



STATE OF NEW YORK  
DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Barbara A. DeBuono, M.D., M.P.H.  
*Commissioner*

Dennis P. Whalen  
*Executive Deputy Commissioner*

December 19, 1996

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Dimitri Polydefkis, M.D.  
57 Montague Street  
Brooklyn, New York 11201

Dan Guenzburger, Esq.  
New York State Department of Health  
5 Penn Plaza - Sixth Floor  
New York, New York 10001

**RE: In the Matter of Dimitri Polydefkis, M.D.**

Dear Dr. Polydefkis and Mr. Guenzburger:

Enclosed please find the Determination and Order (No. BPMC-96-296) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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  
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,

A handwritten signature in black ink that reads "Tyrone T. Butler". The signature is written in a cursive style with a large initial "T".

Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:crc  
Enclosure

IN THE MATTER  
OF  
DIMITRI POLYDEFKIS, M.D.

DETERMINATION  
AND  
ORDER

DANIEL W. MORRISSEY, O.P., Chairman, EDWIN LEAR, M.D., and JACK SCHNEE, 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 (19) of the Public Health Law. MICHAEL P. MCDERMOTT, 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 6, 1996

Hearing Date:

November 20, 1996

Place of Hearing

NYS Department of Health  
5 Penn Plaza  
New York, New York

Date of Deliberations:

November 20, 1996

Petitioner appeared by:

Henry M. Greenberg, Esq.  
General Counsel  
NYS Department of Health  
By: Dan Guenzburger, Esq.  
of Counsel

Respondent appeared in person on his own behalf.

**WITNESSES**

For the Petitioner:

None

For the Respondent:

(1) Dimitri Polydefkis, M.D.

**STATEMENT OF CHARGES**

Essentially, the charges against the Respondent allege that he violated The Terms of Probation imposed on him by Order of the State Board for Professional Medical Conduct, dated August 3, 1995 in that (1) in his response to a letter from the Office of Professional Medical Conduct ("OPMC"), dated September 6, 1995, requesting that he describe in writing the type and nature of his current or most recent practice, he knowingly and falsely represented that he did not currently practice medicine, when in fact, he knew that he practiced medicine; (2) he failed to

have his medical practice monitored by a physician approved by OPMC from at least on or about September 7, 1995 to at least on or about June 10, 1996.

The Charges are more specifically set forth in the letter, from Anne F. Saile, Acting Director, OPMC, to Dimitri Polydefkis, M.D., dated September 6, 1996, a copy of which 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.

### **FINDINGS OF FACT**

1. DIMITRI G. POLYDEFKIS, M.D., the Respondent, was authorized to practice medicine in New York State on or about June 5, 1968, by the issuance of license number 099706 by the New York State Education Department (Pet's. Ex. 2).

2. In a "Statement of Charges", dated, April 24, 1995, the Respondent was charged, among other things, with: First Specification: Negligence on more than one occasion and Third Specification: Failing to maintain an adequate record (Pet's. Ex. 2).
  
3. In an "Application For Consent Order", dated, July 7, 1995, the Respondent admitted guilt to the First and Third Specifications, in full satisfaction of the charges against him. He agreed to one (1) year stayed suspension with three (3) years probation (Pet's. Ex. 2).
  
4. "Consent Order - BPMC #95-165" dated, August 3, 1995, adopted the "Application for Consent Order" and the provisions thereof (Pet's. Ex. 2).
  
5. Exhibit "B" of the "Consent Order" specifies the Terms of Probation. Paragraphs 1, 5, 7a and 7e of the Terms of Probation provide as follows:
  1. DIMITRI G. POLYDEFKIS, M.D., during the period of probation, shall conduct himself in all ways in a manner befitting his professional status, and shall conform fully to the professional standards of conduct imposed by law and by his profession;

5. Respondent shall comply with all terms, conditions, restrictions, and penalties to which he is subject pursuant to the order of the Board;
  
7. Respondent's practice of medicine shall be monitored by a physician monitor, either a psychiatrist or a licensed physician in an appropriate specialty ("practice monitor") approved in advance, in writing, by the Director of the Office of Professional Medical Conduct. Within 14 days of the effective date of this order, Respondent shall provide, in writing to the Probation unit, names and a curriculum vitae of the proposed monitor. Respondent may not practice medicine unless an approved practice monitor and monitoring program is in place within the time period approved by this order.
  - a. The practice monitor shall report in writing to the Director of the Office of Professional Medical Conduct or her designee, on a schedule to be determined by the Office. The practice monitor shall visit Respondent's medical practice at each and every location, on a random basis and shall examine a random selection of records



maintained by Respondent, including patient histories, prescribing information and billing records. Respondent will make available to the monitor any and all records or access to the practice requested by the monitor, including on-site observation. The review will determine whether the Respondent's medical practice is conducted in accordance with the generally accepted standards of professional medical care as defined in Education Law 6530. Any perceived deviation of accepted standards of medical care or refusal to cooperate with the monitor on issues pertaining to his or her monitoring of Respondent's medical practice shall immediately be reported to the Office of Professional Medical Conduct by the monitor. Respondent shall be notified of any negative report by his monitor, and shall be afforded an opportunity to provide the Department of Health with his explanation of the criticisms of his practice in the monitor's report.

- e. In the event Respondent practice medicine in a private setting, Respondent must maintain medical malpractice insurance coverage with limits no less than \$2 million dollars per occurrence and \$6 million dollars per policy year, in accordance with Section 230 (18)(b) of the Public Health Law. Proof of coverage shall be submitted to the Director or her designed prior to the placement of a practice monitor.
6. In a letter to the Respondent, dated, September 6, 1995, Nathan Reed, M.D., Medical Director, Probation Unit, Office of Professional Medical Conduct, requested that the Respondent supply information as to the "Type and nature of your current or most recent practice' (Pet's. Ex. 3).
7. In a letter to Dr. Reed, dated, September 11, 1995, the Respondent answered "None" to the question concerning the type and nature of his current or most recent practice. The Respondent also advised Dr. Reed that his services with Woodhull Medical Group had been terminated (Pet's. Ex. 4).

8. In a letter to the Respondent, dated, March 18, 1996, Lisa Robinson, Probation Case Coordinator, Physicians Monitoring Programs, Office of Professional Medical Conduct, requested that the Respondent submit a written update regarding his practice status (Pet's Ex. 6)
9. In a letter to Lisa Robinson, dated, April 29, 1996, the Respondent disclosed, "One private patient I have had for about two years is about to terminate treatment with me soon and I am not accepting new patients at this time" (Pet's. Ex. 7).
10. In a letter to the Respondent, dated June 6, 1996, Lisa Robinson requested that the Respondent provide specific information about his last patient including the patient's history, prescribing information and billing records (Pet's. Ex. 8).
11. In a letter to Lisa Robinson, dated June 17, 1996, the Respondent disclosed that he had been seeing only one patient, a 59 year old white male of Greek extraction., who had had a serious injury and was suffering from severe anxiety, insomnia, depression, nightmares and feelings of impending catastrophe. The Respondent saw this patient for a total of nine visits, on 9/7/95, 9/21/95, 10/17/95, 11/11/95, 3/4/96, 4/5/96, 4/9/96, 5/3/96 and 6/10/96

and treated him with psychotherapy and Zoloft 50 mg. BID. The Respondent advised that the patient "is financially responsible for his therapy (\$120.00 per) (Pet's. Ex. 9).

12. In his testimony, the Respondent acknowledged that he had not obtained a practice monitor nor did he obtain medical malpractice insurance coverage a mandated in paragraphs 7(a) and 7(e) of the Terms of Probation. He testified that he had not done so because he had given top priority to concerns about his own physical health in the past year. He advised the Hearing Committee that those physical health problems were no longer a concern.

### **CONCLUSIONS OF THE HEARING COMMITTEE**

The evidence in this case clearly establishes that the Respondent violated the terms of his probation, specifically paragraphs 1, 5, 7(a) and 7(e) of the Terms of Probation.

During the course of the hearing, the Petitioner suggested that because the Respondent had answered "none" to a question concerning the type and nature of his current or most recent practice, and subsequently revealed that he had in fact been treating one patient, the question of fraud became an issue.

The Hearing Committee rejects the Petitioner's suggestion that fraud may be an issue in this case. While it is true that the Respondent's letter of September 11, 1995 stated he had no medical practice, his letter of April 29, 1996 contains a voluntary disclosure that he had been treating one patient. His voluntary disclosure undercuts the notion that he had intended to deceive the Office of Professional Medical Conduct. Based upon the evidence the Hearing Committee cannot make a finding of "FRAUD".

More to the point, the Hearing Committee is concerned by the degree of culpable ignorance the Respondent expressed concerning the Terms of Probation specified in "Consent Order BPMC #95-165", dated August 3, 1995.

The Hearing Committee is also concerned by Respondent's arrogance in disregarding the Order's provisions concerning the requirements for a practice monitor, as well as his expressed feelings of entitlement concerning the treatment of a patient without having to have a practice monitor.

The Hearing Committee can only conclude that the Respondent has learned nothing from terms imposed by "Consent Order BPMC #95-165, or at least he has not taken them seriously.

## DETERMINATION OF THE HEARING COMMITTEE

The Hearing Committee determines that the Respondent's license to practice medicine in the State of New York should be **REVOKED**, said **REVOCATION STAYED** subject to conditions as specified hereinafter in the Order.

### ORDER

#### **THEREFORE, IT IS HEREBY ORDERED:**

1. The Respondent's license to practice medicine in New York State is **REVOKED**, said **REVOCATION** is **STAYED** subject to the following conditions.
2. Unless otherwise stated, these conditions shall remain in effect for a period of five (5) years from the effective date of this **ORDER**.

3. The 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 imposed by law and by his profession.
  
4. The Respondent shall submit prompt (within 30 days) written notification to the New York State Department of Health, addressed to the Director, Office of Professional Medical Conduct, Empire State Plaza, Corning Tower Building, Room 438, Albany, New York 12237; said notice is to include 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.
  
5. The 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. The Respondent shall personally meet with a person designated by the Director of OPMC as requested by the Director.

6. Any civil penalty not paid by the date prescribed herein shall be subject to all provisions of law relating to debt collection by New York State. This includes but is not limited to the imposition of interest, late payment charges and collection fees; referral to the New York State Department of Taxation and Finance for collection; and non-renewal of permits or licenses [Tax Law section 171(27)]; State Finance Law section 18; CPLR section 5001; Executive Law section 32].
  
7. The conditions set forth in this ORDER shall be tolled during periods in which the Respondent is not engaged in the active practice of medicine in New York State. The Respondent shall notify the Director of OPMC, in writing, if the 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. The 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 the Respondent's return to practice in New York State.



8. The 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 the Respondent and his staff at practice locations or OPMC offices.
9. The Respondent shall maintain legible and complete medical records which accurately reflect the evaluation and treatment of patients. The medical records shall contain all information required by State rules and regulations regarding controlled substances.
10. The Respondent shall practice medicine only when monitored by a licensed physician, board certified in an appropriate specialty, ("practice monitor") proposed by the Respondent and subject to the written approval of the Director of OPMC.
11. **Within Sixty (60) days** of the effective date of this ORDER, the Respondent shall provide, in writing to the Probation Unit, the name and a curriculum vitae of the proposed monitor.

12. The Respondent may not practice medicine unless an approved practice monitor and monitoring program is in place. It is the Respondent's responsibility to assure that a practice monitor and a monitoring program is in place **within 180 days** of the effective date of this ORDER.
  
13. The Respondent shall make available to the monitor any and all records or access to the practice requested by the monitor, including on-site observation. The practice monitor shall visit the Respondent's medical practice at each and every location, on a random unannounced basis at least monthly and shall examine a selection of records maintained by the Respondent, including patient records, prescribing information and office records. The review will determine whether the Respondent's medical practice is conducted in accordance with the generally accepted standards of professional medical care. Any perceived deviation of accepted standards of medical care or refusal to cooperate with the monitor shall be reported by the practice monitor within 24 hours to OPMC.
  
14. The Respondent shall be solely responsible for all expenses associated with monitoring, including fees, if any, to the monitoring physician.

15. The Respondent shall cause the practice monitor to report quarterly, in writing, to the Director of OPMC.
  
16. The Respondent shall maintain medical malpractice insurance coverage with limits no less than \$2 million per occurrence and \$6 million per policy year, in accordance with Section 230(18)(b) of the Public Health Law. Proof of coverage shall be submitted to the Director of OPMC prior to Respondent's practice after the effective date of this ORDER.
  
17. The Respondent shall comply with all terms, conditions, restrictions, limitations and penalties to which he is subject pursuant to this ORDER and shall assume and bear all costs related to compliance.
  
18. The Probation Unit, Office of Professional Medical Conduct, shall closely monitor the Respondent's compliance with the conditions of this ORDER.

19. The Respondent's failure to comply with any of the conditions herein set forth, including those time limits concerning the practice monitor and monitoring program as specified in paragraphs 11 and 12, will result in the automatic reinstatement of the REVOCATION PENALTY and the Respondent's license to practice medicine in the State of New York shall be REVOKED.

DATED: New York, New York  
*December 16*, 1996

*Daniel W. Morrissey, O.P.*  
DANIEL W. MORRISSEY, O.P.  
Chairman

EDWIN LEAR, M.D.  
JACK SCHNEE, M.D.

(10)



# STATE OF NEW YORK DEPARTMENT OF HEALTH

Office of Health System's Management - Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12237

Barbara A. DeBuono, M.D., M.P.H.  
Commissioner

Karen Schimke  
Executive Deputy Commissioner

September 6, 1996

## ***CERTIFIED MAIL - RETURN RECEIPT REQUESTED***

Dimitri Polydefkis, M.D.  
57 Montague Street  
Brooklyn, NY 11201

Dear Dr. Polydefkis:

Please be advised that, as Acting Director of the New York State Office of Professional Medical Conduct, I have determined, pursuant to NY Public Health Law 230(19) (McKinney Supp. 1996), that you may have violated the Terms of Probation imposed upon you by Order of the State Board for Professional Medical Conduct, dated August 3, 1995. The basis of the alleged violation of probation is as follows: 1) in your response to a letter from the Office of Professional Medical Conduct ("OPMC") dated September 6, 1995 requesting that you describe in writing the type and nature of your current or most recent practice, you knowingly and falsely represented that you did not currently practice medicine, when in fact, you knew that you practiced medicine. Such conduct violates paragraphs 1 and 5 of the terms of probation; 2) You failed to have your medical practice monitored by a physician approved by OPMC from at least on or about September 7, 1995, to at least on or about June 10, 1996. Such conduct violates paragraphs 5, 7, 7A and/or 7E of the terms of probation.

Please be advised that if within twenty (20) days of the date of the letter, you do not dispute the facts forming the basis of the violation alleged above, I shall submit this matter to a Committee on Professional Medical Conduct ("Committee") for its review and determination. If within twenty (20) days of the date of this letter, you elect to dispute any of the facts forming the basis of the violation alleged above, you have a right to and shall be afforded a hearing before the committee. You may be represented by counsel at the hearing and a stenographic record of the hearing shall be made. The Committee shall receive evidence and hear testimony relating to your alleged violation of probation and thereafter shall make findings of facts, conclusions of law and a determination.

Should the Committee determine that you have violated probation, it shall impose an appropriate penalty, taking into account both the violation of probation and the prior adjudication of misconduct. The Chairperson of the Committee shall issue an order adopting the Committee's decision. You may seek review of that order by the Administrative Review Board for Professional Medical Conduct.

Because your ability to continue to practice medicine in this state may be in jeopardy, I recommend that you consult with an attorney. If you or your attorney wish to discuss this matter, you may contact Daniel Guenzburger, Assistant Counsel, at (212) 613-2617.

Sincerely,



Anne F. Saile  
Acting Director  
Office of Professional Medical Conduct