



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

January 27, 1998

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Claudia Bloch, Esq.
NYS Department of Health
5 Penn Plaza Sixth Floor
New York, New York 10001

Fred Friedman, Esq.
36 West 44th Street
New York, New York 10036

Floyd W. White, Jr., M.D.
508 Rutland Street
Westbury, New York 11590

RE: In the Matter of Floyd W. White, Jr., M.D.

Dear Ms. Bloch, Mr. Friedman and Dr. White:

Enclosed please find the Determination and Order (No. 96-118) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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.

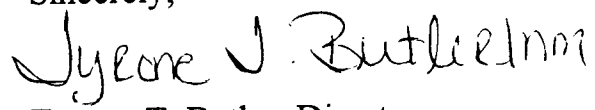
The notice of review served on the Administrative Review Board should be forwarded to:

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,

Handwritten signature of Tyrone T. Butler in black ink.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nm
Enclosure

COPY

IN THE MATTER
OF
FLOYD WESLEY WHITE, JR., M.D.

DETERMINATION
AND
ORDER

BPMC-96-118

The undersigned Hearing Committee consisting of **ROBIN N. BUSKEY, Chairperson**, **PASQUALE A. CARONE, M.D.**, and **MACHELE H. ALLEN, M.D.**, were duly designated and appointed by the State Board for Professional Medical Conduct pursuant to Section 230 (1) of the Public Health Law. **MARY NOE**, served as Administrative Law Judge.

The hearing was conducted pursuant to the provisions of Sections 230 (10) of the New York Public Health Law.

RECORD OF PROCEEDINGS

Notice of Violation of Probation Proceeding:	June 13, 1997
Pre-Hearing:	July 1, 1997
Hearing Dates:	May 14, 1997 May 15, 1997 August 9, 1997 August 12, 1997 August 20, 1997 September 23, 1997
Deliberations:	October 21, 1997

SUMMARY OF PROCEEDINGS

Place of Hearing: NYS Department of Health
5 Penn Plaza
New York, New York 10001

Petitioner appeared by: Claudia Bloch, Esq.
Assistant Counsel
NYS Department of Health
Bureau of Professional Medical Conduct
5 Penn Plaza
New York, New York 10001

Respondent appeared by: Fred Friedman, Esq.
Sharif Mahdavian, Esq.
Wilfred Friedman, P.C.
36 West 44th Street
New York, New York 10036

WITNESSES

For the Petitioner: Carol Nardo
Maureen Fage
Patrick Boyan
Zev Labins, M.D.

For the Respondent: Mark Kevin Moore
Floyd Wesley White, Jr., M.D.
Peter Szilagyi, M.D.

STATEMENT OF CHARGES

Essentially, the Respondent is in violation of Probation, to wit: Between March 1997 and May 14, 1997 he violated Terms 3 and 6 of Probation, and Impairment Monitoring Terms 4, 5, 6, 7, 8, 9, 10 and 12 (see attached Terms of Probation).

The violations are more specifically set forth in the Violation of Probation letter dated May 14, 1997 to Floyd W. White, Jr., M.D., a copy of which is attached hereto and made a part hereof.

FINDINGS OF FACT

Numbers in parenthesis 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 AS TO RESPONDENT

1. The Respondent was authorized to practice medicine in New York State on or about May 23, 1980, by the issuance of license number 142152 by the New York State Education Department (Ex. 5).
2. In September, 1996, the Administrative Review Board for Professional Medical Conduct issued a Determination and Order remanded revocation of the Respondent's License to practice medicine in New York State. However, prior to the Hearing Committee reconvening, Respondent entered into a Consent Application which he executed on February 11, 1997 and which went into effect by issuance of a final Consent Order #BPMC 97-52 on or about February 28, 1997 (Exs. 2 & 3).
3. On March 1, 1997, the day after the Consent Order was issued, a urine specimen obtained by South Oaks from the Respondent was later reported as positive for morphine (Ex. 18 & D; T. 53, 58).

4. On March 3, 1997, OPMC monitoring unit sent an initial letter to Respondent reiterating some of the terms of his probation, specifically the need for him to submit proposed monitors for approval by OPMC. Further, the letter specifically reiterated that Respondent was prohibited under the Order from practicing medicine without approved monitors in place. Respondent testified that he received this letter and was fully aware of his obligations and prohibitions under the terms of the Order; an Acknowledgment forms, and a Data Sheet (Licensee Declaration) were enclosed in the March 3, 1997 letter for Respondent to complete and submit. He failed to do so (Ex. 12; T. 139-142, 892, 911-912, 944).
5. On March 20, 1997, a urine specimen from the Respondent was positive for morphine and was sent to Ms. Nardo from the Nassau County Medical Examiner's Office on April 8, 1997 (Ex. 27; T. 54, 57-58, 117).
6. The Respondent failed to notify OPMC of either positive toxicology screen and failed to cause either of them to be reported as required under the terms of his disciplinary probation (T. 60-61, T. 148-149).
7. After the letter dated March 3, 1997, OPMC notified Respondent of his failure to submit proposed monitors and prohibition of practicing medicine until such time as they were approved, to wit on March 24, 1997, April 9, 1997, April 17, 1997 and April 28, 1997 (Exs. 3, 14, 16; T. 148-153).
8. The Respondent testified that he continued to practice medicine at Department of Mental Health at Kingsboro and Manhattan Psychiatric Hospitals from the date of the signing of the Consent Application and the effective date of the Consent Order (See: Exs. 2, 12, 13, 14, 16; T. 73-75, 144-146, 154-155, 671, 938, 950-951).

9. On April 23, 1997, the Respondent submitted to an evaluation by Zev Labins, M.D. (Exs 14, 18; T. 66, 126, 149-150, 154-155, 163-164).
10. On April 28, 1997, OPMC sent Respondent a letter again stating that the Respondent had not submitted information requested in the March 3, 1997 letter, that OPMC had confirmed that he was practicing medicine without approved supervisors in place and that they were made aware of two positive urine screens (Ex. 16; T. 165-166).
11. On or about May 8, 1997, OPMC received from the Respondent the Licensee Data Sheet partially completed, a proposed practice monitor for his employment at Kingsboro Psychiatric Hospital, and the name of his therapist at South Oaks, Marni Chin, who he proposed to act as both his therapist and sobriety monitor. Respondent failed to submit proposed practice supervisor for his employment at Manhattan Psychiatric Hospital (Ex. 19 T. 167-174).
12. Respondent failed to come to South Oaks for urine screens, as he agreed within the required four hour time period (Ex. 37).
13. Patrick Boyhan, clinic supervisor of outpatient alcohol and drug treatment department at South Oaks, testified that both laboratories confirmed that the results were true-positive for morphine (T. 434-436, 474).
14. Respondent testified that he failed to timely respond to a certified letter of March 3, 1997 from OPMC and to complete and return the requested forms and to submit for approval the identity of the required practice supervisor, sobriety monitor, and therapy monitor.

15. Respondent testified that he practiced medicine without an approved practice supervisor and without an approved sobriety monitor or therapy monitor (Ex. 36; T. 834, 841, 941).

DISCUSSION

The Respondent testified that he was drug free despite the two positive urine screens. The Committee found the Respondent's testimony not credible. The Respondent failed to take any action, such as increasing the frequency of testing, between the first positive screen on March 1, 1997 and the second positive screen on March 20, 1997. The Committee found the toxicology reports were properly taken and accurate as to their results. The Respondent's witness' testimony of a false positive result was not convincing. Furthermore, a separate laboratory confirmed the results of the first laboratory results as to positive. As to the Respondent's testimony of kissing as the cause of the positive screen, the Committee agrees with the testimony of Dr. Zilagi and Dr. Labins that such a transmission would be impossible.

The Respondent testified that he had two "wake up" calls on April 17, 1997 (T. 950) and June 7, 1997 (T. 879). Yet despite the Respondent's understanding of the serious nature of the violations, he continued to work without approved monitors in April 1997, he failed to contact a sobriety monitor at South Oaks (T. 956, 957), failed to submit a location closer to his employment or residence for urine screens, and flagrantly disregarded OPMC's requirements.

The Respondent exhibits poor judgment in his decision making, i.e. sending a wrong Curriculum Vitae to OPMC, consorting with know drug addicts, continued violation of the terms of probation knowing his license was in jeopardy.

The Hearing Committee considers Respondent's misconduct to be very serious. With a concern for the health and welfare of patients in New York State, the Hearing Committee determines that revocation of Respondent's license is the appropriate sanction to impose under the totality of the circumstances presented.

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

By execution of this Determination and Order, all members of the Hearing Committee certify that they have read and considered the complete record of these proceedings.

VOTE OF THE HEARING COMMITTEE

(All votes were unanimous unless otherwise indicated)

1. Two positive screens - **SUSTAINED**
2. Responding to OPMC letter dated March 3, 1997 - **SUSTAINED**
3. Practice of medicine without approved monitors - **SUSTAINED**
4. Failed to comply with OPMC letter dated April 17, 1997 - **NOT SUSTAINED**
5. Failed to submit to urine screens within 4 hours - **SUSTAINED**

DETERMINATION

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determined, that Respondent's license to practice medicine in the State of New York should be **REVOKED**.

This Determination is reached after due and careful consideration of the full spectrum of penalties available pursuant to P.H.L. Section 230-a 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. Limitation;
7. the imposition of monetary penalties;
8. a course of education or training;
- 9 performance of public service and
10. probation.

ORDER

Based upon the foregoing, IT IS HEREBY ORDERED THAT:

1. The Specifications of Violation of Probation (Department's Exhibit # 1) is **SUSTAINED.**
2. Respondent's license to practice medicine in New York State is hereby **REVOKED.**

DATED: Mount Vernon, New York
1/26 1997



ROBIN N. BUSKEY
Chairperson

PASQUALE A. CARONE, M.D.
MACHELE H. ALLEN, M.D.

EXHIBIT "B"**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), Coming Tower Building, 4th Floor, Empire State Plaza, Albany, New York 12237; 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. 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.
5. 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.
6. Respondent shall comply with all terms, conditions, restrictions, limitations and penalties to which he is subject pursuant to the Order and shall assume and bear all costs related to compliance. Upon receipt of evidence of noncompliance with, or any violation of these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding and/or any such other proceeding against Respondent as may be authorized pursuant to the law.

EXHIBIT "C"**IMPAIRMENT MONITORING**

1. Respondent shall remain drug/alcohol free.
2. Respondent shall remain active in self help groups such as, but not limited to, Narcotics Anonymous, Alcoholics Anonymous and Caduceus. ? 20
haven't
gotten CR
3. Respondent shall notify all treating physicians of his history of alcohol/chemical dependency. Respondent shall advise PMC of any controlled or mood-altering substance given or prescribed by treating physicians.
4. Respondent shall practice only when monitored by qualified health care professional monitors (sobriety monitor, practice supervisor, and therapist) proposed by Respondent and approved, in writing, by the Director of OPMC. Monitors shall not be family members or personal friends, or be in professional relationships which would pose a conflict with monitoring responsibilities.
5. Respondent shall ensure that the monitors are familiar with Respondent's drug/alcohol dependency and with the terms of this Order. Respondent shall cause the monitors to report any deviation from compliance with the terms of this Order to OPMC. Respondent shall cause the monitors to submit required reports on a timely basis.
6. Respondent shall submit, at the request of a monitor, to random, unannounced observed blood, breath and/or urine screens for the presence of drugs/alcohol. This monitoring will be on a random, seven-days a week, twenty-four hours a day basis. Respondent shall report for a drug screen within four (4) hours of being contacted by the monitor. Respondent shall cause the monitor to report to OPMC within 24 hours if a test is refused or delayed by Respondent or a test is positive for any unauthorized substance.
7. Respondent shall meet with a sobriety monitor on a regular basis who will submit quarterly reports to OPMC certifying Respondent's sobriety. These reports are to include a) forensically valid results of all drug/alcohol monitoring tests to be performed at a frequency of no less than six (6) times monthly for the first 12 months of the period of probation, then at a frequency to be proposed by the sobriety monitor and approved by OPMC

and b) an assessment of self-help group attendance (e.g., AANAPC Caduceus, etc.), 12 step progress, etc.

8. Respondent shall practice medicine only when supervised in his medical practice. The practice supervisor shall be on-site at all locations, unless determined otherwise by the Director of OPMC. Respondent shall not practice medicine until a practice supervisor has been approved. Respondent shall ensure that the practice supervisor is in a position to regularly observe and assess Respondent's medical practice. Respondent shall cause the practice supervisor to report within 24 hours any suspected impairment, inappropriate behavior, questionable medical practice or possible misconduct to OPMC.
9. Respondent shall cause the practice supervisor to review Respondent's practice regarding the prescribing, administering, dispensing, inventorying, and disposal of controlled substances.
10. Respondent shall cause the practice supervisor to submit quarterly reports to OPMC regarding the quality of Respondent's medical practice, including the evaluation and treatment of patients, physical and mental condition, time and attendance or any unexplained absences from work, prescribing practices, and compliance or failure to comply with any term of probation.
11. Respondent shall continue in counseling or other therapy with a therapist as long as the therapist determines is necessary, or for the period of time dictated in the Order.
12. Respondent shall cause the therapist to submit a proposed treatment plan and quarterly reports to OPMC certifying whether Respondent is in compliance with the treatment plan. Respondent shall cause the therapist to report to OPMC within 24 hours if Respondent leaves treatment against medical advice, or displays any symptoms of a suspected or actual relapse.
13. Respondent shall comply with any request from OPMC to obtain an independent psychiatric/chemical dependency evaluation by a health care professional proposed by the Respondent and approved, in writing, by the Director of OPMC.

**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.
CommissionerDennis P. Whalen
Executive Deputy Commissioner

May 14, 1997

CONFIDENTIAL**CERTIFIED MAIL-RETURN RECEIPT REQUESTED**Floyd W. White, Jr., M.D.
508 Rutland Street
Westbury, New York 11590

Re: Violation of Probation

Dear Dr. White:

As Director of the Office of Professional Medical Conduct, (OPMC) I have conducted an investigation and have determined that you may have violated the probation imposed on you by Order Number BPMC 97-52. I hereby give you notice of the facts forming the basis of the alleged violation of probation. To wit:

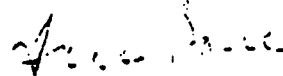
Between March, 1997 and the present, in violation of Terms of Probation 1, 3, and 6; and Impairment Monitoring Terms 1, 4, 5, 6, 7, 8, 9, 10, and 12, you have:

1. Not remained drug free in that you have had two opioid-positive urines, on March 1, 1997 and on March 20, 1997;
2. Failed to timely respond to a certified letter of March 3, 1997 from OPMC and to complete and return the requested forms and to submit for approval the identity of the required practice supervisor, sobriety monitor, and therapy monitor;
3. Practiced medicine without an approved practice supervisor, and without an approved sobriety monitor or therapy monitor.
4. Failed to comply with a directive from OPMC, as set forth in a letter to you dated April 17, 1997, to submit a report of a chemical dependency evaluation.

You have a right to a hearing and may be represented by counsel. As your license may be revoked as a result of the violation of probation proceeding, I urge you to consult an attorney at once. If, within twenty days of the date of this letter, you dispute any of the facts forming the basis of the alleged violation of probation, you will be afforded a hearing before a committee on professional conduct. The committee will hear the evidence and make findings of fact, conclusions of law and a determination. If you do not dispute the facts forming the basis of the alleged violation of probation within twenty days of the date of this letter, I will submit the matter to a committee on professional conduct for its review and determination. In determining the appropriate penalty, the committee will consider both the violation of probation and the prior adjudication of misconduct.

Please direct all future correspondence and communication regarding these allegations of probation violation to Claudia Morales Bloch, Associate Counsel, Bureau of Professional Medical Conduct, New York State Department of Health, 5 Penn Plaza - Suite 601, New York, New York 10001. Ms. Bloch can be reached at 212-613-2615.

Sincerely,



Anne F. Saile
Director
Office of Professional Medical Conduct

cc: Claudia M. Bloch