

STATE OF MICHIGAN  
DEPARTMENT OF CONSUMER & INDUSTRY SERVICES  
BUREAU OF HEALTH SERVICES  
BOARD OF MEDICINE  
DISCIPLINARY SUBCOMMITTEE

In the Matter of

VINAY KUMAR MALVIYA, M.D.

Complaint No. 43-99-0566-00  
CONSENT ORDER AND STIPULATION

CONSENT ORDER

An Administrative Complaint was filed with the Disciplinary Subcommittee of the Board of Medicine on June 25, 2001, charging Vinay Kumar Malviya, M.D., (Respondent) with having violated sections 16221(a) and (b)(i) of the Public Health Code, 1978 PA 368, as amended; MCL 333.1101 *et seq.*

By Stipulation contained in this document, Respondent does not admit but does not contest the allegations of fact and law in the Complaint with the exception of Count II, which shall be dismissed pursuant to the entry of this Consent Order and Stipulation. Respondent understands that by pleading no contest he does not admit the truth of the allegations but agrees that the Disciplinary Subcommittee may treat the allegations as true for resolution of the Complaint. For the purpose of resolution of the Complaint, Respondent agrees that the Disciplinary Subcommittee may enter an Order treating the allegations as true.

By Stipulation contained in this document, the parties have agreed that the Disciplinary Subcommittee shall dismiss with prejudice Count II of the Complaint alleging a violation of section 16221(b)(i) of the Public Health Code.

The Disciplinary Subcommittee has reviewed the Stipulation contained in this document and agrees that the public interest is best served by resolution of the outstanding Complaint.

Therefore, the Disciplinary Subcommittee finds that the allegations of fact contained in the Complaint are true and constitute a violation of section 16221(a) of the Public Health Code.

Accordingly,

IT IS ORDERED that for the violation Respondent is assessed a FINE in the total amount of \$3,000.00 to be paid by check, money order or cashier's check made payable to the State of Michigan (with complaint number 43-99-0566-00 clearly indicated on the check or money order) within 60 days from the effective date of this Order. The timely payment of the fine shall be Respondent's responsibility.

The payment of the fine shall be mailed to: Sanction Monitoring, Bureau of Health Services, Department of Consumer & Industry Services, P.O. Box 30185, Lansing, Michigan 48909.

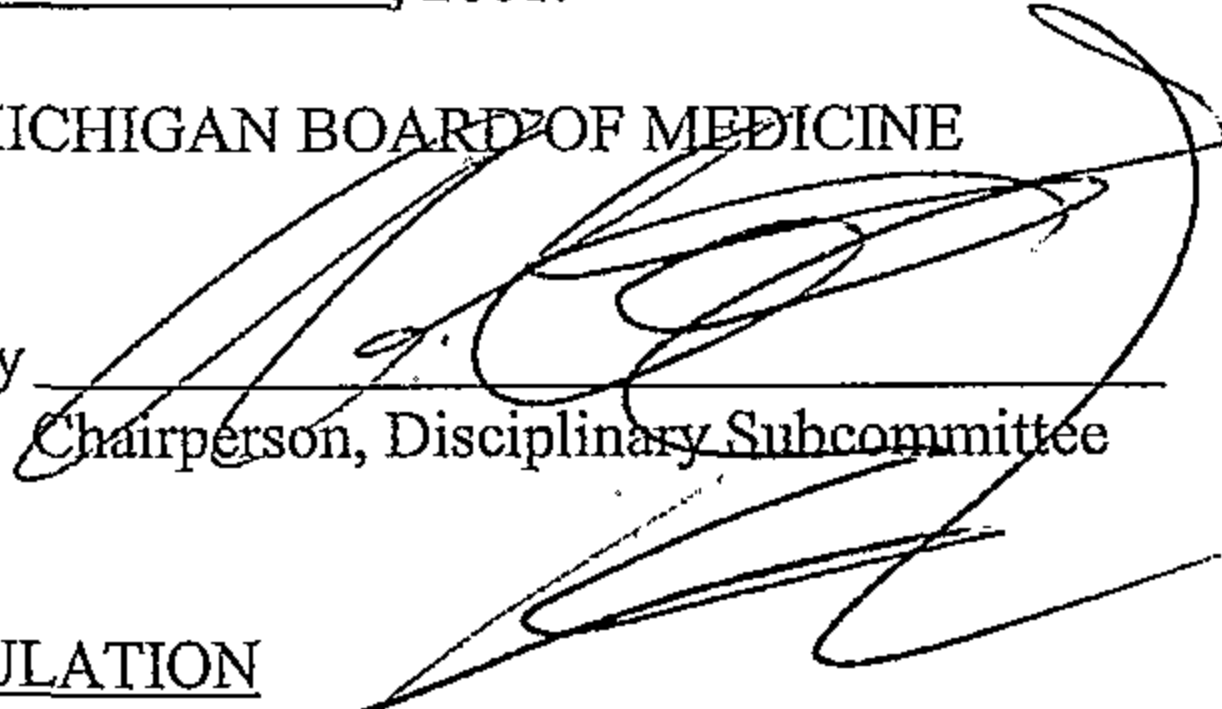
IT IS FURTHER ORDERED that Count II of the Complaint is DISMISSED with prejudice.

IT IS FURTHER ORDERED that should Respondent violate any term or condition set forth here, it may be determined that Respondent has violated an Order of the Disciplinary Subcommittee, 1996 AACRS, R 338.1632, and section 16221(g) of the Public Health Code.

IT IS FURTHER ORDERED that this Order shall be effective on the date signed by the Disciplinary Subcommittee or its authorized representative, as set forth below.

Signed this 11 day of Nov., 2001.

MICHIGAN BOARD OF MEDICINE

By   
Chairperson, Disciplinary Subcommittee

STIPULATION

The parties stipulate and agree as follows:

1. Respondent does not admit but does not contest the allegations set forth in the Complaint with the exception of Count II, which shall be dismissed with prejudice pursuant to the entry of this Order, and agrees that the Disciplinary Subcommittee may treat the allegations of fact and law as true, which finding shall have the same force and effect for purposes of this Consent Order as if evidence and argument were presented in support of the allegations. Further, Respondent understands and intends that by so stating he is not admitting the truth of the allegations but is agreeing that the Disciplinary Subcommittee may enter its Order treating the allegations as true for purpose of resolution of the Complaint. Respondent is agreeing to this Consent Order to avoid the expense, stress and uncertainty of continued litigation.

2. Respondent understands and intends that by signing this Stipulation he is waiving the right pursuant to the Public Health Code, rules promulgated thereunder, and the Administrative Procedures Act of 1969, 1969 PA 306, as amended; MCL 24.201 *et seq*, to require the State to prove the charges set forth in the Complaint by presentation of evidence and legal authority, and to appear with an attorney and such witnesses as Respondent may desire to

present a defense to the charges before the Disciplinary Subcommittee or its authorized representative.

3. Count II of the Complaint shall be dismissed with prejudice by Order of the Disciplinary Subcommittee.

4. Factors taken into consideration when determining the proposed sanction include the following:


- A. Respondent has cooperated fully in the resolution of this matter.
- B. Respondent has relocated his practice from Hutzel Hospital to other hospitals, and is now able to exercise more complete control over office policies and procedures and over the treatment regimens administered through his practice, including more control over the staff of the chemotherapy facility where his patients receive treatment, to help avoid problems such as in this matter where he was not in a position to exercise sufficient direction and control over chemotherapy center staff.
- C. Respondent now expressly requires in his office that all office policies and procedures must apply to patients who are hospital and office employees, as well as to patients without such connections, to help avoid problems such as in this matter where patient/employees could circumvent office procedures.
- D. Respondent has changed his documentation procedures to help ensure that all significant contacts with patients, even if they are hospital or office employees, are noted in the patients' medical records.
- E. Respondent has altered his office procedures to help ensure that, except when another physician is assigned to cover for him, he personally orders all laboratory testing and all medications (including chemotherapy) administered to his patients through his practice, even where the patient is a hospital or office employee, to help avoid problems such as in this matter where a patient/employee could obtain laboratory testing without a physician order or obtain a medication order from another physician unfamiliar with the patient history and treatment plan.

5. The Board's conferee, James Grant, M.D., who has indicated support of this proposal, and the undersigned assistant attorney general are free to discuss this matter with the Disciplinary Subcommittee and recommend acceptance of the resolution set forth in the Consent Order.

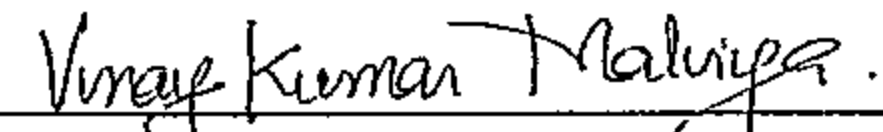
6. This Consent Order is approved by the respective parties and may be entered as the Final Order of the Disciplinary Subcommittee in this cause.

7. This proposal is conditioned upon its acceptance by the Disciplinary Subcommittee, the parties expressly reserving the right to further proceedings without prejudice should the Consent Order be rejected.

AGREED TO BY:

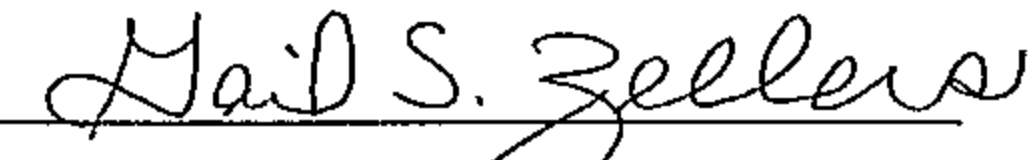
  
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Merry A. Rosenberg (P32120)  
Assistant Attorney General  
Attorney for Complainant  
Dated: 11/31/01

AGREED TO BY:

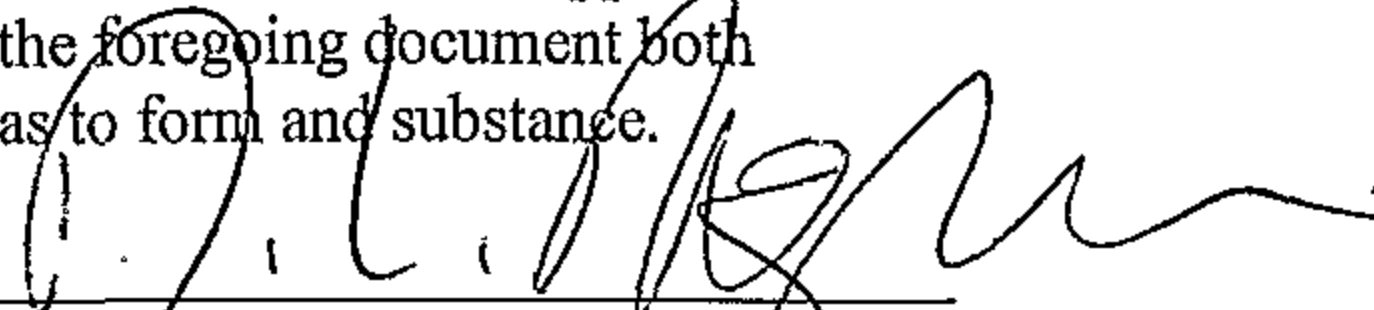
  
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Vinay Kumar Malviya, M.D.  
Respondent

State of Michigan  
County of Oakland )ss

On the 31<sup>st</sup> day of October, 2001, Vinay Kumar Malviya, M.D., signed this Consent Order and Stipulation in front of me.

  
\_\_\_\_\_  
Notary Public, Oakland County  
State of Michigan  
My commission expires: 10-02-03

I have reviewed and approved the foregoing document both as to form and substance.

  
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David Rogers (P34450)  
Attorney for Respondent