



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
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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

November 6, 2009

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Anil K. Tripathy, M.D.

Redacted Address

Re: License No. 231591

Dear Dr. Tripathy:

Enclosed is a copy of Order BPMC #09-199 of the New York State Board for Professional Medical Conduct. This order and any penalty provided therein goes into effect November 13, 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 to: Office of Professional Medical Conduct, c/o Physician Monitoring Unit, New York State Department of Health, 433 River Street, Suite 303, Troy, NY 12180-2299.

If the document(s) are lost, misplaced or destroyed, you are required to submit to this office an affidavit to that effect. Enclosed for your convenience is an affidavit. Please complete and sign the affidavit before a notary public and return it to the Office of Professional Medical Conduct.

Sincerely,

Redacted Signature

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

Enclosure

cc: Paul Goldstein, Esq.
Goldstein & Metzger, LLP
40 Garden Street
Poughkeepsie, NY 12601-3106

IN THE MATTER
OF
ANIL TRIPATHY, M.D.

CONSENT
ORDER

BPMC No. #09-199

Upon the application of Anil Tripathy, 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 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: 11-5-2009

Redacted Signature

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

**IN THE MATTER
OF
ANIL TRIPATHY, M.D.**

**CONSENT
AGREEMENT
AND
ORDER**

Anil Tripathy, M.D., represents that all of the following statements are true:

That on or about March 11, 2004, I was licensed to practice as a physician in the State of New York, and issued License No. 231591 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 understand that the New York State Board for Professional Medical Conduct (Board) 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 admit to the Third Specification, in full satisfaction of the charges against me, and agree to the following penalty:

My license to practice medicine in New York State shall be suspended for a period of three years, all but six months of which shall be stayed. I shall be subject to a three year period of probation as set forth in Exhibit B.

I will also be required to complete 50 hours of Continuing Medical Education, as is more fully described in Exhibit B.

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 8/24/09

Redacted Signature

ANIL TRIPATHY, M.D.
RESPONDENT

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

DATE: 9/21/09

Redacted Signature

PAUL J. GOLDSTEIN, ESQ.
Attorney for Respondent

DATE: 9/30/09

Redacted Signature

JUDE B. MULVEY, ESQ.
Associate Counsel
Bureau of Professional Medical Conduct

DATE: 11/4/09

Redacted Signature

KEITH W. SERVIS
Director
Office of Professional Medical Conduct

IN THE MATTER
OF
ANIL TRIPATHY, M.D.

STATEMENT
OF
CHARGES

Anil Tripathy, M.D., the Respondent, was authorized to practice medicine in New York State on or about March 11, 2004, by the issuance of license number 231591 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. Respondent, on or about July 1, 1994, began an internal residency program at Hurley Medical Center in Flint, Michigan. On or about April 21, 1995 Respondent was placed on probation due to his failure to meet competency requirements. On or about March 31, 1996, Respondent's residency at Hurley Medical Center was terminated due to his inability to meet competency standards.
- B. Respondent, on or about July 1, 1996, began an anesthesiology residency program at the State University of New York at Syracuse in Syracuse, New York. On or about June 17, 1997, the State University of New York at Syracuse failed to renew Respondent's residency privileges based upon faculty evaluations of Respondent's clinical performance.

- C. Respondent, on or about July 1997, began an anesthesiology residency program at Texas Tech University Health Sciences Center (herein after "Texas Tech") in Lubbock Texas. Respondent was placed on probation on or about June 8, 1999. On or about March 30, 2000, Texas Tech failed to renew Respondent's residency privileges based on Respondent's clinical competency evaluations.
- D. Respondent, on or about December 21, 2000 signed and submitted an "Application for Limited Permit in Medicine For Applicants Seeking Licensure in New York State" with New York State education Department. Respondent answered "no" to the question "Has any hospital or licensed facility restricted or terminated your professional training, employment or privileges have you ever voluntarily or involuntarily resigned or withdrawn from such an association to avoid imposition of such measures?" when, in fact:
1. Respondent's professional training, employment and/or privileges were restricted and/or terminated at Hurley Medical Center on or about March 31, 1996.
 2. Respondent's professional training, employment and/or privileges were terminated at the State University of New York at Syracuse on or about June 17, 1997.
 3. Respondent's professional training, employment and/or privileges were terminated at Texas Tech, on or about March 30, 2000.
- E. Respondent, on or about September 24, 2001, signed and submitted an "Application For Limited Permit In Medicine For Applicants Seeking Licensure in New York State" to the New York Education Department.

1. Respondent answered "no" to the question "Has any hospital or licensed facility restricted or terminated your professional training, employment or privileges or have you ever voluntarily or involuntarily resigned or withdrawn from such association to avoid imposition of such measures?" when, in fact, his professional training, employment or privileges were restricted and/or terminated at Hurley Medical Center on or about March 31, 1996, and Respondent knew such facts;
2. Respondent answered "no" to the question "Has any hospital or licensed facility restricted or terminated your professional training, employment or privileges or have you ever voluntarily or involuntarily resigned or withdrawn from such association to avoid imposition of such measures?" when, in fact, his professional training, employment or privileges were restricted and/or terminated at the State University of New York at Syracuse on or about June 17, 1997, and Respondent knew such facts; and/or
3. Respondent answered "no" to the question "Has any hospital or licensed facility restricted or terminated your professional training, employment or privileges or have you ever voluntarily or involuntarily resigned or withdrawn from such association to avoid imposition of such measures?" when, in fact, his professional training, employment or privileges were restricted and/or terminated at Texas Tech on or about March 30, 2000, and Respondent knew such facts.

- F. Respondent, on or about December 1, 2001, signed and submitted an "Application For Limited Permit In Medicine For Applicants Seeking Licensure In New York State" to the New York Education Department.
1. Respondent answered "no" to the question "Has any hospital or licensed facility restricted or terminated your professional training, employment or privileges or have you ever voluntarily or involuntarily resigned or withdrawn from such association to avoid imposition of such measures?" when, in fact, his professional training, employment or privileges were restricted and/or terminated at Hurley Medical Center on or about March 31, 1996, and Respondent knew such facts.
 2. Respondent answered "no" to the question "Has any hospital or licensed facility restricted or terminated your professional training, employment or privileges or have you ever voluntarily or involuntarily resigned or withdrawn from such association to avoid imposition of such measures?" when, in fact, his professional training, employment or privileges were restricted and/or terminated at the State University of New York at Syracuse on or about June 17, 1997, and Respondent knew such facts; and/or
 3. Respondent answered "no" to the question "Has any hospital or licensed facility restricted or terminated your professional training, employment or privileges or have you ever voluntarily or involuntarily resigned or withdrawn from such association to avoid imposition of such measures?" when, in fact, his professional training, employment or privileges were restricted and/or terminated at Texas Tech on or about March 30, 2000, and Respondent knew such facts.

- G. Respondent, on or about March 31, 2002, signed and submitted an "Application for License and First Registration" to the New York State Education Department.
1. Respondent answered "no" to the question "Has any hospital or licensed facility restricted or terminated your professional training, employment or privileges or have you ever voluntarily or involuntarily resigned or withdrawn from such association to avoid imposition of such measures?" when, in fact, his professional training, employment or privileges were restricted and/or terminated at Hurley Medical Center on or about March 31, 1996, and Respondent knew such facts;
 2. Respondent answered "no" to the question "Has any hospital or licensed facility restricted or terminated your professional training, employment or privileges or have you ever voluntarily or involuntarily resigned or withdrawn from such association to avoid imposition of such measures?" when, in fact, his professional training, employment or privileges were restricted and/or terminated at the State University of New York at Syracuse on or about June 17, 1007, and Respondent knew such facts; and/or
 3. Respondent answered "no" to the question "Has any hospital or licensed facility restricted or terminated your professional training, employment or privileges or have you ever voluntarily or involuntarily resigned or withdrawn from such association to avoid imposition of such measures?" when, in fact, his professional training, employment or privileges were restricted and/or terminated at Texas Tech on or about March 30, 2000, and Respondent knew such facts.

- H. Respondent, on or about May 1, 2005 signed and submitted a Uniform Application Form to Via Health System of Wayne, Newark, New York . Respondent answered “no” to the question “Has your employment, medical staff appointment, panel participation, affiliation, or clinical privileges ever been voluntarily or involuntarily suspended, diminished, revoked, refused, or limited in any hospital, health care facility or managed care organization, IPA or PPO including to avoid disciplinary action for reasons related to professional competence or conduct?” when, in fact:
1. Respondent’s employment, medical staff appointment and/or clinical privileges were voluntarily suspended, revoked, refused and/or limited at Hurley Medical Center, and Respondent knew such facts;
 2. Respondent’s employment, medical staff appointment and/or clinical privileges were voluntarily suspended, revoked, refused and/or limited at the State University of New York at Syracuse, and Respondent knew such facts; and/or
 3. Respondent’s employment, medical staff appointment and/or clinical privileges were voluntarily suspended, revoked, refused and/or limited at Texas Tech, and Respondent knew such facts.
- I. Respondent, on or about February 16, 2006, signed and submitted an “Application for Staff Appointment” to St. Peter’s Hospital, Albany, New York. Respondent answered “no” to the question whether his academic appointment or education affiliation, or his clinical privileges on hospital had ever been “denied, revoked, suspended, reduced, limited, placed on probation, not renewed or voluntarily or involuntarily relinquished” when, in fact:

1. Respondent's academic appointment, education affiliation and/or clinical privileges were revoked, reduced, limited and/or not renewed and/or Respondent was placed on probation at Hurley Medical Center, and Respondent knew such facts;
2. Respondent's academic appointment, education affiliation and/or clinical privileges were revoked, reduced, limited and/or not renewed and/or Respondent was placed on probation at the State University of New York at Syracuse, and Respondent knew such facts; and/or
3. Respondent's academic appointment, education affiliation and/or clinical privileges were revoked, reduced, limited and/or not renewed and/or Respondent was placed on probation at Texas Tech, and Respondent knew such facts.

J. Respondent, on or about May 21, 2006, signed and submitted an "Application for Medical/Dental Staff Membership or Allied Health Professional Staff Membership" with the Catholic Health System, Kenmore Mercy Hospital, Kenmore, New York. Respondent answered no to questions asking if his academic appointment, membership in or affiliation with any health care facility staff, clinical privileges and/or prerogatives or rights at any health care facility had ever been "voluntarily or involuntarily denied, revoked, suspended, sanctioned, reduced, limited, monitored, placed on probation, [or] not renewed.." when, in fact:

1. Respondent's academic appointment, education affiliation and/or clinical privileges were revoked, reduced, limited and/or not renewed and/or Respondent was placed on probation at Hurley Medical Center, and Respondent knew such facts;

2. Respondent's academic appointment, education affiliation and/or clinical privileges were revoked, reduced, limited and/or not renewed and/or Respondent was placed on probation at the State University of New York at Syracuse, and Respondent knew such facts; and/or
 3. Respondent's academic appointment, education affiliation and/or clinical privileges were revoked, reduced, limited and/or not renewed and/or Respondent was placed on probation at Texas Tech, and Respondent knew such facts.
- K. Respondent, on or about May 8, 2008 signed and submitted a "Medical Staff Application" to Nicholas H. Noyes Memorial Hospital, Dansville, New York.
1. Respondent answered "no" to the question "Have you ever voluntarily or involuntarily withdrawn or resigned association, employment or privileges at any health care facility or practice" when, in fact:
 - a. Respondent's association, employment or privileges were voluntarily or involuntarily withdrawn or resigned at Hurley Medical Center, and Respondent knew such facts;
 - b. Respondent's association, employment or privileges were voluntarily withdrawn or resigned at the State University of New York at Syracuse, and Respondent knew such facts; and/or
 - c. Respondent's association, employment or privileges were voluntarily withdrawn or resigned at Texas Tech, and Respondent knew such facts.

2. Respondent answered “no” to the question “Have you ever been denied or had suspended or restricted completion of training or certification of completion of training by any health care facility” when, in fact:
 - a. Respondent’s completion of training at Hurley Medical Center was denied, suspended or restricted and Respondent knew such facts;
 - b. Respondent’s completion of training at the State University of New York at Syracuse was denied, suspended or restricted and Respondent new such facts; and/or
 - c. Respondent’s completion of training at Texas Tech was denied, suspended or restricted and Respondent knew such facts.
3. Respondent answered “no” to the question, “Have your Medical Staff appointments, privileges or applications ever been suspended, restricted, curtailed, revoked or refused (other than for medical record completion) at any health care facility? when, in fact:
 - a. Respondent’s Medical Staff appointments and/or privileges were suspended, restricted, curtailed, evoked or refused for reasons other than for medical record completion at Hurley Medical Center, and Respondent knew such facts;
 - b. Respondent’s Medical Staff appointments and/or privileges were suspended, restricted, curtailed, evoked or refused for reasons other than for medical

record completion at the State University of New York at Syracuse, and Respondent knew such facts; and/or

- c. Respondent's Medical Staff appointments and/or privileges were suspended, restricted, curtailed, evoked or refused for reasons other than for medical record completion at Texas Tech, and Respondent knew such facts.

L. Respondent provided medical care to Patient A at Taconic Developmental Disabilities Office (Taconic DDSO), Waissac, New York, from on or about August 15, 2006 through on or about August 20, 2006. Respondent's care and treatment of Patient A deviated from acceptable standards of care in that:

- 1. Respondent inappropriately changed Patient A's percutaneous gastrostomy ("PEG") tube on or about August 15, 2006.
- 2. Respondent failed to consider alternative methods to replacement of the PEG tube for Patient A on or about August 15, 2006.

SPECIFICATIONS OF MISCONDUCT

FIRST THROUGH SECOND SPECIFICATIONS

GROSS NEGLIGENCE

Respondent is charged with committing professional misconduct as defined in New York Education Law §6530(4) by practicing the profession with gross negligence on a particular occasion as alleged in the facts of the following:

- 1. Paragraph L and L.1, and/or

2. Paragraph L and L.2.

THIRD SPECIFICATIONS

FRAUD

Respondent is charged with committing professional misconduct as defined in New York Education Law §6530(2) by practicing the profession fraudulently or beyond its authorized scope as alleged in the facts of the following:

3. Paragraphs A, B, C, D and D.1, D and D.2 and/or D and D.3, E and E.1, E.2 and/or E and E.3, F and F.1, F and F.2 and/or F and F.3, G and G.1, G and G.2 and/or G and G.3, H and H.1, H and H.2 and/or H and H.3, I and I.1, I and I.2 and/or I and I.3, J and J.1, J and J.2 and/or J and J.3, K and K.1(a), K and K.1 (b), K and K.1 (c), K and K.2 (a), K and K.2 (b), K and K.2 (c), and K and K.3 (a), K and K.3 (b) and/or K and K.3 (c).

DATE: *October 5*, 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 50 hours of continuing education programs in the areas of Ethics, professional practice 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.

PRACTICE MONITOR

11. Within thirty days of the Consent Order's effective date, 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. Any medical practice in violation of this term shall constitute the unauthorized practice of medicine.
 - 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. 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.