STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303 Troy, New York 12180-2299

Antonia C. Novello, M.D., M.P.H. , Dr.P.H.
*Commissioner*

Dennis P. Whalen
*Executive Deputy Commissioner*

February 5, 2003

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Joseph S. Tulumello, M.D.
969 Campbell Boulevard
Amherst, New York 14228

Lee A. Davis, Esq.
NYS Department of Health
Bureau of Professional Medical Conduct
Corning Tower - Room 2512
Empire State Plaza
Albany, New York 12237

**RE: In the Matter of Joseph S. Tulumello, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 03-32) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the 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 together with the registration certificate. Delivery shall be by either certified mail or in person to:

Office of Professional Medical Conduct
New York State Department of Health
Hedley Park Place
433 River Street - Fourth Floor
Troy, New York 12180

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 then 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 (i), and §230-c subdivisions 1 through 5, (McKinney Supp. 1992), "the 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 penalties other than suspension or revocation 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.

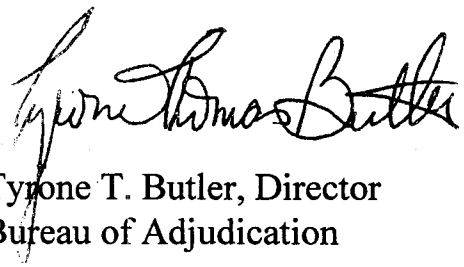
The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Hedley Park Place
433 River Street, Fifth Floor
Troy, New York 12180

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.

Sincerely,



Tyrone T. Butler, Director
Bureau of Adjudication

TTB:djh
Enclosure

STATE OF NY : DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

COPY

IN THE MATTER
OF

Joseph Tulumello, M.D.

DETERMINATION
AND
ORDER

BPMC #03-032

**William K. Major, M.D., CHAIRPERSON, Sandra L. Williams, R.N.** and **RICHARD LEE, M.D.**, duly designated members of the State Board for Professional Medical Conduct, appointed by the Commissioner of Health of the State of New York pursuant to Section 230(1) of the Public Health Law, served as the Hearing Committee in this matter pursuant to Section 230(10)(e) of the Public Health Law. **Timothy J. Trost, ESQ.**, Administrative Law Judge, served as Administrative Officer for the Hearing Committee.

After Consideration of the entire record, the Hearing Committee submits this Determination and Order.

## SUMMARY OF THE PROCEEDINGS

| | |
|---|---|
| Notice of Hearing and Statement of Charges: | September 30, 2002 |
| Pre-Hearing Conference: | November 1, 2002 |
| Hearing Date: | November 6, 2002 |
| Respondent did not appear | December 3, 2002 |
| | December 19, 2002 |

Place of Hearing: Radisson at the Airport
4243 Genesee Street
Buffalo, NY 14225

Date of Deliberations: December 19, 2002

Petitioner appeared by: Lee A. Davis, Esq.
Assistant Counsel
NYS Department of Health
Bureau of Professional
Medical Conduct
Corning Tower, Room 2512
Empire State Plaza
Albany, New York 12237

Respondent appeared by(pre-hearing only):
Mark G. Farrell, ES.
4455 Transit Road
Williamsville, NY 14221

Respondent was PRO SE for the hearing.

**WITNESSES**

**For the Petitioner:**

Debra Caulfield
Sandra King
Lynne Wegner
Howard C. Wilinsky, M.D.
Brian Joseph, M.D.
Richard E. Wolin, M.D. EXPERT.

**For the Respondent:**

Respondent called no witnesses.

## STATEMENT OF CHARGES

Respondent is charged with having a psychiatric condition which impairs the ability to practice, practicing while impaired, negligence on more than one occasion, incompetence on more than one occasion, failure to maintain records and four specifications of fraudulent practice.

A copy of the statement of charges is attached hereto and made a part hereof.

## FINDINGS OF FACT

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 evidence. All Hearing Committee findings were unanimous unless otherwise specified. All exhibits with numbers are Petitioner exhibits. All exhibits with letters are Respondent's.

## DEFINITIONS OF MISCONDUCT

The definitions of misconduct used in this case are those set out in the Memorandum from Health Department

General Counsel, Henry Greenberg, dated November 25, 1999. This Memorandum provides as follows:

**Negligence** is failure to exercise the care that would be exercised by a reasonably prudent licensee under the circumstances.

**Incompetence** is a lack of the skill or knowledge necessary to practice the profession.

**Fraudulent Practice of Medicine** is defined as the intentional misrepresentation or concealment of a known fact, in some connection with the practice of medicine and made with the intent to deceive. An individual's knowledge that he or she is making a misrepresentation or concealing a known fact with the intention to mislead may properly be inferred from certain facts. Fraud is also a statement or representation with reckless disregard to the truth of the statement or representation.

## EXPERT TESTIMONY AND WITNESS CREDIBILITY

### Expert Testimony

**Richard E. Wolin, M.D.** testified as an expert witness for Petitioner in this proceeding. T-165-220. Dr. Wolin's curriculum vitae was admitted into evidence as Petitioner's Exhibit 13. Dr. Wolin is a Clinical Psychiatrist in the Buffalo Area and his testimony and curriculum vitae

demonstrate he is well educated and well trained in the field of psychiatry. Dr. Wolin testified that he is familiar with Bipolar Disorder and that it is an area of psychiatry that he had "great professional interest in." (T-168-169). Dr. Wolin testified that approximately 25-30 percent of his practice is devoted to the treatment of Bipolar Disorders. (T-168-169). Dr. Wolin demonstrated a comprehensive understanding of the records and material at issue in this proceeding. His testimony was authoritative and insightful. He demonstrated no bias and, at times, expressed compassion and understanding for the plight of the Respondent. He was an informative and credible witness.

**Factual Witnesses:**

Petitioner called five factual witnesses in this case:

Debra Caulfield, an Investigator with the United States Drug Enforcement Agency (DEA); Sandra King, a Pharmacist; Lynne Wegner, a Pharmacist and two Clinical Psychiatrists, both of whom have treated Respondent, Howard C. Wilinsky, M.D. and Brian Joseph, M.D.

**Debra Caulfield** testified regarding her knowledge of the DEA registration process. Ms. Caulfield also testified regarding the status of Respondent's DEA number as of

November 2001 and currently. Her testimony was factual in nature and contained information she received from DEA files regarding Respondent's DEA number. She was a credible witness.

**Sandra King** is a Pharmacist in the Buffalo Area who dealt with Respondent regarding the filling of his prescriptions and his attempts to self-prescribe Ambien, a controlled substance. Ms. King provided credible, unbiased testimony as evidenced by Respondent's statement that, "Everything she said is also quite accurate." (T-50).

**Lynne Wegner** is also a Pharmacist in the same Buffalo Area pharmacy as Ms. King. Her testimony was straight forward, credible and unbiased as demonstrated by Respondent's comment, "She's perfectly right." (T-58).

**Howard C. Wilinsky, M.D.** testified with regard to his treatment of Respondent on three separate occasions as a psychiatric patient at the Buffalo General Hospital. His testimony was largely an explanation of the medical records (particularly the initial history and physical examinations and discharge summaries) that he generated. His testimony was most informative and demonstrated a knowledge both of

Respondent and Bipolar Disorder. Dr. Wilinsky was a credible witness.

**Brian Joseph, M.D.** is a Psychiatrist in the Buffalo Area and was Respondent's clinical psychiatrist for approximately two years. His testimony, in large part, explained his medical record of his treatment of Respondent during the two year period. Dr. Joseph demonstrated a knowledge of Bipolar Disorder and of Respondent's treatment course. Dr. Joseph testified in a straightforward, unbiased manner. He was a credible witness.

## GENERAL FINDINGS AS TO THE RESPONDENT

1. Joseph S. Tulumello, M.D., the Respondent, was authorized to practice medicine in New York State on or about February 28, 1972, by the issuance of license number 111838 by the New York State Education Department. (Ex. 3a, p. 2).
2. Respondent is currently registered with the New York State Education Department to practice medicine. (Ex. 3b, pp. 12&13).

## FINDINGS RELATED TO RESPONDENT'S IMPAIRMENT

3. Respondent was initially diagnosed with Bipolar Disorder in 1978. (Ex. 4, p. 26).

4. Bipolar Disorder is a major mental disorder that is characterized by pronounced mood swings, both highs and lows, although there are rare forms of Bipolar Disorder that are characterized solely by recurrent manic episodes. (T-184, 209). In the periods of depression, the individual is flat, depressed and can become suicidal. (T-184). On the manic side, the individual is expansive, euphoric. The patient speaks rapidly and is irritable. The patient's thoughts are racing and the patient engages in behavior that puts them in jeopardy, such as difficulties with the law, spending money inappropriately, sexual indiscretions and poor business judgment. (T-184-185).

5. Bipolar Disorder is similar to Epilepsy or Diabetes. The earlier the condition is treated and the more vigorously it is treated into full sustained remission, the better the prognosis is of the condition. If medication is taken inconsistently,

the condition can deteriorate and become refractory or resistant to treatment. (T-181).

6. On March 2, 2000, Respondent commenced psychiatric treatment with Brian J. Joseph, M.D., who performed a psychiatric evaluation of Respondent on that date. (T-116; Ex. 4, p. 26).

7. Respondent has been hospitalized on at least four occasions since 1990 because of his Bipolar Disorder. The admission dates of these hospitalizations were on or about September 30, 1990 (Ex. 8, pp. 7, 9-10); June 16, 2001 (Ex. 6, pp. 4-5); March 5, 2002 (Ex. 7, pp. 4-6) and September 26, 2002 (Ex. 14).

8. At the time of his initial consultation with Dr. Joseph, Respondent was taking the following medications: Depakote 1000 mg. in the morning, 1500 mg. at bedtime and Lithium 450 mg. in the morning and 900 mg. at bedtime. (Ex. 4, p. 26).

9. At the time of his initial evaluation with Dr. Joseph, Respondent was diagnosed as being affected with Bipolar Disorder in remission. (T-123-124; Ex. 4, p. 27).

10. Between March 2000 and approximately January 2002, Respondent met regularly with his psychiatrist, Dr. Joseph, accompanied on occasion by his fiancee,

Susan, and/or brother, Santo. (T-124; Ex. 4. pp. 30-48).

11. During his course of treatment with Dr. Joseph, Respondent's condition deteriorated with increased irritability and irrationality. Respondent's adherence to his medication regimen was also inconsistent. (T-124-125; 130).

12. At the conclusion of his treatment with Dr. Joseph, it was the opinion of Dr. Joseph that Respondent lacked insight and understanding of the nature of his illness and the affect it had upon him and that the situation was deteriorating. (T-130).

13. Respondent had chronic difficulty sleeping which caused not only fatigue but served to perpetuate his manic state. Consequently, he was prescribed medications to assist him with his sleep. (T-137-138).

14. Dr. Joseph prescribed Trazodone as a sleep agent, as well as clonazepam. (T-139; Ex. 4, p. 4). In January 2001, Respondent was taken off Lithium and placed on Depakote as a substitute for Lithium. (T-140-141; Ex. 4, p. 39). Respondent was also on Topamax (T-140; Ex. 4, p. 4). Topamax is a mood

stabilizer which will also encourage weight loss. (T-140).

**JUNE 11-16, 2001 PSYCHIATRIC HOSPITALIZATION**

15. From June 11, 2001 through June 16, 2001, Respondent was hospitalized at the Buffalo General Hospital for his Bipolar Disorder. The attending physician for the hospitalization was Howard C. Wilinsky, M.D. who was covering for Dr. Joseph. (T-63, 135-136; Ex. 4, p. 7-11; Ex. 6).

16. Respondent spoke with Dr. Wilinsky by telephone prior to his June 11, 2001 admission to the Buffalo General Hospital. (T-63; Ex. 6, p. 35). Dr. Wilinsky observed Respondent to have pressured thought and speech with irritability and poorly controlled anger during the telephone conversation. (T-63-64; Ex. 6, p. 35).

17. Dr. Wilinsky recommended that Respondent be taken directly to the Niagara Falls Memorial Hospital to be examined psychiatrically, as that was the closest facility to Respondent. There were no psychiatric beds currently at the Erie County Medical Center or Buffalo General Hospital at that time. (T-64-65).

Respondent was subsequently admitted to the Buffalo General Hospital. (T-65).

18. Prior to June 11, 2001 psychiatric hospitalization, Respondent stopped taking his prescribed medications. (T-66-67; 70; 142-143; Ex. 6, p. 35; Ex. 4, pp. 142-143, Entry of June 19, 2001).

19. The medications that Respondent stopped taking, Topamax and Trazodone, are used as mood stabilizers for individuals with Bipolar Disorder. (T-66-67; 70; 140).

20. It is anticipated that a manic episode will occur within three months if an individual with a history of prior manic episodes stops taking Topamax and Trazodone. (T-70).

21. At the time of his admission to the Buffalo General Hospital on June 11, 2001, Respondent was suffering from a psychotic decompensation of Bipolar Affective Disorder. (T-70; 96-100; Ex. 6, p. 35).

22. Respondent demonstrated significant elements of behavior at the time of his June 11, 2001 admission that were consistent with a manic episode. There was a general state of psychomotor excitation, his rate of thought and speech were pressured and excessive; logic was impaired; he was markedly distractible;

there was loss of thought goals; there was general expansiveness and grandiosity in his thinking and a denial of a disorder or need for medication. (T-68-69, Ex. 6, pp. 35, 36).

23. Preoccupied distractibility is a hallmark of Bipolar Disorder. (T-194).

24. Respondent stabilized rapidly during his hospital course of June 11 through June 16, 2001 after being placed in a structured environment with medication and boundaries of the hospital. The observations of the mood stabilization were observed by the attending physician. (T-71; Ex. 6, p. 5).

25. The medications that Respondent adhered to during the course of his hospitalization were the two that he had discontinued prior to the hospitalization, in addition to the medication Depakote. (T-71; Ex. 6, pp. 4, 5).

26. The nurses' notes of Respondent's psychiatric hospitalization of June 2001 are consistent with one who is in a manic state. (T-94-95; Ex. 6, pp. 38-39).

27. The nurses' notes include intrusive behavior on the part of the Respondent to such a point they required the medication Haldol. (T-94-95).

28. Respondent's behavior during the course of his June 2001 psychiatric hospitalization exhibited psychotic behavior. (T-96-97).

29. During Respondent's initial examination by the attending physician, his grandiosity and his declaration of a mission to somehow satisfy the hopes and requests of others are consistent with a manic episode and qualify as psychotic behavior. (T-97-98; 195-196).

30. Respondent asserted during his initial examination for his June 2001 psychiatric hospitalization that he was involved in numerous research projects which were not specified even upon further inquiry from the attending physician. The vague descriptions reflect wish fulfillment rather than actual valid endeavor. The lack of specificity or specified clear data or evidence that can be observed are also indications of this behavior which qualify as psychotic behavior. (T-98-100).

31. At the time of his discharge on June 16, 2001, Respondent's prognosis was guarded. This prognosis was based upon information received that Respondent experienced manic swings approximately every six months; he was inconsistent with his medication

compliance and he generally denied his condition (which is not uncommon with people experiencing manic or hypomanic phases). (T-73-75; Ex. 6, p. 5).

32. The guarded prognosis at the time of discharge was downgraded from the prognosis of fair at the time of his admission on June 11, 2001. The reason the prognosis was downgraded from fair to guarded was a loss of optimism by the attending physician after observing the course of Respondent during hospitalization. (T-96; Ex. 6, p. 36).

33. Part of the initial history and physical performed of Respondent for his June 11, 2001 psychiatric hospitalization of Buffalo General Hospital identified three weaknesses regarding the prognosis of Respondent: 1) failure to follow medical recommendations; 2) recurrence of mood swings, despite medication and 3) significant lack of insight as to the need to remain on medication continuously and to be examined at the first indication of mood swing. (Ex. 6, p. 37).

34. These weaknesses were identified by the attending physician based upon his interview and observation of Respondent. The attending physician concluded that Respondent lacked insight in relation to his need to

maintain himself on mood stabilizing medication continuously. Respondent was indicating at the time of his admission to the Buffalo General Hospital on June 11, 2002 that it was entirely appropriate for him not to take medication because he did not have a mood disorder. (T-76).

35. The attending physician concluded, based upon his initial examination of Respondent, that Respondent lacked the awareness of identifying the initial early symptoms of mood decompensation which would allow him to contact his treating psychiatrist as quickly as possible so that intervention could take place. (T-76-77).

36. Respondent's clinical psychiatrist similarly concluded that Respondent lacked insight and understanding of the nature of his illness and its effect upon him. Respondent displayed willful, determined and head strong traits which were viewed as symptoms of his illness. Respondent's private psychiatrist felt as though it was impossible to impact upon these symptoms given his lack of insight to his condition. (T-130).

37. Respondent's clinical psychiatrist attempted various combinations of medication to stem what he saw as the

deteriorating course of Respondent but, these were ultimately unsuccessful. Respondent's clinical psychiatrist stated that Respondent has deteriorated into a chronic hypomanic state wherein his judgment and insight are impaired. He is willful, somewhat grandiose to the point of becoming belligerent and irritable if denied his wishes even though he maintains the ability to present himself at any given moment in a reasonable way. (T-132-133).

38. Respondent's psychiatric hospitalization of June 2001 was consistent with the deteriorating course that he was experiencing. (T-136).

39. Respondent's behavior near the time of his June 2001 psychiatric hospitalization was consistent with one that is having difficulty controlling a Bipolar Disorder. (T-144; Ex. 4, p. 42; Entry of June 29, 2001).

40. Respondent spent excessive amounts of money (much of which was on credit) and was observed by his fiancee to be driving recklessly. This type of behavior is consistent with a manic episode. (T-144-148, Ex. 4., p. 42; Entries of June 29, 2001 and July 5, 2001; 184-185).

## SOCIAL SECURITY DISABILITY BENEFITS

41. On June 5, 2000, Respondent signed an application for disability insurance benefits from the United States Social Security Administration. (Ex. 16, p. 42).

42. Respondent listed his disabling condition as Bipolar Disorder. (Ex. 16, p. 39).

43. A law office on behalf of Respondent contacted Respondent's clinical psychiatrist with regard to his application for his Social Security Disability benefits. (T-133-134).

44. Respondent's psychiatrist was asked to conclude whether the patient was suitably disabled for Social Security and his psychiatrist so concluded. (T-134; Ex. 4, pp. 14-15; Ex. 16, pp. 138-140 & 146).

45. On January 23, 2001, Respondent was determined to be disabled pursuant to an "Affective Disorder." (Ex. 16, p. 2).

## MARCH 5-11, 2002 PSYCHIATRIC HOSPITALIZATION

46. On March 5, 2002, Respondent was hospitalized at the Buffalo General Hospital for Bipolar Affective Disorder, Manic, with Psychotic Decompensation. (Ex. 7, p. 11).

47. The attending physician for his hospitalization was Howard C. Wilinsky, M.D. (T-78; Ex. 7, pp. 11-13).

48. Respondent had been initially admitted to the medical service of Buffalo General Hospital but was given a psychiatric evaluation because he was refusing treatment recommendations of pneumonitis and asthma. The psychiatric consultation concluded that Respondent was in a manic state and that he be transferred to the service of Dr. Wilinsky as Director of Medical Psychiatric Service, where he was thereafter transferred. (T-79-80; Ex. 7, p. 11).

49. Respondent's history, upon admission, was that he had been non-compliant with psychotropic medication which he alleged he had not taken for several months including Depakote and Topamax. (T-79-80; Ex. 7, p. 11).

50. The admission history indicated that while Respondent was still under the care of his treating psychiatrist, Dr. Brian Joseph, he had not seen him for a period of time prior to this hospital admission. (T-79-80).

51. The basis for the Axis I diagnosis of Bipolar Affective Disorder, Manic with Psychotic

Decompensation was the attending physician's own mental status examination. (T-80).

52. The significant aspects of the mental status examination, which led to the Axis I diagnosis, included pressure of speech and high level of motor activity, including psychomotor excitation. The information offered by Respondent was unreliable and ever-changing. Shortly after transfer from the medical care, Respondent was placed in room seclusion because he was so intrusive into the space of other patients and staff. (T-80-81; Ex. 7, pp. 11-12).

53. Other significant aspects of the mental status examination included a high level of narcissism with very exaggerated sense of entitlement. Respondent's speech was pressured to the point of bordering on flight of ideas and his thought pattern was grandiose with questionable logic. (T-81; Ex. 7, pp. 11-12).

54. Respondent's affect was inappropriately euphoric and he was markedly irritable and easily frustrated. (T-81; Ex. 7, pp. 11-12).

55. Respondent insisted he did not have a Bipolar Disorder, only later to claim he did have a Mood Disorder and hoped to conquer it by sheer acts of his own will. The admitting physician opined that

Respondent's ideation was bordering on delusional. His insight, judgment and concentration, as a result of the psychomotor excitation, his exaggerated sense of entitlement and tendency toward grandiosity in his thinking, reflected severe impairment. The admitting physician observed that Respondent was so pressured in speech and thought that his concentration was impaired. (T-82; Ex. 7, pp. 11-12).

56. The mental status examination of Respondent, performed at the time of his March 5, 2002 psychiatric hospitalization, is "…a full-blown picture of a person in mania." (T-185; 187-189).

57. Through his hospital course, Respondent required very firm boundaries and limit setting because he was so intrusive and it was difficult to redirect him through appropriate activities. (T-83; Ex. 7, p. 5).

58. Respondent was placed on relatively high doses of Depakote and Klonopin to calm him and stabilize his mood. (T-83-84; Ex. 7, p. 5).

59. Gradually through the course of the hospitalization, Respondent calmed down and was eventually discharged on March 11, 2002. (T-84; Ex. 7, pp. 4-5).

60. Upon discharge, Respondent's prognosis was listed as poor to guarded because of his lack of awareness of

decompensation, his impaired insight in judgment and his failure to follow medical recommendations consistently. (T-84-85; Ex. 7, p. 5).

**SEPTEMBER 26-30 2002 PSYCHIATRIC HOSPITALIZATION**

61. On September 26, 2002, Respondent presented himself to the Buffalo General Hospital and was voluntarily admitted to the psychiatric service with an admitting diagnosis of Bipolar Affective Disorder, Hypomanic. The attending physician was again, Howard C. Wilinsky, M.D. (T-86; Ex. 14).

62. Respondent was admitted after he presented himself to the Buffalo General Hospital indicating that he had been staying with his mother, who he asserted has a form of dementia. Respondent's brother came into town and there was an altercation with the brother at the home and police were called. Respondent was informed to leave the home. Respondent had about $40 and decided he would bring himself to the hospital for a possible admission. (T-88; Ex. 14, pp. 1-2).

63. The emergency room counselor described Respondent in a moderate state of psychomotor excitation which is defined as hypomanic, less than the classic manic state. (T-88, Ex. 14).

64. The attending physician felt that it was appropriate to admit Respondent at this time particularly in light of the altercation with the police. It was learned that the police had been previously called on several occasions in the preceding months. (T-89).

65. At the time of the admission, Respondent was no longer seeing his private outpatient psychiatrist. (T-89).

66. Respondent received the medication Depakote during his hospital course. (T-90; Ex. 14, p. 2).

67. Respondent's attending physician opined that Respondent should take whatever medication he tolerates that will effectively assist him in controlling his Bipolar Mood Disorder, including Depakote, Topamax and Klonopin that he received during his previous hospitalizations of June 2001 and March 2002. (T-92-93).

68. Based upon the material contained in Respondent's private treating physiatrist chart and hospitalization of June 2001 and June of 2002, Respondent has a long-standing diagnosis of Bipolar Disorder. (T-198).

69. Respondent's hospitalization of September 26, 2002 contains material consistent with a bipolar

diagnosis, such as Respondent's failure to follow through on medication which has been clinically demonstrated to stabilize him and his failure to continue a pattern of treatment that could bring more compliance and control of the disorder. (T-200).

70. Respondent stated during his hospitalization of September 26 - September 30, 2002 that he had no intent of taking medication upon his discharge which can exacerbate his condition. (T-200-201).

71. Respondent is impaired for the practice of medicine, based upon the medical records of Respondent's clinical psychiatrist and his hospitalizations of June 2001, March 2002 and September 2002. (T-202).

72. Respondent is impaired for the practice of medicine because information in the medical records demonstrate a pattern of poor compliance and recurrent manic episodes. (T-202).

73. If a clinical physician's moods are constantly fluctuating [due to the Bipolar Disorder] it negatively affects the physician's cognitive skills to look at data, abstract the data and apply critical judgment, which is necessary for the treatment of patients. (T-203).

74. Respondent has not done what is necessary to maintain a stable clinical state and therefore cannot safely practice medicine. (T-205).

75. Respondent's poor compliance with medication and clinical treatment make him at risk of developing a refractory or resistant form of Bipolar Disorder. (T-207).

## DISCUSSION OF RESPONDENT'S IMPAIRMENT

There exists a long-documented history of Bipolar Disorder for Respondent. The three psychiatrists who testified all described classic manic symptoms exhibited by Respondent on several occasions[1]. Respondent has been hospitalized for this condition on at least five occasions: In April 1984 while doing post-graduate training (Ex. 12, pp. 12, 14); on November 9, 1990 at the Brylin Hospital with subsequent transfer to Buffalo Psychiatric Hospital(Ex. 8, p. 9; Ex. 16, p. 65); on June 11, 2001 at Buffalo General Hospital (Ex. 6); on March 5,

[1] Respondent has implied, by comments and questions during this proceeding, that the Bipolar Disorder diagnosis is not accurate. The record contains many admissions by Respondent of his Bipolar Disorder, frequently as a defense to professional misconduct proceedings or as a basis for a limited license or permit. **See Exhibit 9**, pp. 7-9; 31-52; wherein Respondent claimed in 1989 that his improperly treated Bipolar Disorder was the basis for his criminal behavior that gave rise to misconduct charges in California and that his current treatment plan had stabilized him. **See Exhibit 8**, pp. 2-4, wherein Respondent employed the same argument to pending charges in New York State which resulted in a Voluntary Agreement in 1990, requiring him to remain in treatment with his psychiatrist. **See Exhibit 11**, pp. 5-9 wherein Respondent admitted his Bipolar Disorder in exchange for a temporary educational permit in Wisconsin in 1984. **See Exhibit 12**, pp. 24-27, wherein Respondent accepted a limited license in Michigan in 1984 based upon his Bipolar Disorder. **See Exhibit 16**, pp. 2, 39-42 and 58-60, wherein Respondent applied for Social Security Disability benefits based upon his Bipolar Disorder.

2002 at the Buffalo General Hospital (Ex. 7) and September 26, 2002 at the Buffalo General Hospital (Ex. 14).

The testimony of the three psychiatrists, based upon the psychiatric records of Respondent and the personal observations of two treating psychiatrists, was unanimous and overwhelming in the conclusion that Respondent suffers from Bipolar Disorder. Petitioner's expert, Dr. Wolin concluded that because of the refractory nature of Respondent's condition and his poor medication compliance, Respondent is impaired for the practice of medicine. (T-203). Respondent's lack of insight, together with his past poor compliance, results in a poor prognosis for his recovery. The elements of the disorder that were on display in June 2001 and March 2002 hospitalizations demonstrate that Respondent is incapable of performing the analytical thought processes that are required of a practicing physician. (T-203). Dr. Wolin testified that the diagnosis of Bipolar is not itself a disqualification from the practice of medicine but rather Respondent's poor compliance with treatment and the resulting escalation of the cyclical manic symptoms that lead to the poor prognosis. (T-203-204).

Respondent questioned Petitioner's Expert about his lack of depression episodes, as a defense to the alleged inaccurate diagnosis. (T-209). The record contains at least one reference to a depression, Respondent's sworn statement of January 6, 1984, in a document he submitted to the State of Michigan Department of Licensing and Regulation, Board of Medicine. (Ex. 12, p. 25). While Petitioner's Expert testified that most patients have more depressed episodes than manic (T-183), there are forms of the disorder that are characterized solely by recurrent manic episodes. (T-209). The lack of documented depression did not alter Dr. Wolin's opinion.

The Committee is very sensitive to the fact that Respondent suffers from an illness, the onset of which is beyond his control. Yet, the evidence shows that this illness can be controlled with treatment and most probably in this Respondent. Dr. Wolin testified as to a program of rehabilitation offered by the Committee for Physician's Health of New York State Medical Society (T-204, 216-218). Respondent must certainly be aware of the existence of rehabilitation programs since he has dealt with his illness with the medical boards of four states over the years. Yet, he gave not a clue either though his statements or his demeanor that he was the least bit

cognizant of his illness, much less of any interest in controlling it. Respondent's CV indicates a most impressive academic preparation which would confirm that Respondent possesses (or did then) superior cognitive ability. Yet when confronted with overwhelming evidence of a mental disorder at the present time, it appeared that his illness has caused a significant impairment, which interferes with Respondent's perception of reality. Respondent is in total denial.

Respondent's demeanor and affect at the hearing were consistent with the diagnosis. He appeared to be in a hypo-manic state as indicated by the manner in which he dealt with his professional peers. He acted rude, confrontational, angry and evasive. He totally denied the validity of the medical and psychiatric diagnosis and classification of his illness by the expert and by two treating psychiatrists. There was no middle ground or the slightest recognition of a problem by the Respondent. This clearly shows that Respondent lacks the judgment necessary to practice medicine. Even in the most unlikely event that the three psychiatrists and the professional medical boards of four states might have been wrong, a normally functioning physician would exhibit some consideration and recognition of the weight

of the evidence confronting him. Respondent did make one half-hearted statement in this regard when he asked, rhetorically, how would one DISPROVE the diagnosis of Bipolar Disorder as in this case. One answer is that a physician/patient would not fly in the face of opinion established to a reasonable degree of medical certainty and ridicule the practitioners rendering the opinion. A physician/patient would be expected to negotiate by refutation of the observations and the science and by offering expert opinion to the contrary.

Finally, Respondent failed to make any specific points in his defense or to advance an argument based thereon. He as much as admitted that he did not know how to proceed when he asked the rhetorical question stated above.

He did consult with an attorney and said that he had a plan but none materialized that would be of any consequence. His lawyer prepared a response (answer) to the charges but the substance of the explanations offered there were not proven. Respondent suggested in his opening statement that he would produce business associates who would prove his good judgment, character and leadership abilities. However, the witnesses were not produced. It would have been questionable at the

outset whether such testimony could be probative of Respondent's ability to practice medicine.

It is MOST significant that Respondent never once discussed or referred to the central issue of whether he COULD practice medicine. He denied impairment but did not follow through to suggest that he was capable or even desirous of practicing medicine. Apparently, he is not presently in the active practice and it was not clear when he was last so engaged.

In summary, nothing that Respondent said or did served to rebut or refute the evidence presented by the State and, on the contrary, his conduct confirmed that evidence. Furthermore, no meaningful defense was offered or proven.

**CONCLUSIONS OF THE ISSUE OF IMPAIRMENT**

Specifications #1 and #2 must be sustained.

**RESPONDENT'S ATTEMPT TO SELF-PRESCRIBE AMBIEN**

76. On or about November 13, 2001, Respondent entered the Tops Pharmacy at Niagara Falls Boulevard and Robinson Road in Amherst, New York. (T-41).

77. While Respondent was in the Tops Pharmacy retrieving prescriptions that had been prescribed by his

physician, he inquired with the pharmacist whether the medication Ambien required a prescription. Respondent was informed that Ambien does require a prescription. (T-42).

78. Ambien is a sleep aid and a controlled substance in New York State. (T-42).

79. Respondent asked the pharmacist for a prescription pad so that he could write a prescription for Ambien. Respondent was informed that the prescription would have be written on his own pad and an oral order could be taken if he did not have a prescription pad with him. (T-42-43).

80. An oral order can be written for a one month supply of medication if the physician can provide, within 72 hours, an official New York State blank prescription pad that contains the doctor's name, address, telephone number and DEA number. (T-43-44).

81. Respondent agreed to the oral prescribing procedures and gave the pharmacist the information for the prescription, including his prescriber information, including office address, office telephone number and DEA number. (T-45).

82. After receiving this information, the pharmacist asked Respondent for identification to verify that he

was a physician and authorized to write such a prescription. (T-46).

83. The only information Respondent was able to provide to verify his MD status was a credit card with the initials MD after his name. (T-46).

84. Respondent left the pharmacy, indicating he would be back shortly to pick up the prescription. (T-46).

85. The pharmacist discovered that the pharmacy had Respondent on file as a physician and that the office address, office telephone number and DEA number that Respondent provided on that day, November 13, 2001, did not match the information in the pharmacy computer. (T-46-47).

86. The pharmacist then attempted to telephone the office number provided by Respondent to verify the information provided by Respondent was accurate. In addition, the pharmacist telephoned the number that was in the pharmacy computer from the previous prescriber information under Respondent's name. The pharmacist was unable to contact the doctor's office. One number reached an answering machine that did not identify itself as a doctor's office and the other telephone number was unanswered. (T-47).

87. When Respondent returned and was informed that the information was insufficient to fill the prescription for Ambien, he offered to provide the pharmacist with his medical license number in place of the DEA number. Respondent was informed that a license number was not sufficient to have the prescription filled. (T-48-49).

88. A DEA number is valid for three years. Approximately 4-6 weeks prior to the expiration of the number, the DEA will send the registrant a renewal application. If the DEA does not hear from the registrant within 90 days after the expiration of the number, a second renewal notice is sent. If there is no response on this second notice within 90 days, the DEA number will then be permanently retired, after which it is not possible to renew the number. (T-33-34).

89. During the course of his career, Respondent has had four DEA numbers assigned to him, indicating his familiarity with the registration process. (T-34, 38).

90. The last number assigned to Respondent was issued in 1987 and that number expired on November 30, 2000 after which Respondent could not legally write prescriptions for controlled substances. (T-35).

**RESPONDENT'S ATTEMPT TO PRESCRIBE FOR A THIRD PARTY**

91. Sometime in March 2002, Respondent entered the Tops Pharmacy at Niagara Falls Boulevard and Robinson Road to have a prescription filled for the medication Prilosec for a third party. (T-53-54).

92. The information for the Prilosec prescription was not written on a New York State physician prescription pad but rather a scrap sheet of paper or "sticky note." (T-53-54).

93. The attempted prescription was dropped off at the pharmacy the day previous to the pharmacist speaking with Respondent about the attempted filling of the prescription. (T-53-54).

94. When the pharmacist spoke with Respondent about the prescription, the pharmacist informed Respondent that he must have a prescription for the medication. In response, Respondent requested if he could make the prescription as an oral order. (T-54).

95. The pharmacist informed Respondent that was possible and that Respondent must provide information regarding the patient such as date of birth. Respondent indicated he did not have that information. (T-54-55).

96. The pharmacist asked Respondent for his office telephone number so that she could get the information from the patient as that information on the patient was not in the pharmacy computer. Respondent provided the pharmacist with a telephone number and office number and informed the pharmacist he would be back at another time. (T-55).

97. The pharmacist called the telephone number provided by Respondent and the telephone was answered as "professional photography." The pharmacist indicated that she was trying to reach a doctor's office and the person who answered the telephone said that she had reached the Respondent's office. (T-55).

98. The pharmacist indicated that she was in need of the date of birth, address and other information regarding a patient for Respondent and she was informed that there were no patient records at that location. (T-56).

99. The pharmacist then spoke with people knowledgeable on the subject and confirmed her suspicion that she could not lawfully prescribe medication if there were no medical records to confirm treatment by the physician. (T-56-57).

## DISCUSSION OF RESPONDENT'S PRESCRIBING

The testimony of the two pharmacists, together with the DEA Investigator, clearly demonstrate that Respondent attempted to self-prescribe a controlled substance and attempted to prescribe for one who was not a patient, in the traditional sense. In both instances, Respondent falsely represented to the pharmacists that he maintained a medical office and provided a telephone number in response to their questions. Respondent also falsely represented that he had an active DEA number, when that number had not been active for at least one year. The fact that Respondent had four DEA numbers issued to him is indicative that he was aware of the registration process and is suggestive that he knew his number was no longer valid when he attempted to self-prescribe a controlled substance. The evidence is clear that Respondent attempted to prescribe medications on two occasions when he was not authorized to do so.

Based upon the evidence of Respondent's impairment during this period of time, it is also clear that Respondent was practicing medicine while impaired when he attempted to prescribe the medications.

## DISCUSSION OF NEGLIGENCE AND INCOMPETENCE

Even though the factual allegations of paragraph #2 and #3 (should be B and C) have been established and were essentially uncontested, these facts do not amount to negligence or incompetence.

## CONCLUSIONS AS TO NEGLIGENCE AND INCOMPETENCE

Specifications #3 and #4 could not be sustained.

## DISCUSSION OF RECORD KEEPING AND FRAUD

Respondent did not perform a history and physical or establish the nature of Patient A's illness or keep any record of the same. This failure to document regarding the treatment of Patient A amounted to professional misconduct.

Respondent did falsely represent to the pharmacist that he had a DEA number and an active medical office. However, Respondent, as a licensed physician, prescribed a drug as treatment for Patient A. In doing so, he at least made himself responsible for the health and safety of Patient A. Therefore, Patient A was, to that limited degree, the Respondent's "patient." It was not fraud to represent that fact to the pharmacist.

## CONCLUSION AS TO RECORD KEEPING AND FRAUD

Specification 5 must be sustained. Specifications 6 and 7 must be sustained. Specification 8 is not sustained. Specification 9 is sustained.

## VOTE OF THE HEARING COMMITTEE

FIRST SPECIFICATION; having a psychiatric condition which impairs the ability to practice SUSTAINED

SECOND SPECIFICATION; practicing while impaired SUSTAINED

THIRD SPECIFICATION; negligence on more than one occasion NOT SUSTAINED

FOURTH SPECIFICATION; incompetence on more than one occasion NOT SUSTAINED

FIFTH SPECIFICATION; failure to maintain records SUSTAINED

SIXTH SPECIFICATION; fraudulent practice SUSTAINED

SEVENTH SPECIFICATION; fraudulent practice SUSTAINED

EIGHTH SPECIFICATION; fraudulent practice NOT SUSTAINED

NINTH SPECIFICATION; fraudulent practice SUSTAINED

## DETERMINATION OF HEARING COMMITTEE

There exists overwhelming evidence in this matter that Respondent has suffered from Bipolar Disorder since

approximately 1978. While this diagnosis is not by itself a disqualification from the practice of medicine, the record of Respondent's compliance with the necessary treatment is so poor and inconsistent that he has not and cannot be sufficiently stabilized to practice medicine. The evidence in this record indicates that Respondent has become refractory to effective treatment to the disorder.

Although he called no witnesses at the hearing, Respondent implied by his questions and statements that he has been misdiagnosed with Bipolar Disorder. This assertion is refuted by Respondent's own admissions to the condition dating back to at least 1984, when he agreed to the disorder and a medical treatment plan related to the disorder in Wisconsin in exchange for a temporary educational permit. Respondent also admitted to the disorder in 1990 as a shield to professional disciplinary charges in California and New York State. Most recently in 2000, Respondent applied for and received Social Security Disability benefits based upon his Bipolar Disorder.

Respondent has demonstrated recent conduct reflecting poor medical judgment consistent with his Bipolar diagnosis. He admittedly attempted to self-prescribe Ambien, a controlled substance. In the course of

attempting to self-prescribe, Respondent fraudulently represented that he had a current medical practice and DEA number. Respondent also attempted to prescribe medication for an individual for whom there was no office record or other evidence of a history and examination of the patient. Respondent again fraudulently represented that he had an active medical office and practice in his attempt to obtain medication for a third party.

Respondent's history with the disorder, which his treating psychiatrist described as an unfortunate "downhill course" (T-125), demonstrates that he will not recover sufficiently to allow him to practice medicine. This prognosis, together with Respondent's demonstrated willingness to abuse his medical license for imprudent prescribing practices, leaves this committee with no choice but to revoke Respondent's medical license for the safety of the patient public.

**ORDER**

It is hereby **ORDERED** that Respondent's license to practice medicine in New York State is hereby **REVOKED.**

This **ORDER** shall be effective upon service upon the Respondent by personal service or certified or registered mail.

**DATED:** Oct. 3 , **2003**

**New York, New York**

William K. Major, M.D.

**William K. Major, M.D.**
**Chairperson**

**Sandra L. Williams, R.N.**
**Richard Lee, M.D.**

# APPENDIX I

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

**IN THE MATTER**

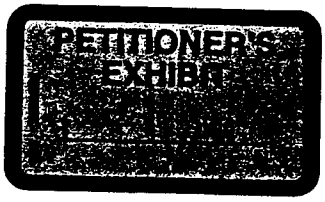
**OF**

**JOSEPH S. TULUMELLO, M.D.**

NOTICE

OF

HEARING




TO: JOSEPH S. TULUMELLO, M.D.
969 Campbell Boulevard
Amherst, New York 14228

PLEASE TAKE NOTICE:

A hearing will be held pursuant to the provisions of N.Y. Pub. Health Law §230 and N.Y. State Admin. Proc. Act §§301-307 and 401. The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on November 6, 2002, at 10:00 a.m., at the Radisson Hotel and Suites, 4243 Genesee Street, Buffalo, New York 14225, and at such other adjourned dates, times and places as the committee may direct.

At the hearing, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the hearing will be made and the witnesses at the hearing will be sworn and examined. You shall appear in person at the hearing and may be represented by counsel. You have the right to produce witnesses and evidence on your behalf, to issue or have subpoenas issued on your behalf in order to require the production of witnesses and documents, and you may cross-examine witnesses and examine evidence produced against you. A summary of the Department of Health Hearing Rules is enclosed.

The hearing will proceed whether or not you appear at the hearing. Please note that requests for adjournments must be made in writing and by telephone to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Hedley Park Place, 433 River Street, Fifth Floor South, Troy, NY 12180, ATTENTION: HON. TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION, (henceforth "Bureau of Adjudication"), (Telephone: (518-402-

0748), upon notice to the attorney for the Department of Health whose name appears below, and at least five days prior to the scheduled hearing date. Adjournment requests are not routinely granted as scheduled dates are considered dates certain. Claims of court engagement will require detailed Affidavits of Actual Engagement. Claims of illness will require medical documentation.

Pursuant to the provisions of N.Y. Pub. Health Law §230(10)(c), you shall file a written answer to each of the charges and allegations in the Statement of Charges not less than ten days prior to the date of the hearing. Any charge or allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such answer. The answer shall be filed with the Bureau of Adjudication, at the address indicated above, and a copy shall be forwarded to the attorney for the Department of Health whose name appears below. Pursuant to §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. Pursuant to the terms of N.Y. State Admin. Proc. Act §401 and 10 N.Y.C.R.R. §51.8(b), the Petitioner hereby demands disclosure of the evidence that the Respondent intends to introduce at the hearing, including the names of witnesses, a list of and copies of documentary evidence and a description of physical or other evidence which cannot be photocopied.

At the conclusion of the hearing, the committee shall make findings of fact, conclusions concerning the charges sustained or dismissed, and in the event any of the charges are sustained, a determination of the penalty to be imposed or appropriate action to be taken. Such determination may be reviewed by the Administrative Review Board for Professional Medical Conduct.

THESE PROCEEDINGS MAY RESULT IN A DETERMINATION THAT YOUR LICENSE TO PRACTICE

MEDICINE IN NEW YORK STATE BE REVOKED OR SUSPENDED, AND/OR THAT YOU BE FINED OR SUBJECT TO OTHER SANCTIONS SET OUT IN NEW YORK PUBLIC HEALTH LAW §§230-a. YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: Albany, New York
September 30 ,2002

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

Inquiries should be directed to: Lee A. Davis
Assistant Counsel
Bureau of Professional Medical Conduct
Corning Tower, Room 2512
Empire State Plaza
Albany, New York 12237-0032
(518) 473-4282

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

**IN THE MATTER**

**OF**

**JOSEPH S. TULUMELLO, M.D.**

STATEMENT

OF

CHARGES

JOSEPH S. TULUMELLO, M.D., the Respondent, was authorized to practice medicine in New York State on or about February 28, 1972, by the issuance of license number 111838 by the New York State Education Department.

## FACTUAL ALLEGATIONS

1. Respondent has been diagnosed with a psychiatric condition, bi-polar disorder, since approximately 1978, requiring ongoing psychiatric therapy and medication. Respondent's failure to adhere to a strict medication regimen results in unstable, psychotic behavior. Respondent's recent and/or current history of compliance with therapy and medication has been poor or nonexistent, resulting in psychotic episodes and psychiatric hospitalizations.

2. On or about November 13, 2001, Respondent entered Top's Pharmacy at 3035 Niagara Falls Boulevard, Amherst, New York. Respondent's actions deviated from accepted standards of medical care in the following respects:

   a. Respondent attempted to write and fill a prescription of Ambien, a controlled substance, for himself.

   b. At the time Respondent attempted to self-prescribe Ambien, he did not have an official New York State prescription pad.

   c. Respondent falsely represented to the pharmacist that he had an active DEA number.

   d. Respondent falsely represented to the pharmacist that he had an active medical office, providing an address and telephone number in response to that requested information that was not a medical office.

Amended 11/1/02 TPT

3. ~~During~~ Between November and March 11, 2002 2001, Respondent entered Top's Pharmacy at 3035 Niagara Falls Boulevard, Amherst, New York and attempted to order a prescription of Prilosec for Patient A . Respondent's actions deviated from accepted standards of medical care in the following respects:

   a. Respondent attempted to prescribe or otherwise acquire Prilosec for Patient A without performing an adequate history, physical examination or evaluation to ascertain the need for the Prilosec.

   b. Respondent did not maintain a medical record for Patient A.

   c. At the time Respondent attempted to prescribe Prilosec, he did not have an official New York State prescription pad.

   d. Respondent falsely represented to the pharmacist that Patient A was his patient.

   e. Respondent falsely represented to the pharmacist that he maintained a medical office at which he treated Patient A, providing an address and telephone number in response to that requested information that was not a medical office.

## SPECIFICATION OF CHARGES

### FIRST SPECIFICATION

### HAVING A PSYCHIATRIC CONDITION WHICH IMPAIRS THE ABILITY TO PRACTICE

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(8) by having a psychiatric condition which impairs the licensee's ability to practice as alleged in the following:

1. The facts set forth in Paragraph A.

**SECOND SPECIFICATION**

**PRACTICING WHILE IMPAIRED**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(7) by practicing the profession while impaired by mental disability as alleged in the following:

2. The facts set forth in Paragraphs A., C. and C.1.

**THIRD SPECIFICATION**

**NEGLIGENCE ON MORE THAN ONE OCCASION**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(3) by practicing the profession of medicine with negligence on more than one occasion as alleged in two or more of the following:

3. The facts set forth in Paragraphs B. and B.1, B. and B.2, C. and C.1 and/or C. and C.2.

**FOURTH SPECIFICATION**

**INCOMPETENCE ON MORE THAN ONE OCCASION**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(5) by practicing the profession of medicine with incompetence on more than one occasion as alleged in the facts of two or more of the following:

4. The facts set forth in Paragraphs B. and B.1, B. and B.2, C. and C.1 and/or C. and C.2.

## FIFTH SPECIFICATION

## FAILURE TO MAINTAIN RECORDS

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(32) by failing to maintain a record for each patient which accurately reflects the care and treatment of the patient, as alleged in the following:

5. The facts set forth in Paragraph C. and C.2.

## SIXTH THROUGH NINTH SPECIFICATIONS

## FRAUDULENT PRACTICE

Respondent is charged with committing professional misconduct as defined by N.Y. Educ. Law §6530(2) by practicing the profession of medicine fraudulently as alleged in the following:

6. The facts set forth in Paragraph B. and B. 3;.
7. The facts set forth in Paragraph B. and B.4;
8. The facts set forth in Paragraph C. and C.4; and
9. The facts set forth in Paragraph C. and C.5.

DATED: September 30, 2002
Albany, New York

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