



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.
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NYS Department of Health*

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*Executive Deputy Commissioner
NYS Department of Health*

Dennis J. Graziano, Director
Office of Professional Medical Conduct

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

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

PUBLIC

May 18, 2004

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Stephen J. O'Brien, M.D.
535 East 70th Street
New York, NY 10021

RE: License No. 168755

Dear Dr. O'Brien:

Enclosed please find Order #BPMC 04-110 of the New York State Board for Professional Medical Conduct. This Order and any penalty provided therein goes into effect May 25, 2004.

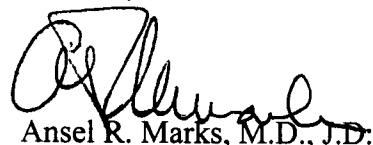
If the penalty imposed by the Order is a surrender, revocation or suspension of this license, you are required to deliver to the Board the license and registration within five (5) days or receipt of the of the Order to:

Board for Professional Medical Conduct
New York State Department of Health
Hedley Park Place, Suite 303
433 River Street
Troy, New York 12180

If the penalty imposed by the Order is a fine, please write the check payable to the New York State Department of Health. Noting the BPMC Order number on your remittance will assist in proper crediting. Payments should be directed to the following address:

Bureau of Accounts Management
New York State Department of Health
Corning Tower, Room 1258
Empire State Plaza
Albany, New York 12237

Sincerely,

A handwritten signature in black ink, appearing to read "Ansel R. Marks". The signature is written in a cursive style with a large initial "A".

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

cc: Wilfred T. Friedman, Esq.
Friedman & Mahdavian
36 West 44th Street, Suite 816
New York, NY 10036

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

**IN THE MATTER
OF
STEPHEN J. O'BRIEN, M.D.**

**CONSENT
ORDER**

BPMC No. 04-110

Upon the application of (Respondent) Stephen J. O'Brien, 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: 5/17/04


MICHAEL A. 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
STEPHEN J. O'BRIEN, M.D.**

**CONSENT
AGREEMENT
AND
ORDER**

Stephen J. O'Brien, M.D., representing that all of the following statements are true, deposes and says:

That on or about November 24, 1986, I was licensed to practice as a physician in the State of New York, and issued License No. 168755 by the New York State Education Department.

My current address is 535 East 70th Street, New York, New York 10021, 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 seven specifications of professional misconduct.

A copy of the Statement of Charges, marked as Exhibit "A", is attached to and part of this Consent Agreement.

I plead no contest to the second specification, in full satisfaction of the charges against me, and agree to the following penalty:

1. A censure and reprimand; and
2. A fifteen thousand dollar (\$15,000) fine.

I further agree that the Consent Order shall impose the following conditions:

That Respondent shall maintain current registration of licensure with the New York State Education Department Division of Professional Licensing Services (except during periods of actual suspension), and shall pay all registration fees. This condition shall take effect thirty (30) days after the Consent Order's effective date and will continue so long as Respondent remains licensed in New York State; and

That Respondent shall cooperate fully with the Office of Professional Medical Conduct (OPMC) in its administration and enforcement of this Order and in its investigations of matters concerning Respondent. Respondent shall respond in a timely manner to all OPMC requests for written periodic verification of Respondent's compliance with this Order. Respondent shall meet with a person designated by the Director of OPMC, as directed. Respondent shall respond promptly and provide all documents and information within Respondent's control, as directed. This condition shall take effect upon the Board's issuance of the Consent Order and will continue so long as Respondent remains licensed in New York State.

I stipulate that my failure to comply with any conditions of this Order shall constitute misconduct as defined by New York State Education Law §6530(29).

I agree that if I am charged with professional misconduct in future, this Consent Agreement and Order **shall** be admitted into evidence in that proceeding.

I ask the Board to adopt this Consent Agreement.


I understand that if the Board does not adopt this Consent Agreement, none of

its terms shall bind me or constitute an admission of any of the acts of alleged misconduct; this Consent Agreement 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 adopts this Consent Agreement, the Chair of the Board shall issue a Consent 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 Consent Order by first class mail to me at the address in this Consent Agreement or to my attorney by certified mail, OR upon facsimile transmission to me or my attorney, whichever is first.


I ask the Board to adopt this Consent Agreement of my own free will and not under duress, compulsion or restraint. In consideration of the value to me of the Board's adoption of this Consent Agreement, 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 Consent Order for which I apply, whether administratively or judicially, I agree to be bound by the Consent Order, and ask that the Board adopt this Consent Agreement.

DATED 9/27/04



STEPHEN J. O'BRIEN, M.D.
RESPONDENT

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

DATE: 4/27/04


WILLIAM T. FRIEDMAN, ESQ.
of Counsel Friedman & Mahdavian
Attorney for Respondent

DATE: 5/4/04


TIMOTHY J. MAHAR
Associate Counsel
Bureau of Professional Medical Conduct

DATE: 5/14/04


DENNIS J. GRAZIANO
Director
Office of Professional Medical Conduct

IN THE MATTER
OF
STEPHEN J. O'BRIEN, M.D.

STATEMENT
OF
CHARGES

STEPHEN J. O'BRIEN, M.D., the Respondent, was authorized to practice medicine in New York State on or about November 24, 1986, by the issuance of license number 168755 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. Respondent provided medical care to Patient A (Patient A is identified in Appendix A) from on or about October 19, 1998 through on or about December 1, 1998 at his offices and the Hospital for Special Surgery located on East 70th Street, New York, New York. On or about November 10, 1998, Respondent intended to harvest the palmaris longus tendon from Patient A's wrist for the purposes of grafting the tendon onto Patient A's elbow. Respondent dissected and removed portions of the median nerve from Patient A's right upper extremity. Respondent's medical care of Patient A failed to meet accepted standards of care in the following respects:
1. Respondent failed intra-operatively to adequately and/or competently identify the palmaris longus tendon and/or determine its adequacy as a graft, in Patient A's right upper extremity.
 2. Respondent failed intra-operatively to adequately and/or competently identify the median nerve in Patient A's right upper extremity.
 3. Respondent dissected and removed a portion of Patient A's median nerve without medical justification.

4. Respondent failed to maintain an adequate office and/or hospital record for Patient A.

SPECIFICATION OF CHARGES

FIRST THROUGH THIRD SPECIFICATION

GROSS NEGLIGENCE

Respondent is charged with professional misconduct under N.Y. Educ. Law § 6530(4) by reason of his having practiced medicine with gross negligence, in that
Petitioner charges:

1. The facts set forth in factual allegation A and A.1.
2. The facts set forth in factual allegation A and A.2.
3. The facts set forth in factual allegation A and A.3.

FOURTH THROUGH SIXTH SPECIFICATION

GROSS INCOMPETENCE

Respondent is charged with professional misconduct under N.Y. Educ. Law § 6530(6) by reason of his having practiced medicine with gross incompetence, in that
Petitioner charges:

4. The facts set forth in factual allegation A and A.1.
5. The facts set forth in factual allegation A and A.2.
6. The facts set forth in factual allegation A and A.3.

SEVENTH SPECIFICATION

NEGLIGENCE ON MORE THAN ONE OCCASION

Respondent is charged with professional misconduct under NY Educ. Law 6530 (3) by reason of his having practiced the profession with negligence on more

than one occasion , in that Petitioner charges

7. The facts set forth in factual allegations A and A.1, A and A.2 and/or A and A.3.

SEVENTH SPECIFICATION

RECORD KEEPING

Respondent is charged with professional misconduct under N.Y. Educ. Law § 6530(32) by reason of having failed to maintain a medical record which accurately reflects the evaluation and treatment of the patient, in that Petitioner charges:

7. The facts set forth in factual allegation A and A.4.


SEVENTH SPECIFICATION

RECORD KEEPING

Respondent is charged with professional misconduct under N.Y. Educ. Law § 6530(32) by reason of having failed to maintain a medical record which accurately reflects the evaluation and treatment of the patient, in that Petitioner charges:

7. The facts set forth in factual allegation A and A.4.

DATED: March 4, 2004
Albany, New York



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