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Commissioner
NYS Department of Health
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Executive Deputy Commissioner
NYS Department of Health
Anne F. Saile, Director
Office of Professional Medical Conduct

William P. Dillon, M.D.
Chair

Denise M. Bolan, R.P.A.
Vice Chair

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

July 21, 2000

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Donald R. Werner, M.D.
5 Locust Court
Mahopac, New York 10541

RE: License No. 141903

Dear Dr. Werner:

Enclosed please find Order #BPMC 00-206 of the New York State Board for Professional Medical Conduct. This Order and any penalty provided therein goes into effect July 21, 2000.

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,

A handwritten signature in black ink, appearing to read 'Ansel R. Marks', written over a stylized, scribbled-out signature.

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

Enclosure

cc: Richard C. Baker, Esq.
Meiselman, Farber, Packman and Eberz
1311 Mamaroneck Avenue
White Plains, New York 10602

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

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IN THE MATTER : SURRENDER
OF : ORDER
DONALD R. WERNER, M.D. : BPMC # 100-206
00-206
-----X

DONALD R. WERNER, M.D., says:

On or about April 11, 1980, I was licensed to practice medicine as a physician in the State of New York having been issued License No. 141903 by the New York State Education Department. My address is 5 Locust Court, Mahopac, New York 10541.

I understand that I have been charged with 12 specifications of professional misconduct as set forth in the Statement of Charges, annexed hereto, made a part hereof, and marked as Exhibit "A".

I am applying to the State Board for Professional Medical Conduct for an agreement to allow me to surrender my license as a physician in the State of New York and request that the Board issue this Surrender Order.

I admit guilt to the first specification set forth in the Statement of Charges, and that portion of the second specification as relates to paragraphs C and C. 3 (a) and C and C. 3 (b) set forth in the Statement of Charges.

I understand that, in the event that this proposed agreement is not granted by the State Board for Professional Medical Conduct, 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 proposed agreement 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 State Board for Professional Medical Conduct shall be made without prejudice to the continuance of any disciplinary proceeding and the final determination by a Committee on Professional Medical Conduct pursuant to the provisions of the Public Health Law.

I agree that in the event the State Board for Professional Medical Conduct agrees with my proposal, this Order shall be issued striking my name from the roster of physicians in the State of New York without further notice to me. I agree 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 Order to me at the address set forth above, or to my attorney, or upon transmission via facsimile to me or my attorney, whichever is earliest.

I am making this agreement of my own free will and accord and not under duress, compulsion, or restraint of any kind or manner.

Date: July, 2000

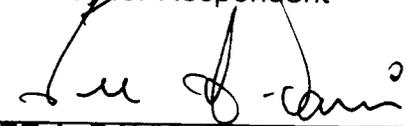

DONALD R. WERNER, M.D.
Respondent

AGREED TO:

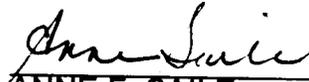
Date: July, 2000


RICHARD C. BAKER, Esq.
Attorney for Respondent

Date: July, 12, 2000


LEE A. DAVIS, Esq.
Assistant Counsel
Bureau of Professional
Medical Conduct

Date: July, 17, 2000


ANNE F. SAILE
Director, Office of
Professional Medical Conduct

ORDER

Upon the proposed agreement of DONALD R. WERNER, M.D., to Surrender his license as a physician in the State of New York, which proposed agreement is made a part hereof, it is AGREED TO and

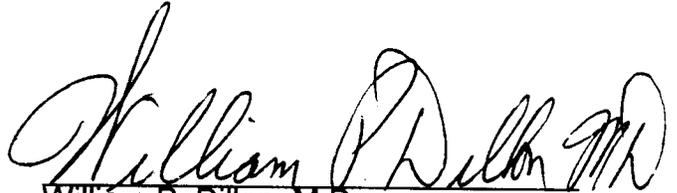
ORDERED, that the proposed agreement and the provisions thereof are hereby adopted; it is further

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, which may be accomplished by mailing, by first class mail, a copy of this Order to Respondent at the address set forth in this agreement or to Respondent's attorney, or upon transmissions via facsimile to Respondent or Respondent's attorney, whichever is earliest.

DATED: _____

7/18/00



William P. Dillon, M.D.
Chair
State Board for Professional
Medical Conduct

**PROPOSED APPENDIX TO ALL BPMC ORDERS FOR NULLIFICATION,
REVOCATION, SURRENDER OR SUSPENSION (of 6 months or more)
OF A MEDICAL LICENSE**

1. Respondent shall immediately cease and desist from engaging in the practice of medicine in accordance with the terms of the Order. In addition, Respondent shall refrain from providing an opinion as to professional practice or its application and from representing himself as being eligible to practice medicine.
2. Respondent shall have delivered to OPMC at Hedley Park Place, 433 River Street 4th Floor, Troy, NY 12180-2299 his original license to practice medicine in New York State and current biennial registration within thirty (30) days of the effective date of the Order.
3. Respondent shall within fifteen (15) days of the Order notify his patients of the cessation of his medical practice and will refer all patients to another licensed practicing physician for their continued care, as appropriate.
4. Respondent shall make arrangements for the transfer and maintenance of the medical records of his patients. Within thirty days of the effective date of the Order, Respondent shall notify OPMC of these arrangements including the appropriate and acceptable contact person's name, address, and telephone number who shall have access to these records. Original records shall be retained for at least six years after the last date of service rendered to a patient or, in the case of a minor, for at least six years after the last date of service or three years after the patient reaches the age of majority whichever time period is longer. Records shall be maintained in a safe and secure place which is reasonably accessible to former patients. The arrangements shall include provisions to ensure that the information on the record is kept confidential and made available only to authorized persons. When a patient or and/or his or her representative requests a copy of the patient's medical record or requests that the original medical record be forwarded to another health care provider, a copy of the record shall be promptly provided or forwarded at a 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 their inability to pay.
5. In the event that Respondent holds a Drug Enforcement Agency (DEA) certificate, Respondent shall within fifteen (15) days advise the DEA in writing of the licensure action and shall surrender his DEA controlled substance privileges to the DEA. Respondent shall promptly surrender any unused DEA #222 U.S. Official Order Forms Schedules 1 and 2 to the DEA.
6. Respondent shall within fifteen (15) days 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 cause all prescription pads bearing his name to be destroyed. If no other licensee is providing services at his practice location, all medications shall be properly disposed.
7. Respondent shall not share, occupy or use office space in which another licensee provides health care services. Respondent shall cause all signs to be removed within fifteen (15) days and stop all advertisements, professional listings whether in telephone directories or otherwise, professional stationery or billings by which his eligibility to practice is represented.

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 engaging in the practice of medicine. Respondent may be compensated for the reasonable value of services lawfully rendered and disbursements incurred on a patient's behalf prior to the effective date of this Order.

9. If Respondent is a shareholder in any professional service corporation organized to engage in the practice of medicine and if his license is revoked, surrendered or suspended for a term of six months or more under the terms of this Order, Respondent shall divest himself of all financial interest in the professional services corporation in accordance with New York Business Corporation Law. Such divestiture shall occur within 90 days. If Respondent is the sole shareholder in a professional services corporation, the corporation must be dissolved or sold within ninety (90) days of the effective date of this Order.

10. Failure to comply with the above directives may result in a civil penalty or further criminal penalties as may be authorized pursuant to the law. Under Section 6512 of the Education Law it is a Class E Felony, punishable by imprisonment of up to 4 years, to practice the profession of medicine when such professional license has been suspended, revoked or annulled. Such punishment is in addition to the penalties for professional misconduct set forth in section 230 a1. of the Public Health Law, which includes fines of up to \$10,000 for each specification of charges of which the Respondent is found guilty and may include revocation of a suspended license.

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

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IN THE MATTER : STATEMENT
OF : OF
DONALD R. WERNER, M.D. : CHARGES

-----X

DONALD R. WERNER, M.D., the Respondent, was authorized to practice medicine in New York State on April 11, 1980 by the issuance of license number 141903 by the New York State Education Department. The Respondent is not currently registered with the New York State Education Department to practice medicine.

FACTUAL ALLEGATIONS

A. On or about September 7, 1999, in accordance with a "Consent Agreement", Respondent surrendered his license to practice medicine in the State of Maine. Respondent's surrender of his medical license occurred after a disciplinary action was instituted against him by the State of Maine Board of Licensure in Medicine (Maine Board), a duly authorized professional disciplinary agency, and was based upon incompetence and unprofessional conduct against a single patient, following "numerous" complaints from 1991 through 1997. Respondent's surrender of his medical license was accepted by the Maine Board on September 14, 1999.

B. The conduct resulting in the Maine Board's disciplinary action against Respondent would constitute

EXHIBIT A

misconduct under the laws of New York State, pursuant to the following sections of New York State law:

1. New York Education Law §6530(20) (moral unfitness).

C. Respondent provided medical care to Patient A [patients are identified in Appendix] on various occasions from on or about October 10, 1996 through on or about January 15, 1997 at Respondent's office in Augusta, Maine. Respondent pursued a personal relationship with Patient A outside during this period of time that culminated in a sexual relationship sometime after June 1, 1997, that continued through February, 1998. Respondent's conduct toward Patient A deviated from accepted standards of medical care in the following respects:

1. Respondent, from on or about October 10, 1996, through January 15, 1997 during Patient A's visits for medical care at Respondent's office, engaged in the following inappropriate and unprofessional conduct with Patient A:
 - a. Engaging in a personal relationship which included touching Patient A without medical justification;
 - b. Misrepresenting his background by informing Patient A that he was a clinically trained psychologist, thereby encouraging Patient A to confide in Respondent regarding personal matters unrelated to his medical treatment of Patient A;
 - c. Using his position of trust as a physician to exploit the emotionally compromised position with which Patient A presented.
2. Respondent, from on or about January 16, 1997 through on or about May, 1997 pursued the personal relationship with Patient A in the following manner:
 - a. Keeping in constant contact with Patient A, and having her over to his apartment on numerous occasions;

- b. Engaging Patient A in conversations about sexual practices and preferences;
 - c. Encouraging Patient A to end her marriage.
3. Respondent, from on or about June 1, 1997 through November 1998 engaged in the following inappropriate behavior;
- a. Engaging in sexual intercourse with Patient A;
 - b. Failing to repay any of the more than \$60,000.00 he "borrowed" from Patient A.

D. Respondent, effective on or about December 10, 1990 had his clinical privileges at the Waterville Osteo Hospital, Kennedy Memorial Drive, Waterville Maine, suspended, revoked and/or otherwise restricted or terminated for an indefinite period due to negligence and/or incompetence.

E. Respondent, on or about March 27, 1994, completed a Registration Application for the period of January 1994 through December 1994 with the New York State Education Department.

1. Respondent answered "No" to question C.):

FOR HEALTH PROFESSIONALS ONLY: Since you last registered, has any hospital or licensed facility restricted or terminated your professional training, employment, or privileges or have you ever voluntarily or involuntarily resigned or withdrawn from such association to avoid imposition of such action due to professional misconduct, unprofessional misconduct, incompetence or Negligence?

Respondent knew this answer was not correct based upon the action taken by Waterville Osteo Hospital when he completed the registration application.

F. Respondent, effective on or about February 4, 1996 had his clinical privileges at HMO Maine, 2 Gannett Drive, Portland, Maine, permanently revoked and/or otherwise restricted due to negligence, incompetence, and/or unverifiable credentialing.

G. Respondent, on or about December 9, 1996 completed a Registration Application for the period of December 1996 through November 1998 with the New York State Education Department.

1. Respondent answered "No" to question C.):

FOR HEALTH PROFESSIONALS ONLY: Since you last registered, has any hospital or licensed facility restricted or terminated your professional training, employment, or privileges or have you ever voluntarily or involuntarily resigned or withdrawn from such association to avoid imposition of such action due to professional misconduct, unprofessional misconduct, incompetence or Negligence?

Respondent knew this answer was not correct based upon the action taken by HMO Maine and the Waterville Osteo Hospital when he completed the registration application.

H. Respondent, on or about September 30, 1998, completed a Registration Application for the period of December 1, 1998 through September 30, 2000 with the New York State Education Department.

1. Respondent answered "No" to question 5.:

Since you last registered, has any hospital or licensed facility restricted or terminated your professional training, employment, or privileges or have you ever voluntarily or involuntarily resigned or withdrawn from such association to

avoid imposition of such action due to professional misconduct, unprofessional misconduct, incompetence or Negligence?

Respondent knew this answer was not correct based upon the action taken by HMO Maine and the Waterville Osteo Hospital when he completed the registration application.

I. On or about February 10, 1999, Respondent was notified by the New York State Education Department that the check he submitted with his 1998 renewal application had not cleared with his bank, and that if he did not submit a replacement fee within 60 days, his registration would be voided pursuant to New York Education Law §59.8 (f).

1. Respondent failed to timely submit the required fee as set forth in the notice of February 10, 1999. He is not currently registered to practice medicine in New York State.

SPECIFICATIONS OF MISCONDUCT

FIRST SPECIFICATION **SURRENDER OF MEDICAL LICENSE AFTER INSTITUTION OF DISCIPLINARY ACTION BY DISCIPLINARY AGENCY OF ANOTHER STATE**

Respondent is charged with professional misconduct in violation of Educ. Law §6530(9)(d) by reason of his having surrendered his license to practice medicine in another state after the institution of disciplinary proceedings by a duly authorized disciplinary agency of another state, where the conduct resulting in the surrender of Respondent's license to

practice medicine in the other state, 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.

SECOND THROUGH FIFTH SPECIFICATIONS
MORAL UNFITNESS

Respondent is charged with professional misconduct by reason of his committing conduct in the practice of medicine which evidences moral unfitness to practice medicine in violation of New York Education Law §6530(20) in that Petitioner charges:

2. The facts in paragraphs C and C.1(a), and/or C and C.1 (b), and/or C and C.1(c), and/or C and C.2(a), and/or C and C.2(b), and/or C and C.2(c), and/or C and C.3(a), and/or C and C.3(b);
3. The facts in paragraphs D, E and E.1;
4. The facts in paragraphs F, G and G.1;
5. The facts in paragraphs D, F and H and H.1.

SIXTH THROUGH EIGHTH SPECIFICATIONS
FRAUD

Respondent is charged with professional misconduct under N.Y. Educ. Law §6530(2) by reason of his practicing the profession of medicine fraudulently, in that Petitioner charges the following:

6. The facts in paragraphs D, E and E.1;
7. The facts in paragraphs F, G and G.1;
8. The facts in paragraphs D, F and H and H.1.

NINTH THROUGH ELEVENTH SPECIFICATIONS
FILING A FALSE REPORT

Respondent is charged with professional misconduct under N.Y. Educ. Law §6530(21) by reason of his willfully making or filing a false report, in that Petitioner charges the following:

9. The facts in paragraphs D, E and E.1;
10. The facts in paragraphs F, G and G.1;
11. The facts in paragraphs D, F and H and H.1.

TWELFTH SPECIFICATION
WILLFUL FAILURE TO REGISTER

Respondent is charged with professional misconduct under N.Y. Educ. Law §6530(12) by reason of his practicing the profession while his license is inactive due to his willful failure to register with the New York State Education Department, in that Petitioner charges the following:

12. The facts in paragraphs I and I.1.

DATED: March 31, 2000
Albany, New York


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