

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

IN THE MATTER
OF
PATRICK WILLIAM O'DALY, M.D.

MODIFICATION
ORDER
BPMC No. #97-150

Upon the proposed Application for a Modification Order of **PATRICK WILLIAM O'DALY, M.D.**, (Respondent) which is made a part of this Modification Order, it is agreed and

ORDERED, that the attached Application and its terms are adopted and it is further

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

SO ORDERED.

DATED: 4-11-2008

Redacted Signature

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

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

IN THE MATTER

OF

PATRICK WILLIAM O'DALY, M.D.

APPLICATION FOR
MODIFICATION ORDER

PATRICK WILLIAM O'DALY, M.D., (Respondent) being duly sworn deposes and says:

That on or about June 22, 1966, I was licensed to practice as a physician in the State of New York, having been issued License No. 096603 by the New York State Education Department.

My current address is Redacted Address

I am currently subject to Consent Order BPMC #97-150, (hereinafter "Original Order"), annexed hereto, made a part, hereof, and marked as Exhibit 1, that was issued on or about June 17, 1997.

I apply, hereby, to the State Board for Professional Medical Conduct for a Modification Order (hereinafter "Modification Order"), modifying the Original Order, as follows: to delete the paragraphs in the Original Order that state:

" A limitation on my license to practice medicine in the State of New York precluding the practice of Obstetrics."

" I further agree that the Consent Order for which I hereby apply shall impose a condition that I maintain current registration of my 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 continuing until the full term of the Order has run, and until any associated period of probation and all probation terms have been completed and satisfied. I hereby stipulate that any failure by me to comply with such condition shall constitute misconduct as defined by New York State Education Law §6530(29)(McKinney Supp 1997)."

substituting therefore:

" I shall never activate my registration to practice medicine in New York state or seek to reapply for a license to practice medicine in New York state."

The Modification Order to be issued will not constitute a new disciplinary action against me, but will substitute the proposed language for the above described language in the Original Order.

I make this Application of my own free will and accord and not under duress, compulsion or restraint, and seek the anticipated benefit of the requested Modification. In consideration of the value to me of the acceptance of the Board of this Application, I knowingly waive the right to contest the Original Order or the Modification Order for which I apply, both administratively and judicially, and ask that the Board grant this Application.

I understand and agree that the attorney for the Bureau of Professional Medical Conduct, the Director of the Office of Professional Medical Conduct, and the Chair of the State Board for Professional Medical Conduct each retain complete discretion to either enter into the proposed Agreement and Modification Order, based upon my application, or to decline to do so. I further understand and agree that no prior or separate written or oral communication can limit that discretion.

AFFIRMED:

DATED: April 9, 2008

Redacted Signature
PATRICK WILLIAM O' DALY, M.D.
Respondent

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

DATE: 08 April 2008

Redacted Signature _____
ROBERT BOGAN
Associate Counsel
Bureau of Professional Medical Conduct

DATE: 4/10/08

Redacted Signature _____
KEITH W. SERVIS
Director
Office of Professional Medical Conduct



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

New York State Board for Professional Medical Conduct

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

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

June 20, 1997

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Patrick O'Daly, M.D.
Redacted Address

RE: License No. 96603

Dear Dr. O'Daly:

Enclosed please find Order #BPMC 97-150 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,

Redacted Signature

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

Enclosure

cc: T. Lawrence Tabak, Esq.
Kern & Augustine
420 Lakeville Road
Lake Success, New York 11042

Claudia Morales Bloch, Esq.

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

IN THE MATTER
OF
PATRICK WILLIAM O'DALY, M.D.

CONSENT
ORDER
BPMC #97-150

Upon the proposed agreement of PATRICK WILLIAM O'DALY, 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 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 by certified mail,
whichever is earliest.

SO ORDERED.

DATED: June 17 1997

Redacted Signature
PATRICK F. CARONE, M.D., M.P.H.
Chairperson
State Board for Professional
Medical Conduct

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

IN THE MATTER
OF
PATRICK WILLIAM O'DALY, M.D.

CONSENT
AGREEMENT
AND
ORDER

STATE OF NEW YORK)
COUNTY OF **NASSAU**) ss.:

PATRICK WILLIAM O'DALY, M.D., being duly sworn, deposes and says:
That on or about June 22, 1966, I was licensed to practice as a physician in
the State of New York, having been issued License No. 96603 by the New York
State Education Department.

My current address is Redacted Address 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 eight specifications of professional misconduct.

A copy of the Statement of Charges is annexed hereto, made a part hereof,
and marked as Exhibit "A".

I agree not to contest the allegations set forth in the Statement of Charges,
in full satisfaction of the charges against me. I hereby agree to the following
penalty:

A limitation on my license to practice medicine in the State of
New York precluding the practice of Obstetrics.

I further agree that the Consent Order for which I hereby apply
shall impose a condition that I maintain current registration of

my 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 continuing until the full term of the Order has run, and until any associated period of probation and all probation terms have been completed and satisfied. I hereby stipulate that any failure by me to comply with such condition shall constitute misconduct as defined by New York State Education Law §6530(29)(McKinney Supp 1997).

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 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.

Redacted Signature

~~PATRICK WILLIAM O'DALY, M.D.~~
RESPONDENT

Sworn to before me this

4th day of June, 1997

NOTARY PUBLIC

THOMAS J. VARDY
Notary Public, State of New York
No. 91-4985066
Qualified in New York City

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

DATE: June 4, 1997

Redacted Signature
T. LAWRENCE TABAK, ESQ.
Attorney for Respondent

DATE: June 10, 1997

Redacted Signature
CLAUDIA MORALES BLOCH
Associate Counsel
Bureau of Professional
Medical Conduct

DATE: June 15, 1997

Redacted Signature
ANNE F. SAILE
Director
Office of Professional
Medical Conduct

IN THE MATTER
OF
PATRICK WILLIAM O'DALY, M.D.

STATEMENT
OF
CHARGES

PATRICK WILLIAM O'DALY, M.D., the Respondent, was authorized to practice medicine in New York State on or about June 22, 1966, by the issuance of license number 96603 by the New York State Education Department. The identity's of Patients JS and BT are listed in the Appendix annexed hereto.

FACTUAL ALLEGATIONS

- A. On or about March 30, 1992, Respondent and his partner, MARIO GIAMPE, M.D., undertook the prenatal care and treatment of Patient JS. On or about November 1, 1992, Patient JS was admitted to the Julia L. Butterfield Memorial Hospital (hereinafter referred to as "Butterfield") under the care and treatment of Respondent and MARIO GIAMPE, M.D. Patient JS was later transferred by Respondent to Westchester County Medical Center (WCMC) where a live female infant weighing 2,840 grams (6 pounds, 4 ounces) with an Apgar of 1-1 was delivered via cesarean section. The infant expired on January 3, 1993.
1. On admission to Butterfield, Patient JS presented at or about 37 weeks gestation, with apparent cessation of fetal movement for approximately 4 hours; premature rupture of the fetal membranes, with meconium-containing amniotic fluid; and a fetal

heart rate fixed at 150 beats per minute with no beat-to-beat variability. Her cervix was noted to be a finger-tip dilated and 50% effaced. Respondent failed to:

- a. In a timely manner, move Patient JS into a lateral recumbent position and administer oxygen via mask to her,
 - b. expeditiously deliver Patient JS via cesarean section,
 - c. prepare and/or order that Patient JS be prepared for immediate cesarean section,
 - d. arrange for an operating room to be prepared on an emergent basis for immediate cesarean section,
 - e. call for an anesthesiologist to be in attendance at the delivery,
 - f. call for a pediatrician to be in attendance at the delivery,
 - g. arrange for another physician to assist in the delivery of Patient JS.
2. Respondent inappropriately and without appropriate medical justification had Patient JS transferred to WCMC and disregarded

the advise of a physician at WCMC who told Respondent to perform an immediate delivery at Butterfield with subsequent transport of the neonate to WCMC's Neonatal Intensive Care Unit.

3. Respondent failed to demonstrate an acceptable level of knowledge of the accurate interpretation of fetal heart rate monitor tracings.
4. Respondent failed to appreciate and/or demonstrate knowledge of the indications for cesarean section.
5. Respondent failed to maintain a hospital record for Patient JS which accurately reflects the history, examination, diagnosis, orders, and care and treatment rendered.

B. On or about September 4, 1990, Respondent and his partner, MARIO GIAMPE, M.D., undertook the prenatal care and treatment of Patient BT. Patient BT was admitted to Butterfield, under the care and treatment of Respondent on or about December 20, 1990 at or about 10:45 a.m., experiencing irregular uterine contractions. Patient BT was delivered by Respondent on December 21, 1990, at or about 11:15 p.m., from a left occiput posterior (LOP) position, over a right mediolateral episiotomy, via forcep extraction, delayed by a shoulder dystocia. The neonate weighed 4,678 grams, (10 pounds, 5.4 ounces) had an Apgar of 1-4, was meconium-stained, and showed severe molding of the head.

1. On admission, Patient BT's cervix was noted at 1-2 centimeters dilated and thick, with a vertex presentation at station -2. She was also noted to have a temperature of 100 degrees F. Patient BT remained febrile throughout labor. On admission, the fetal heart rate baseline was recorded in the 120-140 beats per minute range, however, it rose, over the course of time, to 160-180 beats per minute range. At or about the time that the fetal tachycardia was, or should have been evident to Respondent, Patient BT's cervix was not fully dilated. Respondent:

- a. Failed to diagnose and/or timely diagnose chorioamnionitis,
- b. Failed to appropriately recognize the signs of fetal distress and/or to identify that the fetus was stressed by intrauterine infection,
- c. Failed to perform an immediate delivery via cesarian section in light of the signs of possible fetal infection in utero and resulting fetal distress.

2. On December 21, 1990, at or about 4:30 p.m., when Patient BT's cervix was noted to be 6 centimeters dilated, the fetal heart rate monitor tracings show the appearance of variable decelerations. Within hours, the variable decelerations became late decelerations and meconium staining was noted. Respondent:

- a. Failed to properly assess the condition of the fetus,
- b. Failed to perform fetal scalp blood pH testing,
- c. Failed to appropriately interpret the fetal heart rate monitor tracings and/or to recognize the indication of progressive fetal hypoxia,
- d. Respondent failed to demonstrate an acceptable level of knowledge of the accurate interpretation of fetal heart rate monitor tracings,
- e. Failed to perform an immediate delivery via cesarian section.

3. An antepartum ultrasound examination of on or about December 11, 1990, reported an estimated fetal weight of 4,245 Grams (9 and 1/4 pounds) and a gestational age by ultrasound of 40 weeks. Respondent noted in the hospital chart that, at the time of forcep delivery, Patient BT's second stage of labor arrested in LOP position and that the vertex was at station +2. The fetal head, subsequent to delivery, showed severe molding.
Respondent:

- a. Failed to properly interpret and/or understand the results of the antepartum ultrasound, which indicated that the infant would be large-for-gestational dates,

- b. Failed to properly anticipate the resultant difficulties of a vaginal delivery,
 - c. Failed to perform and/or note an examine of Patient BT when the second stage of labor arrested,
 - d. Failed to properly detect and/or note molding of the fetal head, in utero, on finger examination,
 - e. Failed to properly assess the accurate station of the fetal head at the time of forcep extraction,
 - f. Inappropriately performed a forcep delivery, which was contraindicated,
 - g. Inappropriately performed a medically contraindicated mid-forcep delivery rather than a low-forcep delivery as is noted in the hospital chart,
 - h. Failed to have a set-up ready for an emergency cesarean section,
 - i. Failed to perform a cesarean section.
4. Respondent failed to appreciate and/or demonstrate knowledge of the indications for cesarean section.

5. Respondent failed to appreciate and/or demonstrate knowledge of the indications for forcep delivery.
6. Respondent failed to appreciate and/or demonstrate knowledge of the significance and interpretation of ultrasound evaluation.
7. Respondent failed to maintain a hospital record for Patient BT which accurately reflects the history, examination, diagnosis, orders, care and treatment rendered, and operation performed.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

NEGLIGENCE ON MORE THAN ONE OCCASION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(3)(McKinney Supp. 1997) by practicing the profession of medicine with negligence on more than one occasion as alleged in the facts of two or more of the following:

1. The facts in paragraphs A, A(1)(a) through A(1)(g), A(2), A(3), A(4), A(5), B, B(1)(a), B(1)(b), B(1)(c), B(2)(a) through B(2)(e), B(3)(a) through B(3)(i), and B(4) through B(7).

SECOND SPECIFICATION

INCOMPETENCE ON MORE THAN ONE OCCASION

Respondent is charged with committing professional misconduct as defined in

N.Y. Educ. Law §6530(5)(McKinney Supp. 1997) by practicing the profession of medicine with incompetence on more than one occasion as alleged in the facts of two or more of the following:

2. The facts in paragraphs A, A(1)(a) through A(1)(g), A(2), A(3), A(4), A(5), B, B(1)(a), B(1)(b), B(1)(c), B(2)(a) through B(2)(e), B(3)(a) through B(3)(i), and B(4) through B(7).

THIRD AND FOURTH SPECIFICATIONS

GROSS NEGLIGENCE

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(4)(McKinney Supp. 1997) by practicing the profession of medicine with gross negligence as alleged in the facts of the following:

3. The facts in paragraphs A, A(1)(a) through A(1)(g), A(2), A(3), A(4), and A(5).
4. The facts in paragraphs B, B(1)(a), B(1)(b), B(1)(c), B(2)(a) through B(2)(e), B(3)(a) through B(3)(i), and B(4) through B(7).

FIFTH AND SIXTH SPECIFICATIONS

GROSS INCOMPETENCE

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(6)(McKinney Supp. 1997) by practicing the profession of medicine with gross incompetence as alleged in the facts of the following:

5. The facts in paragraphs A, A(1)(a) through A(1)(g), A(2), A(3), A(4), and A(5).
6. The facts in paragraphs B, B(1)(a), B(1)(b), B(1)(c), B(2)(a) through B(2)(e), B(3)(a) through B(3)(i), and B(4) through B(7).

SEVENTH AND EIGHTH SPECIFICATIONS
FAILURE TO MAINTAIN RECORDS

Respondent is charged with committing professional misconduct within the meaning of N.Y. Educ. Law Section 6530(32) (McKinney Supp. 1997) by failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient, as alleged in the facts of the following:

7. The facts in paragraph A(5).
8. The facts in paragraphs B(3)(c), B((3)(d), and B(7).

DATED: March, 1997
New York, New York

Redacted Signature

ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct