



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.  
*Commissioner*

Dennis P. Whalen  
*Executive Deputy Commissioner*

April 3, 2000

Mr. Robert Bentley, Director  
Division of Professional Licensing Services  
New York State Education Department  
Cultural Education Center  
Empire State Plaza  
Albany, NY 12230

RE: Donald R. Werner, M.D.  
NYS License No. 141903

Dear Mr. Bentley:

Enclosed is a copy of a Commissioner's Order and Notice of Hearing which summarily suspends Dr. Donald R. Werner's right to practice medicine in the State of New York. This Order was issued on March 31, 2000, and is in effect until further notice.

Sincerely,

A handwritten signature in cursive script that reads 'Anne Saile'.

Anne F. Saile  
Director  
Office of Professional Medical Conduct

Enclosure

cc: Daniel Kelleher

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

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IN THE MATTER : COMMISSIONER'S  
OF : ORDER AND  
DONALD R. WERNER, M.D. : NOTICE OF HEARING

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TO: DONALD R. WERNER, M.D.  
1101 PELHAM PARKWAY  
BRONX, NEW YORK 10469

DONALD R. WERNER, M.D.  
5 LOCUST COURT  
MAHOPAC, NEW YORK 10541

The undersigned, Antonia C. Novello, M.D., M.P.H.,  
Commissioner of the New York State Department of Health, after  
an investigation, upon the recommendation of a committee on  
professional medical conduct of the State Board for  
Professional Medical Conduct, and upon the Statement of  
Charges attached hereto and made a part hereof, has determined  
that Donald R. Werner, M.D. has been disciplined by a duly  
authorized professional disciplinary agency of another  
jurisdiction, namely, the Board of Licensure in Medicine,  
State of Maine, for acts which if committed in the State of  
New York would have constituted the basis for summary action  
pursuant to New York Public Health Law section 230 (12) (a),  
and has further determined that the continued practice of  
medicine in the State of New York by Donald R. Werner, M.D.  
the Respondent, constitutes an imminent danger to the health  
of the people of this state.

It is therefore:

ORDERED, pursuant to N.Y. Pub. Health Law Section 230(12) (b), that effective immediately DONALD R. WERNER, M.D., Respondent, shall not practice medicine in the State of New York. This Order shall remain in effect unless modified or vacated by the Commissioner of Health pursuant to N.Y. Pub. Health Law Section 230(12).

PLEASE TAKE NOTICE that a hearing will be held pursuant to the provisions of N.Y. Pub. Health Law Section 230, and N.Y. State Admin. Proc. Act Sections 301-307 and 401. The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on the 15th day of June, 2000 at 10:00 a.m. at the Hedley Park Plaza, 5<sup>th</sup> Floor, 433 River Street, Troy, New York 12180, and at such other adjourned dates, times and places as the committee may direct. The Respondent may file an answer to the Statement of Charges with the below-named attorney for the Department of Health.

At the hearing, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the hearing will be made and the witnesses at the hearing will be sworn and examined. The Respondent shall appear in person at the hearing and may be represented by counsel. The Respondent has the right to produce witnesses and evidence on his behalf, to issue or have subpoenas issued on his behalf for the production of witnesses and documents and to cross-examine witnesses and examine evidence produced against him. Such evidence or sworn testimony shall be limited to evidence and testimony relating

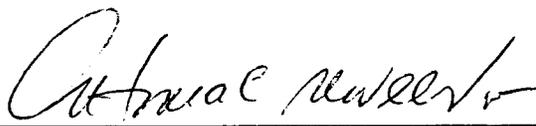
to the nature and severity of the penalty to be imposed upon the licensee with respect to that portion of the hearing based upon charges pursuant New York State Education Law §6530 (9) (d). A summary of the Department of Health Hearing Rules is enclosed. Pursuant to Section 301(5) of the State Administrative 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 hearing will proceed whether or not the Respondent appears at the hearing. Scheduled hearing dates are considered dates certain and, therefore, adjournment requests are not routinely granted. Requests for adjournments must be made in writing to the Administrative Law Judge's Office, Hedley Park Place, 433 River Street, 5th Floor, Troy, New York 12180 (518-402-0751), upon notice to the attorney for the Department of Health whose name appears below, and at least five days prior to the scheduled hearing date. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation.

At the conclusion of the hearing, the committee shall make findings of fact, conclusions concerning the charges sustained or dismissed, and, in the event any of the charges are sustained, a determination of the penalty or sanction to be imposed or appropriate action to be taken. Such determination may be reviewed by the administrative review board for professional medical conduct.

THESE PROCEEDINGS MAY RESULT IN A  
DETERMINATION THAT YOUR LICENSE TO PRACTICE  
MEDICINE IN NEW YORK STATE BE REVOKED OR  
SUSPENDED, AND/OR THAT YOU BE FINED OR  
SUBJECT TO OTHER SANCTIONS SET FORTH IN NEW  
YORK PUBLIC HEALTH LAW SECTION 230-a. YOU  
ARE URGED TO OBTAIN AN ATTORNEY TO  
REPRESENT YOU IN THIS MATTER.

DATED: Albany, New York  
March 31, 2000

  
ANTONIA C. NOVELLO, M.D., M.P.H.  
Commissioner

Inquiries should be directed to:

Lee A. Davis  
Assistant Counsel  
NYS Department of Health  
Division of Legal Affairs  
Corning Tower Building  
Room 2509  
Empire State Plaza  
Albany, New York 12237-0032  
(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  
DONALD R. WERNER, M.D. : CHARGES

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DONALD R. WERNER, M.D., the Respondent, was authorized to practice medicine in New York State on April 11, 1980 by the issuance of license number 141903 by the New York State Education Department. The Respondent is not currently registered with the New York State Education Department to practice medicine.

**FACTUAL ALLEGATIONS**

A. On or about September 7, 1999, in accordance with a "Consent Agreement", Respondent surrendered his license to practice medicine in the State of Maine. Respondent's surrender of his medical license occurred after a disciplinary action was instituted against him by the State of Maine Board of Licensure in Medicine (Maine Board), a duly authorized professional disciplinary agency, and was based upon incompetence and unprofessional conduct against a single patient, following "numerous" complaints from 1991 through 1997. Respondent's surrender of his medical license was accepted by the Maine Board on September 14, 1999.

B. The conduct resulting in the Maine Board's disciplinary action against Respondent would constitute

misconduct under the laws of New York State, pursuant to the following sections of New York State law:

1. New York Education Law §6530(20) (moral unfitness).

C. Respondent provided medical care to Patient A [patients are identified in Appendix] on various occasions from on or about October 10, 1996 through on or about January 15, 1997 at Respondent's office in Augusta, Maine. Respondent pursued a personal relationship with Patient A outside during this period of time that culminated in a sexual relationship sometime after June 1, 1997, that continued through February, 1998. Respondent's conduct toward Patient A deviated from accepted standards of medical care in the following respects:

1. Respondent, from on or about October 10, 1996, through January 15, 1997 during Patient A's visits for medical care at Respondent's office, engaged in the following inappropriate and unprofessional conduct with Patient A:
  - a. Engaging in a personal relationship which included touching Patient A without medical justification;
  - b. Misrepresenting his background by informing Patient A that he was a clinically trained psychologist, thereby encouraging Patient A to confide in Respondent regarding personal matters unrelated to his medical treatment of Patient A;
  - c. Using his position of trust as a physician to exploit the emotionally compromised position with which Patient A presented.
2. Respondent, from on or about January 16, 1997 through on or about May, 1997 pursued the personal relationship with Patient A in the following manner:
  - a. Keeping in constant contact with Patient A, and having her over to his apartment on numerous occasions;

- b. Engaging Patient A in conversations about sexual practices and preferences;
  - c. Encouraging Patient A to end her marriage.
3. Respondent, from on or about June 1, 1997 through November 1998 engaged in the following inappropriate behavior;
- a. Engaging in sexual intercourse with Patient A;
  - b. Failing to repay any of the more than \$60,000.00 he "borrowed" from Patient A.

D. Respondent, effective on or about December 10, 1990 had his clinical privileges at the Waterville Osteo Hospital, Kennedy Memorial Drive, Waterville Maine, suspended, revoked and/or otherwise restricted or terminated for an indefinite period due to negligence and/or incompetence.

E. Respondent, on or about March 27, 1994, completed a Registration Application for the period of January 1994 through December 1994 with the New York State Education Department.

1. Respondent answered "No" to question C.):

FOR HEALTH PROFESSIONALS ONLY: Since you last registered, has any hospital or licensed facility restricted or terminated your professional training, employment, or privileges or have you ever voluntarily or involuntarily resigned or withdrawn from such association to avoid imposition of such action due to professional misconduct, unprofessional misconduct, incompetence or Negligence?

Respondent knew this answer was not correct based upon the action taken by Waterville Osteo Hospital when he completed the registration application.

F. Respondent, effective on or about February 4, 1996 had his clinical privileges at HMO Maine, 2 Gannett Drive, Portland, Maine, permanently revoked and/or otherwise restricted due to negligence, incompetence, and/or unverifiable credentialing.

G. Respondent, on or about December 9, 1996 completed a Registration Application for the period of December 1996 through November 1998 with the New York State Education Department.

1. Respondent answered "No" to question C.):

FOR HEALTH PROFESSIONALS ONLY: Since you last registered, has any hospital or licensed facility restricted or terminated your professional training, employment, or privileges or have you ever voluntarily or involuntarily resigned or withdrawn from such association to avoid imposition of such action due to professional misconduct, unprofessional misconduct, incompetence or Negligence?

Respondent knew this answer was not correct based upon the action taken by HMO Maine and the Waterville Osteo Hospital when he completed the registration application.

H. Respondent, on or about September 30, 1998, completed a Registration Application for the period of December 1, 1998 through September 30, 2000 with the New York State Education Department.

1. Respondent answered "No" to question 5.:

Since you last registered, has any hospital or licensed facility restricted or terminated your professional training, employment, or privileges or have you ever voluntarily or involuntarily resigned or withdrawn from such association to

avoid imposition of such action due to professional misconduct, unprofessional misconduct, incompetence or Negligence?

Respondent knew this answer was not correct based upon the action taken by HMO Maine and the Waterville Osteo Hospital when he completed the registration application.

I. On or about February 10, 1999, Respondent was notified by the New York State Education Department that the check he submitted with his 1998 renewal application had not cleared with his bank, and that if he did not submit a replacement fee within 60 days, his registration would be voided pursuant to New York Education Law §59.8 (f).

1. Respondent failed to timely submit the required fee as set forth in the notice of February 10, 1999. He is not currently registered to practice medicine in New York State.

#### **SPECIFICATIONS OF MISCONDUCT**

##### **FIRST SPECIFICATION**

##### **SURRENDER OF MEDICAL LICENSE AFTER INSTITUTION OF DISCIPLINARY ACTION BY DISCIPLINARY AGENCY OF ANOTHER STATE**

Respondent is charged with professional misconduct in violation of Educ. Law §6530(9)(d) by reason of his having surrendered his license to practice medicine in another state after the institution of disciplinary proceedings by a duly authorized disciplinary agency of another state, where the conduct resulting in the surrender of Respondent's license to

practice medicine in the other state, 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.

**SECOND THROUGH FIFTH SPECIFICATIONS**  
**MORAL UNFITNESS**

Respondent is charged with professional misconduct by reason of his committing conduct in the practice of medicine which evidences moral unfitness to practice medicine in violation of New York Education Law §6530(20) in that Petitioner charges:

2. The facts in paragraphs C and C.1(a), and/or C and C.1 (b), and/or C and C.1(c), and/or C and C.2(a), and/or C and C.2(b), and/or C and C.2(c), and/or C and C.3(a), and/or C and C.3(b);
3. The facts in paragraphs D, E and E.1;
4. The facts in paragraphs F, G and G.1;
5. The facts in paragraphs D, F and H and H.1.

**SIXTH THROUGH EIGHTH SPECIFICATIONS**  
**FRAUD**

Respondent is charged with professional misconduct under N.Y. Educ. Law §6530(2) by reason of his practicing the profession of medicine fraudulently, in that Petitioner charges the following:

6. The facts in paragraphs D, E and E.1;
7. The facts in paragraphs F, G and G.1;
8. The facts in paragraphs D, F and H and H.1.

**NINTH THROUGH ELEVENTH SPECIFICATIONS**  
**FILING A FALSE REPORT**

Respondent is charged with professional misconduct under N.Y. Educ. Law §6530(21) by reason of his willfully making or filing a false report, in that Petitioner charges the following:

9. The facts in paragraphs D, E and E.1;
10. The facts in paragraphs F, G and G.1;
11. The facts in paragraphs D, F and H and H.1.

**TWELFTH SPECIFICATION**  
**WILLFUL FAILURE TO REGISTER**

Respondent is charged with professional misconduct under N.Y. Educ. Law §6530(12) by reason of his practicing the profession while his license is inactive due to his willful failure to register with the New York State Education Department, in that Petitioner charges the following:

12. The facts in paragraphs I and I.1.

DATED: March 31, 2000  
Albany, New York

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