

THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, N.Y. 12234

OFFICE OF PROFESSIONAL DISCIPLINE
ONE PARK AVENUE, NEW YORK, NEW YORK 10016-5802

April 23, 1993

Merrell E. Thallinger, Physician
140 North Broad Street
Norwich, New York 13815

Re: License No. 095867

Dear Dr. Thallinger:

Enclosed please find Commissioner's Order No. 13348. This Order goes into effect five (5) days after the date of this letter.

If the penalty imposed by the Order in your case is a revocation or a surrender of your license, you must deliver your license and registration to this Department within ten (10) days after the date of this letter. Your penalty goes into effect five (5) days after the date of this letter even if you fail to meet the time requirement of delivering your license and registration to this Department. In the event you are also served with this Order by personal service, the effective date of the Order is the date of personal service.

If the penalty imposed by the Order in your case is a revocation or a surrender of your license, you may, pursuant to Rule 24.7 (b) of the Rules of the Board of Regents, a copy of which is attached, apply for restoration of your license after one year has elapsed from the effective date of the Order and the penalty; but said application is not granted automatically.

Very truly yours,

DANIEL J. KELLEHER
Director of Investigations

By:

GUSTAVE MARTINE
Supervisor

DJK/GM/er

CERTIFIED MAIL - RRR

cc: John J. Pollock, Esq.
450 Plaza Drive
Vestal, New York 13850

**REPORT OF THE
REGENTS REVIEW COMMITTEE**

MERRELL EUGENE THALLINGER

CALENDAR NO. 13348



The University of the State of New York

IN THE MATTER

OF

MERRELL EUGENE THALLINGER
(Physician)

**DUPLICATE
ORIGINAL
VOTE AND ORDER
NO. 13348**

Upon the report of the Regents Review Committee, a copy of which is made a part hereof, the record herein, under Calendar No. 13348, and in accordance with the provisions of Title VIII of the Education Law, it was

VOTED (April 23, 1993): That, in the matter of **MERRELL EUGENE THALLINGER**, respondent, the recommendation of the Regents Review Committee be accepted as follows:

1. The hearing committee's findings of fact and conclusions, as well as the recommendation of the Commissioner of Health as to those findings of fact and conclusions, be accepted;
2. Respondent is guilty, by a preponderance of the evidence, of the thirty-seventh specification (practicing the profession with negligence on more than one occasion) and the thirty-eighth specification (practicing the profession with incompetence on more than one occasion), to the extent set forth in the hearing committee's report, involving respondent's failure to identify pathological conditions in his radiological interpretations for various patients, and not guilty of the remaining specifications and charges;

MERRELL EUGENE THALLINGER (13348)

3. The hearing committee's recommendation and the Commissioner of Health's recommendation as to the penalty to be imposed be modified;

that, as a matter of clarification, 1) that the use of the phrase "partially guilty" in the second paragraph of page 3 of the Regents Review Committee report be deemed to mean "guilty of some but not all" of the specifications mentioned in that second paragraph; 2) that the words "suspended partially" in recommendation 4 of the Regents Review Committee be "suspended in part,"; 3) that the words "partial, indefinite suspension" in recommendation 4b of the Regents Review Committee be "indefinite suspension in part," and 4) that the phrase "partial suspension" on the last page of the Regents Review Committee report be "suspension in part", and that the recommendation of the Regents Review Committee, as clarified, be further accepted as follows:

4. Respondent's license to practice as a physician in the State of New York be suspended in part, in the area of ultrasonography, indefinitely and concurrently upon the thirty-seventh and thirty-eighth specifications of the charges of which respondent has been found guilty, as aforesaid, until such time as respondent successfully completes coursework as follows:

a. Respondent shall, at his expense, submit and successfully complete a plan of continuing education, consisting of coursework in ultrasonography, to update the knowledge and skills of respondent, said plan to have the prior written approval of the New York State Education Department;

-and-

b. After receipt of proof from respondent of the purported successful completion of the above coursework, such written proof to be forwarded

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to the Executive Director, Office of Professional Discipline, New York State Education Department, One Park Avenue - Sixth Floor, New York, New York 10016-5802, and if the Executive Director is satisfied that respondent has successfully completed said coursework, the Executive Director shall notify respondent of the termination of the indefinite suspension in part, of respondent's license and the effective date thereof.

Upon the termination of the suspension of respondent's license, respondent shall then be placed on probation for two years in accordance with the terms of probation set forth in Exhibit "D" of the Regents Review Committee; that, further, respondent's license to practice as a physician in the State of New York in all areas of the practice of medicine, except the area which is governed by the aforementioned suspension in part, be suspended for two years upon each specification of the charges of which respondent was found guilty, as aforesaid, said suspensions to run concurrently, that execution of said concurrent suspensions be stayed at which time respondent then be placed on probation for said two years under the terms set forth in Exhibit "E" of the Regents Review Committee;;

and that Deputy Commissioner Henry A. Fernandez be empowered to execute, for and on behalf of the Board of Regents, all orders necessary to carry out the terms of this vote;

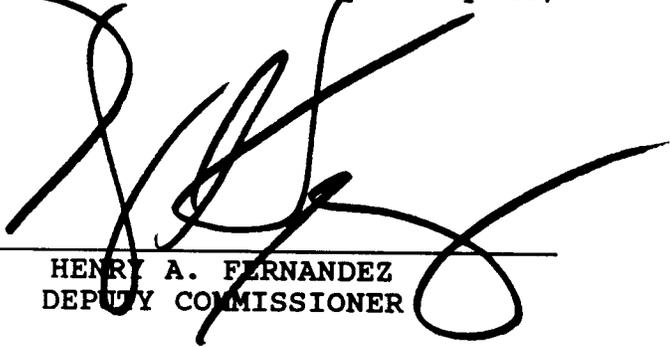
MERRELL EUGENE THALLINGER (13348)

and it is

ORDERED: That, pursuant to the above vote of the Board of Regents, said vote 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 the respondent or five days after mailing by certified mail.

IN WITNESS WHEREOF, I, Henry A. Fernandez, Deputy Commissioner, for and on behalf of the State Education Department and the Board of Regents, do hereunto set my hand, at the City of Albany, this 23rd day of April, 1993.



HENRY A. FERNANDEZ
DEPUTY COMMISSIONER

VOTE AND ORDER

MERRELL EUGENE THALLINGER

CALENDAR NO. 13348



The University of the State of New York

IN THE MATTER
of the
Disciplinary Proceeding
against

MERRELL EUGENE THALLINGER

No. 13348

who is currently licensed to practice
as a physician in the State of New York.

REPORT OF THE REGENTS REVIEW COMMITTEE

MERRELL EUGENE THALLINGER, hereinafter referred to as respondent, was licensed to practice as a physician in the State of New York by the New York State Education Department.

This disciplinary proceeding was duly commenced and respondent was served with the Health Commissioner's summary suspension Order and notice of hearing together with the statement of charges. A copy of such Order and notice of hearing, dated June 21, 1991, relative to the summary suspension of respondent's license is annexed hereto, made a part hereof, and marked as Exhibit "A".

The Commissioner of Health determined that the continued practice of medicine in the State of New York by respondent constituted an imminent danger to the health of the people of this State and ordered, pursuant to Public Health Law §230(12), that,

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effective immediately, respondent shall not practice medicine in the State of New York.

The matter was referred for hearing to a hearing committee of the State Board for Professional Medical Conduct and on August 5, 1991, the hearing committee issued its interim report on the issue of imminent danger. The hearing committee unanimously concluded that respondent's practice of medicine did not constitute an imminent danger to the health of the people of the State of New York and recommended that the Commissioner modify the summary order and allow respondent to resume the practice of medicine with the proviso that respondent be required to complete a formal residency review course, of at least one week duration, in diagnostic radiology within the next six months. It further recommended that, if respondent wished to perform ultrasound, he be required to complete a formal review course, of at least one week duration, in ultrasound and that, if respondent wished to perform mammographies, he be required to complete a week-end course in mammography.

On August 21, 1991, Alfred Gellhorn, M.D., Director of Medical Affairs, New York State Department of Health, issued an order in response to the findings and recommendations contained in the interim report of the hearing committee on the issue of imminent danger, modifying the original order and providing that respondent shall not carry out or interpret CT scans, nuclear medicine diagnoses, ultrasonography diagnoses, and mammography diagnoses until he has successfully completed a training program of at least

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six months duration approved in advance by the Office of Professional Medical Conduct (OPMC) and further that respondent shall confine his practice to routine radiology other than the activities heretofore described, provided that respondent's practice of routine radiology shall be monitored by a qualified radiologist approved in advance by OPMC. The monitoring radiologist shall check x-ray interpretations by coincident reading or spot checking of at least one in every ten gastrointestinal examinations performed by respondent and shall report the results of all such checks to OPMC.

Thereafter, on five dates from July 2, 1991 to July 30, 1991, excluding a pre-hearing conference date, hearings were held before the hearing committee, which rendered a report of its findings, conclusions, and recommendation, a copy of which is annexed hereto, made a part hereof, and marked as Exhibit "B".

The hearing committee concluded that respondent was partially guilty of the thirty-seventh specification (practicing the profession with negligence on more than one occasion) and partially guilty of the thirty-eighth specification (practicing the profession with incompetence on more than one occasion) and not guilty of the remaining specifications and charges. The hearing committee recommended that respondent confine his practice to routine radiology, provided that his practice be monitored for a period of two years by a qualified radiologist approved in advance by OPMC, that the monitoring radiologist check respondent's x-ray

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interpretations by periodic coincident reading or spot checks, and that the monitoring radiologist report the results of all such checks to OPMC. The hearing committee also recommended that respondent not perform or interpret ultrasonography diagnoses and mammography diagnoses independently until he has successfully completed:

1. A formal residency review course, of at least one week duration, in diagnostic radiology;
2. A formal review course, of at least one week duration, in ultrasound;
3. A week-end course in mammography; and
4. A training course, of at least six month duration, approved in advance by OPMC.

If, after successfully completing the required courses, respondent wishes to perform or interpret ultrasonography diagnoses and mammography diagnoses, his practice in these specialties shall also be monitored by a qualified radiologist approved by OPMC. The hearing committee further recommended that respondent not perform nor interpret CT scans or nuclear imaging independently until he has successfully completed a formal fellowship in these specialties and that such a course be approved in advance by OPMC.

The Commissioner of Health recommended to the Board of Regents that the findings of fact and conclusions of the hearing committee be accepted, in full. The Commissioner of Health further recommended that, in order to provide for uniform monitoring of respondent's future practice, the recommendation of the hearing

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committee should be modified as follows: The monitoring radiologist shall report the results of all coincident readings and spot checks immediately to OPMC and shall report his or her general monitoring results at least quarterly to OPMC. If respondent completes the courses in diagnostic radiology, ultrasound, and mammography and performs or interprets ultrasonography diagnoses and mammography diagnoses, his practice of these specialties shall be monitored for two years by a qualified radiologist approved by OPMC who shall report the results of his or her general monitoring at least quarterly to OPMC and the results of any specific monitoring immediately to OPMC. If respondent completes a formal fellowship in CT scans or nuclear imaging and resumes performing or interpreting CT scans and nuclear imaging, this work shall be monitored by a qualified radiologist approved by OPMC who shall report the results of such general monitoring at least quarterly to OPMC and the results of any specific monitoring immediately to OPMC. A copy of the recommendation of the Commissioner of Health is annexed hereto, made a part hereof, and marked as Exhibit "C".

On October 28, 1992 respondent appeared before us in person and was represented by his attorney, John J. Pollock, Esq. who presented oral argument on behalf of respondent. Cindy M. Fascia, Esq. presented oral argument on behalf of the Department of Health.

Petitioner's written recommendation was that respondent's practice should be limited to routine radiology. His practice should be monitored for a period of two years by a qualified

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radiologist approved in advance by OPMC and the monitor should check respondent's x-ray interpretations with periodic coincident readings and spot checks, the results of which should be reported immediately to OPMC, with general monitoring reports to be made to OPMC on at least a quarterly basis. In addition, respondent should not perform or interpret ultrasound or mammography until he successfully completes the retraining requirements set forth in the hearing committee report. If he resumes practice in either area, his practice in such area should be monitored for two years.

Respondent's written recommendation was that respondent has already been suspended from practice by summary order, lasting approximately four months. In addition, respondent has had his resumed practice monitored as required by OPMC since November 1991 and has met OPMC's requirements for additional training in mammography; so that in view of these sanctions, with which respondent has complied, no further penalty should be imposed in the event of a guilty determination.

We have considered the record transferred by the Commissioner of Health in this matter, as well as respondent's and petitioner's submissions relating to the coursework completed by respondent, and the submissions by both parties made at the request of this Regents Review Committee, relating to the appropriateness of the restrictions and retraining in the areas of nuclear medicine and CT scans, as part of the recommended penalty.

With regard to penalty, we note that the aforesaid

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recommendations are not framed to coincide with the penalties set forth in section 6511 of the Education Law. The penalty we recommend addresses those areas of practice which are encompassed in or related to the charges and misconduct based thereon, with due consideration for coursework actually performed by respondent in such areas, as well as for respondent's partial resumption of practice with monitoring.

We unanimously recommend that the determination of the Board of Regents be as follows:

1. The hearing committee's findings of fact and conclusions, as well as the recommendation of the Commissioner of Health as to those findings of fact and conclusions, be accepted;
2. Respondent be found guilty, by a preponderance of the evidence, of the thirty-seventh specification (practicing the profession with negligence on more than one occasion) and the thirty-eighth specification (practicing the profession with incompetence on more than one occasion), to the extent set forth in the hearing committee's report, involving respondent's failure to identify pathological conditions in his radiological interpretations for various patients, and not guilty of the remaining specifications and charges;
3. The hearing committee's recommendation and the Commissioner of Health's recommendation as to the penalty

to be imposed be modified; and

4. Respondent's license to practice as a physician in the State of New York be suspended partially, in the area of ultrasonography, indefinitely and concurrently upon the thirty-seventh and thirty-eighth specifications of the charges of which respondent has been found guilty, as aforesaid, until such time as respondent successfully completes coursework as follows:

- a. Respondent shall, at his expense, submit and successfully complete a plan of continuing education, consisting of coursework in ultrasonography, to update the knowledge and skills of respondent, said plan to have the prior written approval of the New York State Education Department;

-and-

- b. After receipt of proof from respondent of the purported successful completion of the above coursework, such written proof to be forwarded to the Executive Director, Office of Professional Discipline, New York State Education Department, One Park Avenue - Sixth Floor, New York, New York 10016-5802, and if the Executive Director is satisfied that respondent has successfully completed said coursework, the Executive Director shall notify respondent of the termination of the partial, indefinite suspension of respondent's license and the effective date thereof.

Upon the termination of the suspension of respondent's license, respondent shall then be placed on probation for two years in accordance with the terms of probation which

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are annexed hereto, made a part hereof, and marked as Exhibit "D".

Further, respondent's license to practice as a physician in the State of New York in all areas of the practice of medicine, except the area which is governed by the aforementioned partial suspension, be suspended for two years upon each specification of the charges of which respondent was found guilty, as aforesaid, said suspensions to run concurrently, that execution of said concurrent suspensions be stayed at which time respondent then be placed on probation for said two years under the terms set forth in the exhibit annexed hereto, made a part hereof, and marked as Exhibit "E".

Respectfully submitted,

EMLYN I. GRIFFITH

JANE M. BOLIN

PATRICK J. PICARIELLO


Chairperson

Dated: 3/24/93

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

IN THE MATTER
OF
MERRELL EUGENE THALLINGER, M.D.

: COMMISSIONER'S
: ORDER AND
: NOTICE OF HEARING

TO: MERRELL EUGENE THALLINGER, M.D.
140 North Broad Street
Norwich, New York 13815

JUN 28 1991

Pat Ex. 1 Id EV
ROBERT W. HICKS

The undersigned, acting for the Commissioner of Health of the State of New York, after an investigation and upon the recommendation of a committee on professional medical conduct of the State Board for Professional Medical Conduct, has determined that the continued practice of medicine in the State of New York by MERRELL EUGENE THALLINGER, M.D., the Respondent, constitutes an imminent danger to the health of the people of this state.

It is therefore:

ORDERED, pursuant to N.Y. Pub. Health Law Section 230(12) (McKinney 1990), that effective immediately MERRELL EUGENE THALLINGER, M.D., Respondent, shall not practice medicine in the State of New York. This Order shall remain in effect unless modified or vacated by the Commissioner of Health pursuant to N.Y. Pub. Health Law Section 230(12) (McKinney 1990).

PLEASE TAKE NOTICE that a hearing will be held pursuant to the provisions of N.Y. Pub. Health Law Section 230 (McKinney 1990) and N.Y. State Admin. Proc. Act Sections 301-307 and 401 (McKinney 1984 and Supp. 1991). The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on July 2, 9, 16, 23, 30; August 6, 1991, at 9:00 a.m., Room 2509, Corning Tower, Empire State Plaza, Albany, New York 12237 and at such other adjourned dates, times and places as the committee may direct. The Respondent may file an answer to the Statement of Charges with the below-named attorney for the Department of Health.

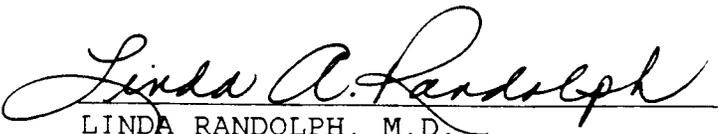
At the hearing, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the hearing will be made and the witnesses at the hearing will be sworn and examined. The Respondent shall appear in person at the hearing and may be represented by counsel. The Respondent has the right to produce witnesses and evidence on his behalf, to have subpoenas issued on his behalf for the production of witnesses and documents and to cross-examine witnesses and examine evidence produced against him. A summary of the Department of Health Hearing Rules is enclosed.

The hearing will proceed whether or not the Respondent appears at the hearing. Scheduled hearing dates are considered dates certain and, therefore, adjournment requests are not routinely granted. Moreover, a request for an adjournment in this matter may be regarded as a "delay caused by the physician" within the meaning of N.Y. Pub. Health Law §230(12) (McKinney 1990) causing the Order of the Commissioner to be continued until the committee makes its recommendation to the Commissioner. Requests for adjournments must be made in writing to the Administrative Law Judge's Office, Empire State Plaza, Corning Tower Building, 25th Floor, Albany, New York 12237-0026 and by telephone (518-473-1385), upon notice to the attorney for the Department of Health whose name appears below, and at least five days prior to the scheduled hearing date. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation.

At the conclusion of the hearing, the committee shall make a determination concerning what action should be taken with respect to Respondent's license to practice medicine in the State of New York.

BECAUSE THESE PROCEEDINGS MAY RESULT IN A
RECOMMENDATION THAT YOUR LICENSE TO
PRACTICE MEDICINE IN NEW YORK STATE BE
REVOKED OR SUSPENDED, YOU ARE URGED TO
OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS
MATTER.

DATED: Albany, New York
June 21, 1991


LINDA RANDOLPH, M.D.
Director, Office of Public Health

Inquiries should be directed to:
Cindy M. Fascia
Associate Counsel
N.Y.S. Department of Health
Empire State Plaza
Corning Tower, Room 2429
Albany, New York 12237

EXHIBIT "D"

TERMS OF PROBATION
OF THE REGENTS REVIEW COMMITTEE

MERRELL EUGENE THALLINGER

CALENDAR NO. 13348

1. That, during the period of probation, respondent shall have respondent's practice in ultrasonography monitored, at respondent's expense, as follows:
 - a. That said monitoring shall be by a physician selected by respondent and previously approved, in writing, by the Director of the Office of Professional Medical Conduct;
 - b. That respondent shall be subject to random selections and reviews by said monitor of respondent's patient records, office records, and hospital charts in regard to respondent's practice of ultrasonography, and respondent shall also be required to make such records available to said monitor at any time requested by said monitor; and
 - c. That said monitor shall submit a report, once every three months, regarding the above-mentioned monitoring of respondent's practice to the Director of the Office of Professional Medical Conduct;
2. If the Director of the Office of Professional Medical Conduct determines that respondent may have violated probation, the Department of Health may initiate a violation of probation proceeding and/or such other proceedings pursuant to the Public Health Law, Education Law, and/or Rules of the Board of Regents.

EXHIBIT "E"

TERMS OF PROBATION
OF THE REGENTS REVIEW COMMITTEE

MERRELL EUGENE THALLINGER

CALENDAR NO. 13348

1. That respondent shall make quarterly visits to an employee of and selected by the Office of Professional Medical Conduct of the New York State Department of Health, unless said employee agrees otherwise as to said visits, for the purpose of determining whether respondent is in compliance with the following:
 - a. That, during the period of the partial suspension of respondent's license to practice as a physician in the State of New York in the area of ultrasonography, Respondent shall not practice, offer to practice, or hold himself out as being able to practice as a physician in the State of New York in the area of ultrasonography until the effective date of the termination of said partial suspension of Respondent's license in accordance with and as set forth in the Regents Review Committee report;
 - b. That respondent, during the period of probation, shall be in compliance with the standards of conduct prescribed by the law governing respondent's profession;
 - c. That respondent shall submit written notification to the New York State Department of Health, addressed to the Director, Office of Professional Medical Conduct, Empire State Plaza, Albany, NY 12234 of any employment and/or practice, respondent's residence, telephone number, or mailing address, and of any change in respondent's employment, practice, residence, telephone number, or mailing address within or without the State of New York;
 - d. That respondent shall submit written proof from the Division of Professional Licensing Services (DPLS), New York State Education Department (NYSED), that respondent has paid all registration fees due and owing to the NYSED and respondent shall cooperate with and submit whatever papers are requested by DPLS in regard to said registration fees, said proof from DPLS to be submitted by respondent to the New York State

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Department of Health, addressed to the Director, Office of Professional Medical Conduct, as aforesaid, no later than the first three months of the period of probation; and

- e. That respondent shall submit written proof to the New York State Department of Health, addressed to the Director, Office of Professional Medical Conduct, as aforesaid, that 1) respondent is currently registered with the NYSED, unless respondent submits written proof to the New York State Department of Health, that respondent has advised DPLS, NYSED, that respondent is not engaging in the practice of respondent's profession in the State of New York and does not desire to register, and that 2) respondent has paid any fines which may have previously been imposed upon respondent by the Board of Regents; said proof of the above to be submitted no later than the first two months of the period of probation;
2. That, during the period of probation, respondent shall, in those areas where respondent is permitted to practice, have such practice monitored, at respondent's expense, as follows:
 - a. That said monitoring shall be by a physician selected by respondent and previously approved, in writing, by the Director of the Office of Professional Medical Conduct;
 - b. That respondent shall be subject to random selections and reviews by said monitor of respondent's patient records, office records, hospital charts in regard to respondent's practice, and respondent shall also be required to make such records available to said monitor at any time requested by said monitor; and
 - c. That said monitor shall submit a report, once every three months, regarding the above-mentioned monitoring of respondent's practice to the Director of the Office of Professional Medical Conduct;
 3. That respondent shall, at respondent's expense, enroll in and diligently pursue an additional course of training in mammography, said course of training to be selected by respondent and previously approved, in writing, by the Director of the Office of Professional Medical Conduct, and to be satisfactorily completed during the period of probation, such

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completion to be verified in writing and said verification to be submitted to the Director of the Office of Professional Medical Conduct;

4. If the Director of the Office of Professional Medical Conduct determines that respondent may have violated probation, the Department of Health may initiate a violation of probation proceeding and/or such other proceedings pursuant to the Public Health Law, Education Law, and/or Rules of the Board of Regents.