



***New York State Board for Professional Medical Conduct***

*433 River Street, Suite 303 • Troy, New York 12180-2299 • (518) 402-0863*

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NYS Department of Health*

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NYS Department of Health*

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*Office of Professional Medical Conduct*

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*Vice Chair*

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

*Public*

July 3, 2006

***CERTIFIED MAIL-RETURN RECEIPT REQUESTED***

Michael W. Berg, M.D.  
34748 FM 2480  
Los Fresnos, Texas 78566

Re: License No. 166103

Dear Dr. Berg:

Enclosed is a copy of Order #BPMC 06-144 of the New York State Board for Professional Medical Conduct. This order and any penalty provided therein goes into effect July 10, 2006.

**If the penalty imposed by this Order is a surrender, revocation or suspension, you are required to deliver your license and registration within five (5) days of receipt of this 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: Jean M. DeLoach, Esq.  
Tew and DeLoach  
106 East 16th Street, Suite 900  
Austin, Texas 78701

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

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**IN THE MATTER**  
**OF**  
**MICHAEL W. BERG, M.D.**  
**CO-05-10-5303-A**

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**CONSENT**  
**AGREEMENT**  
**AND ORDER**

BPMC No. 06-144

**MICHAEL W. BERG, M.D.**, (Respondent) representing that all of the following statements are true, deposes and says:

That on or about May 29, 1986, I was licensed to practice as a physician in the State of New York, and issued License No. 166103 by the New York State Education Department.

My current address is 34748 FM 2480, Los Fresnos, TX 78566, and I will advise the Director of the Office of Professional Medical Conduct of any change of my address thirty (30) days, thereof.

I understand that the New York State Board for Professional Medical Conduct has charged me with one (1) specification of professional misconduct.

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

I do not contest the one (1) specification, in full satisfaction of the charges against me, and agree to the following penalty:

Respondent shall comply fully with the October 7, 2005, Mediated Agreed Order of the Texas Board and any extension or modification thereof.

Respondent shall provide a written authorization for the Texas Board to provide the Director of OPMC with any/all information or documentation as requested by OPMC to enable OPMC to determine whether Respondent is in compliance with the Texas Order.

Respondent shall submit semi-annually a signed Compliance Declaration to the Director of OPMC, which truthfully attests whether Respondent has been in compliance with the Texas Order during the declaration period specified.

Should I return to the practice of medicine in New York state or in any other jurisdiction where that practice is predicated on my New York state medical license to practice prior to my license being fully restored by the State of Texas I shall provide ninety (90) days notice in writing, to the Director, OPMC. The Director in his sole discretion, may impose whatever limitations, or further Conditions, he deems reasonable.

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

That Respondent shall maintain active registration of Respondent's license 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 all 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 the 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. The Order, this agreement, and all attached Exhibits shall be public documents, with only patients identities, if any, redacted.

I stipulate that the proposed sanction and Order are authorized by Public Health Law Sections 230 and 230-a and that the Board for Professional Medical Conduct and the Office of Professional Medical Conduct have the requisite powers to carry out all included terms. 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.

AFFIRMED:

DATED: 21 June 2006

  
MICHAEL W. BERG, M.D.  
Respondent

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

DATE:

06/21/06

  
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ROBERT BOGAN  
Associate Counsel  
Bureau of Professional Medical Conduct

DATE:

29 June 2006

  
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DENNIS J. GRAZIANO  
Director  
Office of Professional Medical Conduct

## STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER  
OF  
MICHAEL W. BERG, M.D.  
CO-05-10-5303-A

STATEMENT  
OF  
CHARGES

MICHAEL W. BERG, M.D., Respondent, was authorized to practice medicine in New York state on May 29, 1986, by the issuance of license number 166103 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A. On or about October 7, 2005, the Texas State Board of Medical Examiners (hereinafter "Texas Board"), by a Mediated Agreed Order (hereinafter "Texas Order"), required Respondent to successfully complete ten (10) hours of CME, enroll in and successfully complete a Physician-Patient Communication course, and teach a two (2) hour "informed consent" course, based on failing to adequately communicate with patients about procedures and the potential risks.

B. The conduct resulting in the Texas Board disciplinary action against Respondent would constitute misconduct under the laws of New York state, pursuant to the following sections of New York state Law:

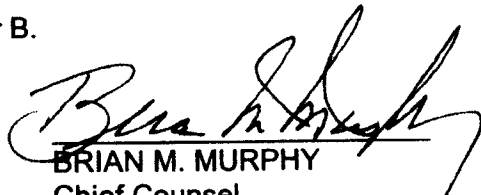
1. New York Education Law §6530(3)(negligence on more than one occasion).

**SPECIFICATION**

Respondent violated New York Education Law §6530(9)(d) by having disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the disciplinary action would, if committed in New York state, constitute professional misconduct under the laws New York state, in that Petitioner charges:

1. The facts in Paragraphs A and/or B.

DATED: *February*, 2006  
Albany, New York

  
BRIAN M. MURPHY  
Chief Counsel  
Bureau of Professional Medical Conduct

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

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IN THE MATTER OF MICHAEL W. BERG, M.D. CONSENT ORDER

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Upon the application of MICHAEL W. BERG, M.D., (Respondent) 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 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: 7-3-2006



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