



New York State Board for Professional Medical Conduct

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

Kendrick A. Sears, M.D.
Chair

Keith W. Servis, Director
Office of Professional Medical Conduct

Michael A. Gonzalez, R.P.A.
Vice Chair

Ansel R. Marks, M.D., J.D.
Executive Secretary

Public

March 23, 2007

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Joseph Berger, D.O.
502 Birch Drive
Cherry Hill, NJ 08003

Re: License No. 082273

Dear Dr. Berger:

Enclosed is a copy of Order #BPMC 07-62 of the New York State Board for Professional Medical Conduct. This order and any penalty provided therein goes into effect March 30, 2007.

If the penalty imposed by this Order is a surrender, revocation or suspension, you are required to deliver your license and registration within five (5) days of receipt of this Order to the Board for Professional Medical Conduct, New York State Department of Health, 433 River Street, Suite 303, Troy, NY 12180.

Sincerely,

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

Enclosure

cc: Timothy P. O'Brien, Esq.
Crammer, Bishop, Marczyk & O'Brien
Ironstone Building
520 Stokes Rd, A-5
Medford, NJ 08055

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

IN THE MATTER
OF
JOSEPH BERGER, D.O.

CONSENT
ORDER

BPMC No. #07-62

Upon the application of (Respondent), **JOSEPH BERGER, D.O.**, in the attached Consent Agreement and Order, which 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 transmission to Respondent or Respondent's attorney, whichever is first.

SO ORDERED.

DATED: 3-22-07



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
OF
JOSEPH BERGER, D.O.
CO-06-09-5007-A

CONSENT
AGREEMENT
AND ORDER

JOSEPH BERGER, D.O., representing that all of the following statements are true, deposes and says:

That on or about March 23, 1959, I was licensed to practice as a physician in the State of New York, and issued License No. 082273 by the New York State Education Department.

My current address is 502 Birch Drive, Cherry Hill, NJ 08003.

I understand that the New York State Board for Professional Medical Conduct (Board) has charged me with one (1) Specification of professional misconduct, based solely upon the State of New Jersey, Department of Law & Public Safety, Division of Consumer Affairs, State Board of Medical Examiners, July 25, 2006, Final Order.

A copy of the Statement of Charges, marked as Exhibit "A", is attached to and part of this Consent Agreement.

I have not practiced medicine in the State of New York in many years, and I do not intend to return to the practice of medicine in the State of New York. I do not, therefore, contest Factual Allegations A and B(4) and the one (1) Specification, in full satisfaction of the charges against me, and agree to the following penalty:

I shall never activate my registration to practice medicine in New York state or seek to reapply for a license to practice medicine in New York state.

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

That Respondent shall cooperate fully with the Office of Professional Medical Conduct (OPMC) in its administration and enforcement of this 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 Order. Respondent shall meet with a person designated by the Director of 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 this 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 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 this 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 transmission to me or my attorney, whichever is first. The Consent Order, this 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's 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, whether administratively 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 of OPMC and the Chair of the Board each retain complete discretion either to enter into the proposed 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.

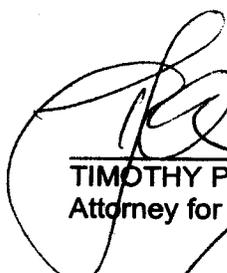
AFFIRMED:

DATED: March 10, 2007

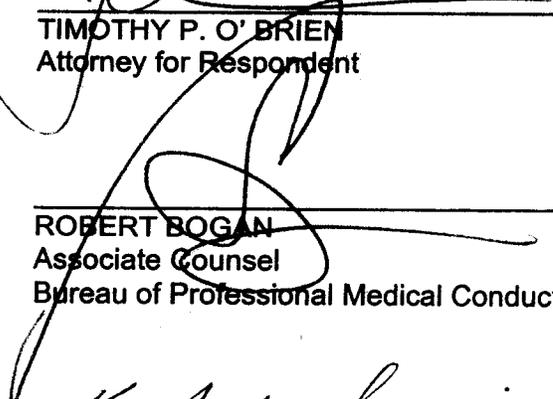

JOSEPH BERGER, D.O.
Respondent

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

DATE: 3/13/07


TIMOTHY P. O'BRIEN
Attorney for Respondent

DATE: 16 March 2007


ROBERT BOGAN
Associate Counsel
Bureau of Professional Medical Conduct

DATE: 3/24/07


KEITH W. SERVIS
Director
Office of Professional Medical Conduct

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

IN THE MATTER
OF
JOSEPH BERGER, D.O.
CO-06-09-5007-A

STATEMENT
OF
CHARGES

JOSEPH BERGER, D.O., Respondent, was authorized to practice medicine in New York state on March 23, 1959, by the issuance of license number 082273 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about July 25, 2006, the State of New Jersey, Department of Law & Public Safety, Division of Consumer Affairs, State Board of Medical Examiners (hereinafter "New Jersey Board"), by a Final Order (hereinafter "New Jersey Order"), suspended Respondent's license to practice medicine for four (4) years, which term of suspension shall be suspended, one (1) year of the suspension shall be served with a proctor; prohibited him from prescribing psychotropic medications for one (1) year; and required him to pay \$15,000.00 costs, based on gross negligence, repeated acts of negligence, professional or occupational misconduct, maintaining medical records that fail to adhere to applicable New Jersey Board regulations and accepted standards of medical practice, and improperly altering a medical record amounting to an act of dishonesty, fraud, deception, misrepresentation, false promise or false pretense.

B. The conduct resulting in the New Jersey Board's 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(2) (practicing the profession fraudulently);
2. New York Education Law §6530(3) (negligence on more than one occasion);
3. New York Education Law §6530(4) (gross negligence); and/or

4. New York Education Law §6530(32) (failure to maintain a record for each patient which accurately reflects the care and treatment of the patient).

SPECIFICATION

Respondent violated New York State Education Law §6530(9)(d) by having his license to practice medicine suspended and/or having other disciplinary action taken by a duly authorized professional agency of another state where the conduct resulting in the suspension and/or other disciplinary action would, if committed in New York state, constitute professional misconduct under the laws of New York state, in that Petitioner charges:

1. The facts in Paragraphs A and/or B.

DATED: *January 18*, 2007
Albany, New York


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