

August 19, 2011

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

Thomas R. Merritt, M.D.

REDACTED

Re: License No. 251467

Dear Dr. Merritt:

Enclosed is a copy of the New York State Board for Professional Medical Conduct (BPMC) Order No. 11-205. This order and any penalty provided therein goes into effect August 26, 2011.

Please direct any questions to: Board for Professional Medical Conduct, 433 River Street, Suite 303, Troy, NY 12180, telephone # (518)402-0863.

Sincerely,

REDACTED

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

Enclosure

cc: Richard R. Malone, Esq.  
Malone, Ault & Farell  
7654 West Bancroft Street  
Toledo, OH 43617



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

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**IN THE MATTER**

**CONSENT**

**OF**

**AGREEMENT**

**THOMAS R. MERRITT, M.D.  
CO-10-02-1307-A**

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**THOMAS R. MERRITT, M.D.**, (Respondent), representing that all of the following statements are true, deposes and says:

That on or about December 18, 2008, I was licensed to practice medicine in the State of New York and issued license number 251467 by the New York State Education Department, although I have never practiced medicine in New York.

My current address is REDACTED and I will advise the Director (Director) of the Office of Professional Medical Conduct (OPMC) 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, which arise out of the referenced disciplinary proceedings conducted before the North Carolina Medical Board relating to a single patient incident which occurred in my practice in the State of North Carolina in 2008, and which resulted in the entry of a Consent Order in the North Carolina proceedings in 2010.

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 three (3) Specifications, and I agree: a) to never practice medicine in New York state as a physician; b) to never activate my registration to practice medicine as a physician in New York state; or c) to never reapply for a license to practice medicine as a physician in New York state.

[Limitation on registration or issuance of any further license pursuant to Public Health Law Section 230-a(6)].

I stipulate that my failure to comply with any conditions of the 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 the 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 the 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 or email transmission to me or my attorney, whichever is first. The Consent Order, this Consent 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 of Health 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, administratively and/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: 28/7/11

REDACTED

THOMAS R. MERRITT, M.D.  
Respondent

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

DATE: 8/2/11

REDACTED

RICHARD R. MALONE  
Attorney for Respondent

DATE: 8/8/11

REDACTED

JOEL E. ABELove  
Associate Counsel  
Bureau of Professional Medical Conduct

DATE: 8/16/11

REDACTED

KEITH W. SERVIS  
Director  
Office of Professional Medical Conduct

# EXHIBIT A

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

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IN THE MATTER  
OF  
THOMAS R. MERRITT, M.D.  
CO-10-02-1307-A

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STATEMENT  
OF  
CHARGES

THOMAS R. MERRITT, M.D., Respondent, was authorized to practice medicine in New York state on December 18, 2008, by the issuance of license number 251467 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A. On or about January 4, 2010, the North Carolina Medical Board, (hereinafter "North Carolina Board"), by a Consent Order (hereinafter "North Carolina Order"), inter alia, SUSPENDED Respondent's license to practice medicine and surgery for six months, which was immediately stayed, and Respondent shall submit himself for an assessment by the PACE program at the University of California at San Diego and provide a copy of all assessment reports to the Board's Compliance Officer, based on his medical treatment and care of one (1) patient constituting unprofessional conduct, including departure from or failure to conform to standards of acceptable and prevailing medical practice or the ethics of the medical profession.

B. On or about March 16, 2011, the State of Michigan, Department of Community Health, Bureau of Professions, State Board of Medicine (hereinafter "Michigan Board"), by a Consent Order and Stipulation (hereinafter "Michigan Order"), limited for a minimum period of one year Respondent's license to practice medicine, based on the North Carolina Order set forth in Paragraph A, above, to require supervised practice specifically related to Respondent's performance of total joint replacement surgery. Respondent was required to complete CME subject to pre-approval of the Board within one year in the area of total hip replacement surgery, and was fined \$1,000.00 payable within sixty days.

C. The conduct resulting in the North Carolina Medical 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(4) (gross negligence on a particular occasion);
2. New York Education Law §6530(6) (practicing the profession with gross incompetence);
3. New York Education Law §6530(32) (failing to maintain a record for each patient that accurately reflects the evaluation and treatment of the patient).

D. The conduct resulting in the Michigan Medical 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)(d) (having his license to practice medicine suspended and/or having other disciplinary action taken by a duly authorized professional disciplinary agency of another state where the conduct resulting in the license suspension and/or disciplinary action would, if committed in New York state, constitute professional misconduct under the laws of New York state).

### **SPECIFICATIONS**

#### **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 findings 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 and/or C.

#### **SECOND AND THIRD SPECIFICATIONS**

Respondent violated New York Education Law §6530(9)(d) by having his license to practice medicine suspended and/or having other disciplinary action taken after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state,



where the conduct resulting in the license suspension and/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 and/or C.
3. The facts in paragraphs A, B, C, and/or D.

DATED: *June 22*, 2011  
Albany, New York

REDACTED

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