



New York State Board for Professional Medical Conduct

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

Dennis P. Whalen
Executive Deputy Commissioner of Health
Anne F. Saile, Director
Office of Professional Medical Conduct
William J. Comiskey, Chief Counsel
Bureau of Professional Medical Conduct

William P. Dillon, M.D.
Chair
Denise M. Bolan, R.P.A.
Vice Chair
Ansel R. Marks, M.D., J.D.
Executive Secretary

May 25, 1999

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Todd Maily, M.D.
47 Jolley Drive
Bloomfield, CT 08054

RE: License No. 181165

Dear Dr. Maily:

Enclosed please find Order #BPMC 99-106 of the New York State Board for Professional Medical Conduct. This Order and any penalty provided therein goes into effect **May 25, 1999.**

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:

Wilfred T. Friedman, Esq.
The Bar Building
36 West 44th Street
New York, NY 10036

Robert Bogan, Esq.

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

IN THE MATTER
OF
TODD MAILLY, M.D.

CONSENT
AGREEMENT
AND
ORDER
BPMC #99-106

STATE OF NEW YORK)
COUNTY OF NEW YORK)

TODD MAILLY, M.D., (Respondent) being duly sworn, deposes and says:
That on or about January 2, 1990, I was licensed to practice as a physician in the State of New York, having been issued License No. 181165 by the New York State Education Department.

My current address is 47 Jolley Drive, Bloomfield, CT 08054, 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 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 do not ^{ELECT TO} contest the specifications, in full satisfaction of the charges against me. I hereby agree to the following penalty:

a Censure and Reprimand .

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 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)(McKinney Supp 1999).

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 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 4/27/99.

Subscribed and sworn to before me
a Notary Public on this 27th day of

April 19 99.
Don D. Water
Notary Public


TODD MAILLY, M.D.
RESPONDENT

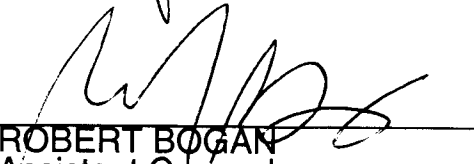
The undersigned agree to the attached application of the Respondent and to the proposed penalty based on the terms and conditions thereof.

DATE: May 6, 1999



WILFRED T. FRIEDMAN, ESQ.
Attorney for Respondent

DATE: May 12, 1999



ROBERT BOGAN
Assistant Counsel
Bureau of Professional
Medical Conduct

DATE: May 15, 1999



ANNE F. SAILE
Director
Office of Professional
Medical Conduct

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

IN THE MATTER
OF
TODD MAILLY, M.D.

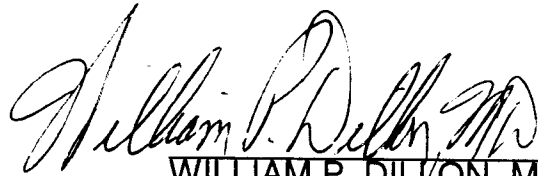
CONSENT
ORDER

Upon the proposed agreement of TODD MAILLY, 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 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: 5/20/99



WILLIAM P. DILLON, M.D.
Chair
State Board for Professional
Medical Conduct

EXHIBIT A

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

-----X

IN THE MATTER : STATEMENT
OF : OF
TODD MAILLY, M.D. : CHARGES

-----X

Todd Mailly, M.D., the Respondent, was authorized to practice medicine in New York State on January 20, 1990 by the issuance of license number 181165 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about March 17, 1998 the State of Connecticut, Connecticut Medical Examining Board, (hereinafter "Connecticut Board") entered a Memorandum of Decision (hereinafter "Connecticut Decision"). The Connecticut Decision reprimanded the Respondent and imposed a civil penalty of \$10,000.

B. The Connecticut Decision found that ^{IN 1993} "the Respondent operated on a patient's left hip when he should have operated on the right hip." It further concluded the "Respondent failed to appropriately make the ... determination of the correct site of the operation;" and "(v)erification of the correct operative site was not done by the Respondent. Even though the medical documents produced within Saint Francis Hospital and Medical

Center were inconsistent as to whether the fracture was in the left or right hip, a quick review of them would have alerted the Respondent that there was at least a question as to which hip was fractured. The Respondent never checked any of the medical documents except the x-rays, which correctly showed the fracture to be in the right hip, and the cover check list which established that appropriate pre-operative procedures had been followed, such as the fact that the patient had been medically cleared for surgery. The Respondent never asked the patient where she experienced the pain and he never examined her leg or hip. When the fluoroscope showed no fracture, the Respondent did not stop to verify that the hip he was about to pin had a fracture."

C. The conduct resulting in the Connecticut Board's disciplinary action against Respondent would constitute misconduct under the laws of New York State, pursuant to the following sections of New York State law:

1. N.Y. Education Law Section 6530(3) [negligence on more than one occasion; and/or
2. N.Y. Education Law Section 6530(4) [gross negligence].

SPECIFICATIONS

FIRST SPECIFICATION

Respondent is guilty of violating N.Y. Education Law § 6530(9)(b) by reason of 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 the Petitioner charges the following:


1. The facts in paragraphs A, B, and/or C.

SECOND SPECIFICATION

Respondent is guilty of professional misconduct under N.Y. Education Law § 6530 (9)(d) by reason of his having had disciplinary action taken against him 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 the Petitioner charges:

2. The facts in paragraphs A, B, and/or C.

DATED: *February 26,* 1999
Albany, New York


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