



New York State Board for Professional Medical Conduct

433 River Street, Suite 303 Troy, New York 12180-2299 • (518) 402-0863

Barbara A. DeBuono, M.D., M.P.H.
Commissioner of Health

Patrick F. Carone, M.D., M.P.H.
Chair
Ansel R. Marks, M.D., J.D.
Executive Secretary

April 21, 1998

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Lance I. Austein, M.D.
35 Charter Oak Road
Staten Island, New York 10304

RE: License No. 184217

Dear Dr. Austein:

Enclosed please find Order #BPMC 98-70 of the New York State Board for Professional Medical Conduct. This Order and any penalty provided therein goes into effect **April 21, 1998**.

If the penalty imposed by the Order is a surrender, revocation or suspension of this license, you are required to deliver to the Board the license and registration within five (5) days of receipt of the Order.

Board for Professional Medical Conduct
New York State Department of Health
Hedley Park Place, Suite 303
433 River Street
Troy, New York 12180

Sincerely,

Ansel R. Marks, M.D., J.D.
Executive Secretary
Board for Professional Medical Conduct

Enclosure

cc: Wilfred Friedman, Esq.
The Bar Building
36 West 44th Street
New York, New York 10036

Ann Gayle, Esq.

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

IN THE MATTER
OF
LANCE IVAN AUSTEIN, M.D.

CONSENT
AGREEMENT
AND
ORDER

BPMC #98-70

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

LANCE IVAN AUSTEIN, M.D., being duly sworn, deposes and says:

That on or about October 11, 1990, I was licensed to practice as a physician in the State of New York, having been issued License No. 184217 by the New York State Education Department.

My current address is 35 Charter Oak Road, Staten Island, NY 10304, and I will advise the Director of the Office of Professional Medical Conduct of any change of my address.

I understand that the New York State Board for Professional Medical Conduct has charged me with nine specifications of professional misconduct.

A copy of the *Amended* Statement of Charges is annexed hereto, made a part hereof, and marked as Exhibit "A".

I do not contest the specifications *labeled* seventh, eighth, and tenth in the Statement of Charges as amended, in full satisfaction of the charges against me.

I hereby agree to the following penalty:

I shall be placed on probation, subject to the terms set forth in Exhibit "B", attached hereto and incorporated, for a period of five years.

I further agree that the Consent Order for which I hereby apply

shall impose a condition that, except during periods of actual suspension, I maintain current registration of my license with the New York State Education Department Division of Professional Licensing Services, and pay all registration fees. This condition shall be in effect beginning thirty days after the effective date of the Consent Order and continuing until the full term of the Order has run, and until any associated period of probation and all probation terms have been completed and satisfied. I hereby stipulate that any failure by me to comply with such condition shall constitute misconduct as defined by New York State Education Law §6530(29)(McKinney Supp 1997).

I agree that in the event I am charged with professional misconduct in the future, this agreement and order shall be admitted into evidence in that proceeding.

I hereby make this Application to the State Board for Professional Medical Conduct (the Board) and request that it be granted.

I understand that, in the event that this Application is not granted by the Board, nothing contained herein shall be binding upon me or construed to be an admission of any act of misconduct alleged or charged against me, such Application shall not be used against me in any way and shall be kept in strict confidence during the pendency of the professional misconduct disciplinary proceeding; and such denial by the Board shall be made without prejudice to the continuance of any disciplinary proceeding and the final determination by the Board pursuant to the provisions of the Public Health Law.

I agree that, in the event the Board grants my Application, as set forth

herein, an order of the Chairperson of the Board shall be issued in accordance with same. I agree that such order shall be effective upon issuance by the Board, which may be accomplished by mailing, by first class mail, a copy of the Consent Order to me at the address set forth in this agreement, or to my attorney, or upon transmission via facsimile to me or my attorney, whichever is earliest.

I am making this Application of my own free will and accord and not under duress, compulsion or restraint of any kind or manner. In consideration of the value to me of the acceptance by the Board of this Application, allowing me to resolve this matter without the various risks and burdens of a hearing on the merits, I knowingly waive any right I may have to contest the Consent Order for which I hereby apply, whether administratively or judicially, and ask that the Application be granted.

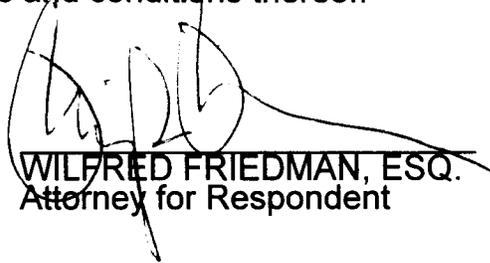
AFFIRMED:
DATED 4/2/98



LANCE IVAN AUSTEIN, M.D.
RESPONDENT

The undersigned agree to the attached application of the Respondent and to the proposed penalty based on the terms and conditions thereof.

DATE: 4/2/98


WILFRED FRIEDMAN, ESQ.
Attorney for Respondent

DATE: 4-2-98


ANN GAYLE
Associate Counsel
Bureau of Professional
Medical Conduct

DATE: April 13, 1998


ANNE F. SAILE
Director
Office of Professional
Medical Conduct

IN THE MATTER
OF
LANCE IVAN AUSTEIN, M.D.

STATEMENT
OF
CHARGES

Lance Ivan Austein, M.D., the Respondent, was authorized to practice medicine in New York State on or about October 11, 1990, by the issuance of license number 184217, by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. Respondent treated Patient A, a then 87 year old male, at Beth Israel Medical Center - Kings Highway Division, located at 3201 Kings Highway, Brooklyn, New York, following surgery, from approximately August 15, 1995 to August 30, 1995.
1. Respondent failed to appropriately address Patient A's complaints of chest pain on a daily to twice per day basis and which required multiple doses of sub lingual nitroglycerine.
 2. Respondent failed to appropriately follow up on the results of Patient A's ECGs which were done on an almost daily basis and which were indicative of acute myocardial ischemic changes.
 3. Respondent failed to appropriately treat the underlying disease process of active myocardial ischemia or unstable angina for approximately 8 days.
 4. Respondent failed to maintain a record which accurately reflects the care and treatment rendered to this patient.

EXHIBIT "A"

Withdrawn
RN

- B. Respondent treated Patient B, a then 89 year old female, at Beth Israel Medical Center - Kings Highway Division, located at 3201 Kings Highway, Brooklyn, New York, for dehydration, malnutrition, and cellulitis of the left hip area, from approximately February 6, 1996 to March 19, 1996.
 - 1. Respondent failed to appropriately address or appropriately follow up on Patient B's large grade II/III decubitus on the left hip.
 - 2. Respondent failed to maintain a record which accurately reflects the care and treatment rendered to this patient.

- C. Respondent treated Patient C, a then 79 year old female, at Beth Israel Medical Center - Kings Highway Division, located at 3201 Kings Highway, Brooklyn, New York, for a two week history of severe back pain from approximately September 23, 1995 to September 30, 1995.
 - 1. Respondent failed to appropriately follow up on Patient C's bone scan results which showed "abnormal tracer activity".
 - 2. Respondent failed to appropriately follow up on Patient C's CT scan results which disclosed "may indicate underlying neoplastic process" or to appropriately follow up on Patient C's test results which showed an elevated alkaline phosphatase and a persistent leucocytosis of the peripheral blood.
 - 3. Respondent failed to maintain a record which accurately reflects the care and treatment rendered to this patient.

- D. Respondent treated Patient D, a then 92 year old female, at Beth Israel Medical Center - Kings Highway Division, located at 3201 Kings Highway, Brooklyn, New York, for bilateral lower lobe pneumonia, from approximately March 6, 1996 to April 15, 1996.
 - 1. Respondent failed to appropriately follow up on a chest X-ray which was read by the radiologist as "suspicious of small apical

pneumothorax of the (L), follow-up is necessary”.

2. Respondent failed to maintain a record which accurately reflects the care and treatment rendered to this patient.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

NEGLIGENCE ON MORE THAN ONE OCCASION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(3)(McKinney Supp. 1998) by practicing the profession of medicine with negligence on more than one occasion as alleged in the facts of two or more of the following:

1. Paragraphs A and A1, 2, 3 and/or 4, B and B1 and/or 2, ~~C and~~
~~C~~, 2 and/or 3, D and D1 and/or 2.

SECOND AND THIRD SPECIFICATIONS

GROSS NEGLIGENCE

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(4)(McKinney Supp. 1998) by practicing the profession of medicine with gross negligence as alleged in the facts of the following:

2. Paragraph A and A1, 2, 3 and/or 4.
3. Paragraph B and B1 and/or 2.

FOURTH SPECIFICATION

INCOMPETENCE ON MORE THAN ONE OCCASION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(5)(McKinney Supp. 1998) by practicing the profession of medicine with incompetence on more than one occasion as alleged in the facts of

two or more of the following:

4. Paragraphs A and A1, 2, 3 and/or 4, B and B1 and/or 2, ~~C and C1, 2 and/or 3, D and D1 and/or 2.~~

FIFTH AND SIXTH SPECIFICATIONS

GROSS INCOMPETENCE

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(6)(McKinney Supp. 1998) by practicing the profession of medicine with gross incompetence as alleged in the facts of the following:

5. Paragraph A and A1, 2, 3 and/or 4.
6. Paragraph B and B1 and/or 2.

**~~EIGHTH,~~
SEVENTH, THROUGH TENTH SPECIFICATIONS**
FAILURE TO MAINTAIN RECORDS

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §(32)(McKinney Supp. 1998) by failing to maintain a record for each patient which accurately reflects the care and treatment of the patient, as alleged in the facts of:

7. Paragraph A and A4.
8. Paragraph B and B2.
~~9. Paragraph C and C3.~~
10. Paragraph D and D2.

DATED: February 18, 1998
New York, New York

RN *2/18/98*

ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct

EXHIBIT "B"

Terms of Probation

1. Respondent shall conduct himself/herself in all ways in a manner befitting his/her professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his/her profession.
2. Respondent shall submit written notification to the New York State Department of Health addressed to the Director of the Office of Professional Medical Conduct, New York State Department of Health, 433 River Street, Suite 303, Troy, NY 12180-2299; said notice is to include a full description of any employment and practice, professional and residential addresses and telephone numbers within or without New York State, and any and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty days of each action.
3. Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of Respondent's compliance with the terms of this Order. Respondent shall personally meet with a person designated by the Director of OPMC as requested by the Director.
4. Any civil penalty not paid by the date prescribed herein shall be subject to all provisions of law relating to debt collection by New York State. This includes but is 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 section 171(27)]; State Finance Law section 18; CPLR section 5001; Executive Law section 32].
5. The period of probation shall be tolled during periods in which Respondent is not engaged in the active practice of medicine in New York State. Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in or intends to leave the active practice of medicine in New York State for a period of thirty (30) consecutive days or more. Respondent shall then notify the Director again prior to any change in that status. The period of probation shall resume and any terms of probation which were not fulfilled shall be fulfilled upon Respondent's return to practice in New York State.
6. Respondent's professional performance may be reviewed by the Director of OPMC. This review may include, but shall not be limited to, a review of office records, patient records and/or hospital charts, interviews with or periodic visits with Respondent and his/her staff at practice locations or OPMC offices.
7. Respondent shall maintain legible and complete medical records which accurately reflect the evaluation and treatment of patients. The medical records shall contain all information required by State rules and regulations regarding controlled substances.

8. At Respondent's expense, Respondent shall fully participate in, cooperate with and successfully complete a three-part retraining program. The retraining program shall consist of Phase I, a complete clinical competency assessment; Phase II, a course of retraining; and Phase III, a post-training follow-up period of practice monitoring for the balance of the five year period of probation (but for no less than two years) with practice monitoring.
9. Respondent, within sixty days of the effective date of the Order, shall submit to and complete a clinical competency assessment, performed by a program for such assessment, proposed by Respondent subject to the prior written approval of the Director of OPMC. Respondent shall cause a report to be provided of such assessment, to the Director of OPMC, within ninety days of the effective date of the Order.
10. Upon completion of Phase I and within six months of the effective date of the Order, Respondent shall be enrolled in a course of personalized continuing medical education (Phase II) which includes an assigned preceptor, preferably a physician board certified in the same specialty, approved in writing by the Director of OPMC, who shall not unreasonably withhold such approval. Respondent shall remain enrolled and shall fully participate in the program for a period of not less than three months nor more than twelve months. *It shall be the responsibility of Respondent to identify such program and qualify therefor, and any failure to do so shall be, if proven in a proceeding pursuant to §230(19) of the N.Y. Public Health Law, a violation of this probation.*
11. The elements of Phase II shall be determined by the participating institution upon reviewing the findings of Phase I and the results of information provided by OPMC. The length of the Phase II program shall be determined by the Phase II preceptor assigned to Respondent subject to the written approval of the Director of OPMC, who shall not unreasonably withhold such approval.
12. During Phase II, the preceptor assigned to Respondent shall:
 - a. Submit quarterly reports to OPMC certifying whether Respondent is fully participating in the Phase II program, and detailing all aspects of his performance and competence in said program.
 - b. Report immediately to the Director of OPMC if Respondent withdraws from the program and report promptly to OPMC any significant pattern of non-compliance by Respondent.
 - c. At the conclusion of the retraining program, submit to the Director of OPMC a detailed assessment of the progress made by Respondent toward remediation of all identified deficiencies.
13. During the entire period of probation 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.
 - a. Respondent shall make available to the practice monitor any and all records or access to the practice requested by the practice 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 less 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.
14. Respondent shall remain drug/alcohol free except for such medication as may be prescribed by Respondent's treating physician.
15. Respondent shall practice only when monitored by qualified health care professional monitors (health monitor, and therapist) proposed by Respondent and approved, in writing, by the Director of OPMC. Monitors shall not be family members or personal friends, or be in professional relationships which would pose a conflict with monitoring responsibilities.
16. Respondent shall ensure that the monitors are familiar with all aspects of Respondent's health history and with the terms of this Order. Respondent shall cause the monitors to report any deviation from compliance with the terms of this Order to OPMC. Respondent shall cause the monitors to submit required reports on a timely basis.
17. Respondent shall submit, at the request of a monitor, to random, unannounced observed blood, breath and/or urine screens for the presence of drugs/alcohol. This monitoring will be on a random, seven-days a week, twenty-four hours a day basis. Respondent shall report for a drug screen within four (4) hours of being contacted by the monitor. Respondent shall cause the monitor to report to OPMC within 24 hours if a test is refused or delayed by Respondent or a test is positive for any unauthorized substance.
18. Respondent shall meet with a health monitor on a regular basis who will submit quarterly reports to OPMC certifying Respondent's continuing health and fitness for practice. These reports are to include forensically valid results of all drug/alcohol monitoring tests to be performed at a frequency of no less than monthly for the first 12 months of the period of probation, then at a frequency to be proposed by the sobriety monitor and approved by OPMC.

19. Respondent shall continue in counseling or other therapy with a therapist as long as the therapist determines is necessary.
20. Respondent shall cause the therapist to submit a proposed treatment plan and quarterly reports to OPMC certifying whether Respondent is in compliance with the treatment plan. Respondent shall cause the therapist to report to OPMC within 24 hours if Respondent leaves treatment against medical advice, or displays any symptoms of a suspected or actual relapse.
21. Respondent shall comply with any request from OPMC to obtain an independent psychiatric and/or chemical dependency evaluation by a health care professional proposed by the Respondent and approved, in writing, by the Director of OPMC.
22. Respondent shall comply with all terms, conditions, restrictions, limitations and penalties to which he or she is subject pursuant to the Order and shall assume and bear all costs related to compliance. Upon receipt of evidence of noncompliance with, or any violation of these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding and/or any such other proceeding against Respondent as may be authorized pursuant to the law.

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

IN THE MATTER
OF
LANCE IVAN AUSTEIN, M.D.

CONSENT
ORDER

Upon the proposed agreement of LANCE IVAN AUSTEIN, M.D.
(Respondent) for Consent Order, which application is made a part hereof, it is
agreed to and

ORDERED, that the application and the provisions thereof are hereby
adopted and so ORDERED, and it is further

ORDERED, that this order shall be effective upon issuance by the Board,
which may be accomplished by mailing, by first class mail, a copy of the Consent
Order to Respondent at the address set forth in this agreement or to
Respondent's attorney by certified mail, or upon transmission via facsimile to
Respondent or Respondent's attorney, whichever is earliest.

SO ORDERED.

DATED: 4/15/98


PATRICK F. CARONE, M.D., M.P.H.
Chairperson
State Board for Professional
Medical Conduct