



***New York State Board for Professional Medical Conduct***

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

Antonia C. Novello, M.D., M.P.H., Dr. P.H.  
*Commissioner  
NYS Department of Health*

Dennis P. Whalen  
*Executive Deputy Commissioner  
NYS Department of Health*

Dennis J. Graziano, Director  
*Office of Professional Medical Conduct*

**PUBLIC**

Michael A. Gonzalez, R.P.A.  
*Vice Chair*

Ansel R. Marks, M.D., J.D.  
*Executive Secretary*

October 29, 2004

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

Corrected Letter

Thomas Crittenden Cherry, Jr., M.D.  
4 Applewood Common  
East Lyme, CT 06333

Re: License No. 150036

Dear Dr. Cherry:

Enclosed please find Order #BPMC 04-244 of the New York State Board for Professional Medical Conduct. This order and any penalty provided therein goes into effect November 5, 2004.

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 the 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: Thomas W. Boyce, Jr., Esq.  
Faulkner & Boyce, P.C.  
216 Broad Street  
New London, CT 06320

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

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IN THE MATTER  
OF  
THOMAS CRITTENDEN CHERRY, JR., M.D.

CONSENT  
ORDER  
BPMC No. 04-244

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Upon the proposed agreement of **THOMAS CRITTENDEN CHERRY, JR., M.D.**,  
(Respondent) for Consent Order, which application is made a part hereof, it is agreed and

ORDERED, that the application and the provisions thereof are hereby adopted and so  
ORDERED, and 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 the Consent Order to Respondent at the  
address set forth in this agreement or to Respondent's attorney by certified mail, or upon  
transmission via facsimile to Respondent or Respondent's attorney, whichever is earliest.

SO ORDERED.

DATED: 10/27/04

  
MICHAEL A. GONZALEZ, R.P.A.  
Vice 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  
  
OF  
  
THOMAS CRITTENDEN CHERRY, JR. M.D.  
CO-04-03-1385-A

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CONSENT  
  
AGREEMENT  
  
AND ORDER

**THOMAS CRITTENDEN CHERRY, JR., M.D.**, (Respondent) being duly sworn deposes and says:

That on or about May 7, 1982, I was licensed to practice as a physician in the State of New York, having been issued License No. 150036 by the New York State Education Department.

My current address is 4 Applewood Common, East Lyme, CT 06333, and I will advise the Director of the Office of Professional Medical Conduct of any change of my address.

I understand that the New York State Board For Professional Medical Conduct has charged me with three (3) specifications of professional medical misconduct.

A copy of the Statement of Charges, based solely upon a January 16, 2001, Connecticut Consent Order and a November 15, 2003, State of Connecticut Memorandum of Decision, is annexed hereto, made a part hereof, and marked as Exhibit "A."

I agree not to contest the three (3) specifications, in full satisfaction of the charges against me.

The New York State Department of Health has offered to settle this matter by my agreeing to a Censure and Reprimand and a \$4,000.00 fine. I have not practiced medicine in New York state in many years and I do not intend to return to practice medicine in New York state.

I agree, therefore, in lieu of the settlement offered by the State of New York:

to never activate my registration to practice medicine in New York state  
or seek to reapply for a license to practice medicine in New York state.

I, hereby, stipulate that any failure by me to comply with such conditions shall constitute misconduct as defined by New York State Education Law §6530(29).

I, hereby, make this Application to the State Board for Professional Medical Conduct (the Board) and request that it be granted.

I understand that, in the event that this Application is not granted by the Board, 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 Board grants my Application, as set forth herein, an Order of the Chairperson of the Board shall be issued in accordance with same. I agree that such order shall be effective upon issuance by the Board, which may be accomplished by mailing, by first class mail, a copy of the Consent Order to me at the address set forth in this agreement, or to my attorney, or upon transmission via facsimile to me or my attorney, whichever is earliest.

I am making this Application of my own free will and accord and not under duress, compulsion or restraint of any kind or manner. In consideration of the value to me of the acceptance by the Board of this Application, allowing me to resolve this matter without the various risks and burdens of a hearing on the merits. I knowingly waive any right I may have to contest the Consent Order for which I hereby apply, whether administratively or judicially, and ask that the Application be granted.

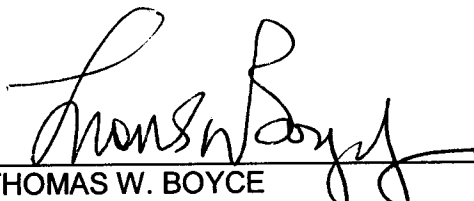
AFFIRMED:

DATED: 10/14/2004

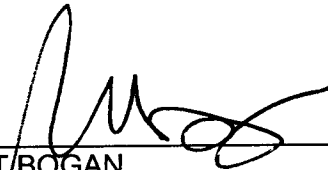
  
THOMAS CRITTENDEN CHERRY, JR., M.D.  
Respondent

The undersigned agree to the attached application of the Respondent and to the proposed penalty based on the terms and conditions thereof.

DATE: 10/14/04

  
THOMAS W. BOYCE  
Attorney for Respondent

DATE: 20 October 2004

  
ROBERT BOGAN  
Associate Counsel  
Bureau of Professional Medical Conduct

DATE: 26 October 2004

  
DENNIS J. GRAZIANO  
Director  
Office of Professional Medical Conduct

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

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IN THE MATTER  
OF  
THOMAS CRITTENDEN CHERRY, JR., M.D.  
CO-04-03-1385-A

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STATEMENT  
OF  
CHARGES

THOMAS CRITTENDEN CHERRY, JR., M.D., the Respondent, was authorized to practice medicine in New York state on May 7, 1982, by the issuance of license number 150036 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A. On or about January 16, 2001, the State of Connecticut, Department of Public Health, Bureau of Regulatory Services, (hereinafter "Connecticut Board"), by a Consent Order (hereinafter "Connecticut Order 1"), imposed, on Respondent, a \$1,000.00 civil penalty, based on failing to ensure that an adequate margin of normal tissue surrounded a tumor surgically removed by Respondent and failing to ensure proper follow-up after the surgery.

B. On or about November 15, 2003, the Connecticut Board, by a Memorandum of Decision (hereinafter "Connecticut Order 2"), imposed, on Respondent, a \$3,000.00 civil penalty, based on performing surgery on the wrong side of a patient's forehead.

C. The conduct resulting in the Connecticut Board disciplinary action against Respondent, set forth in Connecticut Order 1, described in Paragraph A above, 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 (3) (negligence on more than one occasion).

D. The conduct resulting in the Connecticut Board disciplinary action against Respondent set forth in Connecticut Order 2, described in Paragraph B above, 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); and/or
2. New York Education Law §6530(26) (performing professional services which have not been duly authorized by the patient).

### **SPECIFICATIONS**

#### **FIRST AND SECOND SPECIFICATIONS**

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 finding 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.
2. The facts in Paragraphs B and/or D.

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

Respondent violated New York Education Law §6530(9)(d) by having disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the disciplinary action would, if committed in New York State, constitute professional misconduct under the laws of New York state, in that Petitioner charges:

3. The facts in Paragraphs A and/or C.
4. The facts in Paragraphs B and/or D.

DATED: *September 1*, 2004  
Albany, New York

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