



***New York State Board for Professional Medical Conduct***

*433 River Street, Suite 303 Troy, New York 12180-2299 • (518) 402-0863*

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*Vice Chair*

Ansel R. Marks, M.D., J.D.  
*Executive Secretary*

January 30, 2001

**CERTIFIED MAIL -- RETURN RECEIPT REQUESTED**

**CERTIFIED MAIL**

**FIRST CLASS MAIL -- ORDINARY**

Robert A. Jakubowski, M.D.  
47 Willowbrook Drive  
Orchard Park, NY 14127

Robert A. Jakubowski, M.D.  
3796 Abbott Road  
Orchard Park, NY 14127

Mark T. Fantauzzi, Esq.  
Bureau of Professional Medical Conduct  
NYS Department of Health  
Corning Tower - Rm 2509  
Empire State Plaza  
Albany, NY 12237

**RE:** In the Matter of Robert A. Jakubowski, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 01-20) of the Committee on Professional Conduct in the above referenced matter. The effective date of this Decision and Order is **January 25, 2001**, the date upon which personal service of it was made upon Respondent.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), and §230-c subdivision 1 through 5, "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 January 25, 2001, the date of personal service of the Determination and Order upon Robert A. Jakubowski, M.D.

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, NY 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 all documents considered by the committee on professional conduct.

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 "Ansel R. Marks", is written over a rectangular stamp area.

Ansel R. Marks, M.D., J.D.  
Executive Secretary  
Board for Professional Medical Conduct

Enclosures

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

**IN THE MATTER  
OF  
ROBERT A. JAKUBOWSKI, M.D.**

**DETERMINATION  
AND  
ORDER**

BPMC No. 01-20

**DATTA WAGLE, M.D.**, Chairperson, **SHARON KURITZKY, M.D.** and **Ms. MARY MEAGHER**, duly designated members of the State Board for Professional Medical Conduct., appointed by the Commissioner of Health of the State of New York pursuant to Section 230(1) of the Public Health Law, served as the Committee on Professional Conduct (Committee) in this matter pursuant to Section 230(19) of the Public Health Law. The Department of Health appeared by **DONALD P. BERENS, Jr.**, General Counsel, **MARK T. FANTAUZZI, ESQ.**, Assistant Counsel, of Counsel. The Respondent did not appear. Documentation was received. In accordance with New York Public Health Law section 230(19), on January 4, 2001, this matter was submitted by the Director of the Office For Professional Medical Conduct to the Committee for its review and determination.

After its review, the Committee submits this Determination and Order.

**STATEMENT OF THE CASE**

This case was brought pursuant to Public Health Law §230(19). Among other things, the statute provides that where the Director of the Office of Professional Medical Conduct (OPMC) has given written notice to a licensee that the Director believes that the licensee may have violated the terms of probation, and where the licensee has failed to dispute the facts forming the basis of the alleged

violation of probation within twenty days of the Director's written notice, the Director shall submit the matter to a committee on professional conduct for its review and determination. This Committee has reviewed this matter and makes the following findings of fact, conclusions of law, and determination and order.

### **FINDINGS OF FACT**

The following findings of fact were made.

1. Robert M. Jakubowski, M.D., the Respondent, was authorized to practice medicine in New York State on July 1, 1982, by the issuance of license number 150605 by the New York State Education Department.
2. Respondent is presently the subject of a disciplinary order of the Board For Professional Medical Conduct (BPMC), Order No. 99-190. The Order, among other things, imposed against Respondent's medical license a two year period of probation. At all times relevant to this proceeding, Respondent was subject to these terms of probation.
3. During the period of probation, the Director of the OPMC (Director) received information that Respondent may have violated the terms of probation imposed against him by BPMC Order No. 99-190. In accordance with Public Health Law §230(19), the Director conducted an investigation and determined that Respondent may have violated the terms of Respondent's probation. Thereafter, by letter dated November 7, 2000, (hereinafter, the "Notice", see Exhibit A), in accordance with Public Health Law section 230(19), the Director notified Respondent of the facts forming the basis of the Director's determination. The facts set forth in the Director's Notice are:
  - a. Respondent failed to register to practice medicine in the State of New York with the New York State Department of Education.

- b. Respondent continued to practice medicine in the State of New York despite his having failed to register with the New York State Department of Education.
  - c. Respondent failed to provide patient records and information to former patients and their subsequent treating physicians despite having received valid requests for such records and information.
  - d. Respondent failed to provide patient records and information to former patients and their subsequent treating physicians despite having been specifically directed to do so by the Office of Professional Medical Conduct.
3. Respondent was informed in said Notice that these allegations, if proved, violated terms “(1) and (9)” of the terms of probation contained in BPMC Order No. 99-190.
4. Respondent was informed in said Notice that, in accordance with New York Public Health Law section 230(19), Respondent had twenty days from the date of the Director’s Notice within which to dispute the facts which formed the basis of the determination that he may have violated the terms of probation. Respondent was further informed that if he did not dispute such facts within 20 days from the date of said letter, the matter of Respondent’s violation of probation would be submitted to a committee on professional conduct for its review and determination.
5. Respondent was informed in said Notice that if within 20 days from the date of said letter he disputed any of the facts forming the basis of the determination that he may have violated the terms of his probation, Respondent would be afforded a hearing before a committee on professional conduct which would hear and make findings of fact, conclusions of law and a determination. A stenographic record of any such hearing would be made. The committee, after providing him with an opportunity to be heard, would determine whether he had violated the terms of probation and impose an appropriate penalty as defined in New York Public Health Law section 230-a.
6. Therefore, Respondent was expressly informed in said Notice of the time limitations within which to respond to the OPMC’s contention that he may have violated the terms of probation

imposed against him and the procedures and consequences which would follow depending upon whether he responded in a timely manner to the Director's Notice.

7. Respondent was informed in said Notice that he had a right to be represented by counsel in connection with this proceeding.
8. The Director's Notice was served upon Respondent by certified mail, return receipt requested and first class mail on November 7, 2000. Said Notice was received and signed for at Respondent's household by an individual bearing the last name of "Jakubowski". Said address is an address provided by Respondent to the OPMC's physician monitoring unit as an address for mailing. The first class mailing was not returned to the sender and is thus presumed to have been received.
9. An additional copy of the Director's Notice was served upon Respondent by certified mail return receipt requested and first class mail on December 1, 2000. Said mailing was made to Respondent's medical office address which is also Respondent's last known address for mailing with the New York State Education Department. The certified mailing of said Notice was received and signed for at said address. The first class mailing was not returned to the sender, and is thus presumed to have been received.
10. Respondent did not respond to the Director's Notice. Therefore, Respondent did not dispute the facts forming the basis of the determination that he may have violated the terms of probation within twenty days from the date of said letter as was specified in said Notice. In accordance with Public Health Law §230(19), and as is stated in the Director's Notice, the Director submitted this matter to this Committee for its review and determination without further notice to Respondent.
11. Respondent's failed to respond to the Director's Notice. Respondent has thus failed to dispute or otherwise oppose the facts underlying the OPMC's contention that he may have violated the terms of probation. Therefore, it is hereby determined that Respondent has violated terms "1" and "9" of the terms of probation imposed against him in BPMC Order No: 99-190. Specifically, it is hereby determined that:

- a. Respondent failed to register to practice medicine in the State of New York with the New York State Department of Education.
- b. Respondent continued to practice medicine in the State of New York despite his having failed to register with the New York State Department of Education.
- c. Respondent failed to provide patient records and information to former patients and their subsequent treating physicians despite having received valid requests for such records and information.
- d. Respondent failed to provide patient records and information to former patients and their subsequent treating physicians despite having been specifically directed to do so by the Office of Professional Medical Conduct.

12. In addition to the foregoing, the following findings of fact are made:

- a. The OPMC twice corresponded with Respondent regarding his failure to produce medical records to former patients. Said correspondence directed Respondent to provide said patient records to the new physician of said former patients. Said correspondence also informed Respondent of the penalties which could be imposed against Respondent for failure to comply with the relevant public health law statutes requiring the delivery of patient records and that noncompliance could be considered professional misconduct under the New York Education Law. Respondent did not comply with the direction of the OPMC to deliver said patient records to said former patients' new physician. Respondent did not otherwise respond to said correspondence of the OPMC.
- b. Thereafter, the OPMC contacted Respondent, speaking with him directly on no less than two occasions regarding his failure to provide said patients' records. Despite Respondent's reassurances that the patients' records would be delivered to his former patients' new physician, as of the hearing of this matter, said records had not been so delivered.

- c. The new physician of Respondent's former patients twice requested Respondent to provide said patients' medical records and provided Respondent with duly executed medical records release authorizations. Respondent did not comply with the requests of said physician.
- d. Respondent's former patients who sought their medical records were long term patients of Respondent and have significant and serious medical conditions.
- e. The OPMC corresponded with Respondent by certified mail, return receipt requested, expressing the OPMC's knowledge that his license to practice medicine was unregistered. Said correspondence further informed Respondent that the practice of medicine without active license registration would subject him to serious disciplinary action by the OPMC and New York State Education Department. Said correspondence directed Respondent to send to the OPMC proof that his medical license was actively registered with the New York State Department of Education. Respondent did not provide the proof requested by the OPMC and did not otherwise respond to said correspondence.
- f. Respondent's medical license is not currently registered and has not been registered since the expiration of its most recent registration period on August 31, 1999.
- g. Respondent has provided medical services to patients despite his license being unregistered.
- h. Patients of Respondent have been billed by Respondent for medical services rendered by him when said patients expected that such treatment would be paid for, at least in part, by their insurance carriers. Unknown to said patients, said insurance carriers are not permitted to reimburse for medical services rendered by Respondent given that Respondent's medical license is not registered. Respondent was made expressly aware of these limitations by a representative of Blue Cross/Blue Shield, but continued to treat patients without rectifying this situation.

- i. Respondent was the subject of a prior disciplinary adjudication, BPMC Decision and Order No. 99-190, (Order 99-190), to which reference is expressly made. Order 99-190 contains the terms of probation at issue in this proceeding and which have been violated by Respondent. In Order 99-190, a hearing committee determined, among other things, that Respondent failed to provide a patient with copies of said patient's medical records despite repeated requests by said patient and his new treating physician. The patient was forced to engage legal counsel to obtain said records. A civil action was commenced in New York State Supreme Court seeking to compel Respondent to provide said records. An order of the Supreme Court was issued compelling Respondent to provide said records. Respondent defied the Supreme Court order. Thereafter, a subsequent order holding Respondent in contempt of the Supreme Court, for having defied the earlier order compelling him to produce the medical records, was issued by the court, which again directed Respondent to turn over the medical records. Respondent ultimately turned over the medical records when faced with the possibility of being incarcerated for contempt of court. As noted by the hearing committee, "(t)he Respondent broke the law and continuously resisted all attempts by civil authority to enforce the law until it became clear that he would lose his freedom."
- j. Respondent was the subject of a prior disciplinary adjudication in the form of BPMC Consent Agreement and Order No. 97-89, (Order 97-89), to which reference is expressly made. In Order 97-90 Respondent pleaded "no contest" to charges arising from Respondent's failure to provide medical records. Said charges included Respondent's failure to provide said records in response to two written requests from the OPMC, the failure to provide said records in response to a subpoena duces tecum, the failure to provide said records in response to an order of the New York State Supreme Court directing Respondent to produce said records. Said records were ultimately produced at a time when an application for a contempt order was pending.

against Respondent, said application being based upon Respondent's failure to produce the records as required by the Supreme Court's earlier order. Order 97-90 expressly provides that should Respondent be "... charged with professional misconduct in the future, this agreement and order (Order 97-90) shall be admitted into evidence in that proceeding."

## DISCUSSION

In the context of this proceeding, Respondent has exhibited a pattern of refusing to forward medical records to his former patients and to the patients' treating physician despite repeated requests for such records from the patients themselves and the treating physician. Respondent's behavior forced his former patients to seek the intervention of the OPMC, which twice wrote to Respondent directing him to deliver the records to the patients' new physician. Respondent did not comply with the direction of the OPMC and otherwise did not respond to the written correspondence of the OPMC. Additionally, the OPMC spoke with Respondent personally who assured the OPMC that such records would be delivered to the patients' new physician. Notwithstanding such assurances, Respondent has failed to produce the patients' records.

Respondent's behavior is egregious. A patient's right to obtain a copy of his or her medical records is one well known to all physicians. Certainly Respondent is aware of a patient's right to his or her medical records, if for no other reason than the fact that he has twice been the subject of professional discipline for having refused to provide patient records. Indeed, he is presently on probation due in part to his failure to provide medical records to a former patient and the patient's new treating physician!

Additionally, the failure to provide a copy of a patient's records when such a request is made by the new treating physician is positively alarming as such a failure could have life threatening implications for the patient. In the matter presently before this Committee, we note that the patients who have sought and continue to seek their medical records were long term patients of Respondent

who both have significant medical problems.

This Committee again notes that Respondent's former patients were left with no alternative but to seek the intervention of the OPMC in an effort to obtain a copy of their medical records. When a patient is forced to seek assistance from a body with disciplinary authority over Respondent to obtain a copy of the patient's medical records, the right to which is established in law and known to Respondent, the situation is intolerable. Respondent failed to comply with or even acknowledge the OPMC's written directives to provide the patient records to the new treating physician. He later twice represented to the OPMC that such records would be delivered to the new treating physician. Respondent did not comply with his own representations to the OPMC.

Respondent has also failed to satisfy his legal obligation to re-register his medical license with the New York State Department of Education, which has not been registered since August 31, 1999! The obligation to re-register one's medical license is well known to New York state physicians and is undoubtedly known to Respondent as he has re-registered his license to practice medicine in the past. Medical doctors are legally prohibited from practicing medicine during periods when their licenses are unregistered. Respondent has nevertheless continued to practice medicine despite his license being unregistered.

This situation is aggravated by the fact that Respondent was notified by the OPMC that his license was believed to be unregistered. The OPMC requested that Respondent provide proof of the current registration of his medical license, and was notified further that any failure to provide such proof would result in the commencement of disciplinary action. Respondent did not provide the proof

requested by the OPMC and did not otherwise respond to the OPMC request. Additionally, Respondent was informed numerous times by a representative of Blue Cross/Blue Shield that his license was unregistered. Blue Cross/Blue Shield became involved because it is not permitted to pay claims submitted to it for services rendered by physicians whose licenses are unregistered. Despite such notification from Blue Cross/Blue Shield, Respondent has failed to correct the situation, and has thus left his patients, who were unaware of this problem, to handle the financial fallout with Blue Cross/Blue Shield. Respondent's lack of concern for his patients again makes itself apparent.

Respondent has exhibited a continuing pattern of behavior which will not be tolerated by the Board For Professional Medical Conduct. He has repeatedly ignored the requests of his patients and their current physician for their medical records, and has thus repeatedly failed to do that which the law and the ethics of his profession require of him. Respondent has repeatedly ignored the express directions of the OPMC to deliver the patients' medical records and also ignored the OPMC direction to provide proof of the re-registration of his medical license. Respondent has practiced medicine despite the fact that his license is unregistered.

Respondent's behavior is contemptible and is deserving of the most severe sanction. In the context of this proceeding, Respondent's violation of probation as set forth in Findings of Fact numbers "1" through "11" justifies the revocation of Respondent's license to practice medicine. This determination is made independent of, and without reference to, Respondent's earlier disciplinary sanctions. The fact that Respondent has twice been the subject of prior disciplinary action by this Board, and has committed the acts and behaved in the manner otherwise set forth in this Decision and

Order, and has done so while on probation, are aggravating factors considered by this Committee which further reinforces this Committee's determination that revocation of Respondent's medical license is the appropriate disciplinary sanction to be imposed in this case.

### **CONCLUSIONS OF LAW**

In accordance with Public Health Law section 230(19), this Committee determines that Respondent has violated terms "1" and "9" of the terms of probation imposed against him in BPMC Order No. 99-190.

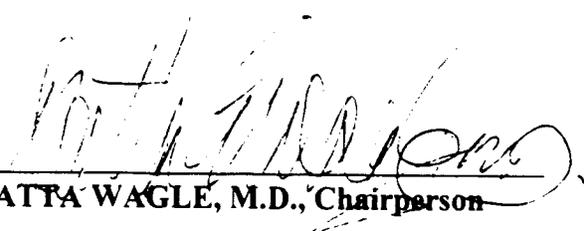
### **DETERMINATION AS TO PENALTY**

The Committee, pursuant to the Findings of Fact, Conclusions of Law, and Discussion set forth above, unanimously determines and hereby **ORDERS** that:

1. Respondent's license to practice medicine is revoked.
2. This **ORDER** shall become effective upon its service upon the Respondent, or the Respondent's attorney, if any, by personal service or by certified or registered mail.

DATED: 1/22/, 2001

, New York



**DATTA WAGLE, M.D., Chairperson**

**Sharon Kuritzky, M.D.  
Ms. Mary Meagher**

**DATED:** 1/22/2001, New York  
**January, 22, 2001**

**TO:** Mark T. Fantauzzi, Esq.  
NYS Department of Health  
Division of Legal Affairs - Bureau of Professional Medical Conduct  
Corning Tower Building, Room 2509  
Empire State Plaza  
Albany, New York 12237-0032

Robert A. Jakubowski, M.D.  
3796 Abbott Road  
Orchard Park, New York 14127

Robert A. Jakubowski, M.D.  
47 Willowbrook Drive  
Orchard Park, New York 14127

**EXHIBIT "A"**



# STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower

The Governor Nelson A. Rockefeller Empire State Plaza

Albany, New York 12237

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

Dennis P. Whalen  
*Executive Deputy Commissioner*

November 7, 2000

**By Certified Mail Return Receipt Requested  
and First Class Mail**

Robert Jakubowski, M.D.  
47 Willowbrook Drive  
Orchard Park, New York 14127

Robert Jakubowski, M.D.  
3925 N. Buffalo Street  
Orchard Park, New York 14127

RE: Matter of Robert Jakubowski, M.D.  
Violation of Terms of Probation

Dear Dr. Jakubowski:

I have received information that you may be in violation of the terms of probation imposed upon you by the Board For Professional Medical Conduct in Order No. 99-190.

In accordance with New York Public Health Law section 230(19), I have conducted an investigation and have determined that you may have violated the terms of your probation. The facts forming the basis of this determination are as follows:

1. You have failed to register to practice medicine in the state of New York with the New York State Department of Education.

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2. You have continued to practice medicine in the state of New York despite your having failed to register with the New York State Department of Education.

3. You have failed to provide patient records and information to former patients and their subsequent treating physicians despite having received valid requests for such records and information.

4. You have failed to provide patient records and information to former patients and their subsequent treating physicians despite having been specifically directed to do so by the Office of Professional Medical Conduct.

These allegations, if proven, violate terms "1" and "9" of the terms of your probation.

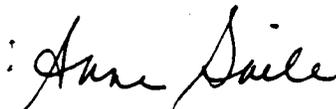
In accordance with New York Public Health Law section 230(19), you have **twenty (20) days from the date of this letter** within which to dispute the facts which form the basis of the determination that you may have violated the terms of probation. If you do not dispute the facts within 20 days from the date of this letter, this matter will be submitted to a committee on professional conduct for its review and determination.

If, however, within **twenty (20) days from the date of this letter** you dispute any of the facts forming the basis of the determination that you may have violated the terms of probation, you will be afforded a hearing before a committee on professional conduct which will hear and make findings of fact, conclusions of law and a determination. A stenographic record of the hearing shall be made. The committee, after providing you with an opportunity to be heard, shall determine whether you have violated the terms of probation and shall impose an appropriate penalty as defined in New York Public Health Law section 230-a.

You have a right to be represented by counsel in connection with this matter.

Please direct all correspondence concerning the matters set forth in this letter to Mark T. Fantauzzi, Assistant Counsel, New York State Department of Health, Division of Legal Affairs, Bureau of Professional Medical Conduct, Corning Tower, Room 2509, Empire State Plaza, Albany, New York, 12237. Mr. Fantauzzi's telephone number is 518-473-4282.

Very truly yours,



Anne F. Saile, Director  
Office Of Professional Medical Conduct