

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

IN THE MATTER
OF
DOUGLAS W. HALLIDAY, M.D.

CONSENT
ORDER

BPMC No. 09-38

Upon the application of DOUGLAS W. HALLIDAY, M.D. (Respondent), 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 Consent 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.

DATE: 3-9-2009

Redacted Signature

KENDRICK A. SEARS, M.D.
Chair
State Board for Professional Medical Conduct

**IN THE MATTER
OF
DOUGLAS W. HALLIDAY, M.D.**

**CONSENT
AGREEMENT
AND
ORDER**

DOUGLAS W. HALLIDAY, M.D., representing that all of the following statements are true, deposes and says:

That on or about December 18, 1981, I was licensed to practice as a physician in the State of New York, and issued License No. 148892 by the New York State Education Department.

My current address is 4939 Brittonfield Parkway, Building B., Suite 210, East Syracuse, New York, 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 (Board) has charged me with 10 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 paragraphs A.2 and B.1 of the Ninth Specification, in full satisfaction of the charges against me, and agree to the following penalty:

1. A three year stayed suspension of my medical license with three years probation in accordance with the terms set forth in Appendix B hereto.
2. I shall pay a \$20,000.00 fine to the New York State Department of Health within 30 days of the effective date of this order.

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

That Respondent shall remain in continuous compliance with all requirements of N.Y. Educ Law § 6502 including but not limited to the requirements that a licensee shall register and continue to be registered with the New York State Education Department (except during periods of actual suspension) and that a licensee shall pay all registration fees. Respondent shall not exercise the option provided in N.Y. Educ. Law § 6502(4) to avoid registration and payment of fees. This condition shall take effect 30 days after the Consent Order's effective date and will continue so long as Respondent remains a licensee 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 Consent 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 Consent 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 Consent Order shall constitute misconduct as defined by N.Y. Educ. 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 N.Y. Pub. 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 Consent 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 Consent 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.

I stipulate that the proposed sanction and Consent Order are authorized by N.Y. Pub. Health Law §§ 230 and 230-a, and that the Board and OPMC 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 I ask that the Board adopt this Consent Agreement.

I understand and agree that the attorney for the Department, the Director of OPMC and the Chair of the Board each retain complete discretion either to enter into the proposed agreement and Consent 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

2/13/09

Redacted Signature

~~DOUGLAS W. HALLIDAY, M.D.~~
RESPONDENT

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

DATE: 2/13/09

Redacted Signature

~~CHARLES E. PATTON, ESQ.~~
MARTIN, GANOTIS, BROWN,
MOULD & CURRIE
Attorney for Respondent

DATE: 2/20/09

Redacted Signature

~~TIMOTHY J. MAHAR~~
ASSOCIATE COUNSEL
Bureau of Professional Medical Conduct

DATE: 3/5/09

Redacted Signature

~~KEITH W. SERVIS~~
Director
Office of Professional Medical Conduct

IN THE MATTER
OF
DOUGLAS W. HALLIDAY, M.D.

STATEMENT
OF
CHARGES

Douglas W. Halliday, M.D., the Respondent, was authorized to practice medicine in New York State on or about December 18, 1981, by the issuance of license number 148892 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. Respondent provided medical care to Patient A (patients are identified by name in Appendix A) at his office and Crouse Hospital, Syracuse, New York, during the period commencing on or about October 11, 2001, during which he performed a functional endoscopic sinus surgery (FESS) for a suspected mucocele or abscess through the left ethmoid bone. Respondent's medical care of Patient A deviated from accepted standards of medical care as follows:

1. Respondent performed functional endoscopic sinus surgery on Patient A to biopsy a nasal mass shown on CT scan, in violation of accepted standards of medical care rather than perform a simple nasal speculum examination and biopsy.
2. Following the diagnosis of a malignant squamous cell carcinoma, Respondent failed to adequately advise Patient A of her treatment options.
3. Respondent failed to maintain an adequate medical record for Patient A.

B. Respondent performed an open reduction surgery of Patient B's nasal bone fracture on or about March 7, 2001 at Community General Hospital, Syracuse, New York. During the post-operative care which occurred in Respondent's office, Patient B developed anosmia. Respondent's care of Patient B deviated from accepted standards of medical care in the following respects:

1. Respondent failed to obtain an adequate pre-operative history from Patient B.
2. Respondent failed to adequately attempt conservative therapies for Patient B's nasal bone fracture prior to performing surgery.
3. Respondent performed an open reduction surgery of Patient B's nasal bone fracture without waiting an adequate time for the fracture to stabilize sufficiently prior to surgery.
4. Respondent failed to maintain an adequate medical record for Patient B.

C. Respondent was responsible for the medical care of Patient C during the period from on or about March 18, 2003, when Patient C was admitted to the ICU at St. Joseph's Hospital, Syracuse, New York on Respondent's service as the emergency on-call ENT, until March 20, 2003. Patient C was treated for, among other things, epistaxis during the admission and had a past medical history which included among other things, a prior nosebleed requiring posterior packing, heavy alcohol intake, coronary artery disease and hypertension. Respondent's care of Patient C deviated from accepted standards of medical care in the following respects:

1. Respondent failed on one or more occasions to timely evaluate Patient C following Patient C's initial evaluation by a resident in otolaryngology.

2. Respondent failed to maintain an adequate medical record for Patient C.

D. Respondent performed an endoscopic sinus surgical procedure on Patient D on October 29, 2001 at Crouse Hospital, Syracuse, New York. Approximately two days post surgery, Patient D reported diplopia or double vision. Imaging studies taken on October 31, 2001, showed, among other things, "a new defect in [Patient D's] left lamina papyracea with the anterior half of the medial rectus muscle not being visualized". Respondent's care of Patient D deviated from accepted standards of medical care in the following respects:

1. Respondent failed to obtain an adequate pre-operative evaluation of Patient D's lamina papyracea and/or ethmoid bone.
2. Respondent failed to adequately document prior to surgery that a pre-operative CT scan, dated September 19, 2001, showed a dehiscence in the proposed surgical site.
3. Respondent failed to adequately inform Patient D prior to surgery of the risks posed to her by the proposed surgery in view of his pre-operative finding of a dehiscence and/or Respondent failed to adequately document having informed Patient D of such risks.
4. Respondent failed to maintain an adequate medical record for Patient D.

E. Respondent provided medical care to Patient E at his office and at Crouse Hospital during the period from on or about April 12, 2001 to August 27, 2001. On June 29, 2001, Respondent performed surgery on Patient E which included an open reduction of an internal and external nasal deformity caused by trauma and a tip procedure. On August 31, 2001, Respondent dictated and later initialed an operative report for the June 29, 2001 surgery which described only the reduction

of the traumatic internal and external nasal deformity, but failed to document the cosmetic tip procedure. On January 18, 2002, Respondent dictated a second operative report which described the cosmetic tip procedure performed on June 29, 2001. Respondent's care of Patient E deviated from accepted standards of medical care as follows:

1. Respondent failed to take an adequate medical history from patient E.
2. Respondent failed to timely document a significant portion of the operative procedure performed on Patient E.
3. Respondent failed to maintain an adequate medical record for Patient E.

F. Patients F-1, F-2, F-3, F-4, F-5, F-6, F-7, F-8, F-9, F-10, F-11, and F-12, individually, received medical care from Respondent at his office during the months of either May or June, 2004. Respondent had been treating each patient with BOTOX prior to June, 2004. In June, 2004, Respondent injected each patient with a botulinum neurotoxin he had ordered from Toxin Research International, Inc. (hereafter botulinum neurotoxin), which was not approved for use in humans by the Federal Food and Drug Association. The label on the bottle of the botulinum neurotoxin contained the following notice or warning, in words or effect, "FOR RESEARCH PURPOSES ONLY - NOT FOR HUMAN USE." Respondent's medical care of each patient deviated from accepted standards of medical care as follows:

1. Respondent failed to adequately read and/or understand the notices and/or warnings against the use of this botulinum neurotoxin in humans.
2. Respondent administered to his patients a botulinum neurotoxin which he knew, or in the exercise of reasonable care should have known, was not for use in humans.

3. Respondent failed to adequately supervise his staff in the procurement, review of the medication's product information, and/or in the preparation of the botulinum neurotoxin for administration to patients.
4. Respondent discontinued administering the botulinum neurotoxin to patients in or about July, 2004. In June, 2005, Respondent wrote a letter to the above patients which, among other things, made the following representations:

- *[the patient] received a Botox injection.*
- *We subsequently learned that the Botox we received from a particular supplier was not FDA approved.*
- *Your injection of Botox came from that particular supplier.*
- *We are unaware of any harmful adverse effects to our patients from the use of this Botox.*

- (1) Respondent stated that the patients had received Botox when Respondent knew that the medication that had been administered to the patients was not Botox, but a botulinum neurotoxin which was not for human use.
- (2) Respondent's statement to the patients that "we subsequently learned that the Botox we received from a particular supplier was not FDA approved" implies that Respondent first received notice that the substance was inappropriate for patients following its administration to those patients. The notices on the order form for the botulinum neurotoxin, the product information sheets and information on the drug containers each stated that the botulinum neurotoxin was not for human use. Therefore, Respondent had notice prior to the administration of the

botulinum neurotoxin to these patients that it was not for use in humans.

SPECIFICATION OF CHARGES

FIRST THROUGH FOURTH SPECIFICATIONS

GROSS NEGLIGENCE

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(4) by practicing the profession of medicine with gross negligence on a particular occasion as alleged in the facts of the following:

1. The facts alleged in paragraphs A and A.2
2. The facts alleged in paragraphs B and B.3
3. The facts alleged in paragraphs C and C.1
4. The facts alleged in paragraphs D and D.2 and/or D and D.3

FIFTH THROUGH EIGHTH SPECIFICATIONS

GROSS INCOMPETENCE

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(6) by practicing the profession of medicine with gross incompetence as alleged in the facts of the following:

5. The facts alleged in paragraphs A and A.2
6. The facts alleged in paragraphs B and B.3
7. The facts alleged in paragraphs C and C.1
8. The facts alleged in paragraphs D and D.2 and/or D and D.3

NINTH SPECIFICATION

NEGLIGENCE ON MORE THAN ONE OCCASION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(3) by practicing the profession of medicine with negligence on more than one occasion as alleged in the facts of two or more of the following:

9. The facts alleged in one or more of the following paragraphs: A and A.1, A and A.2, A and A.3, B and B.1, B and B.2, B and B.3, C and C.1, D and D.1, D and D.2, D and D.3, E and E.1, E and E.2, F and F.1, F and F.2, F and F.3, and/or F and F.4.

TENTH SPECIFICATION

INCOMPETENCE ON MORE THAN ONE OCCASION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(5) by practicing the profession of medicine with incompetence on more than one occasion as alleged in the facts of two or more of the following:

10. The facts alleged in one or more of the following paragraphs: A and A.1, A and A.2, A and A.3, B and B.1, B and B.2, B and B.3, C and C.1, D and D.1, D and D.2, D and D.3, E and E.1, E and E.2, F and F.1, F and F.2, F and F.3, and/or F and F.4.

DATE: February 20, 2009
Albany, New York

Redacted Signature

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

EXHIBIT "B"

Terms of Probation

1. Respondent's conduct shall conform to moral and professional standards of conduct and governing law. Any act of professional misconduct by Respondent as defined by N.Y. Educ. Law §§ 6530 or 6531 shall constitute a violation of probation and may subject Respondent to an action pursuant to N.Y. Pub. Health Law § 230(19).
2. Respondent shall maintain active registration of Respondent's license (except during periods of actual suspension) with the New York State Education Department Division of Professional Licensing Services, and shall pay all registration fees.
3. Respondent shall provide the Director, Office of Professional Medical Conduct (OPMC), Hedley Park Place, 433 River Street Suite 303, Troy, New York 12180-2299 with the following information, in writing, and ensure that this information is kept current: a full description of Respondent's employment and practice; all professional and residential addresses and telephone numbers within and outside New York State; and all investigations, arrests, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility. Respondent shall notify OPMC, in writing, within 30 days of any additions to or changes in the required information.
4. Respondent shall cooperate fully with, and respond in a timely manner to, OPMC requests to provide written periodic verification of Respondent's compliance with the terms of this Consent Order. Upon the Director of OPMC's request, Respondent shall meet in person with the Director's designee.
5. Respondent's failure to pay any monetary penalty by the prescribed date shall subject Respondent to all provisions of law relating to debt collection by New York State, including but not limited to: the imposition of interest, late payment charges and collection fees; referral to the New York State Department of Taxation and Finance for collection; and non-renewal of permits or licenses [Tax Law § 171(27); State Finance Law § 18; CPLR § 5001; Executive Law § 32].
6. The probation period shall toll when Respondent is not engaged in active medical practice in New York State for a period of 30 consecutive days or more. Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in, or intends to leave, active medical practice in New York State for a consecutive 30 day period. Respondent shall then notify the Director again at least 14 days before returning to active practice. Upon Respondent's return to active practice in New York State, the probation period shall resume and Respondent shall fulfill any unfulfilled probation terms and such additional requirements as the Director may impose as reasonably relate to the matters set forth in Exhibit "A" or as are necessary to protect the public health.

7. The Director of OPMC may review Respondent's professional performance. This review may include but shall not be limited to: a review of office records, patient records, hospital charts, and/or electronic records; and interviews with or periodic visits with Respondent and staff at practice locations or OPMC offices.
8. Respondent shall adhere to federal and state guidelines and professional standards of care with respect to infection control practices. Respondent shall ensure education, training and oversight of all office personnel involved in medical care, with respect to these practices.
9. Respondent shall maintain complete and legible medical records that accurately reflect the evaluation and treatment of patients and contain all information required by State rules and regulations concerning controlled substances.
10. Respondent shall enroll in and complete a continuing education programs in the area of medical ethics and clinical practice. This continuing education program is subject to the Director of OPMC's prior written approval and shall be completed within the first year of the probation period.
11. Within thirty days of the effective date of the order, Respondent shall practice medicine only when monitored by a licensed physician, board certified in an appropriate specialty ("practice monitor"), proposed by Respondent and subject to the written approval of the Director of OPMC.
 - a. Respondent shall make available to the monitor any and all records or access to the practice requested by the monitor, including on-site observation. The practice monitor shall visit Respondent's medical practice at each and every location, on a random unannounced basis at least monthly and shall examine a selection (no fewer than 20) of records maintained by Respondent, including patient records, prescribing information and office records. The review will determine whether the Respondent's medical practice is conducted in accordance with the generally accepted standards of professional medical care. Any perceived deviation of accepted standards of medical care or refusal to cooperate with the monitor shall be reported within 24 hours to OPMC.
 - b. Respondent shall be solely responsible for all expenses associated with monitoring, including fees, if any, to the monitoring physician.
 - c. Respondent shall cause the practice monitor to report quarterly, in writing, to the Director of OPMC.
 - d. Respondent shall maintain medical malpractice insurance coverage with limits no less than \$2 million per occurrence and \$6 million per policy year, in accordance with Section 230(18)(b) of the Public Health Law. Proof of coverage shall be submitted to the Director of OPMC prior to Respondent's practice after the effective date of this Order.

12. Payment of the fine imposed is also a term of probation. The fine is payable in full within 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

13. Respondent shall comply with this Consent Order and all its terms, and shall bear all associated compliance costs. Upon receiving evidence of noncompliance with, or a violation of, these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding, and/or any other such proceeding authorized by law, against Respondent.