

August 15, 2011

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Jose M. Poulouse, M.D.  
99 Hillside Avenue – Suite D  
Williston Park, New York 11596

Jose M. Poulouse, M.D.  
REDACTED

Mark L. Furman, Esq.  
Hoffman, Polland & Furman, PLLC  
220 East 42<sup>nd</sup> Street – Suite 435  
New York, New York 10017

Joel E. Abelove, Esq.  
NYS Department of Health  
ESP-Corning Tower-Room 2512  
Albany, New York 12237

**RE: In the Matter of Jose M. Poulouse, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 11-201) 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.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), (McKinney Supp. 2007) and §230-c subdivisions 1 through 5, (McKinney Supp. 2007), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the Respondent or the Department may seek a review of a committee determination.

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,

REDACTED

James F. Horan, Acting Director  
Bureau of Adjudication

JFH:cah

Enclosure

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

IN THE MATTER  
OF  
JOSE M. POULOSE, M.D.  
CO-07-10-5855-A

DETERMINATION  
AND  
ORDER

COPY

BPMC #11-201

A hearing was held on June 23, 2011 at the offices of the New York State Department of Health ("the Petitioner"). A Notice of Referral Proceeding and a Statement of Charges, dated February 25, 2011, were served upon the Respondent, **Jose M. Poulouse, M.D.**

Pursuant to Section 230(10)(e) of the Public Health Law, **Jerry Waisman M.D.**, Chair, **Samuel F. Bosco, M.D.** and **Thomas W. King, Jr., M.P.A., P.E.**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. **David A. Lenihan, Esq.**, Administrative Law Judge, served as the Administrative Officer. The Petitioner appeared by **James E. Dering, Esq.**, General Counsel, by **Joel E. Abelove, Esq.**, of Counsel. The Respondent, **Jose M. Poulouse, M.D.**, did appear, with counsel **Mark L. Furman, Esq.**, of Hoffman, Polland & Furman, PLLC. Evidence was received and transcripts of these proceedings were made. After consideration of the entire record, the Hearing Committee issues this Determination and Order.

### STATEMENT OF CASE

This case was brought pursuant to Public Health Law Section 230(10) (p). The statute provides for an expedited hearing when a licensee is charged solely with a violation of Education Law Section 6530(9). In such cases, a licensee is charged with misconduct based upon a prior criminal conviction in New York State or another jurisdiction, or upon a prior administrative adjudication regarding conduct that would amount to professional misconduct, if committed in New York. The scope of an expedited hearing is limited to a determination of the nature and severity of the penalty to be imposed upon the licensee.

In the instant case, the Respondent is charged with professional misconduct pursuant to Education Law §6530(9)(a)(i) by having been convicted, on or about November 30, 2010, of committing an act constituting a crime under New York State law, specifically, Attempted Disseminating Indecent Material to Minors in the First Degree, a class E felony. Copies of the Notice of Referral Proceeding and the Statement of Charges are attached to this Determination and Order as Appendix 2.

### WITNESSES

For the Petitioner:

None

For the Respondent:

Richard Krueger, M.D.  
Dorothy Bowman  
Luis Savelli  
Reverend Finney Samuel  
Jose M. Poulouse, M.D.

### FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers below in parentheses refer to exhibits, denoted by the prefix "Ex." These citations refer to 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 of fact were unanimous.

1. Jose M. Poulouse, M.D., the Respondent, did appear at the hearing, with counsel, and was duly served and notified of the hearing, by personal service of process, on March 7, 2011. (Petitioner's Exhibit 2.)
2. Jose M. Poulouse, M.D., the Respondent, was authorized to practice medicine in New York State on July 16, 2002, by the issuance of license number 225615 by the New York State Education Department. (Petitioner's Ex. 4)
3. On or about November 30, 2010, in the Supreme Court of the State of New York, Queens County, New York, Respondent was found guilty, based on a plea of guilty of one (1) count of Attempted Disseminating Indecent Material to Minors in the First Degree, in violation of New York Penal Law §110-235.22, a class E felony, and on or about January 25, 2011 was sentenced to five (5) years probation, a \$5,000.00 fine, a \$25.00 CVA fee, a \$50.00 DNA fee, a \$300.00 Surcharge, and a \$50.00 Sexual Offender registration fee. (Petitioner's Ex. 5)

**VOTE OF THE HEARING COMMITTEE**

**SPECIFICATION**

"Respondent violated New York Education Law §6530(a)(i) by having been convicted of committing an act constituting a crime under New York State law..."

VOTE: Sustained (3-0)

**HEARING COMMITTEE DETERMINATION**

The Respondent did appear at the hearing, with counsel. The Administrative Officer, after considering the documentary evidence, which included an Affidavit of Personal Service of the Notice of Referral Proceeding and the Statement of Charges (Petitioner's Exhibit 2) ruled that the Petitioner had met the requirements of law for service of process, that jurisdiction had been established over the Respondent and that the hearing could proceed.

The record in this case indicates that the Respondent pled guilty to a felony, the attempted dissemination of indecent material to minors. The record shows that the respondent engaged in an on-line internet conversation with a presumed 14 year old and that he sent this person pornographic material and attempted to meet with this girl to have sex. (T. 42) In his own testimony at the hearing, Doctor Poulouse stated that he sent a short video file of a couple having sex to a person who stated that she was 14 years of age. (T.

69) When he got to the *rendezvous* place, Doctor Poulouse learned that the person was not actually 14 but looked to be 26 or 28 and was part of a police sting operation. (T. 69) Doctor Poulouse went on to testify that he was then arrested on this charge on October 4, 2007 and spent several days in jail awaiting bail. (Exhibit 5 and T. 69) The record shows that the Respondent pled guilty to the charge and for this crime Doctor Poulouse was sentenced in New York State Supreme Court, County of Queens, to five (5) years probation, a \$5,000.00 fine, a \$25.00 CVA, a \$50.00 DNA fee and a \$300.00 Surcharge, and a \$50.00 Sexual Offender registration fee. (Petitioner's Ex. 5). It is noted that the CVAF fee is for the Crime Victims Assistance Fund, a fund to provide assistance to crime victims and speed the recovery from financial loss, physical suffering and emotional distress. The \$50 DNA databank fee applies to many misdemeanors and all felonies as set forth in the following New York statutes: Penal Law § 60.35(10) and Exec Law § 995(7).

In his defense, Doctor Poulouse had several witnesses testify, including two of his patients, his psychiatrist and his pastor. One patient testified that the Respondent was a wonderful physician and provided great care for her 85 year old father. She testified that the Respondent goes above and beyond the call of duty and has been a great blessing to her family. (T. 40)

Another patient testified that he is quite satisfied with the care the Respondent has given him, noting that Doctor Poulouse explains everything and is easy to talk to. (T.46)

The Respondent's psychiatrist, Dr. Richard Krueger, testified that he has treated and assessed Doctor Poulouse and that, in his opinion, the Respondent is not a pedophile or

paraphile of any sort. (T. 16) Doctor Krueger went on to testify that Doctor Poulouse presents a low risk towards any of his patients since he is in treatment and there have been no accusations of criminal behavior or of inappropriate sexual behavior within his practice. (T. 19)

On cross-examination, Doctor Krueger was asked if someone with a low risk of re-offending is not going to re-offend and he answered that there are no guarantees. (T. 22)

The panel considered the full range of penalties available and determined that the Respondent's license should be permanently restricted and limited to care for those over the age of 18. The panel also determined that the Respondent's license should be suspended for three years and this suspension should be stayed. The panel also determined that the Respondent should be placed on probation for a period of five years. During this probation, the Respondent's practice should be monitored for compliance. The panel indicated that the people of New York State would be best protected by such a suspension and probation of the Respondent's license to practice medicine.



**ORDER**

**IT IS HEREBY ORDERED THAT:**

1. The specifications of professional misconduct, as set forth in the Statement of Charges, are **SUSTAINED**.
2. The license of the Respondent to practice medicine in New York State is **permanently restricted** to care for those over the age of 18 years.
3. The license of the Respondent to practice medicine in New York State is **SUSPENDED** for a period of at three (3) years and this suspension is **stayed**.
4. Respondent is placed on a term of probation of five years. The terms of the probation are attached hereto as Appendix I and are incorporated into this Order.
5. This Order shall be effective upon service on the Respondent in accordance with the requirements of Public Health Law Section 230(10)(h).

**DATED: Poughquag, New York**  
**August 9, 2011**

REDACTED

  
**Jerry Waisman M.D., Char**

**Samuel F. Bosco, M.D.**  
**Thomas W. King, Jr., M.P.A., P.E.,**

To:

Jose M. Poulouse, M.D.  
99 Hillside Avenue - Suite D  
Williston Park, N. Y. 11596

Jose M. Poulouse, M.D.

REDACTED

Mark L. Furman, Attorney for Respondent  
Hoffman, Polland & Furman, PLLC  
220 East 42<sup>nd</sup> Street, Suite 435  
New York, New York 10017

Joel E. Abelow, Esq., Attorney for Petitioner  
Associate Counsel  
NYS Department of Health  
Bureau of Professional Medical Conduct  
Corning Tower, Room 2512  
Empire State Plaza  
Albany, New York 12237

## **APPENDIX 1**

## Terms of Probation

1. Respondent shall conduct himself in all ways in a manner befitting his professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his profession.
2. Respondent shall submit written notification to the New York State Department of Health addressed to the Director, Office of Professional Medical Conduct (OPMC), Hedley Park Place, 433 River Street Suite 303, Troy, New York 12180-2299; said notice is to include a full description of any employment and practice, professional and residential addresses and telephone numbers within or without New York State, and any and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty days of each action.
3. Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of Respondent's compliance with the terms of this Order. Respondent shall personally meet with a person designated by the Director of OPMC as requested by the Director.
4. Throughout the period of probation, Respondent shall practice medicine only when a practice monitor shall be present in his office. The practice monitor shall be on-site during office hours, unless determined otherwise by the Director of OPMC. The practice monitor shall be proposed by the Respondent and subject to the written approval of the Director of OPMC. The practice monitor shall not be a family member or personal friend, or be in a professional relationship, which could pose a conflict with supervision responsibilities.
5. Respondent shall ensure that the practice monitor is familiar with the Order and terms of probation, and be aware of the sexual misconduct issues in this case, and be willing to report to OPMC. Respondent shall ensure that the practice monitor is in a position to regularly observe and assess Respondent's medical practice and conduct. Respondent shall cause the practice monitor to report within 24 hours any suspected impairment, inappropriate behavior, questionable medical practice or possible misconduct to OPMC. The practice monitor shall insure that a female chaperone is present whenever the Respondent is treating a female patient.
6. Respondent shall authorize the practice monitor to have access to patient records and to submit quarterly written reports to the Director of OPMC, regarding Respondent's practice, including, but not limited to procedures for obtaining written consent to procedures and appropriate chaperoning of patients. These narrative reports shall address all aspects of Respondent's clinical practice including, but not limited to, the evaluation and treatment of patients, general demeanor, and other such on-duty conduct as the practice monitor deems appropriate to report.

7. The period of probation shall be tolled during periods in which Respondent is not engaged in the active practice of medicine in New York State, Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in or intends to leave the active practice of medicine in New York State for a period of thirty (30) consecutive days or more, Respondent shall then notify the Director again prior to any change in that status. The period of probation shall resume and any terms of probation which were not fulfilled shall be fulfilled upon Respondent's return to practice in New York State.

8. Respondent's professional performance may be reviewed by the Director of OPMC. This review may include, but shall not be limited to, a review of office records, patient records and/or hospital charts, interviews with or periodic visits with Respondent and his/her staff at practice locations or OPMC offices.

9. At the direction of the Director of OPMC, Respondent shall submit to evaluations by a board-certified psychiatrist, licensed mental health practitioner or other health care professional or program designated by the Director (hereafter "Evaluator.") Respondent shall provide the Evaluator with a copy of this Order and copies of all previous treatment records. OPMC, at its discretion, may provide information or documentation from its investigative files concerning Respondent to Respondent's Evaluator. The Evaluator shall report to the Director regarding Respondent's condition and fitness or incapacity to practice medicine. Respondent shall comply with all treatment recommendations based upon the evaluation; failure to comply with such treatment recommendations shall constitute professional misconduct.

## APPENDIX 2

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



IN THE MATTER  
OF  
JOSE M. POULOSE, M.D.  
CO-07-10-5855-A

NOTICE OF  
REFERRAL  
PROCEEDING

TO: JOSE M. POULOSE, M.D.  
99 Hillside Avenue  
Suite D  
Williston Park, NY 11596

JOSE M. POULOSE, M.D.  
REDACTED

**PLEASE TAKE NOTICE THAT:**

An adjudicatory proceeding will be held pursuant to the provisions of New York Public Health Law §§230(10)(p) and New York State Administrative Procedures Act §§301-307 and 401. The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 20<sup>th</sup> day of April, 2011, at 10:00 a.m., at the offices of the New York State Department of Health, Hedley Park Place, 433 River Street, 5<sup>th</sup> Floor, Troy, NY 12180.

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

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

If you intend to present sworn testimony, the number of witnesses and an estimate of the time necessary for their direct examination must be submitted to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Hedley Park Place, 433 River Street, Fifth Floor South, Troy, NY 12180, ATTENTION: HON. JAMES F. HORAN, ACTING DIRECTOR, BUREAU OF ADJUDICATION (Telephone: (518-402-0748), (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, no later than ten (10) days prior to the scheduled date of the Referral Proceeding, as indicated above.

Pursuant to the provisions of New York Public Health Law §230(10)(p), you shall file a written answer to each of the charges and allegations in the Statement of Charges not less than ten (10) 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. You may file a written brief and affidavits with the Committee. Six (6) copies of all papers you submit must be filed with the Bureau of Adjudication at the address indicated above, no later than fourteen (14) days prior to the scheduled date of the Referral Proceeding, and a copy of all papers must be served on the same date on the Department of Health attorney, indicated 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 New York State Administrative Procedure Act §401 and 10 N.Y.C.R.R. §51.8(b), the Petitioner demands, hereby, disclosure of the evidence that 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 and/or other evidence that cannot be photocopied.

**YOU ARE ADVISED, HEREBY, THAT THE ATTACHED CHARGES WILL BE MADE PUBLIC FIVE (5) BUSINESS DAYS AFTER THEY ARE SERVED.**

Department attorney: Initial here



The proceeding may be held whether or not you appear. Please note that requests for adjournments must be made in writing to the Bureau of Adjudication, at the address indicated above, with a copy of the request to the attorney for the Department of Health, whose name appears below, at least five (5) days prior to the scheduled date of the proceeding. Adjournment requests are not routinely granted. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation. Failure to obtain an attorney within a reasonable period of time prior to the proceeding will not be grounds for an adjournment.

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

**SINCE THESE PROCEEDINGS MAY RESULT IN A DETERMINATION THAT SUSPENDS OR REVOKES YOUR LICENSE TO PRACTICE MEDICINE IN NEW YORK STATE AND/OR IMPOSES A FINE FOR EACH OFFENSE CHARGED, YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER.**

DATED: Albany, New York

*February 25, 2011*

REDACTED

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

Inquiries should be addressed to:

Joel E. Ablove  
Associate Counsel  
Bureau of Professional Medical Conduct  
Corning Tower – Room 2512  
Empire State Plaza  
Albany, NY 12237  
(518) 473-4282

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

IN THE MATTER  
OF  
JOSE M. POULOSE, M.D.  
CO-07-10-5855-A

STATEMENT  
OF  
CHARGES

JOSE M. POULOSE, M.D., Respondent, was authorized to practice medicine in New York state on July 16, 2002, by the issuance of license number 225615 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A. On or about November 30, 2010, in the Supreme Court of the State of New York, Queens County, New York, Respondent was found guilty, based on a plea of guilty of one (1) count of Attempted Disseminating Indecent Material to Minors in the First Degree, in violation of New York Penal Law §110-235.22, a class E felony, and on or about January 25, 2011, was sentenced to five (5) years probation, a \$5,000.00 fine, a \$25.00 CVA, a \$50.00 DNA, a \$300.00 Surcharge, and a \$50.00 Sexual Offender registration fee.

**SPECIFICATION**

Respondent violated New York Education Law §6530(9)(a)(i) by being convicted of committing an act constituting a crime under New York State law, in that Petitioner charges:

1. The facts in Paragraph A.

DATED: *February 25*, 2011  
Albany, New York

REDACTED

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