



New York State Board for Professional Medical Conduct

Corning Tower • Empire State Plaza • Albany, NY 12237 • (518) 474-8357

Barbara A. DeBuono, M.D., M.P.H.
Commissioner of Health

Charles J. Vacanti, M.D.
Chair

November 27, 1996

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Mark Moshe Kesten, M.D.
823 Park Avenue
New York, New York 10028

RE: License No. 125121

Dear Dr. Kesten:

EFFECTIVE DATE DECEMBER 4, 1996

Enclosed please find Order #BPMC 96-282 of the New York State Board for Professional Medical Conduct. This Order and any penalty provided therein goes into effect upon receipt of this letter or seven (7) days after the date of this letter, whichever is earlier.

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.

Board for Professional Medical Conduct
New York State Department of Health
Empire State Plaza
Tower Building-Room 438
Albany, New York 12237-0756

Sincerely,

Charles Vacanti, M.D.
Chair
Board for Professional Medical Conduct

Enclosure

cc: Ivan M. Dochter, Esq.
1615 Northern Boulevard
Manhasset, New York 10030

David Smith, Esq.

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

IN THE MATTER
OF
MARK MOSHE KESTEN, M.D.

SURRENDER
ORDER
BPMC #96-282

Upon the Application of MARK MOSHE KESTEN, M.D. (Respondent) to Surrender his/her license as a physician in the State of New York, which application is made a part hereof, it is

ORDERED, that the application 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 take effect as of the date of the personal service of this order upon Respondent, upon receipt by Respondent of this order via certified mail, or seven days after mailing of this order via certified mail, whichever is earliest.

SO ORDERED.

DATED: 22 November 1996

Charles J. Vacanti

CHARLES J. VACANTI, M.D.
Chairperson
State Board for Professional
Medical Conduct

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

IN THE MATTER
OF
MARK MOSHE KESTEN, M.D.

APPLICATION TO
SURRENDER
LICENSE

STATE OF NEW YORK)

ss.:

COUNTY OF *Westchester*)

MARK MOSHE KESTEN, M.D., being duly sworn, deposes and says:

On or about September 15, 1975, I was licensed to practice medicine as a physician in the State of New York having been issued License No. 125121 by the New York State Education Department.

My current address is 823 Park Avenue, New York, NY 10028 , and I will advise the Director of the Office of Professional Medical Conduct of any change of my address.

I understand that I have been charged with ten 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 permission to surrender my license as a physician in the State of New York on the grounds that I do not contest the allegations set forth in the Statement of Charges, in full satisfaction thereof.

I hereby make this application to the State Board for Professional Medical Conduct and request that it be granted.

I understand that, in the event that the application 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 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 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 grants my application, an order shall be issued striking my name from the roster of physicians in the State of New York without further notice to me.

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.



MARK MOSHE KESTEN, M.D.
Respondent

Sworn to before me this

11 day of Dec, 1996


NOTARY PUBLIC

MARGARET WUEST
Notary Public, State of New York
No. 41-4807186
Qualified in Queens County
Commission Expires March 30, 1998

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

IN THE MATTER
OF
MARK MOSHE KESTEN, M.D.

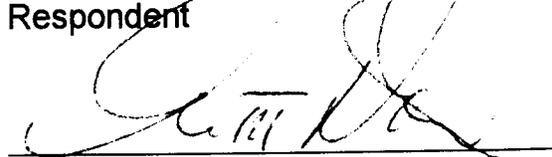
APPLICATION TO
SURRENDER
LICENSE

The undersigned agree to the attached application of the Respondent to surrender his license.

Date: 10/19, 1996


MARK MOSHE KESTEN, M.D.
Respondent

Date: Nov 19, 1996


IVAN M. DOCHTER, ESQ.
Attorney for Respondent

Date: 11/20, 1996


DAVID W. SMITH
Associate Counsel
Bureau of Professional
Medical Conduct

Date: November 21 1996

Anne Saile

ANNE F. SAILE
Director
Office of Professional Medical Conduct

Date: 22 November 1996

Charles J. Vacanti

CHARLES J. VACANTI, M.D.
Chairperson
State Board for Professional Medical Conduct

**IN THE MATTER
OF
MARK MOSHE KESTEN, M.D.**

**STATEMENT
OF
CHARGES**

MARK MOSHE KESTEN, M.D., the Respondent, was authorized to practice medicine in New York State on or about September 15, 1975, by the issuance of license number 125121 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. On or about June 20, 1996, despite the fact that Respondent did not have a good faith medical purpose to do so and that Individual A told Respondent that he sold prescription drugs on the street, Respondent knowingly and in bad faith prescribed controlled substances for Individual A including Xanax and Ambien and received from Individual A \$150.00 for such prescriptions.
- B. On or about June 20, 1996, Respondent deliberately and with intent to deceive, dictated and caused Individual A to write and enter into Respondent's record a false patient note.
- C. On or about June 20, 1996, Respondent inappropriately evaluated, treated and prescribed for Individual A and was verbally abusive to him.

EXHIBIT "A"

D. Based upon the information contained in Paragraphs A and B, supra, and further information in the possession of the Office of Professional Medical Conduct ("OPMC"), indicating that Respondent had engaged in similar conduct with individuals known to Respondent as Alexander Nieto (an alias) and Luis Jimenez (an alias), OPMC sent written requests to Respondent, certified mail, return receipt requested, thirty (30) days in advance, seeking the patient records of the three individuals listed above relevant to complaints about Respondent's alleged professional misconduct. Respondent failed to produce the records for OPMC pertaining to:

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

PRACTICING THE PROFESSION FRAUDULENTLY

Respondent is charged with committing professional misconduct as defined by N.Y. Educ. Law §6530(2)(McKinney Supp. 1996) by practicing the profession of medicine fraudulently as alleged in the facts of the following:

1. Paragraphs A and B

SECOND SPECIFICATION

GROSS NEGLIGENCE ON A PARTICULAR OCCASION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(3)(McKinney Supp. 1996) by practicing the profession with gross negligence on a particular occasion as alleged in the facts of the following:

2. Paragraph C.

THIRD THROUGH FIFTH SPECIFICATIONS
FAILING TO MAINTAIN A RECORD

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(2)(McKinney Supp. 1996) by failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient as alleged in the facts of the following:

3. Paragraphs B, D and D1.
4. Paragraphs D and D2.
5. Paragraphs D and D3.

SIXTH THROUGH EIGHTH SPECIFICATIONS
FAILURE TO RESPOND TO WRITTEN REQUESTS FOR RECORDS

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(28)(McKinney Supp. 1996) by failing to respond within 30 days to written communications from the Department of Health and to make available any relevant records pertaining to a complaint about licensee's professional misconduct as alleged in the facts of the following:

6. Paragraphs D and D1.
7. Paragraphs D and D2.
8. Paragraphs D and D3.

NINTH SPECIFICATION
WILLFULLY ABUSING A PATIENT

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(31)(McKinney Supp. 1996) by willfully verbally abusing and/or intimidating a patient as alleged in the facts of:

9. Paragraph C.

TENTH SPECIFICATION
MORAL UNFITNESS

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(20)(McKinney Supp. 1996) by conduct in the practice of medicine which evidences moral unfitness to practice as alleged in the facts of the following:

10. Paragraphs A, B, C, and D.

DATED: November , 1996
New York, New York

ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct