by the issuance of license number 192331 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A. On or about August 10, 2021, Respondent provided treatment to Patient A (Patients are identified in Appendix A), a 60-year old female at Newark Wayne Community Hospital, 1200 Driving Park Avenue, Newark, New York 14513. Patient A had a history of bladder cancer and was scheduled to undergo an elective gemcitabine instillation procedure to be performed under local anesthesia, a procedure which she had undergone twice before under local anesthesia. In the operating room, Respondent administered general anesthesia to Patient A after being told by other OR staff that the procedure was to be performed under local anesthesia and over Patient A's objection. Patient A was not expecting general anesthesia and had eaten a meal prior to the procedure. Respondent's care and treatment of Patient A deviated from accepted standards of care as follows:

1. Respondent failed to perform an adequate pre-anesthesia evaluation of Patient A and/or failed to record an adequate pre-anesthesia evaluation.
2. Respondent failed to review the chart for Patient A's procedure that reflected the procedure was to be done under local anesthesia.

3. Respondent failed to record his rationale to determine how Patient A met the criteria to undergo general anesthesia.
4. Respondent failed to discuss the anesthesia plan with Patient A and/or failed to document a discussion of the anesthesia plan with Patient A.
5. Respondent failed to obtain proper informed consent from Patient A for the administration of general anesthesia and/or failed to properly document Patient A's consent.
6. Respondent administered general anesthesia against Patient A's wishes.
7. Respondent proceeded with general anesthesia rather than placing an IV and giving the planned sedation
8. Respondent failed to timely document the pre-operative evaluation until after the procedure had started.
9. Respondent failed to maintain a complete and accurate record that reflected the care and treatment of Patient A.

B. On or about August 2, 2021, Respondent provided care to Patient B, a 77-year old female at Rochester General Hospital, 1425 Portland Avenue, Rochester, New York 14621. Patient B had a history of morbid obesity, diabetes, and pulmonary disease among other conditions. Patient B presented for excessive bleeding from a vulvar lesion which was to be surgically removed. The surgery required the placement of an endotracheal tube. Respondent recorded the placement of the tube at 22 cm. The tube was actually taped at 25 cm. Respondent's care and treatment of Patient B deviated from accepted standards of care as follows:

1. Respondent failed to perform an adequate pre-anesthesia evaluation of Patient B and/or failed to document an adequate pre-anesthesia evaluation.
2. Respondent failed to document his rationale to determine how Patient B met the criteria to undergo general anesthesia.
3. Respondent failed to adequately document the use of intra-operative anesthetic.
4. Respondent failed to accurately document the placement of Patient B's endotracheal tube.

5. Respondent failed to properly document the monitoring and management of Patient B's respiratory status.
6. Respondent failed to document the occurrence of the transesophageal echocardiogram (TEE) or its findings.
7. Respondent failed to accurately document any breath sounds.
8. Respondent failed to post-operatively note any of the Intraoperative issues.
9. Respondent failed to post operatively document the unanticipated failure to extubate and ICU admission of Patient B.
10. Respondent failed to maintain an accurate and complete record that reflected the care and treatment of Patient B.

**SPECIFICATION OF CHARGES**

**FIRST 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 two or more of the following:

1. 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, B and B1, B and B2, B and B3, B and B4, B and B5, B and B6, B and B7, B and B8, B and B9, and/or B and B10.

**SECOND 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:

2. Paragraphs A and A1, A and A3, A and A4, A and A5, A and A8, A and A9, B and B1, B and B2, B and B3, B and B4, B and B5, B and B6, B and B7, B and B8, B and B9, and/or B and B10.

DATE: August 16, 2023  
Albany, New York

  
JEFFREY J. CONKLIN  
Deputy Director  
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 §§ 6530 or 6531 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 cooperate fully with, and respond in a timely manner to, OPMC requests to provide written periodic verification of Respondent's compliance with the terms of this Consent Order. Upon the Director of OPMC's request, Respondent shall meet in person with the Director's designee.
- 3) 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].
- 4) 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.
- 5) No more than 30 days after 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 Director of OPMC's written approval. No more than 30 days after learning that the approved practice monitor is no longer willing or able to serve or no more than 30 days after having been notified by the Director that the practice monitor has been discharged for cause, which shall include but not be limited to the inadequacy of the practice monitor's reports and/or performance, Respondent shall have an approved successor in place, subject to the Director's written approval. Upon approval, the new practice monitor shall perform the duties described in (a) and (c) below. Regardless of the reason necessitating a replacement, if the Director does not approve Respondent's proposed new practice monitor, Respondent shall



immediately cease the practice of medicine, unless notified by the Director, in writing, of an extension, which may be granted at the Director's discretion. In that event, Respondent shall propose another practice monitor, which the Director has 30 days to approve or disapprove until a practice monitor is accepted. 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) 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.
- 6) 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.
  - 7) 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.
  - 8) 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.

- 9) Respondent shall enroll in and successfully complete continuing education as directed by the Office of Professional Medical Conduct, subject to the Director of OPMC's prior written approval.
- 10) 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.