



**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

December 19, 1997

**CERTIFIED MAIL-RETURN RECEIPT REQUESTED**

Richard Silverman, M.D.  
1619 Genesee Street  
Utica, New York 13501-4732

RE: License No. 094199

Dear Dr. Silverman:

Enclosed please find Order #BPMC 97-316 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: Alan S. Burstein, Esq.  
Scolaro, Shulman, Cohen, Lawler & Burstein, P.C.  
90 Presidential Plaza  
Corner of Townsend & Harrison Streets  
Syracuse, New York 13202

Timothy J. Mahar, Esq.

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

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IN THE MATTER : CONSENT  
OF : AGREEMENT  
RICHARD S. SILVERMAN, M.D. : AND ORDER  
: BPMC # 97-316

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RICHARD S. SILVERMAN, M.D., says:

On or about April 21, 1965, I was licensed to practice as a physician in the State of New York, having been issued license number 094199 by the New York State Education Department.

My current address is 1619 Genesee Street, Utica, New York 13501-4732 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 eight specification(s) of professional misconduct as set forth in the Statement of Charges, annexed hereto, made a part hereof, and marked as Exhibit A.

I plead no contest to paragraphs A.1, A.2 and A.3 of the seventh specification in full satisfaction of all of the specifications charged.

I hereby agree to the following penalty:

1. A permanent limitation on my license precluding the performance of adenoidectomy and/or tonsillectomy procedures.

2. A permanent limitation on my license limiting the surgical portion of my practice to the following minor procedures: polyp removal, nasal cautery for bleeding, biopsy, endoscopy, myringotomy, foreign body removal from the nose or ear.
3. A two year probation in accordance with the terms set forth in Appendix B.
4. I shall attest to compliance with the prescribed practice restrictions by signing and submitting to the Office of Professional Medical Conduct a practice restriction declaration, as directed by the Office of Professional Medical Conduct.
5. I shall cause the administrators of all hospitals and other health care facilities or practices with which I am affiliated to submit, as directed by the Office of Professional Medical Conduct, a letter to the Director of the Office of Professional Medical Conduct or her designee, attesting to my compliance with the specified restrictions at each such location.
6. My failure to comply with any of the above practice restriction provisions will be considered a violation of this order subject to a violation proceeding or other proceeding as authorized by law.

I agree that in the event that I am charged with professional misconduct in the future, this agreement and order shall be admitted into evidence in that proceeding.

I agree that, as a condition of this Order, I will maintain current registration of my license with the New York State

Education Department, Division of Professional Licensing Services, and pay all registration fees. This condition will remain in effect except during periods of actual suspension, if any, imposed by this Order. This condition shall be in effect beginning thirty days after the effective date of this Order and will continue 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 understand that any failure by me to comply with this condition shall constitute misconduct as defined by New York State Education Law §6530(29).

I understand that, in the event that the Board does not grant this application, 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 State Board for Professional Medical Conduct grants my application, an order of the Chairperson of the Board shall be issued in accordance with same.

I make this application of my own free will and accord and not under duress, compulsion or restraint of any kind or manner.

*Richard S. Silverman MD*

RICHARD S. SILVERMAN, M.D.  
RESPONDENT

Subscribed before me this  
*8<sup>th</sup>* day of *December*, 1997.

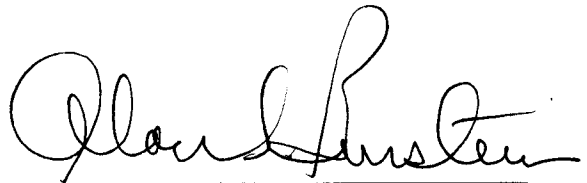
*Alan S. Burstein*

NOTARY PUBLIC

ALAN S. BURSTEIN  
NOTARY PUBLIC, STATE OF NEW YORK  
NO. 6544040  
QUALIFIED IN ONONDAGA COUNTY  
COMMISSION EXPIRES APRIL 30, 1998


AGREED TO:

DATE: December 8, 1997



ALAN S. BURSTEIN, ESQ.  
of counsel to Scolaro,  
Shulman, Cohen, Lawler &  
Burstein, P.C.  
Attorneys for Respondent

DATE: December 15, 1997



TIMOTHY J. MAHAR  
ASSOCIATE COUNSEL  
Bureau of Professional  
Medical Conduct

DATE: December 15, 1997



ANNE F. SAILE  
DIRECTOR  
Office of Professional  
Medical Conduct

ORDER

Upon the proposed agreement of RICHARD S. SILVERMAN, M.D. (Respondent) for Consent Order, which proposed agreement is made a part hereof, it is AGREED TO and

ORDERED, that the proposed agreement and the provisions thereof are hereby adopted; 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.

DATED: 12/16/97

Patrick F. Carone, M.D.

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

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

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IN THE MATTER : STATEMENT  
OF : OF  
RICHARD SILVERMAN, M.D. : CHARGES

-----X

RICHARD SILVERMAN, M.D., the Respondent, was authorized to practice medicine in New York State on April 21, 1965 by the issuance of license number 094199 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A. Respondent provided medical care to Patient A (all patients are identified in the attached Appendix), a four year old male, at his office, at Faxton Children's Hospital, Utica, New York and at St. Luke's Hospital, New Hartford, New York, during the period of approximately January 17, 1990 through approximately February 15, 1990. Respondent performed an adenotonsillectomy on Patient A at Faxton Children's Hospital on or about January 31, 1990. Patient A died on or about February 15, 1990. Respondent's care of Patient A failed to meet acceptable standards of medical care, in that;

1. Respondent failed to use appropriate surgical techniques during Patient A's adenotonsillectomy including but not limited to a failure to properly



remove Patient A's tonsils or adenoids and/or to use adequate hemostatic techniques.

2. Respondent failed to adequately monitor Patient A following his adenotonsillectomy.
3. Respondent failed to order appropriate laboratory tests, CT scans and/or x-rays on or about February 12, 1990 and thereafter.

B. Respondent, during the period of approximately June 8, 1989 through approximately July 3, 1989, provided medical care to Patient B, an approximately 11 year old female, at Faxton-Children's Hospital. Respondent performed an adenotonsillectomy on Patient B at Faxton Children's Hospital on or about June 8, 1989. Respondent's care of Patient B failed to meet acceptable standards of medical care, in that;

1. Respondent failed to use appropriate surgical techniques during Patient B's adenotonsillectomy including but not limited to a failure to properly remove Patient B's tonsils or adenoids and/or to use adequate hemostatic techniques.
2. Respondent, on or about June 16, 1989, failed to adequately treat Patient B's post adenotonsillectomy bleed.

C. Respondent, during the period of approximately April 6, 1989 through approximately April 14, 1989, provided medical care to Patient C, a three year old male, at Faxton-Children's Hospital. Respondent performed an adenotonsillectomy upon Patient C at Faxton Children's Hospital on or about April 6, 1989. Respondent's care of Patient C failed to meet acceptable standards of medical care, in that;

1. Respondent, during Patient C's adenotonsillectomy, failed to use appropriate surgical techniques including but not limited to a failure to properly remove Patient C's tonsils or adenoids and/or to use adequate hemostatic techniques.

**FIRST THROUGH THIRD SPECIFICATIONS**

**GROSS NEGLIGENCE**

Respondent is charged with professional misconduct under N.Y. Educ. Law §6530 (4) (McKinney Supp. 1997) by reason of his having practiced the profession with gross negligence on a particular occasion in that the Petitioner charges the following:

1. The facts in paragraphs A and A.1, A and A.2 and/or A and A.3.
2. The facts in paragraphs B and B.1 and/or B and B.2.
3. The facts in paragraphs C and C.1.

**FOURTH THROUGH SIXTH SPECIFICATIONS**

**GROSS INCOMPETENCE**

Respondent is charged with professional misconduct under N.Y. Educ. Law §6530 (6) (McKinney Supp. 1997) by reason of his having practiced the profession with gross incompetence in that the Petitioner charges the following:

4. The facts in paragraphs A and A.1, A and A.2 and/or A and A.3.
5. The facts in paragraphs B and B.1 and/or B and B.2.
6. The facts in paragraphs C and C.1.

**SEVENTH SPECIFICATION**

**NEGLIGENCE ON MORE THAN ONE OCCASION**

Respondent is charged with professional misconduct under N.Y. Educ. Law §6530 (3) (McKinney Supp. 1997) by reason of his having practiced the profession with negligence on more than one occasion in that the Petitioner charges at least two of the following:

7. The facts in paragraphs A and A.1, A and A.2, A and A.3, B and B.1, B and B.2 and/or C and C.1.

EIGHTH SPECIFICATION

INCOMPETENCE ON MORE THAN ONE OCCASION

Respondent is charged with professional misconduct under N.Y. Educ. Law §6530 (5) (McKinney Supp. 1997) by reason of his having practiced the profession with incompetence on more than one occasion in that the Petitioner charges at least two of the following:

8. The facts in paragraphs A and A.1, A and A.2, A and A.3, B and B.1, B and B.2 and/or C and C.1.

DATED: \_\_\_\_\_, 1997  
Albany, New York

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PETER D. VAN BUREN  
Deputy Counsel  
Bureau of Professional  
Medical Conduct

EXHIBIT "B"

TERMS OF PROBATION

1. Respondent shall conduct himself in all ways in a manner befitting his professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his profession;
2. Respondent shall submit written notification to the New York State Department of Health (NYSDOH), addressed to the Director, Office of Professional Medical Conduct (OPMC), New York State Department of Health, Hedley Park Place, 4th Floor, 433 River Street, 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 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.
7. Respondent shall make available for review by OPMC upon request, and/or in OPMC's discretion, by a physician proposed by Respondent and approved in writing, by the Director of OPMC, complete copies of any and all medical office records selected by OPMC. Respondent shall fully cooperate in the review process.
8. Any deviation from accepted medical practice identified during any of the reviews will be discussed with the Respondent. Any pattern of substandard care identified during the probation period may result in an independent medical review and could lead to a probation violation and/or additional investigation or charges.
9. Respondent shall comply with all terms, conditions, restrictions, limitations and penalties to which he 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.