



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.
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NYS Department of Health

Dennis P. Whalen
Executive Deputy Commissioner
NYS Department of Health

Dennis J. Graziano, Director
Office of Professional Medical Conduct

Kendrick A. Sears, M.D.
Chairman

Michael A. Gonzalez, R.P.A.
Vice Chair

Ansel R. Marks, M.D., J.D.
Executive Secretary

PUBLIC

April 14, 2005

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Steven Herman, M.D.
148 East Avenue
Norwalk, CT 06851

Re: License No. 099112

Dear Dr. Herman:

Enclosed is a copy of Order #BPMC 05-72 of the New York State Board for Professional Medical Conduct. This order and any penalty provided therein goes into effect April 21, 2005.

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 the 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: Laurie T. Cohen, Esq.
Wilson, Elser, Moskowitz, Edelman & Dicker, LLP
One Steuben Place
Albany, NY 12207

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

**IN THE MATTER
OF
STEVEN HERMAN, M.D.**

**SURRENDER
ORDER**
BPMC No. 05-72

Upon the application of (Respondent) STEVEN HERMAN, M.D. to Surrender his 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 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.

DATED: 4-13-2005


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

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

**IN THE MATTER
OF
STEVEN HERMAN, M.D.**

**SURRENDER
of
LICENSE**

STEVEN HERMAN, M.D., representing that all of the following statements are true, deposes and says:

That on or about July 6, 1967, I was licensed to practice as a physician in the State of New York, and issued License No. 099112 by the New York State Education Department.

My current address is 148 East Avenue, Norwalk, CT, 06851, 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 has charged me with six specifications of professional misconduct.

A copy of the Statement of Charges, marked as Exhibit "A", is 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 on the grounds that I cannot successfully defend against at least one of the acts of misconduct alleged against me, in full satisfaction of the charges against me.

I ask the Board to accept the Surrender of my License.

I understand that if the Board does not accept this Surrender, none of its terms shall bind me or constitute an admission of any of the acts of alleged misconduct; 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 the Surrender of my 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 Order, this agreement, and all attached Exhibits shall be public documents, with only patient identities, if any, redacted.

I ask the Board to accept this Surrender of License 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.

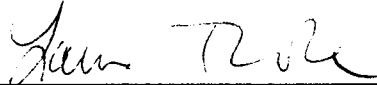
DATED 3/22/05



STEVEN HERMAN, M.D.
RESPONDENT

The undersigned agree to Respondent's attached Surrender of License and to its proposed penalty, terms and conditions.

DATE: 2-14-05


LAURIE T. COHEN, ESQ.
Attorney for Respondent

DATE: 4/5/05


DIANNE ABELOFF
Associate Counsel
Bureau of Professional Medical Conduct

DATE: April 12, 2005


DENNIS J. GRAZIANO
Director
Office of Professional Medical Conduct

EXHIBIT "B"

GUIDELINES FOR CLOSING A MEDICAL PRACTICE FOLLOWING A REVOCATION, SURRENDER OR SUSPENSION (of 6 months or more) OF A MEDICAL LICENSE

1. Respondent shall immediately cease the practice of medicine in compliance with the terms of the Surrender Order. Respondent shall not represent himself or herself as eligible to practice medicine and shall refrain from providing an opinion as to professional practice or its application.
2. Within fifteen (15) days of the Surrender Order's effective date, Respondent shall notify all patients that he or she has ceased the practice of medicine, and shall refer all patients to another licensed practicing physician for their continued care, as appropriate.
3. Within thirty (30) days of the Surrender Order's effective date, Respondent shall have his or her original license to practice medicine in New York State and current biennial registration delivered 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 thirty (30) days of the Surrender Order's effective date, 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 six (6) years after the last date of service, and, for minors, at least six (6) years after the last date of service or three (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 promptly provided or sent at reasonable cost to the patient (not to exceed seventy-five 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 fifteen (15) days of the Surrender Order's effective date, if Respondent holds a Drug Enforcement Agency (DEA) certificate, Respondent shall advise the DEA in writing of the licensure action and shall surrender his or her DEA controlled substance certificate, privileges, and any used DEA #222 U.S. Official Order Forms Schedules 1 and 2, to the DEA.
6. Within fifteen (15) days of the Surrender Order's effective date, 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. Respondent shall have all prescription pads bearing Respondent's name destroyed. If no other licensee is providing services at Respondent's practice location, Respondent shall dispose of all medications.

7. Within fifteen (15) days of the Surrender Order's effective date, 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 himself 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, prior to the Surrender Order's effective date.
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 six (6) months or more pursuant to this Order, Respondent shall, within ninety (90) days of the Order's effective date, divest himself/herself of all financial interest in such 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 ninety (90) days of the Order's effective date.
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 four (4) years, under Section 6512 of the Education Law. 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 Section 230-a of the Public Health Law.

EXHIBIT "A"

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

IN THE MATTER
OF
STEVEN HERMAN, M.D.

STATEMENT
OF
CHARGES

STEVEN HERMAN, M.D., the Respondent, was authorized to practice medicine in New York State on or about July 6, 1967, by the issuance of license number 099112 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. On or about September 21, 2004, the Connecticut Medical Examining Board found that Respondent acted negligently when he performed major abdominal surgery in his office without adequate information, staffing, or documentation. The Board issued a reprimand to Respondent's license to practice medicine; his license was placed on probation for two years and Respondent was fined \$10,000.
- B. Between 1994 and 1998, Respondent performed surgical procedures on Patients A, B, C, and D (identified in Appendix "A") at his office, 800B Fifth Avenue, New York, N.Y. Respondent inappropriately performed those procedures in that:
1. Inadequate informed consent was obtained; and/or
 2. Inadequate pre-operative evaluation was performed; and/or
 3. The nature and/or indication for such procedures was misrepresented to the payor(s).
 - a. Respondent intended to mislead.

4. Respondent failed to maintain adequate medical records.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

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 two or more of the following

1. Paragraphs A, B, B1, B2, and/or B4.

SECOND - FIFTH 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 Paragraphs B and B3 with regard to:

2. Patient A
3. Patient B
4. Patient C
5. Patient D

SIXTH SPECIFICATION

HAVING BEEN FOUND GUILTY OF

PROFESSIONAL MISCONDUCT

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(9)(b) by having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary

agency of another state where the conduct upon which the finding was based would, if committed in New York state, constitute professional misconduct under the laws of New York state (namely N.Y. Educ. Law §6530(4)) as alleged in the facts of the following:

6. Paragraph A.

DATED: February 7, 2005
New York, New York

A handwritten signature in black ink, appearing to read "Roy Nemerson", is written over a horizontal line.

ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct