

DOH STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Dennis P. Whalen
Executive Deputy Commissioner

December 29, 1998

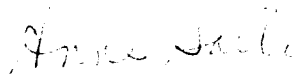
Mr. Robert Bentley, Director
Division of Professional Licensing Services
New York State Education Department
Cultural Education Center
Empire State Plaza
Albany, NY 12230

RE: James M. Esper, D.O.
NYS License No. 200663

Dear Mr. Bentley:

Enclosed is a copy of a Commissioner's Order and Notice of Hearing which summarily suspends Dr. Esper's right to practice medicine in the State of New York. This Order was served on Dr. Esper on December 29, 1998, and is in effect for 90 days from the date of service.

Sincerely,



Anne F. Saile
Director
Office of Professional Medical Conduct

Enclosure

cc: Daniel Kelleher

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

IN THE MATTER

OF

JAMES M. ESPER, D.O.

COMMISSIONER'S

ORDER AND

NOTICE OF

HEARING

TO: JAMES M. ESPER, D.O.
810 Carroll Street
Brooklyn, New York 11215

3238 West 12th Street
Erie, Pennsylvania 00016

P.O. Box 940275
Rockaway Park, New York 11694

The undersigned, DENNIS P. WHALEN, Executive Deputy Commissioner, Department of Health, State of New York, 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 continued practice of medicine in the State of New York by JAMES M. ESPER, D.O., the Respondent, constitutes an imminent danger to the health of the people of this state.

It is therefore:

ORDERED, pursuant to N.Y. Pub. Health Law §230(12) (McKinney Supp.

1998), that effective immediately JAMES M. ESPER, D.O., 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 N.Y. Pub. Health Law §230(12) (McKinney Supp. 1998).

PLEASE TAKE NOTICE that a hearing will be held pursuant to the provisions of N.Y. Pub. Health Law §230 (McKinney 1990 and Supp. 1998), and N.Y. State Admin. Proc. Act §§301-307 and 401 (McKinney 1984 and Supp. 1998). The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on **January 5, 1999**, at 10:00 a.m., at the offices of the New York State Health Department, 5 Penn Plaza, Sixth Floor, New York, NY 10001, and at such other adjourned dates, times and places as the committee may direct. The Respondent may file an answer to the Statement of Charges with the below-named attorney for the Department of Health.

At the hearing, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the hearing will be made and the witnesses at the hearing will be sworn and examined. The Respondent shall appear in person at the hearing and may be represented by counsel. The Respondent has the right to produce witnesses and evidence on his behalf, to issue or have subpoenas issued on his behalf for the production of witnesses and documents and to cross-examine witnesses and

examine evidence produced against him. A summary of the Department of Health Hearing Rules is enclosed. Pursuant to §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 hearing will proceed whether or not the Respondent appears at the hearing. Scheduled hearing dates are considered dates certain and, therefore, adjournment requests are not routinely granted. Requests for adjournments must be made in writing to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Hedley Park Place, 433 River Street, Fifth Floor South, Troy, NY 12180, ATTENTION: HON. TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION, and by telephone (518-402-0748), upon notice to the attorney for the Department of Health whose name appears below, and at least five days prior to the scheduled hearing date. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation.

At the conclusion of the hearing, the committee shall make findings of fact, conclusions concerning the charges sustained or dismissed, and, in the event any of the charges are sustained, a determination of the penalty or sanction to be imposed or appropriate action to be taken. Such determination may be reviewed by the administrative review board for professional medical conduct.

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 §230-a (McKinney Supp. 1998). YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: Albany, New York
December 23, 1998



DENNIS P. WHALEN
Executive Deputy Commissioner

Inquiries should be directed to:

Silvia P. Finkelstein
Associate Counsel
N.Y.S. Department of Health
Division of Legal Affairs
5 Penn Plaza
Suite 601
New York, New York 10001
(212) - 613-2614

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

IN THE MATTER
OF
JAMES ESPER, D.O.

STATEMENT
OF
CHARGES

JAMES ESPER, D.O., the Respondent, was authorized to practice medicine in New York State on or about September 7, 1995, by the issuance of license number 200663 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. The Respondent treated Patient A (patients are identified in Appendix A) from on or about March 30, 1995 through on or about August 31, 1998. Respondent's care of Patient A did not meet acceptable standards of care in that:
1. Respondent failed to obtain and/or document an adequate history and/or physical examination of Patient A.
 2. Respondent prescribed medications listed in Attachment A for Patient A in excessive amounts and/or without adequate

medical indication;

3. Respondent prescribed potentially habit forming medications for Patient A in excessive amounts despite indications of substance abuse;
4. Respondent prescribed medications for Patient A without creating a medical record.
5. Respondent failed to maintain a medical record for Patient A.

B. The Respondent treated Patient B (patients are identified in Appendix A) from on or about January 17, 1996 through on or about June 16, 1998. Respondent's care of Patient A did not meet acceptable standards of care in that:

1. Respondent failed to obtain and/or document an adequate history and/or physical examination of Patient B.
2. Respondent prescribed medications listed in Attachment B for Patient B in excessive amounts and/or without adequate medical indication;
3. Respondent prescribed potentially habit forming medications for Patient B in excessive amounts despite indications of substance abuse;

4. Respondent prescribed medications for Patient B without creating a medical record.
5. Respondent failed to maintain a medical record for Patient B.

C. The Respondent treated Patient C (patients are identified in Appendix A) from on or about March 22, 1996 through on or about June 29, 1998. Respondent's care of Patient C did not meet acceptable standards of care in that:

1. Respondent failed to obtain and/or document an adequate history and/or physical examination of Patient C.
2. Respondent prescribed medications listed in Attachment C for Patient C in excessive amounts and/or without adequate medical indication;
3. Respondent prescribed potentially habit forming medications for Patient C in excessive amounts despite indications of substance abuse;
4. Respondent prescribed medications for Patient C without creating a medical record.
5. Respondent failed to maintain a medical record for Patient C.

- D. The Respondent treated Patient D (patients are identified in Appendix A) from on or about March 30, 1998 through on or about July 18, 1998. Respondent's care of Patient D did not meet acceptable standards of care in that:
1. Respondent failed to obtain and/or document an adequate history and/or physical examination of Patient D.
 2. Respondent prescribed medications listed in Attachment D for Patient D in excessive amounts and/or without adequate medical indication;
 3. Respondent prescribed potentially habit forming medications for Patient D in excessive amounts despite indications of substance abuse;
 4. Respondent prescribed medications for Patient D without creating a medical record.
 5. Respondent failed to maintain a medical record for Patient D.
- E. The Respondent treated Patient E (patients are identified in Appendix A) from on or about August 28, 1995 through on or about December 23, 1996. Respondent's care of Patient E did not meet acceptable standards of care in that:

1. Respondent failed to obtain and/or document an adequate history and/or physical examination of Patient E.
 2. Respondent prescribed medications listed in Attachment E for Patient A in excessive amounts and/or without adequate medical indication;
 3. Respondent prescribed potentially habit forming medications for Patient E in excessive amounts despite indications of substance abuse;
 4. Respondent prescribed medications for Patient E without creating a medical record.
 5. Respondent failed to maintain a medical record for Patient E.
- F. The Respondent treated Patient F (patients are identified in Appendix A) on or about January 30, 1997. Respondent's care of Patient F did not meet acceptable standards of care in that:
1. Respondent failed to obtain and/or document an adequate history and/or physical examination of Patient F.
 2. Respondent prescribed medication listed in Attachment F for Patient F without adequate medical indication;
 3. Respondent prescribed a potentially habit forming medication

for Patient F:

4. Respondent prescribed medication for Patient F without creating a medical record.

G. Respondent treated himself from on or about May 16, 1996 through on or about October 23, 1998. Respondent's treatment of himself fell below acceptable standards of care in that:

1. Respondent wrote prescriptions listed in Attachment G for himself in excessive amounts and/or without adequate medical indication.
2. Respondent fraudulently and/or inappropriately wrote prescriptions listed in Attachment G in the name of Patient G for his own use.
3. Respondent wrote prescriptions listed in Attachment H for himself in excessive amounts and/or without adequate medical indication.
4. Respondent fraudulently and/or inappropriately wrote prescriptions listed in Attachment H in the name of Patient H for his own use.
5. Respondent wrote the prescription listed in Attachment I for

himself in excessive amounts and/or without adequate medical indication.

6. Respondent fraudulently and/or inappropriately wrote the prescription listed in Attachment I in the name of Patient I for his own use.
 7. Respondent did not create an adequate medical record of his self-prescribing and treatment.
- H. Respondent prescribed highly addictive medications for himself and others from on or about March 30, 1995 through October 23, 1998. During that period of time, Respondent knowingly issued 114 prescriptions, as set forth in Appendix B, fraudulently and without a legitimate medical purpose.
- I. On or about February 11, 1989, in the Court of Common Pleas, Criminal Division, Erie County, Commonwealth of Pennsylvania, Respondent pled guilty to 27 felony counts in violation of the Controlled Substance, Drug, Device, and cosmetic Act of the state of Pennsylvania. Respondent's conduct included prescribing, dispensing, or delivering controlled substances by a practitioner, not in good faith, not within the scope of the doctor-patient relationship and without a medical purpose and obtaining a controlled substance through misrepresentation and/or fraud. These acts

were committed and Respondent was convicted at a time when he was licensed to practice medicine in the Commonwealth of Pennsylvania. On or about May 5, 1989, Respondent was sentenced to incarceration in the Jail of Erie County for a period of eleven and a half to twenty-three and a half months and restitution in the sum of \$13,934.24.

- J. On or about January 17, 1990, in the U.S. District Court for the Western District of Pennsylvania, Respondent pled guilty to 2 counts of violating Title 21, U.S. Code, §§841(a)(1) and (b)(1)(c); U.S. Code §846, and Title 18, U.S. Code §1341 and 2. The conduct included knowingly, intentionally and unlawfully conspiring with persons both known and unknown to distribute and possess Schedule II controlled substances; and submitting false insurance claims for medical tests which were never actually performed, while Respondent was engaged in the practice of osteopathic medicine. These acts were committed and Respondent was convicted at a time when he was licensed to practice medicine in the Commonwealth of Pennsylvania. On or about October 22, 1990, Respondent was sentenced to two years incarceration in federal prison and restitution in the sum of \$11,270.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION**NEGLIGENCE ON MORE THAN ONE OCCASION**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(3)(McKinney Supp. 1998) by practicing the profession of medicine with negligence on more than one occasion as alleged in the facts of two or more of the following paragraphs:

1. A, A.1, A.2, A.3, A.4, A.5, B, B.1, B.2, B.3, B.4, B.5, C, C.1, C.2, C.3, C.4, C.5, D, D.1, D.2, D.3, D.4, D.5, E, E.1, E.2, E.3, E.4, E.5, F, F.1, F.2, F.3, F.4, G, G.1, G.2, G.3, G.4, G.5, G.6 and/or G.7.

SECOND SPECIFICATION**INCOMPETENCE ON MORE THAN ONE OCCASION**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(5)(McKinney Supp. 1998) by practicing the profession of medicine with incompetence on more than one occasion as alleged in the facts of two or more of the following paragraphs:

2. A, A.1, A.2, A.3, A.4, A.5, B, B.1, B.2, B.3, B.4, B.5, C, C.1,

C.2, C.3, C.4, C.5, D, D.1, D.2, D.3, D.4, D.5, E, E.1,
E.2, E.3, E.4, E.5, F, F.1, F.2, F.3, F.4, G, G.1, G.2, G.3,
G.4, G.5, G.6 and/or G.7.

THIRD THROUGH NINTH SPECIFICATIONS

GROSS NEGLIGENCE

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(4)(McKinney Supp. 1998) by practicing the profession of medicine with gross negligence as alleged in the facts of the following paragraphs:

3. A, A.1, A.2, A.3, A.4, and/or A.5.
4. B, B.1, B.2, B.3, B.4 and/or B.5.
5. C, C.1, C.2, C.3, C.4 and/or C.5.
6. D, D.1, D.2, D.3, D.4 and/or D.5.
7. E, E.1, E.2, E.3, E.4 and/or E.5
8. F, F.1, F.2, F.3 and/or F.4
9. G, G.1, G.2, G.3, G.4, G.5, G.6 and/or G.7

TENTH THROUGH SIXTEENTH SPECIFICATIONS

GROSS INCOMPETENCE

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(6)(McKinney Supp. 1998) by practicing the profession of medicine with gross incompetence as alleged in the facts of the following paragraphs:

10. A, A.1, A.2, A.3, A.4, and/or A.5.
11. B, B.1, B.2, B.3, B.4 and/or B.5.
12. C, C.1, C.2, C.3, C.4 and/or C.5.
13. D, D.1, D.2, D.3, D.4 and/or D.5.

14. E, E.1, E.2, E.3, E.4 and/or E.5
15. F, F.1, F.2, F.3 and/or F.4
16. G, G.1, G.2, G.3, G.4, G.5, G.6and/or G.7

SEVENTEENTH THROUGH TWENTY-FOURTH SPECIFICATIONS**FRAUDULENT PRACTICE**

Respondent is charged with committing professional misconduct as defined by N.Y. Educ. Law §6530(2)(McKinney Supp. 1998) by practicing the profession

of medicine fraudulently as alleged in the facts of the following paragraphs:

17. A, A.1, A.2, A.3, A.4, and/or A.5.
18. B, B.1, B.2, B.3, B.4 and/or B.5.
19. C, C.1, C.2, C.3, C.4 and/or C.5.
20. D, D.1, D.2, D.3, D.4 and/or D.5.
21. E, E.1, E.2, E.3, E.4 and/or E.5
22. F, F.1, F.2, F.3 and/or F.4
23. G, G.1, G.2, G.3, G.4, G.5, G.6and/or G.7
24. H and I.

TWENTY-FIFTH SPECIFICATION

FAILURE TO MAINTAIN RECORDS

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(32)(McKinney Supp. 1998) by failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient, as alleged in the facts of the following paragraphs:

25. A, A.4, A.5, B, B.4, B.5, C, C.4, C.5, D, D.4, D.5, E, E.4, E.5,
F, F.4, G, G.7.

TWENTY-SIXTH SPECIFICATION
CRIMINAL CONVICTION (Pennsylvania)

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(9)(a)(iii)(McKinney Supp. 1998) by having been convicted of an act constituting a crime under the law of another jurisdiction and which, if committed within New York State would have constituted a crime under New York State Law, as alleged in the facts of the following paragraph:

26. Paragraph I.

TWENTY-SEVENTH SPECIFICATION
CRIMINAL CONVICTION (Federal)

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(9)(a)(ii)(McKinney Supp. 1998) by having been convicted of an act constituting a crime under federal law as alleged in the facts of the following paragraph:

27. Paragraph J

DATED: December , 1998
New York, New York

ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct