*New York State Board for Professional Medical Conduct*

*Corning Tower • Empire State Plaza • Albany, NY 12237 • (518) 474-8357*

Barbara A. DeBuono, M.D., M.P.H.
*Commissioner of Health*

Charles J. Vacanti, M.D.
*Chair*

October 8, 1996

**CERTIFIED MAIL-RETURN RECEIPT REQUESTED**

Steven M. Martini, M.D.
1036 S. Nucleus Avenue
Columbia Falls, Montana 59912

RE: License No. 159250

Effective Date: 10/15/96

Dear Dr. Martini:

Enclosed please find Order #BPMC 96-242 of the New York State Board for Professional Medical Conduct. This Order and any penalty provided therein goes into effect upon receipt of this letter or seven (7) days after the date of this letter, whichever is earlier.

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.

Board for Professional Medical Conduct
New York State Department of Health
Empire State Plaza
Tower Building-Room 438
Albany, New York 12237-0756

Sincerely,

Charles Vacanti

Charles Vacanti, M.D.
Chair
Board for Professional Medical Conduct

Enclosure

cc: Milton Datsopoulos, Esq.
Datsopoulos, MacDonald & Lind, PC
201 West Main, Suite 201
Central Square Building
Missoula, Montana 59802

Marcia Kaplan, Esq.

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

| IN THE MATTER OF STEVEN M. MARTINI, M.D. | CONSENT ORDER |
|---|---|
| | BPMC #96-242 |

Upon the application of STEVEN M. MARTINI, M.D. (Respondent) for Consent Order, which application is made a part hereof, it is

ORDERED, that the application and the provisions thereof are hereby adopted and so ORDERED, and 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 by certified mail, whichever is earliest.

SO ORDERED.

DATED: 4 October 1996

Charles J. Vacanti

CHARLES J. VACANTI, M.D.
Chairperson
State Board for Professional
Medical Conduct

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

| IN THE MATTER OF STEVEN M. MARTINI, M.D. | APPLICATION FOR CONSENT ORDER |
|---|---|

STATE OF MONTANA )
ss.:
COUNTY OF )

STEVEN M. MARTINI, M.D., being duly sworn, deposes and says:

That on or about July 23, 1984, I was licensed to practice as a physician in the State of New York, having been issued License No. 159250 by the New York State Education Department.

My current address is 211 Parkway Drive, Kalispell, MT 59901. Another address is 1036 S. Nucleus Ave., Columbia Falls, MT 59912. I will advise the Director of the Office of Professional Medical Conduct of any change of my address(es).

I understand that the New York State Board for Professional Medical Conduct has charged me with one specification of professional misconduct.

A copy of the Statement of Charges is annexed hereto, made a part hereof, and marked as Exhibit "A".

I admit guilt to the specification, in full satisfaction of the charges against me. I hereby agree that, as provided by New York Public Health Law §230-a(2), my license to practice medicine in the State of New York shall be suspended wholly, until I successfully complete a course of therapy or treatment prescribed by the Board. I understand and hereby agree that my *successful completion of the prescribed course of treatment shall be determined in the sole reasonable discretion of the State Board for Professional Medical Conduct*, exercised by a Committee on Professional Conduct, after I have met a burden of

proof and persuasion in a proceeding as set forth in this agreement. I understand and agree that the Committee's exercise of such discretion shall not be reviewable through recourse to the Administrative Review Board. Specifically, upon my submission of certain minimum evidence of completion of a prescribed course of therapy, as set forth in Exhibit B, attached hereto, I may request a modification of such sanction, as further set forth in Exhibit B.

I hereby make this Application to the State Board for Professional Medical Conduct (the Board) and request that it be granted.

I understand that, in the event that this Application is not granted by the Board, 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 Application 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 Board shall be made without prejudice to the continuance of any disciplinary proceeding and the final determination by the Board pursuant to the provisions of the Public Health Law.

I agree that, in the event the Board grants my Application, as set forth herein, an order of the Chairperson of the Board shall be issued in accordance with same.

I am making this Application of my own free will and accord and not under duress, compulsion or restraint of any kind or manner. In consideration of the value to me of the acceptance by the Board of this Application, allowing me to resolve this matter without the various risks and burdens of a hearing on the merits, I knowingly waive any right I may have to contest the Consent Order for which I hereby apply, whether administratively or judicially, *I stipulate and agree that the sanction agreed to is authorized by New York Public Health Law §230-a and that the Board has the power to carry out the terms herein set forth*, and ask that the Application be granted.

STEVEN M. MARTINI, M.D.
RESPONDENT

Sworn to before me this

24 day of September, 19 96.

NOTARY PUBLIC

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

| IN THE MATTER OF STEVEN M. MARTINI, M.D. | APPLICATION FOR CONSENT ORDER |
|---|---|

The undersigned agree to the attached application of the Respondent and to the proposed penalty based on the terms and conditions thereof.

DATE: _____ _____
STEVEN M. MARTINI, M.D.
Respondent

DATE: Sept 19, 1996 _____
MILTON BATSOPOULOS, ESQ.
Attorney for Respondent

DATE: Sept. 26, 1996 _____
MARCIA E. KAPLAN
Associate Counsel
Bureau of Professional
Medical Conduct

DATE: September 30 1996

ANNE F. SAILE
Acting Director
Office of Professional Medical Conduct

DATE: 4 October 1996

CHARLES J. VACANTI, M.D.
Chairperson
State Board for Professional Medical Conduct

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

| IN THE MATTER OF STEVEN M. MARTINI, M.D. | STATEMENT OF CHARGES |
|---|---|

STEVEN M. MARTINI, M.D., the Respondent, was authorized to practice medicine in New York State on or about July 23, 1984, by the issuance of license number 159250 by the New York State Education Department.

## FACTUAL ALLEGATIONS

A. On or about August 2, 1995, the Montana Board of Medical Examiners entered a Stipulation for Probation and Final Order, which placed Respondent's license to practice medicine in Montana on probation for two years, with conditions including the following: notice to the Board of all professional employment and associations; counseling on at least a monthly basis, with reports to the Board on a quarterly basis specifying progress and compliance with counseling, whether Respondent can practice without risk to the public health, and necessary controls and conditions of practice to protect the public health; random witnessed or scheduled urinalyses for drugs, including alcohol, at the Board's request, with positive urinalysis to result in immediate suspension of Respondent's license pending a prompt post-suspension hearing; and provision that accelerated disciplinary proceedings will follow any violations of the terms or conditions of probation. The Order specified that Respondent's license shall be restored to good standing upon completion of two years of probation, but that for at least eighteen months thereafter, Respondent shall continue in counseling and shall enter into a

EXHIBIT "A"

contract with the Montana Professional Assistance Program, as specified.

B. On or about December 18 and/or 23, 1991, the Montana Board entered a Stipulation, Agreement and Order, based upon a Stipulation and Agreement entered into by Respondent and the Board, in which Respondent admitted that he suffers from chemical dependency and is presently in need of treatment and aftercare for such illness and wishes to undergo a Board approved treatment program in lieu of a hearing. The Board stayed the disciplinary proceedings for three years, and Respondent agreed to conditions including the following: a three year period of rehabilitation including intensive and comprehensive outpatient treatment at Flathead Valley Chemical Dependency Center and a contract of no less than three years with the Montana Professional Assistance Program, as specified; random urine or other bodily fluid testing as specified; participation in AA as specified; individual and/or group therapy; participation in Caduceus; abstinence from alcohol and other mind altering or potentially addicting drugs, as specified; disclosure of this Stipulation, Agreement and Order with attached MPAP contract to parties specified; and to submit to mental and physical evaluation within 60 days of the end of the rehabilitation period.

C. On or about April 2, 1992, Respondent entered into an agreement with the Montana Professional Assistance Program (MPAP).

D. On or about June 16, 1992, Respondent submitted an application for professional staff appointment and clinical privileges to Community Medical Center of Missoula, Montana in which he provided false information to a question concerning his health status and conditions that may affect his practice and failed to submit a copy of his April 2, 1992 agreement with the MPAP to the Community Medical Center in violation of the MPAP agreement and the December 18, 1991 Stipulation with the Montana Board.

E. On or about July 13, 1992, Respondent submitted an application for appointment to the medical staff of North Valley Hospital of Whitefish, Montana, on which he checked off "no" to the question , "Has your license to practice medicine in any jurisdiction ever been limited, suspended or revoked?" and did not submit a copy of his April 2, 1992 agreement with the MPAP to North Valley Hospital in violation of the MPAP agreement and the December 18, 1991 Stipulation with the Montana Board.

F. On or about April 1, 1993, Respondent submitted an application for initial medical staff appointment to Columbus Hospital of Great Falls, Montana, on which he marked "no" in response to a question as to whether his medical license had "ever been, or . . .currently (was) in the process of being denied, revoked, suspended, reduced, limited, placed on probation, not renewed, or voluntarily relinquished? (If yes to any of the following questions, please provide full explanation on a separate sheet) " and attached a letter dated June 15, 1993 to address concerns, but did not submit a copy of his April 2, 1992 agreement with the MPAP to North Valley Hospital in violation of the MPAP agreement and the December 18, 1991 Stipulation with the Montana Board.

G. The conduct resulting in the revocation, suspension or other disciplinary action involving the license or refusal, revocation or suspension of an application for a license or the surrender of the license would, if committed in New York state, constitute professional misconduct under the laws of New York state (namely N.Y. Educ. Law §6530(2) (practicing the profession fraudulently) and/or 6530(8)(being a habitual user of alcohol or drugs and/or 6530(21) (failing to file a report required by law).

## SPECIFICATION OF CHARGES

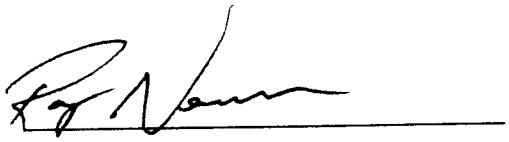
### SPECIFICATION

### HAVING HAD DISCIPLINARY ACTION TAKEN

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(9)(d)(McKinney Supp. 1996) by having his license to practice medicine revoked, suspended or having other disciplinary action taken, or having his application for a license refused, revoked or suspended or having voluntarily or otherwise surrendered his license after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation, suspension or other disciplinary action involving the license or refusal, revocation or suspension of an application for a license or the surrender of the license would, if committed in New York state, constitute professional misconduct under the laws of New York state {namely N.Y. Educ. Law §6530(8)} as alleged in the facts of the following:

1. Paragraphs A-G.

DATED: July 3, 1996
New York, New York



ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct

EXHIBIT "B"

1. I request, agree, and understand that the suspension of my license shall be terminated only upon a showing to the satisfaction of a Committee on Professional Conduct of the State Board for Professional Medical Conduct (henceforth "Committee") that I have successfully completed the course of therapy prescribed by the Board, which successful completion must include a determination by said Committee that I am no longer incapacitated for the active practice of medicine. I shall provide to the Office of Professional Medical Conduct a proposed treatment plan, for advice as to whether it is generally appropriate, but I understand that the determination of successful completion of the course of therapy shall be made solely by the Committee, and shall include, but not be limited to, a determination that I am no longer incapacitated for the active practice of medicine.

2. I request, agree, and understand that upon my request, a meeting of a Committee shall be convened for the purpose of my making the showing referred to in paragraph 1. The Board will make reasonable attempts to convene a Committee not later than 90 days after my request, which shall not be deemed to have been perfected until receipt, by the Director of the Office of Professional Medical Conduct, of all that is required to be provided by me pursuant to paragraph 3 below. I understand and agree that proceedings before said Committee shall *not* be in the nature of a *hearing* pursuant to New York Public Health Law §230, but shall, instead, be informal and intended only for the purpose of addressing any and all facts, evidence, circumstances, or issues which do or may relate to the advisability of terminating the suspension of my license. I understand and agree that the procedural nature of said proceeding shall be determined by the State Board for Professional Medical Conduct through the discretion of the Office of Professional Medical Conduct, Impaired Physicians Unit.

3. I request, agree, and understand that at the time that I request that a meeting of a Committee be scheduled, pursuant to paragraph 2, I will provide the Director of the Office of Professional Medical Conduct, New York State Department of Health, Corning Tower Building, 4th Floor, Empire State Plaza, Albany, New York, 12237, with the following:

a. The signed acknowledgement from the monitor referred to in paragraph 5b.

b. The signed acknowledgement from the supervising physician referred to in paragraph 5c.

c. The signed acknowledgement from the health care

professional or treatment program referred to in paragraph 5d.

d. Certified complete copies of records of all treatment, relating to my impairment, whether that treatment occurred prior to or during the time the suspension is in effect.

e. Fully executed waivers of patient confidentiality concerning any previous and prospective treatment records.

f. A current in-depth chemical dependency evaluation by a health care professional and a complete evaluation by a psychiatrist. The identities of said health care professional and psychiatrist are to be proposed by me and subject to the prior approval of the Director of the Office of Professional Medical Conduct.

g. My attendance at, participation in, and cooperation with personnel of the Office of Professional Medical Conduct, upon the request of the Director thereof.

Provision of the aforesaid documents does not constitute a showing that I am no longer incapacitated for the active practice of medicine.

4. I request, agree, and understand that at the proceeding referred to in paragraph 2, I will be required to provide the Committee, at a minimum, with the following:

a. Certification of treatment in a residential rehabilitation or day-treatment program or intensive treatment in an out-patient service, or other treatment program to be proposed by me and subject to the prior approval of the Director of the Office of Professional Medical Conduct.

b. Evidence of compliance with the terms of a continuing after-care out-patient treatment plan that addresses the major problems associated with my illness.

Submission of the aforesaid evidence does not constitute a showing that I am no longer incapacitated for the active practice of medicine.

5. I request, agree, and understand that if the Chairperson of the Committee issues an order (Order) finding that I have successfully completed the prescribed course of treatment, thereby terminating the suspension of my license, the Order shall further impose a period of probation, pursuant to New York Public Health Law §230-a, during which my practice of medicine shall be subject to conditions imposed. My practice shall be subject to such conditions for

a period of no less than five years. The minimum conditions will be the following:

a. I will remain drug and alcohol free.

b. My sobriety will be monitored by a health care professional, proposed by me but subject to approval by the Director of OPMC. Said monitor shall supervise my compliance with the conditions of practice imposed by the Order. Said monitor shall acknowledge his/her willingness to comply with the monitoring by executing the acknowledgement provided by the Office of Professional Medical Conduct, and referred to in paragraph 3(a).

   i. Said monitor shall be familiar with my history of substance abuse, with this consent agreement, and with the terms of probation set forth in or annexed to the Order. Said monitor shall not be my treating physician.

   ii. Said monitor shall see me, for the purpose of sobriety evaluation, at least twice during each week for the first six months of practice. This frequency may be decreased, after the first six months, at the discretion of the monitor, but only with the prior approval of the Director of OPMC.

   iii. Said monitor shall direct me to submit to unannounced tests of my blood, breath, and/or urine for the presence of drugs or alcohol and shall report to the Office of Professional Medical Conduct (the Office) within 24 hours if at any time such a test is refused by me or is positive. I understand that a significant proportion of said tests shall be blood and breath tests.

   iv. Said monitor shall report to the Office a pattern of noncompliance with the imposed conditions.

   v. Said monitor shall not be a personal friend.

   vi. Said monitor shall submit to the Office quarterly reports either certifying my

compliance, or detailing my failure to comply, with each of the conditions imposed. The reports shall include the results of all body fluid and/or breath tests for drugs and/or alcohol performed during that quarter.

c. I will be supervised in my medical practice by a licensed physician, proposed by me but subject to approval by the Director of OPMC. Said supervising physician shall be familiar with my history of substance abuse and with the Order and its conditions. Said supervising physician shall be in a position regularly to observe and assess my medical practice. Said supervising physician shall acknowledge her willingness to comply with the supervision by executing the acknowledgement provided by the Office of Professional Medical Conduct, and referred to in paragraph 3(b).

   i. Said supervising physician shall have the authority to direct me to submit to unannounced tests of my blood, breath, and/or urine for the presence of drugs or alcohol and shall report to the Office within 24 hours if at any time such a test is refused by me or is positive.

   ii. Said supervising physician shall submit to the Office quarterly reports regarding the quality of my medical practice, any unexplained absences from work and certifying my compliance or detailing my failure to comply with each condition imposed.

d. I will continue in treatment with a health care professional or a treatment program for as long as the health care professional or treatment program determines it is necessary.

   i. Said health care professional or a treatment program shall have the authority to direct me to submit to unannounced tests of my blood, breath, and/or urine for the presence of drugs or

alcohol and shall report to the Office within 24 hours if at any time such a test is refused by me or is positive.

i. My treating health care professional or program shall submit to the Office quarterly reports certifying that I am complying with the treatment.

ii. Said treating health care professional or program shall report to the Office immediately if I drop out of treatment, or if I demonstrate any significant pattern of absences.

iii. Said treating health care professional or program shall acknowledge her/its willingness to comply with the above-mentioned reporting by executing the acknowledgement provided by the Office of Professional Medical Conduct and referred to in paragraph 13(c).

6. I request, agree, and understand that the terms set out in paragraph 5 are the minimum conditions to be imposed on my practice upon any termination of the suspension of my license, and that other terms may be added by the Committee at the time of termination of suspension, and that the costs of complying with all such terms will be my responsibility. I request, agree, and understand that any failure by me to comply with the conditions imposed upon my practice at the time of license restoration, may result in my being subjected to a violation of probation proceeding or other disciplinary action brought against me charging professional misconduct as defined by the New York State Education Law, including but not limited to N.Y. Educ. Law Section 6530(29) (McKinney Supp. 1996). That section defines professional misconduct to include "Violating any term of probation or condition or limitation imposed on the licensee pursuant to section two hundred thirty of the public health law."

7. I shall meet quarterly with OPMC staff, and shall at all times fully cooperate with said staff, providing appropriate and timely response to correspondence and compliance with requests.

8. I request, agree, and understand that upon any denial, by a Committee, of my petition to terminate the suspension of my license, I shall be permitted to make further such petitions, but no sooner than six months after the

denial of the previous petition. I further request, agree, and understand that any such Committee shall have access to any and all information that is relevant to a determination of whether I may safely be returned to the practice of medicine.

DATE

STEVEN M. MARTINI, M.D.