



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

September 14, 2000

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Anthony M. Avellanosa, M.d.
118 President's Walk
Williamsville, New York 14222

RE: License No. 143777

Dear Dr. Avellanosa:

Enclosed please find Order #BPMC 00-252 of the New York State Board for Professional Medical Conduct. This Order and any penalty provided therein goes into effect September 14, 2000.

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: Joseph V. Sedita, Esq.
Hodgson, Russ, Andrews, Woods & Goodyear, LLP
One MT&T Plaza, Suite 2000
Buffalo, New York 14203-2392

Kevin C. Roe

IN THE MATTER
OF
ANTHONY M. AVELLANOSA, M.D.

CONSENT
AGREEMENT
AND
ORDER

BPMC No. 00-252

ANTHONY M. AVELLANOSA, M.D., (Respondent) says:

That on or about October 24, 1980, I was licensed to practice as a physician in the State of New York, having been issued License No. 143777 by the New York State Education Department.

My current address is 55 Spindrift Drive, Suite 201, Williamsville, New York, 14221, 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 fourteen specifications of professional misconduct. A copy of the Statement of Charges is annexed hereto, made a part hereof, and marked as Exhibit A.

I admit guilt to the Thirteenth Specification (negligence on more than one occasion) as it relates to Patients A, B, and C. I agree to the following penalty:

My license shall be limited to prohibit surgery of any kind; and my license shall be suspended for three years with said suspension stayed to become a three year period of probation under the terms and conditions set forth in Exhibit B, attached hereto and made a part hereof.

I further agree that the Consent Order for which I hereby apply shall impose the following conditions:

That, except during periods of actual suspension, Respondent shall maintain current registration of Respondent's license with the New York State Education Department Division of Professional Licensing Services, and pay all registration fees. This condition shall be in effect beginning thirty days after the effective date of the Consent Order and will continue while the licensee possesses his/her license; and

That Respondent shall fully cooperate in every respect with the Office of Professional Medical Conduct (OPMC) in its administration and enforcement of this Order and in its investigation of all matters regarding Respondent. Respondent shall respond in a timely manner to each and every request by OPMC to provide written periodic verification of Respondent's compliance with the terms of this Order. Respondent shall meet with a person designated by the Director of OPMC as directed. Respondent shall respond promptly and provide any and all documents and information within Respondent's control upon the direction of OPMC. This condition shall be in effect beginning upon the effective date of the Consent Order and will continue while the licensee possesses his/her license.

I stipulate that any failure by me to comply with such conditions shall constitute misconduct as defined by New York State Education Law.

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

I 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 8-28-00

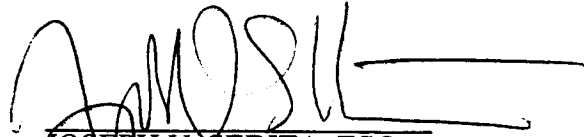


ANTHONY M. AVELLANOSA, M.D.

RESPONDENT

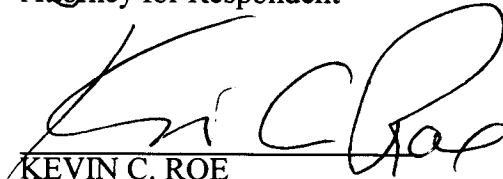
The undersigned agree to the attached application of the Respondent and to the proposed penalty based on the terms and conditions thereof.

DATE: 8/28/00



JOSEPH V. SEDITA, ESQ.
Hodgson, Russ, Andrews, Woods
& Goodyear, LLP
Attorney for Respondent

DATE: 9/6/00



KEVIN C. ROE
Associate Counsel
Bureau of Professional
Medical Conduct

DATE: Sept 8, 2000



ANNE F. SAILE
Director
Office 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 addressed to the Director of the Office of Professional Medical Conduct, New York State Department of Health, 433 River Street, Suite 303, Troy, NY 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. 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].
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/her 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 unannounced basis at least monthly and shall examine a

selection (no less 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 accepted standards of 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.
 - 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.
 - e. The terms of this paragraph shall become effective thirty (30) days after service of the Order and continue for two years.
8. Within 30 days of the effective date of this Order, Respondent shall undergo a complete physical examination, including a neurological evaluation, to determine his fitness to continue practicing medicine. The physicians conducting the examination shall be selected by Respondent and approved by the Director of OPMC and shall submit a written report to the Director of OPMC within 30 days of the examination.
9. Respondent shall obtain and successfully complete 80 hours of medical education within the first 180 days of the effective date of this Order. Respondent shall submit an education proposal to the Director of OPMC for approval within the first thirty days of the effective date of this Order. The education proposal must be approved, in writing, by the Director of OPMC prior to Respondent's participation therein.
10. Respondent shall comply with all terms, conditions, restrictions, limitations and penalties to which he or she 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. Upon written notification to Respondent by the Director of OPMC that he/she has determined that he/she has violated the terms of probation and/or is not in compliance with the terms of probation, the stay of the suspension is vacated and Respondent's licence shall be actively suspend until final resolution of the alleged violations of the terms of probation pursuant to the procedure set forth in NY Public Health Law §230(19).

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

IN THE MATTER
OF
ANTHONY M. AVELLANOSA, M.D.

CONSENT
ORDER

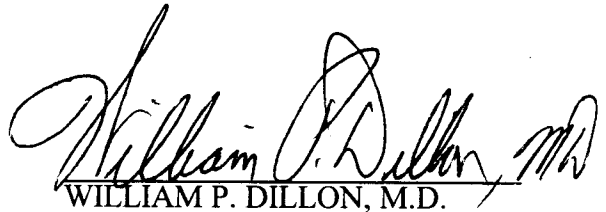
Upon the proposed agreement of Anthony M. Avellanosa, M.D.(Respondent) for Consent Order, which application is made a part hereof, it is agreed to and

ORDERED, that the application and the provisions thereof are hereby adopted, 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: 9/12/00



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
ANTHONY M. AVELLANOSA, M.D. : CHARGES

-----X

ANTHONY M. AVELLANOSA, M.D., the Respondent, was authorized to practice medicine in New York State on October 24, 1980, by the issuance of license number 143777 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. Respondent treated Patient A (patients are identified in the attached appendix) from September 1986 to September 1992 at his office, 55 Spindrift Drive, Suite 201, Williamsville, New York 14221, and/or Sisters of Charity Hospital, Buffalo, New York. Respondent's care and treatment of Patient A failed to meet acceptable standards of medical care, in that:

1. Respondent failed to obtain and/or document an adequate history.
2. Respondent failed to perform and/or document an adequate physical examination.
3. Respondent failed to perform and/or order appropriate diagnostic testing to establish and/or confirm the diagnosis of spinal instability.
4. On or about July 6, 1992, Respondent performed bilateral lumbar laminectomy, bilateral foraminotomies, and disc excisions at L4-L5 and L5-S1 without adequate medical justification.

5. Respondent improperly extended the plates by which a L4-5 fusion was accomplished over and across the interspace at L5-S1.
6. Respondent failed to attach the plate to the sacrum.
7. Respondent failed to adequately document the surgery of July 6, 1992.

B. Respondent treated Patient B from June 1988 to March 1990 at his office and Sisters of Charity Hospital.

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

1. Respondent failed to recognize that he was not within the appropriate disc space.
2. Respondent failed to order x-rays to confirm the location of the surgery.
3. Respondent biopsied a nerve root and ganglion without adequate medical justification.

C. Respondent treated Patient C from September 1989 to September 1992 at his office and Sisters of Charity Hospital.

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

1. Respondent failed to obtain and/or document an adequate history.
2. Respondent failed to perform and/or document an adequate physical examination.
3. On or about September 26, 1990, Respondent performed bilateral lumbar laminectomy, bilateral foraminotomies, and disc excision at L4-5 without adequate medical justification.
4. Respondent failed to perform and/or order an

adequate diagnostic workup postoperatively.

5. Respondent prescribed Baclofen without adequate medical justification.

D. Respondent treated Patient D from September 1989 to March 1991 at his office and Sisters of Charity Hospital.

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

1. Respondent failed to obtain and/or document an adequate history.
2. Respondent failed to perform and/or document an adequate physical examination.
3. On or about April 30, 1990, Respondent performed lumbar laminectomy at L4-L5 or L5-S1 without adequate medical justification.
4. Respondent failed to order and/or perform a contrast enhanced MRI.
5. On or about March 7, 1991, Respondent performed bilateral laminectomies at L4-5 and L5-S1 without adequate medical justification.
6. Respondent failed to accurately document the nature of the surgery performed on March 7, 1991.

E. Respondent treated Patient E from December 1993 to April 1996 at his office and St. Joseph's Hospital.

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

1. Respondent failed to obtain and/or document an adequate history.
2. Respondent failed to perform and/or document an adequate physical examination.
3. Respondent failed to perform and/or order

appropriate diagnostic testing to establish and/or confirm the diagnosis of spinal instability.

4. On or about March 4, 1994, Respondent performed bilateral lumbar laminectomy and disc excision at L4-L5 without adequate medical justification.
5. On or about March 4, 1994 Respondent performed spinal fusion at L4, L5, and S1 without medical justification.
6. Respondent improperly placed the pedicle screw causing a partial cut off of the right nerve root sleeve at S1.
7. Respondent failed to adequately evaluate the patient's post operative complaints and condition.
8. Respondent failed to examine post operative x-rays and/or failed to determine from an examination of the x-rays that the pedicle screws inserted on March 4 1994, were improperly placed.

F. Respondent treated Patient F from September 1993 to May 1996 at his office and St. Joseph's Hospital. Respondent's care and treatment of Patient F failed to meet acceptable standards of medical care, in that:

1. Respondent failed to obtain and/or document an adequate history.
2. Respondent failed to perform and/or document an adequate physical examination.
3. On or about November 7, 1994, Respondent performed a decompressive laminectomy/discectomy at L4-5 and/or L5- S1 without adequate medical justification.
4. On or about September 29, 1995, Respondent performed extensive procedures at L4-L5 and/or L5-S1 without adequate medical justification.
5. Respondent failed to perform and/or order appropriate diagnostic testing to establish and/or confirm the diagnosis of spinal instability.
6. Respondent failed to adequately evaluate and/or treat a cervical spinal fluid (CSF) leak which

developed after the surgery of September 29, 1995.

7. Respondent failed to dictate a discharge summary for the September 1995 admission in a timely manner.
8. On December 29, 1995, Respondent removed the TSRH spinal implantation system, originally implanted on September 29, 1995, without adequate medical justification.
9. Respondent failed to attend Patient F or arrange coverage from December 30, 1995 until January 2, 1996.
10. Respondent knowingly and falsely stated in a letter dated February 14, 1996 that the (CSF) leak closed on its own and did not require sutures.
11. Respondent knowingly and falsely stated in a letter dated February 14, 1996 that Patient F was readmitted to the hospital due to the lack of appropriate supervision and care provided by a designated nursing care organization.
12. Respondent knowingly and falsely stated in a letter to another physician that the reason Patient F was readmitted for the care of the CSF leak was due to the lack of appropriate supervision and care provided by a designated nursing care organization, when in fact the nursing care provided was appropriate.

FIRST THROUGH SIXTH SPECIFICATIONS

GROSS NEGLIGENCE

Respondent is charged with gross negligence in violation of New York Education Law §6530(4), in that Petitioner charges:

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

C.4, and/or C.5.

4. The facts in Paragraphs D and D.1, D.2, D.3, D.4, D.5, D.6.
5. The facts in Paragraphs E and E.1, E.2, E.3, E.4, E.5, E.6, E.7, and/or E.8.
6. The facts in Paragraphs F and F.1, F.2, F.3, F.4, F.5, F.6, F.7, F.8, F.9, F.10, F.11, and/or F.12.

SEVENTH THROUGH TWELFTH SPECIFICATIONS

GROSS INCOMPETENCE

Respondent is charged with gross incompetence in violation of New York Education Law section 6530(6), in that Petitioner charges:

7. The facts in Paragraphs A and A.1, A.2, A.3, A.4, A.5, A.6.
8. The facts in Paragraphs B and B.1, B.2, and/or B.3.
9. The facts in Paragraphs C and C.1, C.2, and/or C.3, C.4, and/or C.5.
10. The facts in Paragraphs D and D.1, D.2, D.3, D.4, D.5, D.6.
11. The facts in Paragraphs E and E.1, E.2, E.3, E.4, E.5, E.6, E.7, and/or E.8.
12. The facts in Paragraphs F and F.1, F.2, F.3, F.4, F.5, F.6, F.7, F.8, F.9, F.10, F.11, and/or F.12.

THIRTEENTH SPECIFICATION

NEGLIGENCE ON MORE THAN ONE OCCASION

Respondent is charged with negligence on more than one

occasion in violation of New York Education Law §6530(3), 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, A.6; B and B.1, B.2, B.3; C and C.1, C.2, C.3, C.4, C.5; D and D.1, D.2, D.3, D.4, D.5, D.6; E and E.1, E.2, E.3, E.4, E.5, E.6, E.7, E.8; and/or F and F.1, F.2, F.3, F.4, F.5, F.6, F.7, F.8, F.9, F.10, F.11, and/or F.12.

FOURTEENTH SPECIFICATION

INCOMPETENCE ON MORE THAN ONE OCCASION

Respondent is charged with incompetence on more than one occasion in violation of New York Education Law §6530(5), in that Petitioner charges two or more of the following:

14. The facts in Paragraphs A and A.1, A.2, A.3, A.4, A.5, A.6; B and B.1, B.2, B.3; C and C.1, C.2, C.3, C.4, C.5; D and D.1, D.2, D.3, D.4, D.5, D.6; E and E.1, E.2, E.3, E.4, E.5, E.6, E.7, E.8; and/or F and F.1, F.2, F.3, F.4, F.5, F.6, F.7, F.8, F.9, F.10, F.11, and/or F.12.

FIFTEENTH THROUGH TWENTIETH SPECIFICATIONS

EXCESSIVE TREATMENT

Respondent is charged with ordering excessive treatment not warranted by the condition of the patient in violation of N.Y. Education Law §6530(35), in that Petitioner charges:

15. The facts in Paragraphs A and A.4.
16. The facts in Paragraphs C and C.3.

17. The facts in Paragraphs D and D.3.
18. The facts in Paragraphs D and D.5.
19. The facts in Paragraphs F and F.3.
20. The facts in Paragraphs F and F.4.

TWENTY-FIRST THROUGH TWENTY-THIRD SPECIFICATIONS

FRAUD

Respondent is charged with practicing the profession fraudulently in violation of New York Education Law §6530(2), in that Petitioner charges:

21. The facts in Paragraphs F and F.10.
22. The facts in Paragraphs F and F.11.
23. The facts in Paragraphs F and F.12.

TWENTY-FOURTH THROUGH TWENTY-SIXTH SPECIFICATIONS

MORAL UNFITNESS

Respondent is charged with conduct in the practice of medicine which evidences moral unfitness to practice medicine in violation of New York Education Law §6530(20), in that Petitioner charges:

24. The facts in Paragraphs F and F.10.
25. The facts in Paragraphs F and F.11.
26. The facts in Paragraphs F and F.12.

DATED: , 2000

Albany, New York

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