



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

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

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NYS Department of Health*

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NYS Department of Health*

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*Vice Chair*

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

*Public*

October 28, 2005

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

Michael Maselly, M.D.

Redacted Address  
*State North  
Syracuse, NY 13057*

Re: License No. 162515

Dear Dr. Maselly:

Enclosed is a copy of Order #BPMC 05-242 of the New York State Board for Professional Medical Conduct. This order and any penalty provided therein goes into effect November 4, 2005.

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,

Redacted Signature

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

Enclosure

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

IN THE MATTER  
OF  
MICHAEL MASELLY, M.D.

CONSENT  
ORDER

BPMC No. #05-242

Upon the application of MICHAEL MASELLY, M.D. (Respondent), in the attached Consent Agreement and Order, which is made a part of this Consent Order, it is

ORDERED, that the Consent Agreement, and its terms, are adopted and SO ORDERED; and it is further

- ORDERED, that this Order shall be effective upon issuance by the Board, either
- by mailing of a copy of this Consent Order, either by first class mail to Respondent at the address in the attached Consent Agreement or by certified mail to Respondent's attorney, OR
  - upon facsimile transmission to Respondent or Respondent's attorney, whichever is first.

SO ORDERED.

Redacted Signature

DATED: 10-27-05

KENDRICK A. SEARS, M.D.  
Chair  
State Board for Professional Medical Conduct

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

IN THE MATTER  
OF  
MICHAEL MASELLY, M.D.

CONSENT  
AGREEMENT

Michael Maselly, M.D., Respondent, representing that all of the following statements are true, deposes and says:

That on or about June 24, 1985, I was licensed to practice as a physician in the State of New York, and issued License No. 162515 by the New York State Education Department.

My current address is Redacted Address in Drive North, East St  
, and I will advise the Director of the Office of Professional Medical Conduct of any change of address.

I understand that the New York State Board for Professional Medical Conduct has charged me with two specifications of professional misconduct.

A copy of the Statement of Charges, marked as Exhibit "A", is attached to and part of this Consent Agreement.

I agree not to contest the specifications of professional misconduct, in full satisfaction of the charges against me, and agree to the following penalty:

Pursuant to Section 230-a (2) of the Public Health Law, my license to practice medicine in the State of New York shall be subject to a Censure and Reprimand.

Pursuant to §230-a (9) of the Public Health Law, I shall be placed on probation for a period of three (3) years, subject to the terms set forth in attached Exhibit "B."

I further agree that the Consent Order shall impose the following conditions:

That Respondent shall maintain current registration of licensure with the New York State Education Department Division of Professional Licensing Services (except during periods of actual suspension), and shall pay all registration fees. This condition shall take effect thirty (30) days after the Consent Order's effective date and will continue so long as Respondent remains licensed in New York State; and

That Respondent shall cooperate fully with the Office of Professional Medical Conduct (OPMC) in its administration and enforcement of this Order and in its investigations of matters concerning Respondent. Respondent shall respond in a timely manner to all OPMC requests for written periodic verification of Respondent's compliance with this Order. Respondent shall meet with a person designated by the Director of OPMC, as directed. Respondent shall respond promptly and provide all documents and information within Respondent's control, as directed. This condition shall take effect upon the Board's issuance of the Consent Order and will continue so long as Respondent remains licensed in New York State.

I stipulate that my failure to comply with any conditions of this Order shall constitute misconduct as defined by New York State Education Law §6530 (29).

I agree that if I am charged with professional misconduct in future, this Consent Agreement and 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 the 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 this 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 transmission to me or my attorney, whichever is first.

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, whether administratively or judicially, I agree to be bound by the Consent Order, and ask that the Board adopt this Consent Agreement.

DATED: 9/27/2005

Redacted Signature

~~MICHAEL MASELLY, M.D.~~  
RESPONDENT



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

DATED: \_\_\_\_\_

\_\_\_\_\_  
Attorney for Respondent

DATED: 10/18/05

Redacted Signature

~~JEFFREY J. CONKLIN, ESQ.~~  
Associate Counsel  
Bureau of Professional Medical Conduct

DATED: 10/25/2005

Redacted Signature

~~DENNIS J. GRAZIANO~~  
Director  
Office of Professional Medical Conduct

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

IN THE MATTER  
OF  
MICHAEL MASELLY, M.D.

STATEMENT  
OF  
CHARGES

MICHAEL MASELLY, M.D., Respondent, was authorized to practice medicine in New York State on June 24, 1985, by the issuance of license number 162515 by the New York State Education Department, with a registration address of 621 West Genesee Street, Syracuse, New York 13204.

**FACTUAL ALLEGATIONS**

- A. Respondent provided medical care to Patient A after her admission to St. Joseph's Hospital on August 21, 2001, with presenting symptoms of slurred speech, dizziness, unsteady gait, and two to three day history of abdominal pain associated with nausea, vomiting and constipation. Patient A's white count on admission was 21,000 with a left shift and she had a temperature of 102 degrees. An abdominal examination at the Emergency Department revealed rebound tenderness and guarding with some distension, with a question of a surgical abdomen. X-rays demonstrated dilated loops of the small bowel consistent with ileus or early small bowel obstruction. After being admitted to the care of Dr. Maselly, Demerol was ordered for the abdominal pain Patient A was experiencing. An NG tube was placed and a foley catheter inserted. Patient A continued to run a temperature in the 101 degree range throughout her admission. Despite multiple episodes of diarrhea, the Respondent discharged Patient A on August 13, 2001. Later on August 23rd, Patient A was readmitted to St. Joseph's Hospital with severe abdominal pain, free air documented by chest x-rays, a temperature of 102, a white count of 25,000 and abnormal liver function studies. Ultimately,

Patient A underwent a left hemicolectomy with the creation of a Hartmann's pouch and a diverting colostomy. The patient was discharged on September 9, 2001. The Respondent dictated the discharge summary for the second hospital admission on or about January 2002.

The Respondent's medical care of Patient A deviated from accepted standards of medical care in the following respects:

1. Respondent failed to properly evaluate and address available clinical information to arrive at a timely diagnosis;
  2. Respondent failed to obtain indicated labs and/or to address abnormal labs;
  3. Respondent failed to review, coordinate, and/or utilize clinical work-ups comments of nurses and physician assistant;
  4. Respondent failed to appreciate and address the severity of Patient A's medical condition on August 13, 2001, when he discharged said patient from St. Joseph's Hospital;
  5. Respondent failed to evaluate and address Patient A's sudden onset of abdominal pain first experienced by said patient two to three days prior to August 13, 2001;
  6. Respondent failed to write timely Discharge Summaries for Patient A's hospitalizations at St. Joseph's Hospital; and
  7. Respondent failed to address abnormal x-ray results.
- B. Respondent provided medical care to Patient B at his office commencing on September 14, 1999, with a complaint of rectal discharge. The Respondent performed an anosopic rectal examination and flexible sigmoidoscopy. A subsequent barium enema demonstrated pan-diverticulosis of a moderate degree. Patient B ultimately underwent rubber banding of hemorrhoids on September 27, 1999; September 27, 1999; October 18, 1999, May 8, 2000; May 22, 2000; June 6, 2000; June 26, 2000; June 26, 2001; and July 10, 2001.



The Respondent's medical care of Patient B deviated from accepted standards of medical care in the following respects:

1. Respondent failed to obtain a complete history from Patient B and/or failed to properly record such history;;
2. Respondent failed to test Patient B's stool for blood and/or failed to properly record any such test;
3. Respondent failed to obtain informed consent forms for the procedures performed on Patient B and/or failed to maintain said forms;
4. Respondent failed to order an indicated colonoscopy of Patient B;
5. Respondent caused an extraordinary number of rubber banding procedures to be performed upon Patient B;
6. Respondent failed to take pictures to demonstrate the extent of hemorrhoidal tissues; and
7. Respondent failed to perform an indicated manometry examination upon Patient B and/or other proctological examinations, and/or failed to properly record such examinations.

- C. Respondent provided care to Patient C at his office on January 5, 2001, with complaints of diarrhea and difficulty sleeping. The Respondent prescribed Flogyl, Imodium, Ambien and Librax. Later, the Respondent prescribed Prozac to address multiple marital problems Patient C was experiencing.

The Respondent's medical care of Patient C deviated from accepted standards of medical care in the following respects:

1. Respondent failed to obtain a complete and adequate history from Patient C and/or failed to properly record such history;

2. Respondent failed to perform an indicated physical examination and/or failed to properly record such an examination;
3. Respondent failed to test Patient C's stool sample for blood and/or failed to properly record such a test;
4. Respondent failed to properly document the basis for the medications prescribed for Patient C; and
5. Respondent failed to refer Patient C for a psychiatric evaluation and/or failed to properly document such a referral.

D. Respondent treated Patient D at his office on December 15, 2000, with a complaint of rectal pain. The Respondent performed office surgery in which he excised a thrombosed external hemorrhoid. Patient D underwent another surgery on December 20, 2000, to excise a thrombosed external hemorrhoid.

The Respondent's medical care of Patient D deviated from accepted medical standards in the following respects:

1. Patient D was given conscious sedation prior to the above mentioned surgeries and Respondent improperly discharged said patient to drive home;
2. Respondent performed surgeries without obtaining the necessary informed consent forms and/or failed to maintain said forms; and
3. Respondent failed to obtain a complete and appropriate history from Patient D and/or failed to properly document such history.

E. Respondent treated Patient E after he admission to St. Joseph's Hospital on July 29, 2001, with a complaint of severe abdominal pain. A CT scan demonstrated a soft tissue density with infiltration of the mesentery of the hepatic flexure, which was suspicious for neoplasti versus inflammatory process, obstruction of the ascending colon with the cecum measuring

12.5 cm, and sigmoid diverticulosis. Patient E was admitted to the care of the Respondent, who thought that said patient's abdominal pain was consistent with diverticulosis. Respondent treated Patient E with antibiotics and intravenous fluids. Review of a CT scan suggested two masses of the liver consistent with possible metastatic disease. A colonoscopy was performed while revealing a mass in the ascending colon, which was thought to be a tumor. A subsequent CT scan revealed progressive distension loops of the small bowel, progressing to the level of this ilium, and two focal lesions of the liver. The diagnosis was colonic obstruction at the level of the hepatic flexure, with a mass plus two lesions of the liver. The colonic obstruction caused a small bowel obstruction. Patient E underwent a right hemicolectomy and biopsy of the liver module on August 6, 2001. The pathology confirmed carcinoma metastatic disease of the liver on multiple lymph nodes. Patient E also had an abnormal chest x-ray suggesting mediastinal masses, subsequently confirmed by a CT scan.

The Respondent's medical care for Patient E deviated from accepted medical standards in the following respects:

1. Respondent improperly waited nine days before Patient E underwent exploratory surgery and resection of the colonic mass, which proved to be a carcinoma with metastatic disease;
2. Respondent failed to timely and properly diagnose Patient E's condition;
3. Respondent failed to appreciate the significance of the available clinical and lab information; and
4. Respondent failed to prepare and maintain appropriate medical records, including a discharge summary.

**SPECIFICATIONS OF CHARGES**

**FIRST THROUGH FIFTH SPECIFICATIONS**

**(Negligence On More Than One Occasion)**

- F. Respondent is charged with professional misconduct under New York Education Law Section 6530 (3) by reason of his having practiced the profession with negligence on more than one occasion, in that Petitioner charges the following:
1. The facts alleged in paragraphs A and A1, A and A2, A and A3, A and A4, A and A4, A and A5, A and A6, and A and A7; B and B1, B and B2, B and B3, B and B4, B and B5, B and B6, and B and B7; C and C1, C and C2, C and C3, C and C4, and C and C5; D and D1, D and D2, and D and D3; and E and E1, E and E2, E and E3, E and E4, and E and E5.

**SIXTH THROUGH TENTH SPECIFICATIONS**

**(Failing to Maintain Accurate Records)**

- G. Respondent is charged with professional misconduct under New York Education Law Section 6530 (32 ) by reason of failing to maintain a record for each patient which accurately reflects the evaluation and treatment of said patients, as alleged in the facts of the following:
2. The facts alleged in paragraphs A and A6; B and B1, B and B2, and B and B7; C and C1, C and C2, C and C3, C and C4, and C and C5; D and D3; and E and E4.

DATED: October 17, 2005

Redacted Signature

\_\_\_\_\_  
Peter D. Van Buren  
Deputy Counsel  
Bureau of Professional Medical Conduct

## EXHIBIT "B"

### Terms of Probation

1. Respondent's conduct shall conform to moral and professional standards of conduct and governing law. Any act of professional misconduct by Respondent as defined by New York State Education Law §6530 or §6531 shall constitute a violation of probation and may subject Respondent to an action pursuant to New York State Public Health Law §230(19).
2. Respondent shall provide the Director, Office of Professional Medical Conduct (OPMC), Hedley Park Place, 433 River Street Suite 303, Troy, New York 12180-2299 with the following information, in writing, and ensure that such information is kept current: a full description of Respondent's employment and practice; all professional and residential addresses and telephone numbers within and outside New York State; and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty (30) days of each action.
3. Respondent shall cooperate fully with, and respond in a timely manner to, OPMC requests to provide written periodic verification of Respondent's compliance with the terms of this Consent Order. Upon the Director of OPMC's request, Respondent shall meet in person with the Director's designee.
4. Respondent's failure to pay any monetary penalty by the prescribed date shall subject Respondent to all provisions of law relating to debt collection by New York State, including but 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 probation period shall toll when Respondent is not engaged in active medical practice in New York State for a period of thirty (30) consecutive days or more. Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in, or intends to leave, active medical practice in New York State for a consecutive thirty (30) day period. Respondent shall then notify the Director again at least fourteen (14) days before returning to active practice. Upon Respondent's return to active practice in New York State, the probation period will resume and Respondent shall fulfill any unfulfilled probation terms.
6. The Director of OPMC may review Respondent's professional performance. This review may include but shall not be limited to: a review of office records, patient records and/or hospital charts; and interviews with or periodic visits with Respondent and Respondent's staff at practice locations or OPMC offices.

7. Respondent shall maintain complete and legible medical records that accurately reflect the evaluation and treatment of patients and contain all information required by State rules and regulations concerning controlled substances.
8. Respondent shall enroll in and complete a continuing education program in the area of medical record keeping for a minimum of eight credit hours. This continuing education program is subject to the Director of OPMC's prior written approval and shall be completed within the probation period, unless the Order specifies otherwise.

#### **PRACTICE MONITOR**

9. Within thirty days of the effective date of the order, 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 unannounced basis at least monthly and shall examine a selection (no fewer than 20) 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 of 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; and
  - 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.
10. Respondent shall comply with this Order and all its terms, and shall bear all associated compliance costs. Upon receiving evidence of noncompliance with, or 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 authorized by law, against Respondent.