



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

February 8, 2000


Robert Bentley, Director
Division of Professional Licensing
New York State Education Department
Cultural Education Center
Empire State Plaza
Albany, New York 12230

RE: Jeffrey Berman, M.D.
License No. 134659
Modification of Consent Order
BPMC #97-301

Dear Mr. Bentley:

Enclosed please find a **Modification of Consent Order #BPMC 97-301**. A meeting of a Committee of the Board for Professional Medical Conduct was held on November 22, 1999. The Committee ordered that the suspension on Jeffrey Berman, M.D.'s medical license be lifted and he be allowed to practice medicine subject to the restrictions contained in the enclosed Order which became effective December 22, 1999.

Sincerely,


Joann V. Dawson, Director
Physician Monitoring Programs
Office of Professional Medical Conduct

Enclosure

cc: Daniel Kelleher

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

X

IN THE MATTER
OF
JEFFERY BERMAN, M.D.

MODIFICATION
OF
CONSENT ORDER

X

This matter was brought to the New York State Board for Professional Medical Conduct for decision at the request of *Jeffrey Berman, M.D.* (Petitioner), License No. 134659. Petitioner entered into a Consent Order effective December 18, 1997. The Order wholly suspended the Petitioner's license to practice medicine in the State of New York. The purpose of the proceeding was to determine whether this suspension should be lifted upon the satisfaction of a Committee of the Board for Professional Medical Conduct that Petitioner is no longer incapacitated for the active practice of medicine and that he is both fit and competent to practice medicine.

A meeting of the Committee was held in the above entitled proceeding on November 22, 1999. The Petitioner appeared with his attorneys, Sharif Mahdavian, Esq. and Wilfred Friedman, Esq., before a Committee of the State Board for Professional Medical Conduct consisting of Arthur Zitrin, MD, Daniel W. Morrissey, OP (Chair) and Gerald Weinberger, MD. The Committee determined, after careful consideration of all evidence provided to them prior to the meeting and the testimony provided, that by unanimous decision, the suspension placed on the Petitioner's medical license shall be lifted and he shall be allowed to practice medicine subject to the following conditions.

THEREFORE, IT IS HEREBY ORDERED THAT:

Petitioner shall be permanently prohibited from engaging in the practice of clinical anesthesia in New York State except for the practice of pain management. Petitioner shall be permanently restricted from prescribing any medications for himself or members of his family.

Unless otherwise indicated, the following conditions shall remain in effect for a five (5) year period of probation from the effective date of this Order. The period of probation shall be tolled during periods in which Petitioner is not engaged in the active practice of medicine in New York State. Petitioner shall notify the Director of the Office of Professional Medical Conduct (OPMC) in writing, if Petitioner is not 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. Petitioner shall then notify the Director again of any change in that status. The period of probation shall resume and any terms of probation which were not fulfilled shall be fulfilled upon Petitioner's return to practice in New York State. The tolling provision set forth may be waived by the Director of OPMC at the Director's discretion.

Petitioner may not commence the practice of medicine until all proposed monitors have been approved by the Office of Professional Medical Conduct.

1. Petitioner shall remain free from alcohol and all other mood altering substances other than those prescribed for Petitioner's treatment by a licensed physician aware of Petitioner's history of chemical dependency and Restless Leg Syndrome.

2. Petitioner shall be monitored by a qualified health care professional (Sobriety Monitor) proposed by Petitioner and approved in writing by the Director of OPMC, who is familiar with Petitioner's history of chemical dependency and Restless Leg Syndrome and with the terms of this Order. Petitioner shall submit the name of a proposed successor within seven (7) days of learning that the approved Sobriety Monitor is no longer willing or able to serve.

a. The Sobriety Monitor shall oversee Petitioner's compliance with the terms and conditions imposed herein and shall cause to be performed forensically valid, random, supervised, unannounced blood, breathalyzer and/or urine tests for the presence of alcohol and other drugs in Petitioner. Petitioner's drugs of choice, including **Fentanyl**, must be specifically tested each time. **Petitioner shall be screened six (6) times per month for the first six months. The Petitioner shall be called on a seven day a week basis and the Sobriety Monitor shall include a Saturday AND Sunday test each month for a minimum of the first six months. After that period of time, specimens shall be collected at the discretion of the monitor at a frequency to be approved by the Director of OPMC.**

b. The Sobriety Monitor shall notify OPMC immediately if Petitioner refuses such a test.

c. The Sobriety Monitor shall notify OPMC immediately if such a test reveals or if the monitor otherwise learns the Petitioner is not alcohol/drug free.

d. Every three months, the Sobriety Monitor shall submit to OPMC a report certifying compliance with each of the terms of this Order or describing in detail any failure to comply. The quarterly reports shall include forensically valid results of all tests for the presence of alcohol and other drugs performed during that quarter.

e. Petitioner shall report to the Sobriety Monitor within four **(4) hours** of being contacted by the Sobriety Monitor to submit a blood, breathalyzer and/or urine test.

f. Petitioner shall avoid all substances which may cause positive urines such as poppy seeds/mouthwash/cough medication. Any positive result will be considered a violation of this Order.

g. If Petitioner is to be unavailable for sobriety monitoring for a period of 15 days or more, Petitioner shall notify his Sobriety Monitor and seek and receive prior written permission from the Director of OPMC subject to any additional terms and conditions required by the OPMC.

3. Petitioner shall be supervised in medical practice by a licensed physician (Supervisor) proposed by Petitioner and approved in writing by the Director of OPMC, who is

familiar with Petitioner's history of chemical dependency and Restless Leg Syndrome and with the terms of this Order. Petitioner shall submit the name of a proposed successor within seven (7) days of Petitioner's becoming aware that Petitioner's approved supervising physician is no longer willing or able to serve in that capacity.

- a. The Supervisor shall submit a report to OPMC every three (3) months regarding the quality of Petitioner's medical practice, any unexplained absences from work, and Petitioner's compliance or failure to comply with each condition described within this Restoration Order.
- b. The Supervisor shall establish the capability of doing a "stat" toxicological screen on Petitioner in response to any complaint or observation that indicates Petitioner may not be drug free.
- c. The Supervisor shall oversee the Petitioner's prescribing, administering, dispensing, inventorying and wasting of controlled substances.
- d. The Supervisor shall report any suspected impairment, inappropriate behavior, questionable medical practice or possible misconduct to OPMC.
- e. The Supervisor shall notify OPMC immediately if Petitioner violates any term(s) of this Order.

4. The Committee recognizes that the Petitioner has been discharged from structured therapy and therefore will not require the therapy component of monitoring **at this time**. The Committee does require, however, that the Petitioner undergo a yearly evaluation by a psychiatrist who specializes in chemical dependency issues approved by the Director of the Office of Professional Medical Conduct. The Petitioner shall provide the evaluator with copies of all previous treatment records and a copy of this Order. Reports of such evaluations shall be submitted promptly to the Director. **Petitioner shall follow treatment recommendations made by the evaluator regarding a conclusion that Petitioner should resume therapy.** If the evaluator determines that the Petitioner is not fit to practice, the Petitioner shall immediately cease the practice of medicine until it is determined he is fit to resume practice. Failure to comply with treatment recommendations will be considered a violation of this Order.

5. Petitioner shall continue participation in self-help fellowship (eg. AA/NA/Caduceus/other). Petitioner shall establish and maintain an ongoing relationship with a sponsor.

6. Petitioner shall inform all physicians or other health care practitioners from whom Petitioner seeks treatment, of Petitioner's history of chemical dependency and Restless Leg Syndrome. Should Petitioner be prescribed any controlled or mood altering substances, Petitioner shall notify Petitioner's Sobriety Monitor and the Director of OPMC before such medications are administered.

7. Petitioner shall immediately notify the Director of OPMC of any home or practice address change as well as any and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institute or facility, within thirty (30) days.

8. The Director of OPMC shall reserve the right to conduct on-site review of Petitioner's office, office records, hospital practice and hospital records at least semi-annually.

9. Petitioner 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.

10. The Director of OPMC shall reserve the right to meet with the Petitioner throughout the duration of this Order, at a time and location determined by OPMC.

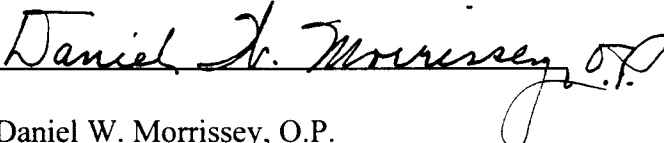
11. Petitioner shall conduct himself in all ways in a manner befitting his professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his profession.

12. Petitioner shall comply with all terms, conditions, restrictions and limitations to which he is subject pursuant to the Order and shall assume and bear all costs related to compliance of the Order.

As Petitioner agreed in the Consent Order, failure to comply with any of the terms of probation described above may result in disciplinary action.

This Order shall be effective upon issuance.

DATED: *New York*, New York
December 22, 1999



Daniel W. Morrissey, O.P.
Committee Chair
State Board for Professional Medical Conduct