



New York State Board for Professional Medical Conduct

433 River Street, Suite 303 Troy, New York 12180-2299 • (518) 402-0863

Barbara A. DeBuono, M.D., M.P.H.
Commissioner of Health

Patrick F. Carone, M.D., M.P.H.
Chair
Ansel R. Marks, M.D., J.D.
Executive Secretary

June 30, 1998

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Miguel Angel Diaz, M.D.
301 19th Street
Watervliet, New York 12189

RE: License No. 096118

Dear Dr. Diaz:

Enclosed please find Order #BPMC 98-125 of the New York State Board for Professional Medical Conduct. This Order and any penalty provided therein goes into effect **July 7, 1998**.

If the penalty imposed by the Order is a surrender, revocation or suspension of this license, you are required to deliver to the Board the license and registration within five (5) days of receipt of the Order.

Board for Professional Medical Conduct
New York State Department of Health
Hedley Park Place, Suite 303
433 River Street
Troy, New York 12180

Sincerely,

Ansel R. Marks, M.D., J.D.
Executive Secretary
Board for Professional Medical Conduct

Enclosure

cc: Peter J. Millock, Esq.
Nixon, Hargrave, Devans & Doyle, LLP
One Keycorp Plaza
Albany, New York 12207-3497

William J. Lynch, Esq.

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

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IN THE MATTER : CONSENT
OF : AGREEMENT
MIGUEL ANGEL DIAZ, M.D. : AND ORDER
: BPMC # 98-125

-----X

MIGUEL ANGEL DIAZ, M.D., says:

On or about March 1, 1966, I was licensed to practice as a physician in the State of New York, having been issued license number 096118 by the New York State Education Department.

My current address is 301 19th Street, Watervliet, New York 12189, and I will advise the Director of the Office of Professional Medical Conduct of any change of my address.

I understand that I have been charged with nine specifications of professional misconduct as set forth in the Statement of Charges, annexed hereto, made a part hereof, and marked as Exhibit A. I admit to the nine specifications.

I hereby agree to the following penalty:

1. A permanent restriction on my license prohibiting me from performing the following surgical procedures: tonsillectomy, tympanoplasty, revision mastoidectomy, complete mastoidectomy, revision of stapedectomy, stapes mobilization, myringotomy with tube insertion, Caldwell Luc, ethmoidectomy, sinusotomy, radical ethmoidectomy, radical Caldwell Luc, septoplasty non-cosmetic, laryngoscopy with excision of vocal cords,

uvulectomy, excision parotid tumor, excision of submandibular gland, excision cyst- thyroglossal duct, excision of malignant lesion- ears, nose and throat, sialolithotomy;

2. A one year suspension of my medical license entirely stayed conditioned upon my compliance with the terms of this agreement;
3. A one year term of probation in accordance with the Terms of Probation attached hereto as Exhibit B to run concurrently with the one year of stayed suspension;
4. A practice monitor during the one year probationary period.

I agree to comply, both during and after any period of probation, with requests for information or other actions as may be required by OPMC to verify that my medical practice is in compliance with the permanent restrictions.

I agree that in the event that I am charged with professional misconduct in the future, this agreement and order shall be admitted into evidence in that proceeding.

I agree that, as a condition of this Order, I will maintain current registration of my license with the New York State Education Department, Division of Professional Licensing Services, and pay all registration fees. This condition will remain in effect except during periods of actual suspension, if any, imposed by this Order. This condition shall be in effect beginning thirty days after the effective date of this Order and will continue until the full term of the Order has run, and until any associated period of probation and all probation terms have

been completed and satisfied. I understand that any failure by me to comply with this condition shall constitute misconduct as defined by New York State Education Law §6530(29).

I understand that, in the event that the Board does not grant this application, nothing contained herein shall be binding upon me or construed to be an admission of any act of misconduct alleged or charged against me; such application shall not be used against me in any way and shall be kept in strict confidence during the pendency of the professional misconduct disciplinary proceeding; and such denial by the Board shall be made without prejudice to the continuance of any disciplinary proceeding and the final determination by the Board pursuant to the provisions of the Public Health Law.

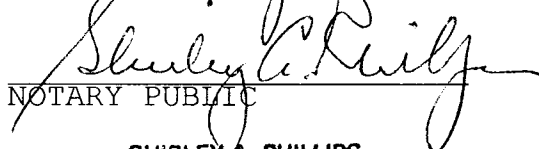
I agree that, in the event the State Board for Professional Medical Conduct grants my application, an order of the Chairperson of the Board shall be issued in accordance with same.

I make this application of my own free will and accord and not under duress, compulsion or restraint of any kind or manner.


MIGUEL ANGEL DIAZ, M.D.
RESPONDENT

Subscribed before me this


12th day of June, 1998.


NOTARY PUBLIC

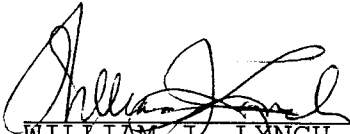
SHIRLEY A. PHILLIPS
Notary Public, State of New York
Reg. #4691743
Residing in Rensselaer County
Commission Expires 8/31/99

AGREED TO:


DATE: June 12, 1998


PETER J. MILLOCK, ESQ.
NIXON, HARGRAVE, DEVANS
& DOYLE, LLP
Attorney for Respondent

DATE: June 17, 1998


WILLIAM J. LYNCH
SENIOR ATTORNEY
Bureau of Professional
Medical Conduct

DATE: June 18, 1998


ANNE F. SAILE
DIRECTOR
Office of Professional
Medical Conduct

ORDER

Upon the proposed agreement of MIGUEL ANGEL DIAZ, M.D. for a Consent Order, which proposed agreement is made a part hereof, it is AGREED TO and

ORDERED, that the proposed agreement and the provisions thereof are hereby adopted; and it is further

ORDERED, that this order shall take effect as of the date of the personal service of this order upon Respondent, upon receipt by Respondent of this order via certified mail, or seven days after mailing of this order by certified mail, whichever is earliest.

DATED: 6/24/98

Patrick F. Carone, M.D.
PATRICK F. CARONE, M.D., M.P.H.
Chair
State Board for 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 : STATEMENT
OF : OF
MIGUEL ANGEL DIAZ, M.D. : CHARGES

-----X

Miguel Angel Diaz, M.D., the Respondent, was authorized to practice medicine in New York State on March 1, 1966 by the issuance of license number 096118 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. Respondent provided medical care to Patient A [all patients are identified in Appendix], a then four year old female, at Leonard Hospital, Troy, New York, on or about March 19, 1991. Respondent's care and treatment of Patient A failed to meet acceptable standards of medical care in that:

1. Respondent failed to adequately document the necessity for surgery and/or the treatment of previous episodes of tonsillitis with antibiotic therapy.
2. Respondent subjected Patient A to an unacceptable operative time of one hour and thirty minutes when performing surgery to control a postoperative hemorrhage.

B. Respondent provided medical care to Patient B, a then five year old female, at St. Mary's Hospital, Troy, New York, on or

about March 19, 1990. Respondent's care and treatment of Patient B failed to meet acceptable standards of medical care in that:

1. Respondent failed to adequately document the necessity for surgery and/or the treatment of previous episodes of tonsillitis with antibiotic therapy.
2. Respondent subjected Patient B to an unacceptable operative time of two hours when performing a Tonsillectomy and Adenoidectomy.

C. Respondent provided medical care to Patient C, a then six year old male on or about March 25, 1992 at his office.

Respondent's care and treatment of Patient C failed to meet acceptable standards of medical care in that:

1. Respondent failed to adequately examine Patient C in that he noted in his medical record that there was no tube in the patient's right ear when, in fact, there was a functioning tube in the right tympanic membrane.

D. Respondent provided medical care to Patient D, a then 36 year old female, at St. Mary's Hospital on or about May 15, 1991.

Respondent's care and treatment of Patient D failed to meet acceptable standards of medical care in that:

1. Respondent failed to advise Patient D to stop smoking and failed to consider steroid treatment before surgically removing polyps from her vocal chords.
2. Respondent used silver nitrate for cautery in this laryngeal surgery.

E. Respondent provided medical care to Patient E, a then six year old female on or about October 22, 1991 at his office. Respondent's care and treatment of Patient E failed to meet acceptable standards of medical care in that:

1. Respondent performed a nasal endoscopy on Patient E in spite of the fact that he had already obtained an x-ray.

F. Respondent provided medical care to Patient F, a then twenty-seven year old female on or about June 28, 1989 at St. Mary's Hospital. Respondent's care and treatment of Patient F failed to meet acceptable standards of medical care in that:

1. Respondent failed to adequately document the necessity for surgery and/or the treatment of previous episodes of tonsillitis with antibiotic therapy.
2. Respondent failed to adequately evaluate Patient F's coagulation status preoperatively and failed to instruct Patient F regarding preoperative aspirin use and/or failed to document these treatments.

G. Respondent provided medical care to Patient G, a then thirty-three year old male on or about May 14, 1990 at St. Mary's Hospital. Respondent's care and treatment of Patient G failed to meet acceptable standards of medical care in that:

1. Respondent failed to adequately document the necessity for surgery and/or the treatment of previous episodes of tonsillitis with antibiotic therapy.
2. Respondent performed surgery on Patient G while his hypertension was not under good control.

H. Respondent provided medical care to Patient H, a then eleven year old female on or about September 11, 1989 at St. Mary's Hospital. Respondent's care and treatment of Patient H failed to meet acceptable standards of medical care in that:

1. Respondent failed to adequately document the necessity for surgery and/or the treatment of previous episodes of tonsillitis with antibiotic therapy.

I. Respondent provided medical care to Patient I, a then twenty-six year old female on or about October 6, 1989 at St. Mary's Hospital. Respondent's care and treatment of Patient I failed to meet acceptable standards of medical care in that:

1. Respondent failed to adequately document the necessity for surgery and/or the treatment of previous episodes of tonsillitis with antibiotic therapy.
2. Respondent performed surgery only one week after commencing antibiotic treatment.
3. Respondent subjected Patient I to an unacceptable operative time of two and one-half hours when performing a Tonsillectomy and Adenoidectomy.

J. Respondent provided medical care to Patient J, a then twenty-five year old male on or about September 12, 1990 at Leonard Hospital. Respondent's care and treatment of Patient J failed to meet acceptable standards of medical care in that:

1. Respondent failed to adequately document the necessity for surgery and/or the treatment of previous episodes of tonsillitis with antibiotic therapy.

SPECIFICATIONS

FIRST SPECIFICATION

NEGLIGENCE ON MORE THAN ONE OCCASION

Respondent is charged with professional misconduct under N.Y. Educ. Law section 6530(3) (McKinney Supp. 1997) by reason of his having practiced the profession with negligence on more than one occasion in that Petitioner charges:

1. The facts in Paragraphs A and A.1, A and A.2, B and B.1, B and B.2, C and C.1, D and D.1, D and D.2, E and E.1, F and F.1, F and F.2, G and G.1, G and G.2, H and H.1, I and I.1, I and I.2, I and I.3, J and/or J.1.

SECOND SPECIFICATION

INCOMPETENCE ON MORE THAN ONE OCCASION

Respondent is charged with professional misconduct under N.Y. Educ. Law section 6530(5) (McKinney Supp. 1997) by reason of his having practiced the profession with incompetence on more than one occasion in that Petitioner charges:

2. The facts in Paragraphs A and A.1, A and A.2, B and B.1, B and B.2, C and C.1, D and D.1, D and D.2, E and E.1, F and F.1, F and F.2, G and G.1, G and G.2, H and H.1, I and I.1, I and I.2, I and I.3, J and/or J.1.

THIRD THROUGH NINTH SPECIFICATIONS
INADEQUATE RECORD KEEPING

Respondent is charged with professional misconduct under N.Y. Educ. law section 6530(32) by reason of his having failed to maintain a record for each patient which accurately reflects the evaluation and treatment of each patient in that Petitioner charges:

3. The facts in Paragraphs A and A.1.
4. The facts in Paragraphs B and B.1.
5. The facts in Paragraphs F and F.1.
6. The facts in Paragraphs G and G.1.
7. The facts in Paragraphs H and H.1.
8. The facts in Paragraphs I and I.1.
9. The facts in Paragraphs J and J.1.

DATED: *June 17*, 1998
Albany, New York



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

EXHIBIT "B"

TERMS OF PROBATION

1. Respondent shall conduct himself in all ways in a manner befitting his professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his profession;
2. Respondent shall submit written notification to the New York State Department of Health (NYSDOH), addressed to the Director, Office of Professional Medical Conduct (OPMC), New York State Department of Health, Hedley Park Place, 4th Floor, 433 River Street, Troy, New York 12180-2299; said notice is to include a full description of any employment and practice, professional and residential addresses and telephone numbers within or without New York State, and any and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty days of each action;
3. Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of Respondent's compliance with the terms of this Order. Respondent shall personally meet with a person designated by the Director of OPMC as requested by the Director.
4. The period of probation shall be tolled during periods in which Respondent is not engaged in the active practice of medicine in New York State. Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in or intends to leave the active practice of medicine in New York State for a period of thirty (30) consecutive days or more. Respondent shall then notify the Director again prior to any change in that status. The period of probation shall resume and any terms of probation which were not fulfilled shall be fulfilled upon Respondent's return to practice in New York State.
5. Respondent's professional performance may be reviewed by the Director of OPMC. This review may include, but shall not be limited to, a review of office records, patient records and/or hospital charts, interviews with or periodic visits with Respondent and his staff at practice locations or OPMC offices.
6. Respondent shall maintain legible and complete medical records which accurately reflect the evaluation and treatment of patients. The medical records shall contain all information required by State rules and regulations regarding controlled substances.

7. 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.
 - 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 basis at least monthly and shall examine a selection (no less than 10 per cent) 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 from 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.
8. Respondent shall comply with all terms, conditions, restrictions, and penalties to which he is subject pursuant to the Order and shall assume and bear all costs related to compliance. Upon receipt of evidence of noncompliance with, or any violation of these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding and/or any such other proceeding against Respondent as may be authorized pursuant to the law.