

Public

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

IN THE MATTER

MODIFICATION

OF

OF

ROBERT GUMBERTS, D.O.

CONSENT ORDER

This matter was brought to the New York State Board for Professional Medical Conduct for decision at the request of Robert Gumberts, D.O., (Petitioner), License No. 209230. Petitioner entered into Consent Order BPMC No. 03-347 effective December 24, 2003. The Order suspended Petitioner's license to practice medicine for a minimum period of no less than six months. The purpose of the proceeding was to determine whether this suspension was to be stayed upon the satisfaction of a Committee of the Board for Professional Medical Conduct that Petitioner, among other things, has successfully completed a course of therapy prescribed by the Board which includes a determination that Petitioner is no longer incapacitated for active practice and that he is both fit and competent to practice medicine.

A meeting of the Committee was held in the above-entitled proceeding on August 5, 2005. Petitioner appeared with his attorney, Mark Farrell, Esquire, before a Committee of the State Board for Professional Medical Conduct consisting of Joseph Messina, M.D., Chair, Debra Omiatek, M.D., M.S. and Deanna Krusenstjerna. The Committee determined, by unanimous decision, after careful consideration of all evidence submitted to them prior to the meeting and the testimony provided, that the suspension of Petitioner's license shall be stayed and he shall be allowed to practice medicine subject to the following conditions.

THEREFORE, IT IS HEREBY ORDERED THAT:

Petitioner's return to practice is subject to the following conditions. Unless otherwise indicated, these conditions shall remain in effect for a period of probation lasting **five (5) years** from the effective date of this Order.

1. Prior to the resumption of the active practice of medicine, Petitioner shall obtain 51 CME credits by attending the October 2005 American College of Osteopathic Family Physicians Annual Convention. Additionally, Petitioner must attend and complete no less than two weeks of comprehensive refresher courses in family medicine (correspondence and Internet courses excluded). Petitioner shall provide written confirmation to the Director of the Office of Professional Medical Conduct (OPMC) that he has successfully completed these courses before he may resume the practice of medicine.

Petitioner may not commence the practice of medicine in New York State until all proposed monitors have been approved in writing by the Director of OPMC.

2. The period of probation, including some or all of the terms and conditions described herein, may be tolled, at the discretion of the Director of OPMC, during periods in which the Petitioner is not engaged in the active practice of medicine in New York State. Petitioner shall notify the Director, in writing, if he 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. Petitioner shall submit written notification to the Director prior to any change in that status. Petitioner shall not resume the practice of medicine in New York State without the approval of the Director and shall comply with any requests from the Director necessary for such approval. Upon the Director's approval, 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.

3. 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.

Petitioner shall not self-prescribe any medications.

4. Petitioner shall be monitored by a qualified health care professional (Sobriety Monitor) proposed by Petitioner and approved in writing by the Director of the OPMC. The Sobriety Monitor is to be familiar with Petitioner's history of alcohol dependency 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, directly observed, unannounced hair, blood, breath, oral fluid and/or urine tests for the presence of alcohol and other drugs in Petitioner. Petitioner must be specifically tested for the presence of alcohol. **Petitioner shall be screened no less than eight (8) times per month for the first year of practice.** The Petitioner shall be called on a seven day a week basis and drug screens must include weekend and evening collections. After the first year of practice, if Petitioner has been fully compliant with this Order, a request for a reduction in the number of screenings may be submitted for approval in writing 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 (3) 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 hair, blood, breath oral fluid and/or urine specimen.
- f. Petitioner shall avoid all substances that may cause positive results such as poppy seeds/ mouthwash/ cough medication/ herbal teas. **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.
5. **For the first six (6) months of practice, the Petitioner shall be limited to practicing no more than 20 hours per week, inclusive of activities such as record keeping.** After that time, Petitioner may submit a written request to the Director of OPMC that his hours be increased. However, **Petitioner's practice hours may not exceed 40 hours per week for the remainder of the Order.**
6. Petitioner shall be supervised in his practice by a licensed physician (Practice Supervisor) proposed by Petitioner and approved in writing by the Director of OPMC. The Practice Supervisor is to be familiar with Petitioner's history of alcohol dependency and with the terms of this Order.

- a. The Practice 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 or alcohol free
- b. The Practice Supervisor shall oversee the Petitioner's prescribing, administering, dispensing, inventory and wasting of controlled substances.
- c. The Practice Supervisor shall immediately report any suspected or actual impairment, inappropriate behavior, questionable medical practice or possible misconduct to OPMC.
- d. The Practice Supervisor shall notify OPMC immediately if Petitioner violates any term(s) of this Order
- e. The Practice Supervisor shall submit a report to OPMC every three (3) months regarding the quality of Petitioner's practice, any unexplained absences from work, and Petitioner's compliance or failure to comply with each condition described within this Order.

7. Petitioner shall continue in treatment with a qualified health care professional (Therapist) proposed by Petitioner and approved in writing by the Director of OPMC. The Therapist is to be familiar with the Petitioner's history of alcohol dependency and the terms of this Order. Petitioner shall continue in both group and individual therapy for a minimum of two years from the resumption of the practice of medicine, at a frequency of therapy visits to be decided by the Therapist. Petitioner shall submit the name of a proposed successor within seven (7) days of becoming aware that an approved Therapist is no longer willing or able to serve in that capacity.

- a. The Therapist shall submit reports to OPMC every three (3) months certifying compliance with treatment by Petitioner and describing in detail any failure to comply.
 - b. The Therapist shall report immediately to OPMC any significant pattern of absences or failure to comply with recommended treatment by Petitioner.
8. The Director of OPMC shall reserve the authority to direct the Petitioner to undergo an independent evaluation by a practitioner or facility approved by the Director of OPMC that specializes in alcohol/chemical dependency issues and/or mental illness. The Petitioner shall provide the evaluator with copies of all previous treatment records and a copy of this Order. The Petitioner shall execute authorizations, and keep said authorizations active, allowing the evaluator to obtain collateral information and communicate with OPMC. Reports of such evaluations shall be submitted directly to the Director of OPMC. Petitioner shall follow treatment recommendations made by the evaluator. If the evaluator determines that the Petitioner is not fit to practice, the Petitioner shall immediately cease practice until it is determined he is fit to resume practice. Failure to comply with the treatment recommendations will be considered a violation of this Order.
9. Petitioner shall continue participation in self-help fellowship (e.g., AA, Caduceus, other). Petitioner shall maintain an ongoing relationship with a sponsor.
10. Petitioner shall continue enrollment in the Committee for Physicians' Health (CPH) and shall engage in a contract with CPH which fully describes the terms, conditions and duration of a recovery program. Respondent shall fully comply with the contract.
11. Petitioner shall provide a written authorization for CPH to provide to the Director of OPMC with any/all information or documentation requested by OPMC to determine whether

Petitioner is in compliance with the contract.

12. Petitioner shall cause CPH to report to OPMC if Petitioner refuses to comply with the contract, refuses to submit to treatment or if his impairment is not substantially alleviated by treatment. CPH shall report immediately to OPMC if Petitioner is regarded at any time to be an imminent danger to the public.

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

14. The Director of OPMC shall reserve the right to review Petitioner's professional performance. This review may include, but shall not be limited to, a review of office records, patient records and/or hospital charts (inclusive of electronic records), and interviews with or periodic visits with Petitioner and staff at his practice locations or OPMC offices.

15. Petitioner shall maintain legible and complete medical records that accurately reflect the evaluation and treatment of patients. The medical records shall contain all information required by State rules and regulations regarding controlled substances.

16. 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.

17. Petitioner shall provide the Director of OPMC with the following information and shall

ensure that such information is kept current: a full description of Petitioner's employment and practice; all professional and residential addresses and telephone numbers within and outside New York State; all professional licenses held and applied for; and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty (30) days of each action.

18. Petitioner shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of Petitioner's compliance with the terms of this Order. Petitioner shall personally meet with a person designated by the Director of OPMC as requested by the Director.

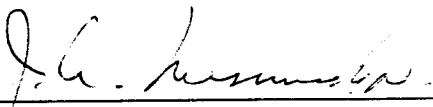
19. Petitioner shall comply with all terms, conditions, restrictions and limitations to which he is subject pursuant to the Order and shall assume and bear all costs related to compliance of the Order. Upon receipt of evidence of noncompliance with, or any violation of these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding and/or any such other proceeding against Petitioner as may be authorized pursuant to the law.

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

This Order shall be effective upon issuance.

Dated: Buffalo, NY

September 18, 2005



Joseph Messina, M.D.
Committee Chair
State Board for Professional Medical Conduct