



Department of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

May 17, 2017

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Charles J. Mallo, M.D.



Re: License No. 132331

Dear Dr. Mallo:

Enclosed is a copy of the New York State Board for Professional Medical Conduct (BPMC) Modification Order No. 17-142. This order and any penalty provided therein goes into effect May 24, 2017.

Please direct any questions to: Board for Professional Medical Conduct, Riverview Center, 150 Broadway, Suite 355, Albany, New York 12204, telephone # 518-402-0846.

Sincerely,


Robert A. Catalano, M.D.
Executive Secretary
Board for Professional Medical Conduct

Enclosure

IN THE MATTER
OF
CHARLES J. MALLO, M.D.

MODIFICATION
ORDER

Upon the proposed Application for a Modification Order of CHARLES J. MALLO, M.D. (Respondent), which is made a part of this Modification Order, it is agreed to and

ORDERED, that the attached Application, and its terms, are adopted and SO ORDERED, 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 Modification Order, either by first class to Respondent at the address in the attached Application or by certified mail to Respondent's attorney, OR
- upon facsimile transmission to Respondent or Respondent's attorney, whichever is first.

SO ORDERED.

DATE: 5/16/2017


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
CHARLES J. MALLO, M.D.

MODIFICATION
AGREEMENT
AND
ORDER

CHARLES J. MALLO, M.D., represents that all the following statements are true:

That on or about September 16, 1977, I was licensed to practice as a physician in the State of New York, and issued License No. 132331 by the New York State Education Department.

My current address is _____

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 # 05-135 (Attachment I) (henceforth "Original Order"), which went into effect on July 14, 2005, and was issued upon a Consent Agreement and Order signed by me and adopted by the Original Order. I hereby apply to the State Board for Professional Medical Conduct for an Order (henceforth "Modification Order"), modifying the Original Order, as follows:

The sanction imposed in the Original Order was a \$1,000 fine (which has been paid) and a practice limitation that I cannot treat members of my family without first notifying the Office of Professional Medical Conduct. The Original Order also imposed Conditions, including that I maintain active registration with the New York

State Education Department, Division of Professional Licensing Services (except during periods of actual suspension) and pay all registration fees for so long as I remain licensed in New York State.

The sanction imposed shall be modified to substitute the following sanction for so much of the one imposed in the Original Order, and referenced above, that remains to be served:

- Pursuant to New York Public Health Law § 230-a(6), Respondent shall be subject to a limitation precluding registration or issuance of any further license.

and

The following Conditions shall be imposed upon Respondent:

- That Respondent, who does not currently practice in the State of New York and does not intend to return to practice in the State of New York, shall be precluded from practicing medicine in New York State, from practicing in any setting where his practice is based solely on his New York license, and from further reliance upon Respondent's New York license to practice medicine to exempt Respondent from the licensure, certification or other requirements set forth in statute or regulation for the practice of any other profession licensed, regulated or certified by the Board of Regents, Department of Education, Department of Health or the Department of State; and

- That Respondent shall, within 30 days of the issuance of the Modification Order, notify the New York State Education Department, Division of Professional Licensing Services, that Respondent's license status is "inactive," and shall provide proof of such notification to the Director of OPMC immediately upon having done so, and shall not reactivate or reregister the license at any time. This Modification Order shall strike the Condition in the Original Order requiring Respondent to maintain active registration of Respondent's license with the New York State Education Department, Division of Professional Licensing Services, to pay all registration fees; and
- That Respondent shall comply with all conditions set forth in attached "Attachment II" ("Requirements for Closing a Medical Practice.")

and

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 5-8-17



CHARLES J. MALLO, M.D.
RESPONDENT

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

DATE: _____

Attorney for Respondent, ESQ.

DATE: May 11, 2017

MARCIA E. KAPLAN
Associate Counsel
Bureau of Professional Medical Conduct

DATE: 5/16/17

KEITH W. SERVIS
Director
Office of Professional Medical Conduct

ATTACHMENT I



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

Kendrick A. Sears, M.D.
Chairman

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

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

Public

July 7, 2005

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Charles J. Mallo, M.D.


RE: License No. 132331

Dear Dr. Mallo:

Enclosed is a copy of Order #BPMC 05-135 of the New York State Board for Professional Medical Conduct. This Order and any penalty provided therein goes into effect July 14, 2005.

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,



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

cc: David Gerald Jay, Esq.
69 Delaware Avenue, Suite 1103
Buffalo, NY 14202

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

IN THE MATTER
OF
CHARLES JOSEPH MALLO, M.D.

CONSENT
ORDER

BPMC No. 05-135

Upon the application of CHARLES JOSEPH MALLO, 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 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: 7-6-2005


KENDRICK A. SEARS, 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
CHARLES JOSEPH MALLO, M.D.

CONSENT
AGREEMENT
AND
ORDER

CHARLES JOSEPH MALLO, M.D., representing that all of the following statements are true, deposes and says:

That on or about September 16, 1977, I was licensed to practice as a physician in the State of New York, and issued License No. 132331 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 two 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 do not contest the first specification relating to the factual allegations contained in paragraphs A, B, C and G, in full satisfaction of the charges against me, and agree to the following penalty:

1. Payment of a fine in the sum of \$1,000 payable in full within thirty (30) days of the effective date of this order. Payments must be submitted to:

Bureau of Accounts Management
New York State Department of Health
Empire State Plaza
Corning Tower, Room 1245
Albany, New York 12237

2. My practice of medicine shall be subject to a practice limitation. The terms of my practice limitation is that I cannot treat members of my family without first notifying the Office of Professional Medical Conduct.

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

That Respondent shall maintain active registration of Respondent's license 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.

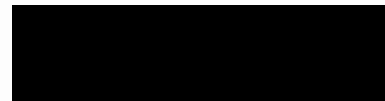
I understand that if the Board does not adopt this Consent Agreement, none of its terms shall bind me or constitute an admission of any of the acts of alleged misconduct; this Consent Agreement shall not be used against me in any way and shall be kept in strict confidence; and the Board's denial shall 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. The Order, this agreement, and all attached Exhibits shall be public documents, with only patient identities, if any, redacted.

I stipulate that the proposed sanction and Order are authorized by Public Health Law Sections 230 and 230-a and that the Board for Professional Medical Conduct and the Office of Professional Medical Conduct have the requisite powers to carry out all included terms. 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 6-9-05



CHARLES JOSEPH MALLO, M.D.
RESPONDENT

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

DATE: June 6, 2005


DAVID GERALD JAY, ESQ.
Attorney for Respondent

DATE: June 6, 2005


THOR B. EVANICK
Associate Counsel
Bureau of Professional Medical Conduct

DATE: June 30, 2005


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
CHARLES JOSEPH MALLO, M.D.

STATEMENT
OF
CHARGES

CHARLES JOSEPH MALLO, M.D., the Respondent, was authorized to practice medicine in New York State on or about September 16, 1977, by the issuance of license number 132331 by the New York State Education Department. Respondent's address upon information and belief is [REDACTED]

FACTUAL ALLEGATIONS

- A. Respondent was engaged in the practice of general surgery on or about May of 2001 at 3000 Military Road, Niagara Falls, New York.
- B. On or about May 9, 2001, the Respondent performed a surgical procedure on Patient A (the patient is identified by name in Appendix A attached hereto) at 3000 Military Road, Niagara Falls, NY.
- C. The surgical procedure is described in a medical record dated May 9, 2001, which identifies Venkateswara Kolli, M.D. as the operating surgeon.
- D. The surgical procedure is described in another medical record dated May 9, 2001, which does not identify the operating surgeon.
- E. A pathology requisition for the mass material excised from Patient A was submitted May 9, 2001 in the name of VENKATESWARA KOLLI, M.D.

- F. A pathology report was issued on May 10, 2001 to VENKATESWARA KOLLI, M.D. in response to the requisition in respect of the excised mass material resulting from the surgical procedure on Patient A.
- G. A billing which included the surgical procedure performed on May 9, 2001 on Patient A was submitted to Independent Health of Buffalo, N.Y. using the identification codes for Venkateswara Kolli, M.D. in May of 2001.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

FAILURE TO MAINTAIN RECORDS

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(32) by failing to maintain a record for each patient which accurately reflects the care and treatment of the patient, as alleged in the facts of:

1. A; A and/or B; A, B and/or C; A, B, C and/or D; A, B, C, D and/or E; A, B, C, D, E and/or F; and A, B, C, D, E, F and/or G.

SECOND SPECIFICATION

PRACTICING THE PROFESSION FRAUDULENTLY

The Respondent is charged with practicing the profession fraudulently within the meaning of New York Education Law section 6530 (2) in that Petitioner charges:

2. A; A and/or B; A, B and/or C; A, B, C and/or D; A, B, C, D and/or E; A, B, C, D, E and/or F; and A, B, C, D, E, F and/or G.

DATED: April 15, 2005
Albany, New York



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

ATTACHMENT II

ATTACHMENT II

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 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, with regard to New York practice or practice anywhere pursuant to Licensee's New York license, 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, with regard to New York practice or practice anywhere pursuant to Licensee's New York license, 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, with regard to New York practice or practice anywhere pursuant to Licensee's New York license, 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 in New York, or predicated upon Licensee's New York license, 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.