



**New York State Board for Professional Medical Conduct**

Corning Tower • Empire State Plaza • Albany, NY 12237 • (518) 474-8357

Barbara A. DeBuono, M.D., M.P.H.  
Commissioner of Health

Charles J. Vacanti, M.D.  
Chair

January 25, 1996

**CERTIFIED MAIL-RETURN RECEIPT REQUESTED**

James W. Follette, M.D.  
3 Timber Lane  
Glenmont, New York 12077

Re: License No. 144544

Dear Dr. Follette:

Effective Date: 02/01/96

Enclosed please find Order #BPMC 96-11 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  
Empire State Plaza  
Tower Building-Room 438  
Albany, New York 12237-0756

Sincerely,

Charles J. Vacanti, M.D.  
Chair

Board for Professional Medical Conduct

Enclosure

cc: Catherine Gale, Esq.  
McKenzie, Smith, Lewis, Michell & Hughes  
500 Onbank Building  
Syracuse, New York 13221-4967

Kimberly O'Brien, Esq.

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

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IN THE MATTER :  
OF : ORDER  
JAMES W. FOLLETTE, M.D. : BPMC #96-11

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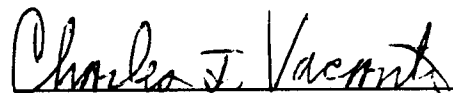
Upon the application of JAMES W. FOLLETTE, M.D. (Respondent) for Consent Order, which application is made a part hereof, it is

ORDERED, that the application and the provisions thereof are hereby adopted and so ORDERED, 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.

SO ORDERED,

DATED: 22 January 1996



Charles J. Vacanti, M.D.  
Chairperson  
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 : APPLICATION  
OF : FOR  
JAMES W. FOLLETTE, M.D. : CONSENT  
: ORDER

-----X

STATE OF NEW YORK )  
COUNTY OF ALBANY ) ss.:

JAMES W. FOLLETTE , M.D., being duly sworn, deposes and says:

That on or about November 21, 1980, I was licensed to practice as a physician in the State of New York, having been issued License No. 144544 by the New York State Education Department. I am currently registered to practice medicine in the State of New York. I reside at 3 Timber Lane, Glenmont, New York 12077.

I understand that the New York State Board for Professional Medical Conduct has charged me with seven specifications of professional misconduct.

A copy of the Statement of Charges is annexed hereto, made a part hereof, and marked as Exhibit A.

I admit guilt to the second specification in full satisfaction of the charges against me.

I hereby agree to the following penalty: a one year probation subject to the terms of probation, annexed hereto, made

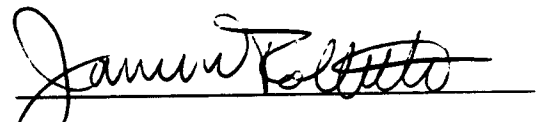
a part hereof, and marked as "Exhibit B," for a probationary period of one year.

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


I understand that, in the event that this Application is not granted by the Board, 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 Board grants my Application, as set forth herein, an order of the Chairperson of the Board shall be issued in accordance with same.

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

  
\_\_\_\_\_  
JAMES W. FOLLETTE, M.D.  
RESPONDENT

Sworn to before me this 16 day of January, 1996.

  
\_\_\_\_\_  
NOTARY PUBLIC  
FRANCES D'ARCY  
Notary Public, State of New York  
No. 5001289  
Qualified in Albany County  
Commission Expires August 31, 1996

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

-----X

IN THE MATTER : APPLICATION  
OF : FOR  
JAMES W. FOLLETTE, M.D. : CONSENT  
: ORDER

-----X

The undersigned agree to the attached application of the Respondent and to the proposed penalty based on the terms and conditions thereof.

DATE: January 16, 1996

James W. Follette  
JAMES W. FOLLETTE, M.D.  
Respondent

DATE: January 12, 1996

Catherine A. Gale  
CATHERINE A. GALE, ESQ.  
Attorney for Respondent

DATE: January 17, 1996

Kimberly A. O'Brien  
KIMBERLY A. O'BRIEN  
Senior Attorney  
Bureau of Professional  
Medical Conduct

DATE: Jan 19, 1996

Anne Saile  
ANNE SAILE  
Acting Director  
Office of Professional Medical  
Conduct

DATE: 22 January 1996

Charles J. Vacanti  
CHARLES J. VACANTI, M.D.  
Chairperson  
State Board for Professional  
Medical Conduct

EXHIBIT "B"

The minimum conditions of probation will be the following:

1. I, JAMES W. FOLLETTE, M.D., during the period of probation shall conduct myself in all ways in a manner befitting my professional status, and shall conform fully to the moral and professional standards of conduct imposed by law and by my profession.
2. I shall submit written notification to the New York State Department of Health (NYSDOH), addressed to the Director, Office of Professional Medical Conduct, New York State Health Department, Corning Tower Building, Fourth Floor, Empire State Plaza, Albany, New York 12237 of any change in:
  - i. my employment, practice, residence, or telephone number within or without the State of New York.
3. I will be supervised in my medical practice by Mark Schimelman M.D. or a successor licensed physician, approved by OPMC. Said supervising physician shall be familiar with my history and with the Order and its terms of probation. Said supervising physician shall be in a position to regularly observe and assess my medical practice. Said supervising physician shall acknowledge his willingness to comply with the supervision by executing the acknowledgement provided by the Office of Professional Medical Conduct.
  - i. Said supervising physician shall submit to the Office quarterly reports regarding the quality of my medical practice, any unprofessional conduct, and any absences from work and certifying my compliance or detailing my failure to comply with each term of probation.
4. I agree that the terms set out here are the minimum terms of probation that will be required and that the costs of complying with all such terms will be my responsibility. I understand that any failure by me to comply with the terms of probation or limitations, may result in disciplinary action being brought against me charging professional misconduct as defined by the New York State Education Law, including but not limited to N.Y. Educ. Law Section 6530(29) (McKinney Supp. 1995). That section defines professional misconduct to include **"violating any term of probation or condition or**

limitation imposed on the licensee pursuant to section two hundred thirty of the public health law." (Emphasis added.)

5. I understand that this order will not be accepted or effective until I submit to the Office of Professional Medical Conduct the executed acknowledgement of the supervising physician which form was provided to me by the Office of Professional Medical Conduct.
6. So long as there is full compliance with every term herein set forth, Respondent may continue to practice his or her aforementioned profession in accordance with the terms of probation; provided, however, that upon receipt of evidence of noncompliance with, or any violation of these terms, the Director of the Office of Professional Medical Conduct and/or the Board may initiate a violation of probation proceeding and/or such other proceeding against Respondent as may be authorized pursuant to the Public Health Law.

IN THE MATTER  
OF  
JAMES W. FOLLETTE, M.D.

STATEMENT  
OF  
CHARGES

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JAMES W. FOLLETTE, M.D., the Respondent, was authorized to practice medicine in New York State on November 21, 1980, by the issuance of license number 144544 by the New York State Education Department. The Respondent is currently registered with the New York State Education Department to practice medicine, at a registered address of 3 Timber Lane, Glenmont, New York 12077.

FACTUAL ALLEGATIONS

A. On or about and during December 1993 to April 1994, Respondent served as the Head of the Anesthesia Department at Park Ridge Hospital, Rochester, New York.

1. On or about December 1993, Respondent, while working with Nurse A in and around the Operating Room, made inappropriate comments of a sexual, suggestive, or derogatory nature to Nurse A, including a comment where he suggested he could be Nurse A's father and wanted Nurse A to have sex with him so that Respondent and Nurse A would be engaging in incest; and or

2. On or about December 16, 1993, Respondent came up behind Nurse A, and started rubbing his body up against Nurse A.



B. On or about and during December 1993 to April 1994, Respondent served as the Head of the Anesthesia Department at Park Ridge Hospital, Rochester, New York.

1. On or about February 9, 1994, Respondent, while working with Nurse B, made a derogatory comment about Nurse A to Nurse B, Nurse Manager of Surgical Services at Park Ridge Hospital and Nurse A's supervisor.

C. On or about and during December 1993 to April 1994, Respondent served as the Head of the Anesthesia Department at Park Ridge Hospital, Rochester, New York.

1. Early in 1994, Respondent, while working with Nurse C, made inappropriate comments regarding Nurse C's marital status and sexual orientation.

D. On or about and during December 1993 to April 1994, Respondent served as the Head of the Anesthesia Department at Park Ridge Hospital, Rochester, New York.

1. On or about March 1994, Respondent, while working with Nurse D, made inappropriate comments of a sexual, suggestive, or derogatory nature to Nurse D: and or

2. Respondent continued his course of conduct and escalated the frequency of the sexual, suggestive, or derogatory comments to Nurse D.

E. On or about and during February 1988 to October 1993, Respondent served as an Anesthesiologist at Albany Medical Center, Albany, New York.

1. Respondent, while working with Nurse E, made inappropriate comments about her marital status and sexual orientation.

F. On or about and during February 1988 to October 1993, Respondent served as an Anesthesiologist at Albany Medical Center, Albany, New York.

1. On or about the Fall of 1991, while working with Dr. F, Director of Post Anesthesia Care Unit, Respondent made sexual overtures toward Dr. F.

G. Respondent has had a psychiatric condition which impairs his ability to engage in appropriate professional conduct; and or Respondent is unable to recognize his inappropriate behavior and its effect on others.

SPECIFICATION OF CHARGES

FIRST, SECOND, THIRD, FOURTH, FIFTH AND SIXTH SPECIFICATIONS

MORAL UNFITNESS

The Respondent is charged with conduct in the practice of medicine which evidences moral unfitness to practice medicine within the meaning of Education Law Section 6530(20) (McKinney Supp. 1993) in that the Petitioner charges:

1. The facts of Paragraph A, A1 and or A2.
2. The facts of Paragraph Band or B1.
3. The facts of Paragraph C and or C1 .
4. The facts of Paragraph D, D1 and or D2.
5. The facts of Paragraph E and or E1.
6. The facts of Paragraph F and or F1.


SEVENTH SPECIFICATION

IMPAIRMENT

Respondent is charged with professional misconduct under N.Y. Educ. Law §6530(8) (McKinney's Supp. 1994) by reason of his having a psychiatric condition which impairs his ability to practice in that the Petitioner charges:

7. The facts in Paragraph G.

DATED: Albany, New York  
*January 11*, 1996

  
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PETER VAN BUREN  
Deputy Counsel  
Bureau of Professional Medical Conduct