



New York State Board for Professional Medical Conduct

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

Barbara A. DeBuono, M.D., M.P.H.
Commissioner of Health

Patrick F. Carone, M.D., M.P.H.
Chair
Ansel R. Marks, M.D., J.D.
Executive Secretary

June 6, 1997

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Malcolm D. Barton, M.D.
789 Sherman Street, #613
Denver, Colorado 80203

RE: License No. 092813

Dear Dr. Barton:

Enclosed please find Order #BPMC 97-133 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
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: Brian G. McConaty, Esq.
Johnson, Ruddy, Norman & McConaty
3773 Cherry Creek Drive North
Denver, Colorado 80209-3866

Marcia E. Kaplan, Esq.

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

**IN THE MATTER
OF
MALCOLM DENNIS BARTON, M.D.**

**SURRENDER
ORDER**
BPMC #97-133

Upon the proposed agreement of MALCOLM DENNIS BARTON, M.D. (Respondent) to Surrender his license as a physician in the State of New York, which proposed agreement is made a part hereof, it is agreed to and


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

ORDERED, that the name of Respondent be stricken from the roster of physicians in the State of New York; it is further

ORDERED, that this order shall take effect as of the date of the personal service of this order upon Respondent, upon receipt by Respondent of this order via certified mail, or seven days after mailing of this order via certified mail, whichever is earliest.

SO ORDERED.

DATED: July 2, 1997


PATRICK F. CARONE, M.D., M.P.H.
Chair, State Board for
Professional Medical Conduct

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

IN THE MATTER

SURRENDER

OF

OF

MALCOLM DENNIS BARTON, M.D.

LICENSE

STATE OF COLORADO)
)ss:
COUNTY OF)

MALCOLM DENNIS BARTON, M.D., being duly sworn, deposes and says:

On or about August 12, 1964, I was licensed to practice medicine as a physician in the State of New York having been issued License No. 092813 by the New York State Education Department.

My current business address is 789 Sherman Street, #613, Denver, Colorado 80203, and I will advise the Director of the Office of Professional Medical Conduct of any change of my address.

I understand that I have been charged with one specification of professional misconduct as set forth in the Statement of Charges, annexed hereto, made a part hereof, and marked as Exhibit "A."

I am applying to the State Board for Professional Medical Conduct for permission to surrender my license as a physician in the State of New York on the grounds that I do not contest the specification in full satisfaction of the Statement of Charges.

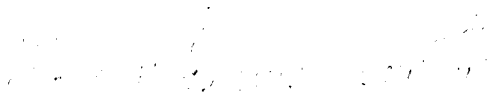
I hereby make this application to the State Board for Professional Medical Conduct and request that it be granted.

I understand that, in the event that the application is not granted by the State Board for Professional Medical Conduct, 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 State Board for Professional Medical Conduct shall be made without prejudice to the continuance of any

disciplinary proceeding and the final determination by a Committee on Professional Medical Conduct pursuant to the provisions of the Public Health Law.

I agree that, in the event the State Board for Professional Medical Conduct grants my application, an order shall be issued striking my name from the roster of physicians in the State of New York without further notice to me.

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 have to contest the Surrender Order for which I hereby apply, whether administratively or judicially, and ask that the Application be granted.



MALCOLM DENNIS BARTON, M.D.
Respondent

Sworn to before me this ____ day of May, 1997.

Witness my hand and official seal.

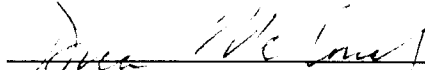
My commission expires: ~~_____~~ *My Commission Expires June 19, 2000*



Notary Public

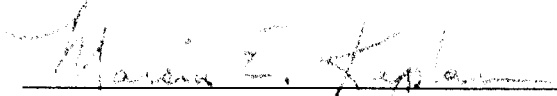
The undersigned agree to the attached application of the Respondent to surrender his license.

Date: 5/20/97




BRIAN G. McCONATY, ESQ.
Attorney for Respondent

Date: 5/21/97



MARCIA E. KAPLAN
Associate Counsel
Bureau of Professional Medical Conduct

Date: May 29, 1997



ANNE F. SAILE
Director
Office of Professional Medical Conduct

IN THE MATTER
OF
MALCOLM DENNIS BARTON, M.D.

STATEMENT
OF
CHARGES

MALCOLM DENNIS BARTON, M.D., the Respondent, was authorized to practice medicine in New York State on or about August 12, 1964, by the issuance of license number 092813 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. On or about April 11, 1996, Respondent's license to practice medicine in Colorado was summarily suspended pursuant to Section 24-4-104(4), C.R.S. upon a finding by the Colorado State Board of Medical Examiners (Colorado Board) of reasonable grounds to believe that Respondent's care of two patients, R.R. and P.K., raised substantial question about his safety to practice medicine. Formal disciplinary proceedings were initiated by filing of a Formal Complaint on April 12, 1996. The Complaint alleged that: on or about August 8, 1996, Respondent, an anesthesiologist, negligently injected phenol, a highly toxic substance, instead of guanethidine, into patient R.R.'s left forearm in an attempt to perform a nerve block procedure, and on or about August 10, 1996, Respondent negligently administered substantial doses of sedative drugs without ensuring the patency of R.R.'s airway, and without employing a pulse oximeter or other monitoring device; and that on or about September 15, 1992, Respondent negligently failed to conduct a thorough and adequate preoperative evaluation to ensure that patient P.K. was capable of undergoing planned anesthesia, and failed to ensure the patency of P.K.'s

airway post-surgery. On or about August 14, 1996, the Colorado Board entered an Order, based upon a Stipulation entered into with Respondent, continuing the suspension of Respondent's license to practice medicine in Colorado pending receipt of a learning plan to include practice supervision, board recertification and a "difficult airways management" course as well as a report attesting to Respondent's continued compliance with all treatment recommendations and current safety to practice. In the Stipulation, Respondent admitted that his care of patient R.R. involved substantial departures from the generally accepted standards of medical practice and admitted there was prima facie evidence to support the allegations within the Formal Complaint, and that this conduct establishes that he engaged in unprofessional conduct as defined in Section 12-36-117(1)(p), C.R.S. ("an act or omission constituting grossly negligent medical practice or acts or omissions which fail to meet generally accepted standards of medical practice.") This conduct, if committed in New York state, would constitute professional misconduct under N.Y. Educ. Law §6530(4) (gross negligence on a particular occasion) and/or 6530(3) (negligence on more than one occasion). On or about August 15, 1996, the Colorado Board entered an Order reinstating Respondent's medical license subject to the terms and restrictions set forth in the August 14, 1996 Stipulation and Final Agency Order, including that Respondent perform no anesthesia services without the personal one-on-one observation of another board certified anesthesiologist.

SPECIFICATION OF CHARGES
HAVING HAD DISCIPLINARY ACTION TAKEN

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(9)(d)(McKinney Supp. 1997) by having his or her license to practice medicine revoked, suspended or having other disciplinary action taken, or having his or her application for a license refused, revoked or suspended or having voluntarily or otherwise surrendered his or her license after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation, suspension or other disciplinary action involving the license or refusal, revocation or suspension of an application for a license or the surrender of the license would, if committed in New York state, constitute professional misconduct under the laws of New York state {namely N.Y. Educ. Law §6530(4) (gross negligence on a particular occasion), and/or 6530(3) (negligence on more than one occasion)} as alleged in the facts of the following:

1. Paragraph A.

DATED: March 1, 1997
New York, New York

ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct