



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

October 7, 1997

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Demetrio P. Fajardo, M.D.
Niagara Falls Clinic
Niagara Civic Building
775 Third Street
Niagara Falls, New York 13202

RE: License No. 152673

Dear Dr. Fajardo:

Enclosed please find Order #BPMC 97-240 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: Joel L. Daniels, Esq.
107 Delaware Avenue, Suite 1366
Buffalo, New York 14202

William D. Scott, Esq.

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

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IN THE MATTER	:	CONSENT
OF	:	AGREEMENT
DEMETRIO P. FAJARDO, M.D.	:	AND ORDER
	:	BPMC # 97-240

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DEMETRIO P. FAJARDO, M.D., says:

On or about December 3, 1982, I was licensed to practice as a physician in the State of New York, having been issued license number 152673 by the New York State Education Department.

My current address is Niagara Falls Clinic, Niagara Civic Building, 775 Third Street, Niagara Falls, New York 14302 and I will advise the Director of the Office of Professional Medical Conduct of any change of my address.

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

I do not contest the specifications.

I hereby agree to the following penalty:

- a) a permanent limitation on my medical license restricting me to a practice in a supervised setting. Such setting and any changes thereto are subject to my obtaining prior approval from the Director of the Office of Professional Medical Conduct or her designee,

such approval to be given in the sole discretion of the Director of the Office of Professional Medical Conduct;

- b) a five year suspension of my medical license, which suspension shall be stayed with five years probation in accordance with the terms set forth in Exhibit B hereto.

I agree that in the event that I am charged with professional misconduct in the future, this agreement and order shall be admitted into evidence in that proceeding.

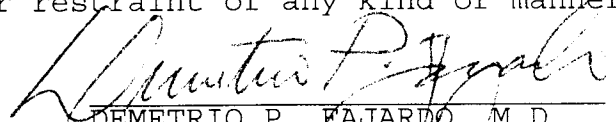
I agree that, as a condition of this Order, I will maintain current registration of my license with the New York State Education Department, Division of Professional Licensing Services, and pay all registration fees. This condition will remain in effect except during periods of actual suspension, if any, imposed by this Order. This condition shall be in effect beginning thirty days after the effective date of this Order and will continue until the full term of the Order has run, and until any associated period of probation and all probation terms have been completed and satisfied. I understand that any failure by me to comply with this condition shall constitute misconduct as defined by New York State Education Law §6530(29).

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.

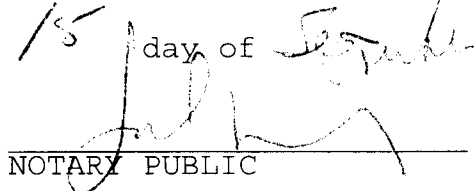
I make this application of my own free will and accord and not under duress, compulsion or restraint of any kind or manner.



DEMETRIO P. FAJARDO, M.D.
RESPONDENT

Subscribed before me this

15 day of September, 1997.



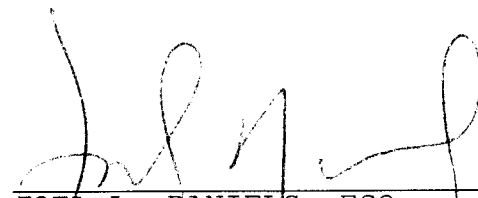
NOTARY PUBLIC

JOEL L. DANIELS
NOTARY PUBLIC, State of New York
No. 4758749
Qualified in Erie County
Commission Expires 11/22/97

AGREED TO:

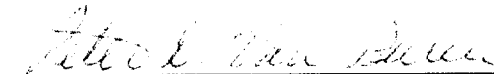
DATE:

9-17-97


JOEL L. DANIELS, ESQ.
Attorney for Respondent

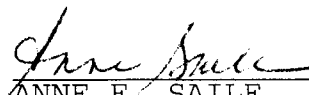
DATE:

9-17-97


PETER D. VAN BUREN
DEPUTY COUNSEL
Bureau of Professional
Medical Conduct

DATE:

9/23/97


ANNE F. SAILE
DIRECTOR
Office of Professional
Medical Conduct

ORDER

Upon the proposed agreement of DEMETRIO P. FAJARDO, 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: 9/30/97

Patrick F. Carone, M.D., M.P.H.

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
DEMETRIO PAJARILLAGA FAJARDO, JR., M.D. : CHARGES

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DEMETRIO PAJARILLAGA FAJARDO, JR., M.D., the Respondent, was authorized to practice medicine in New York State on December 3, 1982, by the issuance of license number 152673 by the New York State Education Department. The Respondent is currently registered with the New York State Education Department to practice medicine from an address at the Niagara Falls Clinic, Niagara Civic Building, 775 Third Street, Niagara Falls, New York 14302.

FACTUAL ALLEGATIONS

A. Patient A (patients are identified in Appendix), a 34 year old male, was admitted to Bry-Lyn Hospital on December 19, 1992 following transfer from Erie County Medical Center where it was determined that he was in need of involuntary psychiatric treatment, having attempted suicide by hanging, and was found in the judgement of physicians at Erie County Medical Center to be "highly lethal."

He was subsequently admitted to the Psychiatry Service of Bry-Lyn Hospital under the care of the Respondent. The patient's discharge was ordered by Respondent on December 21,

1992, although the patient was in fact discharged during the morning of the following day. He was readmitted under the care of Respondent for a second time from December 31, 1992 through January 3, 1993. The Respondent failed to meet acceptable standards of psychiatry in that:

1. Respondent failed to obtain and/or document adequate histories, including but not limited to past suicide attempts, and/or perform and/or document adequate review or consideration of physical examinations and/or mental status exams when he first began treating Patient A and/or during the course of treatment.
2. Respondent failed to adequately evaluate, assess manage, and/or appreciate the suicidal, depression, or homicidal risk posed by the patient at the time of either admission and/or examination by the Respondent.
3. Respondent failed to conduct an appropriate and thorough admitting mental status examination of the patient on either admission.
4. Respondent failed to establish and/or implement an adequate treatment plan either for the time of actual hospitalization or for follow-up care following discharge on January 3, 1993.
5. Respondent failed to document meetings with the patient's spouse, who disagreed with the discharge on December 22, 1992, and/or consider the concerns of the patient's spouse.
6. Respondent failed to exercise reasonable, prudent psychiatric judgement in ordering the discharge of the patient for December 21, 1992 with simultaneous discontinuance of all suicide precautions.
7. Respondent made no effort to continue hospitalization of Patient A following the discontinuance of suicide precautions to provide further assessment of the suicide risk on either admission and/or failed to arrange for, appropriate after-care treatment.
8. Respondent failed to dictate discharge summaries for either of the admissions of Patient A.

B. Patient B was a 31 year old female who was admitted to Bry-Lyn Hospital on or about January 4, 1993 and came under the care of the Respondent on January 5, 1993 until discharged by the Respondent on January 7, 1993. The patient had a history of Bipolar Mood Disorder and was clearly manic on admission according to the record of her primary physician, Dr. Williams. Respondent failed to meet acceptable standards of psychiatry in that:

1. Respondent failed to obtain and/or document adequate mental status exams when he first began treating patient B and/or during the course of treatment.
2. Respondent failed to consider and/or heed explicitly stated recommendations by the primary psychiatrist concerning the patient's mental status upon admission and/or her request for a premature discharge.
3. Respondent discharged patient B before discontinuing orders for "close observation" and "abscond precautions".
4. Respondent failed to appreciate and/or consider in his treatment plan and discharge order the nature of Bipolar Disorder, by discharging the patient in an agitated, manic state.
5. Respondent failed to appreciate and/or consider in his treatment plan the recommendations of the primary (attending) psychiatrist for whom he was covering.
6. Respondent inappropriately discharged Patient B on January 7, 1993.
7. Respondent failed to appreciate, and/or consider the opinion of the patient's father that the patient was not stable for discharge.
8. Notwithstanding the contents of the hospital records, in discharging the patient on January 7, 1993 the Respondent failed to give consideration to well known behavior characteristics of manic patients and take such characteristics into account in discharging his patient.
9. Respondent's action in discharging Patient B on

January 7, 1993 subjected her to the unnecessary risk of substantial harm to herself, and the possibility of other injury and damage typical in cases involving a "manic patient", all of which the Respondent failed to appreciate and/or consider.

C. Patient C was a 32 year old male admitted to Bry-Lyn Hospital on December 27, 1992 and again On January 7, 1993. Concerns upon admission included alcohol abuse, depression, and suicidal ideation, and upon the first admission, the Respondent noted that the patient was "suicidal". The patient was discharged by the Respondent on January 4, 1993, before discontinuing suicide precautions. A second admission occurred on January 7, 1993, three days following his initial discharge by the Respondent. The patient was again suicidal and the admission diagnosis was as follows:

- " 1. Alcohol dependence
- 2. Rule out depressive disorder
- 3. Possible personality disorder with borderline dependent and histrionic quality."

The Respondent failed to meet acceptable standards of psychiatry in that:

1. Respondent failed to obtain and/or document adequate histories and/or perform and/or document adequate mental status evaluations when he first began treating Patient C and/or during the course of treatment.
2. Respondent failed on both admissions to adequately diagnose, assess and manage lethality and/or the suicide risk and suicide potential of the patient.
3. Respondent failed to establish any reasonable or medically acceptable treatment plan for the patient. Further, the Respondent's treatment of the patient does not logically follow from his formal diagnosis of alcohol dependence. Respondent failed to document his consideration of a diagnosis of Alcohol Withdrawal Delirium or lethal intoxication. The Respondent did not appreciate, and/or consider any diagnosis in psychiatry

relating to alcohol dependence as the same have been codified in DSM-III-R.

4. Respondent ordered the patient's discharge before discontinuing suicide precautions and/or failed to properly assess and manage the patient's suicide risk and discharge said patient before discontinuing suicide precautions.
5. In discharging the patient on January 4, 1993, the Respondent failed to consider the "Falls Precaution" protocol and "Q15 minute checks" being maintained on the patient on the day of his discharge or to discontinue these protocols prior to the discharge of the patient.
6. Respondent failed to consider the severity of his patient's alcoholism, complications of alcoholism, and underestimated the length of rehabilitation needed by patient C to be "one week", and not the standard 28 day alcohol rehabilitation program.
7. Respondent discharged patient C from a rehab facility prematurely on January 20, 1993, resulting in subsequent readmission on January 28, 1993. Further, Respondent had no authority to treat Patient C in the rehab facility from January 4, 1993, up to and including January 20, 1993.
8. Respondent failed to formulate a discharge summary for the patient for either admission.

SPECIFICATION OF CHARGES

FIRST THROUGH THIRD SPECIFICATIONS

PRACTICING WITH GROSS NEGLIGENCE

The Respondent is charged with practicing the profession of medicine with gross negligence under N.Y. Educ. Law §6530(4) in that the Petitioner charges:

1. The facts in paragraph A(1), A(2), A(3), A(4), A(5), A(6), A(7), and/or A(8).
2. The facts in paragraph B(1), B(2), B(3), B(4), B(5), B(6), B(7), B(8), and/or B(9).
3. The facts in paragraph C(1), C(2), C(3), C(4),

C(5), C(6), C(7), and/or C(8).

FOURTH THROUGH SIXTH SPECIFICATIONS

PRACTICING WITH NEGLIGENCE ON MORE THAN ONE OCCASION

The Respondent is charged with practicing the profession of medicine with negligence on more than one occasion under N.Y. Educ. Law §6530(3), in that the petitioner charges that the Respondent committed two or more of the following:

4. The facts in paragraph A(1), A(2), A(3), A(4), A(5), A(6), A(7), and/or A(8).
5. The facts in paragraph B(1), B(2), B(3), B(4), B(5), B(6), B(7), B(8) and/or B(9).
6. The facts in paragraph C(1), C(2), C(3), C(4), C(5), C(6), C(7), and/or C(8).

SEVENTH, EIGHTH, AND NINTH SPECIFICATIONS

PRACTICING WITH GROSS INCOMPETENCE

The Respondent is charged with practicing the profession of medicine with gross incompetence under N.Y. Educ. Law §6530(6) in that the petitioner charges:

7. The facts in paragraph A(1), A(2), A(3), A(4), A(5), A(6), A(7), and/or A(8).
8. The facts in paragraph B(1), B(2), B(3), B(4), B(5), B(6), B(7), B(8) and/or B(9).
9. The facts in paragraph C(1), C(2), C(3), C(4), C(5), C(6), C(7), and/or C(8).

TENTH, ELEVENTH AND TWELFTH SPECIFICATIONS

PRACTICING WITH INCOMPETENCE ON MORE THAN ONE OCCASION

The Respondent is charged with practicing the profession of medicine with incompetence on more than one occasion under N.Y. Educ. Law §6530(5) in that the petitioner charges that the respondent committed two or more of the following:

10. The facts in paragraph A(1), A(2), A(3), A(4), A(5), A(6), A(7), and/or A(8).
11. The facts in paragraph B(1), B(2), B(3), B(4), B(5), B(6), B(7), B(8) and/or B(9).
12. The facts in paragraph C(1), C(2), C(3), C(4), C(5), C(6), C(7), and/or C(8).

THIRTEENTH, FOURTEENTH AND FIFTEENTH SPECIFICATIONS

INADEQUATE MEDICAL RECORDS

The Respondent is charged with failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient, under N.Y. Educ. Law §6530(32) in that the petitioner charges:

13. The facts in paragraph A(1).
14. The facts in paragraph B(1).
15. The facts in paragraph C(1).

DATED: Albany, New York

June 25, 1997



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

EXHIBIT "B"

TERMS OF PROBATION

DEMETRIO P. FAJARDO, M.D.

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 only work in a supervised setting at the Monsignor Carr Institute, Chemical Dependency Program, 76 West Humbolt Parkway, Buffalo, New York 14214 or the Niagara Falls Adult Mental Health Clinic, and the Niagara County Methadone Program, both located at 1001 11th Street, Niagara Falls, New York 14301.
 - a. Respondent shall propose an appropriate supervisor or administrator in all practice settings, who shall be subject to the written approval of the Director of OPMC. Respondent shall cause the supervisor or administrator to submit reports, as requested (or quarterly), regarding Respondent's overall quality of medical practice.
 - b. Respondent shall provide the supervisor/administrator in all settings with the Order and terms of probation and shall cause the supervisor/administrator, in writing, to comply with OPMC schedules and requests for information.
 - c. Respondent shall submit semi-annually a signed Compliance Declaration to the Director of OPMC which truthfully attests whether Respondent has been in compliance with the employment setting and required supervision.
9. In the event that Respondent desires to engage in the practice of medicine outside of his current practice at the Monsignor Carr Institute, Chemical Dependency Program, the Niagara Falls Adult Mental Health Clinic and the Niagara County Methadone Program, such practice shall be subject to the prior written approval of the Director of OPMC and be in accordance with the requirements of 8a., 8b. and 8c. above..

10. Respondent shall comply with all terms, conditions, restrictions, and penalties to which he 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.