



State Medical Board of Ohio

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September 10, 2003

Marc J. Bernstein, M.D.
26300 Seville Drive, #202
Beachwood, OH 44122

Dear Doctor Bernstein:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Sharon W. Murphy, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of draft Minutes of the State Medical Board, meeting in regular session on September 10, 2003, including motions approving and confirming the Report and Recommendation as the Findings and Order of the State Medical Board of Ohio.

Section 119.12, Ohio Revised Code, may authorize an appeal from this Order. Such an appeal must be taken to the Franklin County Court of Common Pleas.

Such an appeal setting forth the Order appealed from and the grounds of the appeal must be commenced by the filing of a Notice of Appeal with the State Medical Board of Ohio and the Franklin County Court of Common Pleas. Any such appeal must be filed within fifteen (15) days after the mailing of this notice and in accordance with the requirements of Section 119.12, Ohio Revised Code.

THE STATE MEDICAL BOARD OF OHIO

Lance A. Talmage, M.D.
Secretary

LAT:jam
Enclosures

CERTIFIED MAIL NO. 7000 0600 0024 5150 8763
RETURN RECEIPT REQUESTED

Cc: David M. Levine, Esq.
CERTIFIED MAIL NO. 7000 0600 0024 5150 8770
RETURN RECEIPT REQUESTED

*Second mailing 11-3-03
Mailed 9-11-03*

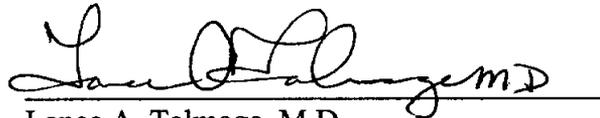
In the Matter of Marc J. Bernstein, M.D.
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Second mailing: 26300 Seville Drive, #202
Beachwood, OH 44122
CERTIFIED MAIL NO. 7000 0600 0024 5150 0279
RETURN RECEIPT REQUESTED

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; Report and Recommendation of Sharon W. Murphy, State Medical Board Attorney Hearing Examiner; and excerpt of draft Minutes of the State Medical Board, meeting in regular session on September 10, 2003, including motions approving and confirming the Findings of Fact, Conclusions and Proposed Order of the Hearing Examiner as the Findings and Order of the State Medical Board of Ohio; constitute a true and complete copy of the Findings and Order of the State Medical Board in the Matter of Marc J. Bernstein, M.D., as it appears in the Journal of the State Medical Board of Ohio.

This certification is made by authority of the State Medical Board of Ohio and in its behalf.



Lance A. Talmage, M.D.
Secretary

(SEAL)

September 10, 2003

Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

*

*

MARC J. BERNSTEIN, M.D.

*

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio on September 10, 2003.

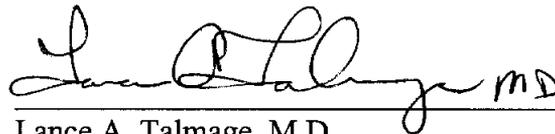
Upon the Report and Recommendation of Sharon W. Murphy, State Medical Board Attorney Hearing Examiner, designated in this Matter pursuant to R.C. 4731.23, a true copy of which Report and Recommendation is attached hereto and incorporated herein, and upon the approval and confirmation by vote of the Board on the above date, the following Order is hereby entered on the Journal of the State Medical Board of Ohio for the above date.

It is hereby ORDERED that:

The certificate of Marc J. Bernstein, M.D., to practice medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED.

This Order shall become effective immediately upon the mailing of notification of approval by the Board.

(SEAL)



Lance A. Talmage, M.D.
Secretary

September 10, 2003
Date

2003 AUG -4 P 3: 20

**REPORT AND RECOMMENDATION
IN THE MATTER OF MARC J. BERNSTEIN, M.D.**

The Matter of Marc J. Bernstein, M.D., was heard by Sharon W. Murphy, Attorney Hearing Examiner for the State Medical Board of Ohio, on May 22 and July 11, 2003.

INTRODUCTION

I. Basis for Hearing

- A. By letter dated February 12, 2003, the State Medical Board of Ohio [Board] notified Marc J. Bernstein, M.D., that it had proposed to take disciplinary action against his certificate to practice medicine and surgery in this state. The Board based its proposed action on allegations pertaining to Dr. Bernstein's criminal conviction for one misdemeanor count of Sexual Abuse, in violation of New York Penal Law Section 130.55. In addition, the Board based its proposed action on an Order of the New York Board for Professional Medical Conduct [New York Board]. The New York Board Order accepted Dr. Bernstein's application for surrender of his New York license based upon the criminal conviction.

The Board alleged that Dr. Bernstein's criminal conviction constitutes "[a] plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a misdemeanor committed in the course of practice,' as that clause is used in R.C. 4731.22(B)(11)." The Board further alleged that the New York Board Order constitutes "[a]ny of the following actions taken by the agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or the limited branches of medicine in another jurisdiction, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual's license to practice; acceptance of an individual's license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand,' as that clause is used in R.C. 4731.22(B)(22)."

Accordingly, the Board advised Dr. Bernstein of his right to request a hearing in this matter. (State's Exhibit 1A).

- B. On February 27, 2003, David M. Levine, Esq., submitted a written hearing request on behalf of Dr. Bernstein. (State's Exhibit 1B).

II. Appearances

- A. On behalf of the State of Ohio: Jim Petro, Attorney General, by Rebecca J. Albers, Assistant Attorney General.
- B. On behalf of the Respondent: David M. Levine, Esq.

EVIDENCE EXAMINED

I. Testimony Heard

A. Presented by the State

Marc J. Bernstein, M.D., as if on cross-examination

B. Presented by the Respondent

- 1. Marc J. Bernstein, M.D.
- 2. Dale Pager

II. Exhibits Examined

A. Presented by the State

- 1. State's Exhibits 1A-1I, 1K, 1N, 1P-1T, 1UA, and 1V: Procedural exhibits. (Note: State's Exhibit 1J, 1L, 1M, 1O, and 1U have been sealed and proffered. See Proffered Materials, paragraph 1).
- 2. State's Exhibits 2A-2E: Certified copies of documents regarding Dr. Bernstein maintained by the Town Court, Town of Colonie, County of Albany, New York.
- * 3. State's Exhibit 3: Copy of a statement made by Patient A.
- * 4. State's Exhibit 4A: Copy of a statement made by a staff member in Dr. Bernstein's New York office, as redacted. (See Proffered Materials, paragraph 2.)
- 5. State's Exhibit 5: Copy of a report of a statement made by Dr. Bernstein to the Colonie Police Department.
- 6. State's Exhibit 6A: Certified copies of documents regarding Dr. Bernstein maintained by the New York Board, as redacted. (See Proffered Materials, paragraph 3.)

7. State's Exhibit 7: Affidavit of Anand G. Garg, M.D., Secretary of the Board, stating that the certificate of Dr. Bernstein to practice medicine and surgery in Ohio expired on July 1, 2001, for non-payment of renewal fees and has not been reinstated.
8. State's Exhibit 8: Affidavit of Debra L. Jones, Chief, CME, Records and Renewal for the Board, stating that the certificate of Dr. Bernstein to practice medicine and surgery in Ohio expired on July 1, 2001, for non-payment of renewal fees and has not been reinstated.
9. State's Exhibit 9A: Copy of a Complaint filed in a civil suit against Dr. Bernstein, as redacted. (See Proffered Materials, paragraph 4.)
10. State's Exhibit 10: Excerpts from the New York Penal Code, §130.55, Sexual abuse in the third degree.
11. State's Exhibit 11: State's Hearing Brief.
12. State's Exhibit 12: State's Reply to Dr. Bernstein's Response to the State's Hearing Brief.

B. Presented by the Respondent

1. Respondent's Exhibit A: Curriculum vitae of Marc J. Bernstein, M.D.
- * 2. Respondent's Exhibit B: Dr. Bernstein's medical records for Patient A, as redacted.
- * 3. Respondent's Exhibit C: Report of Investigation by Dale M. Pager.
4. Respondent's Exhibit C-1: Copy of Private Investigator's License issued by the State of New York to Dale M. Pager, John R. Probst Investigations, Inc.
5. Respondent's Exhibit D: Copy of an April 21, 2003, letter to Dr. Bernstein from Cindy Branch, Senior Claims Examiner, Medical Liability Mutual Insurance Company, in Latham, New York.
6. Respondent's Exhibits E-G: Copies of information from the Board's Website regarding actions taken against other Board licensees.
7. Respondent's Exhibits H-J: Letters written in support of Dr. Bernstein by his colleagues and his New York criminal attorney.

- * 8. Respondent's Exhibit K: Copy of a medical record for Patient A maintained by Patient A's family physician.
- * 9. Respondent's Exhibit L: Marc J. Bernstein, M.D.'s Response to the "State's Hearing Brief."
- 10. Respondent's Exhibit M: Marc J. Bernstein, M.D.'s Sur-Reply to the State's Response to His Response to the State's Hearing Brief.

* Exhibits marked with an asterisk [*] have been sealed to protect patient confidentiality.

PROFFERED MATERIALS

The following exhibits were neither admitted to the hearing record nor considered by the Attorney Hearing Examiner, but are being held as proffered material for the parties.

1. State's Exhibits 1J, 1L, 1M, 1O, and 1U: State's Exhibits 1J, 1L, 1M and 1O deal with the Respondent's request to exclude certain information from the hearing record, and the State's response in which the State agreed to portions of the Respondent's request. Because these exhibits discuss the excluded information, they have been sealed and proffered to avoid tainting the hearing record. See the Hearing Transcript at 7-8 and State's Exhibit 1U and/or 1UA.

Relatedly, State's Exhibit 1U is an Entry issued in response to State's Exhibits 1J, 1L, 1M and 1O. Certain portions of that exhibit discuss the excluded information. Therefore, the Attorney Hearing Examiner has redacted the portions which discuss the excluded information. The redacted copy was admitted to the hearing record as State's Exhibit 1UA. The original, unredacted copy was sealed and proffered as State's Exhibit 1U.

2. State's Exhibit 4: At hearing, the State presented a question to Dr. Bernstein regarding a statement made by a staff member of his office which is set forth in State's Exhibit 4. Dr. Bernstein objected to the statement being included in the hearing record as being unfairly prejudicial to Dr. Bernstein. The Attorney Hearing Examiner agreed, and redacted the offending statement from the exhibit. Accordingly, the redacted copy of State's Exhibit 4 was admitted to the hearing record as State's Exhibit 4A. The original, unredacted copy was sealed and proffered as State's Exhibit 4. See the Hearing Transcript at 103-104.
3. State's Exhibit 6: Certain portions of the documents regarding Dr. Bernstein maintained by the New York Board have been redacted. The redacted copies of these documents were admitted to the hearing record as State's Exhibit 6A. The original, unredacted copies are

sealed and proffered on behalf of the State as State's Exhibit 6. See the Hearing Transcript at 19, 28-30, 162, 165-166.

4. State's Exhibit 9: Certain portions of the documents regarding a civil suit filed against Dr. Bernstein have been redacted. The redacted copies of these documents were admitted to the hearing record as State's Exhibit 9A. The original, unredacted copy is sealed and proffered on behalf of the State as State's Exhibit 9. See the Hearing Transcript at 164-166.
5. State's Exhibit 13: At hearing, the State attempted to elicit certain testimony from Dr. Bernstein. The testimony related to evidence that had previously been excluded by the Attorney Hearing Examiner, and Dr. Bernstein objected to its admission. The Attorney Hearing Examiner agreed, but allowed Counsel for the State to make a proffer of her rationale as to why this information should have been included in the record. Dr. Bernstein was allowed to respond. The proffered testimony is sealed and proffered on behalf of the State as State's Exhibit 13. See the Hearing Transcript at 111-112.

Note: The rulings on proffered exhibits made by the Attorney Hearing Examiner may be overruled by the Board. Accordingly, the Board may vote to admit any or all of the proffered documents into the record.

SUMMARY OF THE EVIDENCE

All exhibits and transcripts of testimony, even if not specifically mentioned, were thoroughly reviewed and considered by the Attorney Hearing Examiner prior to preparing this Report and Recommendation.

1. Marc J. Bernstein, M.D., testified that he had received a medical degree in 1987 from St. George's University School of Medicine in Grenada, West Indies. In 1990, Dr. Bernstein completed a residency in Internal Medicine at Easton Hospital/Hahnemann University in Easton, Pennsylvania. In 1993, Dr. Bernstein completed a fellowship in cardiovascular diseases, which included one year of subspecialty training in nuclear cardiology, at the University of Wisconsin/Sinai-Samaritan Medical Center in Milwaukee, Wisconsin. (Hearing Transcript [Tr.] at 31-32; Respondent's Exhibit [Resp. Ex.] A).

Dr. Bernstein was certified by the American Board of Internal Medicine [ABIM] from 1991 through 2001. He testified that his certification in internal medicine has expired.

Dr. Bernstein has also been certified by the ABIM in the subspecialty Cardiovascular Diseases from 1995 through the present. Finally, Dr. Bernstein has been certified by the Certification Board of Nuclear Cardiology from 1996 through the present. (Tr. at 32-33, 146; Resp. Ex. A).

Dr. Bernstein worked in Kalamazoo, Michigan, from July 1993 through December 1998. From December 1998 through December 2002, Dr. Bernstein worked at Albany Associates in Cardiology in Albany, New York. (Tr. at 33-34, 41-42; Resp. Ex. A).

2. On July 1, 2001, Dr. Bernstein's certificate to practice medicine and surgery in Ohio was suspended by operation of law for non-payment of renewal fees. His certificate has not been reinstated. (State's Exhibits [St. Exs.] 7 and 8).

Dr. Bernstein has surrendered his licenses to practice in New York and Pennsylvania. Moreover, he has allowed his Wisconsin license to become inactive, and his Michigan license to expire. Dr. Bernstein holds no active license to practice in any state at this time. Dr. Bernstein has not practiced medicine since October 2002. (Tr. at 34-39, 95, 123).

3. On October 9, 2002, an Information/Complaint was filed in the Town Court of the Town of Colonie, County of Albany, New York, in *The People of the State of New York vs. Marc J. Bernstein*. The Information/Complaint alleged that, on July 1, 2002, Dr. Bernstein had committed the misdemeanor, Sexual Abuse in the Third Degree, by "by subjecting another person to sexual contact without the latter's consent. More specifically, the Information/Complaint charged that,

[Dr. Bernstein], a practicing physician, did, during a medical examination, subject a 22 year old female patient to sexual contact, by inserting his fingers into her vagina, rubbing her clitoris, and rubbing her breasts.

(St. Ex. 2A). The Information/Complaint further stated that the allegation was "based on police investigation, deposition of the victim, and the oral admissions of the defendant." (St. Ex. 2A).

4. Dr. Bernstein's medical records for Patient A state that Patient A had seen Dr. Bernstein on three occasions prior to July 1, 2002, and that Patient A had been referred to Dr. Bernstein by Patient A's family physician. (Resp. Ex. B).

At some time in 2001 [specific date redacted from the exhibit], Patient A presented to Dr. Bernstein's office for her initial visit. Dr. Bernstein diagnosed a sinus of Valsalva aneurysm and chest pain, most likely related to mild costochondritis and/or other musculoskeletal etiology. Dr. Bernstein advised that Patient A return in one year. Patient A's second and third visits were unremarkable.

On the fourth visit, July 1, 2002, Patient A complained of chest pains, pains in the iliac region, and mid-epigastric burning. Dr. Bernstein documented his physical examination and impressions. In the physical examination, Dr. Bernstein stated that there was "mild tenderness over the iliac region, excellent peripheral pulses bilaterally." (Resp. Ex. B).

Report and Recommendation

In the Matter of Marc J. Bernstein, M.D.

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5. Patient A made a statement for the court in a Supporting Deposition. (St. Ex. 3) In the Supporting Deposition, Patient A stated that she had seen Dr. Bernstein on July 1, 2002, for a follow-up visit. Patient A stated that a nurse had escorted her to the examination room. The nurse instructed Patient A to remove her shirt, but to leave on her bra, pants, and underwear. The nurse further told Patient A to don a gown, open in the front. Shortly thereafter, Dr. Bernstein entered the room. (St. Ex. 3 at 1).

Patient A stated that, during his examination of her, Dr. Bernstein had asked Patient A to remove her bra. Patient A continued,

He had never asked me to take off my bra before and I was a little uncomfortable about it but I did what he told me to. He had me lay back down and he began to feel the [chest] area again for pressure. He then started to move his hands toward my nipple and was feeling my breasts. I thought this was a little strange because it was more like he was doing a breast exam that my gynecologist might do. He was not saying anything about why he was doing this.

He also pushed on my stomach and asked if I felt pressure there. I told him yes. Then he told me that he wanted to check my pulse and pelvic area. He told me to pull my pants and underwear down. I felt funny because he did not leave the room but I pulled them down to just enough so my vaginal area was exposed and I laid back down. He had never did this before during an exam.

He was standing on the right side of me. He put his hands on each side of my pelvic area and pressed down. He said "do you know that you have pulses down here?" and I said yes. He then took my hand and put it on my pelvic area so I could feel my pulse, which I did. Then he said, "You know you have a pulse on you inner thigh also." I said o.k. and he just touched the area he was talking about but did not feel for a pulse.

Then he put his hand on my lower pelvic area and said he was feeling for pressure. He then moved his hand down toward my vagina and began to press on the outside of my vagina and asked me if I felt pressure. My one leg was straight out and other was bent with my heel on the table extension. My pants and underwear were now just above my knees.

He then said he wanted to feel for more pressure here and he put his fingers inside my vagina. He was not wearing any gloves and did not use any kind of lubricant when he did this. He did not tell me [w]hat he was doing or that he was going to put his fingers inside my vagina. He asked me if I felt uncomfortable and I said I was o.k. I was not sure what was going on, I was uncomfortable but figured he was my doctor and I did not know what to do.

I could feel him feeling inside around the wall of my vagina and then he would go in further. He took his fingers out and he was rubbing my clitoris and asked me if I was uncomfortable and I said, "well , you're the doctor." He did not respond. He was still rubbing my clitoris and then he just stopped. * * * I felt really uncomfortable and knew something was wrong. Dr. Bernstein then felt my ankles and under my knees. He then shook my hand and patted me on the back and kissed me on the cheek and said goodbye and left the room. * * *

(St. Ex. 3 at 1-2).

Patient A further stated that, when she went home that evening she had told her mother what had happened in Dr. Bernstein's office. The following day, Patient A's mother took Patient A to her family doctor. Patient A reported that the family doctor had "seemed angry and disgusted" by Dr. Bernstein's conduct and stated that there had been no medical reason to justify Dr. Bernstein's actions. The family physician advised Patient A to report Dr. Bernstein's conduct to the police. (St. Ex. 3 at 3).

6. The medical record for this date maintained by Patient A's family physician is consistent with Patient A's testimony regarding that visit. (Resp. Ex. K).
7. Dr. Bernstein made a statement to the police, which was summarized by a police officer in the Colonie Police Department Oral Admission Form. The Oral Admission Form reports that the following statements, among others, had been made by Dr. Bernstein:
 - "[Dr. Bernstein] stated that he did check [Patient A's] pubic bone for arthritis."
 - "He stated he offered her a gown to wear twice and [Patient A] declined."
 - "He stated he offered twice to have a nurse stay in the room and [Patient A] declined."
 - "He stated that 'She pulled her panties down.'"
 - "He explained that he pressed down on her pubic bone and also pressed 'in and up.' ([Dr. Bernstein] illustrated this by using [the officer's] fist in place of a vagina.)"
 - "He stated that he 'probed her pubic area.'"
 - "When asked if he checked her anywhere else, he replied, 'I did check around her breasts. Above, below, and in between, not on.'"

(St. Ex. 5).

8. A nurse in Dr. Bernstein's office made a statement for the court in a Supporting Deposition. (St. Ex. 4A) In the Supporting Deposition, the nurse stated that Dr. Bernstein had approached her after he learned that Patient A had filed charges against him. The nurse stated that Dr. Bernstein had seemed "upset and flustered." The nurse further stated that:

Dr. Bernstein definitely told me that he palpated her in the groin area and I am not sure if he said he also did her rib area. He also said that he had asked her if she wanted me in the room and she said no. I wonder if he even asked her that because we never stay in the rooms with female patients. He may of asked that because [redacted]. Yesterday Dr. Bernstein had me go in with him on all female patients unless they had a husband or family member with them.

(St. Ex. 4A at 2).

9. On November 13, 2002, Dr. Bernstein entered a plea of guilty to the charges regarding Patient A. The court found him guilty and issued a Judgment of Conviction for one misdemeanor count of Sexual Abuse in the third degree, in violation of New York Penal Law Section 130.55. (St. Ex. 2B).

The court sentenced Dr. Bernstein to a \$500.00 fine, a New York State Surcharge of \$125.00, and one year conditional discharge on the condition that Dr. Bernstein give up his right to practice medicine for thirty days or until the New York State Health Department initiated an investigation, whichever occurred later. Further, the Court issued two Orders of Protection, in effect until November 12, 2005, requiring Dr. Bernstein to stay away from specific persons noted in the Orders of Protection. (St. Exs. 2B, 2D, 2E).

10. On November 25, 2002, Dr. Bernstein signed a Surrender of License in the Matter of Marc J. Bernstein, M.D., before the New York State Department of Health, State Board for Professional Medical Conduct [New York Board]. The Surrender of License was based on the New York Board's Statement of Charges which had included allegations related to Dr. Bernstein's criminal conviction and its underlying conduct. (St. Ex. 6 at 5-10). Effective December 3, 2002, the New York Board issued Order #BPMC 02-361, which adopted Dr. Bernstein's application for surrender of license and ordered that his name be stricken from the roster of physicians in the State of New York. (St. Ex. 6 at 3-4).
11. Dr. Bernstein testified that he had treated Patient A from 2001 through 2002. Dr. Bernstein testified that Patient A had been referred to him by her primary physician after Patient A had had an abnormal echocardiogram. Dr. Bernstein further testified that the echocardiogram had shown a sinus of Valsalva aneurysm which he described as an "elongation or enlargement of one of the three cusps of the aortic valve which are known as the sinus of Valsalva. And an aneurysm is technically defined as a weakening in a wall of a vessel or a vascular structure." Dr. Bernstein added that a sinus of Valsalva aneurysm is generally not a life-threatening condition. (Tr. at 79-80).

Dr. Bernstein testified that Patient A had been in her early twenties at the time of her first visit to Dr. Bernstein's office. Dr. Bernstein testified that she had been accompanied by her mother on her first three visits to the office. He added that Patient A's mother had been very domineering, and had attempted to answer Dr. Bernstein's questions before Patient A had an opportunity to answer them. (Tr. at 80-81).

Dr. Bernstein further testified that, on the second visit, Patient A had complained of diffuse chest pain. Dr. Bernstein diagnosed chronic costochondritis. He explained that chronic costochondritis indicates a long-term "inflammation of the cartilage which separates the sternum from where the ribs insert on the sternum." Dr. Bernstein added that chronic costochondritis is a "very frequent cause of atypical chest pain in young women." Dr. Bernstein testified that, in an examination for chronic costochondritis, the physician would palpate, or gently press or touch, the chest along the sternum, the ribs and the clavicle. (Tr. at 81-83).

Dr. Bernstein testified that Patient A's fourth and final visit had been a routine follow-up visit. He added that it was the first time that Patient A's mother did not accompany Patient A to Dr. Bernstein's office. Dr. Bernstein testified that Patient A had stated that she had forgotten to tell her mother about the appointment and that her mother would be "quite upset." (Tr. at-84-85).

Dr. Bernstein stated that, on the last visit, Patient A had complained of chest pain and pain in her right iliac region. Dr. Bernstein described the iliac region as the area where the upper thigh inserts into the hip. Dr. Bernstein testified that he had examined Patient A by palpating around her sternum, clavicle, and ribs. Dr. Bernstein denied touching Patient A's breasts. (Tr. at 83-85).

Dr. Bernstein testified that, in identifying the site of her iliac pain, Patient A had picked up her gown to above her waist. He stated that she had slid her underwear down, but that Dr. Bernstein had tried to stop her. Dr. Bernstein testified that he had also offered to get his nurse, but that Patient A had refused, stating that it wasn't necessary because Dr. Bernstein was her physician and she trusted him. (Tr. at 85-86).

Dr. Bernstein testified that, when he asked Patient A where her pain was, "she [had] pointed to an area which sort of ran a line from where the front part of the hip is down toward the pubic bone on that diagonal." Dr. Bernstein testified that, during his examination of Patient A, he had taken her peripheral pulses, including those "at the wrists," "behind the knee," "near the ankle," "over the big toe," and "the femoral pulse which is located in the iliac region." Dr. Bernstein denied touching Patient A's pelvic region, other than palpating from the iliac crest toward the pubic bone. (Tr. at 86-87).

Dr. Bernstein testified that Patient A did not scream or fight or call for help and she did not try to stop the examination. Dr. Bernstein testified that his office is located in close proximity to other examination rooms, the waiting room, and the reception desk.

Dr. Bernstein further testified that, when Patient A left the examination room, she had gone to the front desk and scheduled a follow-up appointment to see him in six months, and to have a repeat echocardiogram done at that time. Dr. Bernstein testified that he knows Patient A did this because the information was stored in the office computer. (Tr. at 87-89).

12. Regarding the report of the statement Dr. Bernstein had given to the Colonie Police Officer, Dr. Bernstein denied having stated that he had checked Patient A's public bone for arthritis. He further denied that he had stated that he offered a gown to Patient A, noting that Patient A had been wearing a gown. Moreover, Dr. Bernstein acknowledged that he had used the officer's hand to demonstrate the manner in which he had touched Patient A, but he denied that he had referred to it as a vagina. In addition, Dr. Bernstein testified that he had pressed "down" on the officer's fist, not "up and down." Dr. Bernstein also denied telling the officer that he had probed Patient A's pubic area. (Tr. at 100-101). Dr. Bernstein later explained that he had used the officer's fist to demonstrate the art of palpation in general. (Tr. at 141-142).
13. Dr. Bernstein acknowledged that one of the office nurses had given a statement in the criminal case. Dr. Bernstein further acknowledged that he had told the nurse that he had palpated Patient A in the groin or iliac area. (Tr. at 101; St. Ex. 4A).
14. Regarding Patient A's statement, Dr. Bernstein denied that he had instructed Patient A to pull down her pants. He further denied asking Patient A if she knew she had pulses in her groin area. Finally, he denied putting his fingers in her vagina or rubbing her clitoris. (Tr. at 105-106).
15. Dr. Bernstein testified that he had decided to enter a guilty plea, despite his innocence, because he is married and has two young children. Dr. Bernstein believed that, if he had been convicted, he would have been sentenced to incarceration for one year. He further testified that he had been told that if he entered a plea, he would not go to jail, but would pay a fine and surrender his license to practice medicine in the State of New York. (Tr. at 91-92).

Dr. Bernstein testified that he had discussed his options with his wife and with friends, and had decided to accept the plea agreement. He stated that, "after long, long discussions with my family and other close friends, it was felt that pleading to something I didn't do in this case was a better alternative than to risk losing, given all the media stuff that was going on, losing a trial and taking the risk of spending a year in jail." (Tr. at 91-94).

16. Dr. Bernstein acknowledged that each Order of Protection issued by the court requires that Dr. Bernstein stay away from the victim's home, school, business, or place of employment; and to refrain from communication by mail, telephone, e-mail, voice mail or electronic

means. In addition, each Order of Protection states that Dr. Bernstein is required to refrain from assault, stalking, harassment, menacing, reckless endangerment, disorderly conduct, intimidation, threats, or otherwise interfering with the victim or victims and members of her family or household. Dr. Bernstein testified that that he believes that it is standard language in Orders of Protection and that it was not based on any conduct of his. (Tr. at 109; St. Exs. 2 at D, E).

17. Dale M. Pager, a private investigator and owner of John R. Probst Investigations, Inc., in Loudonville, New York, testified at hearing by telephone on behalf of Dr. Bernstein. Ms. Pager testified that Dr. Bernstein had hired her to investigate Patient A, including her personal circumstances, her lifestyle, and her employment. Ms. Pager further testified that, because Patient A lived with her parents, Ms. Pager had also investigated Patient A's family. (Tr. at 66-73).

Ms. Pager testified that the investigation revealed that Patient A's parents had had tax liens filed against them and had a mortgage on their home. (Tr. at 71; Resp. Ex. C).

18. Dr. Bernstein testified that, after his criminal conviction, he had resigned his position with the cardiology practice. Dr. Bernstein testified that he had been making \$400,000 a year in that job, and that his family had lived in an affluent area of Albany. He added that he had had a house costing \$700,000, which he had had to sell at a significant loss. In addition, Dr. Bernstein was forced to surrender his only active license to practice medicine; and now has a criminal record for a sexual crime. (Tr. at 41-44; 121-122).
19. In March 2003, a civil suit was filed against Dr. Bernstein. Patient A as Jane Doe #1 was a plaintiff in that suit. (St. Ex. 9A).
20. Dr. Bernstein testified that he had moved to Ohio in January 2003 because his wife is from the Cleveland area. He stated that it had been "too difficult" to stay in New York, and he had thought that Cleveland would be a good place to live. (Tr. at 95-96).
21. Dr. Bernstein submitted letters written in his support: two from colleagues and one from his New York criminal attorney. (Resp. Exs. H-J).

FINDINGS OF FACT

1. The certificate of Marc J. Bernstein, M.D., to practice medicine and surgery in Ohio was suspended by operation of law on or about July 1, 2001, for non-payment of renewal fees. The certificate has not been reinstated.
2. On November 13, 2002, in the Town Court of Colonie, Albany County, New York, Bernstein entered a plea of guilty to one misdemeanor count of Sexual Abuse in the third

degree, in violation of New York Penal Law Section 130.55. The court found him guilty and issued a Judgment of Conviction. The court sentenced Dr. Bernstein to a \$500.00 fine, a New York State Surcharge of \$125.00, and one year conditional discharge provided that Dr. Bernstein give up his right to practice medicine for thirty days or until the New York State Health Department initiated an investigation, whichever occurred later. Further, the Court issued two Orders of Protection, in effect until November 12, 2005, requiring Dr. Bernstein to stay away from specific person or persons noted in the Orders of Protection.

3. On November 25, 2002, Dr. Bernstein signed a Surrender of License in the Matter of Marc J. Bernstein, M.D., before the New York State Department of Health, State Board for Professional Medical Conduct [New York Board]. The Surrender of License was based on the New York Board's Statement of Charges which had included allegations related to Dr. Bernstein's criminal conviction and its underlying conduct. Effective December 3, 2002, the New York Board issued Order #BPMC 02-361, which adopted Dr. Bernstein's application for surrender of license and ordered that his name be stricken from the roster of physicians in the State of New York.

CONCLUSIONS OF LAW

1. The criminal conviction of Marc J. Bernstein, M.D., as set forth in Findings of Fact 2, constitutes "[a] plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a misdemeanor committed in the course of practice," as that clause is used in Section 4731.22(B)(11), Ohio Revised Code.
2. The New York Board Order, as set forth in Findings of Fact 3, constitutes "[a]ny of the following actions taken by the agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or the limited branches of medicine in another jurisdiction, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual's license to practice; acceptance of an individual's license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand," as that clause is used in Section 4731.22(B)(22), Ohio Revised Code.

* * * * *

Dr. Bernstein acknowledged that he had pled guilty to and been found guilty of sexual abuse of a patient. Nevertheless, Dr. Bernstein testified at hearing that he had not really committed the crime, and presented a two-fold explanation. First, Dr. Bernstein argued that Patient A had lied about the sexual misconduct because she had hoped to obtain money to pay her parents' bills. Second, he stated that he had accepted the plea arrangement simply to avoid the possibility of spending a year in jail. Neither argument was convincing.

Moreover, Dr. Bernstein's version of events is not credible. According to Dr. Bernstein, when Patient A lay on the examination table, she pulled her gown up and her panties down, which would have left her pubic and vaginal area exposed. Dr. Bernstein, concerned for the impropriety of the situation, asked Patient A if she would like Dr. Bernstein to call a nurse. Patient A declined. Nevertheless, with Patient A's gown up and panties down, pubic and vaginal area exposed, Dr. Bernstein proceeded to palpate her groin. It is unlikely that a well-intentioned physician would allow such a risky and inappropriate situation to develop.

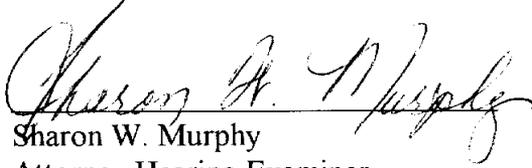
Nevertheless, Rule 4731-13-24, Ohio Administrative Code, Conviction of a crime, provides that, "A certified copy of a plea of guilty to, or a judicial finding of guilt of any crime in a court of competent jurisdiction is conclusive proof of the commission of all of the elements of that crime." Dr. Bernstein pled guilty to sexual abuse of a patient, more specifically, inserting his fingers into her vagina, rubbing her clitoris, and rubbing her breasts, during the course of a medical examination. The Board has no option but to permanently revoke Dr. Bernstein's certificate to practice in this State.

PROPOSED ORDER

It is hereby ORDERED that:

The certificate of Marc J. Bernstein, M.D., to practice medicine and surgery in the State of Ohio shall be PERMANENTLY REVOKED.

This Order shall become effective immediately upon the mailing of notification of approval by the Board.


Sharon W. Murphy
Attorney Hearing Examiner



State Medical Board of Ohio

77 S. High St., 17th Floor • Columbus, OH 43215-6127 • (614) 466-3934 • Website: www.state.oh.us/med/

EXCERPT FROM THE DRAFT MINUTES OF SEPTEMBER 10, 2003

REPORTS AND RECOMMENDATIONS

Mr. Browning announced that the Board would now consider the findings and orders appearing on the Board's agenda. He asked whether each member of the Board had received, read, and considered the hearing record, the proposed findings, conclusions, and orders, and any objections filed in the matters of: Marc J. Bernstein, M.D.; Thomas Anh Nguyen, M.D.; Oscar H. Salvat, M.D.; and Jack E. Steele, M.D. A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Ms. Sloan	- aye
	Dr. Davidson	- aye
	Dr. Robbins	- aye
	Dr. Garg	- aye
	Dr. Steinbergh	- aye
	Mr. Browning	- aye

Mr. Browning asked whether each member of the Board understands that the disciplinary guidelines do not limit any sanction to be imposed, and that the range of sanctions available in each matter runs from dismissal to permanent revocation. A roll call was taken:

ROLL CALL:	Mr. Albert	- aye
	Dr. Egner	- aye
	Dr. Talmage	- aye
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Ms. Sloan	- aye
	Dr. Davidson	- aye
	Dr. Robbins	- aye
	Dr. Garg	- aye

Dr. Steinbergh - aye
Mr. Browning - aye

Mr. Browning noted that, in accordance with the provision in Section 4731.22(F)(2), Revised Code, specifying that no member of the Board who supervises the investigation of a case shall participate in further adjudication of the case, the Secretary and Supervising Member must abstain from further participation in the adjudication of these matters.

Mr. Browning stated that if there were no objections, the Chair would dispense with the reading of the proposed findings of fact, conclusions and orders in the above matters. No objections were voiced by Board members present.

The original Reports and Recommendations shall be maintained in the exhibits section of this Journal.

MARC J. BERNSTEIN, M.D.

.....

DR. STEINBERGH MOVED TO APPROVE AND CONFIRM MS. MURPHY'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF MARC J. BERNSTEIN, M.D. MS. SLOAN SECONDED THE MOTION.

.....

A vote was taken on Dr. Steinbergh's motion to approve and confirm:

Vote:	Mr. Albert	- abstain
	Dr. Egner	- aye
	Dr. Talmage	- abstain
	Dr. Buchan	- aye
	Dr. Kumar	- aye
	Ms. Sloan	- aye
	Dr. Davidson	- aye
	Dr. Robbins	- aye
	Dr. Garg	- abstain
	Dr. Steinbergh	- aye

The motion carried.



State Medical Board of Ohio

77 S. High St., 17th Floor • Columbus, OH 43215-6127 • (614) 466-3934 • Website: www.state.oh.us/med/

February 12, 2003

Marc J. Bernstein, M.D.
8205 West "O" Avenue
Kalamazoo, Michigan 49909

Dear Doctor Bernstein:

In accordance with R.C. Chapter 119., you are hereby notified that the State Medical Board of Ohio intends to determine whether or not to limit, revoke, permanently revoke, suspend, refuse to register or reinstate your certificate to practice medicine and surgery, or to reprimand or place you on probation for one or more of the following reasons:

- (1) Your certificate to practice medicine and surgery in Ohio was suspended by operation of law, on or about July 1, 2001, for non-payment of renewal fees, and has not been reinstated.
- (2) On or about November 13, 2002, in the Justice Court, Town of Colonie, Albany County, New York, you plead guilty to, and a Judgment of Conviction was entered on, one misdemeanor count of Sexual Abuse in the third degree, in violation of New York Penal Law Section 130.55.

You were sentenced to a \$500.00 fine, a New York State Surcharge of \$125.00, and a one (1) year conditional discharge [provided] you give up your right to practice medicine for thirty (30) days or until the [New York State] Health Department begins [an] investigation, whichever comes later. Further, the Court issued two (2) Orders of Protection, in effect until November 12, 2005, for two protected persons, requiring you to stay away from them. Copies of the Complaint, Certificate of Conviction, Orders of Protection, and Certificate of Disposition are attached hereto and incorporated herein.

- (3) Effective on or about December 3, 2002, the New York Board for Professional Medical Conduct (New York Board) Order #BPMC 02-361, ordered that your application for surrender of license, based upon your admission to having been convicted of a crime under [New York] state law, be adopted and that your name be stricken from the roster of physicians in the State of New York.

Mailed 2-13-03

You admitted to the First Specification of the New York Board Statement of Charges, which charged you with committing professional misconduct by having been convicted of committing an act constituting a crime under New York state law, as alleged in the facts which included your November 13, 2002, plea of guilty and sentence, as provided in paragraph two (2) above, which included the issuance of protection orders by the Court covering two female patients. Your conduct underlying your surrender application is provided in greater detail in the above New York Board Order, a copy of which is attached hereto and incorporated herein.

Your plea of guilty to, and/or the judicial finding of, guilt, as alleged in paragraph two (2) above, individually and/or collectively, constitute “[a] plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a misdemeanor committed in the course of practice,” as that clause is used in R.C. 4731.22(B)(11).

Further, the New York Board Order, as alleged in paragraph three (3) above, constitutes “[a]ny of the following actions taken by the agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatric medicine and surgery, or the limited branches of medicine in another jurisdiction, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual’s license to practice; acceptance of an individual’s license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand,” as that clause is used in R.C. 4731.22(B)(22).

Pursuant to R.C. Chapter 119., you are hereby advised that you are entitled to a hearing in this matter. If you wish to request such hearing, the request must be made in writing and must be received in the offices of the State Medical Board within thirty days of the time of mailing of this notice.

You are further advised that, if you timely request a hearing, you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice before this agency, or you may present your position, arguments, or contentions in writing, and that at the hearing you may present evidence and examine witnesses appearing for or against you.

In the event that there is no request for such hearing received within thirty days of the time of mailing of this notice, the State Medical Board may, in your absence and upon consideration of this matter, determine whether or not to limit, revoke, permanently revoke, suspend, refuse to register or reinstate your certificate to practice medicine and surgery or to reprimand or place you on probation.

Please note that, whether or not you request a hearing, R.C. 4731.22(L), provides that “[w]hen the board refuses to grant a certificate to an applicant, revokes an individual’s

Marc J. Bernstein, M.D.

Page 3

certificate to practice, refuses to register an applicant, or refuses to reinstate an individual's certificate to practice, the board may specify that its action is permanent. An individual subject to a permanent action taken by the board is forever thereafter ineligible to hold a certificate to practice and the board shall not accept an application for reinstatement of the certificate or for issuance of a new certificate."

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Anand G. Garg, M.D.
Secretary

AGG/jag
Enclosures

CERTIFIED MAIL # 7000 0600 0024 5151 3903
RETURN RECEIPT REQUESTED

76 Devonshire
Slingerlands, New York 12159

CERTIFIED MAIL # 7000 0600 0024 5151 3897
RETURN RECEIPT REQUESTED

INFORMATION / COMPLAINT
(Sect 100.05-100.50 C.P.L.)

Justice Court-Town of Colonie
This is a copy of original on file in this court.

Julie L. Dansee
Clerk of the Court

TOWN COURT, TOWN OF COLONIE, COUNTY OF ALBANY, N.Y.

THE PEOPLE OF THE STATE OF NEW YORK)
)
 vs.)
)
 Marc J. Bernstein)
)
)

I, Stephen M. Tanski (police officer), the COMPLAINANT herein, ACCUSE, Marc J. Bernstein, the DEFENDANT in this action and charge that on or about the 1st day of July, 2002 at 2 Pallasades Drive, in the Town of Colonie, County of Albany, New York, at about 2:00 o'clock in the afternoon, said DEFENDANT did * intentionally-knowingly-and unlawfully COMMIT THE misdemeanor of Sexual Abuse in the Third Degree contrary to the provisions of Section 130.55, Subdivision -- of the Penal Law of the State of New York.

THE FACTS ON WHICH THIS ACCUSATION IS MADE ARE OF MY OWN KNOWLEDGE AND ON INFORMATION AND BELIEF AS FOLLOWS:

A. OF MY OWN KNOWLEDGE:

B. ON INFORMATION AND BELIEF:

A person is guilty of sexual abuse in the third degree when he subjects another person to sexual contact without the latter's consent; except that in any prosecution under this section, it is an affirmative defense that (a) such other person's lack of consent was due solely to incapacity to consent by reason of being less than seventeen years old, and (b) such other person was more than fourteen years old, and (c) the defendant was less than five years older than such other person, to wit: At the aforesaid time, date and place, the aforementioned defendant, a practicing physician, did, during a medical examination, subject a 22 year old female patient to sexual contact, by inserting his fingers into her vagina, rubbing her clitoris, and rubbing her breasts, all contrary to the provisions the statute herein made and provided for. This allegation is based on police investigation, deposition of the victim, and the oral admissions of the defendant.

WHEREFORE I REQUEST THAT A WARRANT BE ISSUED FOR THE ARREST OF THE DEFENDANT

Stephen M. Tanski
COMPLAINANT

NOTE: FALSE STATEMENTS MADE HEREIN ARE PUNISHABLE AS A CLASS A MISDEMEANOR PURSUANT TO SECTION 210.45 OF THE PENAL LAW.

** Sworn to before me this 9 day of October

John Utley

(Signature)
D/SGT.

(Title)

* Strike all words not applicable
**Need be sworn to only if Court specifically requires (Sec.100.30C.P.L.)

STATE OF NEW YORK : COUNTY OF ALBANY

JUSTICE COURT TOWN OF COLONIE

The People of the State of New York

- against -

MARC J. BERNSTEIN

Defendant

03/12/60

Certificate of Conviction

This is to certify that a Judgment of Conviction has been entered in this court, before the Hon. MARY S. SWEENEY, a ~~Judge~~ - Justice of this Court, on the 13th day of NOVEMBER, 2002, convicting the above named defendant of the offense of PL 130.55 - SEXUAL ABUSE IN THE THIRD DEGREE
(Year)

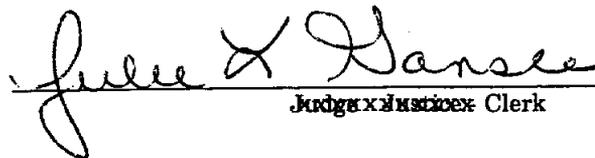
and sentence was imposed as follows,

DEF. PLEAD GUILTY AND WAS SENTENCED TO \$500.00 FINE & \$125.00 NEW YORK STATE SURCHARGE, A ONE YEAR CONDITIONAL DISCHARGE THAT DEF. GIVE UP HIS RIGHT TO PRACTICE MEDICINE FOR 30 DAYS OR UNTIL HEALTH DEPARTMENT BEGINS INVESTIGATION, WHICHEVER COMES LATER. 2 ORDERS OF PROTECTION ISSUED.

FINE/SURCHARGE PAID ON NOVEMBER 21, 2002

Dated at: COLONIE TOWN JUSTICE
312 WOLF ROAD
LATHAM, NY 12110, N.Y.

this 21st day of JANUARY, 2003
(Year)


Julie X. Danse
~~Judge x Justice~~ Clerk

Justice Court-Town of Colonie
This is a copy of original on file in this court.
[Signature]
Clerk of the Court

ORI No: _____ COLONIE TOWN Court County of ALBANY
Order No: _____ (address) WOLF ROAD, LATHAM State of New York
NYSID No: _____

Criminal Form 2 11/99

Present: Hon. _____

People of the State of New York
-against-

MARC BERNSTEIN

Defendant
Date of Birth: 3/12/60

ORDER OF PROTECTION
Non-Family Offense C.P.L. 530.13
 Youthful Offender (check if applicable)

Part _____
Docket No. _____
Indictment No. _____
Charges PL 130.50

Ex parte (check one)
 Defendant Present in Court

NOTICE: YOUR FAILURE TO OBEY THIS ORDER MAY SUBJECT YOU TO MANDATORY ARREST AND CRIMINAL PROSECUTION, WHICH MAY RESULT IN YOUR INCARCERATION FOR UP TO SEVEN YEARS FOR CONTEMPT OF COURT. IF THIS IS A TEMPORARY ORDER OF PROTECTION AND YOU FAIL TO APPEAR IN COURT WHEN YOU ARE REQUIRED TO DO SO, THIS ORDER MAY BE EXTENDED IN YOUR ABSENCE AND CONTINUE IN EFFECT UNTIL YOU REAPPEAR IN COURT.

TEMPORARY ORDER OF PROTECTION. Whereas good cause has been shown for the issuance of a temporary order of protection [as a condition of recognizance release on bail adjournment in contemplation of dismissal].

ORDER OF PROTECTION. Whereas defendant has been convicted of [specify crime or violation]
Sex Abuse 3rd

And the Court having made a determination in accordance with section 530.13 of the Criminal Procedure Law,

IT IS HEREBY ORDERED that the above-named defendant observe the following conditions of behavior:

(Check Paragraphs and Subparagraphs that Apply):

- Stay away from [name(s) of protected persons] _____ and/or from the home of _____ school of _____ business of _____ place of employment of _____ other _____

Refrain from communication by mail or by telephone, e-mail, voice-mail or other electronic means with [specify]: _____

Refrain from assault, stalking, harassment, menacing, reckless endangerment, disorderly conduct, intimidation, threats or otherwise interfering with the victim or victims of the alleged offense and such members of the family or household of such victim or victims as shall be specifically named [specify victims or persons]: _____

Surrender any and all firearms owned or possessed, including, but not limited to, the following: _____ Such surrender shall take place on or before [specify date/time]: _____ at: _____ indirectly

Specify other conditions Stay away/no contact or third party contact, directly c

IT IS FURTHER ORDERED that the above-named Defendant's license to carry, possess, repair, sell or otherwise dispose of a firearm or firearms, if any, pursuant to Penal Law §400.00, is hereby suspended or revoked (note: final order only), and/or the Defendant shall remain ineligible to receive a firearm license during the period of this order. (Check all applicable boxes). NOTE: If this paragraph is checked, a copy of this form must be sent to: New York State Police, Pistol Permit Section, State Campus Building #22, 1220 Washington Avenue, Albany, New York 12226-2252.

IT IS FURTHER ORDERED that this order of protection shall remain in effect until Nov. 12, 05.
DATED: November 13, 2002

[Signature]
JUDGE / JUSTICE
COURT (COURT SEAL)

Defendant advised in Court of issuance of Order.
Received by Defendant _____ (signature)

Service Executed Date: 11/13/02 Time: 9pm

The Criminal Procedure Law provides that presentation of a copy of this order of protection to any police officer or peace officer acting pursuant to his or her special duties shall authorize, and in some situations may require, such officer to arrest a defendant who has violated its terms and to bring him or her before the Court to face whatever penalties may be imposed therefor.

Federal law provides that this order must be honored and enforced by state and tribal courts, including courts of a state, the District of Columbia, a commonwealth, territory or possession of the United States, if it is established that the person against whom the order is sought an intimate partner of the protected party and has been or will be afforded reasonable notice and opportunity to be heard in accordance with state law sufficient to protect that person's rights (18 U.S.C. §§2265, 2266).

It is a federal offense to: cross state lines to violate an order of protection issued against an intimate partner; cross state lines to engage in stalking, harassment or domestic violence; purchase, transfer, possess or receive a firearm following a conviction of a domestic violence misdemeanor involving the use or attempted use of physical force or a deadly weapon; or (for persons other than military or law enforcement officers while on duty) purchase, transport, possess or receive a firearm while an order of protection, issued against an intimate partner after notice and an opportunity to be heard, prohibiting assault, harassment, threatening and/or stalking, is in effect (18 U.S.C. §§922(g)(8), 922(g)(9), 2261, 2261A, 2262).

Justice Court-Town of Colonie
This is a copy of original on file in this court
Jane L. Lane

ORI No: _____
Order No: _____
NYSID No: _____

COLONIE TOWN
(address) WOLF ROAD, LATHAM State of New York
Criminal Form 2 11/99
Court County of ALBANY

Present: Hon _____
People of the State of New York
-against-
MARC BERNSTEIN

ORDER OF PROTECTION
Non-Family Offense C.P.L. 530.13
 Youthful Offender (check if applicable)
Part _____
Docket No. _____
Indictment No. _____
Charges 130.55

Defendant
Date of Birth: 3/12/60

Ex parte (check one)
 Defendant Present in Court

NOTICE: YOUR FAILURE TO OBEY THIS ORDER MAY SUBJECT YOU TO MANDATORY ARREST AND CRIMINAL PROSECUTION, WHICH MAY RESULT IN YOUR INCARCERATION FOR UP TO SEVEN YEARS FOR CONTEMPT OF COURT. IF THIS IS A TEMPORARY ORDER OF PROTECTION AND YOU FAIL TO APPEAR IN COURT WHEN YOU ARE REQUIRED TO DO SO, THIS ORDER MAY BE EXTENDED IN YOUR ABSENCE AND CONTINUE IN EFFECT UNTIL YOU REAPPEAR IN COURT.

TEMPORARY ORDER OF PROTECTION. Whereas good cause has been shown for the issuance of a temporary order of protection [as a condition of recognizance release on bail adjournment in contemplation of dismissal].

ORDER OF PROTECTION. Whereas defendant has been convicted of [specify crime or violation]
130.55 Sex Abuse 3rd

And the Court having made a determination in accordance with section 530.13 of the Criminal Procedure Law,

IT IS HEREBY ORDERED that the above-named defendant observe the following conditions of behavior:
(Check Paragraphs and Subparagraphs that Apply):

- Stay away from [name(s) of protected persons] _____ and/or from the home of _____ school of _____ business of _____ place of employment of _____ other _____

Refrain from communication by mail or by telephone, e-mail, voice-mail or other electronic means with [specify]: A _____ T _____

Refrain from assault, stalking, harassment, menacing, reckless endangerment, disorderly conduct, intimidation, threats or otherwise interfering with the victim or victims of the alleged offense and such members of the family or household of such victim or victims as shall be specifically named [specify victims or persons]: A _____ T _____

Surrender any and all firearms owned or possessed, including, but not limited to, the following: _____ Such surrender shall take place on or before [specify date/time]: _____ at: _____ indirectly

Specify other conditions Stay away/no contact or third party contact, directly o. IT IS FURTHER ORDERED that the above-named Defendant's license to carry, possess, repair, sell or otherwise dispose of a firearm or firearms, if any, pursuant to Penal Law §400.00, is hereby suspended or revoked (note: final order only), and/or the Defendant shall remain ineligible to receive a firearm license during the period of this order. (Check all applicable boxes). NOTE: If this paragraph is checked, a copy of this form must be sent to: New York State Police, Pistol Permit Section, State Campus Building #22, 1220 Washington Avenue, Albany, New York 12226-2252.

IT IS FURTHER ORDERED that this order of protection shall remain in effect until November 12, 2005
DATED: November 13, 2002

MJD
JUDGE/JUSTICE
COURT (COURT SEAL)

Defendant advised in Court of issuance of Order.
Received by Defendant _____ (signature)

Service Executed Date: 11/13/02 Time: 9pm

The Criminal Procedure Law provides that presentation of a copy of this order of protection to any police officer or peace officer acting pursuant to his or her special duties shall authorize, and in some situations may require, such officer to arrest a defendant who has violated its terms and to bring him or her before the Court to face whatever penalties may be imposed therefor.

Federal law provides that this order must be honored and enforced by state and tribal courts, including courts of a state, the District of Columbia, a commonwealth, territory or possession of the United States, if it is established that the person against whom the order is sought an intimate partner of the protected party and has been or will be afforded reasonable notice and opportunity to be heard in accordance with state law sufficient to protect that person's rights (18 U.S.C. §§2265, 2266).

It is a federal offense to: cross state lines to violate an order of protection issued against an intimate partner; cross state lines to engage in stalking, harassment or domestic violence; purchase, transfer, possess or receive a firearm following a conviction of a domestic violence misdemeanor involving the use or attempted use of physical force or a deadly weapon; or (for persons other than military or law enforcement officers while on duty) purchase, transport, possess or receive a firearm while an order of protection, issued against an intimate partner after notice and an opportunity to be heard, prohibiting assault, harassment, threatening and/or stalking, is in effect (18 U.S.C. §§922(g)(8), 922(g)(9), 2261, 2261A, 2262).

CERTIFICATE OF DISPOSITION

STATE OF NEW YORK
ALBANY COUNTY

COLONIE TOWN COURT
CRIMINAL PART

PEOPLE OF THE STATE OF NEW YORK

VS.

MARC J. BERNSTEIN; Defendant

CASE NO: 02100330

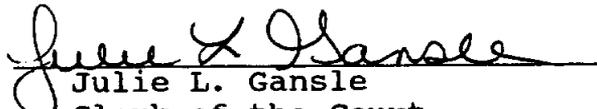
Date of birth: 03/12/60
Date of arrest: 10/09/02
Disposition date: 11/21/02

Section Charged	Section Disposed	Ticket No & Description	Disposition	Fine	Civil-Fee	Surchg
PL 130.55	PL 130.55	0210091 SEX ABUSE - 3rd (MB)	CD	500.00	0.00	125.00

Upon a proper request for an official statement of disposition, I certify that the above named defendant having appeared before this court was charged as shown above. Each of the charges was disposed of as indicated, and the fines paid.

Dated: The 10th day of January 2003

At: PUBLIC SAFETY CENTER
312 WOLF ROAD
LATHAM NY 12110


Julie L. Gansle
Clerk of the Court

NOTE: A copy of the request will be filed with this certificate in the case records.

CAUTION: This information must not be divulged if the case is sealed or where the defendant has been adjudicated a youthful offender.

Copies: ___ Court, ___ Defendant, X Agency, ___ DA

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

IN THE MATTER
OF
MARC J. BERNSTEIN, M.D.

SURRENDER
ORDER
BPMC No. 02-361

Upon the application of (Respondent) MARC J. BERNSTEIN, 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 SO ORDERED, and it is further

ORDERED, that the name of Respondent 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 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: December 3, 2002

William P. Dillon, M.D.

WILLIAM P. DILLON, M.D.
Chair
State Board for Professional Medical Conduct

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

**IN THE MATTER
OF
MARC J. BERNSTEIN, M.D.**

**SURRENDER
of
LICENSE**

MARC J. BERNSTEIN, M.D., representing that all of the following statements are true, deposes and says:

That on or about May 5, 1995, I was licensed to practice as a physician in the State of New York, and issued License No. 199247 by the New York State Education Department.

My current address is 76 Devonshire Road, Slingerlands, New York 12159, 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 Three Specifications of professional misconduct.

A copy of the Statement of Charges, marked as Exhibit "A", 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 guilt to the First Specification [having been convicted of a crime under New York State Law], in full satisfaction of the charges against me.

I ask the Board to accept the Surrender of my License.

I understand that if the Board does not accept this Surrender, none of its terms shall bind me or constitute an admission of any of the acts of alleged misconduct; 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 the Surrender of my 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.

I ask the Board to accept this Surrender of License 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.

DATED 11/25/02



MARC J. BERNSTEIN, M.D.
RESPONDENT

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

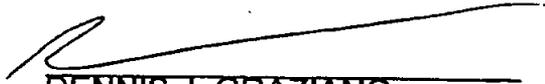
DATE: 11/30/02


PETER J. MILLOCK, ESQ.
Attorney for Respondent

DATE: 12/2/02


MICHAEL A. HISER, ESQ.
Associate Counsel
Bureau of Professional Medical Conduct

DATE: 12/02/02


DENNIS J. GRAZIANO
Director
Office of Professional Medical Conduct

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

IN THE MATTER
OF
MARC J. BERNSTEIN, M.D.

STATEMENT
OF
CHARGES

MARC J. BERNSTEIN, M.D., the Respondent, was authorized to practice medicine in New York State on or about May 5, 1995, by the issuance of license number 199247 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. Respondent, a cardiologist, provided medical care to Patient A, a 22 year old female patient, at various times from approximately July 2001 to July 2002 at his office at 4 Palisades Drive, Albany, New York ["Respondent's office"]. Respondent's care of Patient A was contrary to accepted standards of medical practice as follows:
1. Respondent, during an office examination on July 1, 2002, examined the breasts of Patient A in a manner that was without adequate medical indication.
 2. Respondent, during an office examination on July 1, 2002, touched the patient's genital area, placed his ungloved finger[s] inside her vagina, and then rubbed her clitoris, all without adequate medical indication.
 3. Respondent, on July 1, 2002, kissed Patient A on the cheek following the events described in paragraphs (1) and (2), above.
- B. Respondent, provided medical care to Patient B, a 39 year old female patient, on several occasion in September 2001 at Respondent's office. Respondent's care of Patient B was contrary to accepted standards of medical practice as follows:

1. Respondent, during the patient's first office visit on or about September 11, 2001, following her performance of a treadmill test, while she was standing, hugged her and kissed her on the lips, without permission or warning.
 2. Respondent, during the patient's office visit on or about September 24, 2001, requested that the patient lie down, then without permission or warning kissed her on the lips with sufficient force that she felt his tongue pressing against her.
- C. Respondent, on November 13, 2002, plead guilty to engaging in the misdemeanor of sexual abuse in the third degree, in violation of New York Penal Law Section 130.55, based on the facts alleged in paragraph A, above. Respondent was sentenced to a \$500.00 fine and a \$125.00 New York State surcharge, in addition to being given a one year conditional discharge. Two orders of protection were also issued, one covering Patient A, and the other covering Patient B.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

CRIMINAL CONVICTION (N.Y.S.)

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(9)(a)(i) by having been convicted of committing an act constituting a crime under New York state law as alleged in the facts of the following:

1. The facts in Paragraph C.

SECOND AND THIRD SPECIFICATIONS

WILFUL PHYSICAL ABUSE

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(31) by engaging in conduct that constitutes wilful physical abuse of a patient, as alleged in the facts of:

2. The facts in Paragraphs A and A.1, A and A.2, and/or A and A.3.
3. The facts in Paragraphs B and B.1, and/or B and B.2.

DATED: *December 2*
November, 2002
Albany, New York


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

EXHIBIT "B"

**GUIDELINES FOR CLOSING A MEDICAL PRACTICE FOLLOWING A
REVOCATION, SURRENDER OR SUSPENSION (of 6 months or more)
OF A MEDICAL LICENSE**

1. Respondent shall immediately cease and desist the practice of medicine in compliance with the terms of the Surrender Order. Respondent shall not represent himself or herself as eligible to practice medicine and shall refrain from providing an opinion as to professional practice or its application.
2. Within fifteen (15) days of the Surrender Order's effective date, Respondent shall notify all patients that he or she has ceased the practice of medicine, and shall refer all patients to another licensed practicing physician for their continued care, as appropriate.
3. Within thirty (30) days of the Surrender Order's effective date, Respondent shall have his or her original license to practice medicine in New York State and current biennial registration delivered to the Office of Professional Medical Conduct (OPMC) at 433 River Street Suite 303, Troy, NY 12180-2299.
4. Respondent shall arrange for the transfer and maintenance of all patient medical records. Within thirty (30) days of the Surrender Order's effective date, Respondent shall notify OPMC of these arrangements, including the name, address, and telephone number of an appropriate contact person, acceptable to the Director of OPMC, who shall have access to these records. Original records shall be retained for patients for at least six (6) years after the last date of service, and, for minors, at least six (6) years after the last date of service or three (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 ensure that all patient information is kept confidential and is available only to authorized persons. When a patient or authorized 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 sent at reasonable cost to the patient (not to exceed seventy-five cents per page.) Radiographic, sonographic and like materials shall be provided at cost. A qualified person shall not be denied access to patient information solely because of inability to pay.
5. Within fifteen (15) days of the Order's effective date, if Respondent holds a Drug Enforcement Agency (DEA) certificate, Respondent shall advise the DEA in writing of the licensure action and shall surrender his or her DEA controlled substance certificate, privileges, and any used DEA #222 U.S. Official Order Forms Schedules 1 and 2, to the DEA.
6. Within fifteen (15) days of the Order's effective date, Respondent shall return any unused New York State official prescription forms to the Bureau of Controlled Substances of the New York State Department of Health. Respondent shall have all prescription pads bearing Respondent's name destroyed. If no other licensee is providing services at his practice location, Respondent shall dispose of all medications.
7. Within fifteen (15) days of the Order's effective date, Respondent shall remove from the public domain any representation that Respondent is eligible to practice medicine, including all related signs, advertisements, professional listings whether in telephone directories or otherwise, professional stationery or billings. Respondent shall not share, occupy or use office space in which another licensee

provides health care services.

8. Respondent shall not charge, receive or share any fee or distribution of dividends for professional services rendered (by himself or others) while barred from practicing medicine. Respondent may receive compensation 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 Respondent is a shareholder in any professional service corporation organized to engage in the practice of medicine and Respondent's license is revoked, surrendered or suspended for six (6) months or more pursuant to this Order, Respondent shall, within ninety (90) days of the Order's effective date, divest himself/herself of all financial interest in such professional services corporation in accordance with New York Business Corporation Law. If Respondent is the sole shareholder in a professional services corporation, the corporation must be dissolved or sold within ninety (90) days of the Order's effective date.

10. Failure to comply with the above directives may result in civil or criminal penalties. Practicing medicine when a medical license has been suspended, revoked or annulled is a Class E Felony, punishable by imprisonment for up to four (4) years, under Section 6512 of the Education Law. Professional misconduct may result in penalties including revocation of the suspended license and/or fines of up to \$10,000 for each specification of misconduct, under Section 230-a of the Public Health Law.