



New York State Board for Professional Medical Conduct

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

Antonia C. Novello, M.D., M.P.H., Dr. P.H.
*Commissioner
NYS Department of Health*

Dennis P. Whalen
*Executive Deputy Commissioner
NYS Department of Health*

Dennis J. Graziano, Director
Office of Professional Medical Conduct

PUBLIC

Michael A. Gonzalez, R.P.A.
Vice Chair

Ansel R. Marks, M.D., J.D.
Executive Secretary

December 12, 2003

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Thomas O. Daly, M.D.

REDACTED

Re: License No. 091378

Dear Dr. Daly:

Enclosed please find Order #BPMC 03-340 of the New York State Board for Professional Medical Conduct. This order and any penalty provided therein goes into effect December 19, 2003.

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 the 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

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

Enclosure

cc: Victor Alan Oliveri, Esq.
69 Delaware Avenue, Suite 900
Buffalo, NY 14202-3866

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

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