



New York State Board for Professional Medical Conduct

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

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

Public

July 7, 2005

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Charles J. Mallo, M.D.
2312 East River Road
Grand Island, NY 14072

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,

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" and "M".

Ansel R. 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

**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

**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 2312 East River Road, Grand Island, NY 14072, 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

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 2312 East River Road, Grand Island, New York 14072.

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

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