



New York State Board for Professional Medical Conduct

433 River Street, Suite 303 Troy, New York 12180-2299 • (518) 402-0863

Dennis P. Whalen
Executive Deputy Commissioner of Health
Anne F. Saile, Director
Office of Professional Medical Conduct
William J. Comiskey, Chief Counsel
Bureau of Professional Medical Conduct

William P. Dillon, M.D.
Chair
Denise M. Bolan, R.P.A.
Vice Chair
Ansel R. Marks, M.D., J.D.
Executive Secretary

May 13, 1999

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Andrew L. Nkongho, M.D.
82 Cranford Place
Teaneck, NJ 07666

RE: License No. 129655

Dear Dr. Nkongho:

Enclosed please find Order #BPMC 99-96 of the New York State Board for Professional Medical Conduct. This Order and any penalty provided therein goes into effect **May 13, 1999**.

If the penalty imposed by the Order is a surrender, revocation or suspension of this license, you are required to deliver to the Board the license and registration within five (5) days of receipt of the Order to Board for Professional Medical Conduct, New York State Department of Health, Hedley Park Place, Suite 303, 433 River Street, Troy, New York 12180.

Sincerely,

Ansel R. Marks, M.D., J.D.
Executive Secretary
Board for Professional Medical Conduct

Enclosure

cc: Anthony Benigno, Esq.

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

IN THE MATTER
OF
ANDREW L. NKONGHO, M.D.

CONSENT AGREEMENT
AND
ORDER
BPMC #99-96

STATE OF NEW YORK)
) ss.:
COUNTY OF)

ANDREW L. NKONGHO, M.D., (Respondent) states:

That in or about December, 1976, I was licensed to practice as a physician in the State of New York, having been issued License No. 129655 by the New York State Education Department.

My current address is 82 Cranford Place, Teaneck, NJ 07666, and I will advise the Director of the Office of Professional Medical Conduct of any change of my address.

I understand that the New York State Board for Professional Medical Conduct has charged me with one specification of professional misconduct.

A copy of the Statement of Charges is annexed hereto, made a part hereof, and marked as Exhibit "A".

I agree not to contest the specification, in full satisfaction of the charges against me. I hereby agree to the following penalty:

My license shall be suspended for an indefinite period. With the proviso that such indefinite period of suspension shall continue for no less than one year from the effective date of this order, I shall be permitted, upon compliance with all conditions and after the passage of said minimum period, to petition the State Board for Professional Medical Conduct for a Modification Order, staying such suspension and permitting me to practice as a Physician under whatever limitation(s), term(s) of probation, or further conditions the Board, in its reasonable discretion, exercised by a Committee on Professional Conduct after I have met a burden of proof and persuasion in a proceeding as set forth in this Order and Exhibit "B", attached, may deem appropriate. I understand and agree that the Committee's exercise of such discretion shall not be reviewable through recourse to the Administrative Review Board.

I further agree that the Consent Order for which I hereby apply shall impose the following conditions:

That, except during periods of actual suspension, Respondent shall maintain current registration of Respondent's license with the New York State Education Department Division of Professional Licensing Services, and pay all registration fees. This condition shall be in effect beginning thirty days after the effective date of the Consent Order and will continue while Respondent possesses his license; and

That Respondent shall fully cooperate in every respect with the Office of Professional Medical Conduct (OPMC) in its administration and enforcement of this Order and in its investigation of all matters regarding Respondent. Respondent shall respond in a timely manner to each and every request by OPMC to provide written periodic verification of Respondent's compliance with the terms of this Order. Respondent shall meet with a person designated by the Director of OPMC as directed. Respondent shall respond promptly and provide any and all documents and information within Respondent's control upon the direction of OPMC. This condition shall be in effect beginning upon the effective date of the Consent Order and will continue while Respondent possesses his license.

I hereby stipulate that any failure by me to comply with such conditions shall constitute misconduct as defined by New York State Education Law §6530(29)(McKinney Supp 1999).

I agree that in the event I am charged with professional misconduct in the future, this agreement and order shall be admitted into evidence in that proceeding.

I hereby make this Application to the State Board for Professional Medical Conduct (the Board) and request that it be granted.

I understand that, in the event that this Application is not granted by the Board, nothing contained herein shall be binding upon me or construed to be an admission of any act of misconduct alleged or charged against me, such Application shall not be used against me in any way and shall be kept in strict confidence during the pendency

of the professional misconduct disciplinary proceeding; and such denial by the Board shall be made without prejudice to the continuance of any disciplinary proceeding and the final determination by the Board pursuant to the provisions of the Public Health Law.

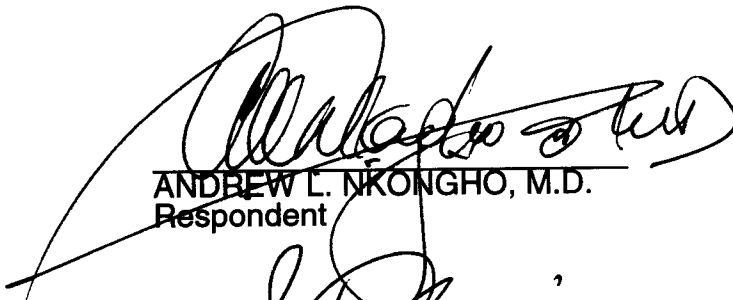
I agree that, in the event the Board grants my Application, as set forth herein, an order of the Chairperson of the Board shall be issued in accordance with same. I agree that such order shall be effective upon issuance by the Board, which may be accomplished by mailing, by first class mail, a copy of the Consent Order to me at the address set forth in this agreement, or to my attorney, or upon transmission via facsimile to me or my attorney, whichever is earliest.

I am making this Application of my own free will and accord and not under duress, compulsion or restraint of any kind or manner. In consideration of the value to me of the acceptance by the Board of this Application, allowing me to resolve this matter without the various risks and burdens of a hearing on the merits, I knowingly waive any right I may have to contest the Consent Order for which I hereby apply, whether administratively or judicially, and ask that the Application be granted.


AFFIRMED

DATED

4/29/09



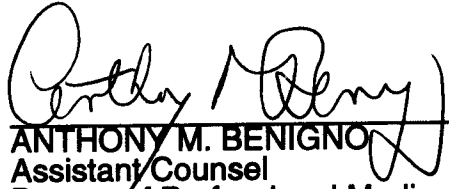
ANDREW L. NKONGHO, M.D.
Respondent




Salvatore Tedesco, Sr., M.D., F.A.C.S.
Director of Surgery

The undersigned agree to the attached application of the Respondent and to the proposed penalty based on the terms and conditions thereof.

DATE: 4/30/99


ANTHONY M. BENIGNO
Assistant Counsel
Bureau of Professional Medical Conduct

DATE: May 5, 1999


ANNE F. SAILE
Director
Office of Professional Medical Conduct

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

IN THE MATTER
OF
ANDREW L. NKONGHO, M.D.

CONSENT ORDER


Upon the proposed agreement of ANDREW L. NKONGHO, M.D. (Respondent) for Consent Order, which application is made a part hereof, it is agreed to and

ORDERED, that the application and the provisions thereof are hereby adopted and so ORDERED; and it is further

ORDERED, that this order shall be effective upon issuance by the Board, which may be accomplished by mailing, by first class mail, a copy of the Consent Order to Respondent at the address set forth in this agreement or to Respondent's attorney by certified mail, or upon transmission via facsimile to Respondent or Respondent's attorney, whichever is earliest.

SO ORDERED.

DATED: 5/6/99


WILLIAM P. DILLON, M.D.
Chair
State Board for Professional
Medical Conduct

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

-----X

IN THE MATTER : STATEMENT
OF : OF
ANDREW L. NKONGHO, M.D. : CHARGES

-----X

ANDREW L. NKONGHO, M.D., the Respondent, was authorized to practice medicine in New York State in or about December, 1976 by issuance of license number 129655 by the New York State Education Department. The Respondent is currently registered with the New York State Education Department to practice medicine.

FACTUAL ALLEGATIONS

A. On or about October 14, 1996, the New York State Board for Professional Medical Conduct issued Consent Order BPMC #96-247, hereto attached as Exhibit 1, wherein ANDREW L. NKONGHO, M.D., Respondent, admitted guilt to the single specification of professional misconduct, practicing the profession while impaired. The agreed penalties included a two year stayed suspension and five years probation with various terms of probation.

B. Paragraph 10 of the Terms of Probation required Respondent to be monitored by qualified health care professional monitors ("sobriety monitor", "practice supervisor" and "therapist").

C. Paragraph 12 of the Terms of Probation required Respondent to "meet with a sobriety monitor on a regular basis who will submit quarterly reports to the OPMC certifying Respondent's compliance with the terms of probation, including an assessment of self-help group attendance, 12 step progress, and results of drug/alcohol monitoring tests performed during each quarter, with copies of any toxicology reports."

1. Respondent failed to submit drug/alcohol monitoring tests and to provide results of those tests to his sobriety monitor from July 1, 1998 through and including today's date.
2. Respondent failed to provide proof of self-help group attendance to his sobriety monitor.
3. Respondent failed to have his sobriety monitor submit quarterly reports to OPMC for the third and fourth quarters of 1998 and the first quarter of 1999.

D. Paragraph 19 of the Terms of Probation required Respondent to be "...in counseling or other therapy with a therapist approved by OPMC for the entire period of probation. Respondent shall further be maintained on a medically appropriate prescribed regimen of Antabuse."

1. Respondent failed to be in counseling from on or about September 7, 1996 through April 10, 1997. From April 12, 1997 through February, 1998, Respondent only saw his therapist three times. Respondent did not see his therapist from March, 1998 until March 5, 1999.
2. Respondent failed to be maintained on a medically appropriate prescribed regimen of Antabuse as indicated by the various toxicology reports which indicated that no Antabuse was detected in the urine screens as well as the sobriety monitor's infrequent observation of Respondent taking his medications.

E. Paragraph 20 of the Terms of Probation required Respondent to ensure that his therapist submits a proposed treatment plan and quarterly reports to OPMC certifying compliance with the treatment plan.

1. Respondent did not ensure that his therapist submitted a treatment plan or quarterly reports to OPMC certifying compliance with the treatment plan.


FIRST SPECIFICATION

HAVING VIOLATED A TERM OF PROBATION IMPOSED BY PHL SECTION 230

Respondent is charged with professional misconduct under N.Y. Education Law section 6530(29) by reason of his having violated a term of probation imposed upon him pursuant to Section 230 of the Public Health Law, by BPMC Order #96-247, in that Petitioner charges:

1. The facts in paragraph A, B, C, C1, C2, and C3, D and D1, D and D2 and/or E and E1.

DATED: *April 30*, 1999
Albany, New York


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

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

IN THE MATTER
OF
ANDREW L. NKONGHO, M.D.

CONSENT

ORDER

BPMC #96-247


Upon the application of ANDREW L. NKONGHO, M.D. (Respondent) for Consent Order, which application is made a part hereof, it is

ORDERED, that the application and the provisions thereof are hereby adopted and so ORDERED, and it is further

ORDERED, that this order shall take effect as of the date of the personal service of this order upon Respondent, upon receipt by Respondent of this order via certified mail, or seven days after mailing of this order by certified mail, whichever is earliest.

SO ORDERED.

DATED: 14 October 1996



CHARLES J. VACANTI, M.D.
Chairperson
State Board for Professional
Medical Conduct

EXHIBIT 1

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

IN THE MATTER
OF
ANDREW L. NKONGHO, M.D.

APPLICATION
FOR
CONSENT ORDER

STATE OF NEW YORK)
COUNTY OF) ss.:

ANDREW L. NKONGHO, M.D., being duly sworn, deposes and says:

That in or about December, 1976, I was licensed to practice as a physician in the State of New York, having been issued License No. 129655 by the New York State Education Department.

My current address is 82 Cranford Place, Teaneck, New Jersey, and I will advise the Director of the Office of Professional Medical Conduct of any change of my address.

I understand that the New York State Board for Professional Medical Conduct has charged me with one specification of professional misconduct.

A copy of the Statement of Charges is annexed hereto, made a part hereof, and marked as Exhibit "A".

I admit guilt to such specification in full satisfaction of the charges against I hereby agree to the following sanctions:

1. A two-year stayed suspension.
2. A five (5) year probation in accordance with the Exhibit "B", Terms of Probation.

I hereby make this Application to the State Board for Professional Medical Conduct (the Board) and request that it be granted.

I understand that, in the event that this Application is not granted by the Board, nothing contained herein shall be binding upon me or construed to be an admission of any act of misconduct alleged or charged against me, such Application shall not be used against me in any way and shall be kept in strict confidence during the pendency of the professional misconduct disciplinary proceeding; and such denial by the Board shall be made without prejudice to the continuance of any disciplinary proceeding and the final determination by the Board pursuant to the provisions of the Public Health Law.

I agree that, in the event the Board grants my Application, as set forth herein, an order of the Chairperson of the Board shall be issued in accordance with same.

I am making this Application of my own free will and accord and not under duress, compulsion or restraint of any kind or manner. In consideration of the value to me of the acceptance by the Board of this Application, allowing me to resolve this matter without the various risks and burdens of a hearing on the

EXHIBIT "A"

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

IN THE MATTER
OF
ANDREW L. NKONGHO, M.D.

STATEMENT
OF
CHARGES

ANDREW L. NKONGHO, M.D., the Respondent, was authorized to practice medicine in New York State in December, 1976, by the issuance of license number 129655 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. On or about September 16, 1995, Respondent was surgeon-on-call in the Emergency Room at Bailey Seton Hospital, 75 Vanderbilt Avenue, Staten Island, New York.
1. On or about September 16, 1995, Respondent practiced medicine in the Emergency Room of Bailey Seton Hospital while being impaired by alcohol.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

PRACTICING WHILE IMPAIRED

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(7)(McKinney Supp. 1996) by having practiced the profession while being impaired by alcohol as alleged in the facts of the following:

1. Paragraphs A and A1.

DATED: July , 1996
New York, New York

ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct

merits, I knowingly waive any right I may have to contest the Consent Order for which I hereby apply, whether administratively or judicially, and ask that the Application be granted.



ANDREW L. NKONGHO, M.D.
RESPONDENT

Sworn to before me this

30th day of *September*, 19*96*.

Christina Gialombardo
NOTARY PUBLIC

Christina Gialombardo
Notary Public
License # 43-4770336
Commission Expires *1/31/97*

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

IN THE MATTER
OF
ANDREW L. NKONGH, M.D.

APPLICATION
FOR
CONSENT ORDER

The undersigned agree to the attached application of the Respondent and to the proposed penalty based on the terms and conditions thereof.

DATE:

9/30/96


ANDREW L. NKONGHO, M.D.
Respondent

DATE:

~~_____~~
NATHAN DEMBIN, ESQ.
Attorney for Respondent

DATE:

October 9, 1996


DAVID W. SMITH
Associate Counsel
Bureau of Professional
Medical Conduct

DATE: October 10, 1996

Anne Saile

ANNE F. SAILE
Acting Director
Office of Professional Medical
Conduct

DATE: 14 October 1996

Charles J. Vacanti

CHARLES J. VACANTI, M.D.
Chairperson
State Board for Professional
Medical Conduct

EXHIBIT "B"
TERMS OF PROBATION

1. Andrew L. Nkongho, M.D., Respondent, during the period of probation 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.
2. Respondent shall submit written notification to the New York State Department of Health (NYSDOH), addressed to the Director, Office of Professional Medical Conduct, ("Director") New York State Department of Health, Coming Tower Building, 4th Floor, Empire State Plaza, Albany, New York 12237 of any employment and practice; Respondent's residence and telephone number within or without the State of New York; and any and all investigations, charges, convictions or disciplinary actions taken by any local, state or federal agency, institution or facility, within thirty days of each action.
3. Respondent shall submit written proof to the NYSDOH, addressed to the Director, that a) Respondent is currently registered with the New York State Education Department; and b) Respondent has paid any fees or fines which may have previously been imposed upon Respondent by the State Board for Professional Medical Conduct, ("Board") or by the Board of Regents, said proof of the above to be submitted no later than 60 days following the effective date of the Order herein.
4. Respondent shall cooperate with and respond in a timely manner to requests from the Office of Professional Medical Conduct (OPMC) to provide written periodic verification of Respondent's compliance with the terms of this Order. If requested, Respondent shall personally meet with a

member of OPMC staff at the discretion of the Director .

5. Upon request, the Respondent will provide OPMC access to or copies of all patient records, office records, records of administration, dispensing and/or prescribing of controlled substances, records of controlled substance purchases, official New York State triplicate prescription books, and any other records which may be required to be maintained under the Public Health Law.
6. The term of this probation shall be five (5) years. Such period shall be tolled until and unless Respondent engages in the active practice of medicine in the State of New York. Respondent shall notify the OPMC, in writing, if for any reason the Respondent is not currently so engaged or intends to leave the active practice medicine in New York State for a period of thirty (30) consecutive days or more. Respondent shall then notify the OPMC again prior to any change in that status. The period of probation will resume and any terms of probation which were not fulfilled while Respondent was in New York State must be fulfilled upon return to New York State.
7. Respondent shall remain drug/alcohol free.
8. Respondent shall remain active in self-help groups such as, but not limited to: Narcotics Anonymous, Alcoholics Anonymous and Caduceus.
9. Respondent must notify all his treating physicians of his history of alcohol/chemical dependency. The Respondent must advise OPMC within forty-eight (48) hours of any controlled or mood-altering substance given or prescribed by treating physicians.

10. The Respondent shall be monitored by qualified health care professional monitors ("soberity monitor", "practice supervisor" and "therapist"), each selected by Respondent and approved by the Director. The monitors will not be family members, personal friends, or be in professional relationships which would pose a conflict with monitoring responsibilities. Should any of the approved monitors indicate an inability or unwillingness to continue in that role, Respondent shall submit to OPMC the name of a proposed successor within seven (7) days of learning that the approved monitor is no longer willing or able to serve.
11. Respondent shall ensure that the monitors are familiar with Respondent's drug/alcohol dependency and with the terms of this probation. Respondent shall authorize the monitors to report any deviation from compliance with the terms of this probation to OPMC. Failure of the monitors to submit required reports on a timely basis will be considered a violation of Respondent's probation.
12. Respondent shall meet with a soberity monitor on a regular basis who will submit quarterly reports to the OPMC certifying Respondent's compliance with the terms of probation, including an assessment of self-help group attendance, 12 step progress, and results of drug/alcohol monitoring tests performed during each quarter, with copies of any toxicology reports. All tests results must be forensically valid.
13. Respondent shall submit to random, unannounced observed blood and/or urine screens by the soberity monitor to determine the presence of drugs/alcohol and to evaluate whether he has complied with the requirements set forth in Paragraph 19 below that he be maintained on a regimen of Antabuse. This monitoring will be on a random, seven-days a

week, twenty-four hours a day basis. The Respondent shall report for a urine screen within four (4) hours of being contacted by such monitor. The sobriety monitor will report within 24 hours to the OPMC if a test is refused by Respondent or a test result is positive for any unauthorized substance or negative for Antabuse.

14. Respondent shall be supervised in his medical practice, on site at all locations, by a practice supervisor. Respondent may not practice medicine until an approved practice supervisor is in place. Any practice of medicine prior to the approval of a practice supervisor will be a violation of probation.
15. Respondent shall ensure that the practice supervisor regularly observes and assesses Respondent's medical practice. The practice supervisor will report to OPMC within 24 hours of any suspected impairment, inappropriate behavior, questionable medical practice or possibility of misconduct to OPMC.
16. Respondent shall ensure that the practice ^{Supervisor} monitor submit quarterly reports to the OPMC regarding the quality of Respondent's medical practice, including the Respondent's evaluation and treatment of patients, his physical and mental condition, attendance at work including any unexplained absences and Respondent's compliance or failure to comply with any terms of probation.
17. Respondent shall comply with provisions of Article 33 of the Public Health Law. The practice supervisor will review Respondent's practice regarding the prescribing, administering, dispensing, inventorying, and disposal of controlled substances.

18. Respondent shall comply with any request of his practice supervisor to submit to random, unannounced, supervised tests of blood and/or urine for the presence of drugs or alcohol within four (4) hours of the request. The practice supervisor will report to OPMC within 24 hours if a test is refused by Respondent or a test result is positive for any unauthorized substance.
19. Respondent shall continue in counseling or other therapy with a therapist approved by OPMC for the entire period of probation. Respondent shall further be maintained on a medically appropriate prescribed regimen of Antabuse.
20. Respondent shall ensure that the therapist submit a proposed treatment plan and quarterly reports to OPMC certifying compliance with the treatment plan. The therapist will report to OPMC within 24 hours if Respondent leaves treatment against medical advice or displays any symptoms of a suspected or actual relapse.
21. Respondent shall comply with all terms, conditions, restrictions and penalties to which he is subject pursuant to the Order of the Board and shall assume and bear all costs related to compliance with the terms of this probation.
22. So long as there is full compliance with every term herein set forth, Respondent may continue to practice his profession in accordance with the terms of probation. Upon receipt of evidence of noncompliance with, or any violation of these terms, the Director and/or the Board may initiate a violation of probation proceeding and/or such other proceeding against Respondent as may be authorized pursuant to the Public Health Law.

EXHIBIT "B"

1. The suspension of Respondent's license shall be terminated only upon a showing to the satisfaction of a Committee on Professional Conduct of the State Board for Professional Medical Conduct (henceforth "Committee") that he has successfully complied with or completed a course of therapy and ongoing evaluation, which successful compliance or completion must include a determination by said Committee that he is no longer incapacitated for the practice as a Physician and that he is both fit and clinically competent to practice as a Physician. Respondent shall provide to the Office of Professional Medical Conduct a proposed treatment plan, for advice as to whether it is generally appropriate, but the determination of successful compliance with or completion of the course of therapy shall be made solely by the Committee, and shall include, but not be limited to, a determination that Respondent is no longer incapacitated for the active practice as a Physician.

2. Upon Respondent's request, but after the passage of the minimum period of suspension, a meeting of a Committee shall be convened for the purpose of hearing and evaluating Respondent's showing referred to in paragraph 1. The Board will make reasonable attempts to convene a Committee not later than 120 days after Respondent's request, which shall not be deemed to have been perfected until receipt, by the Director of the Office of Professional Medical Conduct, of all that is required to be provided by Respondent pursuant to the Conditions imposed upon his and pursuant to paragraph 3 below. The procedural nature of said proceeding shall be determined by the State Board for Professional Medical Conduct through the discretion of the Director of the Office of Professional Medical Conduct upon consultation with Counsel, Bureau of Professional Medical Conduct. Proceedings before said Committee shall *not* be in the nature of a *hearing* pursuant to New York Public Health Law §230, but shall instead be informal and intended only for the purpose of addressing any and all facts, evidence, information, circumstances, or issues which do or may relate to the advisability of terminating the suspension of Respondent's license. The Committee shall be given access to evidence including but not limited to:

- a. Any and all evidence pertaining to Respondent's compliance with the Conditions imposed.
- b. Any evidence which the Director of the Office of Professional Medical Conduct or Counsel, Bureau of Professional

Medical Conduct deems appropriate.

3. At the time that Respondent requests that a meeting of a Committee be scheduled, pursuant to paragraph 2, he shall provide the Director of the Office of Professional Medical Conduct, New York State Department of Health, 433 River Street, Suite 303, Troy, NY 12180-2299, with the following:

- a. The signed acknowledgment from the supervising physician referred to in paragraph 5c.
- b. The signed acknowledgment from the health care professional referred to in paragraph 5d.
- c. Certified true and complete copies of records of all evaluation and treatment, relating to my impairment, whether that evaluation and treatment occurred prior to or during the time this surrender is in effect. These records shall include documentation of the results of all tests conducted to evaluate Respondent's fitness and his clinical competence to practice medicine. Such records shall include documentation of his participation in the program(s) of the Committee for Physicians' Health of the New York State Medical Society, or other equivalent program(s).
- d. Fully executed waivers of patient confidentiality concerning any previous and prospective treatment records.
- e. An independent current psychiatric evaluation by a board certified psychiatrist. Also, upon request of the Director of OPMC, a current in-depth chemical dependency evaluation by a health care professional in a licensed facility.
- f. A report of a complete clinical competency assessment, performed by a program for such assessment, such program to be proposed by Respondent and subject to the prior written approval of the Director of OPMC.
- g. Respondent's attendance at, participation in, and cooperation with an interview conducted by personnel of OPMC, upon the request of the Director thereof.

Provision of the aforesaid documents will not, alone, constitute a showing that Respondent is no longer incapacitated for active practice as a Physician.

licensed physician, proposed by his and approved in writing by the Director of OPMC, in accordance with the conditions contained in or annexed to the Order. Said supervising physician shall be familiar with Respondent's history of impairment and with the Order and its conditions. Said supervising physician shall supervise Respondent's compliance with the conditions of practice imposed by the Order. Said supervising physician shall be in a position regularly to observe and assess Respondent's medical practice. Said supervising physician shall acknowledge his/his willingness to comply with the supervision by executing the acknowledgment provided by OPMC.

- i. Said supervising physician shall submit to OPMC quarterly reports regarding the quality of Respondent's medical practice, any unexplained absences from work and certifying his compliance or detailing his failure to comply with each condition imposed.
 - ii. Said supervising physician shall report any suspected impairment, inappropriate behavior, questionable medical practices or possible misconduct to OPMC.
- d. Respondent shall continue in treatment with a health care professional, proposed by him and approved, in writing, by the Director of OPMC, for as long as the health care professional determines it is necessary.
- i. Respondent's treating health care professional or program shall submit to OPMC quarterly reports certifying that Respondent is complying with the treatment.
 - ii. Said treating health care professional shall report to OPMC immediately if Respondent is noncompliant with his treatment plan or if he demonstrates any significant pattern of absences.

4. At the proceeding referred to in paragraph 2, Respondent shall provide the committee, at a minimum, with the following:

- a. Certified true and complete records of all psychiatric, psychological, and/or any other mental health treatment, evaluation, and/or testing, whether in an out-patient, in-patient, office, consultation setting.
- b. Evidence of compliance with the terms of a continuing after-care out-patient treatment plan that addresses the major problems associated with my illness.
- c. Evidence that Respondent has maintained adequate knowledge and competence to practice as a physician. Such evidence shall include documentation of continuing medical education and, if so requested by the Director of OPMC, a report of an independent evaluation of Respondent's medical knowledge and competence.

Submission of the aforesaid evidence shall not, alone, constitute a showing that Respondent is no longer incapacitated for the active practice as a Physician.

5. If the Chairperson of the Committee issues an order (Order) finding that Respondent has successfully completed the prescribed course of treatment and has regained fitness and competence to practice medicine, and therefore staying the suspension of Respondent's license, the Order shall further impose a period of probation, pursuant to New York Public Health Law §230-a, during which his practice as a Physician shall be subject to conditions imposed. Respondent's practice shall be subject to such conditions for a period of no less than five years. The minimum conditions shall include all terms set forth in Order BPMC# 96-247 and:

- a. Respondent shall be required to comply with the terms of a continuing after-care treatment plan that addresses the major problems associated with his illness.
- b. At the direction of the Director of OPMC, Respondent shall submit to periodic interviews with, and evaluations by, a board certified psychiatrist or other licensed mental health practitioner designated by the Director. Said practitioner shall report to the Director regarding Respondent's condition and his fitness or incapacity to practice as a Physician.
- c. Respondent shall be supervised in his medical practice by a

- iii. Said treating health care professional shall acknowledge his/her willingness to comply with the above-mentioned reporting by executing the acknowledgment provided by OPMC.

6. The terms set out in paragraph 5 shall be the minimum probation terms, related to Respondent's fitness to practice, to be imposed on his practice upon restoration of his license, and that other terms may be added by the Committee at the time of license restoration, and that the costs of complying with all such terms will be Respondent's responsibility. Any failure by Respondent to comply with the conditions imposed upon his practice at the time of license restoration, may result in disciplinary action being brought against him charging professional misconduct as defined by the New York State Education Law, including but not limited to N.Y. Educ. Law Section 6530(29) (McKinney Supp. 1999). That section defines professional misconduct to include "violating any... condition... imposed on the licensee pursuant to section two hundred thirty of the public health law."

7. Upon any denial of license restoration made by the Committee, Respondent shall not again request convening of a Committee until a minimum period of nine months has elapsed since such denial.

8. In addition to the terms set out in paragraph 5 and any other terms imposed by added by the Committee upon restoration of Respondent's license, he shall also be subject to the following standard terms of probation:

- a. 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 the profession of medicine.
- b. Respondent shall submit written notification of all sites of employment and/or medical practice to the New York State Department of Health addressed to the Director of the Office of Professional Medical Conduct, New York State Department of Health, 433 River Street, Suite 303, Troy, NY 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.

- c. 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. He shall personally meet with a person designated by the Director of OPMC as requested by the Director.
- d. 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].
- e. Any period of probation shall be tolled during periods in which Respondent is not engaged in the active practice as a Physician in New York State. Respondent shall notify the Director of OPMC, in writing, if he is not currently engaged in or intends to leave the active practice as a Physician 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. The tolling provision set forth in this paragraph may be waived by the Director of the OPMC, in the Director's discretion.
- f. 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 me and my staff at practice locations or OPMC offices.
- g. 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.

- h. 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.**