



PUBLIC

*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*

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

April 12, 2010

**CERTIFIED MAIL-RETURN RECEIPT REQUESTED**

Safiullah Malik, MD

Re: License No. 158481

Dear Dr. Malik:

Enclosed is a copy of BPMC #10-58 of the New York State Board for Professional Medical Conduct. This order and any penalty provided therein goes into effect April 19, 2010.

**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,

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

Enclosure

cc: Ms. Sally J. Broad, Esq.  
Gibson, McAskill & Crosby, LLP  
69 Delaware Avenue  
Buffalo, New York 14202

**IN THE MATTER  
OF  
SAFIULLAH MALIK, M.D.**

**CONSENT  
ORDER**

Upon the application of (Respondent) Safiullah Malik, 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: 04/09/2010

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

**IN THE MATTER  
OF  
Safiullah Malik, M.D.**

**CONSENT  
AGREEMENT  
AND  
ORDER**

Safiullah Malik, M.D., represents that all of the following statements are true:

That on or about June 25, 1984, I was licensed to practice as a physician in the State of New York, and issued License No. 158481 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 twenty 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 the First, Second, Third and Fifth Specifications as to Patients A and C only, in full satisfaction of the charges against me, and agree to the following penalty:

Pursuant to section 230-a (1) of the New York Public Health Law, I shall be subject to a Censure and Reprimand, and

Pursuant to section 230-a (9) of the New York Public Health Law, I shall be placed on probation for a period of two (2) years, subject to the terms set forth in Exhibit "B", attached hereto.

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 Section 6530(29) of the New York Education Law.

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 New York 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 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 Sections Law 230 and 230-a New York Public Health Law, 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: 3.25.10

\_\_\_\_\_  
SAFIULLAH MALIK, M.D.  
RESPONDENT

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

DATE: 3/20/10

GIBSON, McASKILL & CROSBY, LLP

By: SALLY J. BROAD, ESQ.  
Attorneys for Respondent

DATE: 4/1/10

JEFFREY J. CONKLIN, ESQ.  
Associate Counsel  
Bureau of Professional Medical Conduct

DATE: 4/8/10

KEITH W. SERVIS  
Director  
Office of Professional Medical Conduct

IN THE MATTER  
OF  
SAFIULLAH MALIK, M.D.

STATEMENT  
OF  
CHARGES

Safiullah Malik, M.D., the Respondent, was authorized to practice medicine in New York State on or about June 25, 1984, by the issuance of license number 158481 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

- A. Respondent provided medical care to Patient A (hereinafter identified in the attached Appendix A) a 39 year old female, at his office, located at 2223 West State Street, Olean, New York, on July 5, 2007. Patient A presented to the Respondent's office for a left breast needle aspiration biopsy. Patient A had a medical history of bilateral breast augmentation and a left breast cyst confirmed by a mammogram and sonogram performed on June 21, 2007. Respondent's treatment of Patient A failed to meet accepted standards of care in that:
1. Respondent failed to take a complete and indicated medical history from Patient A prior to the left breast needle biopsy on July 5, 2007, and/or failed to properly document such history;
  2. Respondent failed to perform an indicated and appropriate complete physical examination of Patient A prior to the left breast needle aspiration biopsy on July 5, 2007, and/or failed to properly document such examination;
  3. Respondent failed to adequately and appropriately review Patient A's mammogram and sonogram films prior to the left breast needle biopsy on July 5, 2007;



4. Respondent failed to adequately and appropriately perform the left breast needle aspiration biopsy on July 5, 2007; and
5. Respondent inappropriately pierced Patient A's left breast implant during the left breast needle biopsy on July 5, 2007.

B. Respondent provided medical care to Patient B (hereinafter identified in the attached Appendix A) a 40 year old female, at his office from on or about May 13, 2008, through on or about August 6, 2008. Patient B presented to the Respondent's office for a right breast needle aspiration biopsy. Patient B had a medical history of a right breast cyst. Patient followed up with Respondent on July 17, 2008. A repeat sonogram was performed on July 18, 2008. Patient B underwent a cyst aspiration on August 6, 2008. Respondent's treatment of Patient B failed to meet accepted standards of care in that:

1. Respondent failed to take a complete and indicated medical history from Patient B prior to the right breast needle aspiration biopsy on May 13, 2008, and/or failed to properly document such history;
2. Respondent failed to perform an indicated and appropriate complete physical examination of Patient B prior to the right breast needle aspiration biopsy on May 13, 2008, and/or failed to properly document such examination; and
3. Respondent failed to develop an indicated and appropriate follow-up plan for Patient B at the time of the office visit on May 13, 2008, and/or failed to properly document such plan.

C. Respondent provided medical care to Patient C (hereinafter identified in the attached Appendix A) an 83 year old male, from on or about July 2004, through on or about August 30, 2004. Patient C underwent a left hemicolectomy and umbilical hernia repair on August 25, 2004. Patient C had a medical history of taking Asprin and Plavix, which were stopped pre-operatively on July 25, 2004. Post-operatively, Patient C had a sudden cardiac arrest and expired on August 30, 2004. Respondent's treatment of Patient C failed to meet accepted standards of care in that:

1. Respondent failed to take a complete and indicated medical history from Patient C prior to the surgery on August 25, 2004, and/or Respondent failed to properly document such history;
2. Respondent failed to perform an indicated and appropriate physical examination of Patient C prior to the surgery on August 25, 2004, and/or failed to properly document such examination;
3. Respondent recommended a bowel resection to Patient C, but failed to discuss the possible risks, benefits and alternatives to the surgery and/or failed to properly document such discussions;
4. Respondent failed to properly document the results of a pre-operative CT scan or a serum CEA test; and
5. Respondent failed to prescribe indicated anticoagulants post-operatively.

D. Respondent provided medical care to Patient D (hereinafter identified in the attached Appendix A) a 75 year old male, from on or about September 15, 2008, through September 28, 2008. Patient D underwent a left hemicolectomy on September 24, 2008. During the surgery, an obstructing large left colon with cancer was removed, together with a smaller neoplasm. Patient D expired on

September 28, 2008. Respondent's treatment of Patient D failed to meet accepted standards of care in that:

1. Respondent failed to take a complete and indicated medical history from Patient D prior to the left hemicolectomy, and/or failed to properly document such history;
2. Respondent failed to perform an indicated and appropriate complete physical examination of Patient D prior to the left hemicolectomy, and/or failed to properly document such examination;
3. Respondent failed to discuss the possible risks, benefits and alternatives to the surgery, and/or failed to properly document such discussions; and
4. Respondent failed to obtain an indicated medical clearance from Patient D's primary care physician prior to the surgery, and/or failed to properly document such medical clearance.

E. Respondent provided medical care to Patient E (hereinafter identified in the attached Appendix A) a 77 year old female, on or about December 200. Patient E Respondent's treatment of Patient E failed to meet accepted standards of care in that:

1. Respondent failed to take a complete and indicated medical history from Patient E prior to the laparoscopic cholecystectomy, and/or failed to properly document such history;
2. Respondent failed to perform an indicated and appropriate complete physical examination of Patient E prior to the laparoscopic cholecystectomy, and/or failed to properly document such examination; and

- 3 Respondent performed a nonindicated laparoscopic cholecystectomy upon Patient E.

### **SPECIFICATION OF CHARGES**

#### **FIRST SPECIFICATION**

(Negligence on more than one occasion)

Respondent is charged with committing misconduct as defined in New York Education Law Section 6530 (3) by practicing medicine with negligence on more than one occasion as set forth in two or more of the following:

1. The facts of A and A1, A and A2, A and A3, A and A4, and A and A5; B and B1, B and B2, and B and B3; C and C1, C and C2, C and C3, C and C4, and C and C5; D and D1, D and D2, D and D3, and D and D4; and E and E1, E and E2, and E and E3.

#### **SECOND SPECIFICATION**

(Incompetence on more than one occasion)

Respondent is charged with committing misconduct as defined in New York Education Law Section 6530 (5) by practicing medicine with incompetence on more than one occasion as set forth in two or more of the following:

2. The facts of A and A1, A and A2, A and A3, A and A4, and A and A5; B and B1, B and B2, and B and B3; C and C1, C and C2, C and C3, C and C4, and C and C5; D and D1, D and D2, D and D3, and D and D4; and E and E1, E and E2, and E and E3.

### THIRD THROUGH SEVENTH SPECIFICATIONS

(Failing to maintain records)

Respondent is charged with committing misconduct as defined in New York Education Law Section 6530 (32) by failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient as set forth in the following:

3. A and A1, and A and A2; B and B1, B and B2, and B and B3; C and C1, C and C2, C and C3, and C and C4; D and D1, D and D2, D and D3, and D and D4; and E and E1 and E and E2.

DATE: April 1, 2010  
Albany, New York

~~PETER D. VAN BUREN, ESQ.~~  
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.

#### PRACTICE MONITOR

7. 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.

8. 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.
9. 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.
10. 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.
11. Respondent shall enroll in and complete a continuing education program in the area of medical record keeping. This continuing education program is subject to the Director of OPMC's prior written approval and shall be completed within the first three (3) months of the probation period.
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.