



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

PUBLIC

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

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

January 21, 2004

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Barry E. Greenstein, RSA-O

REDACTED

Re: License No. 000030

Dear Mr. Greenstein:

Enclosed please find Order #BPMC 04-07 of the New York State Board for Professional Medical Conduct. This order and any penalty provided therein goes into effect January 28, 2004.

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,

REDACTED

Ansel R. Marks, M.D., J.D.
Executive Secretary
Board for Professional Medical Conduct

Enclosure

cc: Anna E. Lynch, Esq.
Underberg & Kessler, LLP
1800 Chase Square
Rochester, NY 14604

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

IN THE MATTER
OF
BARRY GREENSTEIN, RSA-O

CONSENT
ORDER

BPMC No. 04-07

Upon the application of (Respondent) Barry Greenstein, RSA-O, in the attached Consent Agreement and Order, which is made a part of this Consent Order, it is

ORDERED, that the Consent Agreement, and its terms, are adopted and SO ORDERED, and it is further

ORDERED, that this Order shall be effective upon issuance by the Board, either

- by mailing of a copy of this Consent Order, either by first class mail to Respondent at the address in the attached Consent Agreement or by certified mail to Respondent's attorney, OR
- upon facsimile transmission to Respondent or Respondent's attorney, Whichever is first.

SO ORDERED.

DATED: 1/17/04

REDACTED

MICHAEL A. GONZÁLEZ, R.P.A.
Vice Chair
State Board for Professional Medical Conduct

IN THE MATTER
OF
BARRY GREENSTEIN, RSA-O

CONSENT
AGREEMENT
AND
ORDER

Barry Greenstein, RSA-O, representing that all of the following statements are true, deposes and says:

That on or about April 1, 1987, I was issued registration No. 0000030-1 to practice as a Specialist Assistant - Orthopaedics (RSA-O) in the State of New York, 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 has charged me with forty-two specifications of professional misconduct.

A copy of the Statement of Charges, marked as Exhibit "A", is attached to and part of this Consent Agreement.

I admit guilt to the first, third, fifth, eighth, thirty-third, thirty-fourth and thirty-sixth specifications, in full satisfaction of the charges against me, and agree to the following penalty:

One year suspension of my registration as a RSA-O, stayed in its entirety, conditional on my full compliance with the terms of Probation for a period of three years.

Further, I will only use the initials RSA-O after my name. I will not

use OPA-C after my name. I will not refer to myself or allow myself to be referred to under any circumstances as a Physician Assistant, a PA or an RPA unless I am registered and licensed as a Physician Assistant by the New York State Education Department.

I further agree that the Consent Order shall impose the following conditions:

That Respondent shall maintain current registration of licensure with the New York State Education Department Division of Professional Licensing Services (except during periods of actual suspension), and shall pay all registration fees. This condition shall take effect thirty (30) days after the Consent Order's effective date and will continue so long as Respondent remains licensed in New York State; and

That Respondent shall cooperate fully with the Office of Professional Medical Conduct (OPMC) in its administration and enforcement of this Order and in its investigations of matters concerning Respondent. Respondent shall respond in a timely manner to all OPMC requests for written periodic verification of Respondent's compliance with this Order. Respondent shall meet with a person designated by the Director of OPMC, as directed. Respondent shall respond promptly and provide all documents and information within Respondent's control, as directed. This condition shall take effect upon the Board's issuance of the Consent Order and will

continue so long as Respondent remains licensed in New York State.

I stipulate that my failure to comply with any conditions of this Order shall constitute misconduct as defined by New York State Education Law §6530(29).

I agree that if I am charged with professional misconduct in future, this Consent Agreement and Order **shall** be admitted into evidence in that proceeding.

I ask the Board to adopt this Consent Agreement.

I understand that if the Board does not adopt this Consent Agreement, none of its terms shall bind me or constitute an admission of any of the acts of alleged misconduct; this Consent Agreement 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 adopts this Consent Agreement, the Chair of the Board shall issue a Consent 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 Consent Order by first class mail to me at the address in this Consent Agreement, or to my attorney by certified mail, OR upon facsimile transmission to me or my attorney, whichever is first.

I ask the Board to adopt this Consent Agreement of my own free will and not under duress, compulsion or restraint. In consideration of the value to me of the Board's adoption of this Consent Agreement, 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 Consent Order for which I apply, whether administratively or judicially, I agree to be bound by the Consent Order, and ask

that the Board adopt this Consent Agreement.

REDACTED

DATED 12/27/07

BARRY GREENSTEIN, RSA-O
RESPONDENT

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

DATE: 12/31/03

REDACTED
ANNA E. LYNCH, ESQ.
Attorney for Respondent

DATE: 1/5/04

REDACTED
VALERIE B. DONOVAN
Assistant Counsel
Bureau of Professional Medical Conduct

DATE: 1/15/04

REDACTED
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
BARRY GREENSTEIN, RSA-O

STATEMENT
OF
CHARGES

Barry Greenstein, the Respondent, was issued registration number 0000030-1 to practice as a Specialist Assistant - Orthopaedics (RSA-O) in New York State on or about April 1, 1987, by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. On or about October 3, 1995, Respondent signed the Rochester General Hospital, Rochester, New York (RGH) "Application for Appointment - Physician's Assistant," and fraudulently and/or inappropriately:
1. stated that his New York State Specialist Assistant registration number was an "Orthopedic P.A. Registration Number," and/or
 2. failed to cross-out and change the words "Physician Assistant" on the top of the cover page.
- B. From in or about the Fall of 1995 through in or about January 2001, Respondent fraudulently and/or inappropriately failed to inform RGH that he was not a Physician Assistant (PA) and/or that he was only authorized to act as a Specialist Assistant-Orthopaedics (SA-O), as follows: when he was initially offered a position at RGH as a PA; when his appointment to active staff at RGH as a PA was approved; when RGH granted him privileges that

went beyond the scope of an SA-O; and/or when he was offered and accepted a position as a PA in the RGH Emergency Department.

- C. On or about January 24, 1997, in a letter to the RGH Chief of Orthopedic Surgery, Respondent fraudulently and/or inappropriately referred to himself as a PA and/or referred to his "fellow PA's" when he knew that he was not a PA.
- D. In or about 1997, Respondent directed RGH to imprint a rubber stamp with OPA-C [Orthopedic Physician Assistant - Certified] following his name and/or he failed to have RGH correct the stamp to reflect the fact that he was an RSA-O.
- E. On or around June 6, 1997, Respondent reviewed the RGH Professional Profile Sheet and certified that all information in this re-appointment application was true and complete. However, Respondent fraudulently and/or inappropriately:
1. failed to change the line on this form that stated that he was certified by the National Commission on Certification of PA's, when in fact he knew that he was not so certified; and/or
 2. failed to correct the address label and/or the professional profile sheet which read "Barry Greenstein, PA," when he knew that he was not a PA.
- F. On or about June 16, 2000, the New York State Department of Education informed Respondent that in New York State an SA may only refer to himself as a PA when he has completed an accredited PA education program and

passed the state licensing exam, the National Commission for Certification of Physician Assistants (NCCPA) certification examination. Respondent has completed neither of these. Respondent has passed the National Board for Certification of Orthopaedic Physician Assistants (NBCOPA) exam, which in New York State entitles him use the title SA-O, not OPA.

G. Respondent, from on or about January 13, 2001, through on or about June 30, 2001, evaluated, treated and/or performed procedures on the following patients presenting with non-orthopedic related conditions in the RGH Emergency Department, when he knew that he was not licensed to do so:

1. Patient A (patients are identified in Exhibit A), presenting on or around January 28, 2001, with pain secondary to kidney stones.
2. Patient B, presenting on or around January 28, 2001, with a bleeding wart.
3. Patient C, presenting on or around February 12, 2001, with testicular pain.
4. Patient D, presenting on or around February 15, 2001, with cheek swelling.
5. Patient E, presenting on or around March 6, 2001, with a swollen eye.
6. Patient F, presenting on or around March 16, 2001, with a right breast mass.
7. Patient G, presenting on or around March 19, 2001, with head pain.
8. Patient H, presenting on or around March 19, 2001, with abdominal pain.
9. Patient I, presenting on or around April 10, 2001, for ophthalmological care.

10. Patient J, presenting on or around April 24, 2001, for treatment of an eye injury.
 11. Patient K, presenting on or around April 26, 2001, for ophthalmological care.
 12. Patient L, presenting on or around May 9, 2001, with possible kidney stones.
 13. Patient M, presenting on or around May 27, 2001, with an eye laceration.
 14. Patient N presenting on or around June 11, 2001, with kidney stone pain.
 15. Patient O, presenting on or around June 21, 2001, with right flank pain.
- H. For some or all of the patients listed in Paragraph G, above, Respondent fraudulently and/or inappropriately made a notation next to his signature in the ED medical record indicating that he was a PA.
- I. From in or about December, 1999, through in or about October, 2001, Respondent wrote prescriptions or orders for medications for Patients A, F, and K through RR, when he knew that he was not licensed to do so. The medications Respondent prescribed and/or ordered included Demerol, Dilaudid, Vicodin, Darvocet, Tylenol 3, Flexeril, Ultram, Relafin, Keflex and Ibuprofen 800 mg.
- J. On or about March 6, 2001, Respondent signed a Via Health Practitioner Reappointment Form, and fraudulently and/or inappropriately certified that "all information submitted by me in this request is accurate and true to the

best of my knowledge and belief" in that:

1. he did not correct the PA category listing;
2. he did not correct the inaccurate statement that he was certified by the National Commission on Certification of Physician Assistants; and/or
3. he did not correct his title which was listed as RPA-C, when he knew that he was not an RPA-C and could not refer to himself as such.

- K. From on or about January 13, 2001, through on or about June 30, 2001, Respondent fraudulently and/or inappropriately led co-workers, physicians and/or patients in the RGH Emergency Department to believe that he was a PA in that: he introduced himself as an Orthopedic PA; his hospital name tag identified him as an OPA-C but not as an SA-O; he performed the functions of a PA while working in the Emergency Department; and/or he failed to advise his supervising physicians that he was authorized to act as an SA in orthopedic matters only.
- L. On the RGH "Department of Emergency Medicine Physician Request for Privileges" form, Respondent fraudulently and/or inappropriately requested privileges that were not within the scope of practice of a RSA-O including: Epistaxis Initial Treatment, G Tube Replacement, Phlebotomy and/or Topical Ophthalmic Steroids use.
- M. On or about May 2, 2001, Respondent wrote a prescription for himself for Clindamycin.

- N. In or about May, 2002, Respondent solicited a letter of support from an attending physician in the RGH Emergency Department. Respondent willfully failed to inform the physician that Respondent was an Specialist Assistant whose practice was limited to orthopedics, thereby misleading the physician to write that Respondent "treated only those for which his training was suited," when Respondent was aware that Respondent had treated patients presenting with non-orthopedic conditions.
- O. Respondent, fraudulently and/or inappropriately stated on his Curriculum Vitae that his job objective was "Orthopedic Physician Assistant," when he knew that he could not practice as a PA in New York State.
- P. Respondent, fraudulently and/or inappropriately stated on his Curriculum Vitae that he was an Orthopaedic Physician Assistant in Wisconsin from 1986 - 1995, when he knew that he was not licensed to practice as a PA in Wisconsin.
- Q. Respondent, fraudulently and/or inappropriately stated in his Curriculum Vitae that from 1970 through 1986 he was employed as an Orthopaedic Physician Assistant in Pennsylvania, when he knew that he was not licensed to practice as a PA in Pennsylvania.
- R. Respondent, on his Curriculum Vitae fraudulently stated and/or implied that he was a PA.

SPECIFICATION OF CHARGES

FIRST THROUGH SIXTEENTH 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:

1. The facts in Paragraphs A and A.1 and/or A and A.2.
2. The facts in Paragraph B.
3. The facts in Paragraph C.
4. The facts in Paragraph D.
5. The facts in Paragraph E and E.1 and/or E and E.2.
6. The facts in Paragraph H.
7. The facts in Paragraph I.
8. The facts in Paragraphs J and J.1, J and J.2 and/or J and J.3.
9. The facts in Paragraph K.
10. The facts in Paragraph L.
11. The facts in Paragraph M.
12. The facts in Paragraph N.
13. The facts in Paragraph O.
14. The facts in Paragraph P.
15. The facts in Paragraph Q.
16. The facts in Paragraph R.

SEVENTEENTH THROUGH THIRTY-SECOND SPECIFICATIONS

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:

17. The facts in Paragraphs A and A.1 and/or A and A.2.
18. The facts in Paragraph B.
19. The facts in Paragraph C.
20. The facts in Paragraph D.
21. The facts in Paragraph E and E.1 and/or E and E.2.
22. The facts in Paragraph H.
23. The facts in Paragraph I.
24. The facts in Paragraphs J and J.1, J and J.2 and/or J and J.3.
25. The facts in Paragraph K.
26. The facts in Paragraph L.
27. The facts in Paragraph M.
28. The facts in Paragraph N.
29. The facts in Paragraph O.
30. The facts in Paragraph P.
31. The facts in Paragraph Q.
32. The facts in Paragraph R.

THIRTY-THIRD THROUGH THIRTY-SIXTH SPECIFICATIONS
PRACTICING BEYOND SCOPE PERMITTED BY LAW

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(24) by practicing beyond the scope permitted by law of a Registered Specialist Assistant, as alleged in:

33. The facts in Paragraph G and G.1, G and G.2, G and G.3, G and G.4, G and G.5, G and G.6, G and G.7, G and G.8, G and G.9, G and

G.10, G and G.11, G and G.12, G and G.13, G and G.14 and/or G and G.15.

34. The facts in Paragraph I.
35. The facts in Paragraph L.
36. The facts in Paragraph M.

THIRTY-SEVENTH THROUGH THIRTY-NINTH SPECIFICATIONS
FAILURE TO COMPLY WITH
STATE LAWS AND/OR REGULATIONS

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(16) by failing to comply with substantial provisions of states rules or regulations governing the practice of medicine, as alleged in:

37. The facts in Paragraphs G and G.1, G and G.2, G and G.3, G and G.4, G and G.5, G and G.6, G and G.7, G and G.8, G and G.9, G and G.10, G and G.11, G and G.12, G and G.13, G and G.14 and/or G and G.15.
38. The facts in Paragraph I.
39. The facts in Paragraph M.

FORTIETH THROUGH FORTY-SECOND SPECIFICATIONS
FILING A FALSE REPORT

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(21) by willfully making a false report, as alleged in:

40. The facts in Paragraph A and A.1 and/or A and A.2.
41. The facts in Paragraph E and E.1 and/or E and E.2.

42. The facts in Paragraphs J and J.1, J and J.2 and/or J and J.3.

DATED: *January 5, 2004*
~~November 2003~~
Albany, New York

REDACTED

~~PETER D. Van Buren~~
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 New York State Education Law §6530 or §6531 shall constitute a violation of probation and may subject Respondent to an action pursuant to New York State Public Health Law §230(19).
2. Respondent shall maintain current registration with the New York State Education Department Division of Professional Licensing Services (except during periods of actual suspension), and shall pay all registration fees.
3. Respondent shall provide the Director, Office of Professional Medical Conduct (OPMC), Hedley Park Place, 433 River Street Suite 303, Troy, New York 12180-2299 with the following information, in writing, and ensure that such 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, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty (30) days of each action.
4. 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.
5. Respondent's failure to pay any monetary penalty by the prescribed date shall subject Respondent to all provisions of law relating to debt collection by New York State, including but 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 probation period shall toll when Respondent is not engaged in active practice in New York State for a period of thirty (30) consecutive days or more. Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in, or intends to leave, active practice in New York State for a consecutive thirty (30) day period. Respondent shall then notify the Director again at least fourteen (14) days before returning to active practice. Upon Respondent's return to active practice in New York State, the probation period will resume and Respondent shall fulfill any unfulfilled probation terms.
7. 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 and/or hospital charts; and interviews with or periodic visits with Respondent and staff at practice locations or OPMC offices.
8. 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.

9. Respondent shall enroll in and complete a continuing education program in the area of professional medical ethics. This continuing education program is subject to the Director of OPMC's prior written approval and shall be completed within the first year of the probationary period.
10. Respondent shall be employed only by a private physician's practice, not by a hospital. Respondent shall ensure that his employer(s) provide the Director of OPMC with written verification on a semi-annual basis that Respondent is employed as, and is performing the functions of, a Specialist Assistant - Orthopaedics, not a Physician Assistant.
11. Respondent shall comply with this Order and all its terms, and shall bear all associated compliance costs. Upon receiving evidence of noncompliance with, or 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.