



New York State Board for Professional Medical Conduct

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

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

Patrick F. Carone, M.D., M.P.H.
Chair
Ansel R. Marks, M.D., J.D.
Executive Secretary

March 11, 1998

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Nicholas John Messina III, M.D.
111 Blackman Road
Ridgefield, Connecticut 06877

RE: License No. 152097

Dear Dr. Messina:

Enclosed please find Order #BPMC 98-48 of the New York State Board for Professional Medical Conduct. This Order and any penalty provided therein goes into effect **March 9, 1998**.

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
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: Sharif Mahdavian Esq.
Wilfred T. Friedman, P.C.
The Bar Building
36 West 44th Street
New York, New York 10036

Valerie B. Donovan, Esq.

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

IN THE MATTER
OF
NICHOLAS JOHN MESSINA III, M.D.

CONSENT
AGREEMENT
AND
ORDER

BPMC #98-48

STATE OF CONNECTICUT)
COUNTY OF FAIRFIELD) ss.: 044-52-8475

NICHOLAS J. MESSINA III, M.D., being duly sworn, deposes and says:

That on or about October 29, 1982, I was licensed to practice as a physician in the State of New York, having been issued License No. 152097 by the New York State Education Department.

My current address is 111 Blackman Road, Ridgefield, Connecticut 06877, and I will advise the Director of the Office of Professional Medical Conduct of any change of my address.

I understand that the New York State Board for Professional Medical Conduct has charged me with two specifications 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 First Specification. I hereby agree to the following penalty:

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, and until I provide a showing to the satisfaction of a Committee on Professional Conduct of the Board for Professional Medical Conduct that I am no longer incapacitated for the active practice of medicine and that I am

both fit and competent to practice medicine. Such a showing shall include proof that I have successfully completed a course of therapy or treatment approved by the Board. I understand and hereby agree that my *successful completion of the approved 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 my fitness and competence as set forth in Exhibit B, attached hereto, I may request a modification of such sanction, as further set forth in Exhibit C.

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 Exhibit B. 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.

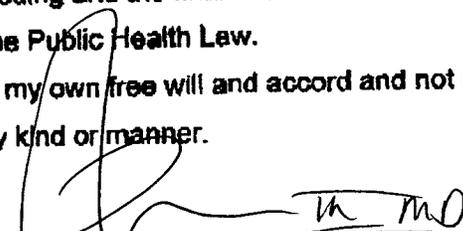
I understand that I may continue to practice in the State of Connecticut under the terms of the November 18, 1997 Connecticut Consent Order (Petition No. 970610-001-134) during this period of suspension.

I agree that in the event I am charged with professional misconduct in the future, this agreement and order shall be admitted into evidence in that proceeding.

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


NICHOLAS J. MESSINA III, M.D.
RESPONDENT

Sworn to before me this

23RD day of FEBRUARY, 1998

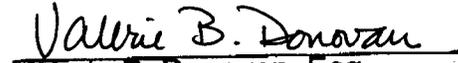

NOTARY PUBLIC

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

DATE: 23 February 98


Wilfred T. Friedman, Esq.
Attorney for Respondent

DATE: March 2, 1998
~~February~~


Valerie B. Donovan, Esq.
Attorney
Bureau of Professional
Medical Conduct

DATE: March 6 1998


ANNE F. SAILE
Director
Office of Professional
Medical Conduct

EXHIBIT A

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

-----X

IN THE MATTER : STATEMENT
OF : OF
NICHOLAS JOHN MESSINA III, M.D. : CHARGES

-----X

NICHOLAS JOHN MESSINA III, M.D., the Respondent, was authorized to practice medicine in New York State on October 29, 1982, by the issuance of license number 152097 by the New York State Education Department. Respondent is not currently registered with the New York State Education Department to practice medicine.

FACTUAL ALLEGATIONS

A. On November 18, 1997, Respondent entered into a Consent Order with the Connecticut Medical Examining Board in which he admitted that: (1) between approximately 1991 and June of 1997, while addicted to drugs and alcohol, he obtained controlled substances in Connecticut by fraud and deceit for his own personal use by writing fraudulent prescriptions in various names; and (2) between 1982 and June of 1997, while addicted to drugs and alcohol, Respondent abused Percocet, Vicodin and alcohol. This activity was in violation of the General Statutes of Connecticut §§20-13c(3), (4) and/or (5). Pursuant to the terms of the Consent Order, Respondent's license to practice medicine was suspended for two years, the suspension was stayed

and Respondent was placed on probation for five years, requiring therapy and monitoring terms relating to the use of alcohol and controlled substances.

B. The conduct which Respondent admitted and/or was disciplined for in Connecticut would, if committed in New York State, constitute professional misconduct under N.Y. Educ. Law. §§ 6530(2), (3), (5) and/or (8) .

SPECIFICATIONS OF MISCONDUCT

FIRST SPECIFICATION

GUILTY OF MISCONDUCT IN ANOTHER STATE

Respondent is charged with professional misconduct under N.Y. Educ. Law §6530(9)(b) by reason of having been found guilty of improper professional practice or 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 B.

SECOND SPECIFICATION

DISCIPLINARY ACTION BY ANOTHER STATE

Respondent is charged with professional misconduct within the meaning of New York Education Law §6530(9)(d) in that he had disciplinary action taken against him by a duly authorized professional disciplinary agency of another state, where the

conduct resulting in the disciplinary action would, if committed in New York State, constitute professional misconduct under the laws of New York State, in that Petitioner charges:

1. The facts of paragraphs A and B.

DATED: *March 4, 1998*
Albany, New York

Peter D. Van Buren
PETER D. VAN BUREN
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 am no longer incapacitated for the active practice of medicine and that I am both fit and competent to practice medicine. I understand that the determination that I am no longer incapacitated for the active practice of medicine shall be made solely by the Committee, and shall include, but not be limited to, a determination of successful completion of an approved course of therapy

2. I request, agree, and understand that at the time that I request that a meeting of a Committee be scheduled, pursuant to paragraph 1, I will provide the Director of the Office of Professional Medical Conduct, New York State Department of Health, 433 River Street, Suite 303, Troy, NY 12180-2299, with the following:

- a. The signed acknowledgement from the sobriety monitor referred to in Exhibit C paragraph 4.
- b. The signed acknowledgement from the supervising physician referred to in Exhibit C paragraph 5.
- c. The signed acknowledgement from the health care professional referred to in Exhibit C paragraph 6.
- d. Certified true and complete copies of records of all evaluation and treatment, relating to my impairment, whether that evaluation and treatment occurred prior to or during the time this surrender is in effect. These records shall include documentation of the results of all urine/blood/breath tests conducted to detect the presence of drugs and/or alcohol.
- e. Fully executed waivers of patient confidentiality concerning any previous and prospective treatment records.
- f. An independent current psychiatric evaluation by a board certified psychiatrist. Also, upon request of the Director of OPMC, a current in-depth chemical dependency evaluation by

- a health care professional in a licensed facility.
- g. My attendance at, participation in, and cooperation with an interview conducted by personnel of OPMC, upon the request of the Director thereof.
- h. Proof of compliance with the terms of my agreement with the State of Connecticut Medical Examining Board.

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

3. At the proceeding referred to in paragraph 1, I will provide the committee, at a minimum, with the following:

- a. Certified true and complete and current records of all psychiatric, psychological, and/or any other mental health treatment, evaluation, and/or testing, whether in an out-patient, in-patient, office, consultation setting.
- 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.
- c. Evidence that I have maintained adequate knowledge and competence to practice as a physician. Such evidence shall include documentation of continuing medical education and, if so requested by the Director of OPMC, a report of an independent evaluation of my medical knowledge and competence.

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

4. I request, agree, and understand that if the Chairperson of the Committee issues an order (Order) finding that I am no longer incapacitated for the active practice of medicine, 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 as described in Exhibit C.

EXHIBIT C

TERMS OF PROBATION

My practice shall be subject to the following terms of probation for a period of no less than five years:

1. I will remain drug and alcohol free.
2. I will comply with the terms of a continuing after-care treatment plan that addresses the major problems associated with my illness.
3. At the direction of the Director of OPMC, I will submit to periodic interviews with, and evaluations by, a board certified psychiatrist or other licensed mental health practitioner designated by the Director. Said practitioner shall report to the Director regarding my condition and my fitness or incapacity to practice medicine.
4. My sobriety will be monitored by a health care professional, proposed by me and approved in writing by the Director of OPMC.
 - a. Said monitor shall be familiar with my history of chemical dependence, with this suspension and with the terms of probation to be set forth.
 - b. Said monitor shall see me at least twice during a quarter.
 - c. 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 OPMC within 24 hours if at any time such a test is refused by me or is positive.
 - d. Said monitor shall report to OPMC any noncompliance with the imposed conditions.
 - e. Said monitor shall not be a personal friend.
 - f. Said monitor shall submit to OPMC quarterly reports 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.

5. I will be supervised in my medical practice by a licensed physician, proposed by me and approved in writing by the Director of OPMC. Said supervising physician shall be familiar with my history of chemical dependency, with this suspension and with the terms of probation to be set forth. Said supervising physician shall supervise my compliance with the conditions of practice to be imposed. Said supervising physician shall be in a position regularly to observe and assess my medical practice.

- a. 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 OPMC within 24 hours if at any time such a test is refused by me or is positive.
- b. Said supervising physician shall submit to OPMC 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.
- c. Said supervising physician shall report any suspected impairment, inappropriate behavior, questionable medical practices or possible misconduct to OPMC.

6. I will continue in treatment with a health care professional, proposed by me and approved, in writing, by the Director of OPMC, for as long as the health care professional determines it is necessary.

- a. My treating health care professional or program shall submit to OPMC quarterly reports certifying that I am complying with the treatment.
- b. Said treating health care professional shall report to OPMC immediately if I am noncompliant with my treatment plan or if I demonstrate any significant pattern of absences.

7. I agree that the preceding terms set out in paragraphs 1-6 shall be the minimum probation terms, related to my fitness to practice, to be imposed on my practice, and that other terms may be added by the Committee at the time of termination of my suspension, and that the costs of complying with all such terms

will be my responsibility. I understand that any failure by me to comply with the conditions imposed upon my practice at the time of termination of my suspension, may result in disciplinary action being 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. 1998). That section defines professional misconduct to include "violating any... condition... imposed on the licensee pursuant to section two hundred thirty of the public health law."

8. I agree that upon any denial of termination of my suspension made by the Committee, I shall not again request convening of a Committee until a minimum period of six months has elapsed since such denial.

9. I agree that in addition to the terms set out in paragraphs 1-6 and any other terms imposed by added by the Committee upon restoration of my license, I shall also be subject to the following standard terms of probation:

- a. I shall conduct myself in all ways in a manner befitting my professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by my profession.
- b. I shall submit written notification to the New York State Department of Health addressed to the Director of the Office of Professional Medical Conduct, 433 River Street, Suite 303, Troy, NY 12180-2299; said notice is to include a full description of any employment and practice, professional and residential addresses and telephone numbers within or without New York State, and any and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty days of each action.
- c. I shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of my compliance with the terms of this Order. I shall personally meet with a person designated by the Director of OPMC as requested by the Director.
- d. Any civil penalty not paid by the date prescribed herein shall be

subject to all provisions of law relating to debt collection by New York State. This includes but is not limited to the imposition of interest, late payment charges and collection fees; referral to the New York State Department of Taxation and Finance for collection; and non-renewal of permits or licenses [Tax Law section 171(27)]; State Finance Law section 18; CPLR section 5001; Executive Law section 32].

- e. The period of probation shall be tolled during periods in which I am not engaged in the active practice of medicine in New York State. I shall notify the Director of OPMC, in writing, if I am not currently engaged in or intend to leave the active practice of medicine in New York State for a period of thirty (30) consecutive days or more. I shall then notify the Director again prior to any change in that status. The period of probation shall resume and any terms of probation which were not fulfilled shall be fulfilled upon my return to practice in New York State. The tolling provision set forth in this paragraph may be waived by the Director of the OPMC, in the Director's discretion.
- f. My professional performance may be reviewed by the Director of OPMC. This review may include, but shall not be limited to, a review of office records, patient records and/or hospital charts, interviews with or periodic visits with me and my staff at practice locations or OPMC offices.
- g. I 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.
- h. I shall comply with all terms, conditions, restrictions, limitations and penalties to which I am subject pursuant to the Order and I shall assume and bear all costs related to compliance. 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 me as may be authorized pursuant to the law.

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

IN THE MATTER
OF
NICHOLAS JOHN MESSINA III, M.D.

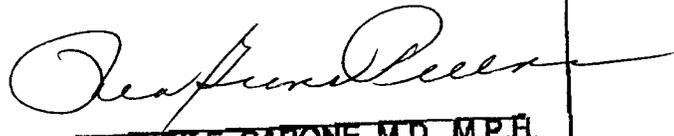
CONSENT
ORDER

Upon the proposed agreement of NICHOLAS JOHN MESSINA III, M.D.
(Respondent) for Consent Order, which application is made a part hereof, it is
agreed to and

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 below.
SO ORDERED.

DATED: 3-9-98



PATRICK F. CARONE, M.D., M.P.H.
Chairperson
State Board for Professional
Medical Conduct