



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

October 31, 2001

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Richard J. DeFranco, M.D.
2729 West 31st Street
Erie, PA 16506

Richard J. DeFranco, M.D.
321 Dove Street
Dunkirk, NY 14048

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

Sharif Mahdavian, Esq.
Friedman and Mahdavian, P.C.
36 West 44th Street
New York, New York 10036

RE: In the Matter of Richard J. DeFranco, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 01-157) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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 written in a cursive style with a large initial 'T'.

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

Richard J. DeFranco, M.D. (Respondent)

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

Administrative Review Board (ARB)

Determination and Order No. 01-157

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.
Sharif Mahdavian, Esq.**

After a hearing below, a BPMC Committee concluded that the Respondent's conviction for criminal trespass constituted professional misconduct. The Committee voted to place the Respondent on probation for three years and to fine him \$1000.00. In this proceeding pursuant to N.Y. Pub. Health Law § 230-c (4)(a)(McKinney's Supp. 2001), the Petitioner requests that the ARB modify or clarify the Determination's probation terms. The Respondent opposes that request. After reviewing the Committee's Determination and the parties' review submissions, we reject the modifications that the Petitioner requested. On our own motion, we modify the Determination to delete certain probation terms and we overturn the Committee's Determination to fine the Respondent.

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)(i)(McKinney Supp. 2001) by engaging in conduct that resulted in the Respondent's conviction for a crime under New York State. An expedited hearing (Direct Referral Proceeding) ensued pursuant to N.Y. Pub. Health Law §230(10)(p)(McKinney Supp. 2001), 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 record before the Committee revealed the Respondent's conviction in Town Court in Penfield, New York for criminal trespass in the second degree, a misdemeanor. The Court sentenced the Respondent to a one-year conditional discharge. The trespass occurred at the home of the Respondent's estranged wife's parents, while the Respondent attempted to obtain personal papers. The Respondent was undergoing treatment at the time for abusing pain medication and the Respondent had relapsed by beginning to consume alcohol.

The Committee found that the Respondent entered the Pennsylvania Medical Society's Physician's Health Program (PHP) following his arrest and that the Respondent received random urine screens, attended a twelve-step program and received monitoring by another physician and PHP staff. The PHP Medical Director wrote that the Respondent was in stable recovery and could return to active practice [Respondent's Exhibit A]. The Respondent's therapist also indicated his support for the Respondent to continue in practice [Respondent's Exhibit B]. In May 2001, the Respondent returned to New York from practice in Pennsylvania. The Respondent's new employer, Dr. Persaud, monitors the Respondent's urine screens and medical practice for the New York Committee on Physician's Health (CHP), for the credentials committee at the hospital where the Respondent and Dr. Persaud practice and to ensure high quality care at the practice where the Respondent works.

The Committee sustained the charge that the Respondent's conduct constituted professional misconduct under N. Y. Educ. Law §§ 6530(9)(a)(i). The Committee concluded that the Respondent could continue in safe medical practice in New York with proper support and monitoring, but saw the need to place the Respondent on probation to protect the State's citizen's fully and to confront the problems that resulted in the criminal conviction. The Committee also ordered the Respondent to pay a \$1000.00 fine. The probationary terms appear in the Committee's Order and include provisions that the Respondent acquire a sobriety monitor with approval from and under reporting responsibilities to the Office for Professional Medical

Conduct (OPMC). Further, the Order established requirements for random urine screens and for reporting certain information. The Order also required that the Respondent obtain a practice monitor for two years, with approval from and under reporting responsibilities to OPMC.

Review History and Issues

The Committee rendered their Determination on July 12, 2001. This proceeding commenced on July 23, 2001, when the ARB received the Petitioner's Notice requesting a Review. The record for review contained the Committee's Determination, the hearing record, the Petitioner's brief and the Respondent's response brief. The record closed when the ARB received the response brief on September 14, 2001.

The Petitioner requests a modification in the probation terms. The Petitioner argues that a practice monitor will provide insufficient oversight of the Respondent's practice to insure adequate public protection. The Petitioner requests that the ARB order a practice supervisor, with direct involvement with the Respondent's practice. The Petitioner also requests that the ARB clarify the schedule for frequency of random urine screens and clarify the Respondent's responsibility for self-reporting attendance at self-help groups. The Petitioner also cautions the ARB about precluding an approved monitor from any "personal/business/professional relationship" with the Respondent.

In reply, the Respondent challenges the request for a practice supervisor and notes that no statute or regulation defines the roles of practice monitors or practice supervisors. The Respondent also argues that PHP and CHP have established a sufficient schedule for urine screening and questions the need for OPMC to impose a different schedule. In response to the Petitioner's caution about precluding a monitor with a "personal/business/professional

relationship" with the Respondent, the Respondent points out that the Committee placed no such condition on the sobriety monitor that the Committee's probation terms established.

Determination

The ARB has considered the record and the parties' briefs. In reviewing a Committee's Determination, 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 N.Y. Pub. Health Law §230-a permits [N.Y. Pub. Health Law §230(10)(i), §230-c(1) and §230-c(4)(b)]. That authority allows the ARB to 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); and in determining guilt on the charges, Matter of Spartalis v. State Bd. for Prof. Med. Conduct 205 A.D.2d 940, 613 NYS 2d 759 (3rd Dept. 1994). The ARB may choose to substitute our judgement on our own motion, Matter of Kabnick v. Chassin, 89 N.Y.2d 828 (1996).

The ARB exercises our authority to substitute our judgement in this case. We affirm the Committee's Determination that the Respondent committed professional misconduct. We overturn the Committee's order that the Respondent pay a fine. We affirm the order that the Respondent serve three years on probation, but we modify the probation to remove certain conditions and to add others.

The Respondent's criminal conduct resulted from a relapse into a problem with substance/alcohol abuse. The relapse resulted in no harm to any patients and no disruptions in patient care. The misconduct required a License sanction that would assure that the Respondent continued in treatment and that provided for random urine screens to assure sobriety. The

Respondent himself took steps to obtain treatment and to undergo random screenings following his arrest by entering PHP and then entering CHP when he returned to practice in New York. The Respondent's current employer, Dr. Persaud, monitors the screenings. These steps have resulted in a stable recovery and the Respondent's therapist and the PHP Medical Director have indicated that the Respondent can engage in practice.

The ARB sees no need to interfere with the current treatment programs and to provide OPMC oversight of the sobriety monitoring. If the Respondent fails a urine screen or leaves the treatment programs, PHP or CHP will report that to OPMC and OPMC may take appropriate action. We also see no need and the Committee's Determination failed to provide an adequate justification for fining the Respondent \$1000.00. The sentence from the Town Court in Penfield addressed the Respondent's criminal activity. We overturn the fine on our own motion. We affirm the probation provision that requires a practice monitor and provides for OPMC to approve the monitor whom the Respondent selects. We place no conditions over which physician may serve as the practice monitor.

On our own motion, we amend the provisions in the probation order. At page 7 in the Order, paragraph 2 begins:

"2.) OPMC will monitor Respondent's completion of a three-year probationary period..."

We amend that paragraph to begin:

"2.) The Respondent will serve three years on probation, ..."

We amend the next paragraph number to read "3.)" rather than "4.)" as the number now appears in the Order. The probation terms appear in the renumbered paragraph 3.) following bullets, with no numbers or letters preceding the bullet sections. On page 8 in the Order, the fourth - seventh

bullet sections set probation terms concerning sobriety monitoring, screening frequency and notice to facilities. The fourth section begins: "*During the period of probation...*". The seventh section begins: "*Respondent shall notify...*". We amend the Order to delete the fourth - seventh paragraphs. We insert a new section to read:

"The Respondent shall remain in PHP/CHP unless the program discharges him for successful completion."

On page 9, the second bullet section provides further OPMC monitoring provisions. We hold that the PHP/CHP arrangements already cover the monitoring that the second bullet section addresses. We delete the second bullet section on Page 9. We affirm the remaining probation terms in the Order.

ORDER

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

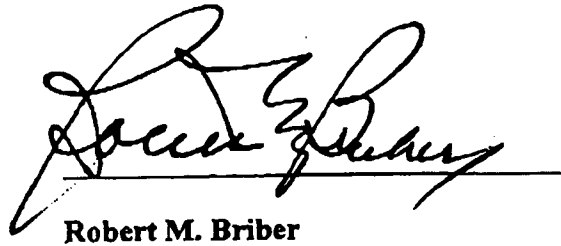
1. The ARB affirms the Committee's Determination that the Respondent committed professional misconduct.
2. The ARB overturns the Committee's Determination to fine the Respondent \$1000.00.
3. The ARB affirms the Committee's Determination to place the Respondent on probation for three years, but we modify the probation terms as we noted in our Determination.

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 Richard J. DeFranco, M.D.

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

Dated: October, 2001



Robert M. Briber

In the Matter of Richard J. DeFranco, M.D.

**Thea Graves Pellman, an ARB Member concurs in the Determination and Order in the
Matter of Dr. DeFranco.**

Dated: Oct 2, 2001

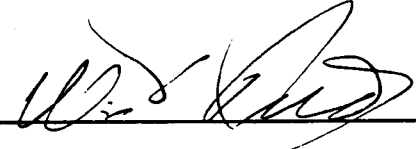


Thea Graves Pellman

In the Matter of Richard J. DeFranco, M.D.

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

Dated: Oct 12, 2001



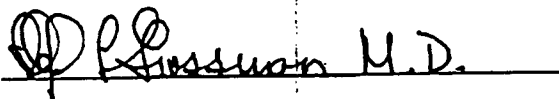
A handwritten signature in black ink, appearing to read "W. S. Price", is written over a solid horizontal line.

Winston S. Price, M.D.

In the Matter of Richard J. DeFranco, M.D.

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

Dated: September 28 2001

A handwritten signature in cursive script, appearing to read "S. L. Grossman M.D.", is written over a horizontal line.

Stanley L Grossman, M.D.

In the Matter of Richard J. DeFranco, M.D.

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

Dated: Sept. 29, 2001



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

July 12, 2001

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Richard J. Defranco, M.D.
2729 West 31st Street
Erie, PA 16506

Richard J. Defranco, M.D.
321 Dove Street
Dunkirk, NY 14048

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

RE: In the Matter of Richard J. Defranco, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 01-157) 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.

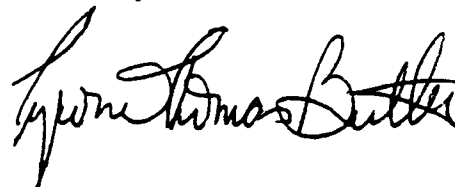
The notice of review served on the Administrative Review Board should be forwarded to:

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 that reads "Tyrone T. Butler". The signature is written in a cursive style with a large initial 'T'.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nm
Enclosure

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

COPY

DETERMINATION

AND

ORDER

**IN THE MATTER
OF
RICHARD J. DEFRANCO, M.D.**

BPMC-01-157

A Notice of Referral Proceeding and Statement of Charges, both dated April 5, 2001, were served upon the Respondent, **RICHARD J. DEFRANCO, M.D.** **GERALD S. WEINBERGER, M.D.**, Chairperson, **ROBERT KLUGMAN, M.D.** and **REV. EDWARD J. HAYES**, 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. **STEPHEN L. FRY, ESQ.**, Administrative Law Judge, served as the Administrative Officer.

A hearing was held on June 20, 2001, at the Offices of the New York State Department of Health, Hedley Park Place, 433 River Street, Troy, New York. The Department appeared by **DONALD P. BERENS, JR., ESQ.**, General Counsel, by **ROBERT BOGEN, ESQ.** and **PAUL ROBERT MAHER, ESQ.**, of Counsel. The Respondent appeared pro se.

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 where a Respondent is charged solely with a violation of Education Law Section 6530(9). In such cases, a Respondent is charged with misconduct based upon a prior criminal conviction in New York or another jurisdiction, or upon a prior administrative adjudication regarding conduct which 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 Respondent.

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

WITNESSES

For the Petitioner:	NONE
For the Respondent:	RESPONDENT

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 transcript page numbers or exhibits, denoted by the prefixes "Tr." and "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 unless otherwise specified.

1. **RICHARD J. DEFRANCO, M.D.**, the Respondent, was authorized to practice medicine in New York State on January 17, 1991, by the issuance of license number 124796 by the New York State Education Department (Ex. 4)
2. On December 15, 1999, in the Town Court of Penfield, County of Monroe, State of New York, Respondent was found guilty of Criminal Trespass in the second degree, a misdemeanor, and was sentenced to a one (1) year conditional discharge (Ex. 5).

HEARING COMMITTEE CONCLUSIONS

- The hearing Committee concludes that Respondent's conviction of the crime enumerated above constitutes professional misconduct pursuant to Education Law Section 6530(9)(a)(i) (conviction of a crime under New York State law).

VOTE OF THE HEARING COMMITTEE

SPECIFICATION

Respondent violated New York Education Law §6530(9)(a)(i) by having been convicted of committing an act constituting a crime under New York State law.

VOTE: SUSTAINED (3-0)

HEARING COMMITTEE DETERMINATION

The record in this case indicates that on December 15, 1999, in the Town Court of Penfield, County of Monroe, State of New York, Respondent was found guilty of Criminal Trespass in the second degree, a misdemeanor, and was sentenced to a one (1) year conditional discharge.

The Hearing Committee determines that Respondent's criminal conviction constitutes misconduct under Education Law §6530(9)(a)(i).

The only issue to be addressed herein, therefore, is the appropriate penalty to be imposed as a result of this finding of misconduct. The Hearing Committee's determination in this regard is based primarily upon the candidly revealed and convincing evidence presented by Respondent regarding the circumstances that brought about the criminal conviction.

There is no dispute that the criminal conviction resulted from a break-in by Respondent at the home of the parents of his estranged wife, in an attempt by him to obtain personal papers, that occurred while Respondent was under treatment for abuse of narcotic pain killing medication and at a time when he had relapsed by beginning to consume alcohol. The treatment commenced after Respondent was arrested for violations

stemming from his use of fabricated prescriptions to purchase the drugs (that case was discharged without a verdict). These circumstances were brought to the attention of the State Office for Professional Medical Conduct ("OPMC") by Respondent after it learned that he had listed the criminal conviction on his New York State medical license renewal application, filed with the State Education Department (Ex. 4).

Beginning with Respondent's arrest on the prescription charges, he was involved with the Pennsylvania (where he was last practicing prior to moving to New York) Medical Society's Physicians' Health Program ("PHP"), and has received random urine toxicology screens, has attended 12-step meetings, and has been monitored by another physician and PHP staff. The medical Director of PHP, in a letter addressed to the Respondent's attorney, stated that Respondent is in "stable recovery" and opined, to a reasonable degree of medical certainty, that Respondent can engage in the active practice of Medicine (Ex. A).

In addition, Respondent's therapist since July of 2000, David M. Motily, MA, CAC, in a letter to the Department's attorney, and by conference call during the hearing, further detailed Respondent's treatment regimen and progress, and indicated his support for Respondent's being allowed to continue to practice medicine (Ex. B).

As of may 1, 2001, Respondent has begun to practice medicine in New York State again, as an associate in a small Obstetrics and Gynecology office in Dunkirk, N.Y. His employer, Dr. Prasad, testified in Respondent's support at the hearing and indicated that he was carefully monitoring Respondent's urine screens and medical practice for the New York State Committee on Physicians' Health (the New York counterpart to PHP), for the credentials staff at the hospital where they have privileges, and to ensure that his office provides high quality care. Dr. Prasad expressed a willingness to continue such monitoring in the future, as necessary.

Respondent testified that he continues to receive counseling and that he intends to continue to take whatever steps are necessary to deal with his addictive tendencies and to avoid any repetition of behavior of the type that resulted in the criminal conviction. The Hearing Committee feels, in light of all the evidence in his favor, that Respondent, with proper support and monitoring, can continue to safely practice medicine in New York State, and that no action against his medical license is called for. However, the Hearing Committee is of the unanimous opinion that a period of probation should be imposed in order to ensure that the residents of New York State are fully protected and that Respondent continues to confront the problems that led to the criminal conviction, and that a \$1,000 fine should be imposed. The terms of this probation and details regarding the fine are set forth in detail in the Order, below. The Hearing Committee also strongly recommends that Respondent continue his involvement with a voluntary addiction recovery program and the counseling he is currently receiving, as recommended by the counselor.

ORDER

IT IS HEREBY ORDERED THAT:

1). A fine in the amount of One Thousand Dollars (\$1,000.00) is assessed against the Respondent. Payment of the fine shall be due within 60 days of the effective date of this order.

The Respondent shall make payment to the Bureau of Accounts Management, New York State Department of Health, Erastus Corning Tower Building, Room 1258, Empire State Plaza, Albany, New York 12237.

Any fine not paid by the prescribed date shall be subject to all provisions of law relating to debt collection by the State of New York. This includes, but is not limited to, the imposition of interest, late payment charges and collection fees; referral to the New York State Department of Taxation and Finance for collection, and non-renewal of permits or licenses (Tax Law §171(27), State Finance Law §18; CPLR §5001; Executive Law §32).

2). OPMC will monitor Respondent's completion of a three-year probationary period, to commence upon the effective date of this order.

4). The terms of Respondent's probation are as follows:

- Respondent shall conduct himself in all ways in a manner befitting his professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his profession. Respondent acknowledges that if he commits professional misconduct as enumerated in New York State Education Law '6530 or '6531, those acts shall be deemed to be a violation of probation and that an action may be taken against Respondent's license pursuant to New York State Public Health Law §230(19);
- Respondent shall submit written descriptive notification to OPMC at the address listed above, of any changes in employment and practice,

professional and residential addresses or telephone numbers within or without New York State, and any and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility during the probationary period, within 30 days of each event;


- The period of probation shall be tolled during periods in which Respondent is not engaged in the active practice of medicine in New York State. Respondent shall notify the Director of OPMC, in writing, if he ceases to be engaged in or intends to leave the active practice of medicine in New York State for a period of thirty (30) consecutive days or more. Respondent shall again notify the Director prior to any change in that status. The period of probation shall resume and any terms of probation which were not fulfilled shall be fulfilled upon Respondent's return to practice in New York State.
- Respondent shall maintain legible and complete medical records which accurately reflect the evaluation and treatment of patients.
- Respondent shall have at least quarterly meetings with a monitoring physician who shall review his practice for a period of two (2) years. This monitoring physician shall, at a minimum, review randomly selected medical records and evaluate whether Respondent's practice comports with generally accepted standards of medical practice. This monitoring physician shall be selected by Respondent and is subject to the approval of the Director of the Office of Professional Medical Conduct. Respondent may continue to practice medicine unless the nominated monitoring physician is not acceptable to the Director, in which event Respondent shall cease practice until an approved monitor is in place.
- During the period of probation set forth above, Respondent shall remain alcohol and drug free.
- During the period of probation, Respondent shall obtain sobriety monitoring, detailed more fully below. The monitor shall be a health care professional or agency proposed by Respondent and subject to the written approval of OPMC or its designee. Respondent shall be responsible for arranging for the monitor, and for ensuring that the monitoring meets the requirements of this order. OPMC shall ensure that the monitor is familiar with the provisions of this order. Respondent shall submit to OPMC or its designee the name of a proposed successor within seven days of learning that the approved sobriety monitor is no longer willing or able to serve.
- The sobriety monitor shall direct Respondent to submit to random, supervised, unannounced tests of blood, breath and/or urine for the presence of drugs and/or alcohol, and shall report to OPMC or its designee within 24 hours if at any time such a test is refused by Respondent or is positive. Respondent shall report as soon as practicable to submit to drug and/or alcohol screening. Respondent shall be screened at a frequency in the discretion of the monitor, subject to the approval of OPMC or its designee.
- Respondent shall notify in writing any medical facility or institution with whom he is presently affiliated or at which he practices medicine, and any facility or institution with whom he becomes affiliated or at which he practices during

the effective period of this probation, of the contents of this order and terms of probation, and provide a copy of any such notification to OPMC.

- If there is full compliance with every term and condition set forth herein, Respondent may continue to practice as a physician in New York State; provided, however, that on receipt of evidence of non-compliance or any other violation of the term(s) and condition(s) of probation, a violation of probation proceeding and/or such other proceeding as may be warranted, may be initiated against Respondent pursuant to New York Public Health Law Sections 230 or any other applicable laws.
- OPMC may, at its discretion, take any and all steps necessary to monitor Respondent's status, condition or professional performance. Respondent must cooperate in providing releases permitting unrestricted access to records and other information, to the extent permitted by law, from any employer, medical facility or institution with which he is affiliated or at which he practices; any treatment facility, treating practitioner, support group or other individual/facility involved in the education, treatment, monitoring or oversight of Respondent, or maintained by a rehabilitation program for impaired Respondents. Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of his compliance with the terms of this Order. Respondent shall personally meet with a person designated by the Director of OPMC as requested by the Director.
- OPMC may, in its discretion, and upon request by Respondent, relieve him of any uncompleted term of his probation if it is satisfied that Respondent's continued unsupervised practice of medicine in New York State would not be contrary to the best interests of New York State residents.

The ORDER shall be effective upon service on the Respondent or the Respondent's attorney by personal service or by certified or registered mail.

DATED: Ardsley, New York
7/10, 2001


GERALD S. WEINBERGER, M.D.
Chairperson

ROBERT KLUGMAN, M.D.
REV. EDWARD J. HAYES

APPENDIX 1

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

IN THE MATTER

OF

RICHARD J. DEFRANCO, M.D.
CO-01-01-0041-A

NOTICE OF
REFERRAL
PROCEEDING

TO: RICHARD J. DEFRANCO, M.D.
2729 West 31st Street
Erie, PA 16506

RICHARD J. DEFRANCO, M.D.
321 Dove Street
Dunkirk, NY 14048

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 17th day of May 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,

EXHIBIT

10/20/01 JEL

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 May 7, 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 May 7, 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

April 5, 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) 402-0820

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

IN THE MATTER
OF
RICHARD J. DEFRANCO, M.D.
CO-01-01-0041-A

STATEMENT
OF
CHARGES

RICHARD J. DEFRANCO, M.D., the Respondent, was authorized to practice medicine in New York state on January 17, 1991, by the issuance of license number 184796 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about December 15, 1999, in the Town Court of Penfield, County of Monroe, State of New York, Respondent was found guilty of Criminal Trespass in the second degree, a misdemeanor, and was sentenced to a one (1) year conditional discharge.

SPECIFICATION

Respondent violated New York Education Law §6530(9)(a)(i) by having been convicted of committing an act constituting a crime under New York state law, in that Petitioner charges:

1. The facts in paragraph A.

DATED: *April 5*, 2001
Albany, New York

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