

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

PUBLIC

**IN THE MATTER
OF
JOHN J. MARIANI, M.D.**

**MODIFICATION
ORDER**

BPMC No. 98-264

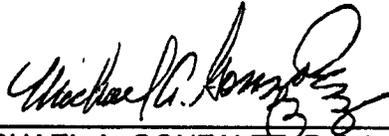
Upon the proposed Application for a Modification Order of **JOHN J. MARIANI, M.D.**
(Respondent) for Modification Order, that is made a part of this Modification Order, it is agreed
to and

ORDERED, that the attached Application, and its terms, are adopted **SO ORDERED**,
and it is further

ORDERED, that this Modification Order shall be effective upon issuance by the Board,
either by mailing of a copy of this Modification Order, by either first class mail, to Respondent at
the address in the attached Application or certified mail to Respondent's attorney, or upon
transmission via facsimile to Respondent or Respondent's attorney, whichever is earliest.

SO ORDERED.

DATED: 9/8/04


MICHAEL A. GONZALEZ, R.P.A.
Vice Chair
State Board for Professional
Medical Conduct

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

IN THE MATTER
OF
JOHN J. MARIANI, M.D.

APPLICATION TO
MODIFY DETERMINATION
AND ORDER NUMBER
BPMC-98-264

JOHN J. MARIANI, M.D., (Respondent) deposes and says:

That on or about April 25, 1995, I was licensed to practice as a physician in the State of New York, having been issued License No. 199048 by the New York State Education Department.

My current address is [REDACTED] and I will advise the Director of the Office of Professional Medical Conduct of any change of my address within thirty (30) days thereof.

I am currently subject to DETERMINATION AND ORDER NUMBER BPMC-98-264, annexed hereto, made a part hereof, and marked as Exhibit I (hereinafter "Original Order"), that was issued on or about November 9, 1998.

I successfully completed five (5) years of probation and a four (4) year psychiatry residency. I am currently in an Addiction Psychiatry Fellowship at Columbia Presbyterian Hospital. I am eligible to sit for the American Board for Psychiatry and Neurology certification examination. I am precluded, however, from doing so due to the restriction in the Original Order. I am, applying, therefore, to the State Board for Professional Medical Conduct for an Order (henceforth "Modification Order"), modifying the Original Order, as follows: to delete the paragraph in the Original Order that states:

4. Respondent's license to practice medicine be permanently RESTRICTED to the practice of psychiatry

The Modification Order to be issued will not constitute a new disciplinary action against me, but will delete number 4 on page 6 of the Original Order.

I am making this Application of my own free will and accord and not under duress, compulsion or restraint of any kind or manner, and seek the anticipated benefit of the requested Modification. In consideration of the value to me of the acceptance by the Board of this Application, I knowingly waive any right I may have to contest the Original Order or the Modification Order for which I apply, whether administratively or judicially, and ask that the Board grant this Application.

AFFIRMED:

DATED: 8/15/04


JOHN J. MARIANI, M.D.
Respondent

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

DATE: 23 August 2004


ROBERT BOGAN
Associate Counsel
Bureau of Professional Medical Conduct

DATE: 07 September 2004


DENNIS J. GRAZIANO
Director
Office of Professional Medical Conduct



**STATE OF NEW YORK
DEPARTMENT OF HEALTH**

433 River Street, Suite 303

Troy, New York 12180-2299

Dennis P. Whalen
Executive Deputy Commissioner

November 12, 1998

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Wilfre T. Friedman, P.C.
36 West 44th Street
New York, NY 10036

John J. Mariani, M.D.

~~XXXXXXXXXXXX~~
~~XXXXXXXXXXXX~~

Silvia P. Finkelstein, Esq.
NYS Department of Health
Division of Legal Affairs
5 Penn Plaza, Suite 601
New York, NY 10001-1803

RE: In the Matter of John J. Mariani, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 98-264) 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,

Tyrone Butler

**Tyrone T. Butler, Director
Bureau of Adjudication**

**TTB:mla
Enclosure**

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

COPY

**IN THE MATTER
OF
JOHN J. MARIANI, M.D.**

**DETERMINATION
AND
ORDER
BPMC-98-264**

A Notice of Referral Proceeding and Statement of Charges, each dated August 6, 1998, was served upon the Respondent, **JOHN J. MARIANI, M.D. WILLIAM P. DILLON, M.D.,** (Chairperson), **JOHN W. CHOATE, M.D.** and **REV. THOMAS KORNMEYER,** 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. **JEFFREY ARMON,** Administrative Law Judge, served as the Administrative Officer. A hearing was held on September 9 and 29, 1998. The Department of Health appeared by **HENRY M. GREENBERG,** General Counsel, by **SILVIA P. FINKELSTEIN, Esq.,** of Counsel. The Respondent appeared and was represented by **WILFRED T. FRIEDMAN** and **SHARIF MAHDAVIAN, Esqs.** 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 Section 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 was charged with professional misconduct pursuant to Education Law Section 6530(9)(a). A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order as Appendix I.

As noted below, Respondent temporarily surrendered his license to practice medicine in the State of New York before a determination had been made by the State Board for Professional Medical Conduct as to the allegations of professional misconduct set forth in the Statement of Charges. Respondent has subsequently requested that his license be restored upon a finding that he is no longer incapacitated for the active practice of medicine. The parties agreed that it would be most efficient to address in a single proceeding issues related to any penalties to be imposed pursuant to a finding of misconduct in conjunction with a determination of continued incapacity to practice.

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. Respondent was authorized to practice medicine in New York State on April 25, 1995 by the issuance of license number 199048 by the New York State Education Department. (Ex.3)

2. On or about August 6, 1996, Respondent executed an agreement whereby he temporarily surrendered his medical license and agreed to not practice until such time as he could demonstrate satisfactorily that he was no longer incapacitated for the active practice of medicine. (Ex. 3)

3. On or about January 21, 1997, Respondent was convicted after a plea of guilty in Westchester County Court of Criminal Trespass in the Second Degree, a class A misdemeanor, in violation of Section 140.15.00) of the Penal Law of the State of New York in that on or about January 16, 1996, Respondent knowingly entered unlawfully in a dwelling; and of Criminal Possession of a Controlled Substance in the Seventh Degree, a class A misdemeanor, in violation of Section 220.03.00 of the Penal Law of the State of New York, in that on or about January 16, 1996, Respondent did knowingly and unlawfully possess a controlled substance, specifically, cocaine. (Ex. 2)

4. On or about January 21, 1997, Respondent was sentenced to three years probation.
(Ex. 2)

5. Respondent received inpatient treatment for substance abuse and addiction from the Talbott Marsh Recovery System in College Park, Georgia from approximately May 21, 1996 through October 5, 1996. (Ex. M)

6. Respondent has been employed at The Princeton Review since January, 1997 and is currently in the position of Director of Research and Development for Medical Licensing Programs.
(Ex. A; T. 258-9))

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 determined that the Department had met its burden of proof and concluded that the preponderance of the evidence demonstrated that Respondent was convicted of committing acts constituting crimes under New York law. The Hearing Committee therefore determined to sustain the Specification set out in the Statement of Charges (Ex. 1).

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 be suspended through June 30, 1999. The suspension shall be stayed as of July 1, 1999 for a period of five years only if Respondent is admitted to an ACGME approved residency program in psychiatry in New York State and shall remain stayed only if Respondent remains enrolled in and successfully completes said residency program. During the period of the stayed suspension, Respondent shall be placed on probation and made subject to all conditions set forth in Appendix II of this Determination and Order. Such conditions include requirements that he remain drug and alcohol free, continue to comply with his treatment regimen and document his continued recovery during the suspension period. In addition, his license to practice medicine shall be permanently restricted to the practice of psychiatry. This decision was made following due consideration of the full spectrum of penalties available pursuant to statute, including license revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties.

Respondent presented extensive evidence in support of his position that he is no longer incapacitated for the active practice of medicine and testified that he has been sober for about a two and one-half year period. The Hearing Committee considered his efforts thus far to recover from his

addiction to be appropriate measures. The extensive support network that Respondent has developed and his successful employment at the Princeton Review were duly noted. The Committee also considered his history of abuse of a highly addictive substance and evidence demonstrating a high rate of recidivism for persons with such a history. It attempted to formulate a penalty which would balance the need to protect the public from the possibility of a relapse by the Respondent while providing him with an opportunity to resume a medical practice.

The Committee determined, based on personal observation of the Respondent plus close examination of his testimony, that he remains a highly fragile individual struggling daily with his addiction and in need of a constant and vigilant support network. There were significant concerns about his expressed desire to enter a residency program in psychiatry in that the demands of a such a program would be expected to greatly limit Respondent's ability to continue to attend support meetings and therapy sessions. The Committee strongly believed that Respondent must continue with all of his current recovery activities and felt that he acknowledged that fact as well. The Committee felt that suspending Respondent's license through June, 1999 would provide additional recovery time while enabling him to pursue admission to a residency program in psychiatry. It was further concluded that Respondent's progress would best be monitored if the residency program was located in New York State. The strenuous Terms of Probation set out in Appendix II were imposed by the Committee to address these concerns while providing Respondent a limited opportunity to pursue a practice in the medical specialty of his choice.

ORDER

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

1. The Specification contained within the Statement of Charges (Ex. 1) is **SUSTAINED**; and
2. Respondent's license to practice medicine in New York State be **SUSPENDED**; and
3. Said license suspension be **STAYED** as of July 1, 1999 and Respondent placed on **PROBATION** for a period of **FIVE YEARS**, provided that he be admitted to an ACGME approved residency program in psychiatry in New York State by such date and remain enrolled in said program until he successfully completes it, and further provided that he comply with all Terms of Probation as set forth in Appendix II, attached hereto and made a part of this Determination and Order; and
4. Respondent's license to practice medicine be permanently **RESTRICTED** to the practice of psychiatry; and
5. This Order shall be effective upon service on the Respondent or the Respondent's attorney by personal service or by certified or registered mail.

Dated: Albany, New York

11/9/98, 1998


WILLIAM P. DILLON, M.D. (Chairperson)

**JOHN W. CHOATE, M.D.
REV. THOMAS KORNMEYER**

**To: Silvia P. Finkelstein, Esq.
NYS Department of Health
Division of Legal Affairs
5 Penn Plaza, Suite 601
New York, New York 10001-1803**

**Wilfred T. Friedman, P.C.
36 West 44th Street
New York, New York 10036**

**John J. Mariani, M.D.
390 6th Street
Brooklyn, New York 11215**

APPENDIX II

TERMS OF PROBATION

1. Respondent shall conduct himself at all times in a manner befitting his professional status, and shall conform fully to the moral and professional standards of conduct imposed by law and by her profession.
2. Respondent shall comply with all federal, state and local laws, rules and regulations governing the practice of medicine in New York State.
3. Respondent shall submit written notification to the Board addressed to the Director, Office of Professional Medical Conduct ("OPMC"), Hedley Park Place, 433 River Street, 4th Floor, Troy, New York 12180, regarding any change in employment, practice, addresses, (residence or professional) telephone numbers, and facility affiliations within or without New York State, within 30 days of such change.
4. Respondent shall submit written notification to OPMC of any and all investigations, charges, convictions or disciplinary actions taken by any local, state or federal agency, institution or facility, within 30 days of each charge or action.
5. Prior to the commencement of a medical practice in New York State, Respondent shall submit written proof to the Director of the OPMC at the address indicated above that he has paid all registration fees due and is currently registered to practice medicine as a physician with the New York State Education Department. Respondent shall not be permitted to register during the period his license is suspended.

6. Respondent shall remain free from alcohol and all other mood altering substances other than those prescribed for Respondent's treatment by a licensed physician aware of Respondent's history. Respondent shall not self-prescribe any medications.

7. Respondent shall continue participation in self help groups such as, but not limited to, Alcoholics Anonymous, Narcotics Anonymous and Caduceus.

8. Respondent shall continue in treatment with a qualified health care professional (Therapist) proposed by Respondent and approved in writing by the Director of the OPMC, who is familiar with Respondent's history of chemical dependency and with the terms of this Order. Respondent shall continue in treatment for the duration of the period of probation. Respondent shall submit the name of a proposed successor within seven (7) days of becoming aware that his approved Therapist is no longer able or willing to serve in that capacity. The Therapist shall submit a report to the OPMC every three (3) months certifying Respondent's compliance with treatment and describing in detail any failure to comply. The Therapist shall report within 24 hours to the OPMC if Respondent displays any significant pattern of absences or discontinuation of recommended treatment or any symptoms of suspected or actual relapse.

9. The Respondent will be monitored for sobriety by a qualified health care professional (Sobriety Monitor) selected by Respondent, and approved in writing by the Director of the Office of Professional Medical Conduct. Respondent shall comply with the sobriety monitoring requirements set forth herein in Appendix II for so long as he retains a New York State license to practice medicine and engages in the practice of medicine in New York State.

10. The Sobriety Monitor will not be a close personal friend or relative of the Respondent. The Sobriety Monitor will supervise Respondent's compliance with the terms set forth in this Order.

11. The Sobriety Monitor's responsibilities shall include assessment of self-help group attendance (e.g. AA/NA/Caduceus, etc.) and 12 step progress, evaluation of compliance with the terms or conditions in the Order, and ordering urines for drug/alcohol assay.

12. Respondent shall submit the name of a proposed successor within seven (7) days of learning that the approved Monitor is no longer willing or able to serve.

13. The Respondent will ensure that the Sobriety Monitor is familiar with Respondent's history of drug/alcohol abuse, and with all terms of probation.

14. The Respondent will meet with the Sobriety Monitor on a regular basis.

15. The Respondent will submit to random, unannounced observed screens of blood, breath and/or urine for the presence of drugs/alcohol at the direction of the Sobriety Monitor who will report to the Office of Professional Medical Conduct immediately if a test is refused by Respondent or a test is positive for any unauthorized substance. This monitoring will be on a random, seven-day a week, twenty-four hour a day basis. The Respondent will report for a urine drug screen, blood and/or breathalyzer test within four (4) hours of being contacted by the Monitor.

16. The Respondent will authorize the Sobriety Monitor to immediately report to the Office of Professional Medical Conduct any deviation from compliance with the terms of probation.

17. The Respondent will authorize the Sobriety Monitor to submit to the Office of Professional Medical Conduct quarterly reports certifying Respondent's compliance with the terms of probation. Respondent's failure to comply with any of the terms must be reported within 24 hours to the Office of Professional Medical Conduct. The reports will include:

- a. forensically valid results of all drug/alcohol monitoring tests to be performed at a frequency of no less than eight (8) screens per month for the first twelve (12) months of the period of probation, then at a frequency to be proposed by the Sobriety Monitor and approved by the OPMC, and
- b. an assessment of self-help group attendance and 12 step progress, as described in Paragraph 11, above.

18. Respondent shall practice medicine only when supervised in his medical practice by a "Practice Supervisor" who shall be proposed by Respondent and approved in writing by the Director of the OPMC. The Practice Supervisor shall be generally available on-site at all locations, unless determined otherwise by the Director of the OPMC. Respondent shall not practice medicine until a Practice Supervisor has been approved and shall ensure that the Practice Supervisor is in a position to regularly observe and assess Respondent's medical practice. Respondent shall cause the Practice Supervisor to:

- a. report within 24 hours any suspected impairment, inappropriate behavior, questionable medical practice or possible misconduct to the OPMC;
- b. review Respondent's practice regarding the prescribing, administering, dispensing, inventorying and disposal of controlled substances;
- c. submit quarterly reports to the OPMC regarding the quality of Respondent's medical practice, including the evaluation and treatment of patients, physical and mental condition, time and attendance or any unexplained absences from work, prescribing practices, and compliance or failure to comply with any term of probation.

19. Respondent shall ensure that the Director of any residency program in psychiatry in which Respondent enrolls shall be made familiar with Respondent's history of chemical dependency and with all terms of this Order. Respondent shall not practice medicine outside of the established residency program (i.e., no "moonlighting") until he provides written documentation to the Director of the OPMC of Respondent's successful completion of such program.

20. Respondent shall comply with any request from OPMC to obtain an independent psychiatric/chemical dependency evaluation by a health care professional proposed by the Respondent and approved, in writing, by the Director of the OPMC.

21. All expenses, including but not limited to those of complying with these terms of probation and the Determination and Order, shall be the sole responsibility of the Respondent.

22. Respondent shall comply with all terms, conditions, restrictions, and penalties to which he is subject pursuant to the Order of the Board. A violation of any of these terms of probation shall be considered professional misconduct. On 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 Respondent pursuant to New York Public Health Law §230(19) or any other applicable laws.

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

**IN THE MATTER
OF
JOHN J. MARIANI, M.D.**

**STATEMENT
OF
CHARGES**

JOHN J. MARIANI, M.D., the Respondent, was authorized to practice medicine in New York State on or about April 25, 1995, by the issuance of license number 199048 by the New York State Education Department.

SPECIFICATION OF CHARGES

**HAVING BEEN CONVICTED OF AN ACT CONSTITUTING
A CRIME UNDER NEW YORK STATE LAW**

- A. Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(9)(a)(i)(McKinney Supp. 1998) by having been convicted of committing an act constituting a crime under New York state law as alleged in the facts of the following:**

On or about January 21, 1997, the Respondent was convicted after a plea of guilty in the County Court, County of Westchester, State of New York, of Criminal Trespass in the Second Degree, a class A misdemeanor, in violation of §140.15.00 of the Penal Law in that on or about January 16, 1996, Respondent knowingly entered unlawfully in a dwelling; and of Criminal Possession of a Controlled Substance in the

Seventh Degree, a class A misdemeanor, in violation of §220.03.00 of the Penal law, in that on or about January 16, 1996, Respondent did knowingly and unlawfully possess a controlled substance, to wit, cocaine.

On or about January 21, 1997, after completion of a rehabilitation program, Respondent was sentenced to three (3) years probation.

DATED: August 6, 1998
New York, New York



ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct