



STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12237

Mark R. Chassin, M.D., M.P.P., M.P.H.
Commissioner

Paula Wilson
Executive Deputy Commissioner

April 2, 1993

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

German Zhitlovsky, M.D.
1 James Court
Nanuet, New York 10954

Daniel Guenzburger, Esq.
NYS Department of Health
Bureau of Professional
Medical Conduct
5 Penn Plaza - Sixth Floor
New York, New York 10001-1810

Irving O. Farber, Esq.
Meiselman, Farber, Packman
& Eberz, P.C.
118 North Bedford Road
P.O. Box 151
Mt. Kisco, New York 10549

RE: In the Matter of German Zhitlovsky, M.D.

Dear Dr. Zhitlovsky, Mr. Farber and Mr. Guenzburger:

Enclosed please find the Determination and Order (No. BPMC-93-50) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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:

New York State Department of Health
Office of Professional Medical Conduct
Corning Tower - Fourth Floor (Room 438)
Empire State Plaza
Albany, New York 12237

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 than 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), "(t)he 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 all action 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
Corning Tower -Room 2503
Empire State Plaza
Albany, New York 12237-0030

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.

Very truly yours,

Tyrone T. Butler, nam

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nam
Enclosure

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

-----X
IN THE MATTER :
OF :
GERMAN ZHITLOVSKY, M.D. :
-----X

DETERMINATION

AND

ORDER

No. BPMC 93-50

Robin N. Buskey, R.P.A., Chairperson, Naomi Goldstein, M.D. and William W. Faloon, 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 Sections 230 (1) of the Public Health Law, served as the Hearing Committee in this matter pursuant to Sections 230(10)(e) and 230(12) of the Public Health Law. Jane B. Levin, Esq., Administrative Law Judge, served as Administrative Officer for the Hearing Committee.

After consideration of the entire record, the Hearing Committee submits this determination.

SUMMARY OF THE PROCEEDINGS

Notice of Hearing dated:	September 16, 1992
Statement of Charges dated:	September 16, 1992
Amended Statement of Charges dated:	December 2, 1992
Pre-hearing conference:	October 16, 1992
Hearing dates:	October 20, 1992 December 2, 1992 December 16, 1992

Deliberation dates: February 5, 1993
February 26, 1993

Place of Hearing: NYS Department of Health
5 Penn Plaza
New York, N.Y.

Petitioner appeared by: Peter J. Millock, Esq.
General Counsel
NYS Department of Health
By: Daniel Guenzburger, Esq.
Associate Counsel

Respondent appeared by: Meiselman, Farber, Packman
& Eberz, P.C.
118 North Bedford Road
Mt. Kisco, N.Y. 10549
By: Irving O. Farber, Esq.

MOTION

Petitioner's motion on December 2, 1992 to amend the Statement of Charges to include an additional charge of filing a false report was GRANTED.

WITNESSES

For the Petitioner:

- 1) Ellen Brinkman Jensen
- 2) Bruce Taylor, M.D.

For the Respondent:

- 1) Alvin Yapalater, M.D.
- 2) Rev. John Anderson
- 3) Richard Gruber, Ph.D.
- 4) German Zhitlovsky, M.D.

STATEMENT OF CHARGES

The Amended Statement of Charges essentially charges the Respondent with professional misconduct in that he had been

convicted of committing an act constituting a crime under New York State law, and also convicted of committing a crime under the law of another jurisdiction which, if committed in New York State, would have constituted a crime under New York state law; with fraud in obtaining his medical license; with professional misconduct by making or filing false reports; and with professional misconduct by violating probation. The charges are more specifically set forth in the Amended Statement of Charges, a copy of which is attached hereto and made a part hereof.

FINDINGS OF FACT

Numbers in parentheses refer to transcript page numbers of 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.

GENERAL FINDINGS

1. German Zhitlovsky, M.D. the Respondent, began the practice of medicine in New York State in July, 1985 as a resident in the New York University-Rockland Psychiatric Residency Program (Pet.'s Ex. 2, p.6). He was licensed to practice medicine in New York State on July 15, 1985 by the issuance of license number 163179 by the New York State Education Department. The Respondent

is currently registered with the New York State Education Department to practice medicine for the period January 1, 1991 through December 31, 1992 (Pet.'s Ex. 2).

2. The Respondent testified that he began drinking alcohol in Russia after his father died in 1963. He started drinking alcohol to "be part of the crowd" (Pet.'s Ex. 23, p. 59-61). Upon Respondent's arrival in the United States in 1977, he initially decreased his alcohol consumption because of the pressures of adjusting to life in a new country. However beginning in the early 1980's and through 1989, Dr. Zhitlovsky admitted that he engaged in a pattern of episodic or binge alcohol consumption. Respondent's drinking was characterized as episodic heavy drinking with gross intoxication and alcohol withdrawal symptoms (Pet.'s Ex. 23, p. 59-61).

3. On or about and between December 23, 1980 and October 18, 1988, the Respondent was convicted on six occasions for driving while intoxicated. Two of the occasions involved motor vehicle accidents, including one head-on collision in 1980 that was caused by the Respondent driving his vehicle into oncoming traffic (Pet.'s Ex. 4, 5a, 6-9, 10a, 10b, 11).

a. On or about December 23, 1980, in the Justice Court of Haverstraw, Rockland County, New York, the Respondent pled guilty to the crime of violating Veh. and Traf. Law Section 1192(2), in that he operated a motor vehicle while having in excess of .10 of one percentum by weight of alcohol in his blood (Pet.'s

Ex. 4).

b. On or about January 9, 1981, in the Justice Court of Orangetown, Rockland County, New York, the Respondent pled guilty to the crime of violating Veh. and Traf. Law Section 1192(2) in that he operated a motor vehicle while having in excess of .10 of one percentum by weight of alcohol in his blood (Pet.'s Ex. 6).

c. On or about June 28, 1982, in the Municipal Court, Borough of Fort Lee, New Jersey, the Respondent was found guilty of driving while intoxicated in violation of N.J. Stat. Sec. 39:4-50 (Pet.'s Ex. 8).

d. On or about August 25, 1983, in the Justice Court of Cornwall, Orange County, New York, the Respondent pled guilty to the crime of violating Veh. and Traf. Law Section 1192(3), in that he operated a motor vehicle while in an intoxicated condition (Pet.'s Ex. 7).

e. On or about May 15, 1984, in the Municipal Court, Borough of Northvale, New Jersey, the Respondent pled guilty to driving while intoxicated in violation of N.J. Stat. Sec. 39:4-50 (Pet.'s Ex. 9).

f. On or about October 18, 1988, in the Municipal Court, Bergen County, New Jersey, the Respondent was convicted, after a trial, of driving while intoxicated in violation of N.J. Stat. Sec. 39:4-50. The Superior Court of New Jersey, Appellate Division, affirmed Respondent's conviction for driving while intoxicated on June 26, 1989 (Pet.'s Exs. 10a,, 10b, 11, 29).

4. An individual abuses alcohol when he engages in a pattern

of compulsive use of alcohol which continues despite adverse consequences. According to Petitioner's expert, Bruce Taylor, M.D., Respondent's history of 6 DWI convictions between 1980 and October 1988, establishes a diagnosis of alcoholism and alcohol abuse (T. 130-132, 135-137).

5. Respondent admitted that he was an alcoholic (T. 482).

6. In Respondent's application for a license to practice medicine in the State of New York dated July 15, 1985, the Respondent represented that he had never been convicted of a crime, when in fact he knew that he had been criminally convicted for driving under the influence of alcohol on three occasions. The dates of Respondent's criminal convictions for driving under the influence of alcohol are set forth in paragraphs 3a, 3b, and 3d (Pet.'s Exs. 2, 4, 6, 7).

7. On or about June 27, 1990, in the New Jersey Superior Court, Bergen County, New Jersey, the Respondent pled guilty to the crime of forgery in that he violated N.J. Stat. 2C:21-1 (a) (2). The Respondent executed a writing in March, 1990, that purported to be a letter signed by Sal Damiani, the Program Director of Good Samaritan Hospital Chemical Dependency Unit. The letter indicated that Respondent had successfully completed an alcohol rehabilitation program at Good Samaritan Hospital. The Respondent directed his attorney to submit the purported letter of Sal Damiani to the Bergen County Prosecutor's Office for the purpose of demonstrating that he had complied with the sentence imposed on his third New Jersey DWI conviction. Respondent knew that he had been

sentenced to attend an alcohol rehabilitation program in lieu of a 90 day jail sentence and that he had not attended the alcohol rehabilitation program at Good Samaritan Hospital (Pet.'s Exs. 12, 13, p.11-13). On or about July 27, 1990, the Respondent was sentenced to a six month jail sentence and a \$1,000.00 fine (Pet.'s Exs. 14 and 15).

8. One of the basic characteristics of alcoholism is that the alcoholic denies that he has a problem. Respondent's failure to obtain treatment for his alcoholism even after the court ordered him to do so demonstrates a deep state of denial (Pet.'s Ex. 23, p. 60-61, 70; T. 135-137, 140-141).

9. On or about April 2, 1991, the Respondent voluntarily surrendered his medical license pursuant to P.H.L Section 230 (13 (a) because he was incapacitated for the practice of active practice of medicine due to his abuse of alcohol (Resp.'s Ex. D).

10. On or about August 28, 1991, a Committee of the State Board of Professional Medical Conduct restored the Respondent's medical license, subject to certain conditions that were to remain in effect during a five year period of probation. The order restoring Respondent's medical license required that he remain drug and alcohol free, and, that, among other conditions:

- a. Respondent be monitored by a qualified health care professional or an approved successor, who would perform unannounced blood/urine tests for the presence of alcohol or drugs;
- b. Respondent's medical practice should be supervised by a licensed physician or approved successor;
- c. Respondent should continue in

treatment with Dr. Griffin or an approved successor.

11. On or about and between August 28, 1991 and April 6, 1992, Raymond Griffin, Ph.D served as Respondent's therapist and monitor pursuant to the order restoring Respondent's medical license (Resp.'s Ex. A, p. 18, 19, 20, 21). Dr. Griffin is a psychologist who specializes in the treatment of alcoholism and drug addiction. He is the co-founder and clinical director of the Treatment Center of Westchester (Pet.'s Exs. 18, 19, 23, p. 15-16).

12. Respondent commenced out-patient treatment with Dr. Griffin several months prior to his August 28, 1991 license restoration hearing (Pet.'s Ex. 23, p. 16). Prior to being treated by Dr. Griffin, Respondent had attended a one month in-patient alcohol rehabilitation program at Conifer Park, Scotia, New York (Pet.'s Ex. 23, p. 16-17). Conifer Park discharged Respondent with a poor prognosis and recommended that he receive three months additional in-patient treatment at another institution (Pet.'s Ex. 23, p. 19-20, 49). Dr. Griffin testified at the license restoration hearing that he disagreed with Conifer Park's assessment and treatment recommendation and he urged the Hearing Panel to restore Respondent's medical license (Pet.'s Ex. 23, p. 16-32).

13. The Federal Regulations governing the Confidentiality of Alcohol and Drug Abuse Patient Records set forth at 42 C.F.R. Section 2.12 and 2.32 precluded the Department of Health from offering the Conifer park treatment records and the testimony and or records of Dr. Griffin, without authorization of the Respondent

(Pet.'s Exs. 26a, 26b; T. 174).

14. After Dr. Zhitlovsky's license was restored, on or about February 28, 1992, Dr. Griffin observed that Respondent's attitude changed (Pet.'s Ex. 22c). Although Dr. Griffin and the staff of the Treatment Center of Westchester confronted Respondent on several occasions about his attitude and behavior in treatment, Dr. Griffin failed to note an improvement (Resp.'s Ex. A).

15. Although Dr. Griffin had not originally been designated as Respondent's urine monitor, he assumed this function in October, 1991 (Pet.'s Exs. 20 and 31, p.3,4). On or about April 6, 1992 at (9:45 a.m., Dr. Griffin's receptionist told the Respondent that he must present to Dr. Griffin's office by 9:00 P.M. that evening to present a urine sample, and he failed to do so (Resp.'s Ex. A, T. 515-520).

16. Respondent testified that Dr. Griffin's receptionist contacted him at 11:30 a.m. rather than 9:45 a.m. (T. 517) and that she told him that Dr. Griffin authorized him to submit a urine sample the following day (T. 516).

17. Urine monitoring can only detect alcohol between 24 and 36 hours after a person has stopped drinking (T. 143).

18. In a letter dated April 6, 1992, Dr. Griffin informed the Respondent that he had therapeutically discharged him and that he would not continue serving as his therapist or monitor (Pet. Ex. 18, T. 519-520).

19. Richard Gruber, Ph.D, Respondent's current therapist, and Bruce Taylor, M.D. the Department's expert witness, testified that

Respondent was not in recovery when Dr. Griffin therapeutically discharged the Respondent on April 6, 1992.

- a. Dr. Gruber testified that Respondent exhibited a mental attitude relapse at that time (T. 467-468).
- b. Dr. Taylor testified that Respondent's failure to appear for the urine screen was inconsistent with a state of recovery (T. 150-152).

20. Respondent became aware that he had been therapeutically discharged by Dr. Griffin on April 7, 1992 (T.506-507). The License Restoration Order required that Respondent propose a successor monitor to OPMC within 7 days of his becoming aware that the original monitor would no longer serve in that capacity (Pet.'s Ex. 16, p.2, par.3).

21. Respondent testified that he contacted Ellen Brinkman Jensen, Director of the OPMC Impaired Physician's Program on the day he received Dr. Griffin's letter (T.522).

22. Ms. Jensen testified that she received two letters from Dr. Griffin (T. 24). In his letter of 4/13/92, Dr. Griffin stated that Dr. Zhitlovsky exhibited a "disintegrating attitude...a great contrast to his behaviors and attitudes before the return of his license, "and expressed concern for "Dr. Zhitlovsky's recovery" (Pet.'s Ex. A).

23. Ms. Jensen testified that she contacted Dr. Zhitlovsky near the end of April, 1992 since she had not heard from him, and he was out of compliance with the restoration order. She expressed concern "about his having been kicked out of treatment and that he failed to show up for a screen " (T.25-26).

24. While Ms. Jensen testified that telephone message books and telephone logs are maintained by her and her office, she failed to provide them at the hearings (T.44-45). Ms. Jensen further testified that she would make notations on her calendar regarding calls received from individuals such as Dr. Zhitlovsky (T.46). She also failed to produce her calendar for inspection.

25. Ms. Jensen stated that she was told by Respondent that he had not been discharged from treatment, but rather had been terminated by Dr. Griffin because he had completed the goals of the therapy. (T. 25-26).

26. Ms. Jensen informed Respondent that he was required to propose a successor therapist and monitor to OPMC. (T. 27). On April 29, 1992, at a meeting in New York City with Ms. Jensen, the Respondent proposed that Robert Devlin, a certified alcoholism counselor, serve as his therapist and urine monitor. (T.27- 28, 494-495).

27. Ms. Jensen informed the Respondent in the first week of May, 1992, that Mr. Devlin, C.A.C., had declined the position of therapist and that he was unable to perform blood or urine monitoring as required by the License Restoration Order (T. 28-29, 495).

28. Respondent conceded that he failed to make any proposals to OPMC for a successor therapist or monitor after OPMC rejected Mr. Devlin. (T. 495).

29. Respondent stated that he "exhausted all his resources" in searching for a successor monitor and therapist, including Karen

Park of the Committee on Physician's Health of the New York State Medical Society ("CPH") (T.497-498, 507-509).

30. CPH progress notes dated 4/21/92 state that after CPH received a letter from Dr. Griffin, CPH contacted Respondent. According to this record, there was no further contact between CPH and Respondent until 8/13/92 (Pet.'s Ex. 25).

31. Respondent testified that he became aware that the Department of Health was going to bring charges of professional misconduct in July, 1992 (T.498).

32. Dr. Gruber, Respondent's current therapist and monitor, receives referrals from CPH and had been approved as a therapist and monitor by the OPMC Impaired Physician's Program. Significantly, Dr. Gruber testified that he could have begun treating and monitoring the Respondent immediately after his therapeutic discharge on April 6, 1992. (T. 495).

33. Since September 15, 1992, the Respondent has been in treatment with Dr. Gruber. His treatment consists of weekly individual therapy sessions and random monitoring for the presence of alcohol (Resp.'s Ex. E, T.395).

34. Dr. Zhitlovsky testified that he ceased using alcohol in December, 1989 (T.487). Toxicology screens have been negative (Pet.'s Ex. 24, "Resp.'s Exs. E, F, H; T.524-525).

35. Dr. Gruber noted that on several occasions Respondent appeared "harried and rushing" during the individual sessions and that Respondent's focus appeared to be on getting to his office. (Resp.'s Ex. E, p. 2 and 6).

36. Further, on November 20, 1992, the Respondent failed to comply with the order of an alcohol counselor to remain at Dr. Gruber's office until he provided a larger urine sample. Dr. Gruber contacted the Respondent at his home and ordered that he return to the office that evening and submit a second urine sample. In spite of the fact that the second urine sample proved to be negative, Dr. Gruber expressed his concern that Respondent needed to keep his priorities straight. (T. 464-465).

37. Respondent has been attending Caduceus and AA meetings (T.349, 483-484).

38. Dr. Gruber testified that Respondent is presently in recovery (T.430).

39. As of August, 1991 Dr. Alvin Yapalater, a psychiatrist, has served as practice monitor for Respondent (Pet.'s Ex. 30). On one occasion he reviewed Respondent's records (T.282-285, Resp.'s Ex. B).

40. Respondent testified that he is currently practicing psychiatry and general medicine in Brooklyn (T.486; 521-522; 532).

41. There was no testimony that Respondent's judgment as a physician was impaired (Pet.'s Ex. 23, p.42; Resp.'s Ex. B).

42. On or about September 27, 1992, the Respondent filed an application to renew his New York Driver's License with the Department of Motor Vehicles. In response to Question 3 on the application, the Respondent denied that he had been found guilty of a vehicle related crime or offense within four years of the date of the application, when in fact on October 18, 1988, in the Police

Court of the Palisades Parkway, Bergen County, New Jersey, he had been convicted for operating a motor vehicle while intoxicated in violation of N.J. Stat. Ann. 39:4-50. This conviction was within 4 years of the date of the Driver's License application. (Pet.'s Ex. 10a, 10b, and 27).

43. The NYS Department of Motor Vehicles has no record of the October 18, 1988 conviction and never took any action against Respondent's NYS Driver's License based on the conviction. (Pet.'s Ex. 28, p.2 and 3; T. 505).

CONCLUSIONS

1. The Respondent committed professional misconduct in that he has been convicted of committing acts constituting a crime under New York State Law.

2. The Respondent committed fraud in obtaining his medical license by knowingly concealing that he had been criminally convicted for driving under the influence of alcohol on three separate occasions.

3. The Respondent committed professional misconduct in that he had been convicted of committing an act constituting a crime under the law of another jurisdiction, which if committed in New York State, would have constituted a crime under New York State law, in that on or about June 27, 1990, in New Jersey Superior Court, the Respondent pled guilty to the crime of forgery in violation of N.J. Stat. 2C:21-1(a)(2).

4. The Respondent committed professional misconduct by willfully making or filing false reports, or inducing another person to do so. Respondent violated Educ. Law 6530(21) since he "induced another person," his attorney, to file a false report.

5. The Respondent committed professional misconduct by wilfully filing a false report with the NYS Department of Motor Vehicles by knowingly misrepresenting on his Driver's License application that he had not been convicted of a traffic related crime or offense within four years.

6. The Respondent committed professional misconduct by habitually abusing alcohol from July 1982, the date he began the practice of medicine in the State of New York.

7. The Respondent committed professional misconduct by violating a term of probation, condition or limitation imposed on the Respondent pursuant to Section 230 of the Public Health Law by the Restoration Committee of the State Board of Professional Medical Conduct on August 28, 1991. Respondent violated the License Restoration Order by failing to appear for a urine screen on April 6, 1992. Further, he failed to obtain a successor therapist and health care monitor for the presence of alcohol approved by OPMC after Dr. Griffin therapeutically discharged him on April 6, 1992."

VOTE OF THE HEARING COMMITTEE

(All votes were unanimous.)

FIRST THROUGH THIRD SPECIFICATIONS:
(Committing a crime)

SUSTAINED as to Paragraphs A, B and C

FOURTH SPECIFICATION:
(Fraud in obtaining a license)

SUSTAINED as to Paragraphs D

FIFTH SPECIFICATION:
(Committing a crime)

SUSTAINED as to Paragraphs E1 and E2

SIXTH AND SEVENTH SPECIFICATIONS:
(Submitting false reports)

SUSTAINED as to Paragraphs E1, E2 and H

EIGHTH SPECIFICATION:
(Habitual use of alcohol)

SUSTAINED as to Paragraphs A,B,C and F

NINTH SPECIFICATION:
(Violating probation)

SUSTAINED as to Paragraphs G1, G2, G3, G3(a), G3(b) and G3(c)

DETERMINATION OF THE HEARING COMMITTEE AS TO PENALTY

The Hearing Committee notes that Respondent has a long history of alcoholism and that he has denied the serious nature of his problem for many years.

The record suggests that the Respondent has avoided treatment and has been deceitful about his history. Note is made of the fact that Respondent has apparently been sober for approximately three years, and that there has been superficial compliance at times with the recommended treatment, although there appears to have been a mental attitude relapse last year.

Respondent seems to comply in response to external pressure, as is not unusual in substance abusers. It is the intent of this Committee to maintain that pressure without resorting to hospitalization, both for the benefit of the Respondent and the general public.

The Hearing Committee unanimously determines:

a) that Respondent's license to practice medicine in the State of New York be suspended for five years, with a minimum suspension of six months and the balance stayed;

b) that the Respondent shall be placed on a new five year term of probation to commence on the date of surrender of Respondent's license, under the following terms:

1. Respondent during the period of probation, shall conduct himself in all ways in a manner befitting his professional status, he shall obey all laws and regulations to which he is subject, and he shall conform fully to the moral and professional standards of care and 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, New York State Health Department, Corning Tower Building, 4th Floor, Empire State Plaza, Albany, New York 12237 of any employment and practice, of Respondent's residence and telephone number, of any change in Respondent's employment, practice, residence, or telephone number within or without the State of New York;

3. 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 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;

4. Respondent shall submit written proof to the NYSDOH, 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 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 or by the Board of Regents; said proof of the above to be submitted no later than the first three months of the period of probation;

5. Respondent shall remain drug and alcohol free.

6. Respondent's sobriety shall be monitored by a qualified health care professional approved by the Office of Professional Medical Conduct. Respondent shall submit the name and signed acknowledgement of an acceptable monitor within fifteen (15) days of the effective date of this Order.

a. Said monitor shall be familiar with Respondent's history of substance abuse, and with the terms of probation contained herein.

b. Said monitor shall not be Respondent's personal physician.

c. Said monitor shall see Respondent at least twice during a quarter.

d. Said monitor shall, during the first year of this term of probation, with a frequency not less than,

but not limited to five times per month, direct Respondent to submit to random, unannounced, and observed tests of Respondent's blood, breath, and/or urine for the presence of drugs or alcohol. Respondent shall comply with such direction within the time frame imposed by the monitor and which time shall be stated in the acknowledgment of the monitor.

e. The monitor shall report to the Office of Professional Medical Conduct (the Office) within 24 hours if at any time such a test is refused by Respondent or is positive.

f. After the end of one year, the frequency of random screens may be reduced by consensus of OPMC, the monitor, and the treating therapist.

g. Said monitor shall not be a personal friend of Respondent's.

h. Said monitor shall submit to the Office quarterly reports either certifying compliance, or detailing Respondent's failure to comply, with each of the terms of probation. The reports shall include the results of all body fluid and/or breath tests for drugs and/or alcohol performed during that quarter.

7. Respondent shall continue in treatment with a qualified health care professional or in a treatment program approved by the Office of Professional Medical Conduct for as long as the health care professional or treatment program determines it is necessary. Respondent shall submit the name and signed acknowledgement of an acceptable health care professional within fifteen (15) days of the effective date of this Order.

a. The treating health care professional shall submit a report to the Office of Professional Medical Conduct every three months certifying compliance with treatment by Respondent and describing in detail any failure to comply.

b. The treating health care professional shall report to the Office of Professional Medical Conduct immediately any discontinuation of treatment by Respondent.

c. The treating health care professional shall immediately report to the Office of Professional Medical Conduct any significant pattern of absences from scheduled treatment sessions.

d. Respondent shall submit the name of a successor qualified treating health professional to the Office of Professional Medical Conduct for approval within fifteen (15) days of Respondent's becoming aware that the original treating health care professional will no longer serve in that capacity.

8. The responsibilities of the sobriety monitor (urine screens, etc.) and treating health care professional may, with the approval of the Office of Professional Medical Conduct, be carried out by the same person or be under the auspices of the same program.

9. Respondent shall be supervised in his medical and psychiatric practice by a licensed physician(s) approved by the Office of Professional Medical Conduct. Respondent shall submit the name and signed acknowledgement of an acceptable health care professional within fifteen (15) days after the restoration of Respondent's license at the conclusion of the six months' active suspension.

a. Said supervising physician(s) shall be in a position to regularly observe and assess Respondent's psychiatric and medical practice.

b. Said supervising physician(s) shall submit to the Office quarterly reports regarding the quality of Respondent's medical and psychiatric practice, any unexplained absences from work and certifying Respondent's compliance or detailing any failure to comply with each term of probation.

c. Respondent shall submit the name of a successor qualified medical and psychiatric practice supervisor to the Office of Professional Medical Conduct for approval within fifteen (15) days of Respondent becoming aware that the original medical and psychiatric practice supervisors will no longer serve in that capacity.

10. The Respondent shall continue attending Alcoholics Anonymous and Caduceus meetings.

11. The costs of complying with all terms of probation shall be Respondent's responsibility.

12. Failure to comply with any of the conditions described above will result in automatic reinstatement of Respondent's inactive license status, upon notice to Respondent.

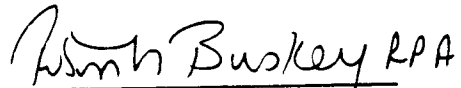
ORDER

Based upon the foregoing, IT IS HEREBY ORDERED THAT

1. Respondent's license to practice medicine in the State of New York be suspended for five years, with a minimum suspension of six months and the balance stayed; and

2. Respondent shall be placed on a new five year term of probation to commence on the date of surrender of Respondent's license, under the terms set forth above.

Dated: New York, New York
March 24th, 1993



ROBIN N. BUSKEY, R.P.A.
Chairperson

NAOMI GOLDSTEIN, M.D.
WILLIAM W. FALCON, M.D.

A P P E N D I X I

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

X AMENDED

IN THE MATTER

: STATEMENT

OF

: OF

GERMAN ZHITLOVSKY, M.D.

: CHARGES

X

GERMAN ZHITLOVSKY, M.D., the Respondent, was authorized to practice medicine in New York State on July 15, 1985 by the issuance of license number 163179 by the New York State Education Department. The Respondent is currently registered with the New York State Education Department to practice medicine for the period January 1, 1991 through December 31, 1992 at 1 James Court, Nanuet, New York 10954.

FACTUAL ALLEGATIONS

- A. On or about December 23, 1980, in the Justice Court of Haverstraw, Rockland County, New York, the Respondent pled guilty to the crime of violating Veh. and Traf. Law Section 1192(2). This section provides that no person shall operate a motor vehicle while the person has in excess of .10 of one percentum by weight of alcohol in his blood. The Court sentenced the Respondent to a conditional discharge and directed that he attend a New York State Drinking Drivers Program.

B. On or about January 9, 1981, in the Justice Court of Orangetown, Rockland County, New York, the Respondent pled guilty to the crime of violating Veh. and Traf. Law Section 1192(2) in that the Respondent operated a motor vehicle while having in excess of .10 of one percentum by weight of alcohol in his blood. The Court sentenced the Respondent to a conditional discharge and directed that he attend and satisfactorily complete a New York State Drinking Drivers Program.

C. On or about August 25, 1983, in the Justice Court of Cornwall, Orange County, New York, the Respondent pled guilty to the misdemeanor of violating Veh. and Traf. Law Section 1192(3). This section provides that no person shall operate a motor vehicle while he is in an intoxicated condition. The Court sentenced the Respondent to a fine of \$500.00.

D. In Respondent's application for a license to practice medicine in the State of New York dated July 15, 1985, the Respondent represented that he he had never been convicted of a crime; when in fact he knew that he had been criminally convicted for driving under the influence of alcohol on three occasions. The dates of Respondent's three New York State guilty pleas for driving while under the influence of alcohol are set forth in paragraphs A, B, and C.

E(1) On or about June 27, 1990, in the New Jersey Superior Court, Bergen County, New Jersey, the Respondent pled guilty to the crime of forgery in that he violated N.J. Stat. 2C:21-1(a)(2). Pursuant to this section, a person is guilty of forgery if, with the purpose to defraud or injure anyone, he makes, completes, executes, authenticates, issues or transfers any writing so that it purports to be the act of another person who did not authorize the making of the writing. On or about July 27, 1990, the Respondent was sentenced to a 6 month jail sentence and a \$1,000.00 fine.

(2) The Respondent executed a writing in March, 1990, that purported to be a letter signed by Sal Damiani, the Program Director of the Good Samaritan Hospital Chemical Dependency Unit. The letter indicated that Respondent had successfully completed an alcohol rehabilitation program at Good Samaritan Hospital. The Respondent directed his attorney to submit the purported letter of Sal Damiani to the Bergen County Prosecutor's Office for the purpose of demonstrating that Respondent had complied with the sentence imposed on his third New Jersey DWI conviction. Respondent knew that he had been sentenced to attend an alcohol rehabilitation program in lieu of a 90 day jail sentence and that he had not attended the alcohol rehabilitation program at Good Samaritan Hospital. This

act, if committed within New York State, would have constituted a crime under N.Y. Penal Law Sec. 170.05. (Forgery in the Third Degree).

On or about and between December, 1980 and March, 1990 the Respondent engaged in regular heavy drinking, primarily on weekends. On six occasions during this period the Respondent was found guilty of driving a motor vehicle while under the influence of alcohol ("DWI"). In addition to the three New York DWI convictions alleged in Paragraphs A, B, and C, the Respondent was found guilty of driving while under the influence of alcohol in New Jersey on three occasions. The first conviction was on June 28, 1982, in the Municipal Court, Borough of Fort Lee, New Jersey. The second conviction was on May 15, 1984, in the Municipal Court, Borough of Northvale, New Jersey. The third conviction was on January 20, 1989, in the Superior Court, Bergen County, New Jersey.

G(1) On or about April 2, 1991, the Respondent voluntarily surrendered his medical license pursuant to P.H.L. Section 230(13)(a). This section provides that a licensee may voluntarily surrender his license and medical registration to the Board of Professional Medical Conduct during a period when the licensee is temporarily incapacitated for the practice of medicine.

On or about August 28, 1991, a Committee of the State Board of Professional Medical Conduct restored Respondent's medical license, subject to certain conditions that were to remain in effect during a five year period of probation. The order restoring Respondent's medical license required that Respondent remain drug and alcohol free, participate in a program of therapy for alcohol dependence, attend Alcoholics Anonymous and Caduceus meetings, submit to random screening for the presence of alcohol, and have his medical practice supervised by a licensed physician. Pursuant to the order, the Respondent was required to obtain the approval of the Office of Professional Medical Conduct ("OPMC") for a successor therapist, supervising physician, and/or health care monitor for the presence of alcohol if a successor was required during the term of probation.

- (3) On or about and between August 28, 1991 and April 6, 1992 Raymond Griffin, PhD. served as Respondent's therapist and alcohol monitor. Respondent failed to present for a random urine screen Dr. Griffin ordered on April 6, 1992. On or about April 6, 1992, Dr. Griffin therapeutically discharged the Respondent and advised him to obtain a successor therapist and monitor. Pursuant to

The order restoring Respondent's medical license, Respondent was required to propose to OPMC a successor health care monitor within 7 days of his becoming aware that his health care monitor would no longer serve in that capacity. The Respondent violated terms of probation required by the order restoring his medical license, in that:

- a. On or about April 6, 1991, the Respondent failed to submit to an unannounced blood and/or urine screen.
- b. Respondent failed to submit the name of a successor qualified monitoring health care professional to OPMC for approval within seven days of his becoming aware that Raymond Griffin, PhD. would no longer serve in that capacity.
- c. Respondent failed to continue in treatment with a health care professional or treatment program approved by the Office of Professional Medical Conduct after Raymond Griffin, M.D.,

therapeutically discharged him on or
about April 6, 1992.

H. In Respondent's application for a New York State Driver's License dated September 27, 1992, the Respondent denied that he had been found guilty of a vehicle related crime or offense within four years of the date of the application, when in fact he knew that on October 18, 1988, in the Police Court of the Palisades Parkway, Bergen County, New Jersey, he had been convicted of the offense of operating a motor vehicle while intoxicated in violation of N.J. Stat. Ann. 39:4-50.

SPECIFICATION OF CHARGES

FIRST THROUGH THIRD SPECIFICATIONS

COMMITTING A CRIME

Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law Section 6539(9)(a)(i) (McKinney 1985 and Supp. 1992) in that he has been convicted of committing an act constituting a crime under New York state law, in that Petitioner charges:

1. The facts in Paragraph A.
2. The facts in Paragraph B.
3. The facts in Paragraph C.

FOURTH SPECIFICATION

FRAUD IN OBTAINING A LICENSE

Respondent is charged with fraud in obtaining his medical license within the meaning of N.Y. Educ. Law Section 6530(1) (McKinney 1985 and Supp. 1992), in that the Petitioner charges:

4. The facts in Paragraph D.

FIFTH SPECIFICATION

COMMITTING A CRIME

Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law Section 6530(9)(a)(iii) (McKinney 1985 and Supp. 1992) in that he has been convicted of committing an act constituting a crime under the law of another jurisdiction and which, if committed in New York

state, would have constituted a crime under New York state law, in that Petitioner charges:

5. The facts in Paragraph E1 and E2.

SIXTH AND SEVENTH SPECIFICATIONS

FALSE REPORTS

Respondent is charged with professional misconduct pursuant to N.Y. Educ. Law Section 6530(21) (McKinney 1985 and Supp. 1992) by willfully making or filing a false report, or inducing another person to do so, in that Petitioner charges:

6. The facts in Paragraph E1 and E2.

7. The facts in Paragraph H.

EIGHTH SPECIFICATION

HABITUAL ABUSE OF ALCOHOL

Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law Section 6530(8) by being an habitual abuser of alcohol, in that Petitioner charges:

8. The facts in Paragraphs A, B, C, and F.

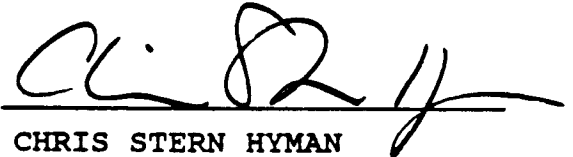
NINTH SPECIFICATION

VIOLATING PROBATION

Respondent is charged with professional misconduct pursuant to N.Y. Educ. Law Section 6530(29) by violating a term of probation or condition or limitation imposed on the licensee pursuant to Section 230 of the Public Health Law, in that Petitioner charges:

9. The facts in Paragraphs G1, G2, G3, G3(a), G3(b) and/or G3(c).

DATED: November 12, 1992
New York, New York



CHRIS STERN HYMAN
Counsel
Bureau of Professional
Medical Conduct