



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

September 27, 1994

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Cindy M. Fascia, Esq.,
Associate Counsel
NYS Department of Health
Bureau of Professional Medical Conduct
Corning Tower - Room 2429
Empire State Plaza
Albany, New York 12237

Johanna Cavender, M.D.
1938 East Fayette Street
Syracuse, New York 13210

Johanna Cavender, M.D.
4800 Westfield Drive
Manlius, New York 13104

RE: In the Matter of Johanna Cavender, M.D.

Dear Ms. Fascia and Dr. Cavender :

Enclosed please find the Determination and Order (No. 94-201) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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:

Office of Professional Medical Conduct
New York State Department of Health
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 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), "(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.

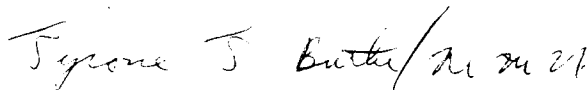
The notice of review served on the Administrative Review Board should be forwarded to:

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

Sincerely,



Tyrone T. Butler, Director
Bureau of Adjudication

TTB:mmn

Enclosure

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

**IN THE MATTER
OF
JOHANNA CAVENDER, M.D.**

**DETERMINATION
AND
ORDER**

NO. BPMC-94-201

OLIVE JACOB, (Chair), JOHN H. MORTON, M.D. and DAVID T. LYON, M.D., duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to §230(10)(e) and/or §230(19) of the Public Health Law.

MARC P. ZYLBERBERG, ESQ., ADMINISTRATIVE LAW JUDGE, served as the Administrative Officer.

The Department of Health appeared by **CINDY M. FASCIA, ESQ.**, Associate Counsel.

Respondent appeared personally at the Hearing on her own behalf and was not represented by counsel.

Evidence was received, witnesses were sworn or affirmed and examined. Transcripts of the proceedings were made. After consideration of the record, the Hearing Committee issues this Determination and Order pursuant to the Public Health Law and the Education Law of the State of New York

PROCEDURAL HISTORY

Date of Notice of Hearing:	March 24, 1994
Date of Service of Notice of Hearing:	March 30, 1994
Date of Statement of Charges:	March 24, 1994
Date of Service of Statement of Charges:	March 30, 1994
Answer to Statement of Charges:	None Filed
Pre-Hearing Conference:	Not Held
Hearing Held:	May 5, 1994 July 1, 1994
Received Petitioner's Brief, Proposed Findings, Conclusions and Recommendation:	August 9, 1994
Received Respondent's Brief, Proposed Findings, Conclusions and Recommendation:	None
Witnesses called by the Petitioner, Department of Health:	Deborah Hathaway Arlene Gray
Witnesses called by the Respondent, Johanna Cavender, M.D.:	Johanna Cavender, M.D. Franklin Johnson, M.D. Michael W. Corbin, M.D. Linda H. Lovig Angela B. Young Dawn M. McClennan Donovan W. Christie, M.D.
Deliberations Held:	August 22, 1994

STATEMENT OF CASE

This case was brought pursuant to §230 of the Public Health Law of the State of New York (hereinafter P.H.L.). Respondent, JOHANNA CAVENDER, M.D., (hereinafter "Respondent") is charged with professional misconduct as delineated in §6530 of the Education Law of the State of New York (hereinafter Education Law).

In this case, the Respondent is charged with professional misconduct by reason of violating a term of probation, condition or limitation previously imposed on her¹. The charges are based on Respondent's alleged violations of conditions of a Restoration Order dated November 23, 1992, (hereinafter "Restoration Order") issued by the State Board for Professional Medical Conduct. Said Restoration Order restored Respondent's license to practice medicine, subject to certain conditions enumerated therein. Those conditions, unless otherwise specified, were to remain in effect for a period of probation lasting five years from the effective date of said Restoration Order.

A copy of the Statement of Charges is attached to this Determination and Order as Appendix I.

¹ Education Law §6530(29) "Each of the following is professional misconduct, ... [V]iolating any term of probation or condition or limitation imposed on the licensee pursuant to section two hundred thirty of the public health law; ..." and see also First through Third Specifications of Petitioner's Exhibit # 1.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. These facts represent evidence and testimony found persuasive by the Hearing Committee in arriving at a particular finding. Conflicting evidence or testimony, if any, was considered and rejected in favor of the cited evidence. Unless otherwise noted, all Findings and Conclusions herein were unanimous.

1. Respondent was authorized to practice medicine in New York State on October 20, 1978, by the issuance of license number 136100 by the New York State Education Department. (Petitioner's Exhibits # 1 and # 3)²

2. The Respondent is currently registered with the New York State Education Department to practice medicine for the period January 1, 1993 through December 31, 1994. (Petitioner's Exhibit # 1).

3. Walter J. Barfield personally served a Notice of Hearing and a Statement of Charges, dated March 24, 1994, on Respondent on March 30, 1994 at 1938 East Fayette Street, Syracuse, NY (Petitioner's Exhibit # 2)

4. Respondent, on October 23, 1991, signed a Temporary Surrender of License and Registration, by which she surrendered her license to practice medicine in New York State. (Petitioner's Exhibit # 3); [T-20]³

² refers to exhibits in evidence submitted by the New York State Department of Health (Petitioner's Exhibit) or by Johanna Cavender, M.D. (Respondent's Exhibit).

³ Numbers in brackets refer to transcript page numbers. [T-]

5. In that Temporary Surrender, Respondent admitted that she was "incapacitated for the active practice of medicine due to drug dependence."

(Petitioner's Exhibit # 3, ¶ 3)

6. Respondent, on November 3, 1992, appeared before a committee of the State Board for Professional Medical Conduct (hereinafter "Restoration Committee") requesting that her license to practice medicine be restored. On November 23, 1992, the Restoration Committee issued a Restoration Order, which restored Respondent's license to practice medicine under certain conditions. Those conditions, unless otherwise specified, were to remain in effect for a period of probation lasting five years from the effective date of the Order⁴. (Petitioner's Exhibit # 4); [T-22-23]

7. The Restoration Order, inter alia, required that Respondent be supervised in her medical practice by a licensed physician, that she limit her work hours to a maximum of twenty-five hours per week for at least one year and that she submit to random testing for the presence of alcohol and drugs. (Petitioner's Exhibit # 4)

8. Respondent, pursuant to the Restoration Order, was required to be supervised in her medical practice by a licensed physician (also called "Supervisor" or "practice monitor") approved by the Office of Professional Medical Conduct (hereinafter "OPMC"). The Restoration Order required that, in the event a successor supervisor became necessary, Respondent was required to obtain such a supervisor, subject to OPMC's approval, within seven (7) days of Respondent becoming aware that the original supervisor would have to be replaced. (Petitioner's Exhibit # 4);

[T-24-25]

⁴ Restoration Order, dated November 23, 1992, was to be effective on issuance. (hereinafter referred to as "Restoration Order") Petitioner's Exhibit # 4.

9. Respondent initially proposed to OPMC that Dr. Franklin Johnson serve as her practice monitor. Dr. Johnson is a physician who at that time was employed at the Syracuse Community Health Center. Respondent had been employed at the Syracuse Center prior to her license surrender and had resumed employment there after the restoration of her license. OPMC approved Dr. Johnson to serve as Respondent's practice monitor. [T- 24-25]

10. On March 16, 1993, Deborah Hathaway, the OPMC Impaired Physicians Program Case Coordinator who monitors Respondent's case, had a telephone conversation with Respondent. During that conversation, Respondent complained about the terms of her Restoration Order. [T-27-29]

11. On April 7, 1993, Ms. Hathaway and Respondent met to discuss violations of the conditions of the Restoration Order. Sue Stanton, Respondent's case coordinator for the Medical Society of the State of New York, was also present. At this meeting, Ms. Hathaway told Respondent that Dr. Johnson was disapproved, would no longer be able to serve as Respondent's practice monitor and that she had to propose a successor. (Petitioner's Exhibit # 6); [T-25-26, 29]

12. On April 19, 1993, OPMC sent a letter to Respondent which confirmed that Dr. Johnson was no longer approved to serve as practice monitor. The letter advised Respondent that she had to propose a new practice monitor to OPMC. Respondent received⁵ that letter and was therefore aware of her responsibility to obtain a successor supervisor within seven (7) days. (Petitioner's Exhibit # 6); [T-30-32]

⁵ Petitioner's Exhibit # 6 - green return receipt card, Article Number P147 474 471, signed by Respondent's son on 4/30/93. [T-31-32]

13. Respondent and Ms. Hathaway had a telephone conversation on April 30, 1993, in which Respondent asked Ms. Hathaway to write her a letter clarifying what OPMC meant by "direct supervision". A letter of explanation was sent to Respondent on April 30, May 25, and July 15, 1993. Respondent refused to sign for or accept the letter when it was sent by certified mail (April 30, 1993) and claimed that she did not receive it when it was sent by regular mail (May 25 and July 15, 1993). (Petitioner's Exhibit # 6); [T-32-33, T-64]

14. The conditions of the Restoration Order required that Respondent's practice monitor be a physician. (Petitioner's Exhibit # 4) However, after Dr. Johnson was disapproved as Respondent's practice monitor, OPMC told Respondent that it would accept a non-physician as her practice monitor because Respondent had indicated that it would be difficult for her to obtain another physician to serve as her monitor. OPMC agreed to accept a non-physician monitor to help Respondent set up a monitoring arrangement that would meet the spirit of the Restoration Order. [T-124-125]

15. Between April 1993 and September 16, 1993, Respondent made several proposals to OPMC, of individuals to serve as her practice monitor. However, none of the proposed individuals were willing or able to assume the responsibilities or duties of being a practice monitor for Respondent. [T-33-35]

16. On September 16, 1993, the Program Director of OPMC's Impaired Physicians Program, Arlene Gray, sent a letter to Respondent. This letter advised Respondent that she did not have an approved practice monitor, and that Respondent's continued practice of medicine without an approved practice monitor

constituted a violation of the conditions of the Restoration Order. (Petitioner's Exhibit # 6); [T-34-36]; [T-119-124] This letter was sent to Respondent by both certified and regular mail. [T-123-124]

17. Respondent did not reply to the letter from Ms. Gray. [T-36]

18. On November 12, 1993, Ms. Gray sent another letter to Respondent. Ms. Gray advised Respondent that Respondent's continued practice of medicine without an approved practice monitor was a violation of the Restoration Order. (Petitioner's Exhibit # 6; [T-123-125]; [T-35-36]

19. Respondent has continued to practice medicine since April 1993 without an approved supervisor or practice monitor, despite being notified in person on April 7, 1993 and in writing by letters dated April 19, September 16, and November 12, 1993, that she was required to obtain a successor supervisor. (Petitioner's Exhibits # 4 and # 6); [T-33]

20. Under the conditions of the Restoration Order, Respondent was required to limit her work schedule to a maximum of twenty-five (25) hours per week for at least a year from the date of the Restoration Order. The Order provides that after the initial year, this condition could be modified to allow Respondent to work more hours, after OPMC had reviewed and approved her request. (Petitioner's Exhibit # 4; [T-38-40]

21. Ms. Hathaway had several conversations with various individuals regarding Respondent's alleged other or additional employment. [T-43-44] Respondent refused to tell Ms. Hathaway anything about Respondent's work situation. [T-45-46] No written documentation was available regarding any work performed by Respondent, other than at Syracuse Community Health Center. [T-102, T-142]

22. Respondent, pursuant to the Restoration Order, is required to be monitored by a Sobriety Monitor approved by OPMC. The Sobriety Monitor is to cause to be performed random, supervised, unannounced blood, breathalyzer and/or urine tests for the presence of alcohol and other drugs. Pelion is the designated Sobriety Monitor for Respondent. (Petitioner's Exhibit # 4; [T-46-47])

23. OPMC requested that Pelion obtain six urine screenings per month during the first six months that the Restoration Order was in effect. Respondent was to report for urine screenings when Pelion ordered her to appear. Pelion was required to contact OPMC if Respondent failed to report for a required urine screening, or if Respondent had a positive urine screen. (Petitioner's Exhibit # 4); [T-46-47])

24. On February 26, 1993, Lisa Potash, Respondent's counselor at Pelion, contacted OPMC. Ms. Potash told Ms. Hathaway that on December 3, 1992, Respondent failed to report to Pelion for a required urine test, despite the fact that Pelion had directed Respondent to do so. (Petitioner's Exhibit # 5); [T-47-51, T-143])

25. Pelion had difficulty in contacting Respondent to come in for urine screenings on several occasions, including January 20, 21 and 22, 1993. This difficulty was due, in part, to the fact that Respondent refused to give Pelion her telephone number at work, so she could not be directly contacted at work to report for a urine test. Because of the difficulty in contacting Respondent, Pelion set up an arrangement whereby Respondent was required to call Pelion every weekday morning between 8:00 a.m. and 9:00 a.m. to ascertain whether or not she would be required to report for a urine test that day. (Petitioner's Exhibit # 5); [T-47-49])

26. Respondent failed to call Pelion on February 15 and 16, 1993 to ascertain whether she would be required to come in that day for a urine test. (Petitioner's Exhibit #5); [T-47-49]; [T-69]; [T-96-97]; [T-143]

27. On February 16, 1993, Pelion contacted Respondent and told her that she had to report for a urine test. Respondent did not come to Pelion on February 16, despite the fact that she was directed to do so. Respondent did not report to Pelion for the required urine screen until February 18, 1993. (Petitioner's Exhibit # 5); [T-47-50]; [T-143]

28. On March 4, 1993, Pelion told Respondent to report for a urine test. Respondent did not come to Pelion on March 4, despite the fact that she was directed to do so. Respondent did not report to Pelion for the required urine screen until March 9, 1993. (Petitioner's Exhibit # 5); [T-47-50]; [T-69-70]; [T-143]

29. Respondent failed to call Pelion on March 22, 1993, despite the fact that she was required to call Pelion every weekday morning to ascertain whether she would be required to report for a urine test. (Petitioner's Exhibit # 5); [T-47-51]; [T-143]

30. On June 10, 1993, Ms. Hathaway advised Respondent that if she did not obtain a practice monitor and comply with the conditions of her Restoration Order, that Respondent's case would be referred to Counsel's Office for prosecution. [(T-56-57]

31. Respondent has not cooperated, and at times has been obstructive, with agencies and/or individuals assigned to monitor or aid her during the required period of probation, as set forth in the Restoration Order. (Petitioner's Exhibits # 5, 6 and 7)

CONCLUSIONS OF LAW

The Hearing Committee makes the following conclusions, pursuant to the Findings of Fact listed above. All conclusions resulted from a unanimous vote of the Hearing Committee.

The Hearing Committee concludes that the following Factual Allegations, from the March 24, 1994 Statement of Charges, are **SUSTAINED**:⁶

Paragraph A.	:	(4 - 6)
Paragraph B	:	(7 - 9)
Paragraph B.1	:	(7 - 19)
Paragraph B.2	:	(7 - 19)
Paragraph C	:	(7)
Paragraph C.1	:	(7, 22 - 24)
Paragraph C.2	:	(7, 22 - 26)
Paragraph C.3	:	(7, 22 - 27)
Paragraph C.4	:	(7, 22 - 28)
Paragraph C.5	:	(7, 22 - 29)

The Hearing Committee concludes that the following Factual Allegation, from the March 24, 1994 Statement of Charges, is **NOT SUSTAINED**:

Paragraph D	:	(20 - 21)
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⁶ The numbers in parentheses refer to the Findings of Fact previously made herein by the Hearing Committee and support each Factual Allegation.

Based on the above, the Hearing Committee concludes that the following Specifications of Charges are **SUSTAINED**:⁷

FIRST SPECIFICATION: (Paragraphs: A, B, B.1 and B.2)

SECOND SPECIFICATION: (Paragraphs: A, C, C.1, C.2, C.3, C.4 and C.5)

Based on the above, the Hearing Committee concludes that the following Specification of Charges is **NOT SUSTAINED**:

THIRD SPECIFICATION

DISCUSSION

The Respondent is charged with three specifications alleging professional misconduct within the meaning of §6530 of the Education Law. Specifically, §6530(29) of the Education Law sets forth that violation of any term of probation or condition or limitation imposed on the licensee pursuant to P.H.L. §230 constitutes professional misconduct. The Restoration Order of November 23, 1992 sets forth specific terms of acceptable conduct and non-acceptable conduct which are conditions, limitations or terms of probation imposed on Respondent pursuant to P.H.L. §230

With regard to the testimony presented herein, including Respondent's, the Hearing Committee made an assessment and evaluated the credibility of each witness including possible bias. The witnesses were also assessed according to his or her training, experience, credentials and demeanor.

⁷ The citations in parentheses refer to the Factual Allegations which support each Specification.

The Petitioner presented two fact witnesses: Deborah Hathaway, a senior medical conduct investigator, who works as a case coordinator for the Impaired Physicians Program and Arlene Gray, the Director of the Impaired Physician's Program. The Hearing Committee found both of these witnesses to be credible. In actuality, Respondent did not contest most of the facts alleged in the Statement of Charges and in fact admitted several of the factual allegations. [T-15]

The Respondent, Dr. Cavender, offered generally credible testimony, although she obviously had the greatest amount of interest in the results of these proceedings. All other witnesses: Franklin Johnson, M.D., Michael W. Corbin, M.D., Linda H. Lovig, Angela B. Young, Dawn M. McClennan and Donovan W. Christie, M.D., presented by Respondent were in the category of character witnesses. Respondent's witnesses testified mostly about Respondent's competence and capability to practice medicine and provide patient care. The Hearing Committee considered the character witnesses in assessing the penalty to be imposed on Respondent once a finding of misconduct had been determined.

Using the above Findings and understanding, the Hearing Committee, unanimously concludes that the Department of Health has shown by a preponderance of the evidence that Respondent's conduct constituted professional misconduct under the laws of New York State. The Department of Health has met its burden of proof as to two of the three specifications of misconduct contained in the March 24, 1994 Statement of Charges and the Hearing Committee, unanimously votes to sustain the first two Charges.

The rationale for the Hearing Committee's conclusions is set forth below.

Service of Charges and of Notice of Hearing.

P.H.L. §230(10)(d) requires that the Charges and Notice of Hearing be served on the licensee personally, at least twenty (20) days before the Hearing. If personal service cannot be made, due diligence must be shown and certified under oath. After due diligence has been certified, then, the Charges and Notice of Hearing must be served by registered or certified mail to the licensee's last known address, at least fifteen (15) days before the Hearing.

From the affidavit submitted, personal service of the Notice of Referral Proceeding and the Statement of Charges on Respondent was proper and timely. In addition, Respondent appeared at the Hearing and had no objection to service of the Statement of Charges and the Notice of Referral Proceeding.

Practice Monitoring

The record clearly establishes that Respondent failed to obtain a successor supervisor since April 1993, when OPMC notified her that her original supervisor was no longer approved. Her failure to obtain, within seven (7) days, a successor supervisor constitutes a violation of the terms of the Restoration Order of November 23, 1992. Accordingly, it constitutes professional misconduct under §6530(29) of the Education Law, in that she violated ¶3 of the Restoration Order, a term of probation or condition or limitation imposed on her. Respondent has violated a term of probation, condition or limitation imposed on her pursuant to Public Health Law §230.

Respondent's continued practice of medicine without being supervised by an approved supervisor also constitutes such a violation. The Committee concludes that Respondent has willfully failed to obtain a successor supervisor. The Committee notes that OPMC's Impaired Physicians Program tried to work with Respondent on the selection of a new supervisor, and tried to make the process easier for Respondent by agreeing to accept a non-physician monitor if no other physician could provide the necessary direct supervision. It was Respondent's responsibility to obtain a suitable monitoring situation. However, after the original monitor was disapproved, Respondent made no real efforts to comply with the terms of the Restoration Order.

It strains credulity that Respondent really did not understand what was required of her. Respondent did not truly propose anyone as a successor monitor. Despite the letters Respondent received from OPMC advising her that her continued practice of medicine without an approved practice monitor was a violation of the Restoration Order, Respondent made no effort whatsoever to propose a successor monitor until March, 1994, after Respondent received the Notice of Hearing and Statement of Charges for this proceeding. Respondent has continued to refuse to do what was required of her by the Restoration Order. Respondent has refused to recognize the necessity for such monitoring or her own responsibility to assure this monitoring is in place as a condition of her practice of medicine. Respondent's deliberate, ongoing failure to comply with this condition of the Restoration Order constitutes a serious violation.

Sobriety Monitoring

Respondent's failures to report to Pelion, her designated Sobriety Monitor, for urine screenings on December 3, 1992, February 16, 1993, and March 4, 1993 despite the fact that Pelion had directed Respondent to report for these screenings, constitute violations of the Restoration Order. Respondent's failures to call Pelion on February 15 and March 22, 1993, despite the fact that she was required to call Pelion every weekday morning to ascertain whether she would be required to report for a urine test, also constitute violations of the conditions of the Restoration Order.

Accordingly, Respondent is guilty of professional misconduct under §6530(29) of the Education Law, in that she violated ¶2 of the Restoration Order, a term of probation or condition or limitation imposed on her. The Committee notes that while Respondent has been compliant with her urine monitoring since April 1993, the multiple violations of her sobriety monitoring in the first four months after her license was restored are of concern. Respondent has not fully accepted her responsibility to comply with the terms of the Restoration Order.

Limitation Of Respondent's Work Hours

There was a great deal of hearsay testimony presented regarding Respondent's employment, in excess of twenty five (25) hours per week. This would have caused a violation of ¶3(e) of the Restoration Order. However, the Hearing Committee determines that the hearsay testimony was not bolstered or supported by any other evidence and therefore was insufficient to be convincing by a preponderance.

Therefore, the charge of professional misconduct by reason of violating a term of the Restoration Order, by working more than a maximum of twenty-five (25) hours weekly, within the meaning of §6530(29) of the Education Law, is not sustained.

DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact, Conclusions of Law and Discussion set forth above, unanimously determines as follows:

1. Respondent's license to practice medicine in the State of New York shall be suspended for twelve (12) months from the effective date of this Determination and Order; and

2. The last nine (9) months of the above suspension shall be stayed, contingent on Respondent's compliance with the terms herein, the terms of the Restoration Order and the terms of probation contained in Appendix II; and

3. During the three (3) months of active suspension, Respondent shall comply with ¶¶ 1, 2, 4, 5, 6 and 7 of the Restoration Order annexed as Appendix III; and

4. During the three (3) months of active suspension, Respondent shall propose and have approved by OPMC a practice monitor or supervisor, who will be ready to begin his or her duties and responsibilities on the first day of Respondent's return to active medical practice. Respondent's active suspension shall continue past three (3) months⁸ if she does not have an approved practice monitor or supervisor.

⁸ until a practice monitor or supervisor is obtained.

5. After the three (3) months of active suspension and until its expiration, all other terms of the Restoration Order, including ¶¶ 3(a), 3(b), 3(c), 3(d) and 3(g), shall remain applicable and in full force and effect, except for the following:

¶ 3(e) shall be deleted and replaced with the following:

e. Petitioner shall not engage in the solo practice of medicine, but shall work in a community based setting which affords the capability of supervision. Supervision does not mean another physician in the room at the same time as Respondent is consulting with a patient, but does include regular⁹ discussions of patients with another physician. A community based setting may include hospital based services.

¶ 3(f) shall be deleted.

All time frames contained in the November 23, 1992 Restoration Order shall remain as originally imposed. (ie: the clock does not start over with this Determination and Order)

This determination is reached after due and careful consideration of the full spectrum of penalties available pursuant to §230-a of the P.H.L., including:

(1) Censure and reprimand; (2) Suspension of the license, wholly or partially; (3) Limitations of the license; (4) Revocation of license; (5) Annulment of license or registration; (6) Limitations; (7) the imposition of monetary penalties; (8) a course of education or training; (9) performance of public service and (10) probation.

⁹ regular means on an almost daily basis, but not less than every other work day.

Respondent's medical abilities or the quality of her medical practice was not an issue in this proceeding, but rather her ability and willingness to comply with the terms of the Restoration Order. The Restoration Committee lawfully imposed terms on Respondent's license to practice medicine to assure that Respondent was practicing competently and unimpaired for the protection of the people of the State of New York.

Respondent's ability and privilege to practice medicine in the State of New York, was contingent on full compliance with all of the conditions contained in the Restoration Order. The record in this case clearly establishes Respondent's unwillingness to comply with certain terms and conditions of the Restoration Order.

The Hearing Committee does note the absence of positive urine tests for the past 15 months and the positive testimony of the witnesses produced by Respondent, as well as Respondent's exhibits in evidence.

The Hearing Committee believes that Respondent is capable of learning from her errors and is capable of rehabilitation and compliance in the future.

The Hearing Committee considers Respondent's misconduct to be very serious and is concerned for the health and welfare of patients in New York State. Therefore, the Hearing Committee determines the above to be the appropriate sanctions under the circumstances.

All other issues raised by both parties have been duly considered by the Hearing Committee and would not justify a change in the Findings, Conclusions or Determination contained herein.

ORDER

Based on the foregoing, **IT IS HEREBY ORDERED THAT:**

1. The First and Second Specifications of professional misconduct contained in the Statement of Charges (Petitioner's Exhibit #1) are **SUSTAINED**; and
2. The Third Specification of professional misconduct contained in the Statement of Charges (Petitioner's Exhibit #1) is **NOT SUSTAINED**; and
3. Respondent's license to practice medicine in the State of New York is **SUSPENDED** for **TWELVE (12) MONTHS** from the effective date of this Determination and Order; and
4. The last **NINE (9) MONTHS** of the above suspension shall be **STAYED**, contingent on Respondent's compliance with the terms herein, the terms of the Restoration Order and the terms of probation contained in Appendix II; and
5. During the three (3) months of active suspension, Respondent shall comply with ¶¶ 1, 2, 4, 5, 6 and 7 of the Restoration Order annexed as Appendix III; and
6. During the three (3) months of active suspension, Respondent shall propose and have approved by OPMC a practice monitor or supervisor, who will be ready to begin his or her duties and responsibilities on the first day of Respondent's return to active medical practice. Respondent's active suspension shall continue past three (3) months¹⁰ if she does not have an approved practice monitor or supervisor; and

¹⁰ until a practice monitor or supervisor is obtained.

7. After the three (3) months of active suspension and until the expiration of the Restoration Order, all other terms of the Restoration Order, as amended, shall remain applicable and in full force and effect; and

8. The complete terms of probation are attached to this Determination and Order in Appendix II and are incorporated herein; and

9. The complete terms of the Restoration Order, dated November 23, 1992, as amended by this Determination and Order, are attached to this Determination and Order in Appendix III and are incorporated herein; and

10. Respondent's suspension, probation and practice shall be supervised by the Office of Professional Medical Conduct.

**DATED: Albany, New York
September, 27 1994**


OLIVE JACOB, (Chair),

**JOHN H. MORTON, M.D.
DAVID T. LYON, M.D.,**

To: Cindy M. Fascia, Esq.,
Associate Counsel,
New York State Department of Health
Bureau of Professional Medical Conduct
Corning Tower Building, Room 2429
Empire State Plaza
Albany, New York 12237-0032

Dr. Johanna Cavender
4800 Westfield Drive
Manlius, NY 13104

Dr. Johanna Cavender
1938 East Fayette Street
Syracuse, NY 13210

A P P E N D I X I

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

-----X
IN THE MATTER : STATEMENT
OF : OF
JOHANNA CAVENDER, M.D. : CHARGES
-----X

JOHANNA CAVENDER, M.D., the Respondent, was authorized to practice medicine in New York State on October 20, 1978 by the issuance of license number 136100 by the New York State Education Department. Respondent is currently registered with the New York State Education Department to practice medicine for the period January 1, 1993 through December 31, 1994 from 4800 Westfield Drive, Manlius, New York 13104.

FACTUAL ALLEGATIONS

A. Respondent's license to practice medicine in New York State was restored by a Restoration Order issued on or about November 23, 1992 by the State Board for Professional Medical Conduct. The Order restored Respondent's license to practice medicine under certain conditions which, unless otherwise specified, remain in effect for a period of probation lasting five years from the effective date of said Order.

B. Respondent, pursuant to the Restoration Order, is required to be supervised in her medical practice by a licensed physician [hereinafter "Supervisor"] approved by the Office of Professional Medical Conduct [hereinafter OPMC]. Respondent is further required to obtain a successor Supervisor subject to the approval of OPMC within seven days of becoming aware that the original supervising physician will no longer serve in that capacity. Respondent has failed to comply with the required supervision in violation of the Restoration Order, in that:

1. Respondent has failed to obtain a successor Supervisor since on or about April 1993.
2. Respondent has practiced medicine since on or about April 1993 without being supervised by an approved Supervisor.

C. Respondent, pursuant to the Restoration Order, is required to be monitored by a "Sobriety Monitor" approved by OPMC. The Sobriety Monitor is to cause to be performed random, supervised, unannounced blood, breathalyzer and/or urine tests for the presence of alcohol and other drugs. Respondent has failed to comply with the required monitoring in violation of the Restoration Order, in that:

1. Respondent failed to report to Pelion, the designated Sobriety Monitor, on December 3, 1992, for a required urine test, despite the fact that Pelion told Respondent to do so.

2. Respondent failed to call Pelion on February 15, 1993, despite the fact that she was required to call Pelion every weekday morning to ascertain whether she would be required to come in that day for a urine test.
3. Respondent failed to report to Pelion on February 16, 1993, for a required urine test, despite the fact that Pelion told Respondent to do so.
4. Respondent failed to report to Pelion on March 4, 1993, for a required urine test, despite the fact that Pelion told Respondent to do so.
5. Respondent failed to call Pelion on March 22, 1993, despite the fact that she was required to call Pelion every weekday morning to ascertain whether she would be required to report for a urine test.

D. Respondent, pursuant to the Restoration Order, is required to limit her work schedule to a maximum of twenty-five hours weekly until at least one year from the date of the Restoration Order. Respondent, on or about April 1993, at a time when she was already working twenty-five hours a week, obtained additional employment in violation of the Restoration Order.

SPECIFICATION OF CHARGES


FIRST THROUGH THIRD SPECIFICATIONS

VIOLATING A TERM OF PROBATION,
CONDITION OR LIMITATION

Respondent is charged with professional misconduct under N.Y. Educ. Law §6530(29) (McKinney Supp. 1994) by reason of her having violated a term of probation or condition or limitation imposed on her pursuant to section two hundred thirty of the public health law, in that Petitioner charges:

1. The facts in Paragraphs A, B and B.1, and/or B.2.
2. The facts in Paragraphs A, C and C.1, and/or C.2, and/or C.3, and/or C.4, and/or C.5.
3. The facts in Paragraphs A and D.

DATED: Albany, New York
March 24, 1994



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

A P P E N D I X I I

TERMS OF PROBATION

1. Respondent shall conduct herself in all ways in a manner befitting her professional status, and shall conform fully to the moral and professional standards of conduct imposed by law and by her profession.

2. Respondent shall comply with all federal, state and local laws, rules and regulations governing the practice of medicine in New York State.

3. Respondent shall submit prompt written notification to the Board addressed to the Director, Office of Professional Medical Conduct, Empire State Plaza, Corning Tower Building, Room 438, Albany, New York 12237, regarding any change in employment, practice, residence or telephone number, within or without New York State.

4. In the event that Respondent leaves New York to reside or practice outside the State, Respondent shall notify the Director of the Office of Professional Medical Conduct (hereinafter "OPMC") in writing at the address indicated above, by registered or certified mail, return receipt requested, of the dates of her departure and return. Periods of residency or practice outside New York shall toll the suspension, the probationary period and the terms of the Restoration Order of November 23, 1992, which shall be extended by the length of residency or practice outside New York.

5. Respondent shall have quarterly meetings with an employee or designee of the OPMC during the period of probation. During these quarterly meetings Respondent's professional performance may be reviewed by having a random selection of office records, patient records and hospital charts reviewed.

6. Respondent shall submit quarterly declarations, under penalty of perjury, stating whether or not there has been compliance with all terms of: (1) the suspension, as applicable; (2) the probationary conditions and (3) the Restoration Order and, if not, the specifics of such non-compliance. These shall be sent to the Director of the OPMC at the address indicated above.

7. Respondent shall submit written proof to the Director of the OPMC at the address indicated above that she has paid all registration fees due and is currently registered to practice medicine as a physician with the New York State Education Department. If Respondent elects not to practice medicine as a physician in New York State, then she shall submit written proof that she has notified the New York State Education Department of that fact.

8. If there is full compliance with every term set forth herein, and the terms of the annexed Determination and Order, and the terms of the Restoration Order, as amended, Respondent may practice as a physician in New York State in accordance with the terms of this Determination and Order, the conditions of probation and the terms of the Restoration Order, provided, however, that on receipt of evidence of non-compliance or any other violation of the terms of probation, a violation of probation proceeding and/or such other proceedings as may be warranted, may be initiated against Respondent pursuant to New York Public Health Law §230(19) or any other applicable laws.

A P P E N D I X I I I

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

IN THE MATTER	X	
	:	RESTORATION
OF	:	
	:	ORDER
Johanna Cavender, M.D.	:	
	X	

This matter was brought to the New York State Board for Professional Medical Conduct for decision at the request of Johanna Cavender, MD ("Petitioner"). The purpose of the proceeding was to determine whether Petitioner's license to practice medicine in the State of New York, which had been temporarily surrendered, should be restored upon a finding that she is no longer incapacitated for the active practice of medicine pursuant to Public Health Law Section 230(13)(a).

A hearing in the above-entitled proceeding was held on November 3, 1992. Petitioner appeared with her attorney Catherine Gale, Esq. before a committee of the State Board for Professional Medical Conduct consisting of Richard D. Milone, M.D., (Chair), Rev. James H. Miller, and George T. C. Way, M.D. The Committee determined that Petitioner is no longer incapacitated for the active practice of medicine and that her medical license and registration should be restored, subject to certain conditions.

THEREFORE, IT IS HEREBY ORDERED THAT:

Petitioner's medical license and registration be restored subject to the following conditions. Unless otherwise indicated, these conditions shall remain in effect for a period of probation lasting five (5) years from the effective date of this Order.

1. Petitioner shall remain alcohol and drug free from mood altering substances other than those prescribed for her treatment by a licensed physician aware of her history. Petitioner shall not self-prescribe any medications.

2. Petitioner shall be monitored by a qualified health care professional ("Sobriety Monitor") approved by the Office of Professional Medical Conduct ("OPMC"). Petitioner shall submit the name of a proposed successor within seven (7) days of learning that his approved Sobriety Monitor is no longer willing or able to serve.

a. The Sobriety Monitor shall oversee Petitioner's compliance with the terms of probation imposed herein and shall cause to be performed random, supervised, unannounced blood, breathalyzer and/or urine tests for the presence of alcohol and other drugs in Petitioner. Specimens shall be collected at the discretion of the monitor at a frequency to be approved by the OPMC.

b. The Sobriety Monitor shall notify the OPMC immediately if Petitioner refuses such a test.

c. The Sobriety Monitor shall notify the OPMC immediately if such a test reveals or if the monitor otherwise learns the Petitioner is not alcohol/drug free.

d. Every three months, the Sobriety Monitor shall submit to the OPMC a report certifying compliance with each of the terms of probation or describing in detail any failure to comply. The quarterly reports shall include the results of all tests for the presence of alcohol and other drugs performed during that quarter.

3. Petitioner shall be supervised in medical practice by a licensed physician ("Supervisor") approved by the OPMC, familiar with Petitioner's history of chemical dependence and with the terms of this Restoration Order.

a. Petitioner shall obtain a successor Supervisor subject to the approval of the Office of Professional Medical Conduct within seven (7) days of Petitioner's becoming aware that the original supervising physician will no longer serve in that capacity.

b. The Supervisor shall submit a report to the Office of Professional Medical Conduct every three months regarding the quality of Petitioner's medical practice, any unexplained absences from work, and Petitioner's compliance or failure to comply with each condition described within this order of restoration.

c. Petitioner shall be prohibited from writing triplicate prescriptions for a minimum of 2 years. If there has been no evidence of return by Petitioner to substance abuse, she may petition for the privilege of writing triplicate prescriptions to be reinstated.

d. The Petitioner shall not dispense, administer, or inventory controlled substances. Should triplicate writing privileges be restored, the Supervisor shall review Petitioner's prescribing, administering, dispensing, inventorying and wasting of controlled substances throughout the remainder of the Restoration Order.

e. Petitioner shall not engage in the solo practice of medicine, but shall work in a community based setting which affords the capability of direct supervision.

f. Petitioner's work schedule shall be limited to a maximum of twenty-five (25) hours weekly for at least one year. This may be modified after that time subsequent to a review by OPMC upon Petitioner's request.

g. Petitioner shall submit documentation verifying completion of 50 CME credits for each year of this Order.

4. Petitioner shall continue in treatment with a qualified Psychiatrist or a successor approved by the OPMC, for as long as the Psychiatrist deems it necessary.

a. The Psychiatrist shall submit a report to the Office of Professional Medical Conduct every three months certifying compliance with treatment by Petitioner and describing in detail any failure to comply.

b. The Psychiatrist shall report immediately to the Office of Professional Medical Conduct any significant pattern of absences. If the Psychiatrist recommends discontinuation of treatment, OPMC must be notified at least three months in advance of potential discharge.

c. OPMC shall reserve the authority to have Petitioner undergo an independent evaluation every six months by a practitioner approved by OPMC who specializes in depressive illness. A report of such assessment shall be submitted promptly to OPMC.

5. Petitioner shall continue in treatment for chemical dependency with a qualified health care professional ("Therapist") or a successor approved by the OPMC, for as long as the Therapist deems it necessary.

a. The Therapist shall submit a report to the Office of Professional Medical Conduct every three months certifying compliance with treatment by Petitioner and describing in detail any failure to comply.

b. The Therapist shall report immediately to the Office of Professional Medical Conduct any significant pattern of absences. If the Therapist recommends discontinuation of treatment, OPMC must be notified at least three months in advance of potential discharge.

c. OPMC shall reserve the authority to have Petitioner undergo an independent evaluation every six months by a practitioner approved by OPMC who specializes in chemical dependency. A report of such assessment shall be submitted promptly to OPMC.

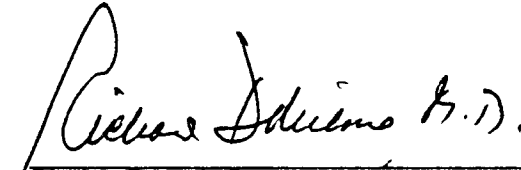
6. Petitioner shall continue regular participation in self-help fellowship (eg. AA/NA/Caduceus/other).

7. Petitioner shall inform all physicians or other health care practitioners from whom she seeks treatment of her history of chemical dependency. Should she be prescribed any controlled substances, she shall notify her Sobriety Monitor, Therapist and OPMC before such medications are administered. Petitioner shall not self-prescribe any medications.

As Petitioner agreed in the Temporary Surrender of license and registration, failure to comply with any of the conditions described above will result in immediate reinstatement of Petitioner's "inactive" license status, upon notice to Petitioner.

This Order shall be effective upon issuance.

DATED: Harrison, New York
November 23, 1992



State Board for
Professional
Medical Conduct

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