



Board for Professional Medical Conduct

Corning Tower • Empire State Plaza • Albany, NY 12237 • (518) 474-8357

C. Maynard Guest, M.D.
Executive Secretary

March 12, 1992

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Joseph Leal, M.D.
107 Dilworth Street
Glendive, Montana 59330

Effective Date: 3/16/92
RE: License No. 158478

Dear Dr. Leal:

Enclosed please find Order #BPMC 92-20 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
Empire State Plaza
Tower Building-Room 438
Albany, New York 12237-0614

Sincerely,

C. Maynard Guest, M.D.
Executive Secretary
Board for Professional Medical Conduct

Enclosure

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

-----X

IN THE MATTER :
OF : ORDER
JOSEPH LEAL, M.D. : #BPMC 92-20

-----X

Upon the application of JOSEPH LEAL, M.D., which application is made a part hereof, it is

ORDERED, that the application and the provisions thereof are hereby adopted and so ORDERED, and it is further

ORDERED that this order shall take effect as of the date of the personal service of this order upon the respondent or seven days after mailing by certified mail.

SO ORDERED,

DATED: 9 March 1992

Charles J. Vacanti
Charles J. Vacanti, M.D.
Chairperson
State Board for Professional
Medical Conduct

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

IN THE MATTER : APPLICATION
OF : FOR
JOSEPH LEAL, M.D. : CONSENT
: ORDER

STATE OF MONTANA)
COUNTY OF Dawson) ss.:

JOSEPH LEAL, M.D., being duly sworn, deposes and says:

That in or about 1984 I was licensed to practice as a physician in the State of New York, having been issued License No. 158478 by the New York State Education Department.

I am not currently registered with the New York State Education Department to practice as a physician in the State of New York.

I understand that the New York State Board of Professional Medical Conduct has charged me with two 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 First Specification to the extent of the facts contained in paragraphs A and A.6 and A.11, in full satisfaction of all charges.

I hereby agree to the penalty of one year suspension of my license to practice medicine with said suspension stayed.

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

Joseph Leal M.D

JOSEPH LEAL, M.D.
RESPONDENT

Sworn to before me this
10 day of FEB., 1992.

Philip A. Simont

NOTARY PUBLIC

RESIDING AT GLENDORA, UT
COMMISSION EXPIRES 7-13-92

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

IN THE MATTER : APPLICATION
OF : FOR
JOSEPH LEAL, M.D. : CONSENT
: ORDER

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

Date: 2/10/92

Joseph Leal M.D.
JOSEPH LEAL, M.D.
RESPONDENT

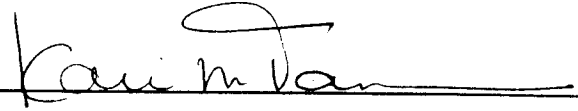
Date: 2-10-92

Richard A. Simons
ATTORNEY FOR RESPONDENT

Date: 2/18/92

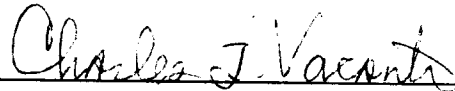
Terrence Sheehan
TERRENCE SHEEHAN
ASSOCIATE COUNSEL
BUREAU OF PROFESSIONAL
MEDICAL CONDUCT

Date: March 9, 1992



KATHLEEN M. TANNER
DIRECTOR, OFFICE OF PROFESSIONAL
MEDICAL CONDUCT

Date: 9 March 1992



CHARLES J. VACANTI, M.D.
CHAIRPERSON, 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
JOSEPH LEAL, M.D. : CHARGES
-----X

JOSEPH LEAL, M.D., the Respondent, was authorized to practice medicine in New York State on 1984 by the issuance of license number 158478 by the New York State Education Department. The Respondent is not currently registered with the New York State Education Department to practice medicine in New York State.

FACTUAL ALLEGATIONS

- A. Between on or about November 20, 1987 and on or about November 25, 1987, Respondent treated Patient A (whose name is contained in the Appendix) for abdominal distension at Queens Hospital Center, 82-68 164th Street, Jamaica, New York.
1. On or about November 20, 1987, Patient A was seen by Respondent at the surgical clinic at Queens Hospital Center. At that time Respondent reviewed X-rays of an

Exhibit "A"

upper GI series and a barium enema and made a diagnosis of Morgagni hernia. This diagnosis was incorrect.

2. On or about November 20, 1987 Respondent referred Patient A to Queens Hospital Center to be admitted for a surgical repair of a purported Morgagni hernia. This referral should not have been made. A surgical repair was not indicated.
3. On or about November 20, 1987, Patient A was admitted to the General Surgery Service at Queens Hospital Center. On or about November 25, 1987, Respondent operated on Patient A for a purported Morgagni-type hernia. Prior to the operation, Respondent failed to obtain complete past medical and surgical histories for Patient A.
4. After admission to the hospital Patient A was observed to have three surgical scars on his abdomen. Prior to performing abdominal surgery on November 25, 1987, Respondent failed to ascertain the nature of the operation or operations which caused those scars.
5. Respondent incorrectly read a chest X-ray dated November 22, 1987, of Patient A as showing a Morgagni hernia.

6. Prior to performing the November 25, 1987 operation, Respondent failed to review the chart and X-rays of Patient A's two previous admissions in 1987 and clinic records at Queens General Hospital. Such a review would have revealed that the November 22, 1987 chest X-ray did not describe a hernia but rather a colonic interposition which had been surgically created years earlier due to ingestion of lye by Patient A.
7. Respondent failed to perform an adequate physical examination of Patient A prior to surgery. The only complete examination Patient A received was performed by a third-year medical student.
8. Respondent failed to evaluate Patient A's tuberculosis and to rule it out as an etiological factor in Patient A's condition.
9. Respondent failed to obtain the informed consent of Patient A's parent.
10. Respondent failed to order gas contrast studies.
11. Respondent failed to order a G.I. series.

12. On November 25, 1987, Respondent performed a laparotomy and repair of a diaphragmatic hernia. These procedures were not indicated.
13. During the course of the operation, Respondent failed to recognize that Patient A had a colonic interposition in place.
14. During the operation Respondent took down, or failed to prevent the taking down of, the colonic interposition.
15. Once Respondent realized that the interposition had been destroyed, the assistance of the Thoracic Surgical Service was requested. Dr. J.W.V. Cordice and/or one or more other chest surgeons arrived at the operating room. The chest surgeon(s) decided that the segment of proximal colon which had been taken down was still viable. After extensive preliminary work, the chest surgeon(s) replaced the colon in its previous location and planned to exteriorize both ends preliminary to performing a repeat esophagocolstomy in the neck in the future. The chest surgeon(s) then scrubbed out and left the Respondent and the other general surgeons to close the abdomen after draining the chest.

16. Respondent improperly failed to follow the plan of the chest surgeon(s). Respondent decided, without justification, that the segment of proximal colon was not viable. As a result, the colon was taken back down and a shorter colonic segment was placed in the right upper abdomen. This procedure was not indicated.
17. Respondent should have advised the chest surgeon(s) of his decision to alter their plan of treatment and of his determination, contrary to their finding, that the segment of proximal colon was not viable.
18. Respondent failed to maintain a medical record for Patient A which accurately reflects his patient histories, examination, assessment, diagnoses, tests, treatment plan and operative reports.
19. On February 26, 1988, Patient A died at Queens Hospital Center. According to the patient's discharge summary the causes of death were bilateral pneumonia and sepsis.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

PRACTICING WITH GROSS NEGLIGENCE

Respondent is charged with practicing the profession with gross negligence under N.Y. Educ. Law Section 6530(4) (McKinney Supp. 1992) in that Petitioner charges:

1. The facts in paragraphs A and A.1.-A.19.

SECOND SPECIFICATION

FAILURE TO MAINTAIN ACCURATE RECORDS

Respondent is charged with professional misconduct under N.Y. Educ. Law Section 6530(32) (McKinney Supp. 1992) in that he failed to maintain a record for each patient which accurately reflects his evaluation and treatment of the patient. Specifically, Petitioner charges:

2. The facts in paragraphs A and A.18.

DATED: New York, New York

January 7, 1992



Chris Stern Hyman
Counsel
Bureau of Professional Medical
Conduct