



New York State Board for Professional Medical Conduct

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

Antonia C. Novello, M.D., M.P.H.
Commissioner
NYS Department of Health

Dennis P. Whalen
Executive Deputy Commissioner
NYS Department of Health

Anne F. Saile, Director
Office of Professional Medical Conduct

William P. Dillon, M.D.
Chair

Denise M. Bolan, R.P.A.
Vice Chair

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

April 13, 2000

PERSONAL AND CONFIDENTIAL

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Robert J. Nicaise, MD
3998 West Langerwood Lane
Syracuse, NY 13215

**RE: Modification of Consent Order
BPMC # 97-220**

Dear Dr. Nicaise:

A Committee of the Board for Professional Medical Conduct has granted your request for a modification of the terms of your September 30, 1997 Consent Order.

This Modification of Consent Order became effective March 28, 2000.

Sincerely,


Ansel R. Marks, M.D., J.D.
Executive Secretary
Board for Professional Medical Conduct

Enclosure

cc: Catherine Gale, Esq.
7136 E. Genesee Street
PO Box 997
Fayetteville, NY 13066

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

IN THE MATTER

MODIFICATION

OF

OF

ROBERT NICAISE, MD

CONSENT ORDER

This matter was brought to the New York State Board for Professional Medical Conduct for decision at the request of Robert Nicaise, MD, (Petitioner), License No. 155535. Petitioner entered into a Consent Order effective September 23, 1997. The Order suspended Dr. Nicaise's license to practice medicine for a period of no less than six (6) months. The purpose of the proceeding was to determine whether this suspension was to be stayed upon the satisfaction of a Committee of Professional Medical Conduct that Petitioner, among other things, has successfully completed a course of therapy prescribed by the Board which includes a determination that Petitioner is no longer incapacitated for the active practice of medicine and that he is both fit and competent to practice as a physician.

A meeting of the Committee was held in the above-entitled proceeding on March 15, 2000. Petitioner appeared with his attorney, Catherine Gale, Esq., before a Committee of the State Board for Professional Medical Conduct consisting of David T. Lyon, MD, Chair, Mary Patricia Meagher, and J. LaRue Wiley, MD. The Committee determined after careful consideration of all evidence provided to them prior to the meeting and the testimony provided, that by unanimous decision, the suspension of Dr. Nicaise's license to practice medicine shall be stayed and he shall be allowed to practice medicine subject to the following conditions.

THEREFORE, IT IS HEREBY ORDERED THAT:

Petitioner's license shall be permanently limited to permit the practice of medicine only in a

setting which ensures supervisory oversight. Petitioner's practice of medicine is subject to the following conditions. Unless otherwise indicated, these conditions shall remain in effect for a period of probation lasting five (5) years from the effective date of this Order.

Petitioner may not commence the practice of medicine until all proposed monitors, supervisors and therapists have been approved by the Office of Professional Medical Conduct.

1. Petitioner shall practice medicine only in a supervised setting proposed by Petitioner and approved in writing, in advance of any practice, by the Director of OPMC. Petitioner shall be restricted from independent practice. Petitioner's medical practice shall be restricted to family medicine exclusive of obstetrics. Petitioner shall be restricted to working no more than thirty (30) hours per week for the first six (6) months and then at an amount to be approved by the Director of OPMC.

Petitioner shall be supervised in medical practice by a licensed physician (Practice Supervisor) proposed by Petitioner and approved in writing by the Director of OPMC. The Practice Supervisor is to be familiar with Petitioner's history of mental illness and with the terms of this Order. Petitioner shall submit the name of a proposed successor within seven (7) days of Petitioner's becoming aware that Petitioner's approved Practice Supervisor is no longer willing or able to serve in that capacity.

a. The Practice Supervisor shall submit a report to OPMC every three (3) months regarding the quality of Petitioner's medical practice, any unexplained absences from work,

and Petitioner's compliance or failure to comply with each condition described within this Order.

b. The Practice Supervisor shall oversee all aspects of Petitioner's clinical practice including but not limited to medical record keeping as well as Petitioner's prescribing practices.

c. The Practice Supervisor shall report any suspected impairment, inappropriate behavior, questionable medical practice or possible misconduct to OPMC.

d. The Practice Supervisor shall notify OPMC immediately if Petitioner violates any term(s) of this Order.

2. Petitioner shall continue in treatment with a qualified health care professional (Therapist) proposed by Petitioner and approved in writing by the Director of OPMC. The Therapist is to be familiar with the Petitioner's history of mental illness and the terms of this Order. Petitioner will continue in treatment with the Therapist for the duration of the Order, at a minimum frequency of monthly visits for the first twelve (12) months and then at a frequency to be decided by the Therapist and approved by OPMC. Petitioner shall submit the name of a proposed successor within seven (7) days of becoming aware that the approved Therapist is no longer willing or able to serve in that capacity.

a. The Therapist shall submit a report to OPMC every three (3) months certifying compliance with treatment by Petitioner and describing in detail any failure to comply.

b. The Therapist shall report immediately to OPMC any significant pattern of absences or failure to comply with recommended treatment by Petitioner.

c. The Director of OPMC shall reserve the authority to have the Petitioner undergo an independent evaluation every six (6) months by a practitioner approved by the Director of OPMC who specializes in mental illness. The Petitioner shall provide the evaluator with copies of all previous treatment records and a copy of this Order. Reports of such evaluations shall be submitted promptly to the Director. Petitioner shall follow treatment recommendations made by the evaluator. If the evaluator determines that the Petitioner is not fit to practice, the Petitioner shall immediately cease the practice of medicine until it is determined he is fit to resume practice. Failure to comply with treatment recommendations will be considered a violation of this Order.

3. Petitioner shall not self-prescribe any medications. Petitioner shall not treat or prescribe medications for any family member.

4. Petitioner shall immediately notify the Director of OPMC of any residential or practice address change as well as any and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty (30) days.

5. The Director of OPMC shall reserve the right to conduct on-site review of Petitioner's office, office records, hospital practice and hospital records.

6. Petitioner shall maintain legible and complete medical records which accurately

reflect the evaluation and treatment of patients. The medical records shall contain all information required by State rules and regulations regarding controlled substances.

7. Petitioner shall complete a minimum of fifty (50) hours Category I continuing medical education credits per year in each of the first three years, including a minimum of twenty (20) in medical record keeping during the first year, following the effective date of the Order.

8. Petitioner shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of Petitioner's compliance with the terms of this Order. He shall personally meet with persons designated by the Director of OPMC as requested by the Director.

9. Petitioner shall conduct himself in all ways in a manner befitting his professional status and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his profession.

10. Petitioner shall comply with all terms, conditions, restrictions and limitations to which he is subject pursuant to the Order and shall assume and bear all costs related to compliance of the Order. Upon receipt of evidence of noncompliance with, or any violation of these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding and/or any such other proceeding against Petitioner as may be authorized pursuant to the law.

As Petitioner agreed in the Consent Order, failure to comply with any of the conditions described above may result in disciplinary action.

This Order shall be effective upon issuance.

DATE MARCH 28, 2000



David T. Lyon, MD, MPH, Committee Chair
State Board for Professional Medical Conduct