



*New York State Board for Professional Medical Conduct*

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

Richard F. Daines, M.D.  
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NYS Department of Health  
James W. Clyne, Jr.  
Executive Deputy Commissioner  
Keith W. Servis, Director  
Office of Professional Medical Conduct

Public

Kendrick A. Sears, M.D.  
Chair  
Carmela Torrelli  
Vice Chair  
Katherine A. Hawkins, M.D., J.D.  
Executive Secretary

August 24, 2009

**CERTIFIED MAIL-RETURN RECEIPT REQUESTED**

Joseph F. Haluska, D.O.

Redacted Address

Re: License No. 222016

Dear Dr. Haluska:

Enclosed is a copy of BPMC #09-161 of the New York State Board for Professional Medical Conduct. This order and any penalty provided therein goes into effect August 31, 2009.

**If the penalty imposed by this Order is a surrender, revocation or suspension, you are required to deliver your license and registration within five (5) days of receipt of this Order** and return it to the Office of Professional Medical Conduct, New York State Department of Health, 433 River Street, Suite 303, Troy, NY 12180-2299

Sincerely,

Redacted Signature

Katherine A. Hawkins, M.D., J.D.  
Executive Secretary  
Board for Professional Medical Conduct

Enclosure

cc: Ramson P. Reynolds, Jr., Esq.  
Davidson & O'Mara, P.C.  
243 Lake Street  
Elmira, NY 14901

**IN THE MATTER  
OF  
JOSEPH HALUSKA, D.O.**

**CONSENT  
ORDER**

BPMC No. #09-161

Upon the application of Joseph Haluska, D.O. 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: 8-21-2009

Redacted Signature

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

**IN THE MATTER  
OF  
JOSEPH HALUSKA, D.O.**

**CONSENT  
AGREEMENT  
AND  
ORDER**

Joseph Haluska, D.O., represents that all of the following statements are true:

That on or about July 13, 2001, I was licensed to practice as a physician in the State of New York, and issued License No. 222016 by the New York State Education Department.

My current address is Redacted Address, 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 Nine 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 Seventh Specification, in full satisfaction of the charges against me, and agree to the following penalty:

I shall receive a censure and reprimand; also I will enroll in and complete a continuing education program in the area of appropriate patient evaluation, including history taking, and physical examination of patients presenting in an emergency room setting. This continuing education program is subject to the Director of OPMC's prior written approval and shall be completed within six (6) months of the effective date of the Order herein.

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 120 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 Aug 5, 2009

Redacted Signature

~~JOSEPH HALUSKA, D.O.~~  
RESPONDENT

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

DATE: 8/11/09

Redacted Signature

RANSOM P. REYNOLDS, JR., ESQ.  
Attorney for Respondent

DATE: 8/13/09

Redacted Signature

MICHAEL A. HISER, ESQ.  
Associate Counsel  
Bureau of Professional Medical Conduct

DATE: 8/20/09

Redacted Signature

KEITH W. SERVIS  
Director  
Office of Professional Medical Conduct

**IN THE MATTER**  
**OF**  
**JOSEPH HALUSKA, D.O.**

**STATEMENT**  
**OF**  
**CHARGES**

JOSEPH HALUSKA, D.O., the Respondent, was authorized to practice medicine in New York State on or about July 13, 2001, by the issuance of license number 222016 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A. Respondent provided medical care to Patient A, an 86 year old female, at the Arnot Ogden Medical Center, 600 Roe Avenue, Elmira, New York on or about July 22, 2007. Patient A presented to the Emergency Department with complaints of having fallen, acting confused at times, and with pain in her left leg and head. Respondent discharged the patient approximately four hours later. Patient A returned to the Emergency Department on July 24, 2007, was admitted with a diagnosis of ischemic left lower extremity.

Respondent's care and treatment of Patient A failed to meet accepted standards of medical practice, in that:

1. Respondent failed to obtain an adequate history of the patient, in light of her symptoms, her history of recent falls, altered mental status, and poor circulation in her legs, and or failed to document that he obtained such an adequate history.
2. Respondent failed to perform an adequate physical examination of the patient, including assessing the patient's mental status, alertness, orientation, and circulation changes in her left leg, and/or failed to document such an examination.
3. Respondent failed to seek the admission of the patient to the hospital, or to order relevant consultations, including by a vascular surgeon, and/or failed to document that he had sought to admit the patient or ordered relevant consultations.

**Exhibit A**



- B. Respondent provided medical care to Patient B, a 50 year old female, in the emergency department at St. Joseph's Hospital Emergency Department, 555 East Market Street, Elmira, New York 14901 (hereafter, "St. Joseph's Hospital") on or about March 9, 2006. Patient B presented to the Emergency Department in the late afternoon at the direction of her primary care physician, complaining of increasing stress and increasing anxiety, feeling disconnected, and having a difficult time with common tasks, among others. Respondent offered the patient admission for psychiatric treatment, which she refused, and she was discharged. On or about March 14, 2006, Patient B was diagnosed as having a "6cm by 5cm midline frontal lobe mass", for which she underwent surgery. Respondent's care and treatment of Patient B failed to meet accepted standards of medical practice, in that:
1. Respondent, on March 9, 2006, failed to adequately evaluate the patient for signs of an organic cause of her apparent psychiatric symptoms by, among others, failing to perform and/or document the performance of an adequate neurologic examination of the patient.
  2. Respondent failed to order a head CT scan with contrast, despite medical indications.
- C. Respondent provided medical care to Patient C, an 85 year old male patient, at the St. Joseph's Hospital Emergency Department beginning on or about July 22, 2005. Patient C presented to the Emergency Department complaining of constipation with vomiting. Respondent diagnosed the patient as having gastritis, and discharged him. Patient C returned to the Emergency Department approximately five hours later, and was admitted with a diagnosis of, among others, "small bowel obstruction". Respondent's care and treatment of Patient C failed to meet accepted standards of medical practice, in that:

1. Respondent failed to obtain an adequate history of the patient's symptoms, and/or document that he obtained such an adequate history, including information relating to the patient's abdominal pain, the nature of the patient's vomiting, and/or specific related symptoms of his constipation.
2. Respondent failed to perform an adequate physical examination of the patient, including testing orthostatic vital signs, evaluation for peritoneal signs, checking for an inguinal hernia, and/or failed to document the results of such testing.
3. Respondent, despite having ordered a urinalysis, discharged the patient without having the results of the urinalysis.
4. Respondent, despite the fact that the patient had a recurrent episode of vomiting shortly before discharge, discharged the patient from the Emergency department.
5. Respondent failed to order adequate diagnostic tests, including 2 position abdominal x rays, abdominal ultrasound, or abdominal CT scan, despite medical indications.
6. Respondent, despite obtaining blood work results that indicated that the patient had a possible infection, inflammation, or other potentially stressful event, failed to take appropriate steps in reliance on this information including seeking a surgical consult and/or observation admission.

## **SPECIFICATION OF CHARGES**

### **FIRST THROUGH THIRD 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 in paragraphs A and A.1, A and A.2, and/or A and A.3.
2. The facts in paragraphs B and B.1, and/or B and B.2.
3. The facts in paragraphs C and C.1, C and C.2, C and C.3, C and C.4, C and C.5 and/or C and C.6.

### **FOURTH THROUGH SIXTH 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:

4. The facts in paragraphs A and A.1, A and A.2, A and A.3 and/or A and A.4.
5. The facts in paragraphs B and B.1, B and B.2, and/or B and B.3.
6. The facts in paragraphs C and C.1, C and C.2, C and C.3, C and C.4, C and C.5 and/or C and C.6.

### **SEVENTH SPECIFICATION**

#### **NEGLECT 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:

7. The facts in paragraphs A and A.1, A and A.2, A and A.3, B and B.1, B and B.2, C and C.1, C and C.2, C and C.3, C and C.4, C and C.5, and/or C and C.6.

#### **EIGHTH 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:

8. The facts in paragraphs A and A.1, A and A.2, A and A.3, B and B.1, B and B.2, C and C.1, C and C.2, C and C.3, C and C.4, C and C.5, and/or C and C.6.

#### **NINTH 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:

9. The facts in paragraphs A and A.1, A and A.2, A and A.3, B and B.1, C and C.1, and/or C and C.2.

DATE:

*Aug*  
*Adm* 13, 2009  
Albany, New York

Redacted Signature

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Peter D. Van Buren  
Deputy Counsel  
Bureau of Professional Medical Conduct