

Public

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

IN THE MATTER
OF
LEONARD BIBERMAN, M.D.

MODIFICATION

ORDER

BPMC No. #00-360

Upon the proposed Application for a Modification Order of **LEONARD BIBERMAN, M.D.**, (Respondent), that is made a part of this Modification Order, it is agreed and

ORDERED, that the attached Application and its terms are adopted and it is further

ORDERED, that this Modification Order shall be effective upon issuance by the Board, either by mailing, by first class mail, a copy of the Modification Order to Respondent at the address in the attached Application or by certified mail to Respondent's attorney or upon transmission via facsimile to Respondent or Respondent's attorney, whichever is earliest.

SO ORDERED.

DATED: 6-27-2009

Redacted Signature

KENDRICK A. SEARS, M.D.
Chair
State Board for Professional
Medical Conduct

IN THE MATTER
OF
LEONARD BIBERMAN, M.D.

APPLICATION FOR
MODIFICATION ORDER

LEONARD BIBERMAN, M.D., (Respondent) being duly sworn deposes and says:

That on or about November 4, 1971, I was licensed to practice as a physician in the State of New York, having been issued license number 110565 by the New York State Education Department.

My current address is Redacted Address

I am currently subject to Consent Agreement and Order BPMC No. 00-360, (hereinafter "Original Order"), annexed hereto, made a part, hereof, and marked as Exhibit 1, that was issued on December 21, 2000.

I apply, hereby, to the State Board for Professional Medical Conduct for a Modification Order (hereinafter "Modification Order"), modifying the Original Order, as follows: to delete the paragraph in the Original Order that states:

"That, except during periods of actual suspension, Respondent shall maintain current registration of Respondent's license with the New York State Education Department Division of Professional Licensing Services, and shall pay all registration fees. This condition shall be in effect beginning thirty days after the effective date of the Consent Order and will continue while the licensee possesses his/her license; and."

substituting:

" Respondent shall never practice medicine in New York state as a physician, activate his registration to practice medicine as a physician in New York state or seek to reapply for a license to practice medicine as a physician in New York state."

The Modification Order to be issued will not constitute a new disciplinary action against me, but will substitute the proposed language for the above described language in the Original Order.

I make this Application of my own free will and accord and not under duress, compulsion or restraint, and seek the anticipated benefit of the requested Modification. In consideration of the value to me of the acceptance of the Board of this Application, I knowingly waive the right to contest the Original Order or the Modification Order for which I apply, both administratively and judicially, and ask that the Board grant this Application.

I understand and agree that the attorney for the Bureau of Professional Medical Conduct, the Director of the Office of Professional Medical Conduct, and the Chair of the State Board for Professional Medical Conduct each retain complete discretion to either enter into the proposed Agreement and Modification 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: June 18, 2009

Redacted Signature

LEONARD BIBERMAN, M.D.
Respondent

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

DATE: 23 June 2009

Redacted Signature _____
ROBERT BOGAN
Associate Counsel
Bureau of Professional Medical Conduct

DATE: 6/26/09

Redacted Signature _____
KEITH W. SERVIS
Director
Office of Professional Medical Conduct

EXHIBIT 1



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.
Commissioner
NYS Department of Health
Dennis P. Whalen
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

December 22, 2000

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Leonard Biberman, M.D.

Redacted Address

RE: License No. 110565

Dear Dr. Biberman:

Enclosed please find Order #BPMC 00-360 of the New York State Board for Professional Medical Conduct. This Order and any penalty provided therein goes into effect December 22, 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,

Redacted Signature

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

Enclosure

cc: James Steinbegr, Esq.
27 Garden Street
Poughkeepsie, NY 12602

Jude Brearton Mulvey, Esq.

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

IN THE MATTER
OF
LEONARD BIBERMAN, M.D.

CONSENT
AGREEMENT
AND
ORDER
BPMC No. 00-360

LEONARD BIBERMAN, M.D., (Respondent) says:

That on or about November 4, 1971, I was licensed to practice as a physician in the State of New York, having been issued License No. 110565 by the New York State Education Department.

My current address is Redacted Address, 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 two specifications of professional misconduct.

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

I admit guilt to the second specification, in full satisfaction of the charges against me. I hereby agree to the following penalty:

That I receive a Censure and Reprimand; that I shall be on probation for a period of two (2) years after the effective date of the order herein; on such terms as set forth in Exhibit "B" attached hereto; additionally, that I will have a chaperone present for every examination of a female patient for whom a breast and/or pelvic examination is conducted and will abide by the standard terms as set forth in Exhibit "C"; and that I shall enroll in and successfully complete a continuing medical education course in performance of breast examinations within 6 months following the effective date of the order herein, such course subject to the approval of the Director

of the Office of Professional Medical Conduct.

I further agree that the Consent Order for which I hereby apply shall impose the following conditions:

That, except during periods of actual suspension, Respondent shall maintain current registration of Respondent's 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 will continue while the licensee possesses his/her license; and

That Respondent shall fully cooperate in every respect with the Office of Professional Medical Conduct (OPMC) in its administration and enforcement of this Order and in its investigation of all matters regarding Respondent. Respondent shall respond in a timely manner to each and every request by OPMC to provide written periodic verification of Respondent's compliance with the terms of this Order. Respondent shall meet with a person designated by the Director of OPMC as directed. Respondent shall respond promptly and provide any and all documents and information within Respondent's control upon the direction of OPMC. This condition shall be in effect beginning upon the effective date of the Consent Order and will continue while the licensee possesses his/her license.

I hereby stipulate that any failure by me to comply with such conditions shall

constitute misconduct as defined by New York State Education Law §6530(29)(McKinney Supp 2000).

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 11/22/00

Redacted Signature

~~LEONARD BIBERMAN, 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: 11/22/00

Redacted Signature

JAMES STEINBERG, ESQ.
Attorney for Respondent

DATE: 12/13/00

Redacted Signature

JUDE BREARTON MULVEY
Assistant Counsel
Bureau of Professional
Medical Conduct

DATE: 12/13/00

Redacted Signature

PATRICIA E. WHITMAN
Deputy Director of Operations
Office of Professional
Medical Conduct

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

-----X

IN THE MATTER : STATEMENT
OF : OF
LEONARD BIBERMAN, M.D. : CHARGES

-----X

LEONARD BIBERMAN, M.D., the Respondent, was authorized to practice medicine in New York State on November 4, 1971 by the issuance of license number 110565 by the New York State Education Department. The Respondent is currently registered with the New York State Education Department to practice medicine for the period August 31, 1998, through August 30, 2000, with a registration address of 64 Jackson Street, Fishkill, New York 12524.

FACTUAL ALLEGATIONS

- A. Respondent provided medical care to Patient A (Patients are identified in Appendix) at his office at 64 Jackson Street, Fishkill, New York ("the office") on or about April 7, 1995. Respondent's care of Patient A deviated from the standard of care in that:
1. Respondent, during the course of a breast examination, and without Patient A's permission, lifted Patient A's medical gown and bra in front of her face, blocking her vision.

- B. Respondent provided medical care to Patient B at the office on or about March 2, 1995. Respondent's care of Patient B deviated from the standard of care in that:
1. Respondent unhooked Patient B's bra without her permission during the course of a breast examination.
- C. Respondent provided medical care to Patient C at the office from on or about February 8, 1995 through on or about April 18, 1995. Respondent's care of Patient C deviated from the standard of care in that:
1. Respondent lifted Patient C's medical gown without her permission during the course of a breast examination.
- D. Respondent provided medical care to Patient D at the office on or about May 24, 1995. Respondent's care of Patient D deviated from the standard of care in that:
1. Respondent made inappropriate comments to Patient D during a breast examination, including that he had seen women older than Patient D with better breasts.

SPECIFICATIONS

FIRST SPECIFICATION

WILLFULLY INTIMIDATING A PATIENT PHYSICALLY AND/OR VERBALLY

Respondent is charged with willfully intimidating a patient physically and/or verbally within the meaning of New

York Education Law Section 6530(31) in that Petitioner charges:

1. The facts in paragraphs A and A.1, B and B.1, C and C.1 and/or D and D.1.

SECOND SPECIFICATION

UNAUTHORIZED EXAMINATION

Respondent is charged with performing professional services which were not authorized by the patient within the meaning of New York Education Law Section 6530 (26) in that Petitioner charges:

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

DATED: *December 13, 2000*
Albany, New York

Redacted Signature

PETER D. VAN BUREN
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. Respondent acknowledges that if s/he commits professional misconduct as enumerated in New York State Education Law §6530 or §6531, those acts shall be deemed to be a violation of probation and that an action may be taken against Respondent's license pursuant to New York State Public Health Law §230(19).
2. Respondent shall submit written notification to the New York State Department of Health addressed to the Director, Office of Professional Medical Conduct (OPMC), Hedley Park Place, 433 River Street Suite 303, Troy, New York 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. Respondent shall have a chaperone present for every breast and/or pelvic examination of a female patient.

9. Respondent shall enroll in and successfully complete a continuing medical education course in performance of breast examinations within 6 months of the effective date of the Order herein, such course subject to the approval of the Director of the Office of Professional Medical Conduct .
10. 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.

EXHIBIT C
CHAPERONE

1. Respondent shall, in the course of practicing medicine in New York State, examine and/ treat any female patient for breast and/or pelvic examinations only in the presence of a chaperone. The chaperone shall be a female licensed or registered health care professional or other health care worker, shall not be a family member or personal friend, which could pose a conflict with the chaperone's responsibilities. The chaperone shall be proposed by Respondent and subject to the written the approval of the Director of OPMC.
2. Prior to the approval of any individual as chaperone, Respondent shall cause the proposed chaperone to execute and submit to the Director of OPMC an acknowledgment of her agreement to undertake all of the responsibilities of the role of chaperone. Said acknowledgment shall be made upon a form provided by and acceptable to the Director. Respondent shall provide the chaperone with a copy of the Order and all of its attachments and shall, without fail, cause the approved chaperone to:
 - a. Report quarterly to OPMC regarding her chaperoning of Respondent's practice.
 - b. Report within 24 hours any failure of Respondent to comply with the Order, including, but not limited to, any failure by Respondent to have the chaperone present when required, any sexually suggestive or otherwise inappropriate comments by Respondent to any patient, and any actions of a sexual nature by Respondent in the presence of any patient.
 - c. Confirm the chaperone's presence at each and every examination and treatment of a female patient involving breast and/or pelvic examinations by Respondent, by placing her name, title and date in the patient record for each and every visit, and by maintaining a separate log, kept in her own possession, listing the patient name and date of visit for each and every patient visit chaperoned.
 - d. Provide copies of the log described in paragraph c, above, to OPMC at least quarterly and also immediately upon the Director's request.

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

IN THE MATTER
OF
LEONARD BIBERMAN, M.D.

CONSENT
ORDER

Upon the proposed agreement of LEONARD BIBERMAN, 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.

Redacted Signature

DATED: 12/21/00

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