



STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Antonia C. Novello, M.D., M.P.H., Dr.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

June 4, 2001

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Paul Rober Maher, Esq.
& Robert Bogan, Esq.
NYS Department of Health
Hedley Park Place – 4th Floor
Troy, New York 12180

Nephtali Montfort, P.A.
22127 Altona Drive
Boca Raton, Florida 33428

Nephtali Montfort, P.A.
421 White Plains Road
Bronx, New York 10473

RE: In the Matter of Nephtali Montfort, P.A.

Dear Parties:

Enclosed please find the Determination and Order (No. 01-137) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine together with the registration certificate. Delivery shall be by either certified mail or in person to:

Office of Professional Medical Conduct
New York State Department of Health
Hedley Park Place
433 River Street - Fourth Floor
Troy, New York 12180

If your license or registration certificate is lost, misplaced or its whereabouts is otherwise unknown, you shall submit an affidavit to that effect. If subsequently you locate the requested items, they must then be delivered to the Office of Professional Medical Conduct in the manner noted above.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), and §230-c subdivisions 1 through 5, (McKinney Supp. 1992), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the licensee or the Department may seek a review of a committee determination.

Request for review of the Committee's determination by the Administrative Review Board stays penalties other than suspension or revocation until final determination by that Board. Summary orders are not stayed by Administrative Review Board reviews.

All notices of review must be served, by certified mail, upon the Administrative Review Board and the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Hedley Park Place
433 River Street, Fifth Floor
Troy, New York 12180

The parties shall have 30 days from the notice of appeal in which to file their briefs to the Administrative Review Board. Six copies of all papers must also be sent to the attention of Mr. Horan at the above address and one copy to the other party. The stipulated record in this matter shall consist of the official hearing transcript(s) and all documents in evidence.

Parties will be notified by mail of the Administrative Review Board's Determination and Order.

Sincerely,



Tyrone T. Butler, Director
Bureau of Adjudication

TTB:cah
Enclosure

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

COPY

IN THE MATTER
OF
NEPHTALI MONTFORT, P.A.

DETERMINATION

AND

ORDER

BPMC 01-137

A Notice of Referral Proceeding and a Statement of Charges, both dated April 5, 2001, were issued against the Respondent, **Nephtali Montfort, P.A.** An Amended Statement of Charges was issued on April 18, 2001. **David Harris, M.D.**, Chairperson, **Roger Oskvig, M.D.**, and **Ms. Jean Krym**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to Section 230(10)(e) of the Public Health Law. **John Wiley, Esq.**, Administrative Law Judge, served as the Administrative Officer.

A hearing was held on May 17, 2001, at the offices of the New York State Department of Health ("the Petitioner"). The Petitioner appeared by **Donald P. Berens, Jr., Esq.**, General Counsel, by **Robert Bogan, Esq.**, and **Paul Robert Maher, Esq.**, of Counsel. The Respondent did not appear at the hearing, either in person or by counsel.

Evidence was received and transcripts of these proceedings were made.

After consideration of the entire record, the Hearing Committee issues this Determination and Order.

STATEMENT OF CASE

This case was brought pursuant to Public Health Law Section 230(10)(p). The statute provides for an expedited hearing when a licensee is charged solely with a

violation of Education Law Section 6530(9). In such cases, a licensee is charged with misconduct based upon a prior criminal conviction in New York or another jurisdiction, or upon a prior administrative adjudication regarding conduct that would amount to professional misconduct, if committed in New York. The scope of an expedited hearing is limited to a determination of the nature and severity of the penalty to be imposed upon the licensee.

In the instant case, the Respondent is charged with professional misconduct pursuant to Education Law Section 6530(9)(a)(i). A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order as Appendix 1.

WITNESSES

For the Petitioner: None

For the Respondent: None

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers below in parentheses refer to exhibits, denoted by the prefix "Ex." These citations refer to evidence found persuasive by the Hearing Committee in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence. All Hearing Committee findings were unanimous.

1. Nephtali Montfort, P.A., the Respondent, was authorized to practice as a physician assistant in New York State on December 4, 1987, by the issuance of license number 003421 by the New York State Education Department (Petitioner's Ex. 6).

2. On February 8, 1999, in the Criminal Court of the City of New York, County of New York, State of New York, the Respondent was found guilty of a violation of New York State Penal Law Sections 110.00 and 120.00, attempted assault in the third degree,

a misdemeanor. He was sentenced to a one-year conditional discharge and a one-year order of protection. (Petitioner's Ex. 7).

3. On February 8, 1999, in the Criminal Court of the City of New York, County of New York, State of New York, the Respondent was found guilty of a violation of New York State Penal Law Section 215.50, criminal contempt in the second degree, a misdemeanor. He was sentenced to three years probation and a three-year order of protection. (Petitioner's Ex. 8).

VOTE OF THE HEARING COMMITTEE

The Hearing Committee unanimously concludes that the conduct of the Respondent constitutes professional misconduct under the laws of New York State pursuant to New York State Education Law Section 6530(9)(a)(i) in that he was convicted of two crimes under New York State law.

HEARING COMMITTEE DETERMINATION

The record in this case indicates that in February of 1999, the Respondent was convicted in a New York State criminal court of attempted assault in the third degree (Petitioner's Ex. 7) and criminal contempt in the second degree (Petitioner's Ex. 8). Conviction of such crimes constitutes professional misconduct under New York State Education Law Section 6530(9)(a)(i).

The Respondent did not appear at the hearing. Petitioner's Ex. 2, 2A, 3, 5 and 9 document the Petitioner's unsuccessful efforts to serve the Respondent, both personally and by certified mail, with the Notice of Referral Proceeding, the Statement of Charges and the Amended Statement of Charges (Petitioner's Ex. 1 and 4) for this hearing. During the hearing, the Administrative Officer ruled that the hearing could proceed despite the absence of service on the Respondent. The reason given by the Administrative Officer for this ruling is that the fault for the failure of service lies with the Respondent. If

the Respondent still resides at the address where the certified mail was sent, then he should have accepted the certified mail at his home or retrieved it at the Post Office. If the Respondent no longer resides at that address, then he should have notified the New York State Education Department, the agency that granted him his license, of the change of address. Whichever reason explains the failure of the Respondent to receive notice of this hearing, the responsibility lies with the Respondent and it is he who must bear the negative consequences.

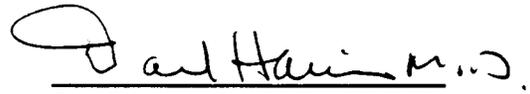
The Petitioner recommended that the Respondent's license be revoked. Since the Respondent did not appear at the hearing, the hearing record contains no evidence regarding mitigation, rehabilitation or any other factor that could serve as a reason for rejecting the Petitioner's revocation recommendation. The recommendation will be adopted.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Respondent's license to practice as a physician assistant is revoked.
2. This Order shall be effective upon personal service on the Respondent, upon service on the Respondent by certified or registered mail, or upon satisfaction of the requirements of Public Health Law Section 230(10)(h).

DATED: Cold Spring Harbor, New York
May 31, 2001



David Harris, M.D., M.P.H.
Chairperson

Roger Oskvig, M.D.
Jean Krym

APPENDIX I

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

IN THE MATTER
OF
NEPHTALI MONFORT, P.A.,
PM-01-02-0522-A

NOTICE OF
REFERRAL
PROCEEDING

TO: NEPHTALI MONFORT, P.A.
22127 Altona Drive
Boca Raton, FL 33428

NEPHATLI MONFORT, P.A.
421 White Plains Road
Bronx, NY 10473

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law § 230(10)(p) and N.Y. State Admin. Proc. Act Sections 301-307 and 401. The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 17th day of May 2001, at 10:00 in the forenoon of that day at the Hedley Park Place, 5th Floor, 433 River Street, Troy, New York 12180.

At the proceeding, evidence will be received concerning the allegations set forth in the attached Statement of Charges. A stenographic record of the proceeding will be made and the witnesses at the proceeding will be sworn and examined.

You may appear in person at the proceeding and may be represented by counsel. You may produce evidence or sworn testimony on your behalf. Such evidence or sworn testimony shall be strictly limited to evidence and testimony relating to the nature and severity of the penalty to be imposed upon the licensee. Where the charges are based on the conviction of state law crimes in other jurisdictions, evidence may be offered that would show that the conviction would not be a crime in New York state. The Committee also may limit the number of witnesses whose testimony will be received, as well as the length of time any witness will be permitted to testify.

If you intend to present sworn testimony, the number of witnesses and an estimate of the time necessary for their direct examination must be submitted to the New

EXHIBIT

1 '01a

York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Hedley Park Place, 5th Floor, 433 River Street, Troy, New York, ATTENTION: HON. TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION, (hereinafter "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before May 7, 2001.

Pursuant to the provisions of N.Y. Public Health Law §230(10)(p), you shall file a written answer to each of the Charges and Allegations in the Statement of Charges no later than ten days prior to the hearing. Any Charge of Allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such an answer. The answer shall be filed with the Bureau of Adjudication, at the address indicated above, and a copy shall be forwarded to the attorney for the Department of Health whose name appears below. You may file a brief and affidavits with the Committee. Six copies of all such papers you wish to submit must be filed with the Bureau of Adjudication at the address indicated above on or before May 7, 2001, and a copy of all papers must be served on the same date on the Department of Health attorney indicated below. Pursuant to Section 301(5) of the State Administrative Procedure Act, the Department, upon reasonable notice, will provide at no charge a qualified interpreter of the deaf to interpret the proceedings to, and the testimony of, any deaf person.

The proceeding may be held whether or not you appear. Please note that requests for adjournments must be made in writing to the Bureau of Adjudication, at the address indicated above, with a copy of the request to the attorney for the Department of Health, whose name appears below, at least five days prior to the scheduled date of the proceeding. Adjournment requests are not routinely granted. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation. Failure to obtain an attorney within a reasonable period of time prior to the proceeding will not be grounds for an adjournment.

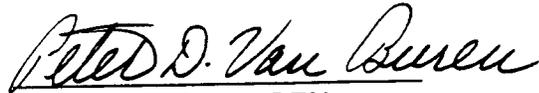
The Committee will make a written report of its findings, conclusions as to guilt, and a determination. Such determination may be reviewed by the Administrative Review Board for Professional Medical Conduct.

**SINCE THESE PROCEEDINGS MAY RESULT IN A DETERMINATION
THAT SUSPENDS OR REVOKES YOUR LICENSE TO PRACTICE**

MEDICINE IN NEW YORK STATE AND/OR IMPOSES A FINE FOR
EACH OFFENSE CHARGED, YOU ARE URGED TO OBTAIN AN
ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: Albany, New York

April 5, 2001



PETER D. VAN BUREN
Deputy Counsel
Bureau of Professional Medical Conduct

Inquiries should be addressed to:

Robert Bogan
Associate Counsel
New York State Department of Health
Office of Professional Medical Conduct
433 River Street – Suite 303
Troy, New York 12180
(518) 402-0820

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

IN THE MATTER
OF
NEPHTALI MONTFORT, P.A.
PM-01-02-0522-A

STATEMENT
OF
CHARGES

NEPHTALO MONTFORT, P.A., the Respondent, was authorized to practice medicine as a physician's assistant in New York state on December 4, 1987, by the issuance of license number 003421 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about February 8, 1999, in the Criminal Court of the City of New York, County of New York, State of New York, Respondent was found guilty of a violation of New York State Penal Law, Sections 110 and 120.00(1), attempted Assault in the third degree, a misdemeanor, and was sentenced to a one year conditional discharge and a one year order of protection.

SPECIFICATION

Respondent violated New York Education Law §6530(9)(a)(i) by having been convicted of committing an act constituting a crime under New York state law, in that Petitioner charges:

1. The facts in paragraph A.

DATED: *April 5*, 2001
Albany, New York

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