



STATE OF NEW YORK DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Antonia C. Novello, M.D., M.P.H., Dr.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

May 14, 2002

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Robert Bogan, Esq.
& Robert Maher, Esq.
NYS Department of Health
Hedley Park Place – 4th Floor
Troy, New York 12180

Harry Joseph Poland, R.P.A.
506 Shenandoah Street
Portsmouth, Virginia 23707

RE: In the Matter of Joseph Poland, R.P.A.

Dear Parties:

Enclosed please find the Determination and Order (No. 02-43) of the Professional Medical Conduct Administrative Review Board 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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:

Office of Professional Medical Conduct
New York State Department of Health
Hedley Park Place
433 River Street-Fourth Floor
Troy, New York 12180

If your license or registration certificate is lost, misplaced or its whereabouts is otherwise unknown, you shall submit an affidavit to that effect. If subsequently you locate the requested items, they must then be delivered to the Office of Professional Medical Conduct in the manner noted above.

This exhausts all administrative remedies in this matter [PHL §230-c(5)].

Sincerely,

A handwritten signature in black ink, appearing to read "Tyrone T. Butler". The signature is fluid and cursive, with the first name "Tyrone" being more prominent.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:cah
Enclosure

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

In the Matter of

Harry Joseph Poland, R.P.A. (Respondent)

Administrative Review Board (ARB)

Determination and Order No. 02-43

**A proceeding to review a Determination by a
Committee (Committee) from the Board for
Professional Medical Conduct (BPMC)**

COPY

**Before ARB Members Grossman, Lynch, Pellman, Price and Briber
Administrative Law Judge James F. Horan drafted the Determination**

**For the Department of Health (Petitioner):
For the Respondent:**

**Paul Robert Maher, Esq.
Pro Se**

In this proceeding pursuant to N.Y. Pub. Health Law § 230-c (4)(a)(McKinney's 2002), the ARB considers whether to impose a penalty against the Respondent-Physician Assistant in New York, following criminal convictions and disciplinary action against him in other states. After a hearing below, a BPMC Committee voted to impose no penalty, upon determining that 1.) the Respondent's conduct related to alcohol and chemical dependency problems the Respondent has since addressed and that 2.) the criminal and administrative penalties from the other states provided sufficient sanctions against the Respondent and safeguards for the public. On review, the Petitioner asks the ARB to overturn the Committee and to impose a penalty. After considering the record, the ARB overturns the Committee and places the Respondent on probation, in the event the Respondent returns to work in New York prior to the time he completes a recovery monitoring contract in Virginia.

Committee Determination on the Charges

The Petitioner commenced the proceeding by filing charges with BPMC alleging that the Respondent violated N. Y. Educ. Law §6530(9)(a)(ii)(McKinney Supp. 2002) due to the

Respondent's conviction for crimes in other states. The Petitioner's Statement of Charges [Petitioner Hearing Exhibit 1] alleged the Respondent's conviction for 1.) Driving Under the Influence in Virginia and for 2.) Acquiring a Drug by Misrepresentation and Deceit in North Carolina. The Petitioner also charged that the Respondent violated N. Y. Educ. Law §§6530(9)(b) & (9)(d) (McKinney Supp. 2002) by committing professional misconduct because:

- the duly authorized professional disciplinary agency from another state (Virginia) found the Respondent guilty for professional misconduct [§6530(9)(b)] and/or took disciplinary action against the Respondent's medical license in that state [§6530(9)(d)], for,
- conduct that would constitute professional misconduct, if the Respondent had committed such conduct in New York.

The Petitioner's Statement of Charges [Petitioner Exhibit 1] alleged that the Respondent's misconduct in the other jurisdiction would constitute misconduct if committed in New York, under the following categories:

- practicing medicine fraudulently, a violation under N. Y. Educ. Law § 6530(2),
- practicing medicine while impaired by drugs, a violation under N. Y. Educ. Law §6530(7),
- being a habitual abuser of alcohol and/or being dependent on or a habitual user of drugs, a violation under N. Y. Educ. Law §6530(8),
- committing an act that results in a criminal conviction in another state, a violation under N. Y. Educ. Law §6530(9)(a)(i),
- willful or grossly negligent failure to comply with federal, state or local laws, rules or regulations governing the practice of medicine, a violation under N. Y. Educ. Law §6530(16), and/or,
- engaging in conduct that evidences moral unfitness, a violation under N. Y. Educ. Law § 6530(20).

An expedited hearing (Direct Referral Proceeding) ensued pursuant to N.Y. Pub. Health Law §230(10)(p)(McKinney 2002), before a BPMC Committee, which rendered the Determination now on review. In the Direct Referral Proceeding, the statute limits the Committee to determining the nature and severity for the penalty to impose against the licensee, see In the Matter of Wolkoff v. Chassin, 89 N.Y.2d 250 (1996).

The Committee made findings concerning criminal or administrative actions against the Respondent in North Carolina and Virginia. In January 1997, the Dare County Court in North Carolina found the Respondent guilty for reckless driving. In June 1997, the General Court of Justice, District Court Division, Dare County North Carolina found the Respondent guilty on two misdemeanor counts of Obtaining or Acquiring a Drug By Misrepresentation and Deceit. That court sentenced the Respondent to thirty days imprisonment, suspended the sentence, required the Respondent to attend substance abuse treatment and mental health counseling and ordered the Respondent to pay a \$100.00 fine and court costs. In February 2000, the Respondent was found guilty in Roanoke, Virginia for Driving Under the Influence, a Class 1 misdemeanor. For that offense, the Respondent received a suspended thirty-day jail sentence, a twelve-month driver's license suspension, a driver's license restriction and a referral to a treatment program. In May 2000, the Board of Medicine of the Virginia Department of Health Professions (Virginia Board) a.) placed the Respondent on indefinite probation, b.) barred him from practice for at least one year and c.) ordered the Respondent to comply with the provisions of a contract with the Virginia Health Practitioner's Intervention Program (HPIP). The Virginia Board imposed that penalty for the Respondent's arrests in Virginia and North Carolina. The Virginia Board also found that the Respondent attempted to obtain fraudulently and obtained fraudulently Fioricet, a Schedule IV Controlled Substance, for the Respondent's own unauthorized use.

The Committee concluded that the Respondent's conduct in Virginia and North Carolina would amount to misconduct under New York law as:

- practicing the profession fraudulently,
- being a habitual abuser of drugs and alcohol, and,

- willfully failing to comply with substantial provisions of state law pertaining to medical practice.

The Committee concluded that such conduct made the Respondent liable for disciplinary action against his New York License pursuant to Educ. Law §§6530(9)(b) & (9)(d). The Committee also found that the Respondent violated Educ. Law §6530(9)(a)(iii) due to the criminal convictions in Virginia and North Carolina.

The Committee found the Respondent's misconduct resulted from serious problems with alcoholism and drug dependency. The Committee concluded from evidence at the hearing that the Respondent had addressed that problem, remained in recovery and regained his license in Virginia. The Committee also found that the only remaining safeguard on the Respondent's Virginia License comes from a Recovery Monitoring Contract with which the Respondent must remain in compliance until March 2005. The Committee voted to impose no penalty on the Respondent.

Review History and Issues

The Committee rendered their Determination on February 6, 2002. This proceeding commenced on February 20, 2002, when the ARB received the Petitioner's Notice requesting a Review. The record for review contained the Committee's Determination, the hearing record and the Petitioner's brief. The record closed when the ARB received the brief on March 21, 2002.

The Petitioner notes that the Respondent remains vulnerable for a relapse to abusive behavior and asks that the ARB impose a meaningful sanction, such as the one-year suspension from practice that Virginia imposed against the Respondent's License in that state. The Petitioner also suggested an indefinite suspension until the Respondent proves his fitness to a Committee from BPMP or probation with drug and alcohol screening.

Determination

The ARB has considered the record and the review brief. We affirm the Committee's Determination that the Respondent committed professional misconduct. We vote to overturn the Committee and to place the Respondent on probation, if he returns to practice in New York prior to the time the Recovery Monitoring Contract terminates in Virginia.

Under our review authority from Pub. Health Law § 230-c(1), the ARB determines: whether the Determination and Penalty are consistent with the Committee's findings of fact and conclusions of law; and, whether the Penalty is appropriate and within the scope of penalties which Pub. Health Law §230-a permits. That statutory standard means that the ARB may substitute our judgement for that of the Committee, in deciding upon a penalty Matter of Bogdan v. Med. Conduct Bd. 195 A.D.2d 86, 606 N.Y.S.2d 381 (3rd Dept. 1993). We elect to exercise that authority in this case.

We reject the Petitioner's request that we suspend the Respondent indefinitely until a BPMC Committee determines the Respondent's fitness to practice. The Committee in this case has determined the Respondent's fitness to practice. We also reject the Petitioner's request for a definite period on suspension. The Respondent served a suspension already in Virginia and the Virginia Board found the Respondent fit to practice.

The Committee Determination notes that the only remaining safeguard on the Respondent in Virginia comes from the Recovery Monitoring Contract that remains in effect until March 2005. In our deliberations, the ARB considered what may happen if the Respondent left Virginia to practice in New York prior to the time the Contract ends. No safeguard would

apply to the Respondent in that event. Although the Respondent may plan no return to New York, no legal bar prevents that return if the Respondent changes his plans.

The Respondent is making an impressive recovery from his dependency problems and the Recovery Monitoring Contract provides safeguards in Virginia to assure that recovery will continue. The ARB concludes that some safeguard must assure that the recovery will continue, if the Respondent should return to New York prior to the time the Contract terminates. We vote to place the Respondent on probation, if the Respondent returns to New York to practice prior to March 2005. That probation will then remain in effect until March 2005. The Director of the Office for Professional Medical Conduct shall set the probation terms pursuant to Pub. Health Law § 230(18)(a). The terms will include provisions requiring drug and alcohol monitoring.

ORDER

NOW, with this Determination as our basis, the ARB renders the following **ORDER**:

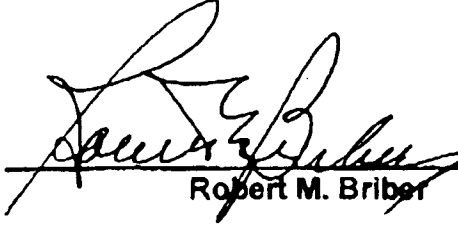
1. The ARB affirms the Committee's Determination that the Respondent committed professional misconduct.
2. The ARB overturns the Committee's Determination to take no action against the Respondent.
3. The ARB places the Respondent on probation in the event the Respondent returns to practice in New York prior to March 2005, with the probation to remain in effect until March 2005.

Robert M. Briber
Thea Graves Pellman
Winston S. Price, M.D.
Stanley L. Grossman, M.D.
Therese G. Lynch, M.D.

In the Matter of Harry Joseph Poland, R.P.A.

Robert M. Briber, an ARB Member, concurs in the Determination and Order in the Matter of Mr. Poland.

Dated: 4/26/2002

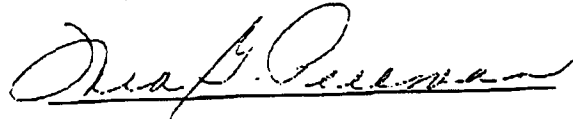


Robert M. Briber

In the Matter of Harry Joseph Poland, R.P.A.

Thea Graves Pellman, an ARB Member concurs in the Determination and Order in the
Matter of Mr. Poland.

Dated: May 2, 2002

A handwritten signature in cursive script, appearing to read 'Thea G. Pellman', written over a horizontal line.

Thea Graves Pellman

In the Matter of Harry Joseph Poland, R.P.A.

Winston S. Price, M.D., an ARB Member concurs in the Determination and Order in the
Matter of Mr. Poland.

Dated: May 3, 2002

A handwritten signature in black ink, appearing to read "W. S. Price", is written over a horizontal line.

Winston S. Price, M.D.

In the Matter of Harry Joseph Poland, R.P.A.

Stanley L. Grossman, an ARB Member concurs in the Determination and Order in the
Matter of Mr. Poland.

Dated: April 28, 2002

Stanley L. Grossman M.D.

Stanley L Grossman, M.D.

In the Matter of Harry Joseph Poland, R.P.A.

Therese G. Lynch, M.D., an ARB Member concurs in the Determination and Order in the Matter of Mr. Poland.

Dated: April 25, 2002

Therese G. Lynch M.D.

Therese G. Lynch, M.D.



STATE OF NEW YORK DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Antonia C. Novello, M.D., M.P.H., Dr.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

February 6, 2002

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Robert Bogan, Esq.
& Robert Maher, Esq.
NYS Department of Health
Hedley Park Place – 4th Floor
Troy, New York 12180

Harry Joseph Poland, R.P.A.
506 Shenandoah Street
Portsmouth, Virginia 23707

RE: In the Matter of Harry Joseph Poland, R.P.A.

Dear Parties:

Enclosed please find the Determination and Order (No. 02-43) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), and §230-c subdivisions 1 through 5, (McKinney Supp. 1992), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the licensee or the Department may seek a review of a committee determination.

All notices of review must be served, by certified mail, upon the Administrative Review Board and the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

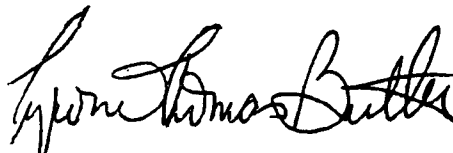
The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Hedley Park Place
433 River Street, Fifth Floor
Troy, New York 12180

The parties shall have 30 days from the notice of appeal in which to file their briefs to the Administrative Review Board. Six copies of all papers must also be sent to the attention of Mr. Horan at the above address and one copy to the other party. The stipulated record in this matter shall consist of the official hearing transcript(s) and all documents in evidence.

Parties will be notified by mail of the Administrative Review Board's Determination and Order.

Sincerely,

A handwritten signature in black ink, appearing to read "Tyrone T. Butler". The signature is fluid and cursive, with the first name "Tyrone" being more prominent.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:cah
Enclosure

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

COPY

IN THE MATTER

OF

HARRY JOSEPH POLAND, R.P.A.

DETERMINATION

AND

ORDER

BPMC #02-43

A hearing was held on January 17, 2002, at the Clarion Inn and Suites, Latham, New York. A Notice of Referral Proceeding and a Statement of Charges, both dated October 30, 2001, were served upon the Respondent, **Harry Joseph Poland, R.P.A.** **Jerry Waisman, M.D.**, Chairperson, **Ernst A. Kopp, M.D.**, and **Ms. Shahla Javdan**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to Section 230(10)(e) of the Public Health Law. **John Wiley, Esq.**, Administrative Law Judge, served as the Administrative Officer.

The New York State Department of Health ("the Petitioner") appeared by **Donald P. Berens, Jr., Esq.**, General Counsel, by **Robert Bogan, Esq.**, and **Paul Robert Maher, Esq.**, of Counsel. The Respondent appeared in person and represented himself.

Evidence was received and transcripts of these proceedings were made.

After consideration of the entire record, the Hearing Committee issues this Determination and Order.

STATEMENT OF CASE

This case was brought pursuant to Public Health Law Section 230(10)(p). The statute provides for an expedited hearing when a licensee is charged solely with a violation of Education Law Section 6530(9). In such cases, a licensee is charged with

misconduct based upon a prior criminal conviction in New York State or another jurisdiction, or upon a prior administrative adjudication regarding conduct that would amount to professional misconduct, if committed in New York. The scope of an expedited hearing is limited to a determination of the nature and severity of the penalty to be imposed upon the licensee.

In the instant case, the Respondent is charged with professional misconduct pursuant to Education Law Section 6530(9)(a)(iii), (b) and (d). A copy of the Notice of Referral Proceeding and the Statement of Charges is attached to this Determination and Order as Appendix 1.

WITNESSES

For the Petitioner:

None

For the Respondent:

Harry Joseph Poland, R.P.A.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers below in parentheses refer to exhibits, denoted by the prefix "Ex." These citations refer to evidence found persuasive by the Hearing Committee in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence. All Hearing Committee findings were unanimous.

1. Harry Joseph Poland, R.P.A., the Respondent, was authorized to practice as a Registered Physician Assistant in New York State on May 4, 1993, by the issuance of license number 004527 by the New York State Education Department (Petitioner's Ex. 4).

2. On or about January 31, 1997, in Dare County Court, North Carolina, the Respondent was found guilty of Reckless Driving, a misdemeanor (Petitioner's Ex. 5).

3. On or about June 13, 1997, in the General Court of Justice, District Court Division, Dare County, North Carolina, the Respondent was convicted of two misdemeanor counts of Obtaining Or Acquiring A Drug By Misrepresentation And Deceit. He was sentenced to 30 days imprisonment, which was suspended, and was required to attend substance abuse treatment and mental health counseling, and was ordered to pay a \$100.00 fine and court costs. (Petitioner's Ex. 5)

4. On or about February 17, 2000, in the City of Roanoke, Virginia, the Respondent was found guilty of Driving Under The Influence, a Class 1 misdemeanor, and was sentenced to 30 days incarceration, which was suspended, a twelve month suspension of his driver's license, referral to a treatment program, and a restriction on his driver's license (Petitioner's Ex. 5).

5. On May 25, 2000, the Virginia Department of Health Professions, Board of Medicine ("Virginia Board"), by an Order ("First Virginia Order"), placed the Respondent's physician assistant license on indefinite probation with terms and conditions that include that the Respondent not practice as a physician assistant for at least one year and that he comply with the terms of his contract with the Health Practitioners' Intervention Program ("HPIP"); based on the convictions described in fact findings 2 through 4 above, on his fraudulently attempting to obtain and obtaining Fioricet, a Schedule IV controlled substance for his own unauthorized use, and on his being dependent on and a habitual user of drugs and alcohol (Petitioner's Ex. 5).

HEARING COMMITTEE CONCLUSIONS

The Hearing Committee concludes that the conduct of the Respondent, had it occurred in New York State, would constitute professional misconduct under the laws of New York State pursuant to:

- New York Education Law Section 6530(2) – practicing the profession fraudulently;
- New York Education Law Section 6530(8) – being a habitual abuser of alcohol and being dependent on or a habitual user of drugs; and
- New York Education Law Section 6530(16) – willful failure to comply with substantial provisions of state law.

VOTE OF THE HEARING COMMITTEE

FIRST THROUGH THIRD SPECIFICATIONS

“Respondent violated New York Education Law Section 6530(9)(a)(iii) by having been convicted of committing an act constituting a crime under the laws of another jurisdiction and which, if committed within New York state, would have constituted a crime under New York state law...”

VOTE: Sustained (3-0)

FOURTH SPECIFICATION

“Respondent violated New York Education Law Section 6530(9)(b) by having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York state, constitute professional misconduct under the laws of New York state...”

VOTE: Sustained (3-0)

FIFTH SPECIFICATION

“Respondent violated New York Education Law Section 6530(9)(d) by having his license suspended or having other disciplinary action taken after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where

the conduct resulting in the license suspension or other disciplinary action would, if committed in New York state, constitute professional misconduct under the laws of New York state..."

VOTE: Sustained (3-0)

HEARING COMMITTEE DETERMINATION

The record in this case indicates that the Respondent has been convicted of crimes on three occasions (Reckless Driving in 1997, Obtaining Or Acquiring A Drug By Misrepresentation and Deceit in 1997, and Driving Under The Influence in 2000). The Respondent has had serious problems with alcoholism and drug dependency. The drug dependency motivated him to obtain Fioricet, a controlled substance, for his own use, by illegal means on multiple occasions. These problems resulted in disciplinary proceedings against him in Virginia. On May 25, 2000, the Virginia Board issued the First Virginia Order. That Order placed the Respondent on probation for an indefinite period of time. The terms and conditions of this probation included a prohibition against the Respondent practicing his profession for at least one year. The terms and conditions also required the Respondent to comply with the terms of his contract with HPIP and to have quarterly progress reports from HPIP submitted to the Virginia Board. (Virginia Monitoring, Inc., is the organization that performed these HPIP services.)

Obviously, these are serious problems for anyone in general and for a health care professional in particular. The Respondent, however, has made an impressive and successful effort since November of 1999 to control his alcoholism and drug dependency. In September of 2001, a committee of the Virginia Board held an informal conference with the Respondent. This conference resulted in an Order ("Second Virginia Order" – Petitioner's Ex. 6), issued by the Virginia Board on October 2, 2001, which summarized

the conscientious effort and impressive progress of the Respondent regarding his problems. The Second Virginia Order reads in part:

3. Mr. Poland has continued to participate in the Health Practitioner's Intervention Program ("HPIP"), as required by Term 2 of the Board's [First Virginia] Order. Quarterly reports indicate that Mr. Poland continues to be in compliance with his Recovery Monitoring Contract dated June 10, 1998, and amended on March 8, 2001.
4. Patricia Pade, M.D., Medical Director of Virginia Monitoring, Inc ("VMI"), stated that Mr. Poland's depression has been stabilized and he is in excellent recovery. Further, Dr. Pade stated that she feels strongly that Mr. Poland is able to practice safely and competently.
5. Jennifer Kittrell, Case Manager, VMI, stated that Mr. Poland is much less at risk for relapse and is working his program intently.
6. Mr. Poland has completed approximately fifty (50) hours of continuing education each year since 1999, and has maintained his NCCPA certification.

The Virginia Board concluded that the Respondent was in full compliance with the First Virginia Order and "ORDERED that the terms and conditions imposed upon the license of Harry J. Poland, P.A., be TERMINATED, and his license is REINSTATED to full and unrestricted status with all attendant rights and privileges." (Petitioner's Ex. 6)

In a December 6, 2001, letter (Respondent's Ex. B) from Ms. Kittrell, the case manager at Virginia Monitoring, Inc., to Mr. Bogan, it is stated in part:

Mr. Poland complied with all the terms [of the First Virginia Order] and went before the Virginia Board again in September 2001. [That hearing] resulted in Mr. Poland's license as a Physician's Assistant being reinstated to a full, unrestricted status...

We would like to advocate that no further action be taken against any of Mr. Poland's licenses. He has remained in full compliance with his Recovery Monitoring Contract. This includes attending at least three Alcoholics Anonymous or Narcotics Anonymous meetings weekly, as well as one Caduceus meeting per week. He reports a sobriety date of November 9, 1999, which is supported by his continued random urine drug screens being negative for all substances since that date, 33 to date. Mr. Poland successfully completed Residential and Aftercare treatment.

While we feel it is important for those in Recovery to face the consequences of their actions, and we must monitor healthcare professionals very closely in order to protect the public, we feel that justice has already been served in this case. Mr. Poland has taken the necessary steps to ensure a solid foundation on which to build his recovery.

The Hearing Committee is impressed with the efforts that the Respondent has made not only with his alcohol and drug problems, but also regarding his career. He used the time that he was prohibited from practicing to establish a teaching career in the physician assistant field and has taken courses in pursuit of a Master's degree. The Hearing Committee also is of the opinion, contrary to the Statement of Charges, that there is no substantial evidence in the hearing record that the Respondent ever treated a patient while under the influence of alcohol or drugs, and that his illegal obtaining of Fioricet was the product of desperation caused by drug dependency rather than moral unfitness to practice.

The evidence discloses a serious problem that needed to be addressed. The evidence also discloses that the problem has been and is being addressed adequately and successfully by the Virginia Board, by Virginia Monitoring, Inc., and by the Respondent. The Recovery Monitoring Contract between the Respondent and Virginia Monitoring, Inc., (Respondent's Ex. B) will remain in effect until March of 2005, and this should be the only future safeguard needed. Placing the Respondent on probation in New York State, a state where he neither lives nor works (nor intends to live or work) would be an unnecessary burden on him and on the resources of the professional discipline program in New York State.

ORDER

IT IS HEREBY ORDERED THAT:

1. No penalty is imposed on the Respondent.

2. This Order shall be effective upon service on the Respondent by personal service or by certified or registered mail.

DATED: New York, New York
February 5, 2002

Jerry Waisman, M.D.
Jerry Waisman, M.D.
Chairperson

Ernst A. Kopp, M.D.
Shahla Javdan

APPENDIX I

EXHIBIT

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

IN THE MATTER

OF

HARRY JOSEPH POLAND, R.P.A.
CO-01-07-3297-A

NOTICE OF

REFERRAL

PROCEEDING

TO: HARRY JOSEPH POLAND, R.P.A.
506 Shenandoah Street
Portsmouth, VA 23707

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law § 230(10)(p) and N.Y. State Admin. Proc. Act Sections 301-307 and 401. The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 19th day of December 2001, at 10:00 in the forenoon of that day at the Hedley Park Place, 5th Floor, 433 River Street, Troy, New York 12180.

At the proceeding, evidence will be received concerning the allegations set forth in the attached Statement of Charges. A stenographic record of the proceeding will be made and the witnesses at the proceeding will be sworn and examined.

You may appear in person at the proceeding and may be represented by counsel. You may produce evidence or sworn testimony on your behalf. Such evidence or sworn testimony shall be strictly limited to evidence and testimony relating to the nature and severity of the penalty to be imposed upon the licensee. Where the charges are based on the conviction of state law crimes in other jurisdictions, evidence may be offered that would show that the conviction would not be a crime in New York state. The Committee also may limit the number of witnesses whose testimony will be received, as well as the length of time any witness will be permitted to testify.

If you intend to present sworn testimony, the number of witnesses and an estimate of the time necessary for their direct examination must be submitted to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Hedley Park Place, 5th Floor, 433 River Street, Troy, New York, ATTENTION: HON.

TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION, (hereinafter "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before December 10, 2001.


Pursuant to the provisions of N.Y. Public Health Law §230(10)(p), you shall file a written answer to each of the Charges and Allegations in the Statement of Charges no later than ten days prior to the hearing. Any Charge of Allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such an answer. The answer shall be filed with the Bureau of Adjudication, at the address indicated above, and a copy shall be forwarded to the attorney for the Department of Health whose name appears below. You may file a brief and affidavits with the Committee. Six copies of all such papers you wish to submit must be filed with the Bureau of Adjudication at the address indicated above on or before December 10, 2001, and a copy of all papers must be served on the same date on the Department of Health attorney indicated below. Pursuant to Section 301(5) of the State Administrative Procedure Act, the Department, upon reasonable notice, will provide at no charge a qualified interpreter of the deaf to interpret the proceedings to, and the testimony of, any deaf person.

The proceeding may be held whether or not you appear. Please note that requests for adjournments must be made in writing to the Bureau of Adjudication, at the address indicated above, with a copy of the request to the attorney for the Department of Health, whose name appears below, at least five days prior to the scheduled date of the proceeding. Adjournment requests are not routinely granted. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation. Failure to obtain an attorney within a reasonable period of time prior to the proceeding will not be grounds for an adjournment.

The Committee will make a written report of its findings, conclusions as to guilt, and a determination. Such determination may be reviewed by the Administrative Review Board for Professional Medical Conduct.

SINCE THESE PROCEEDINGS MAY RESULT IN A DETERMINATION
THAT SUSPENDS OR REVOKES YOUR LICENSE TO PRACTICE
MEDICINE IN NEW YORK STATE AND/OR IMPOSES A FINE FOR
EACH OFFENSE CHARGED, YOU ARE URGED TO OBTAIN AN
ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: Albany, New York
October 30, 2001


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

Inquiries should be addressed to:

Robert Bogan
Associate Counsel
New York State Department of Health
Office of Professional Medical Conduct
433 River Street – Suite 303
Troy, New York 12180
(518) 402-0828

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

IN THE MATTER
OF
HARRY JOSEPH POLAND, R.P.A.
CO-01-07-3297-A

STATEMENT
OF
CHARGES

HARRY JOSEPH POLAND, R.P.A., the Respondent, was authorized to practice as a Registered Physician Assistant in New York state on May 4, 1993, by the issuance of license number 004527 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. On or about January 31, 1997, in Wake County Court, North Carolina, Respondent was found guilty of Reckless Driving, a misdemeanor.
- B. On or about June 13, 1997, in the General Court of Justice, District Court Division, Wake County, North Carolina, Respondent was convicted of two (2) misdemeanor counts of Obtaining or Acquiring a Drug by Misrepresentation or Deception, and was sentenced to thirty (30) days imprisonment, suspended, to attend substance abuse treatment and counseling, and to pay a \$100.00 fine and court costs.
- C. On or about February 17, 2000, in the City of Roanoke, Virginia, Respondent was found guilty of Driving Under the Influence, a Class 1 Misdemeanor, and was sentenced to thirty (30) days incarceration, a \$350.00 fine, twelve (12) months suspension of his driver's license, and referral to VASAP, and received a restricted driver's license.
- D. On or about May 25, 2000, the Commonwealth of Virginia, Department of Health Professions, Board of Medicine (hereinafter "Virginia Board"), by an Order (hereinafter "Virginia Order"), placed Respondent's Physician Assistant license on indefinite probation with terms and conditions that include that he not practice as a physician assistant for at least one (1) year and that he comply with the terms of his contract with HPIP, based on the convictions described

in Paragraphs A,B, and C above, fraudulently attempting to and obtaining Fioricet, a schedule IV controlled substance for his own unauthorized use, practicing the profession while impaired by drugs, being dependant on and/or a habitual user of drugs, and being a habitual abuser of alcohol.

E. The conduct resulting in the Virginia Board disciplinary action against Respondent would constitute misconduct under the laws of New York state, pursuant to the following sections of New York state Law:

1. New York Education Law §6530(2) (practicing the profession fraudulently);
2. New York Education Law §6530(7) (practicing the profession while impaired by drugs);
3. New York Education Law §6530(8) (being a habitual abuser of alcohol and/or being dependent on or a habitual user of drugs);
4. New York Education Law §6530(9)(a)(i) (being convicted of committing an act - constituting a crime under the law of another jurisdiction that is a crime under home state law);
5. New York Education Law §6530(16) (failure to comply with federal, state, or local laws, rules, or regulations governing the practice of medicine); and/or
6. New York Education Law §6530(20) (moral unfitness).

SPECIFICATIONS

FIRST THROUGH THIRD SPECIFICATIONS

Respondent violated New York Education Law §6530(9)(iii) by having been convicted of committing an act constituting a crime under the law of another jurisdiction and which, if committed within New York state, would have constituted 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

Respondent violated New York Education Law §6530(9)(b) by having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York state, constitute professional misconduct under the laws of New York state, in that Petitioner charges:

4. The facts in Paragraphs A, B, C, D and/or E.

FIFTH SPECIFICATION

Respondent violated New York Education Law §6530(9)(d) by having his license suspended or having other disciplinary action taken after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the license suspension or other disciplinary action would, if committed in New York state, constitute professional misconduct under the laws New York state, in that Petitioner charges:

5. The facts in Paragraphs A, B, C, D and/or E.

DATED: *October 30*, 2001
Albany, New York


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