



STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Antonia C. Novello, M.D., M.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

112459

November 17, 1999

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Joseph Peter Repice, M.D.
108 E. Seventh Street
Winona, MN 55987

Joseph Peter Repice, M.D.
108 E. Wabasha Street
Winona, MN 55987

Michael J. McTighe, Esq.
NYS Department of Health
Corning Tower Room 2509
Empire State Plaza
Albany, New York 12237

RE: In the Matter of Joseph Peter Repice, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No.99-283) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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,

A handwritten signature in black ink, appearing to read "Tyrone T. Butler". The signature is written in a cursive style with a large initial 'T' and 'B'.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nm
Enclosure

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

DETERMINATION

AND

ORDER

IN THE MATTER
OF
JOSEPH PETER REPICE, M.D.

BPMC-99-283

COPY

A Notice of Referral Proceedings and Statement of Charges, both dated September 22, 1999, were served upon the Respondent, **JOSEPH PETER REPICE, M.D.**

JOSEPH E. GEARY, M.D., Chairperson, **JOHN H. MORTON, M.D.** and **REV. ROBERT E. EGGENSCHILLER**, 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. **MICHAEL P. MCDERMOTT, ESQ.**, Administrative Law Judge, served as the Administrative Officer.

A hearing was held on October 29, 1999, at the Offices of the New York State Department of Health, Hedley Park Place, 433 River Street, Troy, New York. The Department appeared by **HENRY M. GREENBERG, ESQ.**, General Counsel, by **MICHAEL J. MCTIGHE, ESQ.** The Respondent failed to appear.

Evidence was received 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 case, 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, the Respondent is charged with professional misconduct pursuant to Education Law Section 6530(9)(d). A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order as Appendix I.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers in parenthesis refer to transcript page numbers or exhibits. These citations represent evidence found persuasive by the Hearing Committee in arriving at a particular findings. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence. All Hearing Committee findings were unanimous unless otherwise stated.

1. **JOSEPH PETER REPICE, M.D.**, the Respondent, was authorized to practice medicine in New York State on July 1, 1972, by the issuance of license number 112459 by the New York State Education Department. (Pet's. Exs. 4 and 5)

2. On December 22, 1998, the Minnesota Board of Medical Practice, (hereinafter "Minnesota Board"), entered an Order, that revoked the Respondent's license to practice medicine and ordered him to pay a \$40,000.00 civil penalty.

The "Minnesota Board's" disciplinary action was based on findings that the Respondent engaged in unethical conduct; unprofessional conduct; demonstrated inability to practice medicine with reasonable skill and safety; improper management of records; addiction to drugs; improper prescribing of drugs; sexual misconduct with a patient; and knowingly providing false or misleading information related to the care of a patient. (Pet's. Ex. 3)

3. By Summary Order, dated September 22, 1999, the Commissioner of Health of the State of New York ordered that the Respondent shall not practice medicine in the state of New York, effective immediately.

The action by the New York State Commissioner of Health was based on the disciplinary action by "Minnesota Board" against the Respondent. (Pet's. Ex. 1)

HEARING COMMITTEE CONCLUSIONS

The Hearing Committee concludes that the conduct resulting in the Minnesota Board's disciplinary action against the Respondent would constitute misconduct under the laws of New York State.

VOTE OF THE HEARING COMMITTEE

FIRST SPECIFICATION

Respondent violated New York Education Law §6530(9)(b) by 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.

VOTE: SUSTAINED (3-0)

SECOND SPECIFICATION

Respondent violated New York State Education Law §6530(9)(d) by having 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 that laws of New York state.

VOTE: SUSTAINED (3-0)

HEARING COMMITTEE DETERMINATION

The evidence in this case indicates that the Minnesota Board of Medical Practice revoked the Respondent's license to practice medicine in that state based on findings of unethical conduct; unprofessional conduct; demonstrated inability to practice medicine with reasonable skill and safety; improper management of records; addiction to drugs; improper prescribing of drugs; sexual misconduct with a patient; and knowingly providing false or misleading information related to the care of a patient.

The Commissioner of Health of the State of New York subsequently issued a Summary Order prohibiting the Respondent from practicing medicine in this state based on the disciplinary action of the "Minnesota Board".

The Respondent did not appear at the present hearing nor did he submit any evidence in mitigation of the charges.

Based on the evidence in the record of this case, the Hearing Committee determines unanimously (3-0), that the Respondent's license to practice medicine in the State of New York should be **REVOKED**.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Respondent's license to practice medicine in the State of New York is hereby **REVOKED**.
2. 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: *Rochester*, New York

11/16 1999


JOSEPH E. GEARY, M.D.
Chairperson

JOHN H. MORTON, M.D.
REV. ROBERT E. EGGENSCHILLER

APPENDIX I

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

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IN THE MATTER : NOTICE OF
OF : REFERRAL
JOSEPH PETER REPICE, M.D. : PROCEEDING

-----x

TO: JOSEPH PETER REPICE, M.D.
108 E. Seventh Street
Winona, MN 55987

108 E. Wabasha Street
Winona, MN 55987
(507) 452-8631

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law Section 230(10)(p), (12)(b), and N.Y. State Admin. Proc. Act Sections 301-307 and 401. The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 29th day of October, 1999, at 10:00 in the forenoon of that day at the Hedley Park Place, 5th Floor, 433 River Street, Troy, New York 12180.

At the proceeding, evidence will be received concerning the allegations set forth in the Statement of Charges annexed hereto. A stenographic record of the proceeding will be made and witnesses appearing to testify at the proceeding will be sworn and examined.

You may appear in person at the proceeding and may be represented by counsel. You may produce evidence or sworn testimony on your behalf. Such evidence or sworn testimony shall be strictly limited to evidence and testimony relating to the

nature and severity of the penalty to be imposed upon the licensee. Where the charges are based on the conviction of federal or state law crimes or professional misconduct in other jurisdictions, evidence may be offered which would show that the conduct underlying the conviction would not be a crime or misconduct in New York State. The Committee also may limit the number of witnesses whose testimony will be received, as well as the length of time any witness will be permitted to testify.

If you intend to present sworn testimony, the number of witnesses and an estimate of the time necessary for their direct examination must be submitted to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Hedley Park Place, 5th Floor, 433 River Street, Troy, New York 12180, ATTENTION: HON. TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION, (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before October 19, 1999.

Pursuant to the provisions of N.Y. Public Health Law §230(10)(p), you shall file a written answer to each of the Charges and Allegations in the Statement of Charges no later than ten days prior to the hearing. Any Charge or Allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such an answer. The answer shall be filed with the Bureau of Adjudication, at the address indicated above, and a copy shall be forwarded to the attorney for the Department of Health whose name appears below. You may file a brief and affidavits with the Committee. Six copies of all such papers you wish to submit must be filed with the Bureau

of Adjudication at the address indicated above on or before October 19, 1999, and a copy of all papers must be served on the same date on the Department of Health attorney indicated below. Pursuant to Section 301(5) of the State Administrative Procedure Act, the Department, upon reasonable notice, will provide at no charge a qualified interpreter of the deaf to interpret the proceedings to, and the testimony of, any deaf person.

The proceeding may be held whether or not you appear. Please note that requests for adjournments must be made in writing to the Bureau of Adjudication, at the address indicated above, with a copy of the request to the attorney for the Department of Health, whose name appears below, at least five days prior to the scheduled date of the proceeding. Adjournment requests are not routinely granted. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation. Failure to obtain an attorney within a reasonable period of time prior to the proceeding will not be grounds for an adjournment.

The Committee will make a written report of its findings, conclusions as to guilt, and a determination. Such determination may be reviewed by the administrative review board for professional medical conduct.

SINCE THESE PROCEEDINGS MAY RESULT IN A DETERMINATION THAT SUSPENDS OR REVOKES YOUR LICENSE TO PRACTICE MEDICINE IN NEW YORK STATE AND/OR IMPOSES A FINE FOR EACH OFFENSE CHARGED, YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: Albany, New York
September 23, 1999


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

Inquiries should be addressed to:

Michael J. McTighe, Senior Attorney
Bureau of Professional Medical Conduct
Corning Tower Room 2585
Empire State Plaza
Albany, New York 12237
(518) 474-5168

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

-----X

IN THE MATTER : STATEMENT
OF : OF
JOSEPH PETER REPICE, M.D. : CHARGES

-----X

JOSEPH PETER REPICE, M.D., the Respondent, was authorized to practice medicine in New York state on July 1, 1972, by the issuance of license number 112459 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about December 22, 1998, the Minnesota Board of Medical Practice, (hereinafter "Minnesota Board"), entered an Order, (hereinafter "Minnesota Order") that revoked the Respondent's license to practice medicine and ordered him to pay a \$40,000.00 civil penalty, based on unethical conduct, unprofessional conduct, demonstrated inability to practice medicine with reasonable skill and safety, improper management of records, addiction to drugs, improper prescribing of drugs, sexual misconduct with a patient, and knowingly providing false or misleading information related to the care of a patient.

B. The conduct resulting in the Minnesota Board's disciplinary action against Respondent would constitute

misconduct under the laws of New York state, pursuant to the following sections of New York state law:

1. New York Education Law §6530(3) (negligence on more than one occasion);
2. New York Education Law §6530(5) (incompetence on more than one occasion);
3. New York Education Law §6530(7) (practicing while impaired by drugs or alcohol);
4. New York Education Law §6530(8) (being a habitual abuser of alcohol or being dependent or a habitual abuser of drugs);
5. New York Education Law §6530(16) (willful failure to comply with federal, state, or local rules governing the practice of medicine);
6. New York Education Law §6530(20) (moral unfitness);
7. New York Education Law §6530(21) (making a false report); and/or
8. New York Education Law §6530(22) (failure to maintain accurate records).

SPECIFICATIONS

FIRST SPECIFICATION

Respondent violated New York Education §6530(9)(b) by 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/or B.

SECOND SPECIFICATION

Respondent violated New York State Education Law §6530(9)(d) by having 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:

2. The facts in paragraphs A and/or B.

DATED: *September 22*, 1999
Albany, New York


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

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

-----X

IN THE MATTER : COMMISSIONER'S
OF : SUMMARY
JOSEPH PETER REPICE, M.D. : ORDER

-----X

TO: JOSEPH PETER REPICE, M.D.
108 E. SEVENTH STREET
WINONA, MINNESOTA 55987

420 E. SARNIA STREET
WINONA, MINNESOTA 55987

WC
112459

The undersigned, ANTONIA C. NOVELLO, M.D., M.P.H.,
Commissioner, New York State Department of Health, after an
investigation, upon the recommendation of a Committee on
Professional Medical Conduct of the State Board for Professional
Medical Conduct, and upon the Statement of Charges attached
hereto and made a part hereof, has determined that the duly
authorized professional disciplinary agency of another
jurisdiction [the Minnesota Board of Medical Practice] has
disciplined licensee JOSEPH PETER REPICE, M.D., for acts which if
committed in this State would have constituted the basis for
summary action pursuant to New York Public Health Law Section
230(12)(a).

It is therefore:

ORDERED, pursuant to New York Public Health Law Section

230(12)(b), that, effective immediately, JOSEPH PETER REPICE, M.D., Respondent, shall not practice medicine in the State of New York. This Order shall remain in effect unless modified or vacated by the Commissioner of Health pursuant to New York Public Health Law Section 230(12).

PLEASE TAKE NOTICE that a hearing will be held pursuant to the provisions of New York Public Health Law Section 230, and New York State Administrative Procedure Act Sections 301-307 and 401. The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct and shall commence within ninety (90) days of the date of service of this order [New York Public Health Law Section 230(12)(b)].

The date and location of this hearing will be set forth in a written Notice of Summary Hearing to be provided to Respondent at a later date. The written Notice may be provided in person, by mail or other means.

If Respondent wishes to be provided this written Notice at an address other than the ones noted above, he shall notify both the attorney whose name is set forth in this Order and the Director of the Bureau of Adjudication, Hedley Park Place, 433 River Street, 5th Floor, Troy, New York 12180 (518-402-0748).

THESE PROCEEDINGS MAY RESULT IN A
DETERMINATION THAT YOUR LICENSE TO PRACTICE
MEDICINE IN NEW YORK STATE BE REVOKED OR

SUSPENDED, AND/OR THAT YOU BE FINED OR
SUBJECT TO OTHER SANCTIONS SET FORTH IN NEW
YORK PUBLIC HEALTH LAW SECTION 230-a. YOU
ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT
YOU IN THIS MATTER.

DATED: Albany, New York
September 22, 1999.



ANTONIA C. NOVELLO, M.D., M.P.H.,

COMMISSIONER OF HEALTH

Inquiries should be directed to:

Michael J. McTighe
Senior Attorney
Bureau of Professional Medical Conduct
NYS Department of Health
Division of Legal Affairs
Corning Tower Building
Room 2509
Empire State Plaza
Albany, New York 12237-0032
(518) 473-4282

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

-----X

IN THE MATTER : STATEMENT
OF : OF
JOSEPH PETER REPICE, M.D. : CHARGES

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2. The facts in paragraphs A and/or B.

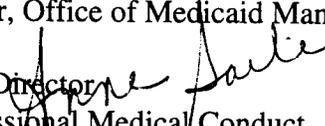
DATED: *September 22*, 1999
Albany, New York


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

STATE OF NEW YORK - DEPARTMENT OF HEALTH

INTEROFFICE MEMORANDUM

TO: Dennis Whalen, Executive Deputy Commissioner
Henry Greenberg, General Counsel, Division of Legal Affairs
Wayne Osten, Director, Office of Health Systems Management
Robert McConnell, Assistant Director, Division of Health Care
Standards & Surveillance
James Giglio, Director, Bureau of Controlled Substances
Fred Heigel, Director, Bureau of Hospital Services
Robert Tengeler, Office of Medicaid Management

FROM: Anne F. Saile,  Director
Office of Professional Medical Conduct

DATE: October 6, 1999

SUBJECT: Summary Suspension - Joseph Peter Repice, M.D. - NYS License No. 112459

Attached is a copy of a Commissioner's Order and Notice of Hearing which summarily suspends Dr. Joseph Peter Repice's right to practice medicine in the State of New York. This Order was served on October 6, 1999 and shall remain in effect until further notice.

Attachment