



STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

PUBLIC

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

Dennis P. Whalen
Executive Deputy Commissioner
December 27, 2002

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Stephen Guthrie, M.D.
239B Cleveland Avenue
Mineola, New York 11502

Kevin D. Porter, Esq.
Heller Jacobs & Kamlet, L.L.P.
261 Madison Avenue
New York, New York 10016-2303

Anthony M. Benigno, Esq.
Bureau of Professional Medical Conduct
New York State Department of Health
Corning Tower, 25th Floor
Empire State Plaza
Albany, New York 12237

RE: In the Matter of : Stephen Guthrie, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 02-384) 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 written in a cursive style with a large initial 'T' and 'B'.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:djh
Enclosure

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

**IN THE MATTER
OF
STEPHEN GUTHRIE, M.D.,
Respondent**

COPY

**DETERMINATION
AND
ORDER**

PBMC No. 02-384

The undersigned Hearing Committee (hereinafter referred to as “the Committee”) consisting of **ALAN KOPMAN**, Chairperson, **JOSEPH CARCIONE, JR., D.O.** and **FLORENCE KAVALER, M.D.**, was duly designated and appointed by the State Board for Professional Medical Conduct.

FREDERICK ZIMMER, ESQ., served as Administrative Law Judge.

The hearing was conducted pursuant to the provisions of Section 230(10)(e) and (19) of the New York State Public Health Law and Sections 301-307, 401 and 501 of the New York State Administrative Procedure Act. The purpose of the hearing was to receive evidence concerning alleged violations of Terms of Probation contained in Consent Order BMC No. 02-7 by **STEPHEN GUTHRIE, M.D.** (hereinafter referred to as “Respondent”).

The New York State Board for Professional Medical Conduct (hereinafter referred to as “the State” or “Petitioner”) appeared by **DONALD P. BERENS, JR., ESQ.**, General Counsel, **ANTHONY M. BENIGNO, ESQ.**, of Counsel. Respondent appeared by **HELLER, JACOBS & KAMLET, LLP, KEVIN D. PORTER, ESQ.**, of Counsel.

Witnesses were sworn or affirmed and examined. A stenographic record of the hearing was made. Exhibits were received in evidence and made a part of the

record. There were motions and/or briefs which are all part of the record herein whether submitted to the Trier of Fact or not.

The Committee has considered the entire record in the above captioned matter and hereby renders its decision.

RECORD OF PROCEEDINGS

Date of Service of Notice of Hearing with Notice of Violation of Probation	Service Waived
Respondent's Reply to Notice of Violation of Probation	August 30, 2002
Date of Hearing:	October 29, 2002
Witness for Petitioner:	Patrick Sullivan
Witnesses for Respondent:	Stephen Guthrie, M.D. Rev. Shawn Moninger Gerald Shaftan, M.D.
Date of Deliberations:	October 29, 2002

NOTICE OF VIOLATION OF PROBATION

A Notice of Violation of Probation, dated August 13, 2002, signed by **DENNIS J. GRAZIANO**, Director of the Office of Professional Medical Conduct (hereinafter referred to as "OPMC") was sent to Respondent. The Notice of Violation of Probation was subsequently incorporated into a Notice of Hearing (Pet's Ex. 1). Respondent waived service of the Notice of Hearing (Pre-hearing Transcript at Page 77).

The Notice of Violation of Probation alleged four violations of Terms of Probation contained in a Consent Order BPMC No. 02-7 entered into by Respondent (Pet's Ex. 2). Specifically, Respondent was alleged to have practiced medicine

without an approved sobriety monitor, to have practiced medicine thereafter without an approved sobriety monitor available to request drug/alcohol screens during the weekend, to have failed to submit to the required number of drug/alcohol monitoring tests and to submit an assessment of his participation in self-help groups, and to have practiced medicine without an approved therapy monitor. Based on the allegations, a violation of probation proceeding was initiated pursuant to New York Public Health Law §230(19).

A copy of the Notice of Violation of Probation is attached to this Determination and Order, as Appendix I.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Unless otherwise noted, all Findings and Conclusions herein are the unanimous determination of the Committee. Conflicting evidence, if any, was considered and rejected in favor of the evidence cited. Numbers in parentheses refer to transcript page numbers or exhibits. The transcript page numbers refer to page numbers in the transcript of this proceeding, dated November 12, 2002. These citations represent evidence found persuasive by the Committee in arriving at a particular finding. All Findings of Fact were established by a preponderance of the evidence.

Having heard testimony and considered evidence presented by the Petitioner and the Respondent respectively, the Committee hereby makes the following Findings of Fact;

1. The Respondent, Stephen Guthrie, M.D., was originally licensed to practice medicine in New York State on October 4, 1999 under license number 215954 and is currently registered to practice medicine at 239 B Cleveland Avenue, Mineola, New York 11501-0000 (Petitioner's Exhibit [hereinafter "Pet's Ex. 3]).
2. Respondent is board certified in plastic and reconstructive surgery and undersea and hyperbaric medicine (Pet's Ex. 8).
3. Respondent, while practicing medicine in Virginia, developed an alcohol problem which resulted in a three month admission in 1999 to the William J. Farley Center, an alcoholism treatment facility for professionals. Upon discharge, Respondent came under the jurisdiction of the medical conduct monitoring unit of the State of Virginia and upon moving to New York State subjected himself for a period to monitoring by the Committee on Physician's Health [hereinafter "CPH"] (Pet's Ex. 2 and 7).
4. Respondent entered into a Consent Agreement and Order, dated January 8, 2002, with OPMC whereby he agreed to comply with Terms of Probation. The Consent Agreement and Order was subsequently adopted into a Consent Order, dated January 15, 2002, signed by William P. Dillon, M.D., Chair of the State Board for Professional Medical Conduct and became effective on January 17, 2002 (Pet's Ex.2; T.56).
5. Respondent admitted, as part of the Consent Agreement and Order, to six Specifications of misconduct of willfully making or filing a false report, in that he inaccurately and falsely answered various questions on an employment application from the Nassau County Medical Center Healthcare System by failing to disclose his alcohol dependence and/or treatment and his relinquishment of his

privileges at the Memorial Hospital of Martinsville and Henry County in Virginia, that he failed to disclose his treatment in a July 12, 1999 letter to the Nassau Community Medical Center Credentials Committee, and that he failed to disclose on an employment application to the Nassau County Medical Center Healthcare System that he had been fined \$1,000 by the Virginia Board of Medicine for selling Tretinoin, a Schedule VI controlled substance when he was not licensed by the Virginia Board of Pharmacy to sell controlled substances (Pet's Ex. 2).

6. Paragraph 12 of the Terms of Probation provides that "Respondent shall practice only when monitored by qualified health care professional monitors (sobriety monitor, practice supervisor and therapist) proposed by Respondent and approved, in writing, by the Director of OPMC..." (Pet's Ex.2).
7. Paragraph 14 of the Terms of Probation provides that "Respondent shall submit, at the request of a monitor, to random, unannounced observed blood, breath and/or urine screens for the presence of drugs/alcohol. This monitoring will be on a random, seven days a week, twenty-four hours a day basis..." (Pet's Ex. 2).
8. Paragraph 15 of the Terms of Probation provides that "Respondent shall meet with a sobriety monitor on a regular basis who will submit quarterly reports to OPMC certifying Respondent's sobriety. These reports are to include; a) forensically valid results of all drug/alcohol monitoring tests to be performed at a frequency of no less than 6 times per month for the first 12 months of the period of probation, then at a frequency to be proposed by the sobriety monitor and approved by OPMC; and b) an assessment of self-help group attendance (e.g., AA/NA/Caduceus, etc.), 12 step progress, etc." (Pet's Ex. 2).

9. Paragraph 19 of the Terms of Probation provides that “Respondent shall continue in counseling or other therapy with a therapist as long as the therapist determines is necessary, or for the period of time dictated in the Order.” (Pet’s Ex. 2).
10. On February 11, 2002, Respondent was advised by OPMC of the need for him to propose a sobriety monitor, and he agreed to have a health care professional perform an independent psychiatric/chemical dependency evaluation in order to determine if he required a therapist (T. 25-26, 50, 131; Pet’s Ex. 9).
11. On February 15, 2002, following receipt from Respondent of faxed signed acknowledgement forms proposing a practice supervisor and sobriety monitor, Mr. Sullivan again advised Respondent of the need to propose an independent psychiatric/chemical dependency evaluator (T. 26-27; Pet’s Ex. 9).
12. At a February 28, 2002 meeting with Patrick Sullivan, of the Physician Monitoring Program of OPMC, Mr. Sullivan reviewed the terms of the Consent Order with Respondent. Respondent was notified that OPMC would not approve his minister, Shawn Moninger, as his sobriety monitor, and he was advised to obtain a health care professional to serve in that role as required by the terms of the Consent Order. Respondent was also advised that because of the necessity of providing urine specimens within four hours of notification, a monitoring system akin to what he had undergone in Virginia would not be approved. Respondent proposed Ms. Mirriam O’Keefe to be his therapy monitor (T. 27-28, 37-38, 107, 142-143; Pet’s Ex. 8 and 9).
13. On March 6, 2002, Respondent notified Mr. Sullivan that Ms. O’Keefe had declined to be his therapy monitor due to a refusal by CPH to release its psychiatric evaluation of Respondent. Respondent was advised that he must

- propose someone to do a psychiatric/chemical dependency evaluation, and that he needed to propose a sobriety monitor (T. 27-28, 107, 142-143; Pet's Ex.9).
14. Respondent proposed three other individuals to be therapy monitor each of whom refused to serve due to CPH's refusal to release its evaluations (T. 108, 142-143).
 15. By an April 15, 2002 letter from Mr. Sullivan, Respondent was notified that he had failed to propose an evaluator who would determine whether Respondent required therapy and that he had not proposed a new sobriety monitor in lieu of Shawn Moninger. He was notified that a failure to implement the therapy and sobriety monitoring components of the Consent Order by April 23, 2002 would result in a violation of probation proceeding (Pet's Ex.4).
 16. On April 29, 2002, Respondent's attorney, Brian Chung, Esq. notified OPMC that Respondent was proposing Arnold Merriam, M.D. to conduct the psychiatric/chemical dependency evaluation (Pet's Ex. 9).
 17. On April 30, 2002, Mr. Sullivan faxed a letter to Respondent's attorney approving Dr. Merriam to conduct the evaluation (Pet's Ex.9).
 18. On April 30, 2002, Respondent faxed Mr. Sullivan an acknowledgement form proposing Dr. Paul Scott, Associate Director of Surgery at Nassau University Medical Center, as his sobriety monitor (Pet's Ex. 9; T.52).
 19. On May 10, 2002, Mr. Sullivan spoke with Mr. Chung and was advised that Dr. Scott would arrange to have Eric Shoenfeld, M.D. collect the urine drug screens and send them off for testing. Dr. Shoenfeld had begun collecting the urine drug screens, on May 6, 2002 (T.20; Pet's Ex. 9; Resp's Ex. G).
 20. On May 15, 2002, Respondent and Mr. Chung, met with Mr. Sullivan and his supervisor, Roberta Curran of OPMC. Respondent was notified that Dr. Scott was not yet approved as his sobriety monitor due to Dr. Scott's difficulties in

obtaining a satisfactory arrangement with a laboratory to screen Respondent's urine samples. Respondent was reminded that he still needed to have an independent psychiatric/chemical dependency evaluation performed to determine whether he needed therapy. (T. 31-32; Pet's Ex. 9).

21. On May 16, 2002, Respondent e-mailed Mr. Sullivan indicating that Dr. Scott was his sobriety monitor. Mr. Sullivan called Respondent and reminded him that Dr. Scott's arrangement for collecting urine screens in conjunction with Dr. Shoenfeld was unacceptable and that Dr. Scott needed to contact Mr. Sullivan (T.31-32, 52-53).
22. Dr. Scott would have been acceptable to OPMC as a sobriety monitor were it not for his difficulties in accessing an appropriate laboratory (T. 54).
23. On May 17, 2002, Arnold E. Merriam, M.D. performed the required evaluation of Respondent and, thereafter, issued a Report of Independent Medical Examination to OPMC in which he recommended that Respondent obtain weekly psychotherapy for approximately two months, with the therapist thereafter determining whether continuing therapy is necessary. Dr. Merriam concluded that Respondent was an alcoholic three years into sobriety, without any lapse, despite being subjected to very difficult life circumstances (Pet's Ex.7, pg.6).
24. By a June 27, 2002 letter from Mr. Sullivan, Respondent was advised of OPMC approval of his practice supervisor, Gerald Shaftan, M.D. and his weekday sobriety monitor, Dr. Shoenfeld. Respondent was also notified that he must propose a sobriety monitor to collect blood, breath and/or urine screens for the presence of drugs/alcohol on weekends (Pet's Ex. 5).
25. Respondent was also advised that his monitoring quarters were February 1 through April 30, May 1 to July 31, August 1 to October 31 and November 1 to

- January 31. Quarterly reports were to be submitted within 15 days of the end of each monitoring quarter and the report covering February 5, 2002 through April 30, 2002 was due by May 15, 2002 (Pet's Ex. 5).
26. By a July 8, 2002 letter from Mr. Sullivan, Respondent was advised of OPMC approval of his therapy monitor, Lili Rysz, M.D. Respondent was also advised that his monitoring quarters were February 1 through April 30, May 1 to July 31, August 1 to October 31 and November 1 to January 31 and that the report covering February 5, 2002 through April 30, 2002 was due by May 15, 2002 and that subsequent reports were to be submitted within 15 days of the end of each monitoring quarter (Pet's Ex. 6).
27. By an August 13, 2002 letter entitled Notice of Violation of Probation, signed by Dennis Graziano, Director of OPMC, Respondent was notified that he had violated Paragraphs 12, 14, 15 and 19 of the Terms of Probation imposed upon him via the Consent Order. Respondent filed a response, dated August 30, 2002 (Pet's Ex.1 and 2; Resp's Ex. B).
28. Respondent submitted to no urine drug screens in January, February, March, April and May of 2002 conducted by an OPMC approved sobriety monitor. (T. 42,133-140).
29. Respondent submitted to four urine/drug screens by Dr. Scott who was not approved as sobriety monitor in March of 2002 and to five screens in April of 2002. He also submitted to four urine drug screens in each of May and June of 2002 at the request of Dr. Shoenfeld who was not approved as sobriety monitor until June 27, 2002 (T.42, 135-140; Pet's Ex.5).

30. From May 6, 2002 through August 2002, Dr. Shoenfeld performed over seventeen urine screens of Respondent all of which were negative for alcohol and drugs including four in July of 2002 (T. 20, 42, 101-102; Resp's Ex. G).
31. Four tests were performed on Monday all of which were negative for drugs and alcohol (T. 84-85).
32. With his monitor's approval, Respondent, at his own initiative and without OPMC's approval, arranged to undergo Sunday breathalyzer testing at his monitor's request through COMPLY Substance Abuse Testing Resource. He has undergone such testing on a number of occasions and has provided the results to Dr. Rysz and Dr. Shoenfeld (T.105-107, 111-112, 140; Resp's Ex. H).
33. A breathalyzer test only determines the presence of alcohol and does not test for drugs (T. 88).
34. Respondent is currently the Director of the Wound Care/Hyperbaric Oxygen Treatment Center at Nassau University Medical Center (Pet's Ex. 8; T.165).
35. Respondent has been supervised by Dr. Shaftan at Nassau University Medical Center since November 1999 (T. 110-111).
36. Respondent currently receives psychiatric therapy twice monthly from Lili Rysz, M.D., who is certified in addiction psychiatry (Resp's Ex.C).
37. Respondent is currently a member of Alcoholics Anonymous and attends meetings two or three times weekly (T.98; Pet's Ex. 7).
38. Respondent volunteers at a soup kitchen every Saturday but is available for urine screens by Dr. Shoenfeld (T. 98-99, 104, 112).
39. Respondent has not relapsed into alcoholism since the Consent Order went into effect, and has shown no difficulty in remaining alcohol free since entering therapy (T. 84-85, 166; Resp's Ex. C and G; Dept's Ex. 7, pg. 6).

CONCLUSIONS OF LAW

The following Conclusions were made pursuant to the Findings of Fact listed above. All Conclusions resulted from a unanimous vote of the Committee upon a preponderance of the evidence.

The Committee unanimously concluded that the Respondent violated the terms of his probation, as set forth below, and that the violations constitute misconduct under New York Education Law § 6530(29).

FIRST ALLEGATION

The Committee sustained the First Allegation of the Notice of Violation of Probation. The Committee concluded that Respondent's sobriety monitor was not formally approved in writing by the Director of OPMC until June 27, 2002, and that Respondent had practiced medicine from the time his Consent Order became effective on January 17, 2002 until June 27, 2002 without being monitored by a qualified health professional sobriety monitor approved in writing by the Director of OPMC, in violation of Paragraph 12 of the Terms of Probation.

Although, the Committee sustains the allegation, the Committee notes in mitigation that Respondent made a good faith effort to comply with the probation terms. He initially proposed the Rev. Shawn Moninger to be his sobriety monitor. It was not until April 15, 2002, that OPMC notified Respondent in writing that Rev. Moninger was unacceptable. The Respondent, then, proposed Dr. Paul Scott, Associate Director of Surgery at Nassau University Medical Center, as his sobriety monitor. Mr. Sullivan, who appeared as a witness on behalf of OPMC, testified that putting forth Dr. Scott to be sobriety monitor was a reasonable proposal. While Dr. Scott was eventually deemed unacceptable to be Respondent's sobriety monitor, both Dr. Scott and Dr. Shoenfeld,

prior to his formal approval as sobriety monitor, performed urine screens upon Respondent. The Committee notes that OPMC was aware that Dr. Shoenfeld had been performing urine screens upon Respondent since early May. Dr. Shoenfeld was eventually approved as sobriety monitor by OPMC on June 27, 2002.

The Committee believes that Respondent made a good faith effort to have a sobriety monitor in place and that OPMC's own delay in formally responding in writing to Respondent's proposals contributed to Respondent's failure to comply with Paragraph 12 of his probation terms.

SECOND ALLEGATION

The Committee declines to sustain the Second Allegation. This allegation charged that Respondent practiced medicine from on or about June 27, 2002 till the date of the Notice of Violation of Probation (August 13, 2002) without having an approved sobriety monitor available to request a urine drug screen during the weekend. The Notice of Violation of Probation alleged a violation of Paragraph 14 of the probation terms which required that Respondent shall submit to random seven days a week, twenty four hours a day, monitoring including random unannounced observed blood, breath and/or urine screens for the presence of drugs/alcohol.

The Committee accepted Respondent's testimony that notwithstanding his Saturday volunteer work at the soup kitchen, it was viable for him to undergo Saturday urine screens through Dr. Shoenfeld and believes that in any event, the Monday tests would have reflected any drug or alcohol use by Respondent over the weekend. Mr. Sullivan, in fact, confirmed that Respondent had undergone four Monday tests all of which were negative for drugs and alcohol.

The Committee also believes that Respondent's arrangement with his monitors to be tested for alcohol via a Sunday Breathalyzer test was medically reasonable given that Respondent's problem was alcohol and not drug use.

The Committee was of the opinion that Respondent's overall testing regimen which included Monday through Saturday urine testing for drugs and alcohol, and Sunday breathalyzer testing for alcohol is satisfactory given that random Monday urine tests are available to test for drug and alcohol use over the weekend. The Committee, therefore, concludes that Respondent substantially complied with Paragraph 14 of his probation terms and does not find him in violation of this Term of Probation.

THIRD ALLEGATION

The Committee sustains the Third Allegation that Respondent practiced medicine from on or about January 17, 2002 through the date of Notice of Violation of Probation (August 13, 2002) without submitting the required number of drug/alcohol monitoring tests. The Committee also concludes that from the effective date of the Consent Order through July 8, 2002 when Respondent's therapy monitor, Dr. Rysz was approved, Respondent practiced without submitting required quarterly assessments of his participation in self-help groups.

The Committee concludes that Respondent underwent no drug screens in January and February of 2002. Although, he attempted compliance in March through June of 2002 by having a number of drug screens done, the Committee observes that he did not meet the required number of drug screens, and in any event, his screens were not done by an OPMC approved sobriety monitor until June 27, 2002. Even after his sobriety monitor was approved, Respondent only submitted to four screens in July of 2002. The Committee, nevertheless, believes that Respondent has made efforts to comply with the

probation terms and that at least some of his failure, as observed above, can be attributed to OPMC's own delays.

The Committee does not sustain Allegation 3 with regard to quarterly reports due after Dr. Rysz' approval, on July 8, 2002. The Committee observes that no evidence was submitted by either party concerning such reports.

FOURTH ALLEGATION

The Committee sustains the Fourth Allegation which charged that Respondent practiced medicine from on or about January 17, 2002 through and including July 2, 2002 without an approved therapy monitor, in violation of Paragraph 19 of his probation terms.

Respondent's early efforts to obtain an independent psychiatric/chemical dependency evaluation were apparently frustrated by the unwillingness of a number of individuals to serve in that role after Respondent proposed them to OPMC. On May 17, 2002, the required evaluation was performed by Dr. Merriam with OPMC's approval and he recommended that Respondent obtain therapy. Respondent's therapist, Dr. Rysz, was approved by OPMC in writing on July 8, 2002. While Respondent was not timely in implementing the therapy component of the probation terms, the Committee again notes Respondent's continuing efforts to comply and also notes the lack of a formal written response by OPMC to Respondent until April 15, 2002.

DISCUSSION

The Committee found the Department's witness, Mr. Sullivan to be credible. Nevertheless, his testimony did not persuade the Committee that responsibility for the delay in obtaining appropriate monitors can be totally placed upon Respondent. For example, Mr. Sullivan testified that physicians subject to probation would be allowed to

continue to practice after the effective date of a Consent Order so long as the physician made a good faith effort to obtain a monitor, and that it was not expected that the monitor would necessarily be in place as of the effective date of the Order (T.75-77). While it is understandable that OPMC would allow some flexibility in the probation process, it appears that OPMC lacked standards for triggering probation violations. As noted, OPMC did not send Respondent a formal written letter that his arrangements for a therapy and sobriety monitor were unacceptable until April 15, 202.

The Respondent was a very credible, lucid and clear witness. Dr. Shaftan, Respondent's practice supervisor, also testified very persuasively. It is the Committee's belief based on both Respondent's and Dr. Shaftan's testimony that Respondent is functioning well as a physician. Additionally, no evidence was presented that Respondent has relapsed in any way from his recovery and indeed Mr. Sullivan testified that he had no evidence that Respondent has relapsed. Mr. Sullivan's testimony comports in this regard with the testimony of Dr. Shaftan, the report of Dr. Merriam and the affidavits of Dr. Rysz and Dr. Shoenfeld. The Committee also notes Dr. Shaftan's testimony that Respondent has outstanding clinical ability and is an outstanding upright individual with a strong sense of right and wrong who transformed the hyperbaric medicine department at Nassau University from "a laggard service and built it into a wonderful full functioning part of the hospital." (T. 165-166).

PENALTY

In making its determination with regard to penalty, the Committee considered both Respondent's violation of probation and the prior adjudication of misconduct. The Committee observes that the prior adjudication which concerned Respondent's filing of false reports occurred during a period when he was undergoing treatment for alcoholism.

The Committee gives great weight to the testimony of Respondent's practice supervisor, Dr. Shaftan, that Respondent is an outstanding upright individual with a strong sense of right or wrong. Respondent has made great strides in his recovery from alcoholism and an overly harsh penalty risks setting Respondent back in his recovery. While Respondent should have had his monitors in place far sooner, he has been functioning well as a physician since entering into the Consent Order. He now has appropriate health care professionals monitoring him. It would serve no useful purpose to impose a harsh penalty upon Respondent such as actual suspension time which would deprive the public of Respondent's services.

The Committee, therefore, unanimously agrees that an appropriate penalty would extend Respondent's period of probation and stayed suspension for six months beyond the period contemplated in the Consent Order (Pet's Ex. 2). The Committee also unanimously concludes that a censure and reprimand should be imposed upon Respondent.

ORDER

Based on the forgoing, **IT IS HEREBY ORDERED THAT:**

1. The Determination that Respondent violated the Terms of Probation imposed by Consent Order BPMC No. 02-7 as set forth in OPMC's letter of August 13, 2002, in that Respondent violated Paragraphs 12, 15 and 19 of his Terms of Probation is **SUSTAINED**; and
2. The Determination that Respondent violated the Terms of Probation imposed by Consent Order BPMC No. 02-7 as set forth in OPMC's letter of August 13, 2002, in that Respondent violated Paragraph 14 of his Terms of Probation is not **SUSTAINED**; and

3. Respondent's license to practice medicine shall be SUSPENDED for an additional six months beyond the three year stayed suspension imposed by Consent Order BPMC No. 02-7 which became effective on January 17, 2002, said additional period of suspension shall be STAYED, and Respondent shall be placed on PROBATION during the additional six month period of stayed suspension of his license and Respondent shall comply with all Terms of Probation as set forth in Appendix II, attached hereto and made a part of this Determination and Order; and
4. Respondent shall be issued a CENSURE and REPRIMAND; and
5. This Order shall be effective upon service on the Respondent or his attorney by personal service or by certified or registered mail.

DATED: Troy, New York

Dec 19th, 2002



ALAN KOPMAN, Chairperson

**JOSEPH CARCIONE, JR., D.O.
FLORENCE KAVALER, M.D.**

TO:

Anthony M. Benigno, Esq.
Associate Counsel
Bureau of Professional Medical Conduct
NYS Department of Health
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Stephen Guthrie, M.D.
239B Cleveland Avenue
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APPENDIX I



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

August 13, 2002

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Stephen Guthrie, M.D.
239B Cleveland Avenue
Mineola, NY 11501

**Re: Notice of Violation of Probation
License No. 215954**

Dear Dr. Guthrie:

As the Director of the Office of Professional Medical Conduct of the New York State Department of Health, I have conducted an investigation and determined that you have violated the terms of probation imposed upon you by Order BPMC No.02-07, effective January 17, 2002. My determination that you have violated the terms of your probation is based on the following:

1. Paragraph 12 of the terms of probation required that, "Respondent shall practice **only** (emphasis added) when monitored by qualified health care professional monitors (sobriety monitor, practice supervisor and therapist) proposed by Respondent and approved, in writing, by the Director of OPMC." You practiced medicine from on or about January 17, 2002 until June 27, 2002 without any approved sobriety monitor.
2. Paragraph 14 of the terms of probation required that, "Respondent shall submit, at the request of a monitor, to random, unannounced observed blood, breath and/or urine screens for the presence of drugs/alcohol. This monitoring will be on a random, seven-days a week, twenty-four hours a day basis." Your sobriety monitor was approved on June 27, 2002, however, the monitor could provide coverage only on Monday through Friday. You have practiced medicine from on or about June 27, 2002 to date without an approved sobriety monitor available to request a screen during the weekend.
3. Paragraph 15 of the terms of probation required that, "Respondent shall meet with a sobriety monitor on a regular basis who will submit quarterly reports to OPMC certifying Respondent's sobriety. These reports are to include a) forensically valid results of all drug/alcohol monitoring tests to be performed at a frequency of no less than 6 times per month for the first 12 months of the period of probation, than at a frequency to be proposed by the sobriety monitor and approved by OPMC and b) an assessment of self-help group attendance (e.g., AA/Na/Caduceus, etc.), 12 step progress, etc." You practiced medicine from on or about January 17,

Stephen Guthrie, M.D.
August 13, 2002
Page two

2002 to date without submitting to the required number of drug/alcohol monitoring tests and without an assessment of your participation in self-help groups as required by paragraph 10 of the terms of probation.

4. Paragraph 19 of the terms of probation required that, "Respondent shall continue in counseling or other therapy with a therapist as long as the therapist determines is necessary, or for the period of time dictated in the Order." You practiced medicine from on or about January 17, 2002 through and including July 2, 2002 without an approved therapy monitor.

By this letter, I am initiating a violation of probation proceeding against you pursuant to New York Public Health Law § 230(19).

Be advised that if you do not dispute the facts forming the basis of my determination within 20 days of the date of this letter, I shall submit this matter to a committee on professional conduct for its review and determination. If within 20 days of the date of this letter, you dispute in writing the facts forming the basis of my determination, you shall be afforded a hearing before a committee on professional conduct. You have the right to such a hearing and may be represented by counsel.

A stenographic record of this hearing will be made. The committee, after providing you an opportunity to be heard, shall determine whether you have violated probation and, if so, shall impose an appropriate penalty as defined in New York State Public Health Law § 230-a. In determining the appropriate penalty, the committee shall consider both the violation of probation and the prior adjudication of misconduct. The chairperson of the committee shall issue an order adopting the decision of the committee on professional conduct. This order may be reviewed by the Administrative Review Board of the State Board for Professional Medical Conduct.

Since this violation of probation proceeding may result in a determination that your license to practice medicine in New York be revoked, I urge you to consult with an attorney.

Very truly yours,



Dennis J. Graziano
Director
Office of Professional Medical Conduct

cc: Bryan Chung, Esq.

APPENDIX II

EXHIBIT "B"

Terms of Probation

1. Respondent's conduct shall conform to moral and professional standards of conduct and governing law. Any act of professional misconduct by Respondent as defined by New York State Education Law §6530 or §6531 shall constitute a violation of probation and may subject Respondent to an action pursuant to New York State Public Health Law §230(19).
2. Respondent shall provide the Director, Office of Professional Medical Conduct (OPMC), Hedley Park Place, 433 River Street Suite 303, Troy, New York 12180-2299 with the following information, in writing, and ensure that such information is kept current: a full description of Respondent's employment and practice; all professional and residential addresses and telephone numbers within and outside New York State; and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty (30) days of each action.
3. Respondent shall cooperate fully with, and respond in a timely manner to, OPMC requests to provide written periodic verification of Respondent's compliance with the terms of this Consent Order. Upon the Director of OPMC's request, Respondent shall meet in person with the Director's designee.
4. Respondent's failure to pay any monetary penalty by the prescribed date shall subject Respondent to all provisions of law relating to debt collection by New York State, including but not limited to: the imposition of interest, late payment charges and collection fees; referral to the New York State Department of Taxation and Finance for collection; and non-renewal of permits or licenses [Tax Law section 171(27)]; State Finance Law section 18; CPLR section 5001; Executive Law section 32].
5. The probation period shall toll when Respondent is not engaged in active medical practice in New York State for a period of thirty (30) consecutive days or more. Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in, or intends to leave, active medical practice in New York State for a consecutive thirty (30) day period. Respondent shall then notify the Director again at least fourteen (14) days before returning to active practice. Upon Respondent's return to active practice in New York State, the probation period will resume and Respondent shall fulfill any unfulfilled probation terms.
6. The Director of OPMC may review Respondent's professional performance. This review may include but shall not be limited to: a review of office records, patient records and/or hospital charts; and interviews with or periodic visits with Respondent and Respondent's staff at practice locations or OPMC offices.
7. Respondent shall maintain complete, legible medical records that accurately reflect the evaluation and treatment of patients and contain all information required by State rules and regulations concerning controlled substances.
- 8.

Unless otherwise specified herein, the fine is payable in full within thirty (30) days of the effective date of this Order. Payments must be submitted to:

Bureau of Accounts Management
New York State Department of Health
Empire State Plaza
Corning Tower, Room 1245
Albany, New York 12237

9. Respondent shall remain drug/alcohol free.
10. Respondent shall remain active in self help groups such as, but not limited to, Narcotics Anonymous, Alcoholics Anonymous and Caduceus.
11. Respondent shall notify all treating physicians of his/her history of alcohol/chemical dependency. Respondent shall advise OPMC of any controlled or mood-altering substance given or prescribed by treating physicians.
12. Respondent shall practice only when monitored by qualified health care professional monitors (sobriety monitor, practice supervisor, and therapist) proposed by Respondent and approved, in writing, by the Director of OPMC. Monitors shall not be family members or personal friends, or be in professional relationships which would pose a conflict with monitoring responsibilities.
13. Respondent shall ensure that the monitors are familiar with Respondent's drug/alcohol dependency and with the terms of this Order. Respondent shall cause the monitors to report any deviation from compliance with the terms of this Order to OPMC. Respondent shall cause the monitors to submit required reports on a timely basis.
14. Respondent shall submit, at the request of a monitor, to random, unannounced observed blood, breath and/or urine screens for the presence of drugs/alcohol. This monitoring will be on a random, seven-days a week, twenty-four hours a day basis. Respondent shall report for a drug screen within four (4) hours of being contacted by the monitor. Respondent shall cause the monitor to report to OPMC within 24 hours if a test is refused or delayed by Respondent or a test is positive for any unauthorized substance.
15. Respondent shall meet with a sobriety monitor on a regular basis who will submit quarterly reports to OPMC certifying Respondent's sobriety. These reports are to include a) forensically valid results of all drug/alcohol monitoring tests to be performed at a frequency of no less than 6 times per month for the first 12 months of the period of probation, then at a frequency to be proposed by the sobriety monitor and approved by OPMC and b) an assessment of self-help group attendance (e.g., AA/NA/Caduceus, etc.), 12 step progress, etc.
16. Respondent shall practice medicine only when supervised in his/her medical practice. The practice supervisor shall be on-site at all locations, unless determined otherwise by the Director of OPMC. Respondent shall not practice

medicine until a practice supervisor has been approved. Respondent shall ensure that the practice supervisor is in a position to regularly observe and assess Respondent's medical practice. Respondent shall cause the practice supervisor to report within 24 hours any suspected impairment, inappropriate behavior, questionable medical practice or possible misconduct to OPMC.

17. Respondent shall cause the practice supervisor to review Respondent's practice regarding the prescribing, administering, dispensing, inventorying, and disposal of controlled substances.
18. Respondent shall cause the practice supervisor to submit quarterly reports to OPMC regarding the quality of Respondent's medical practice, including the evaluation and treatment of patients, physical and mental condition, time and attendance or any unexplained absences from work, prescribing practices, and compliance or failure to comply with any term of probation.
19. Respondent shall continue in counseling or other therapy with a therapist as long as the therapist determines is necessary, or for the period of time dictated in the Order.
20. Respondent shall cause the therapist to submit a proposed treatment plan and quarterly reports to OPMC certifying whether Respondent is in compliance with the treatment plan. Respondent shall cause the therapist to report to OPMC within 24 hours if Respondent leaves treatment against medical advice, or displays any symptoms of a suspected or actual relapse.
21. Respondent shall comply with any request from OPMC to obtain an independent psychiatric/chemical dependency evaluation by a health care professional proposed by the Respondent and approved, in writing, by the Director of OPMC.
22. Respondent shall comply with this Order and all its terms, and shall bear all associated compliance costs. Upon receiving evidence of noncompliance with, or violation of, these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding, and/or any other such proceeding authorized by law, against Respondent.