



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.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

September 28, 2000

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Jamille Peress, M.D.
C/o Anthony Scher, Esq.
Wood & Scher
14 Harwood Court
Scarsdale, New York 10583

Harry Josifidis, M.D.
C/o Gerard J. Heubel, Esq.
Marulli, Pewarski & Heubel, P.C.
115 Broadway – 19th Floor
New York, New York 10006

Jamille Peress, M. D.
7 Jordan Drive
Great Neck, New York 11021-2813

Harry Josifidis, M.D.
27-47 Crescent Street
Long Island, New York 11102

**RE: In the Matter of Jamille Peress, M.D.
and Harry Josifidis, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 00-258) 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 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
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

COPY

-----X
IN THE MATTER : **HEARING COMMITTEE**
OF : **DETERMINATION**
JAMILLE PERESS, M.D. : **AND OTHER**
AND
HARRY JOSIFIDIS, M.D.
-----X

BPMC #00-258

Alan Kopman, Chairperson, Majid Eshghi, M.D., and Sheldon Putterman, M.D., duly designed members of the State Board of Professional Medical Conduct, appointed by the Commissioner of Health of the State of New York pursuant to Section 230 (1) of the Public Health Law, served as the Hearing Committee in the matter pursuant to Sections 230 (10) (e) and 230 (12) of the Public Health Law. **Stephen Bermas, Esq.,** Administrative Law Judge, served as Administrative Officer for the Hearing Committee.

Alan Kopman was not present at the hearing session conducted on May 5, 2000 and at a portion of the hearing session conducted on May 17, 2000. Mr. Kopman has duly affirmed that he had read and considered the transcript of proceedings, and the evidence received at, such hearing sessions, prior to the deliberations in this matter. See Appendix A.

Dr. Majid Eshghi was not present at a portion of the hearing session conducted on June 20, 2000. Dr. Eshghi has duly affirmed that he had read and considered the transcript of proceedings of, and the evidence received at, such hearing session, prior to the deliberations in this matter. See Appendix B.

It should be noted that Petitioner withdrew its charges concerning Patients 4 and 6.

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

SUMMARY OF THE PROCEEDINGS

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| Notice of Hearing dated: | February 7, 2000 |
| Statement of Charges dated: | February 7, 2000 |
| Hearing Dates: | March 14 and 31, April 5, May 5, 12, 17, 23, and 24 and June 12, 20 and 21, 2000 |
| Deliberation Dates: | July 14 and August 8, 2000 |
| Place of Hearing: | NYS Department of Health 5 Penn Plaza New York, New York |
| Petitioner Appeared By: | Daniel Guenzburger, Esq. Associate counsel Bureau of Professional Medical Conduct NYS Department of Health |
| Respondent Peress Appeared By: | Wood & Scher, Esqs. By Anthony Z. Scher, Esq. |
| Respondent Josifidis Appeared By: | Bartlett, McDonough, Bastone Monaghan, LLP By Gerard J. Heubel, Esq. |

EXPERT WITNESSES

Although there may have appeared to be a conflict generally between the Petitioner's expert witness and the Respondent's expert witnesses, careful analysis of their respective testimony shows that the different experts focused on different aspects of this matter. The Respondents' experts concentrated on the medical competence used in the surgical procedures. The Petitioner's expert dealt with the whole patient care process including alternative treatments, continuity of patient care and informed consents. Although the Petitioner's expert did get somewhat emotional in his testimony, his personal feelings did not obscure his analysis of the underlying facts nor lessen the value of his testimony for the Hearing Committee.

STATEMENT OF CHARGES

The Statements of Charges have been marked as Petitioner's Exhibits 25 and 27 and attached hereto as Appendices C and D.

FINDINGS OF FACT

Numbers in parentheses refer to transcript page numbers or exhibits. These citations represent evidence found persuasive by the Hearing Committee in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of cited evidence. All Findings are unanimous except as specifically indicated.

BACKGROUND

1. **JAMILLE PERESS, M.D., Respondent, a urologist, was authorized to practice medicine in New York State on or about July 1, 1971, by the issuance of license number 10863 by the New York State Education Department. At all times relevant to the Statement of Charges Respondent Peress was a part owner of Parkway Hospital, Forest Hills New York, and Chairperson of the Parkway Hospital Department of Urology. He retired from the active practice of medicine on December 30, 1999. (Pet. Exh. 26; T. 875)**
2. **HARRY JOSIFIDIS, M.D., Respondent, a urologist, was authorized to practice medicine in New York State on or about July 10, 1986, by the issuance of license number 166922 by the New York State Education Department. Respondent holds privileges at several New York City hospitals**

including Parkway Hospital. Respondent Peress' and Respondent Josifidis' professional relationship began in 1994 when Respondent Josifidis agreed to accept surgical referrals from Respondent Peress and to cover for Respondent Peress at Parkway Hospital when he was unavailable. Respondent Peress and Josifidis are not legal partners and they do not hold membership in the same group medical practice. (Pet. Exh. 28; T. 1318-20, 1324)

3. In January, 1998, the 24 patients identified in Appendix A of the Statement of Charges were residents of the Leben Home for Adults ("Leben Home"). The Leben Home, located at 88-08 45th Avenue, Elmhurst, New York, is an adult long term residential care facility established and operated pursuant to the New York State Social Services Law and regulations found at NYCRR Title 18 §487. The Leben Home has 361 residents, of which approximately 200 were male. (T. 767)
4. In or about January, 1998, Respondent Peress performed outpatient urological evaluations on twenty of the patients in the statement of charges and referred all 24 patients in the Statement of Charges to Respondent Josifidis at Parkway Hospital. Respondent Josifidis either performed trans-urethral resections of the prostate ("TURP") or transurethral incisions of the prostate ("TUIP") on the patients. (Pet. Exhs. 1a-9a, 13a-15a, 17a-24a; Pet. Exhs. 1b-24b; and T. 787, 812, and 892.)
5. Although Respondent Peress referred Patients 10, 11, 12, and 16 to Respondent Josifidis (Pet. Exhs. 10a, 11a, 12a, and 16a), he certified that he did not maintain a medical record for those patients. (Pet. Exhs. 10b, 11b, 12b, 16b). At the hearing Respondent testified that he never had seen the four patients for whom he had no record. (T. 953)
6. A TURP is an invasive surgical procedure for the relief of lower urinary tract symptoms caused by benign prostatic hyperplasia ("BPH"), a noncancerous enlargement of the prostate gland. The procedure is performed endoscopically under general anesthesia. A TUIP is a less invasive surgical

procedure reserved for patients with smaller prostates. The symptoms associated with BPH are frequency of urination, nocturia, incontinence, hesitancy and weakened urinary stream. The lower urinary tract symptoms associated with BPH may be caused by other urological conditions. (T. 34-9, 1038)

7. Zenaida Santos M.D. and Yitzhak Twerskey, M.D. were the two primary care physicians who were documented as having treated 20 of the 24 patients in this case. Dr. Santos had been at the Leben Home for 5 to 6 years prior to the events in question, and Dr. Twerskey started at the Leben Home in approximately November, 1997. Both primary care physicians had privileges at Parkway Hospital. (T. 807-809). Neither Dr. Santos or Dr. Twerskey referred the subject patients to Respondents. (Pet. Exh. 1c, 2c, 3c, 4c, 5c, 7c, 8c, 9d, 11c, 12c, 13c, 14c, 15c, 16c, 18c, 19c, 21c, 22c, 23c, and 24c). In the two month period preceding the surgeries in this case Doctors Santos and Twerskey had requested urological consults for Patients 2, 8, 18, and 23 from a urologist named Dr. Ehrenpreiss. (Pet. Exh. 2c, 8c, 18c, 23c)

SCREENING PATIENTS A THE LEBEN HOME

8. Respondent Peress' initial encounters with the Leben home patients were at two urological screenings performed at the Leben Home. Each of Respondent Peress' patient encounters was under 5 minutes in duration. The screening consisted of taking a brief oral history from the patient. Respondent Peress did not physically examine the patients nor perform any diagnostic tests at the Leben Home. (T. 812) Respondent Peress described his initial encounter with the patients as a "...triage, talking to them, not examining or anything of that sort." (T. 893)

9. The credible evidence is that Respondent Peress went to the Leben Home on two occasions documented in his office record, at which time he saw approximately a total 30 to 40 patients. (Pet. Exh. 1a-9a, 13a-15a, 17a-24a)

10. After Respondent Peress concluded his brief patient screening, he had Diane Ahearn, the Leben Home Medical Coordinator assist the patients to execute written consents for TURP's. Respondent Peress was exclusively responsible for the idea that she assist patients in executing the written consents. (T. 813)

11. In light of the brief interaction that Respondent had with patients at the Leben Home, his testimony that he explained the risks, benefits and complications of a TURP prior to the Leben Home residents executing the written consent is not credible. (T. 1704)

12. Respondent testified that "It pretty quickly occurred to me that in order to facilitate this project, I needed to get somebody they trust. The only one they trust is Diane Ahearn." (T. 1703, lines 17 to 20). "I asked Diane Ahearn to obtain consent for TURP because with her they would do anything that she says." (T. 891, T. 1704, lines 14-16)

THE FIRST GROUP: ADMISSION OF PATIENTS 12 AND 16

13. On January 7, 1998, Respondent Peress admitted Patients 12 and 16 to Parkway Hospital. Patients 12 and 16 presented to Parkway Hospital with signed consents witnessed by Diane Ahearn at the Leben Home. (Pet. Exhs. 1b-24b)

14. Respondent Peress did not evaluate Patients 12 or 16 prior to their admission to Parkway Hospital. (Pet. Exhs. 12a and 16a; T. 953). At Respondent's interview with OPMC, he confirmed that he never examined or even spoke to Patient 12. (T. 553)
15. The emergency room triage nurse noted that Patient 16 reported to her that he did not know why he was in the hospital. (Pet. Exh. 16b, p.8)
16. The admitting physician noted that Patient 16 reported that he did not know why he was in the hospital. (Pet. Exh. 12b, p. 42; Pet. Exh. 16b, p.40)
17. Respondent gave instructions, via a telephone order, for the preoperative administration of certain medications, for laboratory work and to medically clear the Patients for surgery. The telephone order was noted on the physician order sheets in the hospital charts of both patients. (Pet. Exh. 12b, p. 42, Pet. Exh. 16b, p. 40)
18. On January 8, 1998, Respondent Josifidis performed TURPs on Patients 12 and 16. Respondent Josifidis failed to evaluate either patient prior to performing surgery, as evidenced by the lack of any pre-operative entry by Respondent Josifidis in the Patients' hospital charts. Respondent Josifidis did not write a pre-operative progress note or consult note and he did not sign the physician's certification on the written consent. (Pet. Exhs. 12b and 16b) Respondent Josifidis' claim that the admitting notes for both patients got lost or that he evaluated the patients but negligently failed to write a note is not credible. (T. 1390, 1392)
19. Respondent Peress signed the physicians certification on the written consents for both Patients. (Pet. Exh. 12, p. 6; Pet. Exh. 16, p. 6) Respondent Peress stated at his interview with OPMC that he signed the physicians certifications to avoid any delays in performing the surgeries. (T. 552)

20. By signing the physicians certification on the written consents without having evaluated and/or spoken to the Patients 12 or 16, Respondent knowingly and falsely represented that he had explained the “nature, purposes, benefits, risks of and alternatives” to a TURP.

THE SECOND GROUP: PATIENTS 3, 4, 8, 13, 14, 18, AND 23

21. On January 8, 1998, Respondent Peress admitted the second group of seven Leben Home residents to Parkway Hospital, patients 3, 4, 8, 13, 14, 18 and 23. (Pet. Exhs. 3b, 4b, 8b, 13b, 14b, 18b, and 23b)
22. In response to complaints made to the Parkway Hospital administration by the emergency room physicians, Respondent Peress had been criticized by the hospital for the manner in which written consents were handled and because the Leben Home patients were disruptive in the emergency room. (T. 1182-83, 1187)
23. On January 8, 1998, and on all subsequent dates on which Respondent Peress evaluated Leben Home residents in his office, Respondent closed his office in the afternoon to other patients. (Pet. Exh. 34A; T. 835) The patients would be brought to Respondent’s office in a group by ambulette. After Respondent concluded his examination, the patients would proceed by ambulette directly to the Parkway Hospital emergency room. (t. 794-795, 822)
24. Margaret Ort, R.N., Assistant Head Nurse of the Parkway Hospital emergency room, triaged the seven Leben Home residents on January 8, 1998, starting at 1:50 P.M. (Pet. Exh. 18b, p. 12) The patients presented to the emergency room with pre-signed consent forms for TURPS and patient transfer forms from the Leben Home. Ms. Ort testified that in her experience she had never encountered other situations where patients presented to an emergency room with pre-signed Parkway Hospital consent forms. (T. 518)

25. During the triage process Ms. Ort asked each patient if they were experiencing urinary difficulty or were experiencing any type of pain. (T. 520, 545-46) She also conducted a physical examination to determine if the patients had suprapubic distention. Ms. Ort followed the same procedure on January 15, 1998, when she triaged the third group of Leben Home residents presenting to Parkway Hospital for TURPs. (T. 520, 540-542)
26. In response to Ms. Ort's questions on triage concerning urinary difficulty, Patient 14 reported that he had no urinary complaints. (T. 535, 546; Pet. Exh. 14b, p. 18)
27. It is not credible that in the time available that Respondent could have performed all of the following components of a urological examination and discussed with the patients the issues necessary to adequately obtain informed consent, as he claimed:
- a. Taken a medical history, especially of a patient whose ability to comprehend and communicate may have been hampered by a mental disability. (Pet. Exhs. 3a, 4a, 8a, 13a, 14a, and 18a).
 - b. Performed a physical examination, including a rectal examination, abdominal examination and visual examination of the genitalia. (T. 990, Pet. Exhs. 3a, 4a, 8a, 13a, 14a and 18a)
 - c. Measured oxygen perfusion with a pulse oximeter. (T. 987)
 - d. Urinalysis. (Pet. Exhs. 3a, 4a, 8a, 13a, 14a, and 18a.)
 - e. Bilateral renal sonogram. (Pet. Exhs. 3a, 4a, 8a, 13a, 14a, and 18a.)

- f. Measured post-void residual urine, including performing a three-dimensional bladder sonogram and then draining post-void urine through either a cystoscope or a catheter. (T. 933-35) According to the written statement of Sandra Bermudex, the office manager, it could take up to 3 hours for the patient to completely void. (Pet. Exh. 34a.)
 - g. Examined the patient's urinary tract with cystoscopy. (Pet. Exhs. 3a, 4a, 8a, 13a, 14a, and 18a.)
 - h. Discussed with the patient his condition, the proposed procedure, and reasonable alternatives to a TURP, including explaining to the patient why he was not a suitable candidate for medical management. (T. 1001, line 14)
28. Respondent Peress deviated from medically accepted standards in failing to perform an adequate urological evaluation on Patients 1, 2, 3, 5, 7, 8, 9, 13, 14, 15, 17, 18, 19, 20, 21, 22, 23, and 24 who he examined in his office. (T. 43-67, Pet. Exhs. 1a to 9a, 13a to 15a, 17a to 24a)
29. Respondent Josifidis deviated from medically accepted standards by inappropriately relying on the inadequate evaluation of Respondent Peress, by failing to adequately evaluate the out-patient examinations performed by Respondent Peress, and by failing to review the medical records of each of Respondent Peress' urological evaluations. (T. 87-88, 325-326)
30. In addition, Respondent Josifidis inappropriately operated on two patients, 12 and 16, who had never been pre-operatively evaluated by either Respondent Peress or by Respondent Josifidis. (Pet. Exhs. 12a, 12b, 16a, and 16b)

31. Respondent Peress failed to take an adequate history of the patients. An adequate history would include a description of symptoms, duration of symptoms, history of prior urological evaluations and treatment, and a thorough general medical history including medication history. (T. 54-55) The histories taken by Respondent Peress fell below acceptable standards in the following respects:
- a. Respondent Peress failed to elicit and note prior treatment, including the fact that Patients 3, 6, 8, 14 and 23 had previously had TURPS (Pet. Exh. 3b, p. 12; Pet. Exh. 6b, p. 15; Pet. 8b, p. 16; Pet. Exh. 14c; and Pet. Exh. 23c, progress noted dated October 21, 1996.) and that Patients 2, 7, 8, 18 were taken Ditropan, a bladder relaxant. (Pet. Exhs. 2c, 7c, 8c, 18c) Respondent Peress' failure to elicit that four patients were taken Ditropan is significant, since Respondent Peress admitted that the combination of Ditropan and other medication might have contributed to the patient's lower urinary tract symptoms. (T. 1132)
 - b. Respondent Peress failed to elicit and note prior urological evaluations, including the fact that Patients 2 and 18 had recently undergone cystometrograms. The cystometrograms had been performed at Parkway Hospital by Respondent Peress' former employee, Dr. Ehrenpreiss. (Pet. Exh. 31 and 35, T. 885-886)
 - c. Respondent Peress failed to elicit and note the duration of symptoms for all patients. (Pet. Exhs. 1a-24a)
 - d. Respondent Peress failed to elicit and note a medication history for all patients. (Pet. Exhs. 1a-24a; T.54-55)

- e. In cases where Respondent Peress specifically noted that the patient was a poor historian, he failed to contact the patient's primary physician, or seek relevant records from other sources. (T. 600-601, 680; Pet. Exhs. 18a and 22a)
32. Respondent Peress inappropriately measured post void residual (PVR) urine because he only measured the PVR urine with one transverse ultrasound image. (T. 62, Pet. Exh. 30) The credible evidence does not support Respondent Peress' assertion that he also measured PVR urine by draining the urine through a catheter or through the cystoscope. When Respondent Peress was asked at the OPMC interview how he measured the patients' PVR urines, he stated with ultrasound and that he may have catheterized one or two patients. (T. 553) Respondent Peress' notes also reflect that almost all PVR urines were measured by ultrasound. Similarly, Respondent Josifidis, who professed that he knew from past experience how Respondent Peress measured PVR urines, repeatedly recorded in his admitting notes large PVR on "sono". (T. 1346, Pet. Exhs. 1b-24b)
33. Since Respondent Peress examined seven patients in under two hours, he could not have catheterized PVR urine within such a time frame. Draining urine through a cystoscope is time consuming because the port is small. (T. 111) Further, Respondent Peress testified that he had only one cystoscope in his office and that it would take approximately 10 minutes to sterilize the cystoscope. (T. 934)
34. In some instances, Respondent Peress failed to perform urodynamic studies to ascertain whether a patient's symptoms were caused by bladder dysfunction or prostatic obstruction. (T. 58-59) Several of the patients had histories that might suggest a neurological factor as the cause of the patient's symptoms, including Patient 8's recent cerebral vascular accident (Pet. Exh. 8c), Patient 3's history of alcohol abuse (Pet. Exh. 3c), and those patients who were on chronic psychotropic medication which is known to impair bladder function. (T. 55, 253, 299)

35. Respondent Peress and Respondent Josifidis inappropriately relied on a visual assessment made through cystoscopy to diagnose prostatic obstruction. In Respondent Peress's records he repeatedly notes "obstructive prostate, bladder trabeculation and diverticula." Because urination is a dynamic event, it is well accepted that you cannot rely on a visual assessment of the prostate to make a diagnosis of prostatic obstruction. (t. 65) Steven Kaplan, M.D., Respondent Josifidis' expert, conceded that cystoscopy is not an accurate assessment of obstruction, and he testified that "... size of the prostate absolutely clearly does not have any relationship to obstruction period. I mean, that has been documented in studies and studies and studies". (T. 1630, lines 5-10, 1651)
36. Respondent Peress inappropriately relied on findings of bladder trabeculation and diverticuli to support a diagnosis of prostatic obstruction. (T. 995, 14a) Since diverticuli may also be caused by bladder dysfunction, finding of diverticuli or other bladder wall abnormalities is of limited use in diagnosing prostatic obstruction. (T. 53)

INFORMED CONSENT

37. Both Respondents failed to adequately obtain informed consents. For a patient to have given informed consent, the patient must understand his condition, the procedure proposed, benefits and risks of the proposed procedure, and reasonable alternative forms of treatment. The obligation to explain to the patient all the necessary components of "informed consent" falls on the physician treating the patient. (T. 68) With respect to a TURP, the risks that should be explained to a patient include infection, post-operative urinary incontinence, impotence and developing scar tissue. (T. 68) If a patient has symptoms but is not experiencing complications, the reasonable alternatives that should be explained to a patient contemplating a TURP include watchful waiting with regular follow-up, medical management or procedures that are less invasive than a TURP. (T. 68)

38. Before the Leben Home patients were admitted to Parkway hospital, Respondents discussed the issue of obtaining informed consents from the patients. Respondent Josifidis testified that Respondents decided that Respondent Peress would “take care of consents essentially” (T. 1331) The majority of the written consents identify Respondent Peress as the physician who explained the procedure to the patient. (See for example, Pet. Exh. 1b, p. 5, paragraph 2).
39. In some instances, Respondent Peress had patients inappropriately execute written consents authorizing Respondent Josifidis to perform TURPs at Parkway Hospital. Such conduct was inappropriate because at the time the consent was executed by the patients Respondent Peress had only conducted a screening and lacked the pertinent information to adequately explain the patient’s condition and would not have known if a TURP was indicated. (T. 212-214) Paul Svensson testified that Respondent Peress’ conduct also violated Parkway Hospital procedure which requires that the written consent for a hospital surgical procedure be done 100 percent in the hospital by the operating surgeon and properly witnessed.
40. Respondent Peress’ testimony that he explained to each Leben Home patient that the patient should not attempt a trial of medical management because the patient could not be trusted is not credible. The Leben Home patients were not necessarily adverse to taking oral medication on a daily basis, as evidenced by the office charts of the primary care physicians. (Pet. Exh. 1c, 2c, 3c, 4c, 5c, 7c, 8c, 9d, 11c, 12c, 13c, 14c, 15c, 16c, 18c, 19c, 21c, 22c ,23c and 24c)
41. Respondent Josifidis inappropriately delegated the responsibility of explaining the significant elements of informed consent to Respondent Peress. Respondent Josifidis admitted that he entirely left to Respondent Peress the issue of explaining that the patients were inappropriate candidates for medical management. (T. 1386) Since Respondent Josifidis was the treating physician, he would have been responsible for explaining reasonable alternative treatments to the patient. (T. 68)

42. Respondent Peress and Josifidis inappropriately concluded that a trial of medical management was not a reasonable alternative to performing TURP. Both Respondents inflated the potential dangers of patients over-dosing on alpha-blockers. (T. 331)
43. Six weeks before Patient 18 had a TURP on or about November 19, 1997, Dr. Ehrenpreiss performed a cystometrogram on Patient 18. Dr. Ehrenpreiss apparently determined that Patient 18 did not have the capacity to give an informed consent so he had Patient 18's guardian execute the written consent for the cystometrogram. (Pet. Exh. 35; T. 613) Whether the guardian had the legal authority to give that consent is not relevant in this proceeding. However, it should have alerted Dr. Peress to the issue of Patient 18's capacity to give an informed consent.
44. Respondents' Peress and Josifidis' approach to evaluating and treating the Leben Home residents precluded either Respondent from giving the patients the attention they needed to ensure that the patients understood why they were being admitted to the hospital for TURPs. As the operating surgeon, Respondent Josifidis was responsible to obtain informed consents. He failed to do so. He did not see any of the subject patients in his office and he generally would first see the patients the morning that he was going to operate. (T 1323). In addition, with respect to Patients 2 and 17, Respondent Josifidis signed the certification on the consent form the day before the hospital record indicates he actually saw or examined the patient. (Pet. Exh. 2b and 17b)
45. Respondent Peress used the "informed consents" from the patients as a means of expediting the flow of patients into Parkway Hospital.

PATIENT SYMPTOMS

46. The following patients were asymptomatic or only had mild symptoms:

- (A) Patient 1: On September 25, 1997 he denied he had a urinary problem to Americare nurse Eileen Hendrickson. Ms. Hendrickson never observed the patient exhibit signs of incontinence. (Pet. Exh. 1d; T. 412) No problem with incontinence was noted on physician medical evaluations dated January 30, 1997 and December 2, 1997. (Pet. Exh. 46)
- (B) Patient 5: Patient's only complaint to the triage nurse is a report of blood in urine. (Pet. Exh. 5b) No urinary complaint in the record of Dr. Santos. (Pet. Exh. 5c) No rebuttal offered by any Respondent witness.
- (C) Patient 9: Dr. Ehrenpreiss noted no voiding problems on November 20, 1997. (Pet. Exh. 9a, p.1) No urinary complaint in the record of Respondent Twerskey. (Pet. Exh. 9c) Americare nurse Graylene Charles noted that patient reports regular bladder function. (Pet. Exh. 33) Patient denied frequency and dysuria to physician who medically cleared the patient at Parkway Hospital. (Pet. Exh. 9b, p. 16) Patient denied frequency, burning, urgency and nocturia to nurse who performed in-patient assessment. (Pet. Exh. 9b, p.86) Dr. Santos reported that patient was not incontinent on annual medical evaluation dated November 7, 1997. (Pet. Exh. 41) No rebuttal offered by any Respondent witness.
- (D) Patient 10: Americare nurse Eileen Hendrickson managed the care of this patient. She never observed signs of incontinence, patient never reported urinary problems to her, and Home Health Aides never reported a problem. Patient 10 left the Leben Home for the day to attend an off-site socialization program. The program would not accept individual who was incontinent. (T. 464-466) No rebuttal offered by any Respondent witness.

- (E) Patient 14: Home Health Aide Hazel Gardiner testified that the Patient did not have a problem with incontinence. (T. 1257) Americare nurse Eileen Hendrickson, R.N. testified that Patient 14 was not incontinent. Ms. Hendrickson would see Patient 14 on a daily basis to administer insulin shots. She never observed any signs of incontinence. (T. 448) Patient reported no urinary complaint to triage nurse, Margaret Ort, R.N. (Pet. Exh 14b) No evidence of incontinence in office record of Dr. Santos. (Pet. Exh. 14c) Gila Comet, a social worker situated in the Leben Home who had frequent interactions with Patient 14, never observed any sign of incontinence. (Pet. Exh. 45) Dr. Gupta, a Leben Home primary care physician, reported that patient not incontinent on annual medical evaluation dated June 5, 1997. (Pet. Exh. 43) No rebuttal offered by any Respondent witness.
- (F) Patient 15: No urinary complaint in record of Dr. Twerskey. (Pet. Exh. 15c) Patient's only complaint to triage nurse was blood in urine although the initial hospital urine analysis failed to reveal any blood. Patient specifically denied pain on urination. (Pet. Exh. 15b, p. 11) The nurse's patient assessment reported normal bladder function. (Pet. Exh. 15b, p. 69) Physician who medically cleared patient noted that patient had reported no dysuria. (Pet. Exh. 15b, p. 17) At the Leben Home Patient 15 received weekly linen change, which was the usual interval for patients who did not have problems with incontinence. (T. 1263; Pet. Exh. 49)
- (G) Patient 16: Patient 16's social worker never observed any signs of incontinence. (Pet. Exh. 45.) Patient denied pain, frequency, burning and nocturia to nurse who did in-patient assessment. (Pet. 16a, p. 65) No rebuttal offered by any Respondent witness. No urinary problems reflected in Dr. Santo's office chart and she reported that the Patient was not incontinent on the annual medical evaluation dated February 5, 1997. (Pet. Exh. 16c and Pet. Exh. 43) No rebuttal offered by any Respondent witness.

- (H) Patient 19: No urinary problems reported to Dr. Twerskey. (Pet. Exh. 19c) Dr. Gupta noted that Patient was not incontinent on annual medical evaluation dated February 6, 1997. (Pet. Exh. 44) Americare Nurse Eileen Hendrickson never observed signs of incontinence nor did Hom Health Aide report any problems. Ms. Hendrickson was a case manager for Patient 19. She would see him twice a week. (T. 500)
- (I) Patient 20: Patient denied to triage nurse that he had a problem with urinating. (Pet. Exh. 20b) Patient denied frequency, nocturia, urgency, burning to nurse who performed in-patient assessment. (Pet. Exh. 20b, p. 78) Dr. Santos reported no problem with incontinence on annual medical evaluation dated December 3, 1997. (Pet. Exh. 37) Patient on weekly linen change at the Leben Home. (Pet. Exh. 48) Home Health Aide Norma Edwards testified that Patient 20 was not incontinent. (T. 1261)
- (J) Patient 22: Patient reported no urinary complaint to the triage nurse. (Pet. Exh. 22b, p. 11) Patient reported no urinary complaint to Dr. Twerskey. (Pet. Exh. 22c)
- (K) Patient 24: No urinary complaints reported to Dr. Twerskey. (Pet. Exh. 24c) Dr. Gupta noted that Patient was not incontinent on annual medical evaluation dated March 6, 1997. (Pet. Exh. 39) Social worker Gila Comet reported that she never observed any signs of incontinence and Patient 24 specifically denied he had a problem with incontinence immediately prior to his admission to the hospital. Patient 24 told Ms. Comet that he could not understand why he was being asked to go to the hospital. (Pet. Exh. 45)

UNNECESSARY SURGERY

47. On more than one occasion, Respondent Peress inappropriately recommended TURPs and on more than one occasion Respondent Josifidis inappropriately performed TURPs on the subject patients. The surgical procedures performed by Respondent Josifidis were elective procedures. Unless the patients had complications or severe symptomatology, it would be inappropriate to proceed directly to an invasive procedure such as a TURP (T. 36, 87, 1505, Pet. Exhs. 1a-9a, 13a-15a, 17a-24a; Pet. Exhs. 1b-24b)
48. On more than one occasion Respondent Peress inappropriately recommended and on more than one occasion Respondent Josifidis inappropriately performed TURPs by failing to offer the subject patients medical management.
49. Respondent Peress inappropriately recommended and Respondent Josifidis inappropriately performed TURPs by operating on patients without an adequate evaluation. The pre-operative evaluations of Respondent Peress and Respondent Josifidis failed to adequately diagnose the cause of the patients' symptoms, in particular whether a patient's lower urinary tract symptoms were caused by prostatic obstruction, or were the result of bladder dysfunction caused by a neurogenic factor or by long term use of psychotropic medications. (T. 59)
50. Respondent Peress inappropriately recommended and Respondent Josifidis inappropriately performed TURPs on patients who had no or only mild lower urinary tract symptoms. See Finding 46. In this regard the case of Patient 14 is especially egregious since the Patient had a previous TURP that had apparently relieved his symptoms. Nevertheless, at the hands of Respondent Josifidis he underwent the same procedure for no medically justified reason. (Pet. Exh. 14a)

51. The following patients had poor post operative outcomes:

- A. Patient 3: still incontinent according to Home Health Aide Norma Edwards. (T. 1262)
Respondent Peress recommended a cystostomy tube on July 1, 1998. (Pet. Exh. 3a; T. T. 1043)
- B. Patient 8: Americare case nurse Eileen Hendrickson testified that after the TURP was performed in January, 1998, he had unmanageable urinary incontinence. The Patient was wet all the time and he got very bitter and upset. (T. 457-8)
- C. Patient 11: Reported frequency and nocturia to Eileen Hendrickson in December 1998. (T. 486-7)
- D. Patient 12: Home Health Aide Norma Edwards testified that Patient 12 was incontinent after surgery. (T. 1284)
- E. Patient 13: Home Health Aide Nola Hamilton testified that Patient 13 was still incontinent after surgery. (T. 1295-6)
- F. Patient 18: Home Health Aide Hazel Gardner testified that Patient 18 was still very much incontinent after surgery. (T. 1256)

ROLE OF RESPONDENT JOSIFIDIS

52. Respondent Josifidis deviated from medically accepted standards by failing to independently assess the patients. While a urologist accepting a surgical referral from another physician is not required to redo every diagnostic test, the reasonably prudent urologist must review the pre-operative out-patient evaluation and make sure in his own mind that the patient had a thorough evaluation. At a minimum, he must review the referring physician's medical records. (T. 325-326)

53. Respondent Josifidis failed to review Respondent Peress' medical records for the subject patients. (T. 1394) Most of Respondent Josifidis' communication with Respondent Peress regarding the subject patients was by telephone. (t. 1343, 1416) Significant problems in transmitting medical information arise when the surgeon accepting the referral fails to review the medical record. For example, in the case of Patient 9, Respondent Peress noted in his record a swollen edematous mass around the trigone and a need for a bladder biopsy. However, Respondent Peress' concern with performing a bladder biopsy was not reflected in Respondent Josifidis' admitting note, pre-operative procedure in the operating report, or in the written consent. (Pet. Exh. 9b; T. 1431-1437)
54. Respondent Josifidis inappropriately defined his role as "pretty much to confirm what was and to check what was, was decided ..." (T. 1417-1418, 1430) By failing to independently evaluate the patient, he deprived patients of the expertise and quality health care they have the right to expect from New York State licensed physicians.

CONCLUSIONS OF LAW

FIRST: Respondent Peress and Josifidis are found to have engaged in professional misconduct by reason of engaging in conduct in the practice of medicine that evidences moral unfitness to practice within the meaning of N.Y. Education Law Sec. 6530 (20) (McKinney Supp. 2000) as set forth in Findings of Fact 1 through 54, supra.

SECOND: Respondent Peress and Josifidis are found to have engaged in professional misconduct by reason of practicing medicine with gross negligence within the meaning of N.Y. Education Law Sec. 6530 (4) (McKinney Supp. 2000) as set forth in Findings of Fact 1 through 54, supra.

THIRD: Respondent Peress and Josifidis are found to have engaged in professional misconduct by reason of practicing medicine with negligence on more than one occasion within the meaning of N.Y. Education Law Sec. 6530 (4) (McKinney Supp. 2000) as set forth in Findings of Fact 1 through 54, supra.

FOURTH: Respondent Peress and Josifidis are not found to have engaged in professional misconduct by reason of practicing medicine with gross incompetence within the meaning of N.Y. Education Law Sec. 6530 (6) (McKinney Supp. 2000) as set forth in Findings of Fact 1 through 54, supra.

FIFTH: Respondent Peress and Josifidis are found to have engaged in professional misconduct by reason of practicing medicine with incompetence on more than one occasion within the meaning of N.Y. Education Law Sec. 6530 (5) (McKinney Supp. 2000) as set forth in Findings of Fact 1 through 54, supra.

SIXTH: Respondent Peress and Josifidis are found to have engaged in professional misconduct by reason of practicing medicine fraudulently within the meaning of N.Y. Education Law Sec. 6530 (2) (McKinney Supp. 2000) as set forth in Findings of Fact 1 through 54, supra.

SEVENTH: Respondent Peress and Josifidis are found to have engaged in professional misconduct by reason of willfully making or filing a false report, or failing to file a report required by law or by the Department of Health within the meaning of N.Y. Education Law Sec. 6530 (12) (McKinney Supp. 2000) as set forth in Findings of Fact 1 through 54, supra.

EIGHTH: Respondent Peress and Josifidis are found to have engaged in professional misconduct by reason of ordering treatment not warranted by the conditions of the patients within the meaning of N.Y. Education Law Sec. 6530 (12) (McKinney Supp. 2000) as set forth in Findings of Fact 1 through 54, supra.

NINTH: Respondent Peress is found to have engaged in professional misconduct by reason of failing to maintain a record for Patients 10, 11, 12 and 16 which accurately reflects the care and treatment of each said Patient within the meaning of N.Y. Education Law Sec. 6530 (32) (McKinney Supp. 2000) as set forth in Findings of Fact 5, supra.

TENTH: Respondent Josifidis is not found to have engaged in professional misconduct by reason of failing to maintain records for any Patient which accurately reflects the care and treatment of said Patient within the meaning of N.Y. Education Law Sec. 6530 (32) (McKinney Supp. 2000) as set forth in Findings of Fact 1 through 54, supra.

ORDER

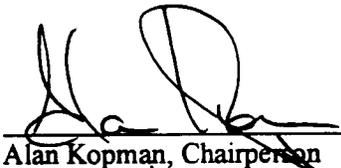
The Hearing Committee determines and orders that Respondent Peress' license to practice medicine be suspended for a period of five (5) years commencing from the date of the service of this order on said Respondent.

The Hearing Committee further determines and orders that Respondent Josifidis' license to practice medicine be restricted so that he may only continue to practice when monitored by a board certified urologist proposed by Respondent and subject to the written approval of the Director of the Office of Professional Medical Conduct (OPMC), upon the following terms and conditions.

- A. Respondent shall make available to the monitor any and all records or access to his practice requested by the monitor, including on-site observation. The practice monitor shall visit Respondent's medical practice at each and every location including offices and hospitals, on a random unannounced basis at least monthly and shall examine all records maintained by Respondent, including patient records, prescribing information and office records. The review will determine whether the Respondent's medical practice is conducted in accordance with the generally accepted standards of professional medical care, with particular emphasis on the

appropriate continuity of patient care, operative work-up, indications for surgery and assessment of post operative results. Any perceived deviation of accepted standards of medical care or refusal to cooperate with the monitor shall be reported within 24 hours to OPMC.

- B. Respondent shall be solely responsible for all expenses associated with monitoring, including fees, if any, to the monitoring physician.
- C. Respondent shall cause the practice monitor to report quarterly, in writing, to the Director of OPMC.
- D. Respondent shall maintain medical malpractice insurance coverage with limits no less than \$2 million per occurrence and \$6 million per policy year, in accordance with Section 230(18)(b) of the Public Health Law. Proof of coverage shall be submitted to the Director of OPMC prior to Respondent's practice after the effective date of this Order.
- E. Upon the completion of three years of monitoring, if the OPMC determines that Respondent Josifidis has established a pattern of appropriate continuity of patient care, all restrictions on his license to practice medicine shall be removed. If the OPMC cannot make such a determination at that time, the monitoring shall continue subject to annual review by the OPMC until OPMC can make such a determination.


Alan Kopman, Chairperson

Date: New York, NY,
September 22, 2000

Majid Eshghi, M.D.
Sheldon Putterman, M.D.

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

IN THE MATTER : AFFIRMATION
OF : OF MEMBER OF THE
JAMILLE PERESS, M.D. : HEARING COMMITTEE
AND :
HARRY JOSIFIDIS, M.D.

Alan Kopman, a duly designated member of the State Board for Professional Medical Conduct and of the Hearing Committee thereof designated to hear the MATTER of **JAMILLE PERESS, M.D. AND HARRY JOSIFIDIS, M.D.**, hereby affirms that he was not present at the hearing session conducted on May 5, 2000 and at a portion of the hearing session conducted on May 17, 2000. He further affirms that he has read and considered the transcript of proceedings of, and the evidence received at such hearing days prior to deliberations of the Hearing Committee on the 14th day of July and the 8th day of August, 2000.

DATED:

8/15/00
New York, N.Y.


ALAN KOPMAN

APPENDIX A

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

IN THE MATTER

OF

JAMILLE PERESS, M.D.

AND

HARRY JOSIFIDIS, M.D.

NOTICE
OF
HEARING

TO: JAMILLE PERESS, M.D.
c/o Anthony Scher, Esq.
Wood & Scher
14 Harwood Court
Scarsdale, New York 10583

HARRY JOSIFIDIS, M.D.
c/o Gerard J. Heubel, Esq.
Marulli, Pewarski & Heubel, P.C.
115 Broadway - 19th Floor
New York, New York 10006

PLEASE TAKE NOTICE:

A hearing will be held pursuant to the provisions of N.Y. Pub. Health Law §230 (McKinney 1990 and Supp. 2000) and N.Y. State Admin. Proc. Act §§301-307 and 401 (McKinney 1984 and Supp. 2000). The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on February 22, 2000, at 10:00 a.m., at the Offices of the New York State Department of Health, 5 Penn Plaza, Sixth Floor, New York, New York, and at such other adjourned dates, times and places as the committee may direct.

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

The hearing will proceed whether or not you appear at the hearing. Please note that requests for adjournments must be made in writing and by telephone to the

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2-18-00-SS
Fetters's

New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Hedley Park Place, 433 River Street, Fifth Floor South, Troy, NY 12180, ATTENTION: HON. TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION, (henceforth "Bureau of Adjudication"), (Telephone: (518-402-0748), upon notice to the attorney for the Department of Health whose name appears below, and at least five days prior to the scheduled hearing date.

Adjournment requests are not routinely granted as scheduled dates are considered dates certain. Claims of court engagement will require detailed Affidavits of Actual Engagement. Claims of illness will require medical documentation.

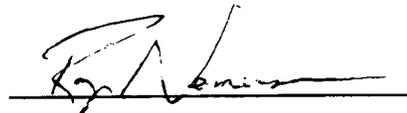
Pursuant to the provisions of N.Y. Pub. Health Law §230(10)(c), you shall file a written answer to each of the charges and allegations in the Statement of Charges not less than ten days prior to the date of the hearing. Any charge or allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such 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. Pursuant to §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. Pursuant to the terms of N.Y. State Admin. Proc. Act §401 (McKinney Supp. 2000) and 10 N.Y.C.R.R. §51.8(b), the Petitioner hereby demands disclosure of the evidence that the Respondent intends to introduce at the hearing, including the names of witnesses, a list of and copies of documentary evidence and a description of physical or other evidence which cannot be photocopied.

At the conclusion of the hearing, the committee shall make findings of fact, conclusions concerning the charges sustained or dismissed, and in the event any of the charges are sustained, a determination of the penalty to be imposed or appropriate action to be taken. Such determination may be reviewed by the

Administrative Review Board for Professional Medical Conduct.

THESE PROCEEDINGS MAY RESULT IN A DETERMINATION THAT YOUR LICENSE TO PRACTICE MEDICINE IN NEW YORK STATE BE REVOKED OR SUSPENDED, AND/OR THAT YOU BE FINED OR SUBJECT TO OTHER SANCTIONS SET OUT IN NEW YORK PUBLIC HEALTH LAW §§230-a (McKinney Supp. 2000). YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: New York, New York
February 7, 2000



ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct

Inquiries should be directed to: DANIEL GUENZBURGER
Associate Counsel
Bureau of Professional
Medical Conduct
5 Penn Plaza, Suite 601
New York, New York 10001
(212) 268-6816

IN THE MATTER
OF
JAMILE PERESS, M.D.

STATEMENT
OF
CHARGES

JAMILE PERESS, M.D., the Respondent, was authorized to practice medicine in New York State on or about July 1, 1971, by the issuance of license number 10863 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. In or about and between December 1997 and February 1998, the Respondent performed urological evaluations on Patients 1 through 24 at the Leben Home for Adults, ("Leben Home") 88-08 45th Avenue, Elmhurst, New York, and at his office, 110-11 72nd Avenue, Forest Hills, New York. The Leben Home is an adult long term residential care facility established and operated pursuant to the Social Services Law. Patients 1 through 24 variously suffered from mental disabilities, including but not limited to schizophrenia, dementia, depression and alcohol abuse. With regard respectively to Patients 1 through 24:

1. Respondent, acting in concert with Harry Josifidis, M.D., caused medically inappropriate transurethral resections of the prostate ("TURPs") or transurethral incisions of the prostate ("TUIPs") to be performed on these patients.
2. Respondent deviated from medically accepted standards in his urological evaluations, including but not limited to:

- a. Failing to take an adequate history.
- b. Inappropriately assessing post-void residuals.
- c. Failing to perform urodynamic studies.
- d. Inappropriately relying on a visual assessment made through cystoscopy to diagnose prostatic obstruction.

3. Respondent failed to order an appropriate trial of medical therapy.

4. Respondent failed to adequately obtain informed consent.

5. Respondent failed to maintain an adequate medical record.

B. Respondent knowingly and falsely represented in his medical record the degree of urinary difficulty experienced by the patients, including but not limited to whether they had stranguria, incontinence, nocturia, urinary retention, when, in fact, he knew that the patients did not have such symptoms, or that their symptoms were significantly less severe, with regard respectively to the patients listed below:

1. Patient 1.
2. Patient 2.
3. Patient 4.

4. Patient 5.
5. Patient 9.
6. Patient 15.
7. Patient 19.
8. Patient 20.
9. Patient 21.
10. Patient 22.
11. Patient 24.

C. Respondent knowingly and falsely represented in Patient 12's and Patient 16's hospital chart that on January 7, 1998 he explained the "nature, purposes, benefits, risks of and alternatives" to a TURP, when, in fact, he knew that he had not provided such explanations.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

MORAL UNFITNESS

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(20)(McKinney Supp. 2000) by engaging in conduct in the practice of the profession of medicine that evidences moral unfitness to practice, as alleged in the facts of the following:

1. Paragraphs A, A1, A2, A2(a), A2(b), A2(c), A2(d), A3, A4, A5, B, B1, B2, B3, B4, B5, B6, B7, B8, B9, B10, B11 and/or C.

SECOND THROUGH TWENTY-FIFTH SPECIFICATIONS

GROSS NEGLIGENCE

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(4)(McKinney Supp. 2000) by practicing the profession of medicine with gross negligence as alleged in the facts of the following:

2. - 25. Paragraphs A, A1, A2, A2(a), A2(b), A2(c), A2(d), A3, A4, A5, B, B1-11 and/or C, as said Paragraphs relate respectively to each of Patients 1 through 24.

TWENTY-SIXTH SPECIFICATION

NEGLIGENCE ON MORE THAN ONE OCCASION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(3)(McKinney Supp. 2000) by practicing the profession of medicine with negligence on more than one occasion as alleged in the facts of two or more of the following:

26. Paragraphs A, A1, A2, A2(a), A2(b), A2(c), A2(d), A3, A4, A5, B and B1 through 11, and/or C.

TWENTY-SEVENTH SPECIFICATION

GROSS INCOMPETENCE

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(6)(McKinney Supp. 2000) by practicing the profession of medicine with gross incompetence as alleged in the facts of the following:

27. Paragraphs A, A1, A2, A2(a), A2(b), A2(c), A2(d), A3, A4, A5, B, B1, B2, B3, B4, B5, B6, B7, B8, B9, B10, B11 and/or C.

TWENTY-EIGHTH THROUGH FORTIETH SPECIFICATIONS
FRAUDULENT PRACTICE

Respondent is charged with committing professional misconduct as defined by N.Y. Educ. Law §6530(2)(McKinney Supp. 2000) by practicing the profession of medicine fraudulently as alleged in the facts of the following:

28. Paragraphs B and B1.
29. Paragraphs B and B2.
30. Paragraphs B and B3.
31. Paragraphs B and B4.
32. Paragraphs B and B5.
33. Paragraphs B and B6.
34. Paragraphs B and B7.
35. Paragraphs B and B8.
36. Paragraphs B and B9.
37. Paragraphs B and B10.
38. Paragraphs B and B11.
39. Paragraph C with regard to Patient 12.
40. Paragraph C with regard to Patient 16.

FORTY-FIRST THROUGH FIFTY-THIRD SPECIFICATIONS
FALSE REPORTS

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(21)(McKinney Supp. 1999) by wilfully making or filing a false report, or failing to file a report required by law or by the department of health or the education department, as alleged in the facts of:

41. Paragraphs B and B1.
42. Paragraphs B and B2.

43. Paragraphs B and B3.
44. Paragraphs B and B4.
45. Paragraphs B and B5.
46. Paragraphs B and B6.
47. Paragraphs B and B7.
48. Paragraphs B and B8.
49. Paragraphs B and B9.
50. Paragraphs B and B10.
51. Paragraphs B and B11.
52. Paragraph C with regard to Patient 12.
53. Paragraph C with regard to Patient 16.

FIFTY-FOURTH SPECIFICATION

INCOMPETENCE ON MORE THAN ONE OCCASION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(5)(McKinney Supp. 1999) by practicing the profession of medicine with incompetence on more than one occasion as alleged in the facts of two or more of the following:

54. Paragraphs A, A1, A2, A2(a), A2(b), A2(c), A2(d), A3, A4, A5, B, B1, B2, B3, B4, B5, B6, B7, B8, B9, B10, B11, and/or C.

FIFTY-FIFTH THROUGH SEVENTY-EIGHTH SPECIFICATIONS

UNWARRANTED TESTS/TREATMENT

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(35)(McKinney Supp. 2000) by ordering of excessive tests, treatment, or use of treatment facilities not warranted by the condition of the patient, as alleged in the facts of paragraphs:

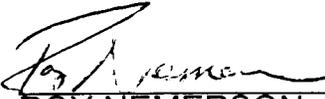
55.- 78. Paragraphs A and A1, and/or A2 and A2(d), as said paragraphs relate respectively to each of Patients 1 through 24.

SEVENTY-NINTH THROUGH ONE HUNDRED SECOND SPECIFICATIONS
FAILURE TO MAINTAIN RECORDS

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(32)(McKinney Supp. 2000) by failing to maintain a record for each patient which accurately reflects the care and treatment of the patient, as alleged in the facts of paragraphs:

79. -102. A and A5 as said paragraphs relate respectively to each of Patients 1 through 24.

DATED: February 7, 2000
New York, New York



ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct

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

Petitioner's
27 For ID
Into Evd
2-18-00 SG

IN THE MATTER
OF
JAMILLE PERESS, M.D.
AND
HARRY JOSIFIDIS, M.D.

NOTICE
OF
HEARING

TO: JAMILLE PERESS, M.D.
c/o Anthony Scher, Esq.
Wood & Scher
14 Harwood Court
Scarsdale, New York 10583

HARRY JOSIFIDIS, M.D.
c/o Gerard J. Heubel, Esq.
Marulli, Pewarski & Heubel, P.C.
115 Broadway - 19th Floor
New York, New York 10006

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

The hearing will proceed whether or not you appear at the hearing. Please note that requests for adjournments must be made in writing and by telephone to the

New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Hedley Park Place, 433 River Street, Fifth Floor South, Troy, NY 12180, ATTENTION: HON. TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION, (henceforth "Bureau of Adjudication"), (Telephone: (518-402-0748), upon notice to the attorney for the Department of Health whose name appears below, and at least five days prior to the scheduled hearing date. Adjournment requests are not routinely granted as scheduled dates are considered dates certain. Claims of court engagement will require detailed Affidavits of Actual Engagement. Claims of illness will require medical documentation.

Pursuant to the provisions of N.Y. Pub. Health Law §230(10)(c), you shall file a written answer to each of the charges and allegations in the Statement of Charges not less than ten days prior to the date of the hearing. Any charge or allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such 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. Pursuant to §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. Pursuant to the terms of N.Y. State Admin. Proc. Act §401 (McKinney Supp. 2000) and 10 N.Y.C.R.R. §51.8(b), the Petitioner hereby demands disclosure of the evidence that the Respondent intends to introduce at the hearing, including the names of witnesses, a list of and copies of documentary evidence and a description of physical or other evidence which cannot be photocopied.

At the conclusion of the hearing, the committee shall make findings of fact, conclusions concerning the charges sustained or dismissed, and in the event any of the charges are sustained, a determination of the penalty to be imposed or appropriate action to be taken. Such determination may be reviewed by the

Administrative Review Board for Professional Medical Conduct.

THESE PROCEEDINGS MAY RESULT IN A DETERMINATION THAT YOUR LICENSE TO PRACTICE MEDICINE IN NEW YORK STATE BE REVOKED OR SUSPENDED, AND/OR THAT YOU BE FINED OR SUBJECT TO OTHER SANCTIONS SET OUT IN NEW YORK PUBLIC HEALTH LAW §§230-a (McKinney Supp. 2000). YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: New York, New York
February 7, 2000



ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct

Inquiries should be directed to: DANIEL GUENZBURGER
Associate Counsel
Bureau of Professional
Medical Conduct
5 Penn Plaza, Suite 601
New York, New York 10001
(212) 268-6816

IN THE MATTER
OF
HARRY JOSIFIDIS, M.D.

STATEMENT
OF
CHARGES

HARRY JOSIFIDIS, M.D., the Respondent, was authorized to practice medicine in New York State on or about July 10, 1986, by the issuance of license number 166922 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. In or about and between December 1997 and February 1998, the Respondent performed either transurethral resections of the prostate ("TURPs") or transurethral incisions of the prostate ("TUIPs") on Patients 1 through 24 at Parkway Hospital, 70-135th Street, Forest Hills, New York. Patients 1 through 24 were residents of the Leben Home for Adults, ("Leben Home"), an adult long-term residential facility located at 88-08 45th Avenue, Elmhurst, New York. Patients 1 through 24 variously suffered from mental disabilities, including but not limited to schizophrenia, dementia, alcohol abuse. With regard respectively to Patients 1 through 24:

1. Respondent, acting in concert with Jamile Peress, M.D., performed TURPS or TUIPs without adequate medical indication.
2. Respondent deviated from medically accepted standards in his urological evaluation of the patients, including but not limited to:
 - a. Inappropriately relying on the inadequate urological

evaluations performed by Jamile Peress, M.D.

- b. Failing to take an adequate history.
 - c. Inappropriately assessing post-void residuals.
 - d. Failing to perform urodynamic studies.
 - e. Inappropriately relying on a visual assessment made through endoscopy to diagnose prostatic obstruction.
3. Respondent failed to order an appropriate trial of medical therapy prior to performing a TURP or TUIP.
 4. Respondent failed to adequately obtain informed consent.
 5. Respondent failed to maintain a record that accurately reflects his evaluation and treatment.
- B. Respondent knowingly and falsely represented in the hospital record the degree of urinary difficulty experienced by the patients, including whether they had stranguria, incontinence, nocturia, urinary retention, when, in fact, he knew that the patients either did not have such symptoms or conditions, or that their symptoms were less severe, with regard respectively to the patients listed below:
1. Patient 1.

2. Patient 2.
3. Patient 4.
4. Patient 5.
5. Patient 9.
6. Patient 10
7. Patient 15.
8. Patient 16
9. Patient 19.
10. Patient 20.
11. Patient 21.
12. Patient 22.
13. Patient 24.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

MORAL UNFITNESS

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(20)(McKinney Supp. 2000) by engaging in conduct in the practice of the profession of medicine that evidences moral unfitness to practice as alleged in the facts of the following:

1. Paragraphs A, A1, A2, A2(a), A2(b), A2(c), A2(d), A2(e), A3, A4, A5, B, B1, B2, B3, B4, B5, B6, B7, B8, B9, B10, B11, B12 and/or B13.

SECOND THROUGH TWENTY-FIFTH SPECIFICATIONS

GROSS NEGLIGENCE

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(4)(McKinney Supp. 2000) by practicing the profession of medicine with gross negligence as alleged in the facts of the following:

2. - 25. Paragraphs A, A1, A2, A2(a), A2(b), A2(c), A2(d), A3, A4, A5, B and B1-13 as said Paragraphs relate respectively to Patients 1 through 24.

TWENTY-SIXTH SPECIFICATION

NEGLIGENCE ON MORE THAN ONE OCCASION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(3)(McKinney Supp. 2000) by practicing the profession of medicine with negligence on more than one occasion as alleged in the facts of two or more of the following:

26. Paragraphs A, A1, A2, A2(a), A2(b), A2(c), A2(d), A2(e), A3, A4, A5, B, B1, B2, B3, B4, B5, B6, B7, B8, B9, B10, B11, B12 and/or B13.

TWENTY-SEVENTH SPECIFICATION

GROSS INCOMPETENCE

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(6)(McKinney Supp. 2000) by practicing the profession of medicine with gross incompetence as alleged in the facts of the following:

27. Paragraphs A, A1, A2, A2(a), A2(b), A2(c), A2(d), A2(e), A3, A4, A5, B, B1, B2, B3, B4, B5, B6, B7, B8, B9, B10, B11, B12 and/or B13.

TWENTY-EIGHTH THROUGH FORTIETH SPECIFICATIONS
FRAUDULENT PRACTICE

Respondent is charged with committing professional misconduct as defined by N.Y. Educ. Law §6530(2)(McKinney Supp. 2000) by practicing the profession of medicine fraudulently as alleged in the facts of the following:

28. Paragraphs B and B1.
29. Paragraphs B and B2.
30. Paragraphs B and B3.
31. Paragraphs B and B4.
32. Paragraphs B and B5.
33. Paragraphs B and B6.
34. Paragraphs B and B7.
35. Paragraphs B and B8.
36. Paragraphs B and B9.
37. Paragraphs B and B10.
38. Paragraphs B and B11.
39. Paragraphs B and B12.
40. Paragraphs B and B13.

FORTY-FIRST THROUGH FIFTY-THIRD SPECIFICATIONS
FALSE REPORTS

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(21)(McKinney Supp. 1999) by wilfully making or filing a false report, or failing to file a report required by law or by the department of health or the education department, as alleged in the facts of:

41. Paragraphs B and B1.
42. Paragraphs B and B2.
43. Paragraphs B and B3.
44. Paragraphs B and B4.
45. Paragraphs B and B5.
46. Paragraphs B and B6.
47. Paragraphs B and B7.
48. Paragraphs B and B8.
49. Paragraphs B and B9.
50. Paragraphs B and B10.
51. Paragraphs B and B11.
52. Paragraphs B and B12.
53. Paragraphs B and B13

FIFTY-FOURTH SPECIFICATION

INCOMPETENCE ON MORE THAN ONE OCCASION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(5)(McKinney Supp. 2000) by practicing the profession of medicine with incompetence on more than one occasion as alleged in the facts of two or more of the following paragraphs:

54. Paragraphs A, A1, A2, A2(a), A2(b), A2(c), A2(d), A2(e), A3, A4, A5, B, B1, B2, B3, B4, B5, B6, B7, B8, B9, B10, B11, B12, and/or B13.

FIFTY-FIFTH THROUGH SEVENTY-EIGHTH SPECIFICATIONS

UNWARRANTED TESTS/TREATMENT

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(35)(McKinney Supp. 2000) by ordering of excessive tests, treatment, or use of treatment facilities not warranted by the condition of the patient, as alleged in the facts of paragraphs:

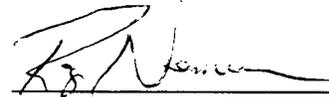
55. - 78. Paragraphs A and A1, and/or A2(e) as said paragraphs relate respectively to Patients 1 through 24.

SEVENTY-NINTH THROUGH ONE HUNDRED SECOND SPECIFICATIONS
FAILURE TO MAINTAIN RECORDS

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(32)(McKinney Supp. 2000) by failing to maintain a record for each patient which accurately reflects the care and treatment of the patient, as alleged in the facts of paragraphs:

79. -102. A and A5 as said paragraphs relate respectively to each of Patients 1 through 24.

DATED: February 7, 2000
New York, New York



ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct

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

IN THE MATTER
OF
HARRY JOSIFIDIS, M.D.

AFFIDAVIT OF
SERVICE
BY MAIL

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss:

- I, Johnette Hamer, being duly sworn, declare that I am over eighteen years of age and I am not a party to the above-entitled proceeding.
- I am, employed by the New York State Department of Health, Office of Professional Medical Conduct at 5 Penn Plaza, 6th Floor, New York, New York 10001, and my duties include the posting of mail.
- On February 7, 2000, I received from Theodore Herrington, Bureau of Professional Medical Conduct an envelope(s) addressed to Respondent(s) as follows:
 - Gerard J . Heubel, Esq.; Marulli, Pewarski & Heubel, P.C., 115 Broadway, 19th Floor, New York New York 10060
 -
- On February 7, 2000, I mailed the above-mentioned addressed envelope, as Certified Mail, at the United States Postal Service facility JAF Station, located at 8th Avenue and 33rd Street, New York, New York 10001, with the postage thereon fully prepaid, and I received the attached certificate of mailing.

Jhnette Hamer

Jhnette Hamer

Sworn to me
on this 8th day of
February, 2000

Marcia E. Kaplan

NOTARY

MARCIA E. KAPLAN
Notary Public, State of New York
No. 31-4786421
Qualified in New York County
Commission Expires November 30, 2001

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

-----X

IN THE MATTER : AFFIRMATION
OF : OF MEMBER OF THE
JAMILLE PERESS, M.D. : HEARING COMMITTEE
AND :
HARRY JOSIFIDIS, M.D.

-----X

Majid Eshghi, M.D., a duly designated member of the State Board for Professional Medical Conduct and of the Hearing Committee thereof designated to hear the MATTER of JAMILLE PERESS, M.D. AND HARRY JASIFIDIS, M.D. hereby affirms that he was not present at a portion of the hearing session conducted on June 20, 2000. He further affirms that he has read and considered the transcript of proceedings of, and the evidence received at such hearing day prior to deliberations of the Hearing Committee on the 14th day of July, and the 8th day of August, 2000.

DATED: 8.28.00
New York, N.Y.

M. Eshghi MD
MAJID ESHGHI, M.D.

APPENDIX B