



# STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12237

Mark R. Chassin, M.D., M.P.P., M.P.H.  
Commissioner

Paula Wilson  
Executive Deputy Commissioner

October 21, 1993

## CERTIFIED MAIL - RETURN RECEIPT REQUESTED

David Reed, M.D.  
109 South Front Street  
Marquette, Michigan 49855

Coleen H. Whalen, Esq.  
Carter, Cowboy, Bardwell,  
Case, Blackmore & Napierski  
20 Corporate Woods Blvd.  
Albany, NY 12211-2350

Kevin P. Donovan, Esq.  
NYS Department of Health  
Empire State Plaza  
Corning Tower - Room 2438  
Albany, New York 12237

**RE: In the Matter of David Michael Reed, M.D.**

Dear Dr. Reed, Ms. Whalen and Mr. Donovan:

Enclosed please find the Determination and Order (No. BPMC-93-166) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified mail or in person to:**

New York State Department of Health  
Office of Professional Medical Conduct  
Corning Tower - Fourth Floor (Room 438)  
Empire State Plaza  
Albany, New York 12237

If your license or registration certificate is lost, misplaced or its whereabouts is otherwise unknown, you shall submit an affidavit to that effect. If subsequently you locate the requested items, they must than be delivered to the Office of Professional Medical Conduct in the manner noted above.

As prescribed by the New York State Public Health Law, §230, subdivision 10, paragraph (p), and §230-c subdivisions 1 through 5, (McKinney Supp. 1992), "(t)he determination of a committee on professional medical conduct may be reviewed by the administrative review board for professional medical conduct." Either the licensee or the Department may seek a review of a committee determination.

Request for review of the Committee's determination by the Administrative Review Board stays all action until final determination by that Board. Summary orders are not stayed by Administrative Review Board reviews.

All notices of review must be served, by **certified mail**, upon the Administrative Review Board and the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

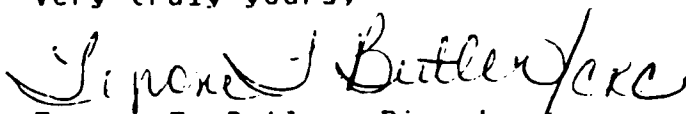
The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Administrative Law Judge  
New York State Department of Health  
Bureau of Adjudication  
Corning Tower -Room 2503  
Empire State Plaza  
Albany, New York 12237-0030

The parties shall have 30 days from the notice of appeal in which to file their briefs to the Administrative Review Board. Six copies of all papers must also be sent to the attention of Mr. Horan at the above address and one copy to the other party. The stipulated record in this matter shall consist of the official hearing transcript(s) and all documents in evidence.

Parties will be notified by mail of the Administrative Review Board's Determination and Order.

Very truly yours,

  
: Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:crc  
Enclosure

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

-----X  
IN THE MATTER ; DETERMINATION  
OF ; AND  
DAVID MICHAEL REED, M.D. ; ORDER  
-----X NO. BPMC-93-166

A Notice of Referral Proceedings and Statement of Charges, both dated August 26, 1993 were served upon the Respondent, David Michael Reed, M.D.

AARON B. STEVENS, M.D., Chairman, Ms. TRENA DEFRANCO and BERNARD POLLARA, M.D. duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to Section 230(10)(e) of the Public Health Law. MICHAEL P. MCDERMOTT, ESQ., Administrative Law Judge, served as the Administrative Officer. A hearing was held on October 6, 1993. The Department of Health appeared by KEVIN DONOVAN, ESQ., Assistant Counsel. The Respondent appeared in person and was represented by Carter, Cowboy, Bardwell, Case, Blackmore and Napierski, 20 Corporate Woods Blvd., Albany, New York, 12211-2350, COLEEN H. WHALEN, ESQ., of Counsel. Evidence was received and transcripts of these proceedings were made.

After consideration of the entire record, the Hearing Committee issues this Determination and Order.

STATEMENT OF CASE

This case was brought pursuant to Public Health Law Section 230(10)(p). The statute provides for an expedited hearing where a

licensee is charged solely with a violation of Education Law Section 6530(9). In such cases, a licensee is charged with misconduct based upon a prior criminal conviction in New York or another jurisdiction, or upon a prior administrative adjudication regarding conduct which would amount to professional misconduct, if committed in New York. The scope of an expedited hearing is limited to a determination of the nature and severity of the penalty to be imposed upon the licensee.

In the instant case, the Respondent is charged with professional misconduct pursuant to Education Law Section 6530(9)(b). A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order as Appendix I.

#### FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers in parentheses refer to transcript page numbers or exhibits. These citations represent evidence found persuasive by the Hearing Committee in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited.

1. **DAVID MICHAEL REED, M.D.** the Respondent, was authorized to practice medicine in New York State on August 31, 1972, by the issuance of license number 114039 by the New York State Education Department. The Respondent is not currently registered to practice medicine in New York State (Pet's. Ex. 1).

2. The Respondent is currently licensed to and does practice

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medicine in the State of Michigan (Pet's. Ex. 3).

3. By ORDER dated May 19, 1993, the Board of Medicine of the State of Michigan found that the Respondent had engaged in a sexual relationship with a patient for whom he had provided psychiatric care and treatment shortly after termination of the physician-patient relationship, was found to have been negligent, to have not conformed to minimal professional standards and to be lacking in good moral character in violation of Public Health Code 16221 (a), (b)(1), and (b)(vi) (see MCL 333.1101 et seq.) and was placed on probation for a period of three years (Pet's. Exs. 3 and 4).

4. The terms of probation are specifically set forth in the Michigan ORDER, a copy of which is attached hereto as Appendix II.

5. The conduct resulting in the disciplinary action in Michigan and/or the findings of the Michigan Board of Medicine would, if committed in New York State, constitute the following misconduct under the law of New York State: moral unfitness in the practice of medicine, within the meaning of New York Education Law §6530(20) (McKinney Supp. 1993).

#### DETERMINATION OF THE HEARING COMMITTEE

##### FIRST SPECIFICATION

1. The Respondent is charged with professional misconduct within the meaning of New York Education Law §6530(9)(b) (McKinney Supp. 1993) in that he had been found guilty of improper professional practice or 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.

**THE FIRST SPECIFICATION IS SUSTAINED**

**SECOND SPECIFICATION**

2. The Respondent is charged with professional misconduct within the meaning of New York Education Law §6530(9)(d) (McKinney Supp. 1993) in that he had disciplinary action taken, after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the discipline would, if committed in New York State, constitute professional misconduct under the laws of New York State.

**THE SECOND SPECIFICATION IS SUSTAINED**

3. After a review of the entire record in this matter, the Hearing Committee determines that the Respondent's license to practice medicine in the State of New York should be **SUSPENDED** for a period of three years.

During the period of suspension, the Respondent shall comply with all of the terms of probation imposed by the **ORDER** of the Board of Medicine of the State of Michigan, issued on May 19, 1993, and shall commit no further violations of the Public Health Law.

Copies of all reports required to be filed under the terms of the Michigan **ORDER** shall be filed simultaneously with the New York State Department of Health, Office of Professional Medical Conduct, Corning Tower Building, Empire State Plaza, Albany, New York 12237.

1.

**ORDER**

**IT IS HEREBY ORDERED THAT:**

1. The Respondent's license to practice medicine in the State of New York is **SUSPENDED** for a period of three years.
2. During the period of suspension, the Respondent shall comply with all of the terms of probation imposed by the **ORDER** of the Board of Medicine of the State of Michigan, issued on May 19, 1993, and shall commit no further violations of the Public Health Law.
3. Copies of all reports required to be filed under the terms of the Michigan **ORDER** shall be filed simultaneously with the New York State Department of Health, Office of Professional Medical Conduct, Corning Tower Building, Empire State Plaza, Albany, New York 12237.



4. This Order shall be effective upon service on the Respondent or the Respondent's attorney by personal service or by certified or registered mail.

DATED: Cambridge, New York  
October 15, 1993

  
AARON B. STEVENS, M.D.  
Chairman

TRENA DE FRANCO  
BERNARD POLLARA, M.D.

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APPENDIX I

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

-----X  
IN THE MATTER : NOTICE OF  
OF : REFERRAL  
DAVID REED, M.D. : PROCEEDING  
-----X

TO: DAVID REED, M.D.  
109 South Front Street  
Marquette, Michigan 49855

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law Section 230(10)(p) (McKinney Supp. 1993) and N.Y. State Admin. Proc. Act Sections 301-307 and 401 (McKinney 1984 and Supp. 1993). The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 6th day of October, 1993 at 11:00 o'clock in the forenoon of that day at New York State Department of Health, Corning Tower, Room 2509, Empire State Plaza, Albany, New York 12237.

At the proceeding, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the proceeding will be made and the witnesses at the proceeding will be sworn and examined.

You may appear in person at the proceeding and may be represented by counsel. You may produce evidence or sworn testimony on your behalf. Such evidence or sworn testimony shall be strictly limited to evidence and testimony relating to the nature and severity of the penalty to be imposed upon the licensee. Where the charges are based on the conviction of state law crimes in other jurisdictions, evidence may be offered which would show that the conviction would not be a crime in New York State. The Committee also may limit the number of witnesses whose testimony will be received, as well as the length of time any witness will be permitted to testify.

If you intend to present sworn testimony, the number of witnesses and an estimate of the time necessary for their direct examination must be submitted to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Corning Tower Building, 25th Floor, Empire State Plaza, Albany, New York 12237, ATTENTION: Nancy Massaroni (henceforth "Bureau of Adjudication") as well as to the Department of Health attorney indicated below, on or before September 27, 1993.

You may file a written answer, brief, and affidavits with the Committee. Seven copies of all papers you wish to submit must be filed with the Bureau of Adjudication at the address indicated above on or before September 27, 1993, and a copy of all papers must be served on the same date on the Department of

Health attorney indicated below. Pursuant to Section 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 proceeding may be held whether or not you appear. Please note that requests for adjournments must be made in writing to the Bureau of Adjudication at the address indicated above, with a copy of the request to the attorney for the Department of Health, whose name appears below, at least five days prior to the scheduled date of the proceeding. Adjournment requests are not routinely granted. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation. Failure to obtain an attorney within a reasonable period of time prior to the proceeding will not be grounds for an adjournment.

The Committee will make a written report of its findings, conclusions as to guilt, and a determination. Such determination may be reviewed by the administrative review board for professional medical conduct.

SINCE THESE PROCEEDINGS MAY RESULT IN A  
DETERMINATION THAT SUSPENDS OR REVOKES YOUR LICENSE  
TO PRACTICE MEDICINE IN NEW YORK STATE AND/OR  
IMPOSES A FINE FOR EACH OFFENSE CHARGED, YOU ARE

URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN  
THIS MATTER.

DATED: Albany, New York  
*August 26, 1993*

*Peter D. Van Buren*  
\_\_\_\_\_  
PETER D. VAN BUREN  
Bureau of Professional Medical  
Conduct

Inquiries should be addressed to:  
Kevin P. Donovan  
Assistant Counsel  
(518) 474-8266

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

-----X  
IN THE MATTER : STATEMENT  
OF : OF  
DAVID REED, M.D. : CHARGES  
-----X

DAVID REED, M.D., the Respondent, was authorized to practice medicine in New York State on August 31, 1972, by the issuance of license number 114039 by the New York State Education Department. The Respondent is not currently registered with the New York State Education Department to practice medicine in New York State. Respondent's last known address is 109 South Front Street, Marquette, Michigan 49855.

FACTUAL ALLEGATIONS

A. By Order dated May 19, 1993, the Board of Medicine of the State of Michigan found that Respondent had engaged in a sexual relationship with a patient for whom he had provided psychiatric care and treatment shortly after termination of the physician-patient relationship, was found to have been negligent, to have not conformed to minimal professional standards and to be lacking in good moral character in violation of Public Health Code 16221 (a), (b)(1), and (b)(vi) (see MCL

333.1101 et seq.) and was placed on probation for a period of three years.

B. The conduct resulting in the disciplinary action in Michigan and/or the findings of the Michigan Board of Medicine would, if committed in New York State, constitute the following misconduct under the law of New York State: moral unfitness in the practice of medicine, within the meaning of New York Education Law §6530(20) (McKinney Supp. 1993).

#### FIRST SPECIFICATION

The Respondent is charged with professional misconduct within the meaning of New York Education Law §6530(9)(b) (McKinney Supp. 1993) in that he had been found guilty of improper professional practice or 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:

1. The facts of paragraphs A and B.

#### SECOND SPECIFICATION

The Respondent is charged with professional misconduct within the meaning of New York Education Law §6530(9)(d) (McKinney Supp. 1993) in that he had disciplinary action taken, after a disciplinary action was instituted by a duly authorized



professional disciplinary agency of another state, where the conduct resulting in the discipline would, if committed in New York State, constitute professional misconduct under the laws of New York State, in that Petitioner charges:

2. The facts of paragraphs A and B.

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DATED: Albany, New York

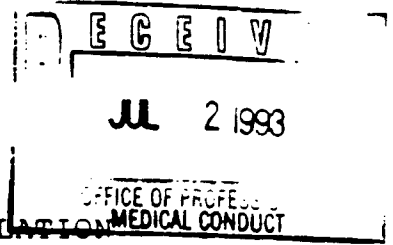
*August 26, 1993*

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

:

APPENDIX II

STATE OF MICHIGAN  
DEPARTMENT OF COMMERCE  
BUREAU OF OCCUPATIONAL AND PROFESSIONAL REGULATION  
BOARD OF MEDICINE



In the Matter of

DAVID MICHAEL REED, M.D.

CONSENT ORDER AND STIPULATION

CONSENT ORDER

WHEREAS, an administrative complaint was issued on December 22, 1992, charging David Michael Reed, M.D., hereafter Respondent, with having violated section 16221(a), (b)(i), (b)(vi) of the Public Health Code, 1978 PA 368, as amended; MCL 333.1101 et seq; MSA 14.15(1101) et seq; and

WHEREAS, Respondent has admitted, by stipulation submitted herewith, that the facts alleged in the aforesaid complaint are true and constitute violations of the Public Health Code, supra, as set forth in said complaint; and

WHEREAS, the Board of Medicine, hereafter Board, has reviewed said stipulation and, based upon the matters asserted therein, agrees that the public interest is best served by resolution of the outstanding complaint; ~~now~~ therefore,

State of Michigan  
We certify that the foregoing is a true copy  
of the original on file in the office of the  
Department of Commerce - Bureau of Occu-  
pational and Professional Regulation - Office  
of Legal Resources

Paul E. Rice 6/25/93 327

IT IS HEREBY FOUND that the allegations of fact and law set forth in the aforesaid complaint are true and constitute violations of section 16221(a),(b)(i),(b)(vi) of the Public Health Code, supra, as set forth in said complaint.

Accordingly,

IT IS ORDERED that for the aforesaid violations of the Public Health Code, supra, Respondent shall be and hereby is placed on PROBATION for a period of three (3) years, commencing on the effective date of this order. The terms of probation shall be as follows:

1. MONITORING PHYSICIAN REPORTS. Respondent's practice of psychiatry shall be monitored on a monthly basis by Joseph M. Cools, M.D., a board-certified psychiatrist, or by another psychiatrist approved by the Board, who shall submit quarterly reports to the Board indicating the method of monitoring utilized, cases reviewed and concerns raised, the status of Respondent's emotional health and well-being, and Respondent's ability to practice in a safe and competent manner.
2. RESPONDENT'S REPORTS. Respondent shall file quarterly reports with the Board advising of Respondent's relationship with his monitoring physician, significant stressors, any therapy recommended or pursued, practice status and any other activities relative to Respondent's ability to practice in a safe and competent manner.
3. COSTS. Respondent shall be solely responsible for payment of all costs incurred in complying with the terms of this order.

We certify that foregoing is a true and correct copy of the original on file in the Department of Commerce - Bureau of Occupational and Professional Regulation - Office of Legal Resources.

Henry E. Hertz 6/25/92 917

4. REPORTING PROCEDURE. All reports required herein shall be filed on a quarterly basis, the first report to be filed at the end of the third (3rd) month of probation, and subsequent reports to be filed every three (3) months thereafter until Respondent is discharged from probation or the reporting requirement is waived by the Board upon Respondent's release from treatment.

In addition to receiving reports as required herein, the Board or its authorized representative may periodically contact the reporting individuals or agencies to inquire of Respondent's progress. Respondent authorizes release of said information as specifically set forth in the stipulation made a part hereof.

All reports required herein shall be filed with the Board, c/o Compliance Section, Office of Legal Services, Bureau of Occupational and Professional Regulation, Department of Commerce, P.O. Box 30018, Lansing, Michigan 48909.

The timely filing of all reports required herein shall be Respondent's responsibility, and failure to file said reports within the time limitations herein provided shall be deemed a violation of an order of the Board.

IT IS FURTHER ORDERED that Respondent shall immediately provide copies of the within consent order and stipulation to Respondent's monitoring physician prior to commencement of the probationary period; further, in the event Respondent wishes to change monitoring physicians, Respondent shall first obtain the Board's advance approval for the proposed change and shall provide copies of the within consent order and stipulation to each successor monitoring physician, which successor shall continue to comply with the terms of the within order.

Witness my hand and seal of the Department of Commerce - Bureau of Occupational and Professional Regulation - Office of Legal Resources.

Ray E. Hess 6/25/93 S27

IT IS FURTHER ORDERED that Respondent shall be automatically discharged from probation at the end of the probationary period, PROVIDED Respondent has complied with the terms of this order and has not violated the Public Health Code, supra.

:

IT IS HEREBY ORDERED that for the aforesaid violations of the Public Health Code, supra, Respondent shall be and hereby is REPRIMANDED.

IT IS FURTHER ORDERED that for the aforesaid violations of the Public Health Code, supra, Respondent shall be and hereby is assessed a FINE in the total amount of two thousand dollars (\$2000.00), to be paid to the State of Michigan within six (6) months of the effective date of this order.

IT IS FURTHER ORDERED that the aforesaid fine shall be mailed to the Board, c/o Compliance Section, Office of Legal Services, Bureau of Occupational and Professional Regulation, Department of Commerce, P.O. Box 30185, Lansing, Michigan 48909.

IT IS FURTHER ORDERED that timely payment of the fine as herein required shall be Respondent's responsibility, and should Respondent fail to pay said fine within the time

State of Michigan  
Ingham County

We certify that the foregoing is a true copy of the original on file in the office of the Department of Commerce - Bureau of Occupational and Professional Regulation - Office of Legal Resources.

Mary E. Hertz 6/25/13 s.m.

limitations herein provided, the Board may determine that Respondent has violated an order of the Board and may proceed pursuant to 1980 AACR, R 338.983 and section 16221(g) of the Public Health Code, supra.

IT IS FURTHER ORDERED that in the event Respondent violates any provision of this order, the Board may reconsider the disciplinary action taken in the present matter; further, if such violation is deemed by the Board to constitute an independent violation of the Public Health Code, supra, or the rules promulgated pursuant thereto, the Board may proceed to take disciplinary action based upon such violation.

IT IS FURTHER ORDERED that this order shall be effective thirty (30) days from the date signed by the Board, as set forth below.

Signed this 17<sup>th</sup> day of May, 1993.

MICHIGAN BOARD OF MEDICINE

By Philip Margolis  
Philip Margolis, M.D.  
Chairperson

I hereby approve the above order both as to form and substance.

Max R. Hoffman, Jr.  
Max R. Hoffman, Jr.  
Attorney for Respondent

State of Michigan  
Ingham County

We certify that the foregoing is a true copy of the original on file in the Department of Commerce - Bureau of Occupational and Professional Regulation - Office of Local Registration

CONTINUED ON PAGE 6

Debra E. Deen 6/25/93 SP2