



New York State Board for Professional Medical Conduct

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

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

PUBLIC

December 1, 2004

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

David Aaron Fineberg, M.D.
1021 Hunting Ridge Road
Raleigh, NC 27615

Re: License No. 182262

Dear Dr. Fineberg:

Enclosed please find Order #BPMC 04-273 of the New York State Board for Professional Medical Conduct. This order and any penalty provided therein goes into effect December 8, 2004.

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 the 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: Sharif Mahdavian, Esq.
Friedman and Mahdavian, P.C.
36 West 44th Street, Suite 816
New York, NY 10036

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

IN THE MATTER
OF
DAVID AARON FINEBERG, M.D.

SURRENDER
ORDER

BPMC No. 04-273

Upon the application of (Respondent) DAVID AARON FINEBERG, 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 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 Surrender Order, either by first class mail to Respondent at the address in the attached Surrender Application or by certified mail to Respondent's attorney, OR
 - upon facsimile transmission to Respondent or Respondent's attorney, Whichever is first.

SO ORDERED.

DATED: 11-29-2004


KENDRICK A. SEARS, 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
DAVID AARON FINEBERG, M.D.**

**SURRENDER
of
LICENSE**

DAVID AARON FINEBERG, M.D., representing that all of the following statements are true, deposes and says:

That on or about June 11, 1990, I was licensed to practice as a physician in the State of New York, and issued License No. 182262 by the New York State Education Department. On or about June 17, 1999 I agreed to an indefinite suspension of my license as reflected in BPMC Order #99-132.

My current address is 1021 Hunting Ridge Road, Raleigh, North Carolina 27615, 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 one specification 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 do not contest the first specification, in full satisfaction of the charges against me.

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

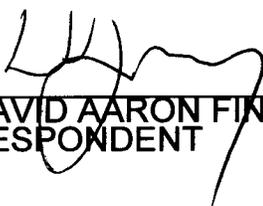
I understand that if the Board does not accept this Surrender, none of its terms shall bind me or constitute an admission of any of the acts of alleged misconduct; this application shall not be used against me in any way and shall be kept in strict confidence; and the Board's denial shall be without 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. The Order, this agreement, and all attached Exhibits shall be public documents, with only patient identities, if any, redacted. The Surrender Order for which I am applying shall supercede BPMC Order #99-132.

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 11/10/2004


DAVID AARON FINEBERG, 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.

DATED: 11/12/04


SHARIF MANDAVIAN, ESQ.
Attorney for Respondent

DATED: 11-15-04


LEE A. DAVIS
Assistant Counsel
Bureau of Professional
Medical Conduct

DATED: 11/24/04

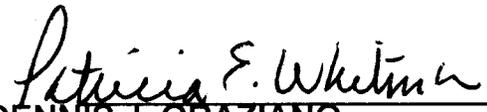

DENNIS J. GRAZIANO
Director, Office of Professional
Medical Conduct

EXHIBIT A

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

IN THE MATTER
OF
DAVID AARON FINEBERG, M.D.

STATEMENT
OF
CHARGES

David Aaron Fineberg, M.D., the Respondent, was authorized to practice medicine in New York State on June 11, 1990, by issuance of license number 182262 by the New York State Education Department. His license was temporarily surrendered on March 19, 1999. Respondent subsequently entered into Consent Order on June 17, 1999 whereby his license is indefinitely suspended until such time as Respondent can demonstrate his fitness to practice medicine.

FACTUAL ALLEGATIONS

- A. Respondent provided medical care to Patient A from April 1997 through on or about December 1997 at his offices at 1660 Hopkins Street, 102, Getzville, New York ("the office") and at Our Lady of Victory Hospital, 53 Melroy at Ridge Road, Lackawanna, New York ("the hospital"). Respondent's care and treatment of Patient A did not meet acceptable standards of medical care in that:
1. Respondent inappropriately over inflated the saline of mammary implants implanted in Patient A by 100 cc on July 31, 1997;
 2. Respondent inappropriately misdiagnosed severe capsular contraction as bilateral spontaneous implant deflation of Patient A's mammary implants.
- B. Respondent provided medical care and treatment to Patient B from on or about October 1998 through on or about March 1999 at his offices and the hospital. Respondent's care and treatment of Patient B did not meet

acceptable standards of medical care in that:

1. Respondent inappropriately overinflated the saline of mammary implants implanted in Patient B by approximately 130 cc on November 6, 1998.

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) 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. The facts in paragraphs A and A.1, A and A.2, and/or B and B.1.

DATED: November 17, 2004
Albany, New York


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