



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, N.Y. 12234

OFFICE OF PROFESSIONAL DISCIPLINE
ONE PARK AVENUE, NEW YORK, NEW YORK 10016-5802

August 15, 1990

Joseph Anthony McMahan
Physician
26 Downer Street
Pawcatuck, Connecticut 06379

Re: License No. 097880

Dear Dr. McMahan:

Enclosed please find Commissioner's Order No. 10844. This Order and any penalty contained therein goes into effect five (5) days after the date of this letter.

If the penalty imposed by the Order is a surrender, revocation or suspension of your license, you must deliver your license and registration to this Department within ten (10) days after the date of this letter. In such a case your penalty goes into effect five (5) days after the date of this letter even if you fail to meet the time requirement of delivering your license and registration to this Department.

Very truly yours,

DANIEL J. KELLEHER
Director of Investigations
By:

MOIRA A. DORAN
Supervisor

DJK/MAH/er
Enclosures

CERTIFIED MAIL- RRR

cc:

RECEIVED
AUG 20 1990
Office of Professional
Medical Council

**REPORT OF THE
REGENTS REVIEW COMMITTEE**

JOSEPH ANTHONY McMAHON

CALENDAR NO. 10844



The University of the State of New York

IN THE MATTER

of the

Disciplinary Proceeding

against

JOSEPH ANTHONY McMAHON

No. 10844

who is currently licensed to practice
as a physician in the State of New York.

REPORT OF THE REGENTS REVIEW COMMITTEE

JOSEPH ANTHONY McMAHON, hereinafter referred to as respondent, was given due notice of this proceeding and informed that he could appear and be represented by an attorney.

On April 18, 1990, the scheduled date of our hearing, respondent did not appear before us in person and no attorney appeared before us to represent respondent. However, a letter was received from respondent which was made part of the record. Silvia P. Finkelstein, Esq., represented the Department of Health.

Petitioner's recommendation as to the penalty to be imposed, should respondent be found guilty, was that respondent's license to practice as a physician in the State of New York be revoked.

We have reviewed the record in this matter; and our unanimous findings of fact, determination as to guilt, and recommendation as to the penalty to be imposed follow:

FINDINGS OF FACT

1. Respondent was licensed to practice as a physician in this State by the New York State Education Department.
2. On January 12, 1988 the California Board of Medical Quality Assurance issued a decision, effective February 11, 1988, upon a default hearing, finding respondent guilty of violating California Business and Professions Code §725, §2234(a), §2234(b), §2234(c), §2234(d), §2234(e), §2238, §2242(a), §2262 and California Health and Safety Code §11150, §11153, §11154, §11157, §11164, §11172, and §11210, in that respondent repeatedly prescribed controlled substances without any medical need therefor, and revoking respondent's California medical license.
3. Respondent has been found guilty, after an administrative default hearing in the State of California, of improper professional practice and professional misconduct by a duly authorized professional disciplinary agency of another state (second specification), which conduct would, if committed in New York State, constitute professional misconduct under New York Education Law §6509(2) - - practicing the profession with gross negligence, practicing the profession fraudulently, and practicing the profession with negligence on more than

one occasion - - as set forth in the statement of charges and the record herein.

4. Respondent is guilty of professional misconduct by reason of having disciplinary action taken after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state (first specification), as set forth in the statement of charges and the record herein.
5. The conduct committed by respondent in California, pursuant to the California administrative default hearing, would, if committed in New York State, constitute professional misconduct under New York Education Law §6509(2) - - practicing the profession with gross negligence, practicing the profession fraudulently, and practicing the profession with negligence on more than one occasion.

DETERMINATION AS TO GUILT

The charges contained in the statement of charges, a copy of which is annexed hereto, made a part hereof, and marked as Exhibit "A", have been proven by a preponderance of the evidence and respondent is guilty thereof.

We note that the two charges herein are substantively identical and are merely two different procedural vehicles for framing the same factual allegations. We stress that in arriving

JOSEPH ANTHONY McMAHON (10844)

at our penalty recommendation we have not considered petitioner's artificial multiplication of the specifications charged. Our recommendation is based on the serious nature of respondent's misconduct.

**RECOMMENDATION AS TO THE
PENALTY TO BE IMPOSED**

Respondent's license to practice as a physician in the State of New York be revoked upon each specification of the charges of which respondent has been found guilty. Respondent may, pursuant to Rule 24.7(b) of the Rules of the Board of Regents, apply for restoration of said license after one year has elapsed from the effective date of the service of the order of the Commissioner of Education to be issued herein; but said application shall not be granted automatically.

Respectfully submitted,

GERALD J. LUSTIG, M.D.

JOHN T. MCKENNAN

PATRICK J. PICARIELLO


Chairperson

Dated: June 21, 1990

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

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IN THE MATTER : STATEMENT
OF : OF
JOSEPH ANTHONY McMAHON, M.D. : CHARGES

-----X

JOSEPH ANTHONY McMAHON, M.D., the Respondent, was authorized to practice medicine in New York State on November 16, 1966 by the issuance of license number 097880 by the New York State Education Department. The Respondent is currently registered with the New York State Education Department to practice medicine for the period January 1, 1989 through December 31, 1991.

FIRST SPECIFICATION

1. Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law Sec. 6509(5)(d) (McKinney Supp. 1990) in that his license to practice medicine was revoked after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation of the license would, if committed in New York State, constitute professional misconduct under the laws of New York State, in that Petitioner charges:

EXHIBIT "A"

A. By an order dated January 12, 1988, after instituting a disciplinary action, the California Board of Medical Quality Assurance issued a decision finding the Respondent guilty of professional misconduct and revoking his physician's license.

(i) The California Board of Medical Quality Assurance revoked Respondent's license based upon its conclusion that Respondent was guilty of professional misconduct in his issuing more than five hundred ninety eight (598) prescriptions for controlled substances including, but not limited to Citra Forte, APC/Codeine No. 4, Doriden, Preludin, Dilaudid, Ritalin, Barbiturates, Benzedrine, Percodan, and Demerol, during the period from July, 1983 through May, 1984. (A more detailed description of specific prescriptions is included in Petitioner's Exhibit B, attached hereto and made a part hereof).

B. The California Board of Medical Quality Assurance found Respondent guilty of professional misconduct in violation of the California Business and Professions Code and the California Health and Safety Code, including:

- (i) Prescribing the above drugs without good faith prior examination and medical indication therefore;
- (ii) Issuing the prescriptions without legitimate medical purposes as a practitioner acting in the usual course of his professional practice;
- (iii) Prescribing controlled substances in greater quantity than reasonably necessary and without a good faith disease, ailment, injury, or infirmity requiring such treatment;
- (iv) Repeated acts of clearly excessive prescribing;
- (v) Gross negligence, repeated negligent acts and/or incompetence;
- (vi) Issuing false and fictitious prescriptions; and
- (vii) Engaging and aiding and abetting in pre-signing prescriptions for dangerous drugs, and/or controlled substances.

C. Respondent engaged in conduct that, if committed in New York State, would constitute professional misconduct under New York State Law, as follows:

- (i) Practicing the profession fraudulently (N.Y. Educ. Law Sec. 6509(2));
- (ii) Practicing the profession with gross negligence on a particular occasion (N.Y. Educ. Law Sec. 6509(2));
- (iii) Practicing the profession with negligence on more than one occasion (N.Y. Educ. Law Sec. 6509(2));
- (iv) Practicing the profession with incompetence on more than one occasion (N.Y. Educ. Law Sec. 6509(2)); and
- (v) Ordering excessive treatment not warranted by the condition of the patient (N.Y. Educ. Law Sec. 6509(9) as defined by 8 N.Y.R.R. Sec. 29.2(7))

SECOND SPECIFICATION

2. Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law Sec. 6509(5)(b) (McKinney 1985) in that he was found guilty of professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York State, constitute professional misconduct under the laws of New York State, in that Petitioner charges:

A. On or about January 12, 1988, after instituting a disciplinary action, the California Board of Medical Quality Assurance issued an order, including findings of fact and determination of issues, finding Respondent guilty of professional misconduct and revoking his license. Respondent was found to have committed professional misconduct as follows:

(i) Petitioner realleges the facts contained in paragraph 1A (i).

B. Petitioner realleges the facts set forth in paragraphs 1B and 1B (i) thorough (vii).

C. Respondent's conduct, if committed in New York, would have been misconduct as set forth in paragraphs 1C and 1C (i) through (v).

DATED: New York, New York
February 27, 1990



CHRIS STERN HYMAN
Counsel
Bureau of Professional Medical
Conduct

**ORDER OF THE COMMISSIONER OF
EDUCATION OF THE STATE OF NEW YORK**

JOSEPH ANTHONY McMAHON

CALENDAR NO. 10844



The University of the State of New York

IN THE MATTER

OF

JOSEPH ANTHONY McMAHON
(Physician)

**DUPLICATE
ORIGINAL
VOTE AND ORDER
NO. 10844**

Upon the report of the Regents Review Committee, a copy of which is made a part hereof, the record herein, under Calendar No. 10844, and in accordance with the provisions of Title VIII of the Education Law, it was

VOTED (July 27, 1990): That the record herein be accepted; that the findings of fact, determination as to guilt, and recommendation as to the penalty to be imposed rendered by the Regents Review Committee in the matter of JOSEPH ANTHONY McMAHON, respondent, be accepted; that respondent is guilty of the charges by a preponderance of the evidence; that respondent's license and registration to practice as a physician in the State of New York be revoked upon each specification of the charges of which respondent has been found guilty; that respondent may, pursuant to Rule 24.7(b) of the Rules of the Board of Regents, apply for restoration of said license after one year has elapsed from the effective date of the service of the order of the Commissioner of Education to be issued herein, but said application shall not be granted automatically; and that the Commissioner of Education be empowered to execute, for and on behalf of the Board of Regents, all orders necessary to carry out the terms of this vote;

and it is

ORDERED: That, pursuant to the above vote of the Board of

JOSEPH ANTHONY McMAHON (10844)

Regents, said vote 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 the respondent or five days after mailing by certified mail.

IN WITNESS WHEREOF, I, Thomas Sobol, Commissioner of Education of the State of New York, for and on behalf of the State Education Department and the Board of Regents, do hereunto set my hand and affix the seal of the State Education Department, at the City of Albany, this 6th day of August, 1990.

Thomas Sobol
Commissioner of Education