



New York State Board for Professional Medical Conduct

433 River Street, Suite 303 Troy, New York 12180-2299 • (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 1, 1998

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Michael Volpe, M.D.
84 Campus Road
Staten Island, New York 10301

RECEIVED
Physician Monitoring

SEP 01 1998

Office of Professional
Medical Conduct

RE: License No. 129309

Dear Dr. Volpe:

Enclosed please find Order #BPMC 98-175 of the New York State Board for Professional Medical Conduct. This Order and any penalty provided therein goes into effect **September 1, 1998**.

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: Nathan Dembin, Esq.
225 Broadway
New York, New York 10007

Roy Nemerson, Esq.

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

**IN THE MATTER
OF
MICHAEL VOLPE, M.D.**

**CONSENT
AGREEMENT
AND
ORDER**

BPMC #98-175

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

MICHAEL VOLPE, M.D., being duly sworn, deposes and says:

That in or about 1976, I was licensed to practice as a physician in the State of New York, having been issued License No. 129309 by the New York State Education Department.

My current address is 84 Campus Road, Staten Island, NY 10301, my office address is 1722 85th Street, Brooklyn, NY 11214, and I will advise the Director of the Office of Professional Medical Conduct of any change of my address.

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

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

I agree not to contest the specification of misconduct, in full satisfaction of the charges against me. I hereby agree to the following penalty:

I shall be subject to a two year period of probation, pursuant to the terms set forth in Exhibit "B".

I further agree that the Consent Order for which I hereby apply shall impose a condition that, except during periods of actual

suspension, I 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 shall be in effect beginning thirty days after the effective date of the Consent Order and continuing 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 hereby stipulate that any failure by me to comply with such condition shall constitute misconduct as defined by New York State Education Law §6530(29)(McKinney Supp 1998).

I agree that in the event I am charged with professional misconduct in the future, this agreement and order shall be admitted into evidence in that proceeding.

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 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 Consent 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 Consent Order for which I hereby apply, whether administratively or judicially, and ask that the Application be granted.

AFFIRMED:

DATED 7/9/28


MICHAEL VOLPE, M.D.
RESPONDENT

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

DATE: 7/9/98


NATHAN DEMBIN, ESQ.
Attorney for Respondent

DATE: 8/12/98


ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct

DATE: 8/17/98


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
MICHAEL VOLPE, M.D.**

**CONSENT
ORDER**

98-175

Upon the proposed agreement of MICHAEL VOLPE, M.D. (Respondent) for Consent Order, which application is made a part hereof, it is agreed to and ORDERED, that the application and the provisions thereof are hereby adopted and so ORDERED, and 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 Consent 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: 8/23/98

Patrick F. Carone, M.D.
PATRICK F. CARONE, M.D., M.P.H.
Chairperson
State Board for Professional
Medical Conduct

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

**IN THE MATTER
OF
MICHAEL VOLPE, M.D.**

**STATEMENT
OF
CHARGES**

MICHAEL VOLPE, M.D., the Respondent, was authorized to practice medicine in New York State on or about 1976, by the issuance of license number 129309 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. At times prior to September of 1997, Respondent was an habitual abuser of alcohol.

SPECIFICATION OF CHARGES

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(8)(McKinney Supp. 1998) by being a habitual abuser of alcohol as alleged in the facts of the following:

- 1. Paragraph A.

EXHIBIT "A"

DATED: July , 1998
New York, New York

ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct

EXHIBIT "B"**Terms of Probation**

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 addressed to the Director of the Office of Professional Medical Conduct, New York State Department of Health, 433 River Street, Suite 303, Troy, NY 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. Any civil penalty not paid by the date prescribed herein shall be subject to all provisions of law relating to debt collection by New York State. This includes but is not limited to the imposition of interest, late payment charges and collection fees; referral to the New York State Department of Taxation and Finance for collection; and non-renewal of permits or licenses [Tax Law section 171(27)]; State Finance Law section 18; CPLR section 5001; Executive Law section 32].
5. The period of probation shall be tolled during periods in which Respondent is not engaged in the active practice of medicine in New York State. Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in or intends to leave the active practice of medicine in New York State for a period of thirty (30) consecutive days or more. Respondent shall then notify the Director again prior to any change in that status. The period of probation shall resume and any terms of probation which were not fulfilled shall be fulfilled upon Respondent's return to practice in New York State.
6. 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.
7. 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.

8. Respondent shall remain drug/alcohol free.
9. Respondent shall notify all treating physicians of his/her history of alcohol/chemical dependency. Respondent shall advise OPMC of any controlled or mood-altering substance given or prescribed by treating physicians.
10. Respondent shall practice only when monitored by qualified health care professional monitors (sobriety monitor, practice supervisor, and therapist) proposed by Respondent and approved, in writing, by the Director of OPMC. Monitors shall not be family members or personal friends, or be in professional relationships which would pose a conflict with monitoring responsibilities.
11. Respondent shall ensure that the monitors are familiar with Respondent's drug/alcohol dependency and with the terms of this Order. Respondent shall cause the monitors to report any deviation from compliance with the terms of this Order to OPMC. Respondent shall cause the monitors to submit required reports on a timely basis.
12. Respondent shall submit, at the request of a monitor, to random, unannounced observed blood, breath and/or urine screens for the presence of drugs/alcohol. This monitoring will be on a random, seven-days a week, twenty-four hours a day basis. Respondent shall report for a drug screen within four (4) hours of being contacted by the monitor. Respondent shall cause the monitor to report to OPMC within 24 hours if a test is refused or delayed by Respondent or a test is positive for any unauthorized substance.
13. Respondent shall meet with a sobriety monitor on a regular basis who will submit quarterly reports to OPMC certifying Respondent's sobriety. These reports are to include a) forensically valid results of all drug/alcohol monitoring tests to be performed at a frequency of no less than six times per month for the first 12 months of the period of probation, then at a frequency to be proposed by the sobriety monitor and approved by OPMC.
14. Respondent shall practice medicine only when supervised in his/her medical practice, and all surgical practice shall be performed at the hospital at which the practice supervisor practices. The practice supervisor shall have access on-site at all locations where the Respondent practices, unless determined otherwise by the Director of OPMC. Respondent shall not practice medicine until a practice supervisor has been approved. Respondent shall ensure that the practice supervisor is in a position to regularly observe and assess Respondent's medical practice. Respondent shall cause the practice supervisor to report within 24 hours any suspected impairment, inappropriate behavior, questionable medical practice or possible misconduct to OPMC.
15. Respondent shall cause the practice supervisor to review Respondent's practice regarding the prescribing, administering, dispensing, inventorying, and disposal of controlled substances.
16. Respondent shall cause the practice supervisor to submit quarterly reports to OPMC regarding the quality of Respondent's medical practice, including the evaluation and treatment of patients, physical and mental condition, time and attendance or any unexplained absences from work, prescribing practices, and compliance or failure to comply with any term of probation.

17. Respondent shall continue in counseling or other therapy with a therapist as long as the therapist determines is necessary, or for the period of time dictated in the Order.
18. Respondent shall cause the therapist to submit a proposed treatment plan and quarterly reports to OPMC certifying whether Respondent is in compliance with the treatment plan. Respondent shall cause the therapist to report to OPMC within 24 hours if Respondent leaves treatment against medical advice, or displays any symptoms of a suspected or actual relapse.
19. Respondent shall comply with any reasonable request from OPMC to obtain an independent psychiatric/chemical dependency evaluation by a health care professional proposed by the Respondent and approved, in writing, by the Director of OPMC.
20. Respondent shall comply with all terms, conditions, restrictions, limitations and penalties to which he or 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.
21. In the event that the Director receives blood, breath and/or urine screen evidence of any alcohol or drug use by Respondent in violation of term number 8, above, the Director shall have the authority to Order Respondent to immediately cease all medical practice in the State of New York, and upon such Order, Respondent shall immediately cease such practice.
 - a. Such Order shall be effective upon issuance and shall be delivered or communicated to the Respondent in a manner reasonably calculated to reach him, including but not limited to delivery by hand or mail to either of the premises listed above, on page one of this Consent Agreement or, if Respondent at such time has notified the Director of a subsequent residence or practice address, at any such new address.
 - b. In the event that the Director issues such an Order, she shall provide documentation of the blood, breath and/or urine screen evidence of any alcohol or drug use by Respondent upon which the Director bases such Order to the Respondent upon his written request within three business days of such request.
 - c. In the event that the Director issues such an Order, Respondent may request the convening of a Committee on Professional Conduct for the purpose of obtaining impartial review of the nature and reliability of the evidence relied upon for the issuance of such Order and the propriety of continuing such Order in effect, modifying it, or terminating it. Such Committee shall be convened and shall commence such review within 20 days of the Director's receipt of Respondent's written request for such review. Such Committee shall issue a Determination consistent with such review no more than 14 days after the completion of the taking of evidence in such review. Such Determination shall not be subject to further review by the

Administrative Review Board, but Respondent shall retain all rights to review by a court of competent jurisdiction.

- d. Regardless of whether or not Respondent seeks review by such Committee and/or Court, the Director of the Office of Professional Medical Conduct, the Commissioner of the Department of Health, and the State Board for Professional Medical Conduct [the Department] shall retain all other powers granted by the Public Health Law and/or the Education Law, and Respondent shall retain all rights with regard to the exercise of such other powers by the Department.
- e. Any practice of medicine in violation of either the Consent Order or an Order issued pursuant to paragraph 21 thereof, shall be deemed "unauthorized," and may subject Respondent to further misconduct proceedings pursuant to §230 of the Public Health Law and/or §6530 of the Education Law, and/or criminal proceedings related to the unauthorized practice of medicine as defined in §6512 of the Education Law.