



**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

December 18, 1997

**CERTIFIED MAIL-RETURN RECEIPT REQUESTED**

K. S. Mallaiah Setty, M.D.  
818 Huntington Drive  
Schenectady, New York 12309

RE: License No. 125278

Dear Dr. Setty:

Enclosed please find Order #BPMC 97-311 of the New York State Board for Professional Medical Conduct. This Order and any penalty provided therein goes into effect upon receipt of this letter or seven (7) days after the date of this letter, whichever is earlier.

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: Barry Gold, Esq.  
Thuillez, Ford, Gold & Johnson, LLP  
90 State Street, Suite 1500  
Albany, New York 12207-1715

Thomas K. O'Malley, Esq.

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

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IN THE MATTER	:	CONSENT
OF	:	AGREEMENT
K.S. MALLAIAH SETTY, M.D.	:	AND ORDER
	:	BPMC # 97-311

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K.S. MALLAIAH SETTY, M.D., says:

On or about April 19, 1975, I was licensed to practice as a physician in the State of New York, having been issued license number 125278 by the New York State Education Department.

My current address is 818 Huntington Drive, Schenectady, New York 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 twenty (20) specification(s) of professional misconduct as set forth in the Statement of Charges, annexed hereto, made a part hereof, and marked as Exhibit A.

I hereby agree not to contest the allegations and specifications as set forth in the Statement of Charges. (Exhibit A).

I hereby agree to the penalty of two(2)years probation.

I further agree to be bound by the terms of probation annexed hereto and made a part hereof as Exhibit B.

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.

  
K.S. MALLAIAH SETTY, M.D.  
RESPONDENT

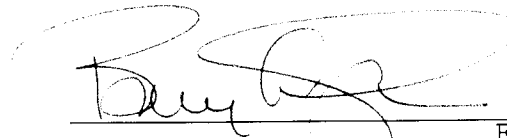
Subscribed before me this

26 day of December, 1997.


  
NOTARY PUBLIC

AGREED TO:


DATE: 12/2/97

  
\_\_\_\_\_, ESQ.  
Attorney for Respondent

DATE: 12/10/97

  
THOMAS K. O'MALLEY  
ASSOCIATE COUNSEL  
Bureau of Professional  
Medical Conduct

DATE: 12/11/97

  
ANNE F. SAILE  
DIRECTOR  
Office of Professional  
Medical Conduct

ORDER

Upon the proposed agreement of K.S. MALLAIAH SETTY, M.D. (Respondent) for 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: 12/16/97

Patrick F. Carone, M.D.

PATRICK F. CARONE, M.D., M.P.H.  
Chair  
State Board for Professional  
Medical Conduct

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

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IN THE MATTER : STATEMENT  
OF : OF  
K.S. MALLAIAH SETTY, M.D. : CHARGES

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K.S. MALLAIAH SETTY, M.D., the Respondent, was authorized to practice medicine in New York State commencing in 1975 by the issuance of license number 125278 by the New York State Education Department. The Respondent is currently registered with the New York State Education Department to practice medicine for the period January 1, 1996, through December 31, 1996. His current address is 818 Huntington Drive, Schenectady New York.

**FACTUAL ALLEGATIONS**

A. Respondent treated Patient A (Patients are identified in the appendix attached hereto and made a part hereof) from on or about December 6, 1991 through December 18, 1991, at St. Clare's Hospital, Schenectady New York. Respondent's care and treatment of Patient A failed to meet acceptable standards of medical care, in that:

1. Respondent failed to maintain a record which accurately reflects the evaluation and treatment of Patient A.
2. Respondent failed to order or otherwise record Patient A's daily fluid levels: more specifically the intake and output of SED levels.

3. Respondent failed to order or otherwise record Patient A's daily weight levels.
4. Respondent failed to institute anti-coagulation therapy despite Patient A's symptoms consistent with severe congestive cardiomyopathy.
5. Respondent prescribed Quinaglute without adequate medical justification.
6. Respondent failed to order a followup chest x-ray for Patient A to evaluate the status of Patient A's congestive heart failure.

B. Respondent treated Patient B from on or about December 18, 1991 through on or about December 22, 1991 at St. Clare's Hospital. Respondent's care and treatment of Patient B failed to meet acceptable standards of medical care in that:

1. The Respondent failed to maintain a record which accurately reflects the evaluation and treatment of Patient B.
2. Respondent admitted Patient B to St. Clare's Hospital with an erroneous diagnosis.
3. Respondent overlooked and/or failed to change improper lead placement problems relative to Patient B's electrocardiogram (ECG).
4. Respondent failed to timely discharge Patient B subsequent to the discovery of the erroneous diagnosis which was a result of the incorrect electrocardiogram lead placement.
5. Respondent failed to interpret Patient B's electrocardiogram correctly.

C. Respondent treated Patient C from on or about February 14, 1990 from on or about March 4, 1990 at St. Clare's Hospital. Respondent's care and treatment of Patient C failed to meet acceptable standards of medical care in that:

1. Respondent failed to maintain a record which accurately reflects the evaluation and treatment of Patient C.

2. Respondent prescribed Quinidine without adequate medical justification.
3. Respondent failed to promptly and/or timely diagnosis Patient C's congestive heart failure.
4. Respondent failed to institute Coumadin anti-coagulation therapy despite Patient C's increased likelihood to develop venous thrombosis and pulmonary emboli.

D. Respondent treated Patient D from on or about May 31, 1991 through on or about June 5, 1991 at St. Clare's Hospital. Respondent's care and treatment of Patient D failed to meet acceptable standards of medical care in that:

1. Respondent failed to maintain a record which accurately reflects the evaluation and treatment of Patient D.
2. Respondent failed to properly interpret Patient D's electrocardiogram (ECG).
3. Respondent failed to diagnosis Patient D's Atrial fibrillation.
4. Respondent failed to institute prompt anti-coagulation therapy.

#### **SPECIFICATIONS OF MISCONDUCT**

#### **FIRST THROUGH FOURTH SPECIFICATIONS**

#### **GROSS NEGLIGENCE**

Respondent is charged with gross negligence in violation of N.Y. Educ. Law §6530(4) (McKinney Supp. 1997) in that Petitioner charges:



1. The facts in paragraphs A and A.1, A.2, A.3, A.4, A.5 and/or A.6.
2. The facts in paragraphs B and B.1, B.2, B.3, B.4, and/or B.5.
3. The facts in paragraphs C and C.1, C.2, C.3, and/or C.4.
4. The facts in paragraphs D and D.1, D.2, D.3, and/or D.4.

FIFTH THROUGH EIGHTH SPECIFICATIONS

GROSS INCOMPETENCE

Respondent is charged with gross incompetence in violation of N.Y. Educ. Law §6530(6) (McKinney Supp. 1997) in that Petitioner charges:

5. The facts in paragraphs A and A.1, A.2, A.3, A.4, A.5, and/or A.6
6. The facts in paragraphs B and B.1, B.2, B.3, B.4, and/or B.5.
7. The facts in paragraphs C and C.1., C.2, C.3, and/or C.4.
8. The facts in paragraphs D and D.1, D.2, D.3, and/or D.4.

NINTH THROUGH TWELFTH SPECIFICATIONS

NEGLIGENCE ON MORE THAN ONE OCCASION

Respondent is charged negligence on more than one occasion in violation of N.Y. Educ. Law §6530(3) (McKinney Supp.1997) in that Petitioner charges two or more of the following:

9. The facts in paragraphs A and A.1, A.2, A.3, A.4, A.5 and/or A.6.
10. The facts in paragraphs B and B.1, B.2, B.3, B.4, and/or B.5.
11. The facts in paragraphs C and C.1, C.2, C.3, C.4., and/or C.5.
12. The facts in paragraphs D and D.1, D.2, D.3, D.4. and/or D.5.

THIRTEENTH THROUGH SIXTEENTH SPECIFICATIONS

INCOMPETENCE ON MORE THAN ONE OCCASION

Respondent is charged with incompetence on more than one occasion in violation of N.Y. Educ. Law §6530(5) (McKinney Supp .1997) in that Petitioner charges two or more of the following:

13. The facts in paragraphs A and A.1, A.2, A.3, A.4, A.5 and/or A.6.
14. The facts in paragraphs B and B.1, B.2, B.3, B.4, and/or B.5.
15. The facts in paragraphs C and C.1, C.2, C.3, and/or C.4.

16. The facts in paragraphs D and D.1, D.2, D.3, and/or D.4.

SEVENTEENTH THROUGH TWENTIETH SPECIFICATIONS

RECORDKEEPING

Respondent is charged with failing to maintain a record which accurately reflects the care and treatment of Patient's in violation of N.Y. Educ. Law §6530(32) (McKinney Supp. 1997) in that Petitioner charges two or more of the following:

- 17. The facts in paragraphs A and A.1.
- 18. The facts in paragraphs B and B.1.
- 19. The facts in paragraphs C and C.1.
- 20. The facts in paragraphs D and D.1.

DATED: June 3, 1997

Albany, New York

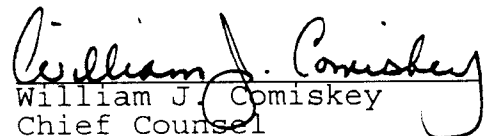
  
William J. Comiskey  
Chief Counsel  
Bureau of Professional  
Medical Conduct

EXHIBIT "B"

TERMS OF PROBATION

1. Respondent shall conduct himself/herself in all ways in a manner befitting his/her professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his/her 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. Any civil penalty not paid by the date prescribed herein shall be subject to all provisions of law relating to debt collection by New York State. This includes but is 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 section 171(27); State Finance Law section 18; CPLR section 5001; Executive Law section 32].
5. 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.
6. 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/her staff at practice locations or OPMC offices.

7. 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.

It is agreed that Respondent is currently practicing medicine at Conifer Park and Van Rensselaer Manor Nursing Home. If Respondent should decide for any reason to practice Family Medicine in a private office setting or as part of a Family Medicine General Practice he must notify OPMC of this decision and for the period of this probation he will then be subject to the following practice monitoring provisions listed in paragraph numbered (8) below, otherwise Respondent will not be subjected to the practice monitor requirements of these probationary terms.

8. Respondent's practice of medicine shall be monitored by a physician monitor, board certified in an appropriate speciality, ("practice monitor") approved in advance, in writing, by the Director of the Office of Professional Medical Conduct or designee. Respondent may not practice medicine in any private office or as part of any Family Practice Group until an approved practice monitor and monitoring program is in place. Any practice of medicine prior to the submission and approval of a proposed practice monitor will be determined to be a violation of probation.
  - a. The practice monitor shall report in writing to the Director of the Office of Professional Medical Conduct or designee, on a schedule to be determined by the office. The practice monitor shall visit Respondent's medical practice at each and every location, on a random basis at least quarterly and shall examine a random (no less than 25%) selection of records maintained by Respondent, including patient histories, prescribing information and billing records. Respondent will make available to the monitor any and all records or access to the practice requested by the monitor, including on-site observation. 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 immediately be reported to the Office of Professional Medical Conduct by the monitor.
  - b. Any change in practice monitor must be approved in writing, in advance, by the Office of Professional Medical Conduct.

- c. All expenses associated with monitoring, including fees to the monitoring physician, shall be the sole responsibility of the Respondent.
  - d. It is the responsibility of the Respondent to ensure that the reports of the practice monitor are submitted in a timely manner. A failure of the practice monitor to submit required reports on a timely basis will be considered a possible violation of the terms of probation.
  - e. Respondent must 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 designee prior to the placement of a practice monitor.
9. Respondent shall enroll in and complete a program of education in the area of General Family Practice to be equivalent to at least 40 credit hours of Continuing Medical Education per year for the period of probation. Said program of Continuing Education shall be subject to the prior approval of the Director of the Office of Professional Medical Conduct and be complete within the period of probation or otherwise specified in the Order. If the program of Education is not completed within the time period specified and a waiver or a time extension is not granted by the Director of The Office of Professional Medical Conduct, Respondent will be in violation of this term of probation and subject to a violation of probation proceeding.
10. Respondent's practice of medicine is permanently restricted to prohibit further practice in the area of Cardiology.
11. Respondent shall comply with all terms, conditions, restrictions and penalties to which he/she is subject pursuant to the order and shall assume and bear all costs related to compliance. Upon receipt of evidence of non-compliance 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 other such proceeding against Respondent as may be authorized pursuant to the law.