



New York State Board for Professional Medical Conduct

433 River Street, Suite 303 Troy, New York 12 80-2299 • (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

September 16, 1997

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Robert J. Nicaise, M.D.
3998 West Langerwood Lane
Syracuse, New York 13215

RE: License No. 155535

Dear Dr. Nicaise:

Enclosed please find Order #BPMC 97-220 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: Joseph Sedita, Esq.
Phillips, Lytle, Hitchcock, Blaine & Huber
3400 Marine Midland Center
Buffalo, New York 14203

William J. Lynch, Esq.

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

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IN THE MATTER	:	CONSENT
OF	:	AGREEMENT
ROBERT J. NICAISE, M.D.	:	AND ORDER
	:	BPMC # 97-220

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ROBERT J. NICAISE, M.D., says:

On or about October, 1983, I was licensed to practice as a physician in the State of New York, having been issued license number 155535 by the New York State Education Department.

My current address is 3998 West Langerwood Lane, Syracuse, New York, 13215, 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 one hundred thirty-seven 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 fourth through one hundred thirty-sixth specifications.

I hereby agree to the following penalty:

- (a) Suspension of my license to practice medicine in New York State for a period of no less than six months from the effective date of this Order, and until I successfully demonstrate to the satisfaction of a

Committee of the State Board for Professional Medical Conduct that I am able to resume the practice of medicine.

- (b) Permanent limitation of my license to permit only the practice of medicine in a setting which ensures supervisory oversight. I agree to obtain the prior approval for any practice setting from the Director of the Office of Professional Medical Conduct (hereafter "OPMC"), which approval shall not be unreasonably withheld and which approval shall be conditioned on my continued satisfactory performance.
- (c) My practice of medicine approved by OPMC pursuant to subparagraph (b), above, shall be monitored pursuant to practice monitoring terms that shall be established by OPMC in conjunction with their approval of the practice setting.

I agree to comply also with the Additional Terms annexed hereto, made a part hereof and marked as "Exhibit "B."

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.


ROBERT J. NICAISE, M.D.
RESPONDENT
8/15/97


Subscribed before me this
15th day of August, 1997.


NOTARY PUBLIC

LYNETTE SUE SMITH
NOTARY PUBLIC ST. OF NY
QUAL. ON. CO. NO. 4670014
MY COMM. EXP. FEB. 28, 1999


AGREED TO:

DATE: August 22, 1997



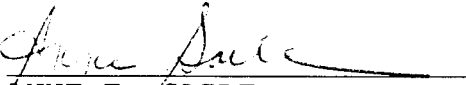
JOSEPH SEDITA, ESQ.
Attorney for Respondent

DATE: September 2, 1997



WILLIAM J LYNCH, ESQ.
ASSISTANT COUNSEL
Bureau of Professional
Medical Conduct

DATE: September 8, 1997



ANNE F. SAILE
DIRECTOR
Office of Professional
Medical Conduct

ORDER

Upon the proposed agreement of ROBERT J. NICAISE, 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: September 10, 1997

Patrick F. Carone M.D.

PATRICK F. CARONE, M.D., M.P.H.
Chair
State Board for Professional
Medical Conduct

EXHIBIT "A"

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

-----X

IN THE MATTER : STATEMENT
OF : OF
ROBERT J. NICAISE, M.D. : CHARGES

-----X

Robert Nicaise, M.D., the Respondent, was authorized to practice medicine in New York State in October, 1983 by the issuance of license number 155535 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 July 1, 1996, through June 30, 1998, with a registration address of 1 State Street, Tully, New York 13159.

FACTUAL ALLEGATIONS

1. On or about and between October 1994 and April 1995, Respondent failed to forward complete medical records of sixty former patients to their new treating physician, James E. Edinger, M.D. in spite of written requests to do so and/or failed to maintain medical records which accurately reflected their evaluation and treatment. A list of the aforesaid sixty patients is attached hereto and made a part hereof, marked Appendix A.

2. On or about August 25 1995, the Commissioner of Health issued and served upon the Respondent an Order adopting the Report and Recommendations of an Administrative Law Judge finding that the Respondent had violated Public Health Law § 17 on sixty separate occasions by failing to transfer the medical records referred to in paragraph one (See Appendix A).

3. On or about and between June 29, 1995 and May 3, 1996, Respondent failed to forward complete medical records of seventeen additional former patients to their new treating physician, James E. Edinger, M.D., in spite of written requests to do so and/or failed to maintain medical records which accurately reflected their evaluation and treatment. A list of the aforesaid seventeen patients is attached hereto and made a part hereof, marked Appendix B.

4. On or about and between June 29, 1995 and May 3, 1996, Respondent failed to forward requested medical records of fifty-six additional former patients to their new treating physician, James E. Edinger, M.D., and/or failed to maintain medical records which accurately reflected their evaluation and treatment. A list of the aforesaid fifty-six patients is attached hereto and made a part hereof, marked Appendix C.

5. On or about March 17, 1997, an Order of the Supreme Court of the State of New York issued in an action brought against the Respondent by the Attorney General to sue to collect civil penalties and to obtain injunctive relief. The Respondent,

having failed to appear, was ordered to deliver complete copies of the medical records of the 133 patients listed in Appendices A, B, and C to the offices of James E. Edinger, M.D.

6. Medical records that have been received by James E. Edinger, M.D., as a result of the aforesaid Orders and actions, are incomplete in that they fail to accurately reflect Respondent's evaluation and treatment of his former patients.

FIRST SPECIFICATION

NEGLIGENCE ON MORE
THAN ONE OCCASION

Respondent is charged with professional misconduct under N.Y. Educ. Law §6530(3) (McKinney Supp. 1997) by reason of his practicing the profession of medicine with negligence on more than one occasion, in that Petitioner charges the facts in paragraphs 1 and/or 3, and/or 4.

SECOND SPECIFICATION

INCOMPETENCE ON MORE
THAN ONE OCCASION

Respondent is charged with professional misconduct under N.Y. Educ. Law §6530(5) (McKinney Supp. 1997) by reason of his practicing the profession of medicine with incompetence on more than one occasion, in that Petitioner charges the facts in paragraphs 1 and/or 3, and/or 4.

THIRD SPECIFICATION

**FOUND GUILTY OF VIOLATING
A STATE STATUTE**

Respondent is charged with professional misconduct under N.Y. Educ. Law §6530(9)(C) (McKinney Supp. 1997) by reason of his having been found guilty of violating a state statute in that Petitioner charges the facts in paragraph 2.

FOURTH THROUGH ONE HUNDRED THIRTY-SIX SPECIFICATIONS

INADEQUATE RECORDS

Respondent is charged with professional misconduct under N.Y. Educ. Law §6530(32) (McKinney Supp. 1997) by reason of his failing to maintain a record for each patient which accurately reflected the evaluation and treatment of the patient, in that Petitioner charges the facts in paragraphs 1 and/or 3, and/or 4 and/or 6.

ONE HUNDRED THIRTY-SEVENTH SPECIFICATION

SUBSTANTIAL PROVISIONS OF STATE LAW

Respondent is charged with professional misconduct under N.Y. Educ. Law §6530(16) (McKinney Supp. 1997) by reason of his failure to comply with substantial provisions of state law, in that Petitioner charges the facts in paragraphs 1 and/or 2, and/or 3, and/or 4, and/or 5 and/or 6.

DATED: *July 22*, 1997
Albany, New York

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

EXHIBIT "B"

ADDITIONAL TERMS

1. Respondent shall conduct himself/herself in all ways in a manner befitting his/her professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his/her 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. 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/her staff at practice locations or OPMC offices.
5. 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.
6. Respondent shall comply with all terms, conditions, restrictions, and penalties to which he/she 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.