

NEW YORK
state department of
HEALTH

Public

Nirav R. Shah, M.D., M.P.H.
Commissioner

Sue Kelly
Executive Deputy Commissioner

June 28, 2012

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Marshall J. Hubsher, M.D.
REDACTED

Re: License No. 129123

Dear Dr. Hubsher:

Enclosed is a copy of the New York State Board for Professional Medical Conduct (BPMC) Order No. 12-131. This order and any penalty provided therein goes into effect June 28, 2012.

If the penalty imposed by this Order is a surrender, revocation or suspension, you are required to deliver your license and registration within five (5) days of receipt of this Order to: Office of Professional Medical Conduct, c/o Physician Monitoring Unit, New York State Department of Health, Riverview Center, Suite 355, 150 Broadway, Albany, NY 12204.

If your license is framed, please remove it from the frame and only send the parchment paper that your name and license number is printed on. Our office is unable to store framed licenses.

If the document(s) are lost, misplaced or destroyed, you are required to submit to this office an affidavit to that effect. Enclosed for your convenience is an affidavit. Please complete and sign the affidavit before a notary public and return it to the Office of Professional Medical Conduct.

Please direct any questions to: Board for Professional Medical Conduct, 90 Church Street, 4th Floor, New York, NY 10007-2919, telephone # 212-417-4445.

Sincerely,

REDACTED

Katherine A. Hawkins, M.D., J.D.
Executive Secretary
Board for Professional Medical Conduct

Enclosure

cc: Alexander G. Bateman, Jr., Esq.
Ruskin, Moscou, Evans & Faltischeck, P.C.
East Tower, 15th Floor 190 EAB Plaza
Uniondale, NY 11556-0190

IN THE MATTER
OF
MARSHALL HUBSHER, M.D.

SURRENDER
ORDER

Upon the application of MARSHALL HUBSHER, M.D. to Surrender 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 effective close of business, July 31, 2012,

Respondent's name 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.

DATE: 6/28/2012

REDACTED

KENDRICK A. SEARS, M.D.

Chair

State Board for Professional Medical Conduct

IN THE MATTER
OF
MARSHALL HUBSHER, M.D.

SURRENDER &
CONSENT
AGREEMENT
AND
ORDER

MARSHALL HUBSHER, M.D., represents that all of the following statements are true:

That on or about April, 2006, I was licensed to practice as a physician in the State of New York, and issued License No. 129123 by the New York State Education Department.

My current address is _____ REDACTED _____, 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 (Board) has charged me with one or more specifications of professional misconduct, as set forth in a Statement of Charges, marked as Exhibit "A", 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, with said surrender to become effective close of business, July 31, 2012, on the grounds that I that I cannot successfully defend against at least one of the allegations, in full satisfaction of the charges against me. Effective immediately upon the issuance of this Order, and continuing until the effective date of my surrender of license, pursuant to

N.Y. Pub. Health Law § 230-a(9), I shall be placed on probation, subject to the terms set forth in attached Exhibit "B."

I ask the Board to accept my Surrender of License, and I agree to be bound by all of the terms set forth in attached Exhibit "C".

I understand that, if the Board does not accept my Surrender of License, none of its terms shall bind me or constitute an admission of any of the acts of misconduct alleged; 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 my Surrender of 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 Surrender Order, this agreement, and all attached exhibits shall be public documents, with only patient identities, if any, redacted. As public documents, they may be posted on the Department's website(s). OPMC shall report this action to the National Practitioner Data Bank and the Federation of State Medical Boards, and any other entities that the Director of OPMC shall deem appropriate.

I ask the Board to accept this Surrender of License, which I submit 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.

I understand and agree that the attorney for the Department, the Director of the Office of Professional Medical Conduct and the Chair of the State Board for Professional Medical Conduct each retain complete discretion either to enter into the proposed agreement and 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.

DATE

6/26/12

REDACTED

MARSHALL HUBSHER, M.D.
RESPONDENT

The undersigned agree to Respondent's attached Consent Agreement and to its proposed penalty, terms and conditions.

DATE: 6/26/12

REDACTED

ALEXANDER G. BATEMAN, Jr. LGA
Attorney for Respondent

DATE: 6/26/12

REDACTED

JEAN BRESLER, Associate Counsel
Bureau of Professional Medical Conduct

DATE: June 27, 2012

REDACTED

KEITH W. SERVIS
Director
Office of Professional Medical Conduct

EXHIBIT "A"

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

IN THE MATTER

OF

MARSHALL HUBSHER, MD

STATEMENT
OF
CHARGES

MARSHALL HUBSHER M.D., the Respondent, was authorized to practice medicine in New York State on or about October 22, 1976, by the issuance of license number 1903282 by the New York State Education Department. That license was revoked by the State Board for Professional Medical Conduct and the Administrative Review Board effective May 16, 1995. Subsequently, the Respondent, was re authorized to practice medicine in New York State on or about April, 2006 by issuance of license number 129123 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about and between December 13, 2008 and August 2009 Respondent, treated Patient A, a 24 year old psychiatric patient for anxiety, depression, OCD, ADD and other psychiatric illnesses at his private office in Roslyn, New York (Patients A through E are identified in the annexed Appendix). On several occasions during the course of treating Patient A, Patient A's mother advised Respondent that Patient A had a history of alcohol abuse, eating disorders and suicide attempt.

1. Respondent submitted insurance claim forms to GHI Insurance Company (GHI) in which he falsely entered his own home address when the form requested the patient's home address. Respondent intended to deceive with respect to four claim forms submitted on or about January 5, 2009 and two claim forms March 1, 2009.

2. Respondent submitted insurance claim forms to GHI in which he falsely represented that he had provided treatment to Patient A when he knew that he had in fact not provided such treatment. Respondent intended to deceive with respect to claims for services purportedly performed on one or more of the dates set forth below:

- a. August 11, 2008
- b. August 18, 2008
- c. August 25, 2008
- d. August 29, 2008
- e. September 3, 2008
- f. September 10, 2008
- g. September 2, 2008
- h. September 6, 2008
- i. September 9, 2008
- j. September 13, 2008
- k. September 16, 2008
- l. September 17, 2008

- m. September 20, 2008
- n. September 23, 2008
- o. September 24, 2008
- p. September 27, 2008
- q. September 29, 2008
- r. September 30, 2008
- s. October 2, 2008
- t. October 6, 2008
- u. October 9, 2008
- v. October 13, 2008
- w. October 16, 2008
- x. October 20, 2008
- y. October 23, 2008
- z. October 27, 2008
- aa. October 30, 2008
- bb. November 3, 2008
- cc. November 6, 2008
- dd. November 10, 2008
- ee. November 13, 2008
- ff. November 17, 2008
- gg. November 20, 2008
- hh. November 24 2008.

3. Throughout the period beginning December 2008 through September 2009, Respondent's care and treatment of Patient A deviated from acceptable psychiatric practice and /or violated professional boundaries in that he engaged in the following:
- a. Respondent asked Patient A to photograph him for a magazine
 - b. Respondent left voice mails on Patient A's phone advising her that unless she complied with his request to write letters to OPMC or to him for OPMC he would release damaging information (including allegations of illegal activity) about Patient A and her family.
 - c. On or about June 5, 2009 Respondent sent Patient A an email threatening to release damaging information about her mother and father, gleaned during treatment unless she comply with his request to provide him with a "note" preventing him from releasing her records to OPMC,
 - d. Respondent requested that she write letters to OPMC in his behalf and directed and or dictated the content of these letters
 - e. Respondent requested that Patient A provide him with sexually explicit videos of her.
 - f. Respondent failed to obtain or record sufficient history related to her psychiatric disorders and failed to rule out substance induced anxiety disorder.
 - g. Respondent failed to follow-up on Patient A's history of substance abuse, eating disorders and suicide attempts or record that he did so.

4. Respondent failed to maintain a medical record for Patient A in accordance with accepted medical standards and in a manner which accurately reflects his care and treatment of the patient.

B. Respondent submitted insurance claim forms to GHI in which he falsely represented that he had provided treatment to Patient A's mother when he knew that he had in fact not provided such treatment. Respondent intended to deceive with respect to claims for services purportedly performed on the dates set forth below:

1. May 2, 2008
2. May 6, 2008
3. May 9, 2008
4. May 12, 2008
5. May 15, 2008
6. May 19, 2008
7. May 22, 2008
8. May 28, 2008
9. May 31, 2008
10. June 3, 2008
11. June 6, 2008
12. June 10, 2008

13. Respondent submitted insurance claim forms to GHI in which he falsely entered his own home address when the form requested the patient's home

address. Respondent intended to deceive with respect to claims submitted on or about December 31, 2008.

C. Respondent treated Patient B a 21 year old psychiatric patient for major depression, anxiety, suicidal thoughts and other psychiatric illnesses, at his private office in Roslyn New York on or about and between October 2007 through August 2008.

1. Respondent submitted insurance claim forms to GHI in which he falsely represented that he had provided office treatment to Patient B when in fact Respondent knew that he did not provide such treatment. Respondent submitted false claims to GHI for treatment on multiple dates between January 2008 through August 2008 to GHI. Respondent intended to deceive GHI with respect to claims for services purportedly rendered on multiple dates between January 2008 and August 2008.

2. Respondent knowingly, willfully and with the intent to deceive created a medical record for Patient B which did not accurately reflect the care and treatment rendered to the patient and submitted this medical record to the Office of Professional Medical Conduct.

3. Respondent submitted insurance claim forms to GHI in which he falsely entered his own address where the form requested the patient's address. Respondent intended to deceive with respect to claims submitted on or about January 2, 2009.

4. Respondent failed to maintain a medical record for Patient B in accordance with accepted medical standards and in a manner which accurately reflects his care and treatment of the patient.

D. On or about and between May 16, 2008 through October 26, 2009 Respondent treated Patient C, a 29 year old psychiatric patient for panic disorder, dysthymia, pain , opiate dependence and other psychiatric disorders at his private office in Roslyn, New York. Respondent treated Patient D with Xanax, Valium, Doxepin and Suboxone. During the course of Respondent's treatment of Patient C Respondent was advised by Patient C's sister that Patient C suffered from a substance use disorder and that Patient C was obtaining controlled substances from other physicians.

1. Respondent's care and treatment of Patient C deviated from acceptable medical standards in that :

- a. Respondent failed to obtain or record sufficient history related to the diagnosis of panic disorder and or mood disorder including but not limited to ruling out substance induced anxiety disorder.
- b. Respondent failed to obtain or record a sufficient history related to substance use disorder
- c. Respondent inappropriately prescribed Suboxone, Xanax, and/or Valium
- d. Respondent failed to provide psychotherapy to patient C or refer him for such treatment.
- e. Respondent failed to appropriately follow-up on Patient C's substance abuse history and behavior or record that he did.

2. Respondent failed to maintain a medical record for Patient C in accordance with accepted medical standards and in a manner which accurately reflects his care and treatment of the patient.

3. Respondent knowingly, willingly and with the intent to deceive created a record for Patient C which did not accurately reflect the care and treatment rendered to the patient and submitted this medical record to the Office of Professional Medical Conduct and or State-Wide Insurance Company.

4. Respondent submitted insurance claim forms and medical records to State-Wide Insurance Company in which he falsely represented that he had provided treatment to Patient C when he knew that he had in fact not provided such treatment. Respondent intended to deceive with respect to claims for services purportedly performed on one or more of the dates set forth below:

- a. May 27, 2008
- b. May 30, 2008
- c. June 2, 2008
- d. June 5, 2008
- e. June 7, 2008
- f. June 9, 2008
- g. June 12, 2008
- h. June 16, 2008
- i. June 19, 2008
- j. June 21, 2008

k. June 25, 2008

l. June 28, 2008

E. Respondent treated Patient D a 22 year old female at his private office in Roslyn NY from on or about March 24, 2008 through on or about November 4, 2009 for multiple psychiatric disorders. Respondent prescribed Xanax, Paxil, Suboxone, Abilify, Valium and Lexipro. Respondent's medical records indicate that on April 1, 2008, March 4, 2009 and March 23, 2009 Patient E advised the Respondent that she lost or accidentally destroyed her Xanax. On each occasion Respondent provided Patient D with a prescription for Xanax. Respondent's care and treatment of Patient D deviated from acceptable medical standards in that he:

1. Inappropriately prescribed Xanax, Valium, and or Suboxone to Patient D.
2. Failed to obtain or record sufficient history related to substance use disorder.
3. Failed to obtain or record sufficient history related to diagnosis of panic disorder and or mood disorder including but not limited to ruling out substance induced anxiety disorder.
4. Failed to provide psychotherapy to patient D or refer her for such treatment or record that he did so.

SPECIFICATION OF CHARGES

FIRST THROUGH NINTH SPECIFICATIONS

FRAUDULENT PRACTICE

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

- 1.Paragraphs: A,A.1
- 2.Paragraphs: A, A.2 and any or all of its subparagraphs
- 3.Paragraphs: A,A.3.d
- 4.Paragraphs: B and any or all of its subparagraphs
- 5.Paragraph C,C.1
6. Paragraph C,C.2
7. Paragraph C,C.3
8. Paragraph D,D.3
9. Paragraph D,D.4 and any or all of its subparagraphs

TENTH THROUGH SEVENTH SPECIFICATIONS

FALSE REPORT

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(21) by willfully making or filing a false report, or failing to file a report required by law or by the department of health or the education department, as alleged in the facts of:

10. Paragraph A,A.1
11. Paragraphs: A,A.2 and any or all of its subparagraphs
- 12.Paragraphs B, and any or all of its subparagraphs

13.. Paragraph C,C.1

14. Paragraph C,C.2

15.Paragraph C,C.3

16. Paragraph D,D. 3

17. Paragraph D,D.4 and any or all of its subparagraphs

EIGHTEENTH THROUGH TWENTY-FIRST SPECIFICATIONS

FAILURE TO MAINTAIN RECORDS

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(32) by failing to maintain a record for each patient which accurately reflects the care and treatment of the patient, as alleged in the facts of:

18. Paragraph A,A.3.f,A.3.g.and or A.4

19. Paragraph C,C.4

20. Paragraph D,D.1.a, D.1.b D.1.e and or D. 2

21. Paragraph E,E.2,E.3 and or E.4

TWENTY-SECOND THROUGH TWENTY-SIXTH SPECIFICATION

MORAL UNFITNESS

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(20) by engaging in conduct in the practice of the profession of

medicine that evidences moral unfitness to practice as alleged in the facts of the following:

22. Paragraph A,A.1, A.2 and any or all of it's subparagraphs, A.3.a, A.3.b,.A.3.c, A.3.d.,A.3.e.

23.Paragraph B and any or all of its subparagraphs

24.Paragraph C, C.1, C.2., C.3.

25. Paragraph D, D.3, D.4. and any or all of its subparagraphs,

TWENTY-SIXTH SPECIFICATIONS

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:

26. Paragraph: A,A.3 and any or all of its subparagraphs, A.4,D,D.1 and any of its subparagraphs, D.2., E and any of its subparagraphs

TWENTY-SEVENTH SPECIFICATIONS

INCOMPETANCE ON MORE THEN ONE OCCASION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(5) by practicing the profession of medicine with incompetence on more than one occasion as alleged in the facts of:

27. Paragraph: A,A.3 and any or all of its subparagraphs, A.4,D,D.1 and any of its subparagraphs, D.2, E and any of its subparagraphs

TWENTY-EIGHTH THROUGH THIRTIETH SPECIFICATION

GROSS NEGLIGENCE

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(4) by practicing the profession of medicine with gross negligence on a particular occasion as alleged in the facts of the following:

1. Paragraph: A,A.3. and any or all of its subparagraphs,
2. Paragraph: D, and any or all of its subparagraphs
3. Paragraph: E, and any or all of its subparagraphs

THIRTY-FIRST THROUGH THIRTY-SECOND SPECIFICATION

WILLFUL PATIENT HARASSMENT, ABUSE, OR INTIMIDATION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(31) by willfully harassing, abusing, or intimidating a patient either physically or verbally as alleged in the facts of:

4. Paragraph: A,A.3.a,A.3.b, and or A.3.c

THIRTY-SECOND SPECIFICATIONS

EXERCISING UNDUE INFLUENCE ON A PATIENT

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(17) by exercising undue influence on a patient, as alleged in the facts of:

5. Paragraphs: A,A.3.b,A.3.c,and or A.3.d

DATE: May 17, 2012
New York, New York

REDACTED

ROY NEMERSON
Deputy Counsel
Bureau of Professional Medical Conduct

EXHIBIT "B"

Terms of Probation

- 1) Respondent's conduct shall conform to moral and professional standards of conduct and governing law. Any act of professional misconduct by Respondent as defined by N.Y. Educ. Law §§ 6530 or 6531 shall constitute a violation of probation and may subject Respondent to an action pursuant to N.Y. Pub. Health Law § 230(19).
- 2) Respondent shall provide the Director, Office of Professional Medical Conduct (OPMC), Hedley Park Place, 433 River Street Suite 1000, Troy, New York 12180-2299 with the following information, in writing, and ensure that this information is kept current: a full description of Respondent's employment and practice; all professional and residential addresses and telephone numbers within and outside New York State; and all investigations, arrests, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility. Respondent shall notify OPMC, in writing, within 30 days of any additions to or changes in the required information.
- 3) Respondent shall cooperate fully with, and respond in a timely manner to, OPMC requests to provide written periodic verification of Respondent's compliance with the terms of this Consent Order. Upon the Director of OPMC's request, Respondent shall meet in person with the Director's designee.
- 4) The Director of OPMC may review Respondent's professional performance. This review may include but shall not be limited to: a review of office records, patient records, hospital charts, and/or electronic records; and interviews with or periodic visits with Respondent and staff at practice locations or OPMC offices.
- 5) Respondent shall adhere to federal and state guidelines and professional standards of care with respect to infection control practices. Respondent shall ensure education, training and oversight of all office personnel involved in medical care, with respect to these practices.
- 6) Respondent shall maintain complete and legible medical records that accurately reflect the evaluation and treatment of patients and contain all information required by State rules and regulations concerning controlled substances.
- 7) Respondent shall comply with this Consent Order and all its terms, and shall bear all associated compliance costs. Upon receiving evidence of noncompliance with, or a violation of, these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding, and/or any other such proceeding authorized by law, against Respondent.

EXHIBIT "C"

Requirements for Closing a Medical Practice Following a Revocation, Surrender, Limitation or Suspension of a Medical License

1. Respondent shall cease the practice of medicine in compliance with the terms of this Order. Upon his surrender of license, Respondent shall not represent eligibility to practice medicine and shall refrain from providing an opinion as to professional practice or its application.
2. Within 15 days of his surrender of license, Respondent shall notify all patients that he has ceased the practice of medicine, and shall refer all patients to another licensed practicing physician for continued care, as appropriate.
3. Within 30 days of his surrender of license, Respondent shall deliver his original license to practice medicine in New York State and current biennial registration to the Office of Professional Medical Conduct (OPMC) at 433 River Street Suite 303, Troy, NY 12180-2299.
4. Respondent shall arrange for the transfer and maintenance of all patient medical records. Within 30 days of his surrender of license, Respondent shall notify OPMC of these arrangements, including the name, address, and telephone number of an appropriate contact person, acceptable to the Director of OPMC, who shall have access to these records. Original records shall be retained for patients for at least 6 years after the last date of service, and, for minors, for at least 6 years after the last date of service or 3 years after the patient reaches the age of majority, whichever time period is longer. Records shall be maintained in a safe and secure place that is reasonably accessible to former patients. The arrangements shall ensure that all patient information is kept confidential and is available only to authorized persons. When a patient or authorized representative requests a copy of the patient's medical record, or requests that the original medical record be sent to another health care provider, a copy of the record shall be provided promptly or sent to the patient at reasonable cost (not to exceed 75 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 inability to pay.
5. Within 15 days of his surrender of license, if Respondent holds a Drug Enforcement Agency (DEA) certificate, Respondent shall advise the DEA in writing of the licensure action and shall surrender Respondent's DEA controlled substance certificate, privileges, and any unused DEA #222 U.S. Official Order Forms Schedules 1 and 2, to the DEA.
6. Within 15 days of his surrender of license, Respondent shall return any unused New York State official prescription forms to the Bureau of Narcotic Enforcement of the New

York State Department of Health. If no other licensee is providing services at Respondent's practice location, Respondent shall dispose of all medications.

7. Within 15 days of his surrender of license, Respondent shall remove from the public domain any representation that Respondent is eligible to practice medicine, including all related signs, advertisements, professional listings whether in telephone directories or otherwise, professional stationery or billings. Respondent shall not share, occupy or use office space in which another licensee provides health care services.

8. Respondent shall not charge, receive or share any fee or distribution of dividends for professional services rendered (by Respondent or others) while barred from practicing medicine. Respondent may receive compensation for the reasonable value of services lawfully rendered, and disbursements incurred on a patient's behalf, before his surrender of license.

9. If Respondent is a shareholder in any professional service corporation organized to engage in the practice of medicine and Respondent's license is revoked, surrendered or suspended for 6 months or more pursuant to this Consent Agreement and Surrender Order, Respondent shall, within 90 days of his surrender of license, divest all financial interest in the professional services corporation in accordance with New York Business Corporation Law. If Respondent is the sole shareholder in a professional services corporation, the corporation must be dissolved or sold within 90 days of his surrender of license.

10. Failure to comply with the above directives may result in civil or criminal penalties. Practicing medicine when a medical license has been suspended, revoked or annulled is a Class E Felony, punishable by imprisonment for up to 4 years, under N.Y. Educ. Law § 6512. Professional misconduct may result in penalties, including revocation of the suspended license and/or fines of up to \$10,000, for each specification of misconduct, under N.Y. Pub. Health Law § 230-a.