



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

August 26, 1997

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Jose Deperio, M.D.
571 Terrace Boulevard
Depew, New York 14043

RE: License No. 103168

Dear Dr. Deperio:

Enclosed please find Order #BPMC 97-206 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
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: Terrence Connors, Esq.
Connors & Vilardo
1020 Liberty Building
420 Main Street
Buffalo, New York 14202

Karen Eileen Carlson, Esq.

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

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IN THE MATTER : CONSENT
OF : AGREEMENT
JOSE DEPERIO, M.D. : AND ORDER
: BPMC # 97-206

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JOSE DEPERIO, M.D., being duly sworn, says:

On or about February 25, 1969, I was licensed to practice as a physician in the State of New York, having been issued license number 103168 by the New York State Education Department.

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

I hereby admit guilt to specification number 5, in full satisfaction of the charges as set forth in Exhibit A. I specifically deny the remaining charges contained in Exhibit A.

I hereby agree to the following penalty:

- a two year suspension of my medical license, such suspension to be stayed for the two year term;
- a five year term of probation;

a permanent condition of my license that I continue to follow my current practice which is to have an individual who is licensed within the health care profession, unrelated to myself, as a chaperon for all examinations of any female patient, regardless of the nature of the examination.

I understand that in the event that I am charged with professional misconduct in the future, the Office of Professional Medical Conduct will seek to offer this agreement and order into evidence after a finding of professional misconduct has been entered and a penalty is being considered.

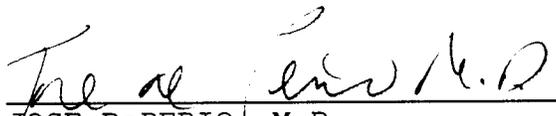
I agree that, as a condition of this Order, I will maintain current registration of my license. Within 90 days of the date of this Order, I will provide proof of current registration to the Director of the Office of Professional Medical Conduct.

I understand that, in the event that the Board does not grant this application, 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.

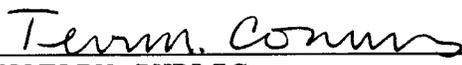
I agree that, in the event the State Board for Professional Medical Conduct grants my application, an order of the Chairperson of the Board shall be issued in accordance with same.

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



JOSE DePERIO, M.D.
RESPONDENT

Subscribed before me this
22 day of July, 1997.

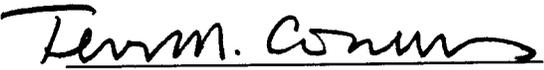


NOTARY PUBLIC

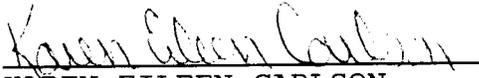
TERRENCE M. CONNORS
Notary Public, State of New York
Qualified in Essex County
My Comm. Expires 12/31/99

AGREED TO:

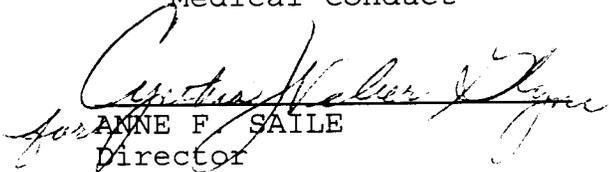
DATE: 7/23/97


TERRENCE M. CONNORS, ESQ.
Attorney for Respondent

DATE: 8/15/97


KAREN EILEEN CARLSON
Assistant Counsel
Bureau of Professional
Medical Conduct

DATE: Aug. 18, 1997


ANNE F SAILE
Director
Office of Professional
Medical Conduct

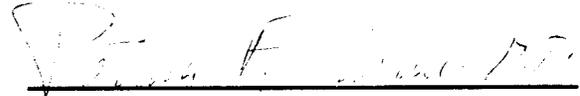
ORDER

Upon the proposed agreement of JOSE DEPERIO, M.D.
(Respondent) for Consent Order, which proposed agreement is made
a part hereof, it is AGREED TO and

ORDERED, that the proposed agreement and the provisions
thereof are hereby adopted; 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.

DATED:

August 20, 1997

Patrick F. Carone, M.D., M.P.H.
Chair
State Board for Professional
Medical Conduct

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

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IN THE MATTER : STATEMENT
OF : OF
JOSE DEPERIO, M.D. : CHARGES

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Jose Deperio, M.D., the Respondent, was authorized to practice medicine in New York State on February 25, 1969 by the issuance of license number 103168 by the New York State Education Department. The Respondent is currently registered with the New York State Education Department to practice medicine for the period January 1, 1995 through August 31, 1997, with a registration address of 571 Terrace Boulevard, Depew, New York, 14043.

FACTUAL ALLEGATIONS

- A. Respondent provided medical care to Patient A [all patients are identified in Appendix] from approximately 1982 through approximately 1989 at his medical office at 571 Terrace Boulevard, Depew, New York [hereafter "Respondent's Terrace Boulevard office"]. In approximately the middle of 1980, during Patient A's appointment for medical care at Respondent's office:

Exhibit A

1. Respondent asked Patient A about her boyfriend and stated he "should kiss you like this," or words to such effect.
2. Respondent, after the aforesaid comment, kissed Patient A on the mouth.

B. Respondent provided medical care to Patient B from approximately 1970 through approximately 1990 at Respondent's office at 35 Muskingum, Depew, New York [hereafter "Respondent's Muskingum office"] and in 1983 at the Lafayette General Hospital in Buffalo, New York.

1. Respondent, in approximately 1990, during Patient B's appointment for medical care at Respondent's office, kissed Patient B on the mouth.
2. Respondent, in approximately 1983 during Patient B's hospital admission, climbed into Patient B's hospital bed and told her to "have sex doggie style," or words to such effect, when Patient B asked Respondent when she could resume having sexual intercourse.

C. Respondent provided medical care to Patient C from approximately 1982 through approximately 1993 at Respondent's Terrace Boulevard office. On or about March 8, 1993, during Patient C's appointment for medical care at Respondent's office:

1. Respondent kissed Patient C on the cheek.
 2. Respondent placed his arms around Patient C's waist, which was not medically justified.
 3. Respondent stated to Patient C that he wanted to "rub cream all over her" or words to such effect when Respondent was giving Patient C a sample of cream.
 4. Respondent, while examining Patient C, told her "too bad I am married, you should be nicer to me" or words to such effect.
- D. Respondent first employed Employee A, then a seventeen year old woman, in approximately 1974 and through approximately 1990 in Respondent's medical offices.
1. Respondent at his office during the course of Employee A's employment from approximately 1978 through approximately 1988 engaged in the following:
 - a. Respondent attempted to kiss Employee A on the cheek and/or mouth on numerous occasions.
 - b. Respondent pulled Employee A toward him on numerous occasions.
 - c. Respondent stood behind Employee A and rubbed himself against her on numerous occasions.
 - d. Respondent told Employee A that she "had a nice

butt" and/or "nice boobs" or words to such effect on numerous occasions.

2. Respondent, at his office during the course of Employee A's employment in approximately 1988 or 1989 engaged in the following:
 - a. Respondent pushed Employee A against a counter and while Respondent held Employee A against the counter with his body, Respondent exposed his penis and masturbated.

SPECIFICATIONS

FIRST THROUGH FOURTH SPECIFICATIONS

MORAL UNFITNESS

Respondent is charged with professional misconduct under N.Y. Educ. Law §6530(20) (McKinney Supp. 1997) by reason of his conduct in the practice of medicine which evidences moral unfitness to practice medicine in that Petitioner charges:

1. The facts in Paragraphs A and A.1 and/or A and A.2.
2. The facts in Paragraphs B and B.1 and/or B and B.2.
3. The facts in Paragraphs C and C.1, C and C.2, C and C.3 and/or C and C.4.
4. The facts in Paragraphs D and D.1.a., D and D.1.b., D

and D.1.c., D and D.1.d. and/or D and D.2.a.

**FIFTH THROUGH SEVENTH SPECIFICATIONS
WILLFUL, PHYSICAL AND/OR VERBAL ABUSE**

Respondent is charged with professional misconduct under N.Y. Educ. Law §6530(31) (McKinney Supp. 1997) by reason of his willfully harassing, abusing or intimidating a patient, either physically or verbally, in that Petitioner charges:

5. The facts in Paragraphs A and A.1 and/or A and A.2.
6. The facts in Paragraphs B and B.1 and/or B and B.2.
7. The facts in Paragraphs C and C.1, C and C.2, C and C.3 and/or C and C.4.

DATED: *August 7*, 1997
Albany, New York

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

EXHIBIT B
TERMS OF PROBATION

1. Respondent shall conduct himself in all ways in a manner befitting his professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his profession;
2. Respondent shall submit written notification to the New York State Department of Health (NYSDOH), addressed to the Director, Office of Professional Medical Conduct (OPMC), New York State Department of Health, Hedley Park Place, 4th Floor, 433 River Street, Troy, New York 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;
3. Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of Respondent's compliance with the terms of this Order. Respondent shall personally meet with a person designated by the Director of OPMC as requested by the Director.
4. 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].
5. The period of probation shall be tolled during periods in which Respondent is not engaged in the active practice of medicine in New York State. Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in or intends to leave the active practice of medicine in New York State for a period of thirty (30) consecutive days or more. Respondent 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 Respondent's return to practice in New York State.
6. Respondent's 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 Respondent and his staff at practice locations or OPMC offices.

7. Respondent 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.
8. Respondent shall comply with all terms, conditions, restrictions, and penalties to which he/she is subject pursuant to the Order and 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 Respondent as may be authorized pursuant to the law.