

Nirav R. Shah, M.D., M.P.H.  
Commissioner

**NEW YORK**  
state department of  
**HEALTH**

Public

Sue Kelly  
Executive Deputy Commissioner

June 6, 2012

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

William Baerthlein, M.D.

REDACTED

Re: License No. 149476

Dear Dr. Baerthlein:

Enclosed is a copy of the New York State Board for Professional Medical Conduct (BPMC) Order No. 12-115. This order and any penalty provided therein goes into effect June 13, 2012.

**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: Office of Professional Medical Conduct, c/o Physician Monitoring Unit, New York State Department of Health, 433 River Street, Suite 1000, Troy, NY 12180-2299.**

**If your license is framed, please remove it from the frame and only send the parchment paper that your name and license number is printed on. Our office is unable to store framed licenses.**

If the document(s) are lost, misplaced or destroyed, you are required to submit to this office an affidavit to that effect. Enclosed for your convenience is an affidavit. Please complete and sign the affidavit before a notary public and return it to the Office of Professional Medical Conduct.

Please direct any questions to: Board for Professional Medical Conduct, 90 Church Street, 4th Floor, New York, NY 10007-2919, telephone # 212-417-4445.

Sincerely,

REDACTED

Katherine A. Hawkins, M.D., J.D.  
Executive Secretary  
Board for Professional Medical Conduct

Enclosure

cc: Wilfred T. Friedman, Esq.  
60 East 42nd Street, 40th Floor  
New York, NY 10165

IN THE MATTER  
OF  
WILLIAM BAERTHLEIN, M.D.

SURRENDER  
ORDER

Upon the application of (Respondent) WILLIAM BAERTHLEIN, M.D. to Surrender his or her 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 of License application or by certified mail to Respondent's attorney, OR
- upon facsimile transmission to Respondent or Respondent's attorney,

Whichever is first.

SO ORDERED.

DATE: 6/5/2012

REDACTED

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

**IN THE MATTER  
OF  
WILLIAM BAERTHLEIN, M.D.**

**SURRENDER  
OF  
LICENSE  
AND  
ORDER**

WILLIAM BAERTHLEIN, M.D., represents that all of the following statements are true:

That on or about April 16, 1982, I was licensed to practice as a physician in the State of New York, and issued License No. 149476 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 (Board) has charged me with Thirteen Specifications of professional misconduct, as set forth in a Statement of Charges, marked as Exhibit "A", which 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 admit the Fifth and Sixth Specifications (violating a term of probation or condition imposed pursuant to Section 230 of the Public Health Law) in full satisfaction of the charges against me.

I ask the Board to accept my Surrender of License, and I agree to be bound by all of the terms set forth in attached Exhibit "B".

I understand that, if the Board does not accept my Surrender of License, none of its terms shall bind me or constitute an admission of any of the acts of misconduct alleged; 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 my Surrender of 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 Surrender Order, this agreement, and all attached exhibits shall be public documents, with only patient identities, if any, redacted. As public documents, they may be posted on the Department's website(s). OPMC shall report this action to the National Practitioner Data Bank, the Federation of State Medical Boards, and any other entities that the Director of OPMC shall deem appropriate.

I ask the Board to accept this Surrender of License, which I submit 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.

I understand and agree that the attorney for the Department, the Director of the Office of Professional Medical Conduct and the Chair of the State Board for Professional Medical Conduct each retain complete discretion either to enter into the proposed agreement and Order, based upon my application, or to decline to do so. I further understand and agree that no prior or separate written or oral communication can limit that discretion.

DATE

5/24/12

REDACTED

WILLIAM BAERTHLEIN, M.D.  
RESPONDENT

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

DATE: 5/25/12

REDACTED

WILFRED T. FRIEDMAN, ESQ.  
Attorney for Respondent

DATE: 5/28/12

REDACTED

MICHAEL A. HISER  
Associate Counsel  
Bureau of Professional Medical Conduct

DATE: June 4, 2012

REDACTED

KEITH W. SERVIS  
Director  
Office of Professional Medical Conduct

IN THE MATTER  
OF  
WILLIAM BAERTHLEIN, M.D.

SECOND AMENDED  
STATEMENT  
OF  
CHARGES

WILLIAM BAERTHLEIN, M.D., the Respondent, was authorized to practice medicine in New York State on or about April 16, 1982 by the issuance of license number 149476 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A. Respondent provided medical care to Patient A [patients are identified in the attached Appendix], a 40 year old female patient, at various times between on or about January 2009 and February 2010 at Respondent's Office at 77 West Barney Street, Gouverneur, New York 13642 (hereafter, "Respondent's Office"), and at the E. J. Noble Hospital, 77 West Barney Street, Gouverneur, New York 13642 (hereafter, "E. J. Noble Hospital"). Respondent performed a laser ablation of the cervix on Patient A on or about January 14, 2010, at E. J. Noble Hospital. Thereafter, on or about January 20-21, 2010, Respondent treated Patient A at the Hospital for cervical hemorrhage. Respondent's care and treatment of Patient A was contrary to accepted standards of medical practice, in that:

1. Respondent, despite being informed at approximately 6:00 p.m. on January 20, 2010 of the patient's clinical condition while at the emergency department, including her ongoing vaginal hemorrhage, failed to personally evaluate the patient in timely fashion.
2. Respondent, despite being informed at approximately 7:00 p.m. on January 20, 2010 of the patient's clinical condition while at the emergency department, including her ongoing vaginal hemorrhage, failed to personally evaluate the patient in timely fashion, and/or order appropriate treatment.
3. Respondent, despite being informed at approximately 8:30 p.m. on January 20, 2010 of the patient's clinical condition, including

her ongoing vaginal hemorrhage, failed to personally evaluate and/or treat the patient in timely fashion, and/or order appropriate treatment.

4. Respondent, despite being informed at approximately 9:25 p.m. on January 20, 2010 of the patient's clinical condition, including her ongoing vaginal hemorrhage, failed to personally evaluate and/or treat the patient in timely fashion, and/or order appropriate treatment.
5. Respondent, despite being informed at approximately 10:50 p.m. on January 20, 2010 of the patient's clinical condition, including her ongoing vaginal hemorrhage, failed to personally evaluate and/or treat the patient in timely fashion, and/or order appropriate treatment.
6. Respondent, when he saw the patient for a post-discharge visit at his office on January 29, 2010, failed to adequately assess the patient's physical condition, and/or document that he adequately assessed the patient.

B. Respondent, on or about June 16, 2007, entered into a Nondisciplinary Order of Conditions ["NDOC"] with the State Board of Professional Medical Conduct. The NDOC was effective on or about July 13, 2007, with a term of five years. The terms of the NDOC obligated Respondent to comply with specific conditions. The NDOC also provided that, "Violations of such conditions, if proven and found at a hearing pursuant to N.Y. Public Health Law Section 230(10), shall constitute professional misconduct as defined in N.Y. Educ. Law Sections 6530(15) and/or (29)."

C. By NDOC Order of Condition "2" [set out in Exhibit "A" of the NDOC], Respondent was required to provide the Director of OPMC, within 30 days, information related to "all investigations, arrests, charges, convictions or disciplinary actions by any local, state, or federal agency, institution or facility". Respondent has violated this Condition, as follows:

1. Respondent, on or about February 21, 2008, was arrested in Beekmantown, New York on the charge of operating a motor vehicle with .08% of alcohol or more in the blood, a misdemeanor under Section 1192 of the New York Vehicle and Traffic Law. On or about September 24, 2008, Respondent was convicted upon a plea of guilty on the charge of driving while ability impaired by the consumption of



alcohol, in the Beekmantown Town Court, Clinton County, State of New York. Respondent failed to notify the Director of OPMC of such arrest and conviction within 30 days of the occurrences of the events.

- D. By NDOC Order of Condition "6" [Exhibit "A"] Respondent was required to "remain alcohol free". Respondent has violated this Condition, as follows:
1. Respondent, on or about February 21, 2008, was arrested in Beekmantown, New York on the charge of operating a motor vehicle with .08% of alcohol or more in the blood, a misdemeanor under Section 1192 of the New York Vehicle and Traffic Law. On or about September 24, 2008, Respondent was convicted upon a plea of guilty on the charge of driving while ability impaired by the consumption of alcohol, in the Beekmantown Town Court, Clinton County, State of New York.
  2. Respondent, between approximately May 9 and May 14, 2010, underwent an in-depth, inpatient evaluation at the Marworth Health Care Facility, Waverly, Pennsylvania. As part of that evaluation, Respondent provided blood specimens for laboratory testing, including Phosphatidylethanol "[PETH]" testing. The PETH test returned a strong positive result, indicating Respondent had not remained alcohol free during the term of the NDOC.
- E. Respondent, on or about October 2, 2008, signed a "Data Sheet", and submitted it to the New York State Department of Health's OPMC Physician Monitoring Program (hereafter, "October 2008 OPMC Data Sheet submission").
1. Respondent, as part of his October 2008 OPMC Data Sheet submission, dated and signed under oath by the Respondent on or about "10/2/08", intentionally and falsely answered "No" to question "3" on page two, which read as follows:  
  
Since the effective date of your Order have you been arrested, charged or convicted in any criminal matter?  
  
In fact, Respondent had been arrested on February 21, 2008, in Beekmantown, New York on the charge of operating a vehicle with .08% of alcohol or more in the blood, a misdemeanor charged under Section 1192 of the New York Vehicle and Traffic Law. Such criminal arrest had occurred since July 13, 2007, the effective date of Respondent's Order.
  2. Respondent, as part of his October 2008 OPMC Data Sheet submission, dated and signed under oath by the Respondent on or about "10/2/08", intentionally and falsely answered "Yes" to question "II.c)" on page one, which read as follows:

Have you updated your Physician Profile"?

In fact, Respondent had not updated his physician profile related to his practice information and his hospital affiliations, and his office locations, among others.

F. Respondent submitted an "Application for Reappointment" to E. J. Noble Hospital on or about March 10, 2008.

1. Respondent, as part of his E. J. Noble Application, dated and signed by the Respondent on or about "3/10/08", intentionally and falsely answered "N/C" [no change] to question "4", which read as follows:

[Since the last application] Have there been any criminal proceedings against you"?

In fact, Respondent had been arrested on February 21, 2008, in Beekmantown, New York on the charge of operating a vehicle with .08% of alcohol or more in the blood, a misdemeanor charged under Section 1192 of the New York Vehicle and Traffic Law. Such criminal arrest had occurred since the date of Respondent's last application, which had been submitted on or about August 15, 2005.

G. Respondent, from on or about May 9, 2010 through May 14, 2010, underwent an in depth, in patient evaluation at the Marworth Health Care Facility, Waverly, Pennsylvania. The results of the evaluation found Respondent to be alcohol dependent, and recommended that he withdraw from the practice of medicine "until such time as he has been successfully treated at an inpatient or residential level of care acceptable to OPMC and returned to practice by OPMC".

H. Respondent, on or about March 19, 2011, signed a "Personal and Professional Information Sheet" ["PPIS"] as part of his credentials renewal process with the Navy Medicine Support Command. Respondent affirmed and attested that the information contained in such PPIS was complete and correct.

1. Respondent, as part of his March 19, 2011 executed PPIS, intentionally and falsely responded to Question 7(d) which read as follows:

Have you ever been charged or a defendant in a felony or misdemeanor case? (Indicate final disposition of case in comments.)

In his response, Respondent indicated that while he had been stopped by a New York State Trooper, "I was never advised that I was arrested", and that he was eventually released after a brief hospitalization "and went on my way".

In fact, Respondent had been formally arrested during that incident that occurred on February 21, 2008, in Beekmantown, New York on the charge of operating a vehicle with .08% of alcohol or more in the blood, a misdemeanor charged under Section 1192 of the New York Vehicle and Traffic Law. Additionally, on or about September 24, 2008, Respondent was convicted upon a plea of guilty on the charge of driving while ability impaired by the consumption of alcohol, in the Beekmantown Town Court, Clinton County, State of New York.

2. Respondent, as part of his March 19, 2011 executed PPIS, intentionally and falsely responded to Question 7(h) which read in pertinent part as follows:

Have there been previously successful or currently pending challenges, investigations, . . . , restriction, . . . to any licensure . . . (State, district, or Drug Enforcement Agency) to practice in any jurisdiction . . . ?

In his response, Respondent indicated that he "[has] not been informed that I am the subject of any disciplinary action. . . I currently have a full and unrestricted license in N.Y."

In fact, Respondent, on or about June 16, 2007, entered into a Nondisciplinary Order of Conditions ["NDOC"] with the State Board of Professional Medical Conduct. The NDOC was effective on or about July 13, 2007, with a term of five years. The terms of the NDOC obligated Respondent to comply with numerous specific conditions.

## **SPECIFICATION OF CHARGES**

### **FIRST SPECIFICATION**

#### **GROSS NEGLIGENCE**

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

1. The facts in Paragraphs A and A.1, A and A.2, A and A.3, A and A.4, A and A.5 and/or A and A.6.

### **SECOND SPECIFICATION**

#### **GROSS INCOMPETENCE**

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

2. The facts in Paragraphs A and A.1, A and A.2, A and A.3, A and A.4, A and A.5, and/or A and A.6.

### **THIRD 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:

3. The facts in Paragraphs A and A.1, A and A.2, A and A.3, A and A.4, A and A.5, and/or A and A.6.

#### **FOURTH SPECIFICATION**

##### **INCOMPETENCE ON MORE THAN ONE OCCASION**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(5) 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:

4. The facts in Paragraphs A and A.1, A and A.2, A and A.3, A and A.4, A and A.5, and/or A and A.6.

#### **FIFTH AND SIXTH SPECIFICATIONS**

##### **VIOLATING ANY TERM OF PROBATION OR CONDITION OR LIMITATION**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(29) by violating any term of probation or condition or limitation imposed on the licensee pursuant to section two hundred thirty of the public health law, as alleged in the facts of the following:

5. The facts in Paragraphs B and C and C.1.
6. The facts in Paragraphs B and D and D.1, and/or B and D and D.2.

#### **SEVENTH SPECIFICATION**

##### **FALSE REPORT/FAILING TO FILE REPORT**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(21) by wilfully making or filing a false report, or failing to file a report required by law or by the department of health or the education department, as alleged in the facts of:

7. The facts contained in Paragraph B and C and C.1, E and E.1, E and E.2, F and F.1, H and H.1, and/or H and H.2.

**EIGHTH SPECIFICATION**  
**VIOLATION OF § TWENTY-EIGHT HUNDRED FIVE-K**  
**OF THE PUBLIC HEALTH LAW**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(14) by violating section twenty-eight hundred five-k of the Public Health Law, as alleged in the facts of:

8. The facts contained in Paragraph F and F.1.

**NINTH SPECIFICATION**  
**WILFUL OR GROSSLY NEGLIGENT FAILURE TO COMPLY WITH**  
**SUBSTANTIAL PROVISIONS OF FEDERAL OR STATE LAWS, RULES, OR**  
**REGULATIONS GOVERNING THE PRACTICE OF LAW**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(16) by wilfully or grossly negligently failing to comply with substantial provisions of federal or state laws, rules, or regulations governing the practice of law, as alleged in the facts of:

9. The facts contained in Paragraphs B and C and C.1, B and D and D.1, B and D and D.2, E and E.1, E and E.2, F and F.1, H and H.1, and/or H and H.2.

## **TENTH THROUGH TWELFTH 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 the following:

10. The facts contained in Paragraphs E and E.1 and/or E and E.2.
11. The facts contained in Paragraphs F and F.1.
12. The facts contained in Paragraphs H and H.1 and/or H and H.2.

### **THIRTEENTH SPECIFICATION**

#### **BEING AN HABITUAL USER OR HAVING A PSYCHIATRIC CONDITION WHICH IMPAIRS THE ABILITY TO PRACTICE**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(8) by being a habitual abuser of alcohol, or being dependent on or a habitual user of narcotics, barbiturates, amphetamines, hallucinogens, or other drugs having similar effects, or having a psychiatric condition which impairs the licensee's ability to practice as alleged in the facts of the following:

13. The facts in Paragraph G.

DATE: January 12, 2012  
Albany, New York

REDACTED

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Peter D. Van Buren  
Deputy Counsel  
Bureau of Professional  
Medical Conduct



## EXHIBIT "B"

### Requirements for Closing a Medical Practice Following a Revocation, Surrender, Limitation or Suspension of a Medical License

1. Licensee shall immediately cease and desist from engaging in the practice of medicine in New York State, or under Licensee's New York license, in accordance with the terms of the Order. In addition, Licensee shall refrain from providing an opinion as to professional practice or its application and from representing that Licensee is eligible to practice medicine.
2. Within 5 days of the Order's effective date, Licensee shall deliver Licensee's original license to practice medicine in New York State and current biennial registration to the Office of Professional Medical Conduct (OPMC) at Hedley Park Place, 433 River Street 4th Floor, Troy, NY 12180-2299.
3. Within 15 days of the Order's effective date, Licensee shall notify all patients of the cessation or limitation of Licensee's medical practice, and shall refer all patients to another licensed practicing physician for continued care, as appropriate. Licensee shall notify, in writing, each health care plan with which the Licensee contracts or is employed, and each hospital where Licensee has privileges, that Licensee has ceased medical practice. Within 45 days of the Order's effective date, Licensee shall provide OPMC with written documentation that all patients and hospitals have been notified of the cessation of Licensee's medical practice.
4. Licensee shall make arrangements for the transfer and maintenance of all patient medical records. Within 30 days of the Order's effective date, Licensee shall notify OPMC of these arrangements, including the name, address, and telephone number of an appropriate and acceptable contact person who shall have access to these records. Original records shall be retained for at least 6 years after the last date of service rendered to a patient or, in the case of a minor, for at least 6 years after the last date of service or 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 include provisions to ensure that the information in the record is kept confidential and is available only to authorized persons. When a patient or a patient's 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 forwarded at a reasonable cost to the patient (not to exceed 75 cents per page.) Radiographic, sonographic and similar materials shall be provided at cost. A qualified person shall not be denied access to patient information solely because of an inability to pay.



5. In the event that Licensee holds a Drug Enforcement Administration (DEA) certificate for New York State, Licensee shall, within 15 days of the Order's effective date, advise the DEA, in writing, of the licensure action and shall surrender Licensee's DEA controlled substance privileges for New York State to the DEA. Licensee shall promptly surrender any unused DEA #222 U.S. Official Order Forms Schedules 1 and 2 for New York State to the DEA. All submissions to the DEA shall be addressed to Diversion Program Manager, New York Field Division, U.S. Drug Enforcement Administration, 99 Tenth Avenue, New York, NY 10011.
6. Within 15 days of the Order's effective date, Licensee shall return any unused New York State official prescription forms to the Bureau of Narcotic Enforcement of the New York State Department of Health. If no other licensee is providing services at Licensee's practice location, Licensee shall properly dispose of all medications.
7. Within 15 days of the Order's effective date, Licensee shall remove from the public domain any representation that Licensee is eligible to practice medicine, including all related signs, advertisements, professional listings (whether in telephone directories, internet or otherwise), professional stationery or billings. Licensee shall not share, occupy, or use office space in which another licensee provides health care services.
8. Licensee shall not charge, receive or share any fee or distribution of dividends for professional services rendered by Licensee or others while Licensee is barred from engaging in the practice of medicine. Licensee may be compensated for the reasonable value of services lawfully rendered, and disbursements incurred on a patient's behalf, prior to the Order's effective date.
9. If Licensee is a shareholder in any professional service corporation organized to engage in the practice of medicine, Licensee shall divest all financial interest in the professional services corporation, in accordance with New York Business Corporation Law. Such divestiture shall occur within 90 days. If Licensee is the sole shareholder in a professional services corporation, the corporation must be dissolved or sold within 90 days of the Order's effective date.
10. Failure to comply with the above directives may result in a civil penalty or criminal penalties as may be authorized by governing law. Under N.Y. Educ. Law § 6512, it is a Class E Felony, punishable by imprisonment for up to 4 years, to practice the profession of medicine when a professional license has been suspended, revoked or annulled. Such punishment is in addition to the penalties for professional misconduct set forth in N.Y. Pub. Health Law § 230-a, which include fines of up to \$10,000 for each specification of charges

of which the Licensee is found guilty, and may include revocation of a suspended license.