



*New York State Board for Professional Medical Conduct*

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

Dennis P. Whalen  
*Executive Deputy Commissioner of Health*  
Anne F. Saille, Director  
*Office of Professional Medical Conduct*  
William J. Comiskey, Chief Counsel  
*Bureau of Professional Medical Conduct*

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*Chair*  
Denise M. Bolan, R.P.A.  
*Vice Chair*  
Ansel R. Marks, M.D., J.D.  
*Executive Secretary*

February 11, 1999

**CERTIFIED MAIL-RETURN RECEIPT REQUESTED**

Oscar Stivala, M.D.  
42 West Gansevoort Street  
Little Falls, NY 13365

RE: License No. 096229

Dear Dr. Stivala:

Enclosed please find Order #BPMC 99-33 of the New York State Board for Professional Medical Conduct. This Order and any penalty provided therein goes into effect **February 11, 1999**.

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 to 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: Mae A. D'Agostino, Esq.  
D'Agostino, Krackeler, Baynes & Maguire, P.C.  
16 Sage Estate  
Menands, NY 12204

Kevin P. Donovan, Esq.

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

-----X

IN THE MATTER : SURRENDER  
OF : ORDER  
OSCAR STIVALA, M.D. : BPMC # 99-33

-----X

OSCAR STIVALA, M.D., says:

On or about March 1, 1966, I was licensed to practice medicine as a physician in the State of New York having been issued License No. 096229 by the New York State Education Department. My address is 42 West Gansevoort Street, Little Falls, New York 13365.

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

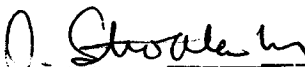
I am applying to the State Board for Professional Medical Conduct for an agreement to allow me to surrender my license as a physician in the State of New York and request that the Board issue this Surrender Order.

I do not contest the first specification concerning patients F and G set forth in the Statement of Charges.

I understand that, in the event that this proposed agreement is not granted by the State Board for Professional Medical Conduct, 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 proposed agreement 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 State Board for Professional Medical Conduct shall be made without prejudice to the continuance of any disciplinary proceeding and the final determination by a Committee on Professional Medical Conduct pursuant to the provisions of the Public Health Law.

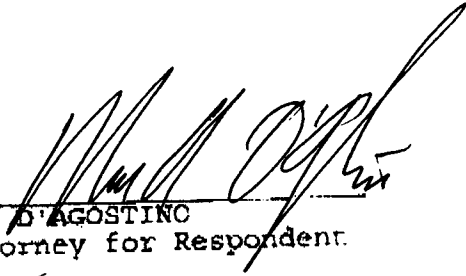
I agree that in the event the State Board for Professional Medical Conduct agrees with my proposal, this Order shall be issued striking my name from the roster of physicians in the State of New York without further notice to me. I agree that this Order shall be effective upon issuance by the Board, which may be accomplished by mailing, by first class mail, a copy of the Order to me at the address set forth above, or to my attorney, or upon transmission via facsimile to me or my attorney, whichever is earliest.

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

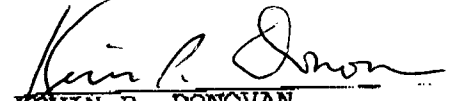
  
OSCAR STIVALA, M.D.  
Respondent

AGREED TO:


Date: 2/3, 1999

  
MAE D'AGOSTINO  
Attorney for Respondent

Date: 2/4, 1999

  
KEVIN P. DONOVAN  
Associate Counsel  
Bureau of Professional  
Medical Conduct

Date: 2/4, 1999

  
ANNE F. SATILE  
Director, Office of  
Professional Medical Conduct

## ORDER

Upon the proposed agreement of OSCAR STIVALA, M.D., to Surrender his license as a physician in the State of New York, 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; it is further

ORDERED, that the name of Respondent be stricken from the roster of physicians in the State of New York; it is further

ORDERED, that this Order shall be effective upon issuance by the Board, which may be accomplished by mailing, by first class mail, a copy of this Order to Respondent at the address set forth in this agreement or to Respondent's attorney, or upon transmissions via facsimile to Respondent or Respondent's attorney, whichever is earliest.

DATED: 2/8/99

WILLIAM P. DILLON, M.D.  
Chair  
State Board for Professional  
Medical Conduct

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

-----X  
IN THE MATTER STATEMENT  
OF OF  
OSCAR STIVALA, M.D. CHARGES  
-----X

OSCAR STIVALA, M.D., the Respondent, was authorized to practice medicine in New York State on March 1, 1966, by the issuance of license number 096229 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. Respondent treated Patient A (patients are identified in the attached Appendix A) during an admission at Little Falls Hospital, Little Falls, New York, beginning on or around February 25, 1998. Respondent's care and treatment did not meet acceptable standards of care in that

1. Respondent failed to operate or transfer care in a timely manner with a patient who had symptoms of hematemesis, low blood pressure, tachycardia, tachypnea, pallor, low hemoglobin and low hematocrit.
2. During a procedure on February 26, 1998, Respondent inappropriately closed the gastrotomy with a single layer of absorbable sutures.

B. Respondent treated Patient B during an admission at Little Falls Hospital beginning on or around February 20, 1998. Respondent's care and treatment did not meet acceptable standards of care in that Respondent failed to take appropriate steps to identify biliary anatomy before cutting structures during an operation on February 20, 1998.

EXHIBIT A

C. Respondent treated Patient C during an admission at Little Falls Hospital beginning on or around November 5, 1998, and another beginning on or around November 10, 1998. Respondent's care and treatment did not meet acceptable standards of care in that, during a procedure on November 5, 1998, Respondent failed to take appropriate steps to identify biliary anatomy before cutting structures.

D. Respondent treated Patient D during an admission at Little Falls Hospital beginning on or around September 5, 1997. Respondent's care and treatment did not meet acceptable standards of care in that:

1. During a procedure on September 5, 1997, Respondent failed to identify the cause of or appropriately manage the perforation of the patient's colon.
2. During a procedure on September 5, 1997, Respondent inappropriately closed a colon perforation with a purse string suture.
3. During a procedure on October 7, 1997, Respondent inappropriately made a paramedian incision after the patient had already had midline and transverse abdominal incisions.
4. During a procedure on October 7, 1997, Respondent inappropriately closed an enterotomy with a continuous suture.
5. During a procedure on October 7, 1997, Respondent inappropriately closed the transverse colostomy.

F. Respondent treated Patient F during an admission at Little Falls Hospital, beginning on or around May 8, 1996. Respondent's care and treatment did not meet acceptable standards of care in that:

1. During a procedure on May 8, 1996, Respondent inappropriately performed a pyloroplasty with a running suture.
2. Respondent failed to adequately address gastric acid reduction.
3. During a procedure on May 17, 1996, Respondent inappropriately closed a duodenal fistula with a figure of eight suture.
4. During a procedure on May 17, 1996, Respondent inappropriately made additional gastric openings.

5. During a procedure on May 30, 1996, Respondent repaired a gastrotomy leak inappropriately.
6. Respondent inappropriately initiated enteral feedings too soon after the procedure on May 30, 1996.
7. After the procedure on May 30, 1996, Respondent inappropriately attempted treatment of the patient's hyperglycemia with agents administered orally.

F. Respondent treated Patient F during an admission at Little Falls Hospital beginning on or around August 28, 1995. Respondent's care and treatment did not meet acceptable standards of care in that:

1. During a procedure on August 29, 1995, Respondent inappropriately performed a laparoscopic cholecystectomy during a procedure in which he also planned to be perform a laparotomy.
2. During a procedure on August 29, 1995, Respondent removed an inadequate length of bowel around a suspected malignancy.
3. During a procedure on August 29, 1995, Respondent inappropriately closed a colostomy with a continuous single layer suture.

G. Respondent treated Patient G during an admission at Little Falls Hospital beginning on or around January 9, 1996. Respondent's care and treatment did not meet acceptable standards of care in that Respondent did not adequately evaluate the cause of the patient's reports of abdominal pain.

H. Respondent treated Patient H during an admission at Little Falls Hospital beginning on or around February 12, 1998. Respondent's care and treatment did not meet acceptable standards of care in that: In the period post-operative for a splenectomy, Respondent failed to appropriately consider the causes of the patient's peritonitis before performing an appendectomy on February 16, 1998.



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**SPECIFICATIONS OF MISCONDUCT**

**FIRST SPECIFICATION**

**NEGLIGENCE ON MORE THAN ONE OCCASION**

Respondent is charged with practicing the profession with negligence on more than one occasion within the meaning of New York Education Law § 6530(3), in that Petitioner charges:

1. The facts of paragraphs A and A.1, A and A.2, B, C, D and D.1, D and D.2, D and D.3, D and D.4, D and D.5, E and E.1, E and E.2, F and E.3, E and E.4, E and E.5, E and E.6, E and E.7, F and F.1, F and F.2, F and F.3, G and/or H.

**SECOND SPECIFICATION**

**INCOMPETENCE ON MORE THAN ONE OCCASION**

Respondent is charged with practicing the profession with incompetence on more than one occasion within the meaning of New York Education Law § 6530(5), in that Petitioner charges:

2. The facts of paragraphs A and A.1, A and A.2, B, C, D and D.1, D and D.2, D and D.3, D and D.4, D and D.5, E and E.1, E and E.2, F and E.3, E and F.4, E and E.5, E and E.6, E and E.7, F and F.1, F and F.2, F and F.3, G and/or H.

**THIRD THROUGH TENTH SPECIFICATIONS**

**GROSS NEGLIGENCE**

Respondent is charged with practicing the profession with gross negligence within the meaning of New York Education Law § 6530(4), in that Petitioner charges:

3. The facts of paragraphs A and A.1 and/or A and A.2
4. The facts of paragraph B.
5. The facts of paragraphs C.
6. The facts of paragraphs D and D.1, D and D.2, D and D.3, D and D.4, and/or D and D.5.
7. The facts of paragraphs E and E.1, E and E.2, E and E.3, E and E.4, E and E.5, E and E.6, and/or E and E.7.

- 8. The facts of paragraphs F and F.1, F and F.2, and/or F and F.3.
- 9. The facts of paragraph G.
- 10. The facts of paragraph H.

**ELEVENTH SPECIFICATION**

**GROSS INCOMPETENCE**

Respondent is charged with practicing the profession with gross incompetence within the meaning of New York Education Law § 6530(6), in that Petitioner charges:

- 11. The facts of paragraphs A and A.1, A and A.2, B, C, D and D.1, D and D.2, D and D.3, D and D.4, D and D.5, E and E.1, E and E.2, E and E.3, E and E.4, E and E.5, E and E.6, E and E.7, F and F.1, F and F.2, F and F.3, G and/or H.

DATED. *February 4*  
~~January~~, 1999  
Albany, New York

*Peter D. Van Buren*  
PETER D VAN BUREN  
Deputy Counsel  
Bureau of Professional  
Medical Conduct *2/KPQ*