

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

**IN THE MATTER
OF
MARK FILSTEIN, M.D.**

CONSENT
AGREEMENT
AND
ORDER
BPMC #98-190

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

MARK FILSTEIN, M.D., being duly sworn, deposes and says:

That on or about May 17, 1990, I was licensed to practice as a physician in the State of New York, having been issued License No. 182093 by the New York State Education Department.

My current address is 31 East 28th Street, New York, New York, 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 First Specification, in full satisfaction of the charges against me. I hereby agree to the following penalty:

1. A censure and reprimand;
2. A two thousand dollar fine; and
3. A two year period of probation on the terms and conditions specified in Exhibit B.

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 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 1998).

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.

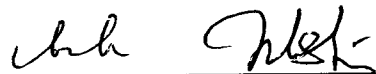
I understand that, in the event that this Application is not granted by the Board, nothing contained herein shall be binding upon me or construed to be an admission of any act of misconduct alleged or charged against me, such Application shall not be used against me in any way and shall be kept in strict 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.

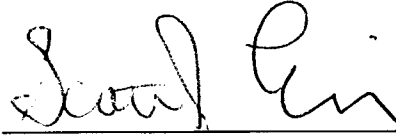
I am making this Application of my own free will and accord and not under duress, compulsion or restraint of any kind or manner. In consideration of the value to me of the acceptance by the Board of this Application, allowing me to resolve this matter without the various risks and burdens of a hearing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

AFFIRMED: 8/10/98 SE
DATED: 8/11/98


MARK FILSTEIN, M.D.
Respondent

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

8/10/98 SE.
DATE: 8/11/98



SCOTT I. EINIGER, ESQ.
Fager & Amsler
Attorneys for Respondent

DATE: 8-12-98



PAUL STEIN, ESQ.
Associate Counsel
Bureau of Professional
Medical Conduct

DATE: Aug 17, 1998



ANNE F. SAILE
Director
Office of Professional
Medical Conduct

**IN THE MATTER
OF
MARK FILSTEIN, M.D.**

CONSENT
ORDER


Upon the proposed agreement of MARK FILSTEIN, 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 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: 8/19/98


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

IN THE MATTER
OF
MARK FILSTEIN, M.D.

STATEMENT
OF
CHARGES

MARK FILSTEIN, M.D., the Respondent, was authorized to practice medicine in New York State on May 17, 1990 by the issuance of license number 182093 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. 1. On or about March 5, 1997, the Division of Occupational and Professional Licensing of the Department of Commerce of the State of Utah (hereinafter referred to as "the Division"), filed a Petition (Case No. DOPL-97-56) against Respondent, inter alia, alleging violation of various provisions of the Division of Occupational and Professional Licensing Act, Utah Code Ann. sections 58-1-101, et seq. and the Utah Medical Practice Act, Utah Code Ann. sections 58-12-26, et seq. (1994), including, but not limited to:
- a. practicing medicine as a partner in a joint venture with a person who does not hold a license to practice medicine in this state (Utah Code Ann. section 58-12-28(5)(f));
 - b. aiding and abetting an unlicensed person to engage in the practice of medicine (Utah Code Ann. Section 58-1-501(2)(a)):

- c. allowing an unlicensed person to practice medicine including performing laser surgery (Utah Code Ann. section 58-1-501(2)(g));
- d. allowing an unlicensed person to evaluate tattoos to determine whether the use of laser surgery was appropriate (Utah Code Ann. section 58-1-501(2)(g)); and
- e. failing to follow-up with laser surgery patients for complications and proper aftercare (Utah Code Ann. section 58-1-501(2)(g)).

2. On or about June 27, 1997, the Division issued a Stipulation and Order (Case No. DOPL-97-56), signed by Respondent on June 17, 1997, that stated, inter alia, "Respondent agrees that cause exists for sanctions against his license."

3. The Stipulation and Order sanctioned Respondent with:
- a. a public reprimand;
 - b. a \$2,000 fine; and
 - c. a requirement that:

In the future, should Respondent desire to practice medicine in the state of Utah, he shall notify the Division in writing within thirty (30) days of his intent to do so. Thereafter, Respondent shall meet with the Utah Board at its next scheduled meeting to discuss any concerns raised by the Board.

SPECIFICATIONS

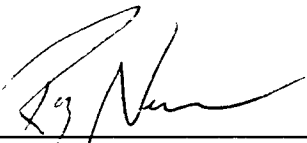
FIRST SPECIFICATION

HAVING HAD DISCIPLINARY ACTION TAKEN

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(9)(d) (McKinney Supp. 1998) 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 (namely N.Y. Educ. Law §6530(11) and/or (19) and/or (3) and/or (4) and/or (5) and/or (6) as alleged in the facts of the following:

1. Paragraphs A1-3.

Dated: New York, New York
July 20, 1998



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, upon reasonable notice.
4. Unless otherwise specified herein, the fine is payable in full within thirty (30) days of the effective date of this Order. Payments must be submitted to:

Bureau of Accounts Management
New York State Department of Health
Empire State Plaza
Corning Tower, Room 1245
Albany, New York 12237
5. 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].
6. 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.

7. 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, employment records, interviews with or periodic visits with Respondent and his staff at practice locations or OPMC offices.
8. 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.
9. Respondent shall maintain legible and complete employment records which accurately reflect the names, addresses, home telephone numbers, certifications (if any), licensure (if any), and actual duties of all persons employed in his medical practice. On a quarterly basis during the period of probation, Respondent shall provide a notarized statement to the Director of OPMC listing the names, addresses, home telephone numbers, certifications (if any), licensure (if any), and actual duties of all persons employed in his medical practice. Respondent shall report any changes in the above employment information that occur between quarterly reports in a notarized statement to the Director of OPMC within seven business days of his receipt of notice of their occurrence.
10. 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.