



# Department of Health

ANDREW M. CUOMO  
Governor

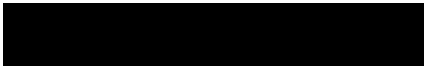
HOWARD A. ZUCKER, M.D., J.D.  
Commissioner

SALLY DRESLIN, M.S., R.N.  
Executive Deputy Commissioner

September 6, 2016

## CERTIFIED MAIL-RETURN RECEIPT REQUESTED

David Austin, M.D.



Re: License No. 166926

Dear Dr. Austin:

Enclosed is a copy of the New York State Board for Professional Medical Conduct (BPMC) Order No. 16-307. This order and any penalty provided therein goes into effect September 13, 2016.

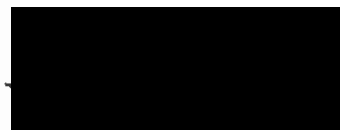
**You are required to deliver your license and registration within 5 days of the effective date of the surrender provision to: c/o Physician Monitoring Unit, NYS DOH - OPMC, Riverview Center, Suite 355, 150 Broadway, Albany, NY 12204-2719.**

**If your license is framed, please remove it from the frame and only send the parchment paper on which your name is printed. 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. 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: NYS DOH - OPMC, Riverview Center, Suite 355, 150 Broadway, Albany, NY 12204-2719, telephone # (518)402-0855.

Sincerely,



Henry Spector, M.D.  
Acting Executive Secretary  
Board for Professional Medical Conduct

Enclosure

IN THE MATTER  
OF  
DAVID AUSTIN, M.D.

SURRENDER  
ORDER

Upon the application of (Respondent) David Austin, M.D. to Surrender his 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: 9/2/2016



ARTHUR S. HENGERER, M.D.  
Chair  
State Board for Professional Medical Conduct

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

IN THE MATTER  
OF  
DAVID AUSTIN M.D.

SURRENDER  
OF  
LICENSE  
AND  
ORDER

David Austin, M.D., represents that all of the following statements are true:

That on or about July 10, 1986, I was licensed to practice as a physician in the State of New York, and issued License No. 166926 by the New York State Education Department.

My current address is [REDACTED]

I understand that the New York State Board for Professional Medical Conduct (Board) has charged me with one or more 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 agree not to contest the allegations 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 8/30/16



DAVID AUSTIN, M.D.  
RESPONDENT

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

DATE: \_\_\_\_\_

\_\_\_\_\_  
. ESQ.  
Attorney for Respondent

DATE: 9/1/2016

\_\_\_\_\_  
JOHN THOMAS VITI  
Associate Counsel  
Bureau of Professional Medical Conduct

DATE: 9/2/16

\_\_\_\_\_  
KEITH W. SERVIS  
Director  
Office of Professional Medical Conduct

**EXHIBIT "A"**

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

**IN THE MATTER**  
**OF**  
**DAVID AUSTIN, M.D.**

**STATEMENT**  
**OF**  
**CHARGES**

David Austin, M.D., the Respondent, was authorized to practice medicine in New York State on or about July 10, 1986 by the issuance of license number 166926 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

- A. On three occasions during the approximate period of April 2015 through June 2015, the Maine Board of Licensure in Medicine ("Maine Board") issued orders restricting Respondent's privilege to practice medicine in the State of Maine. The conduct resulting in these orders would constitute misconduct under the laws of New York State, pursuant to New York Education Law Sections 6530(8) (Being a Habitual User of Alcohol).
1. On or about June 9, 2015, the Maine Board by a Consent Agreement for Surrender of License ("Maine Consent Agreement"), after having opened an inquiry into the conduct and medical practice of Respondent, accepted the immediate surrender of Respondent's Maine Medical License. The Board based its determination on the facts, which Respondent neither admitted to or denied, that there was sufficient evidence to impose discipline on Respondent pursuant to 34 M.R.S. 3282-A(2)(B) for misuse of alcohol, drugs or other substances that has

resulted or may result in the licensee performing services in a manner that endangers the health and safety of patients. The Maine Consent Agreement was predicated on two prior orders that suspended Respondent's License to practice medicine (the Maine Interim Consent Agreement and the Maine Order of Immediate Suspension as set forth below).

2. On or about May 26, 2015, the Maine Board by an Interim Consent Agreement ("Maine Interim Consent Agreement"), after having opened an inquiry into the conduct and medical practice of Respondent, agreed to an extension of an adjudicatory hearing with respect to Maine Order of Immediate Suspension Respondent's Maine Medical License. The Respondent while disputing that there were grounds for licensure discipline agreed that the suspension of his medical license would remain in effect.
3. On or about April 14, 2015, the Maine Board by an Order of Immediate Suspension ("Maine Order of Immediate Suspension"), after having opened an investigation into the conduct and medical practice of Respondent, immediately suspended Respondent's Maine Medical License pending a hearing. The Maine Order of Immediate Suspension was based on the facts that the Maine Board could, subject to proof at an anticipated hearing, conclude that Respondent had engaged in conduct which violated 34 M.R.S. 3282-A(2)(B) for misuse of alcohol, drugs or other substances that has resulted or may result in the licensee performing services in a manner that endangers the health and safety of patients; 34 M.R.S. 3282-A(2)(E)(1) by engaging in conduct that evidences a lack of ability or fitness to discharge the duty owed by licensee to a client or patient or the general public; 34 M.R.S. 3282-A(2)(H) by engaging in unprofessional conduct by violating a standard of behavior, including engaging in disruptive behavior, that has been



established in the practice of medicine. No meeting was held, and the matter was resolved as set forth in paragraph A1 above.

**SPECIFICATION OF CHARGES**

**HAVING HAD DISCIPLINARY ACTION TAKEN**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(9)(d) 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(8) alleged in the facts of the following:

1. The facts in Paragraph A and its subparagraphs.

DATE: *Sept 1*, 2016  
New York, New York



Roy Nemerson  
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 Riverview Center, 150 Broadway, Suite 355, Albany, New York 12204-2719.
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.