

January 3, 2011

Henry S. Weintraub, Esq. – Executive Director  
New York State Board of Professional Medical Conduct  
433 River Street Suite 303  
Troy, New York 12180

Dear Mr. Weintraub,

I recently wrote you requesting a number of modifications to my Board Order in an effort to try and get back to work, as explained in detail in that letter. In the time since sending that correspondence, I have felt called to submit some additional information that I believe would serve to further mitigate my circumstances which are currently under consideration.

The specific information I wish to submit concerns the incident case from 2001. This is the case at Crouse Hospital which prompted my department to act against my privileges that ultimately escalated to two OPMC hearings. I had previously argued before the Department of Health that the hospital's sanctions were done without the standard due process that is supposed to be afforded a staff member whenever an adverse outcome results in any clinical setting. (Please see enclosed flow chart for Crouse Hospital Peer Review Process which shows, encircled, the steps that were "skipped" back in 2001-2002 and additionally as recently as 2008 when this hospital once again denied such due process as part of a repeat performance.)

Not to rehash what I vehemently opposed at both the hospital and State level, but had this sentinel case been properly handled both before and/or after I had to request a hearing in front of the hospital's medical executive committee (MEC), I firmly believe that nothing would have become a State level license issue. This and all the subsequent cases that were sent to the DOH came from within my department after this MEC hearing, not as a result of any patient complaint and again, as previously stated, not associated with any adverse outcome. In fact, I felt that these particular members from my department had behaved so unprofessionally that I wrote my own complaint to the Department of Health and received return correspondence along with a case/file number (OPMC # 02-09-4875) (see enclosed copy of original) but yet have never heard from them since, despite personal and professional inquiry (from my attorney) about the issue.

The primary point to be made here is this. During that MEC hearing in 2002, and prior to OPMC becoming involved with any of these matters or the subsequent cases that were sent it by my department, I had an expert testify on my behalf who emphatically stated that no standard of care deviation had occurred in that case, especially to justify any of the actions on part of my department. This doctor was Richard Waldman, M.D., who at the time of his testimony was Section Chair for the American College of Ob/Gyn (ACOG) for this region of the State. To further qualify Dr. Waldman's opinion and/or testimony, he has since been elected and is currently the presiding President of ACOG, which is the governing body across the world for setting practice standards for Obstetricians and Gynecologists.

Dr. Waldman was able to reach his conclusion by looking at the facts of the case, the scientific evidence as well as the practice standards set forth by ACOG. All of this was clear and convincing in his testimony before the MEC. What makes this so important to bring up is that in a correspondence between the DOH's Prosecuting Attorney, Timothy Mahar, and my attorney, Mr. Mahar acknowledges the fact that the State knew of Dr. Waldman's expert opinion on the matter before proceeding to not one but two hearings. This exculpatory evidence was not disclosed to any of the panels during the hearings and, perhaps, could have been weighty enough to have avoided any hearing in the first place not to mention all the troubles that followed.

These points are not brought up in order to erase any of the past eight years, however difficult it was for my family and me. It is, however, another piece to this entire affair with my license that perchance can move the hearts of those in your position to assist me in regaining a little of what I lost. To simply be able to readily return to the practice of medicine for which I was exceptionally trained and have a body of work illustrating very sound performance for the entirety of my career. I thank you once again for your consideration and do hope that I hear back from you soon. Have a nice day.

Sincerely,

James R. Caputo, M.D.

c.c. Keith W. Servis  
Richard F. Daines, M.D.