

**NEW YORK**  
state department of  
**HEALTH**

Public

Nirav R. Shah, M.D., M.P.H.  
Commissioner

Sue Kelly  
Executive Deputy Commissioner

December 20, 2011

***CERTIFIED MAIL-RETURN RECEIPT REQUESTED***

Richard W. Maloney, M.D.  
The Aesthetic Surgery Center  
11181 Health Park Boulevard, Suite 1115  
Naples, FL 34110

RE: License No. 127680

Dear Dr. Maloney:

Enclosed is a copy of the New York State Board for Professional Medical Conduct (BPMC) Order No. 11-302. This Order and any penalty provided therein goes into effect December 27, 2011.

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 1717  
Empire State Plaza  
Albany, New York 12237

Please direct any questions to: Board for Professional Medical Conduct, 90 Church Street, 4th Floor, New York, NY 10007-2919, telephone # 212-417-4445.

Sincerely,

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

cc: Amy T. Kulb, Esq.  
Jacobson, Goldberg & Kulb, LLP  
585 Stewart Avenue, Suite 720  
Garden City, NY 11530

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

---

IN THE MATTER  
OF  
RICHARD W. MALONEY, M.D.

CONSENT  
ORDER  
BPMC No. 11-302

---

Upon the application of **RICHARD W. MALONEY, M.D.**, (Respondent), in the attached Consent Agreement, that 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 or email transmission to Respondent or Respondent's attorney, whichever is first.

SO ORDERED.

DATED: 12/19/2011

REDACTED SIGNATURE

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

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

---

IN THE MATTER

CONSENT

OF

AGREEMENT

RICHARD W. MALONEY, M.D.  
CO-10-08-5233-A

---

**RICHARD W. MALONEY, M.D.**, (Respondent), representing that all of the following statements are true, deposes and says:

That on or about July 16, 1976, I was licensed to practice medicine in the State of New York and issued license number 127680 by the New York State Education Department.

My current address is The Aesthetic Surgery Center, 11181 Health Park Blvd., Suite 1115, Naples, FL 34110, and I will advise the Director (Director) of the Office of Professional Medical Conduct (OPMC) of any change of my address within thirty (30) days, thereof.

I understand that the New York State Board for Professional Medical Conduct (Board) has charged me with two (2) 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, and agree to the following sanction:

Censure and Reprimand;

Respondent shall pay a \$5,000.00 fine, to be paid within thirty (30) days of the effective date of the Consent Order to the NYS Department of Health, Bureau of Accounts Management, Revenue Unit, Empire State Plaza, Corning Tower, Room 1717, Albany, NY 12237-0016.

Respondent shall comply fully with the August 11, 2010, State of Florida, Board of Medicine, Final Order, and any extensions or modifications thereof.

Respondent shall provide a written authorization for the Florida Board to provide the Director of the Office of Professional Medical Conduct (OPMC) with any/all

information or documentation as requested by OPMC to enable OPMC to determine whether Respondent is in compliance with the Florida Order.

Respondent shall submit semi-annually a signed Compliance Declaration to the Director of OPMC, which truthfully attests whether Respondent has been in compliance with the Florida Order during the declaration period specified.

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

That Respondent shall remain in continuous compliance with all requirements of New York Education 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 New York Education Law § 6502(4) to avoid registration and payment of fees. This condition shall take effect 30 days after the effective date of the Consent Order and will continue so long as Respondent remains a licensee in New York State; and

That Respondent shall cooperate fully with the OPMC in its administration and enforcement of the 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 Agreement. Respondent shall meet with a person designated by the Director, 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 the Consent Order shall constitute misconduct as defined by New York Education Law § 6530(29).

I agree that, if I am charged with professional misconduct in future, this Consent Agreement and the Consent 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 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 the 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 or email transmission to me or my attorney, whichever is first. The Consent Order, this Consent 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 of Health website.

I stipulate that the proposed sanction and Consent Order are authorized by New York Public 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, administratively and/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, OPMC, and the Chair of the Board each retain complete discretion either to enter into the proposed Consent 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.

AFFIRMED:

DATED: 12/6/2011

REDACTED SIGNATURE

RICHARD W. MALONEY, M.D.  
Respondent

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

DATE: 12-7-11

REDACTED SIGNATURE

AMY T. KOLB  
Attorney for Respondent

DATE: 12/8/11

REDACTED SIGNATURE

JOEL E. ABELOVE  
Associate Counsel  
Bureau of Professional Medical Conduct

DATE: 12/10/11

REDACTED SIGNATURE

KEITH W. SERVIS  
Director  
Office of Professional Medical Conduct

## EXHIBIT A

---

IN THE MATTER  
OF  
RICHARD W. MALONEY, M.D.  
CO-10-08-5233-A

---

STATEMENT  
OF  
CHARGES

**RICHARD W. MALONEY, M.D.**, Respondent, was authorized to practice medicine in New York state on July 16, 1976, by the issuance of license number 127680 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A. On or about August 11, 2010, the State of Florida, Board of Medicine (hereinafter "Florida Board"), by a Final Order (hereinafter "Florida Order"), issued Respondent a Letter of Concern, fined Respondent \$5,000.00 and required him to complete CME in risk management, perform 50 hours of community service, present a one hour lecture/seminar, and pay \$11,278.82 costs, based on Respondent's failure to meet the prevailing standard of care.

B. On or about September 10, 2010, the Pennsylvania State Board of Medicine, by a Final Order (hereinafter "Pennsylvania Order"), fined Respondent \$2,500.00, based on the Florida Board action.

C. The conduct resulting in the Florida Board disciplinary action against Respondent would constitute misconduct under the laws of New York state, pursuant to the following sections of New York state Law:

1. New York Education Law §6530(4) (gross negligence on a particular occasion).

D. The conduct resulting in the Pennsylvania Board disciplinary action against Respondent would constitute misconduct under the laws of New York state, pursuant to the following sections of New York state Law:



1. New York Education Law §6530(9)(d) (having disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the disciplinary action would, if committed in that state, constitute professional misconduct under the laws of that state).

**SPECIFICATIONS**

**FIRST AND SECOND SPECIFICATIONS**

Respondent violated New York Education Law §6530(9)(d) by having disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the disciplinary action would, if committed in New York state, constitute professional misconduct under the laws New York state, in that Petitioner charges:

1. The facts in Paragraphs A and/or C.
2. The facts in Paragraphs A, B, C, and/or D.

DATED: *August 22*, 2011  
Albany, New York

REDACTED SIGNATURE

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