

Public

NEW YORK
state department of
HEALTH

Howard A. Zucker, M.D., J.D.
Acting Commissioner of Health

Sue Kelly
Executive Deputy Commissioner

August 7, 2014

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Thomas O. Daly, M.D.

REDACTED

Re: License No. 091378

Dear Dr. Daly:

Enclosed is a copy of the New York State Board for Professional Medical Conduct (BPMC) Order No. 14-198. This order and any penalty provided therein goes into effect August 14, 2014.

If the penalty imposed by this Order is a surrender, revocation or suspension, you are required to deliver your license and registration within five (5) days of receipt of this Order to: c/o Physician Monitoring Unit, NYS DOH - OPMC, Riverview Center, Suite 355, 150 Broadway, Albany, NY 12204-2719.

If your license is framed, please remove it from the frame and only send the parchment paper on which your name is printed. Our office is unable to store framed licenses.

If the document(s) are lost, misplaced or destroyed, you are required to submit to this office an affidavit to that effect. Please complete and sign the affidavit before a notary public and return it to the Office of Professional Medical Conduct.

Please direct any questions to: NYS DOH - OPMC, Riverview Center, Suite 355, 150 Broadway, Albany, NY 12204-2719, telephone # (518)402-0855.

Sincerely,

REDACTED

Katherine A. Hawkins, M.D., J.D.
Executive Secretary
Board for Professional Medical Conduct

Enclosure

IN THE MATTER
OF
THOMAS DALY, M.D.

MODIFICATION
ORDER

Upon the proposed Application for a Modification Order of **THOMAS DALY, M.D.**
(Respondent), that 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 of a copy of this Consent Order, either by first class mail to Respondent at the address in the attached Consent Agreement or by certified mail to Respondent's attorney, or upon facsimile or email transmission to Respondent or Respondent's attorney, whichever is first.

SO ORDERED.

DATE: 8/6/2014

REDACTED

Arthur S. Hengerer, M.D.
Chair
State Board for Professional
Medical Conduct

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

**IN THE MATTER
OF
THOMAS DALY, M.D.**

**CONSENT
AGREEMENT
AND
ORDER**

Thomas Daly, M.D., represents that all of the following statements are true:

That on or about October 2, 1963, I was licensed to practice as a physician in the State of New York, and issued License No. 091378 by the New York State Education Department.

My current address is REDACTED and I will advise the Director of the Office of Professional Medical Conduct of any change of address.

I am currently subject to BPMC Order # BPMC 03-340 (Attachment I) (henceforth "Original Order"), which was issued upon an Application For Consent Order signed by me on November 21, 2003, (henceforth Original Application"), adopted by the Original Order. I apply to the State Board for Professional Medical Conduct for an Order (henceforth "Modification Order"), modifying the Original Order, as follows: to delete the paragraphs in the Original Order that state:

My license to practice medicine shall be limited and restricted solely to the following:

I will be able to perform physical examinations on individuals who are applying for insurance or are claimants seeking social security disability benefits. The scope of these examinations includes taking and/or reviewing each applicant's medical history as well as performing examinations of the applicants. Findings from these procedures can be noted as well as medical source statements. Medical source statements document self-reporting

by the patient and provide medical recommendation. None of the above condones the rendering of medical treatment.

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

I shall maintain current registration of my license with 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 order issued hereunder and will continue while I possess my license;

Substituting for the above paragraphs:

I ask the Board to accept my Surrender of License, and I agree to be bound by all of the terms set forth in attached Exhibit "B".

I understand that, if the Board does not accept my Surrender of License, none of its terms shall bind me or constitute an admission of any of the acts of misconduct alleged; this application shall not be used against me in any way and shall be kept in strict confidence; and the Board's denial shall be without prejudice to the pending disciplinary proceeding and the Board's final determination pursuant to the Public Health Law.

I agree that, if the Board accepts my Surrender of License, the Chair of the Board shall issue a Surrender Order in accordance with its terms. I agree that this Order shall take effect upon its issuance by the Board, either by mailing of a copy of the Surrender Order by first class mail to me at the address in this Surrender of License, or to my attorney by certified mail, or upon facsimile transmission to me or my attorney, whichever is first. The Surrender Order, this agreement, and all attached exhibits shall be public documents, with only patient identities, if any, redacted. As public documents, they may be posted on the Department's website(s). OPMC shall report this action to the National

Practitioner Data Bank, the Federation of State Medical Boards, and any other entities that the Director of OPMC shall deem appropriate.

I ask the Board to accept this Surrender of License, which I submit of my own free will and not under duress, compulsion or restraint. In consideration of the value to me of the Board's acceptance of this Surrender of License, allowing me to resolve this matter without the various risks and burdens of a hearing on the merits, I knowingly waive my right to contest the Surrender Order for which I apply, whether administratively or judicially, and I agree to be bound by the Surrender Order.

All remaining Terms and Conditions will continue as written 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 by the Board of this Application, I knowingly waive my right to contest the Original Order or the Modification Order for which I apply, whether administratively or judicially, and ask that the Board grant this Application.

I understand and agree that the attorney for the Department, the Director of the Office of Professional Medical Conduct and the Chair of the State Board for Professional Medical Conduct each retain complete discretion either to enter into the proposed agreement and 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.

DATE 7/21/14

REDACTED

~~Thomas Daly, M.D.~~
RESPONDENT



The undersigned agree to Respondent's attached Consent Agreement and to its proposed penalty, terms and conditions.

DATE: 7/28/14

REDACTED

JUDE BREARION MULVEY
Associate Counsel
Bureau of Professional Medical Conduct

DATE: 8/4/14

REDACTED

KEITH W. SERVIS
Director
Office of Professional Medical Conduct

EXHIBIT "B"

**Requirements for Closing a Medical Practice Following a
Revocation, Surrender, Limitation or Suspension of a Medical License**

1. Licensee shall immediately cease and desist from engaging in the practice of medicine in New York State, or under Licensee's New York license, in accordance with the terms of the Order. In addition, Licensee shall refrain from providing an opinion as to professional practice or its application and from representing that Licensee is eligible to practice medicine.
2. Within 5 days of the Order's effective date, Licensee shall deliver Licensee's original license to practice medicine in New York State and current biennial registration to the Office of Professional Medical Conduct (OPMC) at Riverview Center, 150 Broadway, Suite 355, Albany, New York 12204-2719.
3. Within 15 days of the Order's effective date, Licensee shall notify all patients of the cessation or limitation of Licensee's medical practice, and shall refer all patients to another licensed practicing physician for continued care, as appropriate. Licensee shall notify, in writing, each health care plan with which the Licensee contracts or is employed, and each hospital where Licensee has privileges, that Licensee has ceased medical practice. Within 45 days of the Order's effective date, Licensee shall provide OPMC with written documentation that all patients and hospitals have been notified of the cessation of Licensee's medical practice.
4. Licensee shall make arrangements for the transfer and maintenance of all patient medical records. Within 30 days of the Order's effective date, Licensee shall notify OPMC of these arrangements, including the name, address, and telephone number of an appropriate and acceptable contact persons who shall have access to these records. Original records shall be retained for at least 6 years after the last date of service rendered to a patient or, in the case of a minor, for at least 6 years after the last date of service or 3 years after the patient reaches the age of majority, whichever time period is longer. Records shall be maintained in a safe and secure place that is reasonably accessible to former patients. The arrangements shall include provisions to ensure that the information in the record is kept confidential and is available only to authorized persons. When a patient or a patient's representative requests a copy of the patient's medical record, or requests that the original medical record be sent to another health care provider, a copy of the record shall be promptly provided or forwarded at a reasonable cost to the patient (not to exceed 75 cents per page.) Radiographic, sonographic and similar materials shall be provided at cost. A qualified person shall not be denied access to patient information solely because of an inability to pay.

5. In the event that Licensee holds a Drug Enforcement Administration (DEA) certificate for New York State, Licensee shall, within fifteen (15) days of the Order's effective date, advise the DEA, in writing, of the licensure action and shall surrender his/her DEA controlled substance privileges for New York State to the DEA. Licensee shall promptly surrender any unused DEA #222 U.S. Official Order Forms Schedules 1 and 2 for New York State to the DEA. All submissions to the DEA shall be addressed to Diversion Program Manager, New York Field Division, U.S. Drug Enforcement Administration, 99 Tenth Avenue, New York, NY 10011.
6. Within 15 days of the Order's effective date, Licensee shall return any unused New York State official prescription forms to the Bureau of Narcotic Enforcement of the New York State Department of Health. Licensee shall destroy all prescription pads bearing Licensee's name. If no other licensee is providing services at Licensee's practice location, Licensee shall properly dispose of all medications.
7. Within 15 days of the Order's effective date, Licensee shall remove from the public domain any representation that Licensee is eligible to practice medicine, including all related signs, advertisements, professional listings (whether in telephone directories, internet or otherwise), professional stationery or billings. Licensee shall not share, occupy, or use office space in which another licensee provides health care services.
8. Licensee shall not charge, receive or share any fee or distribution of dividends for professional services rendered by Licensee or others while Licensee is barred from engaging in the practice of medicine. Licensee may be compensated for the reasonable value of services lawfully rendered, and disbursements incurred on a patient's behalf, prior to the Order's effective date.
9. If Licensee is a shareholder in any professional service corporation organized to engage in the practice of medicine, Licensee shall divest all financial interest in the professional services corporation, in accordance with New York Business Corporation Law. Such divestiture shall occur within 90 days. If Licensee is the sole shareholder in a professional services corporation, the corporation must be dissolved or sold within 90 days of the Order's effective date.
10. Failure to comply with the above directives may result in a civil penalty or criminal penalties as may be authorized by governing law. Under N.Y. Educ. Law § 6512, it is a Class E Felony, punishable by imprisonment of up to 4 years, to practice the profession of medicine when a professional license has been suspended, revoked or annulled. Such punishment is in addition to the penalties for professional misconduct set forth in N.Y. Pub. Health Law §

230-a, which include fines of up to \$10,000 for each specification of charges of which the Licensee is found guilty, and may include revocation of a suspended license.

Attachment I

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

IN THE MATTER
OF
THOMAS DALY, M.D.

CONSENT
ORDER

BPMC No. 03-340

Upon the application of (Respondent) THOMAS DALY, M.D. in the attached Consent Agreement and Order, which is made a part of this Consent Order, it is

ORDERED, that the Consent Agreement, and its terms, are adopted and SO ORDERED, and it is further

ORDERED, that this Order shall be effective upon issuance by the Board, either

- by mailing of a copy of this Consent Order, either by first class mail to Respondent at the address in the attached Consent Agreement or by certified mail to Respondent's attorney, OR
- upon facsimile transmission to Respondent or Respondent's attorney, Whichever is first.

SO ORDERED.

DATED: 12/11/03

REDACTED

MICHAEL GONZALEZ, R.P.A.
Vice Chair
State Board for Professional Medical Conduct

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

IN THE MATTER
OF
THOMAS DALY, M.D.

CONSENT
AGREEMENT
AND
ORDER

THOMAS DALY, M.D., representing that all of the following statements are true, deposes and says:

That on or about October 2, 1963, I was licensed to practice as a physician in the State of New York, and issued License No. 091378 by the New York State Education Department.

My current address is REDACTED and I will advise the Director of the Office of Professional Medical Conduct of any change of address.

I understand that the New York State Board for Professional Medical Conduct has charged me with 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 concerning Patient A in full satisfaction of the charges against me, and voluntarily agree to the following penalty:

My license to practice medicine shall be limited and restricted solely to the following:

I will be able to perform physical examinations on individuals who are applying for insurance or are claimants seeking social security disability benefits. The scope of these examinations includes taking and/or reviewing each applicant's medical history as well as performing physical examinations of the applicants. Findings from these procedures can be noted as well as medical

source statements. Medical source statements document self reporting by the patient and provide a medical recommendation. None of the above condones the rendering of medical treatment.

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

I shall maintain current registration of my license with 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 order issued hereunder and will continue while I possess my license; and

I shall fully cooperate in every respect with the Office of Professional Medical Conduct in its administration and enforcement of the Order issued hereunder and in its investigation of all matters regarding me. I shall respond in a timely manner to each and every request by the Office of Professional Medical Conduct to provide written periodic verification of my compliance with the terms of the Order issued hereunder. I shall meet with a person designated by the Director of the Office of Professional Medical Conduct as directed. I shall respond promptly and provide any and all documents and information within my control upon the direction of the Office of Professional Medical Conduct. This condition shall be in effect beginning upon the effective date of the Order issued hereunder and will continue while I possess my license.

I 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 the effective date of the order issued hereunder, and thereafter, within thirty days of each such action, change or occurrence.

I hereby stipulate that any failure by me to comply with these conditions shall constitute misconduct as defined by New York State Education Law §6530(29).

I shall assume and bear all costs related to compliance with the Order issued hereunder.

I agree that in the event I am charged with professional misconduct in future, this Agreement and Order issued hereunder 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 were to grant 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 Order issued hereunder to me at the address set forth in this agreement and to my attorney, or upon transmission via facsimile to me and my attorney, whichever is earliest.

I am making this application of my own free will and accord and not under duress, compulsion or restraint on 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, whether administratively or judicially, the Order issued hereunder for which I hereby apply and I ask that the application be granted.

REDACTED

DATED 11/21/03

~~THOMAS DALY, M.D.~~
RESPONDENT

The undersigned agree to Respondent's attached Consent Agreement and to its proposed penalty, terms and conditions.

DATE: 11/24/03

REDACTED

~~VICTOR ALAN OLIVERI, ESQ.~~
Attorney for Respondent

DATE: 11/26/03

REDACTED

~~THOR B. EVANICK~~
Associate Counsel
Bureau of Professional Medical Conduct

DATE: 12/08/08

REDACTED

~~DENNIS J. GRAZIANO~~
Director
Office of Professional Medical Conduct

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

IN THE MATTER
OF
THOMAS O. DALY, M.D.

STATEMENT
OF
CHARGES

Thomas O. Daly, M.D., the Respondent, was authorized to practice medicine in New York State on or about October 2, 1963, by the issuance of license number 091378 by the New York State Education Department. Dr. Daly's current address is 68 Summerdale Road, Angola, NY 14006.

FACTUAL ALLEGATIONS

- A. The Respondent provided medical care to Patient A¹ in the form of issuing pathologic reports at the W.C.A. Hospital, on or about October 25, 2000. The Respondent's care of Patient A failed to meet accepted standards of medical care in the following respects:
1. Respondent failed to diagnose an adenocarcinoma.
- B. The Respondent provided medical care to Patient B in the form of issuing pathologic reports at the W.C.A. Hospital, on or about October 26, 2000. The Respondent's care of Patient B failed to meet accepted standards of medical care in the following respects:
1. Respondent failed to diagnose an actinic keratosis.

¹To preserve privacy throughout this document, patients are referred to by letter designation. / Appendix is attached hereto.

- C. The Respondent provided medical care to Patient C in the form of issuing pathologic reports at the W.C.A. Hospital, on or about October 26, 2000. The Respondent's care of Patient C failed to meet accepted standards of medical care in the following respects:
1. Respondent failed to diagnose abdominal fibromatosis.
- D. The Respondent provided medical care to Patient D in the form of issuing pathologic reports at the W.C.A. Hospital, on or about October 26, 2000. The Respondent's care of Patient D failed to meet accepted standards of medical care in the following respects:
1. Respondent failed to diagnose helicobacter pylori associated chronic active gastritis.
- E. The Respondent provided medical care to Patient E in the form of issuing pathologic reports at the W.C.A. Hospital, on or about October 26, 2000. The Respondent's care of Patient E failed to meet accepted standards of medical care in the following respects:
1. Respondent rendered a specific diagnosis with insufficient evidence.
- F. The Respondent provided medical care to Patient F in the form of issuing pathologic reports at the W.C.A. Hospital, on or about October 26, 2000. The Respondent's care of Patient F failed to meet accepted standards of medical care in the following respects:
1. Respondent failed to adequately sample the specimen.
- G. The Respondent provided medical care to Patient G in the form of issuing pathologic reports at the W.C.A. Hospital, on or about October 26, 2000. The Respondent's care of Patient G failed to meet accepted standards of medical care in the following respects:

1. Respondent failed to diagnose an endometrial polyp.

H. The Respondent provided medical care to Patient H in the form of issuing pathologic reports at the W.C.A. Hospital, on or about October 25, 2000. The Respondent's care of Patient H failed to meet accepted standards of medical care in the following respects:

1. Respondent diagnosed colonic tissue - collogenous colitis where there was no evidence for such diagnosis..
2. Respondent diagnosed colonic tissue - collogenous colitis where there was essentially normal histology.

I. The Respondent provided medical care to Patient I in the form of issuing pathologic reports at the W.C.A. Hospital, on or about October 25, 2000. The Respondent's care of Patient I failed to meet accepted standards of medical care in the following respects:

1. Respondent failed to diagnose hyperplastic polyp.
2. Respondent rendered a diagnosis of a specific colitis.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

NEGLIGENCE ON MORE THAN ONE OCCASION

Respondent is charged with negligence on more than one occasion in violation of § 6530(3), in that Petitioner charges two or more of the following:

1. The facts set forth in paragraphs A and A.1, B and B.1, C and C.1, D and D.1, E and E.1, F and F.1, G and G.1, H and H.1, and/or I and I.1.

SECOND SPECIFICATION

GROSS NEGLIGENCE

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

2. The facts set forth in paragraphs A and A.1.

THIRD SPECIFICATION

GROSS NEGLIGENCE

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

3. The facts set forth in paragraphs C and C.1.

FOURTH SPECIFICATION

GROSS NEGLIGENCE

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

4. The facts set forth in paragraphs D and D.1.

FIFTH SPECIFICATION

GROSS NEGLIGENCE

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

5. The facts set forth in paragraphs E and E.1.

SIXTH SPECIFICATION

GROSS NEGLIGENCE

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

6. The facts set forth in paragraphs H and H.1.

DATED: November 26, 2003
Albany, New York

REDACTED

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