



New York State Board for Professional Medical Conduct

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

Dennis P. Whalen
Executive Deputy Commissioner of Health
Anne F. Saile, Director
Office of Professional Medical Conduct
William J. Comiskey, Chief Counsel
Bureau 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

March 11, 1999

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Joseph N. Aquilina, M.D.
c/o Rosemare E. Aquilina, Esq.
229 North Pine Street, Suite 1
Lansing, MI 48933-1021

RE: License No. 095824

Dear Dr. Aquilina:

Enclosed please find Order #BPMC 99-53 of the New York State Board for Professional Medical Conduct. This Order and any penalty provided therein goes into effect **March 18, 1999**.

If the penalty imposed by the Order is a surrender, revocation or suspension of this license, you are required to deliver to the Board the license and registration within five (5) days of receipt of the Order to Board for Professional Medical Conduct, New York State Department of Health, Hedley Park Place, Suite 303, 433 River Street, Troy, New York 12180.

Sincerely,

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

Enclosure

cc: Anthony Benigno, Esq.

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

-----X

IN THE MATTER : SURRENDER
OF : ORDER
JOSEPH N. AQUILINA, M.D. : BPMC #99-53

-----X

JOSEPH N. AQUILINA, M.D. says:

On or about May 16, 1966, I was licensed to practice medicine as a physician in the State of New York having been issued License No. 095824 by the New York State Education Department.

By Order #BPMC 98-230, effective October 10, 1998, I was found to have committed professional misconduct in violation of N.Y. Education Law 6530(9)(b) and I was placed on probation for two years.

I am applying to the State Board for Professional Medical Conduct for an agreement to allow me to surrender my license as a physician in the State of New York and request that the Board issue a surrender order. It is agreed that the surrender order will not constitute a new disciplinary action, but will replace Order #BPMC 98-230.

I do not contest the findings of the hearing committee that I violated N.Y. Education Law 6530(9)(b). In addition to this surrender, I agree to a limitation against the issuance of any further license to me pursuant to N.Y. Public Health Law §230-a(6) and agree not to apply for re-licensure in New York state.

I understand that, in the event that this proposed agreement is not granted by the State Board for Professional Medical Conduct, nothing contained herein shall be binding upon me or construed to be an admission of any act of misconduct alleged or charged against me, such proposed agreement shall not be used against me in any way, and shall be kept in strict confidence during the pendency of the professional misconduct disciplinary proceeding; and such denial by the State Board for Professional Medical Conduct shall be made without prejudice to the continuance of any disciplinary proceeding and the final determination by a Committee on Professional Medical Conduct pursuant to the provisions of the Public Health Law.

I agree that in the event the State Board for Professional Medical Conduct agrees with my proposal, this Order shall be issued striking my name from the roster of physicians in the State of New York without further notice to me.

I am making this agreement of my own free will and accord and not under duress, compulsion, or restraint of any kind or manner.


JOSEPH N. AQUILINA, M.D.
Respondent

Subscribed before me this
21st day of February 1999


NOTARY PUBLIC

My commission expires:
HELEN T. HARTFORD
Notary Public, Ingham County, MI
My Commission Expires May 30, 2003

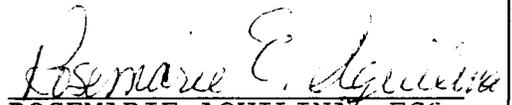
AGREED TO:

Date: 2/26, 1999



KEVIN C. ROE
Assistant Counsel
Bureau of Professional
Medical Conduct

Date: 21 February, 1999



ROSEMARIE AQUILINA, ESQ.
Attorney for Respondent

Date: March 3, 1999



ANNE F. SAILE
Director
Office of Professional
Medical Conduct

ORDER

Upon the proposed agreement of JOSEPH N. AQUILINA, M.D., to surrender his license as a physician in the State of New York, which proposed agreement is made a part hereof, it is agreed to and

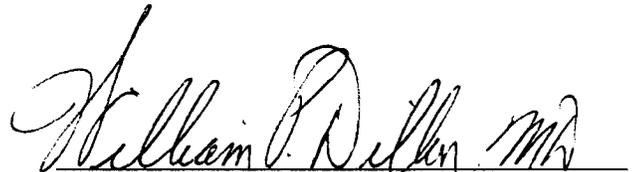
ORDERED, that the proposed agreement and the provisions thereof are hereby adopted; it is further

ORDERED, that the name of Respondent be stricken from the roster of physicians in the State of New York; it is further

ORDERED, that the Respondent is limited from any further license pursuant to N.Y. Public Health Law §230-a(6), it is further

ORDERED, that this Order shall take effect as of the date of the personal service of this Order upon Respondent, upon receipt by Respondent of this Order via certified mail, or seven days after mailing of this Order via certified mail, whichever is earliest.

DATED: 3/8/99


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



STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Barbara A. DeBuono, M.D., M.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

October 5, 1998

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Kalimah J. Jenkins, Esq.
NYS Department of Health
Corning Tower Room 2509
Empire State Plaza
Albany, New York 12237

Joseph Aquilina, M.D.
3406 Davenport Avenue
Saginaw, Michigan 48602-3393

RE: In the Matter of Joseph Aquilina, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 98-230) 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 if said license has been revoked, annulled, suspended or surrendered, 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,

A handwritten signature in black ink, appearing to read "Tyrone T. Butler". The signature is written in a cursive style with some loops and flourishes.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nm
Enclosure

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

COPY

-----X
IN THE MATTER :
OF :
JOSEPH AQUILINA, M.D. :
-----X

DETERMINATION
AND
ORDER

BPMC-98-230

A Notice of Referral Proceeding and Statement of Charges, both dated June 30, 1998, were served upon the Respondent, Joseph Aquilina, M.D. **IRVING S. CAPLAN (Chair), LEMUEL ROGERS, JR., M.D., and RAVENDRA N. SHARMA, M.D.,** 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. **LARRY G. STORCH, ESQ., ADMINISTRATIVE LAW JUDGE,** served as the Administrative Officer. The Department of Health appeared by Kalimah J. Jenkins, Esq., Assistant Counsel. The Respondent failed to appear in person and was not represented by counsel. A hearing was held on August 18, 1998. Evidence was received and witnesses sworn and heard 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 where a licensee is charged solely with a violation of Education Law §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 which 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, Respondent is charged with professional misconduct pursuant to Education Law §6530(9)(b) [having been found guilty of professional misconduct by a duly authorized professional disciplinary agency of another state, where the conduct upon which the finding was based would, if committed in New York State, constitute professional misconduct]. A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order in Appendix I.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers in parentheses refer to transcript page numbers or exhibits. These citations represent 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.

1. Joseph Aquilina, M.D. (hereinafter, "Respondent"), was authorized to practice medicine in New York State on May 16, 1966 by the issuance of license number 095824 by the New York State Education Department. Respondent is not currently registered with the New York State Education Department to practice medicine. (Pet. Ex. #2).

2. Respondent's license to practice medicine in the State of Michigan became the subject of a disciplinary action relating to events occurring from approximately August 1995 through approximately October 1995. (Pet. Ex. #5).

3. Pursuant to a Consent Order entered into with the State of Michigan, Department of Consumer and Industry Services, Board of Medicine, Disciplinary Subcommittee (hereinafter, the "Michigan Board") on October 28, 1997, Respondent was reprimanded and ordered to pay a \$1,000.00 fine. (Pet. Ex. #5).

4. Respondent admitted by stipulation that he failed to keep adequate patient records for one patient named in an administrative complaint. He further admitted that his records for the patient fell below the minimum standard of care and thus constituted inadequate record keeping in violation of the Michigan Public Health Code, §16221(a). (Pet. Ex. #5).

5. Respondent submitted an Answer in which he admitted that he had been disciplined by the Michigan Board, while neither admitting or denying that the underlying conduct would constitute misconduct under the laws of New York state. (Resp. Ex. A).

CONCLUSIONS OF LAW

The following conclusions were made pursuant to the Findings of Fact listed above. All conclusions resulted from a unanimous vote of the Hearing Committee unless noted otherwise.

The Hearing Committee concluded that the Petitioner had sustained its burden of proof in this matter. The preponderance of the evidence demonstrates that Respondent was found guilty of professional misconduct by the Michigan Board, a duly authorized disciplinary agency. Moreover, the Committee concluded that Respondent's conduct, if committed within New York State, would constitute professional misconduct in violation of Education Law §6530(32) [failure to maintain a record which accurately reflects the evaluation and treatment of the patient]. Accordingly, the Hearing Committee sustained the specification of professional misconduct.

DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determined that Respondent's license to practice medicine in New York State should be placed on probation for a period of two years. The period of probation shall be tolled until such time as Respondent returns to the practice of medicine in New York. The terms of probation shall include monitoring of Respondent's medical records. The complete terms of probation are attached to this Determination and Order in Appendix II and incorporated by reference herein. This determination was reached upon due

consideration of the full spectrum of penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties.

The record before this Hearing Committee demonstrated that Respondent was reprimanded by the Michigan Board for poor record keeping. The Michigan Board also imposed a minimal monetary fine. Although the Committee considered the level of sanction imposed by the Michigan Board, it has an independent obligation to determine the appropriate sanction to be imposed on Respondent's New York license.

The Hearing Committee considered imposing a requirement for re-training regarding medical records. However, given the absence of any evidence demonstrating a lack of knowledge in the area, the Committee determined that a re-training provision would be unwarranted. The Hearing Committee further determined that any stronger sanction, such as suspension or revocation, would be grossly disproportionate to Respondent's misconduct. Under the totality of the circumstances, the Hearing Committee unanimously determined that a two year period of probation, including monitoring of Respondent's medical records, is the appropriate sanction to be imposed in this case.

ORDER

Based upon the foregoing, **IT IS HEREBY ORDERED THAT:**

1. The Specification of professional misconduct, as set forth in the Statement of Charges (Petitioner's Exhibit # 1) is **SUSTAINED;**

2. Respondent's license to practice medicine in New York State be and hereby is placed on **PROBATION** for a period of **TWO (2) YEARS** from the effective date of this Determination and Order. The period of probation shall be tolled until such time as Respondent registers for the practice of medicine in New York State. The complete terms of probation are attached to this Determination and Order in Appendix II and incorporated by reference herein. Respondent shall give written notice to the Director of the Office of Professional Medical Conduct ninety (90) days before resuming the practice of medicine in New York.

3. This Determination and Order shall be effective upon service. Service shall be either by certified mail upon Respondent at Respondent's last known address and such service shall be effective upon receipt or seven days after mailing by certified mail, whichever is earlier, or by personal service and such service shall be effective upon receipt.

DATED: Troy, New York
OCT 1ST 1998



IRVING S. CAPLAN (CHAIR)

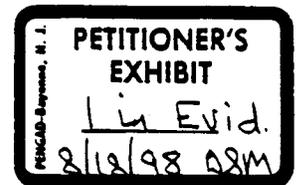
LEMUEL ROGERS, JR., M.D.
RAVENDRA N. SHARMA, M.D.

TO: Kalimah J. Jenkins, Esq.
Assistant Counsel
New York State Department of Health
Tower Building - Room 2509
Albany, New York 12237

Joseph Aquilina, M.D.
3406 Davenport Avenue
Saginaw, Michigan 48602-3393

APPENDIX I

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



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IN THE MATTER : NOTICE OF
OF : REFERRAL
JOSEPH AQUILINA, M.D. : PROCEEDING

-----X

TO: Joseph Aquilina, M.D.
3406 Davenport Avenue
Saginaw, MI 48602

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law Section 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 18th day of August, 1998 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 Statement of Charges, which is attached. 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 which 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 York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Hedley Park Place, 5th Floor, 433 River Street, Troy, New York 12180, ATTENTION: HON. TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION, (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before August 4, 1998, 1998.

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 or 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 August 4, 1998 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
June 30, 1998



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

Inquiries should be addressed to:

Kalimah J. Jenkins, Esq.
Assistant Counsel
NYS Department of Health
Division of Legal Affairs
Corning Tower Building
Room 2509
Empire State Plaza
Albany, New York 12237
(518) 473-4282

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

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IN THE MATTER : STATEMENT
OF : OF
JOSEPH AQUILINA, M.D. : CHARGES

-----X

JOSEPH AQUILINA, M.D., the Respondent, was authorized to practice medicine in New York State on May 16, 1966 by the issuance of license number 095824 by the New York State Education Department. The Respondent is not currently registered with the New York State Education Department to practice medicine. His address is 3406 Davenport Avenue, Saginaw, MI 48602.

FACTUAL ALLEGATIONS

A. Respondent's license to practice medicine in the State of Michigan became the subject of a disciplinary action relating to events occurring from approximately August 1995 through approximately October 1995.

B.—Pursuant to a Consent Order entered into with the State of Michigan, Department of Consumer and Industry Services, Board of Medicine, Disciplinary Subcommittee, Respondent was reprimanded and ordered to pay a \$1,000 fine.

C. The sanctions imposed upon Respondent's license was based upon Respondent's keeping of patient records was not adequate and fell below the minimum standard of care.

D. The conduct resulting in the disciplinary action would constitute professional misconduct if committed in New York State

under Education Law § 6530(32) -- failure to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient.

SPECIFICATION

Respondent is charged with professional misconduct under New York Education Law § 6530(9)(b) in that he has been found guilty of professional misconduct by a duly authorized professional disciplinary agency of another state, where the conduct upon which the finding was based would, if committed in New York State, constitute professional misconduct under the laws of New York State, in that Petitioner charges:

1. The facts in paragraphs A and/or B and /or C and /or D above.

DATED: *June 30*, 1998
Albany, New York

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

APPENDIX II

APPENDIX II
TERMS OF PROBATION

1. Dr. Aquilina 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 imposed by law and by his profession.

2. Dr. Aquilina shall comply with all federal, state and local laws, rules and regulations governing the practice of medicine in New York State.

3. Dr. Aquilina shall submit prompt written notification to the Board addressed to the Director, office of Professional Medical conduct, Empire State Plaza, Corning Tower Building, Room 438, Albany, New York 12237, regarding any change in employment, practice, residence or telephone number, within or without New York State.

4. In the event that Dr. Aquilina leaves New York to reside or practice outside the State, Dr. Aquilina shall notify the Director of the Office of Professional Medical Conduct in writing at the address indicated above, by registered or certified mail, return receipt requested, of the dates of her departure and return. Periods of residency or practice outside New York shall toll the probationary period, which shall be extended by the length of residency or practice outside New York.

5. Dr. Aquilina shall have quarterly meetings with an employee or designee of the Office of Professional Medical Conduct during the period of probation. During these quarterly meetings Dr. Aquilina's professional performance may be reviewed by having a random selection of office records, patient records and hospital charts reviewed.

6. Dr. Aquilina shall have quarterly meetings with a monitoring physician who shall review Dr. Aquilina's medical records. This monitoring physician shall review randomly selected medical records and evaluate whether Dr. Aquilina's record keeping practices comport with generally accepted standards of medical practice. This monitoring physician shall be selected by Dr. Aquilina and is subject to the approval of the Director of the Office of Professional Medical Conduct. Dr. Aquilina shall not practice medicine until an acceptable monitoring physician is approved by the

Director.

7. Dr. Aquilina shall submit quarterly declarations, under penalty of perjury, stating whether or not there has been compliance with all terms of probation and, if not, the specifics of such non-compliance. These shall be sent to the Director of the Office of Professional Medical Conduct at the address indicated above.

8. Dr. Aquilina shall submit written proof to the Director of the Office of Professional Medical Conduct at the address indicated above that he has paid all registration fees due and is currently registered to practice medicine with the New York State Education Department. If Dr. Aquilina elects not to practice medicine in New York State, then he shall submit written proof that he has notified the New York State Education Department of that fact.

9. If there is full compliance with every term set forth herein, Dr. Aquilina may practice as a physician in New York State in accordance with the terms of probation; provided, however, that upon receipt of evidence of non-compliance or any other violation of the terms of probation, a violation of probation proceeding and/or such other proceedings as may be warranted, may be initiated against Dr. Aquilina pursuant to New York Public Health Law §230(19) or any other applicable laws.