



New York State Board for Professional Medical Conduct

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

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

Patrick F. Carone, M.D., M.P.H.
Chair
Ansel R. Marks, M.D., J.D.
Executive Secretary

August 20, 1997

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Marvin Shuster, M.D.
244 Bal Bay Drive
Bal Harbour, Florida 33154

RE: License No. 083372

Dear Dr. Shuster:

Enclosed please find Order #BPMC 97-202 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
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.
Nixon, Hargrave, Devans & Doyle
One Keycorp Plaza
Albany, New York 12207

Silvia Finkelstein, Esq.

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

**IN THE MATTER
OF
MARVIN M. SHUSTER, M.D.**

**CONSENT
ORDER**

BPMC #97-202

Upon the proposed agreement of MARVIN M. SHUSTER, 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 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 by certified mail, whichever is earliest.

SO ORDERED.

DATED: August 14, 1997


PATRICK F. CARONE, M.D., M.P.H.
Chairperson
State Board for Professional
Medical Conduct

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

**IN THE MATTER
OF
MARVIN M. SHUSTER, M.D.**

**CONSENT
AGREEMENT
AND
ORDER**

STATE OF FLORIDA)
) ss.:
COUNTY OF)

MARVIN M. SHUSTER, M.D., being duly sworn, deposes and says:

That on or about October 20, 1959, I was licensed to practice as a physician in the State of New York, having been issued License No. 083372 by the New York State Education Department.

My current address is 244 Bal Bay Drive, Bal Harbour, Florida 33154, 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 one specification of professional misconduct.

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

I agree not to contest the specification, in full satisfaction of the charges against me. I hereby agree to the penalty that I shall be placed on probation for a period of two years, subject to the terms, conditions, and tolling provisions set forth in Exhibit "B" (Terms of Probation). I further agree that the Consent Order for which I hereby apply shall impose a condition that, except during periods of actual suspension, I maintain current the registration of my 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

continuing until the full term of the Order has run, and until any associated period of probation and all probation terms have been completed and satisfied. I hereby stipulate that any failure by me to comply with such condition shall constitute misconduct as defined by New York State Education Law §6530(29)(McKinney Supp 1997).

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.

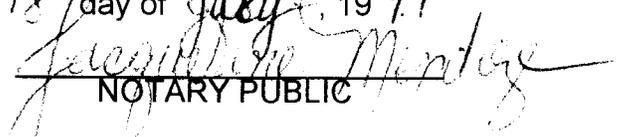
I am making this Application of my own free will and accord and not under duress, compulsion or restraint of any kind or manner. In consideration of the value to me of the acceptance by the Board of this Application, allowing me to resolve this matter without the various risks and burdens of a hearing 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.



MARVIN M. SHUSTER, M.D.
RESPONDENT

Sworn to before me this

18 day of July, 1997



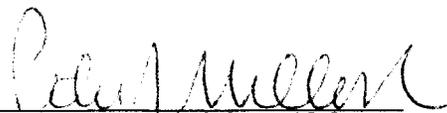
NOTARY PUBLIC



JACQUELINE MENDOZA
COMMISSION # CC 315557
EXPIRES SEP 14, 1997
BONDED THRU
ATLANTIC BONDING CO., INC.

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

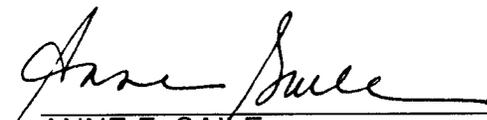
DATE: July 23, 1997


PETER J. MILLOCK, ESQ.
Attorney for Respondent

DATE: 8/5/97


SILVIA P. FINKELSTEIN
Associate Counsel
Bureau of Professional Medical Conduct

DATE: 8/12/97


ANNE F. SALE
Director
Office of Professional Medical Conduct

IN THE MATTER
OF
MARVIN M. SHUSTER, M.D.

STATEMENT
OF
CHARGES

MARVIN M. SHUSTER, M.D., the Respondent, was authorized to practice medicine in New York State on or about October 20, 1959, by the issuance of license number 083372 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. On or about June 8, 1997, the Board of Medicine of the State of Florida (Florida Board) issued an order approving and adopting a consent agreement entered into by Respondent and the Florida Board, to resolve an Administrative Complaint issued against Respondent alleging violations of Florida Statutes § 458.331(1)(j) (exercising influence within a patient-physician relationship for purposes of engaging a patient in sexual activity) and §458.329 (sexual misconduct in the practice of medicine) predicated upon Respondent's care and treatment of patient F.S., patient V.M., and patient M.M. In the consent entered into with the Florida Board, Respondent neither admits nor denies the allegations of fact contained in the Administrative Complaint. The penalty agreed upon by Respondent and the Florida Board consisted of a fine in the sum of \$3,000 dollars, evaluation of Respondent by the Physician's Recovery Network, and the requirement that Respondent shall not treat any female patients without a female clinical health care practitioner being present in the examination room. If committed in New York, the conduct

alleged in the Florida Board's complaint would constitute professional misconduct under N.Y. Educ. Law §§6530 (willfully harassing, abusing, or intimidating a patient either physically or mentally) and/or 6530(20) (moral unfitness).

SPECIFICATION OF CHARGES

SPECIFICATION **HAVING HAD DISCIPLINARY ACTION TAKEN**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(9)(d)(McKinney Supp. 1997) by having his or her license to practice medicine revoked, suspended or having other disciplinary action taken, or having his or her application for a license refused, revoked or suspended or having voluntarily or otherwise surrendered his or her license after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation, suspension or other disciplinary action involving the license or refusal, revocation or suspension of an application for a license or the surrender of the license would, if committed in New York state, constitute professional misconduct under the laws of New York state, as alleged in the facts of the following:

1. Paragraph A.

DATED: May 2, 1997
New York, New York



ROY NEMERSON
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.
2. Respondent shall submit written notification to the New York State Department of Health addressed to the Director of the Office of Professional Medical Conduct, New York State Department of Health, 433 River Street, Suite 303, Troy, NY 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 shall, in the course of practicing medicine in New York State, examine and/ treat any female patient 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, personal friend, or be in a professional relationship with Respondent 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.
7. 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 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.
8. 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.
 9. 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.
 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.