

BEFORE THE  
NORTH CAROLINA MEDICAL BOARD

In re: )  
 )  
William Joseph Birmingham, M.D., )            CONSENT ORDER  
 )  
Respondent. )

This matter is before the North Carolina Medical Board ("Board") on information received relating to William Joseph Birmingham, M.D. ("Dr. Birmingham"). Dr. Birmingham admits and the Board finds and concludes that:

STATUTORY AUTHORITY

The Board is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Article 1 of Chapter 90 of the North Carolina General Statutes and the rules and regulations promulgated thereto.

FINDINGS OF FACT

On or about September 17, 1994, the Board issued a license to Dr. Birmingham to practice medicine, license number 9401129.

During the times relevant herein, Dr. Birmingham practiced general surgery in Elizabethtown, North Carolina.

On November 27, 2009, Patient A, a 58 year old obese male with hypertension and diffuse arthritis, presented to Dr.

Birmingham for a laparoscopic cholecystectomy operation (removal of the gallbladder) due to a history of cholecystitis (inflammation of the gallbladder) and cholelithiasis (formation of gallstones). After the operation, Patient A was admitted to the hospital because of persistent abdominal pain, especially in the left lower quadrant, and an elevated temperature. The following morning, Dr. Birmingham ordered a CT scan and blood work. The CT scan could not be performed at this time due to Patient A's pain and agitation. Dr. Birmingham then appropriately ordered antibiotics and decided to postpone the CT scan until he re-examined Patient A. On November 28, 2009, Dr. Birmingham re-examined Patient A and noted that his temperature and heart rate were normal and his pain had decreased. Based on this examination, Dr. Birmingham decided to postpone Patient A's CT scan.

On November 29, 2009, at 3:40 a.m., Patient A was noted to be unresponsive and significant drainage was noted at the umbilical incision site. Resuscitative efforts were started and Patient A was intubated and transferred to an intensive care unit. Dr. Birmingham was called and ordered medications. Dr. Birmingham arrived at 5:00 a.m., placed a central line and a nasogastric tube, opened Patient A's incision site and suctioned a significant amount of abdominal fluid from Patient A.

Dr. Birmingham believed, considering the patient's condition, that attempts should be made to stabilize the patient prior to taking the patient back to the operating room. The patient was hypotensive and had a pH of 7.1, and Dr. Birmingham did not believe the patient would survive surgery before being stabilized. Efforts were made to stabilize the patient. However, Patient A continued a steady clinical deterioration throughout November 29, 2009, despite non-operative resuscitative efforts, resulting in multi-system failure, acidosis and a code at 9:10 p.m. on November 29, 2009. Patient A was then transferred to a higher level care center and died at 6:37 a.m. on November 30, 2009. An autopsy was performed that indicates that Patient A died of an acute purulent peritonitis secondary to microperforation of the small bowel.

In March 2014, the Board received information regarding a medical malpractice lawsuit settlement payment with regard to care provided by Dr. Birmingham to Patient A.

The Board thereafter sent Patient A's medical records to an independent medical expert qualified to render an opinion as to the standard of care for Dr. Birmingham's treatment of Patient A. This medical expert explained generally that the standard of care for treating patients in these situations requires that an operative complication be diagnosed and treated in a timely and

proficient manner. Unrecognized injury to the intestine resulting post-operatively in a leak causing peritonitis and/or drainage through the incision needs to be diagnosed promptly and treated with urgent operative repair.

This medical expert opined that the standard of care required taking Patient A back to the operating room for surgery in the early morning hours of November 29, 2009, when Patient A required resuscitation and significant drainage was noted at the umbilical incision site because Patient A likely had a fistula created by an unrecognized injury to his intestine from the original operation.

#### CONCLUSIONS OF LAW

Dr. Birmingham's medical treatment and care of Patient A, as described above, constitutes unprofessional conduct including, but not limited to, departure from, or the failure to conform to, the standards of acceptable and prevailing medical practice within the meaning of N.C. Gen. Stat. § 90-14(a)(6) which is grounds under that section of the North Carolina General Statutes for the Board to annul, suspend, revoke, condition or limit Dr. Birmingham's license to practice medicine issued by the Board.

PROCEDURAL STIPULATIONS

Dr. Birmingham acknowledges and agrees that the Board has jurisdiction over him and over the subject matter of this case.

Dr. Birmingham knowingly waives his right to any hearing and to any judicial review or appeal in this case.

Dr. Birmingham acknowledges that he has read and understands this Consent Order and enters into it voluntarily.

The Board has determined it to be in the public interest to resolve this matter as set forth below.

Dr. Birmingham would like to resolve this matter without the need for more formal proceedings.

ORDER

NOW, THEREFORE, with Dr. Birmingham's consent, it is ORDERED that:

1. Dr. Birmingham is hereby REPRIMANDED for the above-described conduct.

2. Dr. Birmingham shall obey all laws. Likewise, Dr. Birmingham shall obey all rules and regulations involving the practice of medicine.

3. Dr. Birmingham shall notify the Board in writing of any change in his residence and practice addresses within ten (10) days of the change.

4. Dr. Birmingham shall meet with the Board or members of the Board for an investigative interview at such times as requested by the Board.

5. If Dr. Birmingham fails to comply with any of the terms of this Consent Order, that failure shall constitute unprofessional conduct within the meaning of N.C. Gen. Stat. § 90-14(a)(6) and shall be grounds, after any required notice and hearing, for the Board to annul, revoke, suspend or limit his license or to deny any application he might then have pending or might make in the future for a license.

6. This Consent Order shall take effect immediately upon its execution by both Dr. Birmingham and the Board and it shall continue in effect until specifically ordered otherwise by the Board.

7. Dr. Birmingham hereby waives any requirement under any law or rule that this Consent Order be served on him.

8. Upon execution by Dr. Birmingham and the Board, this Consent Order shall become a public record within the meaning of Chapter 132 of the North Carolina General Statutes and shall be subject to public inspection and dissemination pursuant to the provisions thereof. Additionally, it will be reported to persons, entities, agencies and clearinghouses as required and permitted by law.

By Order of the North Carolina Medical Board this the 20<sup>th</sup>  
day of February, 2015.

NORTH CAROLINA MEDICAL BOARD

By: Cheryl L. Walker-McGill, M.D.  
Cheryl L. Walker-McGill, M.D.  
President

Consented to this the 10 day of February, 2015.

William Joseph Birmingham, M.D.  
William Joseph Birmingham, M.D.

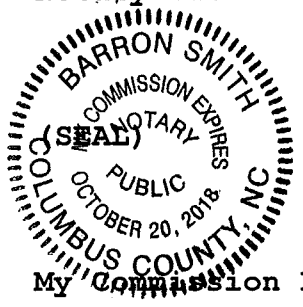
State of North Carolina  
County of Bladen

I, Barron Smith, a Notary Public for the above named County and State, do hereby certify that William Joseph Birmingham, M.D. personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal

this the 10<sup>th</sup> day of February, 2015.

Barron Smith  
Notary Public



My Commission Expires: 10/20/2018