



*New York State Board for Professional Medical Conduct*

433 River Street, Suite 303 Troy, New York 12180-2299 • (518) 402-0863

Dennis P. Whalen  
*Executive Deputy Commissioner of Health*  
Anne F. Salle, Director  
*Office of Professional Medical Conduct*  
William J. Comiskey, Chief Counsel  
*Bureau of Professional Medical Conduct*

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*Chair*  
Denise M. Bolan, R.P.A.  
*Vice Chair*  
Ansel R. Marks, M.D., J.D.  
*Executive Secretary*

February 26, 1999

**CERTIFIED MAIL-RETURN RECEIPT REQUESTED**

James Esper, D.O.  
3238 West 12th Street  
Erie, PA 00016

RE: License No. 200663

Dear Dr. Esper:

Enclosed please find Order #BPMC 99-46 of the New York State Board for Professional Medical Conduct. This Order and any penalty provided therein goes into effect **February 26, 1999**.

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 to 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: Charles Day, Esq.  
Ferro & Cuccia  
325 Broadway, Suite 505  
New York, New York 10007

Silvia P. Finkelstein, Esq.

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

IN THE MATTER  
OF  
JAMES M. ESPER, D.O

SURRENDER  
OF  
LICENSE

BPMC #99-46

STATE OF PENNSYLVANIA )  
COUNTY OF ) ss.:

JAMES M. ESPER, D.O., being duly sworn, deposes and says:

On or about September 7, 1995, I was licensed to practice medicine as a physician in the State of New York having been issued License No. 200663 by the New York State Education Department.

My current address is 3238 West 12th Street, Erie Pennsylvania 00016 , 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 Twenty-eight specifications of professional misconduct as set forth in the Statement of Charges, annexed hereto, made a part hereof, and marked as Exhibit "A".

I am applying to the State Board for Professional Medical Conduct for permission to surrender my license as a physician in the State of New York on the grounds that I admit guilt to Specifications Twenty-sixth and Twenty-seventh and do not contest Specifications First through Twenty-fifth and Twenty-eighth in full satisfaction of the Statement of Charges.

I hereby make this application to the State Board for Professional Medical Conduct and request that it be granted.

I understand that, in the event that the application is not granted by the State Board for Professional Medical Conduct, 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 State Board for Professional Medical Conduct shall be made without prejudice to the continuance of any disciplinary proceeding and the final determination by a Committee on Professional Medical Conduct 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 shall be issued striking my name from the roster of physicians in the State of New York without further notice to me. I agree that such order shall be effective upon issuance by the Board, which may be accomplished by mailing, by first class mail, a copy of the Surrender Order to me at the address set forth in this agreement, or to my attorney, or upon transmission via facsimile to me or my attorney, whichever is earliest.

I am making this Application of my own free will and accord and not under duress, compulsion or restraint of any kind or manner. In consideration of the value to me of the acceptance by the Board of this Application, allowing me to resolve this matter without the various risks and burdens of a hearing on the merits, I knowingly waive any right I may have to contest the Surrender Order for which I hereby apply, whether administratively or judicially, and ask that the Application be granted.


AFFIRMED:

DATED FEB. 1, 1999

  
\_\_\_\_\_  
JAMES M. ESPER, D.O.  
RESPONDENT

The undersigned agree to the attached application of the Respondent to surrender his license.

Date: 2/3/99

  
\_\_\_\_\_  
CHARLES DAY, ESQ.  
Attorney for Respondent

Date: 2/9/99

  
\_\_\_\_\_  
SILVIA P. FINKELSTEIN  
Associate Counsel  
Bureau of Professional  
Medical Conduct

Date: Feb. 18, 1999

  
\_\_\_\_\_  
ANNE F. SAILE  
Director  
Office of Professional Medical Conduct

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

IN THE MATTER  
OF  
JAMES M. ESPER, D.O.

SURRENDER  
ORDER

Upon the proposed agreement of JAMES M. ESPER, D.O. (Respondent) to Surrender his license as a physician in the State of New York, which proposed agreement is made a part hereof, it is agreed to and

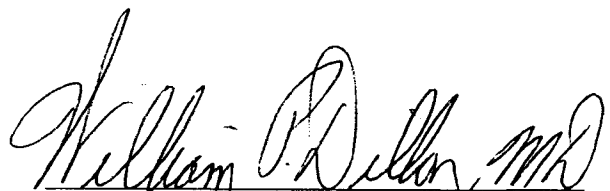
ORDERED, that the application and the provisions thereof are hereby adopted; it is further

ORDERED, that the name of Respondent be stricken from the roster of physicians in the State of New York; it is further

ORDERED, that this order shall be effective upon issuance by the Board, which may be accomplished by mailing, by first class mail, a copy of the Surrender Order to Respondent at the address set forth in this agreement or to Respondent's attorney by certified mail, or upon transmission via facsimile to Respondent or Respondent's attorney, whichever is earliest.

SO ORDERED.

DATED: 2/23/99



WILLIAM P. DILLON, M.D.  
Chair  
State Board for Professional  
Medical Conduct

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;

EXHIBIT "A"

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 B 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.

K. Since in or about the early 1980's and continuing to the present, Respondent has been a habitual abuser, or been dependent on or a habitual user of narcotics, barbiturates, amphetamines, hallucinogens, or other drugs having similar effects.

## 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 paragraph:

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.6and/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

**TWENTY EIGHTH SPECIFICATION**  
**BEING AN HABITUAL ABUSER OF DRUGS**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(8)(McKinney Supp. 1998) by being a habitual abuser, or been dependent on or a habitual user of narcotics, barbiturates, amphetamines, hallucinogens, or other drugs having similar effects, as alleged in the facts of the following paragraphs:

28. Paragraphs G, H, I, J, and/or K.

DATED: December 24, 1998  
New York, New York



ROY NEMERSON  
Deputy Counsel  
Bureau of Professional  
Medical Conduct