



***New York State Board for Professional Medical Conduct***

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

Antonia C. Novello, M.D., M.P.H., Dr. P.H.  
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NYS Department of Health*

Dennis P. Whalen  
*Executive Deputy Commissioner  
NYS Department of Health*

Dennis J. Graziano, Director  
*Office of Professional Medical Conduct*

William P. Dillon, M.D.  
*Chair*

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

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

**PUBLIC**

December 3, 2002

***CERTIFIED MAIL-RETURN RECEIPT REQUESTED***

Marc J. Bernstein, M.D.  
76 Devonshire Road  
Slingerlands, New York 12159

RE: License No. 199247

Dear Dr. Bernstein:

Enclosed please find Order #BPMC 02-361 of the New York State Board for Professional Medical Conduct. This Order and any penalty provided therein goes into effect December 3, 2002.

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 to 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: Peter J. Millock, Esq.  
c/o Nixon Peabody LLP  
Omni Plaza, Suite 900  
30 South Pearl Street  
Albany, New York 12207-3497

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

**IN THE MATTER  
OF  
MARC J. BERNSTEIN, M.D.**

**SURRENDER  
ORDER**  
BPMC No. 02-361

Upon the application of (Respondent) MARC J. BERNSTEIN, M.D. to Surrender his license as a physician in the State of New York, which is made a part of this Surrender Order, it is

ORDERED, that the Surrender, and its terms, are adopted and SO ORDERED, and it is further

ORDERED, that the name of Respondent be stricken from the roster of physicians in the State of New York; it is further

ORDERED, that this 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: December 3, 2002

  
WILLIAM P. DILLON, M.D.  
Chair  
State Board for Professional Medical Conduct

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

**IN THE MATTER  
OF  
MARC J. BERNSTEIN, M.D.**

**SURRENDER  
of  
LICENSE**

MARC J. BERNSTEIN, M.D., representing that all of the following statements are true, deposes and says:

That on or about May 5, 1995, I was licensed to practice as a physician in the State of New York, and issued License No. 199247 by the New York State Education Department.

My current address is 76 Devonshire Road, Slingerlands, New York 12159, and I will advise the Director of the Office of Professional Medical Conduct of any change of address.

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

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

I am applying to the State Board for Professional Medical Conduct for permission to surrender my license as a physician in the State of New York on the grounds that I admit guilt to the First Specification [having been convicted of a crime under New York State Law], in full satisfaction of the charges against me.

I ask the Board to accept the Surrender of my License.

I understand that if the Board does not accept this Surrender, none of its terms shall bind me or constitute an admission of any of the acts of alleged misconduct; this application 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 the Public Health Law.

I agree that, if the Board accepts the Surrender of my License, the Chair of the Board shall issue a Surrender Order in accordance with its terms. I agree that this Order shall take effect upon its issuance by the Board, either by mailing of a copy of the Surrender Order by first class mail to me at the address in this Surrender of License, or to my attorney by certified mail, OR upon facsimile transmission to me or my attorney, whichever is first.

I ask the Board to accept this Surrender of License of my own free will and not under duress, compulsion or restraint. In consideration of the value to me of the Board's acceptance of this Surrender of License, 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 Surrender Order for which I apply, whether administratively or judicially, and I agree to be bound by the Surrender Order.

DATED 11/25/02

  
\_\_\_\_\_  
MARC J. BERNSTEIN, M.D.  
RESPONDENT

The undersigned agree to Respondent's attached Surrender of License and to its proposed penalty, terms and conditions.

DATE: 11/26/02

  
PETER J. MILLOCK, ESQ.  
Attorney for Respondent

DATE: 12/2/02

  
MICHAEL A. HISER, ESQ.  
Associate Counsel  
Bureau of Professional Medical Conduct

DATE: 12/02/02

  
DENNIS J. GRAZIANO  
Director  
Office of Professional Medical Conduct

IN THE MATTER  
OF  
MARC J. BERNSTEIN, M.D.

STATEMENT  
OF  
CHARGES

MARC J. BERNSTEIN, M.D., the Respondent, was authorized to practice medicine in New York State on or about May 5, 1995, by the issuance of license number 199247 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

- A. Respondent, a cardiologist, provided medical care to Patient A, a 22 year old female patient, at various times from approximately July 2001 to July 2002 at his office at 4 Palisades Drive, Albany, New York ["Respondent's office"]. Respondent's care of Patient A was contrary to accepted standards of medical practice as follows:
1. Respondent, during an office examination on July 1, 2002, examined the breasts of Patient A in a manner that was without adequate medical indication.
  2. Respondent, during an office examination on July 1, 2002, touched the patient's genital area, placed his ungloved finger[s] inside her vagina, and then rubbed her clitoris, all without adequate medical indication.
  3. Respondent, on July 1, 2002, kissed Patient A on the cheek following the events described in paragraphs (1) and (2), above.
- B. Respondent, provided medical care to Patient B, a 39 year old female patient, on several occasion in September 2001 at Respondent's office. Respondent's care of Patient B was contrary to accepted standards of medical practice as follows:

1. Respondent, during the patient's first office visit on or about September 11, 2001, following her performance of a treadmill test, while she was standing, hugged her and kissed her on the lips, without permission or warning.
  2. Respondent, during the patient's office visit on or about September 24, 2001, requested that the patient lie down, then without permission or warning kissed her on the lips with sufficient force that she felt his tongue pressing against her.
- C. Respondent, on November 13, 2002, plead guilty to engaging in the misdemeanor of sexual abuse in the third degree, in violation of New York Penal Law Section 130.55, based on the facts alleged in paragraph A, above. Respondent was sentenced to a \$500.00 fine and a \$125.00 New York State surcharge, in addition to being given a one year conditional discharge. Two orders of protection were also issued, one covering Patient A, and the other covering Patient B.

### **SPECIFICATION OF CHARGES**

#### **FIRST SPECIFICATION**

#### **CRIMINAL CONVICTION (N.Y.S.)**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(9)(a)(i) by having been convicted of committing an act constituting a crime under New York state law as alleged in the facts of the following:

1. The facts in Paragraph C.

**SECOND AND THIRD SPECIFICATIONS**

**WILFUL PHYSICAL ABUSE**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(31) by engaging in conduct that constitutes wilful physical abuse of a patient, as alleged in the facts of:

2. The facts in Paragraphs A and A.1, A and A.2, and/or A and A.3.
3. The facts in Paragraphs B and B.1, and/or B and B.2.

DATED: *December 2*  
November, 2002  
Albany, New York

  
Peter D. Van Buren  
Deputy Counsel  
Bureau of Professional  
Medical Conduct

## EXHIBIT "B"

### **GUIDELINES FOR CLOSING A MEDICAL PRACTICE FOLLOWING A REVOCATION, SURRENDER OR SUSPENSION (of 6 months or more) OF A MEDICAL LICENSE**

1. Respondent shall immediately cease and desist the practice of medicine in compliance with the terms of the Surrender Order. Respondent shall not represent himself or herself as eligible to practice medicine and shall refrain from providing an opinion as to professional practice or its application.
2. Within fifteen (15) days of the Surrender Order's effective date, Respondent shall notify all patients that he or she has ceased the practice of medicine, and shall refer all patients to another licensed practicing physician for their continued care, as appropriate.
3. Within thirty (30) days of the Surrender Order's effective date, Respondent shall have his or her original license to practice medicine in New York State and current biennial registration delivered to the Office of Professional Medical Conduct (OPMC) at 433 River Street Suite 303, Troy, NY 12180-2299.
4. Respondent shall arrange for the transfer and maintenance of all patient medical records. Within thirty (30) days of the Surrender Order's effective date, Respondent shall notify OPMC of these arrangements, including the name, address, and telephone number of an appropriate contact person, acceptable to the Director of OPMC, who shall have access to these records. Original records shall be retained for patients for at least six (6) years after the last date of service, and, for minors, at least six (6) years after the last date of service or three (3) years after the patient reaches the age of majority, whichever time period is longer. Records shall be maintained in a safe and secure place that is reasonably accessible to former patients. The arrangements shall ensure that all patient information is kept confidential and is available only to authorized persons. When a patient or authorized representative requests a copy of the patient's medical record, or requests that the original medical record be sent to another health care provider, a copy of the record shall be promptly provided or sent at reasonable cost to the patient (not to exceed seventy-five cents per page.) Radiographic, sonographic and like materials shall be provided at cost. A qualified person shall not be denied access to patient information solely because of inability to pay.
5. Within fifteen (15) days of the Order's effective date, if Respondent holds a Drug Enforcement Agency (DEA) certificate, Respondent shall advise the DEA in writing of the licensure action and shall surrender his or her DEA controlled substance certificate, privileges, and any used DEA #222 U.S. Official Order Forms Schedules 1 and 2, to the DEA.
6. Within fifteen (15) days of the Order's effective date, Respondent shall return any unused New York State official prescription forms to the Bureau of Controlled Substances of the New York State Department of Health. Respondent shall have all prescription pads bearing Respondent's name destroyed. If no other licensee is providing services at his practice location, Respondent shall dispose of all medications.
7. Within fifteen (15) days of the Order's effective date, Respondent shall remove from the public domain any representation that Respondent is eligible to practice medicine, including all related signs, advertisements, professional listings whether in telephone directories or otherwise, professional stationery or billings. Respondent shall not share, occupy or use office space in which another licensee

provides health care services.

8. Respondent shall not charge, receive or share any fee or distribution of dividends for professional services rendered (by himself or others) while barred from practicing medicine. Respondent may receive compensation for the reasonable value of services lawfully rendered, and disbursements incurred on a patient's behalf, prior to the Order's effective date.

9. If Respondent is a shareholder in any professional service corporation organized to engage in the practice of medicine and Respondent's license is revoked, surrendered or suspended for six (6) months or more pursuant to this Order, Respondent shall, within ninety (90) days of the Order's effective date, divest himself/herself of all financial interest in such professional services corporation in accordance with New York Business Corporation Law. If Respondent is the sole shareholder in a professional services corporation, the corporation must be dissolved or sold within ninety (90) days of the Order's effective date.

10. Failure to comply with the above directives may result in civil or criminal penalties. Practicing medicine when a medical license has been suspended, revoked or annulled is a Class E Felony, punishable by imprisonment for up to four (4) years, under Section 6512 of the Education Law. Professional misconduct may result in penalties including revocation of the suspended license and/or fines of up to \$10,000 for each specification of misconduct, under Section 230-a of the Public Health Law.