



**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

June 17, 1996

**CERTIFIED MAIL-RETURN RECEIPT REQUESTED**

John Kevin Pfenning, R.P.A.  
4 Devon Court  
P.O. Box 4757  
Ruidoso, New Mexico 88345

RE: License No. 002742

Effective Date: 06/24/96

Dear Mr. Pfenning:

Enclosed please find Order #BPMC 96-146 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, M.D.

Chair

Board for Professional Medical Conduct

Enclosure

cc: Cindy M. Fascia, Esq.



***New York State Board for Professional Medical Conduct***

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

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

June 19, 1996

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

John Kevin Pfenning, R.P.A.  
4 Devon Court  
P.O. Box 4757  
Ruidoso, New Mexico 88345

RE: License No. 002742

Dear Mr. Pfenning:

This is a follow-up to my June 17, 1996 letter forwarding BPMC Order 96-146.

I am enclosing the Statement of Charges, which was inadvertently omitted from the previous correspondence. I apologize for any inconvenience this may have caused.

Sincerely,

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

Enclosure

cc: Cindy M. Fascia, Esq.

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

-----X

IN THE MATTER :  
OF : ORDER  
JOHN KEVIN PFENNING, R.P.A. : BPMC #96-146

-----X

Upon the Application of JOHN KEVIN PFENNING, R.P.A. to surrender his certificate of registration as a physician assistant in the State of New York, which application is made a part hereof, it is

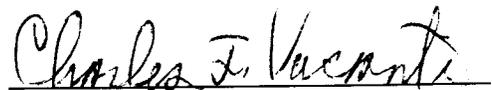
ORDERED, that the application and the provisions thereof are hereby adopted; it is further

ORDERED, that the name of Respondent be stricken from the roster of physician assistants in the State of New York; 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.

SO ORDERED,

DATED: 13 June 1996



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

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

-----X

IN THE MATTER : APPLICATION TO  
OF : SURRENDER  
JOHN KEVIN PFENNING, R.P.A. : CERTIFICATE  
-----X OF REGISTRATION

STATE OF NEW MEXICO )

ss.:

COUNTY OF )

JOHN KEVIN PFENNING, R.P.A., being duly sworn, deposes and says:

On or about July 29, 1985, I was authorized to practice as a physician assistant in the State of New York having been issued registration number 002742 by the New York State Education Department.

I am currently registered with the New York State Education Department to practice as a physician assistant in the State of New York for the period March 1, 1995 through February 1, 1998, with a registration address of 4 Devon Court, P.O. Box 4757, Ruidoso, New Mexico 88345.

I understand that I have been charged with Eleven Specifications of professional misconduct as set forth in the Statement of Charges, annexed hereto, made a part hereof, and marked as Exhibit A.

I am applying to the State Board for Professional Medical Conduct for permission to surrender my certificate of registration as a physician assistant in the State of New York on the grounds that I admit all the Factual Allegations and Specifications set forth in the Statement of Charges.

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

I understand that, in the event that the application 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 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 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 grants my application, an order shall be issued striking my name from the roster of physician assistants in the State of New York without further notice to me.

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



JOHN KEVIN PFENNING, R.P.A.  
Respondent

Sworn to before me this

5<sup>th</sup> day of June, 1996

  
NOTARY PUBLIC

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

-----X  
IN THE MATTER : APPLICATION TO  
OF : SURRENDER  
JOHN KEVIN PFENNING, R.P.A. : CERTIFICATE  
-----X OF REGISTRATION

The undersigned agree to the attached application of the Respondent to surrender his certificate of registration.

Date: 6/5, 1996

  
JOHN KEVIN PFENNING, R.P.A.  
Respondent

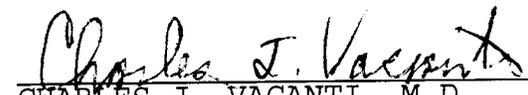
Date: June 7, 1996

  
CINDY M. FASCIA  
Associate Counsel  
Bureau of Professional  
Medical Conduct

Date: June 11, 1996

  
ANNE F. SAILE  
ACTING DIRECTOR  
Office of Professional Medical  
Conduct

Date: 13 June, 1996

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

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

-----X

IN THE MATTER : STATEMENT  
OF : OF  
JOHN KEVIN PFENNING, R.P.A. : CHARGES

-----X

JOHN KEVIN PFENNING, R.P.A., the Respondent, was authorized to practice as a physician assistant in New York State on July 29, 1985 by the issuance of registration number 002742 by the New York State Education Department. The Respondent is currently registered with the New York State Education Department to practice as a physician's assistant for the period March 1, 1995 through February 1, 1998, with a registration address of 4 Devon Court, P.O. Box 4757, Ruidoso, New Mexico 88345.

**FACTUAL ALLEGATIONS**

A. Respondent, on or about March 6, 1978, in Escondido, California, was convicted of one count of theft in violation of §484 of the California Penal Code. Respondent's acts, if committed in New York state, would have constituted a crime under New York state law, including but not limited to N.Y. Penal Law §155.05, and/or N.Y. Penal Law §155.25.

B. Respondent, on or about June 13, 1985, submitted an Application for Registration as a Physician's Assistant to the New York State Education Department. Respondent answered "No" to

the application question "Have you ever been convicted of a crime (felony or misdemeanor) in any state or country?" when in fact Respondent, on or about March 6, 1978, in Escondido, California was convicted of one count of theft, a misdemeanor, in violation of §484 of the California Penal Code, and Respondent knew such facts.

C. Respondent, on or about December 8, 1989, pleaded guilty to and was convicted of one count of violating California Vehicle Code §23152(a), in that he drove a vehicle while under the influence of an alcoholic beverage or a drug, or under the combined influence of an alcoholic beverage and a drug. Pursuant to his guilty plea, Respondent was sentenced to serve 48 hours of work release, to pay a fine of seven hundred and forty dollars (\$740.00), and to complete a three week alcohol program. Respondent's acts, if committed in New York state, would have constituted a crime under New York state law, including but not limited to N.Y. Vehicle and Traffic Law §1192.

D. Respondent, on or about August 2, 1991, in San Diego, California, pleaded guilty to and was convicted of one count of driving a vehicle while having a 0.10 percent or more blood alcohol content, in violation of California Vehicle Code §23152(b). Respondent was sentenced to five years of probation, to pay a fine of nine hundred thirty-nine dollars (\$939.00), and his license was revoked for one year. Respondent's acts, if committed in New York state, would have constituted a crime under New York state law, including but not limited to N.Y. Vehicle and

Traffic Law §1192(2).

E. Respondent, on or about November 12, 1991, in the Municipal Court of California, County of San Diego, pleaded guilty to one count of possession of stolen property, a misdemeanor, in violation of California Penal Code §496.1. In exchange for Respondent's guilty plea, the remaining counts of the ten count complaint against him were dismissed. Respondent's acts, if committed in New York state, would have constituted a crime under New York state law, including but not limited to N.Y. Penal Law §165.40, and/or N.Y. Penal Law §165.45.

F. Respondent, on or about February 10, 1995, surrendered his New Mexico registration as a physician assistant and agreed not to reapply for a New Mexico registration.

1. Respondent surrendered his New Mexico registration after the New Mexico Board had instituted disciplinary proceedings against him pursuant to a Notice of Contemplated Action issued on or about December 9, 1994.
2. The conduct which resulted in Respondent's surrender of his New Mexico registration included the following:
  - Respondent, on or about April 7, 1993, submitted an application to the New Mexico Board to be registered as a physician assistant. Respondent answered "No" to the application question #11 "Have you ever had a personal or legal problem with narcotics, alcohol or any other dangerous drugs?" when Respondent knew that he had

previously had a problem with dangerous drugs.

- Respondent answered "No" to the application question #12 "Have you ever been charged with a violation of any Federal, State or Local Statute?" when Respondent knew that he had been charged and convicted of a crime in California.
  - Respondent, during an interview with the Secretary-Treasurer of the Board in connection with Respondent's application, told her that his answer to Question #11, as described above, was accurate when Respondent knew that it was not.
  - Respondent, during the same interview, said that he did not have a chemical dependence when he knew that he did have such a dependence.
  - Respondent, on or about July 1, 1994, on the renewal form for his registration, again answered "No" to the question "Have you been charged with a violation of a federal, state or local statute (except minor traffic citations)?" when Respondent knew that he had been charged and convicted of a crime in California.
  - Respondent, on the same renewal form, again answered "No" to the question "Have you had personal or legal problems with narcotics, alcohol or other dangerous drugs?" when Respondent knew that he had previously had a problem with dangerous drugs.
  - Respondent, on or about September 6, 1994, picked up a prescription for Halotestin from a drug store in Ruidoso, New Mexico. Respondent claimed that the prescription was for his nephew. Respondent told the pharmacist that Dr. James Fenimore had authorized the prescription, when Respondent knew that Dr. Fenimore had not authorized it.
  - Respondent on or about September 7, 1994, tested positive in a drug screen for anabolic steroids and benzodiazepines when those drugs had not been legitimately prescribed for him.
3. The conduct which resulted in Respondent's surrender of his New Mexico registration would, if committed in New York state, constitute professional misconduct under the laws of New York state, including but not limited to N.Y. Educ. Law §6530(2) [practicing the profession

fraudulently]; and/or N.Y. Educ. Law §6530(1) [obtaining the license fraudulently]; and/or N.Y. Educ. Law §6530(21) [willfully making or filing a false report]; and/or N.Y. Educ. Law §6530(9)(a)(iii) [being convicted of a crime]; and/or N.Y. Educ. Law §6530(8) [being a habitual user/being dependent]; and/or N.Y. Educ. Law §6530(7) [practicing the profession while impaired].

G. Respondent, on or about April 9, 1995, submitted an application for employment to TRAVCORPS, Inc., Advanced Practice Division.

1. Respondent answered "No" to the application question "Have you ever been convicted of a crime (other than a minor traffic violation)?" when in fact Respondent, on or about March 6, 1978, was convicted of theft in Escondido, California, in violation of §484 of the California Penal Code, and Respondent knew such facts.
2. Respondent answered "No" to the application question "Have you ever been convicted of a crime (other than a minor traffic violation)?" when in fact Respondent, on or about December 8, 1989, pleaded guilty to and was convicted of driving a vehicle while under the influence of an alcoholic beverage or drug, or under the combined influence of an alcoholic beverage and a drug, in violation of California Vehicle Code

§23152(a), and Respondent knew such facts.

3. Respondent answered "No" to the application question "Have you ever been convicted of a crime (other than a minor traffic violation)?" when in fact Respondent, on or about August 2, 1991, pleaded guilty to and was convicted of one count of driving a vehicle while having a 0.10 percent or more blood alcohol content, in violation of California Vehicle Code §23152(b), and Respondent knew such facts.
4. Respondent answered "No" to the application question "Have you ever been convicted of a crime (other than a minor traffic violation)?" when in fact Respondent, on or about November 12, 1991, pleaded guilty to and was convicted of one count of possession of stolen property in violation of California Penal Code §496.1, and Respondent knew such facts.
5. Respondent answered "No" to the application question "Have you ever had disciplinary action taken against any of your licenses?" when in fact Respondent, on or about February 10, 1995, had surrendered his New Mexico registration as a physician assistant and had agreed to not reapply in New Mexico, and Respondent had surrendered after disciplinary proceedings had been instituted against him by the New Mexico Board pursuant to a Notice of Contemplated Action issued on or about

December 9, 1994, and Respondent knew such facts.

H. Respondent, on or about June 1995, submitted an application for employment to Staff Relief, Inc.

1. Respondent answered "No" to the application question "Has your professional license ever been suspended, revoked, or investigated?" when, in fact, Respondent's license had been investigated by the California Medical Board, which had filed an Accusation against Respondent on or about April 20, 1994, and Respondent knew such facts.
2. Respondent answered "No" to the application question "Has your professional license ever been suspended, revoked or investigated?" when, in fact, Respondent's New Mexico registration had been investigated by the New Mexico Board of Medical Examiners, which on or about December 9, 1994 had issued a Notice of Contemplated Action containing allegations of unprofessional or dishonorable conduct against Respondent, and Respondent knew such facts.
3. Respondent answered "No" to the application question "Has your professional license ever been suspended, revoked or investigated?" when, in fact, Respondent's New York registration was being investigated by the Office of Professional Medical Conduct, and Respondent

knew such facts.

4. Respondent, in the section of the application which required him to "List all states in which you are currently licensed or have been licensed", listed only New York State. Respondent did not list New Mexico or California when, in fact, Respondent had been licensed to practice as a physician's assistant in both New Mexico and California, and Respondent knew such facts.

I. Respondent, on or about June 9, 1995, entered into a Stipulation For Surrender of License with the California Medical Board, whereby Respondent surrendered his license to practice as a physician assistant in California.

1. Respondent surrendered his California license after disciplinary action had been instituted against him by the California Medical Board. Said action was instituted by the Board making and filing an Accusation against Respondent on or about April 20, 1994. Respondent, in said Stipulation, admitted the truth and accuracy of all allegations in the Accusation.
2. The conduct which resulted in Respondent's surrender of his license to the California Board, as set forth in the Board's Accusation, included the following:
  - Respondent received, concealed, sold and/or withheld property stolen from various persons.

- Respondent, on or before August 2, 1991, stole triplicate prescription forms from James Stakely, M.D., his former employer.
  - Respondent, on or before August 2, 1991, obtained a controlled substance, dexedrine, by use of a prescription obtained by fraud, deceit or misrepresentation.
  - Respondent, on or before August 12, 1991, stole a check from James Stakely, M.D., his former employer. Respondent forged and cashed the stolen check on August 12, 1991.
  - Respondent, on or about August 13, 1991, obtained a controlled substance, dexedrine, by use of a stolen and forged prescription.
  - Respondent, on or about April 14, 1991, entered the residence of his former roommate and stole a revolver, credit cards, and identification.
  - Respondent, on or about November 12, 1991, pleaded guilty to and was convicted on one count of receiving stolen property, in violation of Section 496.1 of the California Penal Code. Pursuant to Respondent's plea bargain, the remaining nine counts of the felony complaint filed against him on or about October 8, 1991 were dismissed.
3. The conduct which resulted in Respondent's surrender of his license to the California Board violated various sections of the California Business and Professions Code, including §2234(e), which prohibits the commission of "any act involving dishonesty or corruption which is substantially related to the qualifications, functions, or duties of a physician"; and §3531, which provides that "a plea or verdict of guilty.....made to a charge of a felony or of any offense which is substantially related to the qualifications, functions, or duties [of a physician]" constitutes unprofessional conduct.

4. The conduct which resulted in Respondent's surrender of his license to the California Board would, if committed in New York state, constitute professional misconduct under the laws of New York state, including N.Y. Educ. Law §6530(2) [practicing the profession fraudulently]; and/or N.Y. Educ. Law §6530(20) [conduct in the practice which evidences moral unfitness]; and/or N.Y. Educ. Law §6530(9)(a)(iii) [being convicted of an act constituting a crime].

J. Respondent, on or about June 19, 1995, submitted an Application for Privileges to Delaware Valley Hospital, Walton, New York. Respondent answered "No" to the application question "Have your privileges at any hospital ever been suspended, diminished, revoked or not renewed?" when, in fact, Respondent's privileges at Lincoln County Medical Center in Ruidoso, New Mexico, had been suspended or revoked on or about September 15, 1994, and Respondent knew such facts.

#### **SPECIFICATION OF CHARGES**

#### **FIRST SPECIFICATION**

#### **OBTAINING THE LICENSE FRAUDULENTLY**

Respondent is charged with professional misconduct under N.Y. Educ. Law §6530(1), by reason of obtaining a license fraudulently, in that Petitioner charges:

1. The facts in Paragraph B.

**SECOND THROUGH FIFTH SPECIFICATIONS**

**HAVING BEEN CONVICTED OF A CRIME**

Respondent is charged with professional misconduct under N.Y. Educ. Law §6530(9)(a)(iii), by reason of being convicted of committing an act constituting a crime under the law of another jurisdiction which, if committed in New York state, would have constituted a crime under New York state law, in that Petitioner charges:

2. The facts in Paragraph A.
3. The facts in Paragraph C.
4. The facts in Paragraph D.
5. The facts in Paragraph E.

**SIXTH AND SEVENTH SPECIFICATIONS**

**SURRENDERING A LICENSE AFTER  
DISCIPLINARY ACTION WAS INSTITUTED**

Respondent is charged with professional misconduct under N.Y. Educ. Law §6530(9)(d), by reason of 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 surrender of the license would, if committed in New York state, constitute

professional misconduct under the laws of New York state, in that  
Petitioner charges:

6. The facts in Paragraphs F and F.1, F.2, and F.3.
7. The facts in Paragraphs I and I.1, I.2, I.3 and I.4.

**EIGHTH THROUGH TENTH SPECIFICATIONS**

**FRAUDULENT PRACTICE**

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

8. The facts in Paragraphs G and G.1, and/or G.2,  
and/or G.3, and/or G.4, and/or G.5.
9. The facts in Paragraphs H and H.1, and/or H.2,  
and/or H.3, and/or H.4.
10. The facts in Paragraph J.

**ELEVENTH THROUGH THIRTEENTH SPECIFICATIONS**

**WILLFULLY FILING A FALSE REPORT**

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

11. The facts in Paragraphs G and G.1, and/or G.2, and/or G.3, and/or G.4, and/or G.5.
12. The facts in Paragraphs H and H.1, and/or H.2, and/or H.3, and/or H.4.
13. The facts in Paragraph J.

DATED: *May 7*, 1996  
Albany, New York

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