



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.
Commissioner
NYS Department of Health

Dennis P. Whalen
Executive Deputy Commissioner
NYS Department of Health

Dennis J. Graziano, Director
Office of Professional Medical Conduct

William P. Dillon, M.D.
Chair

Denise M. Bolan, R.P.A.
Vice Chair

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

December 12, 2001

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Brian Scott Blaustein, D.O.
5 Sabrina Court
Dix Hills, New York 11746

RE: License No. 189503

Dear Dr. Blaustein:

Enclosed please find Order #BPMC 01-303 of the New York State Board for Professional Medical Conduct. This Order and any penalty provided therein goes into effect December 12, 2001.

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 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: Lori A. Morano, Esq.
Messrs. Geisler and Gabriele, LLP
100 Quentin Roosevelt Blvd.
Garden City, New York 11530

David W. Smith, Esq.

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

IN THE MATTER
OF
BRIAN SCOTT BLAUSTEIN, D.O.

CONSENT
ORDER

BPMC No. 01-303


Upon the proposed agreement of BRIAN SCOTT BLAUSTEIN, D.O.
(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 be effective upon issuance by the Board, which
may be accomplished by mailing, by first class mail, a copy of the Consent Order to
Respondent at the address set forth in this agreement or to Respondent's attorney by
certified mail, or upon transmission via facsimile to Respondent or Respondent's
attorney, whichever is earliest.

SO ORDERED.

DATED: 12/10/01


WILLIAM P. DILLON, 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
BRIAN SCOTT BLAUSTEIN, D.O.**

CONSENT
AGREEMENT
AND
ORDER

STATE OF NEW YORK)
COUNTY OF *NASSAU*) ss.:

BRIAN SCOTT BLAUSTEIN, D.O., (Respondent) being duly sworn,
deposes and says:

That on or about July 1, 1992, I was licensed to practice as a physician in the State of New York, having been issued License No. 189503 by the New York State Education Department.

My current address is 5 Sabrina Court, Dix Hills, New York 11746, 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 eleven (11) specifications 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 allegations contained in the First Specification therein in full satisfaction of the charges against me. I hereby agree to the following penalty:

- a. My license to practice medicine shall be suspended for a period of two years with such suspension entirely stayed.

- b. I shall be subject to a three-year probation in accordance with the terms set forth in Exhibit "B".

I further agree that the Consent Order for which I hereby apply shall impose the following conditions:

That, except during periods of actual suspension, Respondent shall maintain active registration of Respondent's 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 will continue while the licensee possesses his/her license; and

That Respondent shall fully cooperate in every respect with the Office of Professional Medical Conduct (OPMC) in its administration and enforcement of this Order and in its investigation of all matters regarding Respondent.

Respondent shall respond in a timely manner to each and every request by OPMC to provide written periodic verification of Respondent's compliance with the terms of this Order.

Respondent shall meet with a person designated by the Director of OPMC as directed. Respondent shall respond promptly and provide any and all documents and information within Respondent's control upon the direction of OPMC. This condition shall be in effect beginning upon the effective date of

the Consent Order and will continue while the licensee possesses his/her license.

I hereby stipulate that any failure by me to comply with such conditions shall constitute misconduct as defined by New York State Education Law §6530(29).

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 agree that such order shall be effective upon issuance by the Board, which may be accomplished by mailing, by first class mail, a copy of the Consent Order to me at the address set forth in this agreement, or to my attorney, or upon transmission via facsimile to me or my attorney, whichever is earliest.

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.

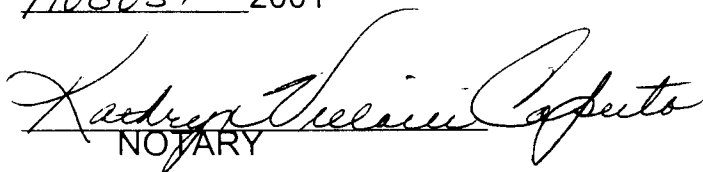
DATED 8/14/2001


BRIAN SCOTT BLAUSTEIN, D.O.
RESPONDENT

Sworn to before me

on this 14 day of


AUGUST 2001


NOTARY


KATHRYN VILLACCI CAPUTO
NOTARY PUBLIC, State of New York
No. 01CA9465405
Qualified in Nassau County
Commission Expires January 31, 2003

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

DATE: 8/23/01


LORI MORANO, ESQ.
Attorney for Respondent

DATE: 12/3/01


DAVID W. SMITH
Associate Counsel
Bureau of Professional
Medical Conduct

DATE: 12/7/01


DENNIS J. GRAZIANO
Director
Office of Professional
Medical Conduct

EXHIBIT "A"

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

**IN THE MATTER
OF
BRIAN SCOTT BLAUSTEIN, D.O.**

STATEMENT
OF
CHARGES

BRIAN SCOTT BLAUSTEIN, D.O., the Respondent, was authorized to practice medicine in New York State on or about July 1, 1992, by the issuance of license number 189503 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. Respondent treated Patient A in the Emergency Room of Long Beach Medical Center ("ER Center") on April 22nd and 23rd, 1998 for injuries sustained while playing ice-hockey.
 - 1. On the second visit, Patient A complained of worsening pain in the neck and lower arms, tingling and numbness. Nevertheless Respondent failed to follow-up or treat such conditions or note such follow-up or treatment, if any.

- B. On or about July 1, 1997, Respondent treated Patient B, 89 years old, at the ER Center for problems with her right arm.

1. Patient B presented with an elevated respiratory rate but Respondent failed to follow-up or treat such condition or note such follow-up or treatment, if any.
 2. Respondent failed to develop any follow-up care plan for Patient B or note such plan, if any.
- C. On or about August 2, 1996, Respondent treated Patient C at the Good Samaritan Hospital Emergency Room for a gunshot wound.
1. The site of the wound placed Patient C at risk for vascular injuries to various arteries. Respondent failed to obtain a surgical vascular consult or note such consult, if any.
- D. On or about July 19, 1997, Respondent treated Patient D, 87 years old, for possible pneumonia at the ER Center.
1. Respondent improperly failed to provide anti-biotic treatment for Patient D or note such treatment, if any.
 2. Respondent improperly failed to provide Patient D with a discharge diagnosis of lower lobe pneumonia or note such diagnosis, if any.

E. On or about February 2, 1999, Respondent treated Patient E for headache, nausea and vomiting at the Emergency Room of Massapequa Hospital.

1. Respondent failed to correctly diagnose the etiology of Patient E's headaches or note such diagnosis, if any.
2. Respondent inappropriately failed to do a Head CT Scan of Patient E or obtain a neurological consult or note such scan or consult, if any.

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)(McKinney Supp. 2001) 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 and A1; B and B1-2; C and C1; D and D1-2;
and/or E and E1-2.

SECOND SPECIFICATION

INCOMPETENCE ON MORE THAN ONE OCCASION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(5)(McKinney Supp. 2001) by practicing the profession of medicine with incompetence on more than one occasion as alleged in the facts of two or more of the following:

2. Paragraphs A and A1; B and B1-2; C and C1; D and D1-2;
and/or E and E1-2.

THIRD AND FOURTH SPECIFICATIONS
GROSS NEGLIGENCE

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(4)(McKinney Supp. 2001) by practicing the profession of medicine with gross negligence as alleged in the facts of the following:

3. Paragraphs A and A1.
4. Paragraphs D and D1-2.

FIFTH AND SIXTH SPECIFICATION
GROSS INCOMPETENCE

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(6)(McKinney Supp. 2001) by practicing the profession of medicine with gross incompetence as alleged in the facts of the following:

5. Paragraphs A and A1.
6. Paragraphs D and D1-2.

SEVENTH THROUGH ELEVENTH SPECIFICATIONS

FAILURE TO MAINTAIN RECORDS

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(32)(McKinney Supp. 2001) 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:

7. Paragraphs A and A1.
8. Paragraphs B and B1-2.
9. Paragraphs C and C1.
10. Paragraphs D and D1-2.
11. Paragraphs E and E1-2.

DATED: March , 2001
New York, New York

ROY NEMERSON
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 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 obtain a clinical competency evaluation performed by a program for such assessment proposed by Respondent subject to the prior written approval of the Director of OPMC. Respondent shall cause a written report of such assessment to be provided to the Director of OPMC within three months of the effective date of the Order.

7. Within six months of the clinical competency assessment, Respondent shall enroll in a course of personalized continuing medical education, which includes an assigned preceptor, preferably a physician board certified in the same specialty, to be approved, in writing, by the Director of OPMC. It shall be the responsibility of Respondent to identify such program and qualify therefor. Respondent shall remain enrolled and shall fully participate in the program for a period of not less than three months nor more than twelve months.
8. Respondent shall cause the preceptor to:
 - a. Submit reports on a quarterly basis to OPMC certifying whether Respondent is fully participating in the personalized continuing medical education program. These narrative reports shall address all aspects of Respondent's clinical practice including, but not limited to, the evaluation and treatment of patients, the preceptor's assessment of patient records selected for review, detailed case description of any case found to not meet the established standards of care and Respondent's remediation of previously identified deficiency areas.
 - b. Report immediately to the Director of OPMC if Respondent withdraws from the program and report promptly to OPMC any significant pattern of non-compliance by Respondent.
 - c. Submit to the Director of OPMC at the conclusion of the program a detailed assessment of the progress made by Respondent toward remediation of all identified deficiencies.
9. Respondent shall be solely responsible for all expenses associated with the assessment and personalized continuing medical education program.
10. 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.
11. 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.

12. For the remainder of the probation period, to commence immediately following the completion of the approved personalized continuing medical education program, Respondent shall practice medicine only when monitored by a physician, board certified in an appropriate specialty (practice monitor), proposed by Respondent and subject to the written approval of the Director of OPMC. Respondent shall cause the practice monitor to monitor Respondent's medical practice in accordance with a monitoring plan to be approved by the Director of OPMC. Such monitoring plan shall include, but not be limited to, provisions for selected medical record reviews, occasional observation of the Respondent in practice settings, required participation in hospital departmental meetings and enrollment in ongoing educational courses, if any.
13. Respondent shall cause the practice monitor to report to OPMC on a quarterly basis regarding Respondent's compliance with the approved monitoring plan. These narrative reports shall address all aspects of Respondent's clinical practice including, but not limited to, the evaluation and treatment of patients, the monitor's assessment of patient records selected for review, detailed case description of any case found to not meet established standards of care and Respondent's remediation of previously identified deficiency areas.
14. Respondent shall maintain medical malpractice insurance coverage with limits no less than \$2 million per occurrence and \$6 million per policy year, in accordance with Section 230(18)(b) of the Public Health Law. Proof of coverage shall be submitted to the Director of OPMC prior to Respondent's practice after the effective date of this Order.
15. 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.