



STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza

Albany, New York 12237

Mark R. Chassin, M.D., M.P.P., M.P.H.
Commissioner

Paula Wilson
Executive Deputy Commissioner

May 9, 1994

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Donald Pirodsky, M.D.
7000 East Genesee Street
Gayetteville, New York 13066

Barry A. Gold, Esq.
Thuillez, Ford, Gold & Conolly
90 State Street
Suite 1500
Albany, New York 12207-1715

Kevin Donovan
NYS Department of Health
Empire State Plaza
Corning Tower - Room 2429
Albany, New York 12237

RE: In the Matter of Donald Pirodsky, M.D.

Dear Dr. Pirodsky, Mr. Gold, and Mr. Donovan:

Enclosed please find the Determination and Order (No. 92-59-B) of the Professional Medical Conduct Administrative Review Board in the above referenced matter. This Determination and Order shall be deemed effective upon receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified mail or in person** to:

Office of Professional Medical Conduct
New York State Department of Health
Empire State Plaza
Corning Tower, Room 438
Albany, New York 12237

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

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

Sincerely,

A handwritten signature in black ink that reads "Tyrone T. Butler". The signature is written in a cursive style with a large initial 'T' and 'B'.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:lar

Enclosure

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

IN THE MATTER
OF
DONALD PIRODSKY, M.D.

ADMINISTRATIVE
REVIEW BOARD
DETERMINATION
AND ORDER
ARB NO. 92-59-B

The Administrative Review Board for Professional Medical Conduct (hereinafter the "Review Board"), consisting of **ROBERT M. BRIBER, MARYCLAIRE B. SHERWIN, WINSTON S. PRICE, M.D., EDWARD C. SINNOTT, M.D.** and **WILLIAM A. STEWART M.D.** held deliberations on February 8, 1994¹ and March 4, 1994² to review the Professional Medical Conduct Hearing Committee's (hereinafter the "Hearing Committee") December 20, 1993 Supplemental Determination revoking Dr. Donald Pirodsky's license to practice medicine in New York State. Dr. Pirodsky (Respondent) requested that review through a Notice of Appeal received by the Board on December 24, 1993. The Review Board remanded the case to the Hearing Committee for further limited proceedings and reconsideration on September 16, 1992. **James F. Horan, Esq.**, served as Administrative Officer to the Review Board. Barry Gold, Esq. submitted a brief on behalf of Dr. Pirodsky on January 24, 1994. Kevin Donovan, Esq. submitted a brief on behalf of the Office of Professional Medical Conduct (Petitioner) on January 12, 1994 and a reply to the Respondent's brief on February 1, 1994.

¹ Dr. Price was unable to attend the February 8, 1994 deliberations due to inclement weather.

² Drs. Stewart, Price and Sinnott participated in the March 4, 1994 meeting by conference call.

SCOPE OF REVIEW

New York Public Health Law (PHL) §230(10)(i), §230-c(1) and §230-c(4)(b) provide that the Review Board shall review:

- whether or not a hearing committee determination and penalty are consistent with the hearing committee's findings of fact and conclusions of law; and
- whether or not the penalty is appropriate and within the scope of penalties permitted by PHL §230-a.

Public Health Law §230-c(4)(b) permits the Review Board to remand a case to the Hearing Committee for further consideration.

Public Health Law §230-c(4)(c) provides that the Review Board's Determinations shall be based upon majority concurrence of the Review Board.

HEARING COMMITTEE DETERMINATION

In its original Determination in this case, the Hearing Committee determined that the Respondent had been convicted on August 2, 1990 of second degree assault, a Class D. Felony, upon pleading guilty to stabbing his wife Susan Pirodsky in the back on November 14, 1989. Based upon the conviction, Respondent was sentenced to five years probation and ordered to perform 500 hours of community service.

The Hearing Committee voted unanimously to revoke the Respondent's license, because they felt the Respondent's act of violence meant that he could not be entrusted with the care of another human being.

The Respondent asked for an administrative review of that Determination. The Respondent argued that the revocation was an excessive penalty given the Respondent's uninterrupted record of high quality patient care. The Respondent challenges the penalty further because the Hearing Committee was not allowed to review certain essential relevant evidence relating to the stabbing.

REMAND ORDER

The Review Board found unanimously that the Hearing Committee Penalty was not consistent with nor supported by its Findings of Fact and Conclusions of Law and these members of the Board voted to remand the case to the Hearing Committee for further limited proceedings and reconsideration. The Board also submitted three questions for the Hearing Committee to address:

- 1) "The Court also included community service as a part of its sentence. The Review Board wild like to know whether any of the Respondent's community service has included providing health care."
- 2) "If the Hearing Committee feels that Dr. Pirodsky is unable to control his behavior in times of stress, did it consider whether there was a problem which would respond to psychiatric treatment or counseling?"
3. "Did the Committee consider placing the Respondent on probation and requiring a psychiatric evaluation to determine whether Respondent has an ongoing problem with behavioral control in time of stress?"

SUPPLEMENTAL HEARING COMMITTEE DETERMINATION

In their Supplemental Determination, the Hearing Committee made additional Findings of Fact and answered the Review Board questions. The Committee voted again to revoke Dr. Pirodsky's license to practice medicine in New York State. The Hearing Committee found that the Respondent was not credible in his explanation of his wife's stabbing, the Committee found that the Respondent had committed a vicious crime and the Committee found that psychiatric testimony at the supplemental hearing raised questions about Dr. Pirodsky's inability to adequately control his emotions and behavior. The Committee concluded that the Respondent could not be trusted with the responsibility to diagnose the vulnerable patient population who Dr. Pirodsky serves.

REVIEW BOARD DETERMINATION

The Review Board sustains the Hearing Committee Determination finding Dr. Pirodsky guilty of misconduct as a result of his conviction for assault in the second degree.

By a vote of three to two, the Review Board overturns the Hearing Committee's Determination to revoke Dr. Pirodsky's license to practice medicine in New York State because that severe penalty is not appropriate in this case. The three member majority votes to suspend Dr. Pirodsky's license for two years, and votes further to stay that suspension and place Dr. Pirodsky on probation for two years in lieu of the suspension. During that two year probation, Dr. Pirodsky shall perform 500 hours of community service. This community service shall be in addition to any community service which the Respondent has performed or must still perform to satisfy the sentence from his criminal case. The remaining two members of the Board would sustain the Hearing Committee's penalty.

There were several factors which convinced the Board that the Hearing Committee's penalty was inappropriate in this case. We do not believe that Dr. Pirodsky's crime indicates that he poses an ongoing danger to the public. The judge in Dr. Pirodsky's criminal case did not impose a jail sentence. Dr. Pirodsky has never been charged with causing any harm to his patients. A psychiatric evaluation during the supplemental hearing determined that Dr. Pirodsky does not appear to have a diagnosable mental disorder and does not represent a danger to himself and others. Judge Burke, in Dr. Pirodsky's criminal case, felt that Mrs. Pirodsky shared the blame with her husband, for the tense domestic situation that resulted in Dr. Pirodsky stabbing his wife. Based on all these factors, the Review Board does not believe that there is a danger that Dr. Pirodsky will repeat his violent behavior in the future.

The Board feels further that revocation would not be appropriate in this case because Dr. Pirodsky's crime did not arise from his practice of medicine and there are no allegations that Dr. Pirodsky provided substandard care to his patients at any time.

The Board believes that Dr. Pirodsky did commit a serious crime, and at the least, as a psychiatrist he showed bad judgement by remaining in the domestic situation that culminated in the stabbing. The Board feels that a penalty is warranted in this case. We feel that a stayed suspension, with probation that includes additional community service is the appropriate sentence in this case.

ORDER

NOW, based upon this Determination, the Review Board issues the following
ORDER:

1. The December 20, 1993 Determination by the Hearing Committee on Professional Medical Conduct, finding Dr. Donald Pirodsky guilty of professional misconduct is sustained.
2. The Determination by the Hearing Committee on Professional Medical Conduct to revoke Dr. Pirodsky's license to practice medicine in New York State is overturned.
3. The Respondent's license to practice medicine in New York State is suspended for two years.
4. The suspension is stayed, and in lieu of the suspension, the Respondent shall be on probation for two years.
5. As a condition of probation, the Respondent shall perform five hundred hours of community service within the two year period of probation.

ROBERT M. BRIBER

MARYCLAIRE B. SHERWIN

WINSTON S. PRICE, M.D.

EDWARD C. SINNOTT, M.D.

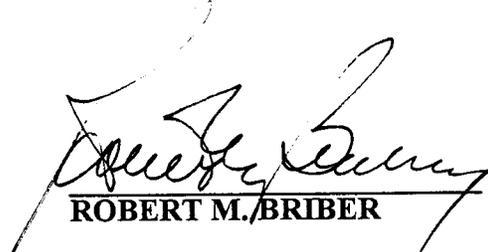
WILLIAM A. STEWART

IN THE MATTER OF DONALD PIRODSKY, M.D.

ROBERT M. BRIBER, a member of the Administrative Review Board for Professional Medical Conduct, affirms that the attached Determination and Order reflects the votes of the majority of the members of the Board in the matter of Dr. Pirodsky

DATED: Albany, New York

4/22, 1994



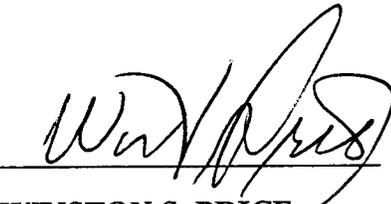
ROBERT M. BRIBER

IN THE MATTER OF DONALD PIRODSKY, M.D.

WINSTON S. PRICE, a member of the Administrative Review Board for Professional Medical Conduct, affirms that the Determination and Order reflects the votes of the majority of the members of the Board in the case of Dr. Pirodsky.

DATED: Brooklyn, New York

_____, 1994



WINSTON S. PRICE

IN THE MATTER OF DONALD PIRODSKY, M.D.

MARYCLAIRE B. SHERWIN, a member of the Administrative Review Board
for Professional Medical Conduct, concurs in the Determination and Order in the Matter of
Dr. Pirodsky.

DATED: Malone, New York
4/29, 1994

Maryclaire B. Sherwin
MARYCLAIRE B. SHERWIN

IN THE MATTER OF DONALD PIRODSKY, M.D.

WILLIAM A. STEWART, a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Pirodsky.

DATED: Syracuse, New York
21 April, 1994

William A Stewart
WILLIAM A. STEWART

IN THE MATTER OF DONALD PIRODSKY, M.D.

EDWARD C. SINNOTT, a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Dr. Pirodsky.

DATED: Roslyn, New York
April 21, 1994



EDWARD C. SINNOTT, M.D.



STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12237

Mark R. Chassin, M.D., M.P.P., M.P.H.
Commissioner

Paula Wilson
Executive Deputy Commissioner

December 20, 1993

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Donald Pirodsky, M.D.
7000 East Genesee Street
Gayetteville, New York 13066

Barry A. Gold, Esq.
Thuillez, Ford, Gold
& Conolly
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Suite 1500
Albany, NY 12207-1715

Kevin P. Donovan, Esq.
Assistant Counsel
NYS Department of Health
Room 2429, Corning Tower
Empire State Plaza
Albany, New York 12237

RE: In the Matter of Donald Pirodsky, M.D.

Dear Dr. Pirodsky, Mr. Gold and Mr. Donovan:

Enclosed please find the Determination and Order (No. BPMC-92-59-S) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified mail or in person** to:

New York State Department of Health
Office of Professional Medical Conduct
Corning Tower - Fourth Floor (Room 438)
Empire State Plaza
Albany, New York 12237

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

As prescribed by the New York State Public Health Law, §230, subdivision 10, paragraph (p), and §230-c subdivisions 1 through 5, (McKinney Supp. 1992), "(t)he 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.

Request for review of the Committee's determination by the Administrative Review Board stays all action until final determination by that Board. Summary orders are not stayed by Administrative Review Board reviews.

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
Corning Tower -Room 2503
Empire State Plaza
Albany, New York 12237-0030

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.

Very truly yours,

Tyrone T. Butler / m n

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:crc
Enclosure

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

-----X
IN THE MATTER : SUPPLEMENTAL
: :
OF : DETERMINATION
: :
DONALD PIRODSKY, M.D. : AND
: :
: ORDER
-----X
NO. BPMC-92-59-S

The Administrative Review Board's Remand and Order (No. BPMC-92-59-A) directed the Hearing Committee to conduct additional hearings to "explore mitigating factors which the Respondent wishes to argue or the Department wishes to dispute, including the details of the stabbing and Dr. Pirodsky's attempts to obtain emergency aid for his wife." (ARB Remand and Order, p. 6).

A Notice of Hearing and Statement of Charges, both dated March 30, 1992, were served upon the Respondent, DONALD PIRODSKY, M.D. CHARLOTTE S. BUCHANAN, ESQ. (Chair), GEORGE T.C. WAY, M.D., and J. LaRUE WILEY, M.D., duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to Section 230(10)(e) of the Public Health Law. LARRY G. STORCH, ADMINISTRATIVE LAW JUDGE, served as the Administrative Officer. A hearing was held on May 27, 1992 and on subsequent dates. The Department of Health appeared by Kevin P. Donovan, Esq., Assistant Counsel. The Respondent appeared by Thuillez, Ford, Gold & Conolly, Barry A. Gold, Esq., of Counsel. Evidence was received and witnesses sworn and heard and transcripts of these proceedings were made.

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

STATEMENT OF CASE

This case was brought pursuant to Public Health Law Section 230(10)(p). The statute provides for an expedited hearing where a licensee is charged solely with a violation of Education Law Section 6530(9). In such cases, a licensee is charged with misconduct based upon a prior criminal conviction in New York or another jurisdiction, or upon a prior administrative adjudication regarding conduct which would amount to professional misconduct, if committed in New York. The scope of an expedited hearing is limited to a determination of the nature and severity of the penalty to be imposed upon the licensee.

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

A hearing on these charges was initially held on May 27, 1992. The Hearing Committee sustained the specification of professional misconduct and issued a Determination and Order (#BPMC-92-59) which revoked Respondent's license to practice medicine in New York State. Respondent then filed an appeal with the Administrative Review Board (ARB). The ARB remanded the case to the Hearing

Committee for further proceedings. The ARB directed the Hearing Committee to explore mitigating factors which Respondent wished to argue or the Department wished to dispute. A copy of the ARB decision is attached to this Supplemental Determination and Order in Appendix II. Additional hearings were held on February 24, 1993, June 10, 1993 and June 21, 1993. The Committee deliberated on July 14, 1993.

Due to the unavailability of two of the original Hearing Committee members (Bernard Pollara, M.D. and Lyon M. Greenberg, M.D.), Dr. Way and Dr. Wiley were appointed to serve on this Hearing Committee. By adoption of this Supplemental Determination and Order, all members of the Hearing Committee certify that they have reviewed the complete record in this matter.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. 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 the cited evidence.

1. Donald Pirodsky, M.D. (hereinafter "Respondent"), was authorized to practice medicine in New York State on December 6, 1973 by the issuance of license number 118590 by the New York State Education Department. (Pet. Ex. #2).

2. On or about August 7, 1990, Respondent was convicted, upon a plea of guilty, of assault in the second degree, in violation of Penal Law Section 120.05(2). Assault in the second degree is a class D felony. By so pleading, Respondent admitted that on or about November 14, 1989, he intentionally caused serious physical injury to Susan Pirodsky by means of a dangerous instrument, by stabbing her in the back with a knife, causing her lung to collapse and fluid to fill the lung and chest cavity area. (Pet. Ex. #3, 5 and 6).

3. On September 27, 1990, Respondent was sentenced to a five-year term of probation and ordered to perform 520 hours of community service. (Pet. Ex. #6).

4. On the night of November 14, 1989, Respondent and his wife, Susan Pirodsky, had an argument in the presence of their seven year old son Jason. (21, 24-25, 207).

5. Following the argument, Mrs. Pirodsky went to the kitchen. She rinsed several dishes and placed them in the dishwasher. (25).

6. Respondent entered the kitchen. He stabbed his wife in the right side of her back below the shoulder blade, with a diver's knife. (25, 209-210; Pet. Ex. #9, pp. 3 and 44).

7. The knife entered her back and punctured her lung. (31; Pet. Ex. #9, p. 45).

8. The police report establishes that Jason ran to the kitchen and "saw his father on top of the mother and that the father stabbed his mother and the knife was sticking in her back, and that

his mother ran downstairs [sic]." (Pet. Ex. #9, p. 3-8).

9. Mrs. Pirodsky went to the front door, unlocked it and began to open the door. Respondent came behind her, slammed the door shut and locked it. He pulled the knife out of Mrs. Pirodsky's back and shoved her. He raised the knife, so that she feared another attack. She raised her left hand to ward off the blow and suffered a laceration of the web area between the thumb and first finger. (26-28; Pet. Ex. #9, pp. 11, 45).

10. Respondent then left her lying on the floor. Respondent did not offer any medical assistance to his wife. He set off an alarm and called for an ambulance. He went to the attic entrance on the second floor and hid the knife in the attic. He also called his answering service to arrange for coverage of his practice. (28, 210-211; Pet. Ex. #9, pp. 30-31).

11. When assistance arrived on the scene, the front door of the house was locked. (Pet. Ex. #9, p.11).

12. A neighbor of the Pirodsky's, who was the first person on the scene, stated that Mrs. Pirodsky was lying on the floor and that the front door was locked. (pet. Ex. #9, p. 11). The police reports also document the fact that there were blood stains approximately 3.2 feet above the floor in the corner away from the door. (Pet. Ex. #9, p. 36; Pet. Ex. #14).

13. The police reports establish the fact that Respondent did speak to the police, although Respondent continued to deny that he spoke to the police on the evening of the stabbing. (Pet. Ex. #9,

p. 13, 226).

14. Mrs. Pirodsky was hospitalized due to the stabbing, and required six weeks convalescence following her discharge. (31-32).

15. Respondent testified that he stabbed his wife in self-defense after she approached him with a raised steak knife. He stated that he swung the knife around with his eyes closed and struck his wife. Respondent further testified that he threw her knife under the sink following the attack. (208-210).

16. Respondent testified that on advice of counsel, he did not speak to the police officers who came to his house in response to the alarm. However, a sworn statement made by the Manlius Police Department officer on the scene documents that Respondent had not yet spoken to his attorney. Further, Respondent did speak to the officer and admitted stabbing his wife. Respondent told the officer "We were arguing I got a little carried away and I stabbed her." Respondent did not tell the police officer that Mrs. Pirodsky had attacked him with a steak knife. (214-215, 224-226; Pet. Ex. #9, p. 13).

17. When the investigating officer asked Respondent where his knife was, he answered "I don't know." (Pet. Ex. #9, p. 13).

18. The police searched the house on two occasions (November 15 and 16, 1989). The kitchen was searched on both occasions. No knife was found under the sink. (Pet. Ex. #9, pp. 19, 27).

19. The diver's knife used by Respondent to stab his wife was found in the attic on November 16, 1989. It was located in the

attic, approximately three feet from the entrance and partially covered with insulation. (Pet. Ex. #9, p. 22).

20. Sheridan Radin, M.D., a board-certified psychiatrist, testified on behalf of Respondent. Dr. Radin testified that Respondent became a patient of his in April, 1983. He further testified that he saw Respondent and Mrs. Pirodsky intermittently over the next four to six years, in an attempt to deal with their marital discord. (76-78).

21. Following the stabbing in November, 1989, Dr. Radin began seeing Respondent on a weekly basis. This continued until February, 1992. Since that time, Dr. Radin sees Respondent on a bi-monthly basis. (78).

22. Dr. Radin testified that Respondent described the attack on his wife in a manner similar to Respondent's testimony at this hearing, i.e., Respondent inadvertently stabbed his wife after an argument and after she raised a knife against him. (85-86).

23. Dr. Radin expressed the opinion that there are no psychiatric reasons to prevent Respondent from practicing medicine. (93-94).

24. Dr. Radin testified that Respondent continues to require psychiatric therapy, in order to determine whether Respondent's behavior is due to psychological stress in his environment or an intra-psychic phenomenon. He further testified that Respondent may exhibit some basic personality problems. (138-139).

25. Dr. Radin testified that the "scenario [as described by

Respondent's wife and the police reports] is a good deal different from the one I've heard" and that he "had not considered that the assault was unprovoked." He further testified that his opinion regarding Respondent's fitness to continue to practice medicine might change if the events on November 14, 1989 did not occur as described by Respondent; that is, that it was a case of inadvertent stabbing after a provocation. (104-105, 107, 109, 139-140).

26. At the request of the Hearing Committee, Respondent was examined by another psychiatrist. Dr. Melvin J. Steinhart is board-certified in psychiatry and is a professor of clinical psychiatry at the Albany Medical College. Dr. Steinhart reviewed the exhibits and transcripts of these proceedings. (Hearing Committee Ex. #1 and #2, p. 4).

27. Dr. Steinhart conducted a 70 minute evaluation of Respondent on June 16, 1993. At the request of Dr. Steinhart Reuben J. Silver, Ph. D., a licensed psychologist, subjected Respondent to a battery of psychological tests. Although Dr. Silver concluded that the Respondent "does not appear to have a diagnosable mental disorder," and that he does not represent a danger to himself or to others, Dr. Silver also concluded that Respondent "is a person who has much more anger and resentment than he acknowledges." (326-327, 334, 337-339; Hearing Committee Exhibits #2 and 3).

28. Based upon his review of the record and Dr. Silver's report, as well as his evaluation of Respondent, Dr. Steinhart

concluded that "I find no evidence of psychopathology which would in any way present a danger to the public. There is no indication that he has an ongoing problem with any type of impulse disorder." (Committee Exhibit #2, p. 4).

29. Respondent performed his required term of community service at Seguin Community Services, a branch of the Syracuse Developmentally Disabled Service Organization. Respondent performed psychiatric consultations and evaluations. His supervisor praised his work as a professional. (144, 147, 149).

CONCLUSIONS OF LAW

The following conclusions were made pursuant to the Findings of Fact listed above. All conclusions resulted from a unanimous vote of the Hearing Committee.

The Hearing Committee concluded that the Department has met its burden of proof. The preponderance of the evidence demonstrates that on or about August 7, 1990, Respondent was convicted of assault in the second degree, a class D felony.

The Hearing Committee unanimously concluded that Respondent committed professional misconduct within the meaning of Education Law Section 6530(9)(a)(i), by virtue of this criminal conviction. As a result, the Hearing Committee sustained the specification of misconduct alleged in the Statement of Charges.

The Hearing Committee heard testimony concerning the events on November 14, 1989 from both Respondent and Mrs. Pirodsky. They had

the opportunity to view the demeanor and assess the credibility of both witnesses. The Hearing Committee unanimously concluded that Respondent's testimony was not credible. His testimony regarding the events of the night of the stabbing directly conflict with the police reports and the testimony of Respondent's wife.

Respondent's claim of self-defense is not credible, based upon the criminal conviction which forms the predicate for this disciplinary proceeding. At the August 7, 1990 plea hearing, Respondent's counsel stated, on the record, in Respondent's presence, that he had advised Respondent that by pleading guilty to second degree assault, Respondent specifically waived his right to assert self-defense. (Pet. Ex. #5, pp. 3-6, 11).

DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determined that Respondent's license to practice medicine in New York State should be revoked. This determination was reached upon due consideration of the full spectrum of penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties.

Respondent stands convicted of a vicious crime. The Hearing Committee carefully considered the evidence offered by Respondent in mitigation of his actions, including his work at the Syracuse Developmental Center. The Committee found this to be not

sufficient to remove doubts about Respondent's fitness to practice psychiatry.

The Administrative Review Board raised several questions regarding the issue of whether or not Respondent's conduct reflected some underlying psychiatric condition for which treatment would be indicated. Respondent currently is undergoing psychiatric treatment and has periodically for many years with psychiatrist, Sheridan Radin, M.D. Additionally, the Hearing Committee ordered Respondent to submit himself to a psychiatric evaluation. Respondent presented testimony by Sheridan Radin, M.D., his treating psychiatrist.

Dr. Radin testified that he began treating Respondent sometime in April, 1983. He began seeing Respondent on a regular basis shortly after the stabbing incident. Although Dr. Radin testified that there were no psychiatric reasons which would prevent Respondent from practicing medicine, his testimony demonstrated that his understanding of the facts in the case was not true. He also expressed the opinion that he might change his mind regarding Respondent's fitness to practice medicine if the facts were other than that the Respondent inadvertently stabbed his wife after she provoked him. The facts are clear that Respondent was not provoked immediately prior to his attack on his wife. It was not an act of self-defense. Further Respondent attacked his wife a second time at the front door as she tried to escape. Respondent's long term psychiatrist believes that Respondent continues to require

psychiatric therapy.

Although Dr. Steinhart concluded that there was no evidence that Respondent was not fit to practice psychiatry, his conclusion was based on one 70 minute examination and a battery of tests. Dr. Silver, who administered the tests, also concluded that Respondent did not present any present danger, and yet he also concluded that Respondent has significant repressed anger and resentment.

The Hearing Committee was troubled by Respondent's continued denial of the facts as reported by independent observers, as written in the police reports. Either he intentionally lied or he was mentally unable to accept reality. Either is unacceptable for a practicing psychiatrist.

Although the Hearing Committee did not conclude that Respondent currently suffers from any psychiatric problem that impairs his ability to practice medicine, sufficient questions have been raised by Respondent's treating psychiatrist and Dr. Silver, that the Committee is concerned about Respondent's ability, or lack of ability, to adequately control his emotions and behavior. He works with a particularly vulnerable population. Although Respondent's outrage that resulted in an uncontrolled, vicious attack was not in the context of his medical practice, it is not certain what may trigger an outrage.

The Committee considered that the very specialty that Respondent practices required training in human behavior and understanding of emotions. Not only was he unable to recognize his

own uncontrollable emotion, but when it surfaced, he committed a vicious attack instead of walking out of the house. He committed this act while his seven year old son was in the house. It was a reckless disregard for the mental health of his own son, as well as an attack on his wife.

The conviction for a vicious attack on any human being coupled with a psychiatrist's evaluation that Respondent "has much more anger and resentment than he acknowledges" demonstrates a solid record to conclude that Respondent cannot be trusted with the responsibility to diagnose and treat the vulnerable patient population that he must be involved with if he is to practice psychiatry. The potentially irreparable damage Respondent has already inflicted upon his family members and the potential for further damage to others requires the revocation of Respondent's license.

In determining this sanction, the Hearing Committee considered its responsibilities to protect the health of the public. The Hearing Committee believes that part of protecting the public is to maintain the trust and confidence of the public that those who have the privilege of a license to practice medicine in the State of New York have sufficient judgment and control of themselves that they will appropriately be able to apply the judgment and the skills they have learned only to benefit their patients.

The Hearing Committee acknowledges the fact that Respondent's

crime did not occur in the context of his medical practice, and that no allegations have been raised regarding the level of Respondent's technical skills. The Committee is also aware that the sentencing court chose not to send Respondent to prison. Nevertheless, this Hearing Committee has an independent responsibility to determine the appropriate sanction, if any, to be imposed.

Under the totality of the circumstances, the Hearing Committee unanimously determined that Respondent is not fit to practice medicine. As a result, the Committee determined that revocation was the only appropriate sanction.

ORDER

Based upon the foregoing, IT IS HEREBY ORDERED THAT:

1. The Specification of professional misconduct contained within the Statement of Charges (Petitioner's Exhibit #1) is SUSTAINED, and

2. Respondent's license to practice medicine in the State of New York is REVOKED.

DATED: Albany, New York

December 16, 1993

Charlotte S. Buchanan
CHARLOTTE S. BUCHANAN, ESQ.
(Chair)

GEORGE T. C. WAY, M.D.
J. LaRUE WILEY, M.D.

TO: Donald Pirodsky, M.D.
7000 East Genesee Street
Gayetteville, New York 13066

Kevin P. Donovan, Esq.
Assistant Counsel
New York State Department of Health
Room 2429, Tower Building
Empire State Plaza
Albany, New York 12237

Barry A. Gold, Esq.
Thuillez, Ford, Gold & Conolly
90 State Street, Suite 1500
Albany, New York 12207-1715

APPENDIX I

Deft's
EXHIBIT
ID. EVD.
DATE: 5-27-92
BETSY HELM, CSR, RPR

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

-----X
IN THE MATTER : NOTICE OF
OF : REFERRAL
DONALD PIRODSKY, M.D. : PROCEEDING
: X
-----X

TO: DONALD PIRODSKY, M.D.
7000 East Genesee Street
Fayetteville, New York 13066

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law Section 230(10)(p) (McKinney Supp. 1992) and N.Y. State Admin. Proc. Act Sections 301-307 and 401 (McKinney 1984 and Supp. 1992). The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 6th day of May, 1992 at 10:00 o'clock in the forenoon of that day at the 25th Floor Conference Room, Corning Tower Building, Empire State Plaza, Albany, New York 12237.

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

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

If you intend to present sworn testimony, the number of witnesses and an estimate of the time necessary for their direct examination must be submitted to Larry Storch, Administrative Law Judge, New York State Department of Health, Corning Tower Building, 25th Floor, Empire State Plaza, Albany, New York 12237, as well as the Department of Health attorney indicated below, on or before April 27, 1992 .

You may file a written answer, brief, and affidavits with the Committee. Seven copies of all papers you wish to submit must be filed with Judge Storch at the address indicated above on or before April 27, 1992 and a copy of all papers must be served on the same date on the Department of Health attorney indicated below. Pursuant to Section 301(5) of the State

Administrative Procedure Act, the Department, upon reasonable notice, will provide at no charge a qualified interpreter of the deaf to interpret the proceedings to, and the testimony of, any deaf person.

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

The Committee will make a written report of its findings, conclusions as to guilt, and a determination. Such determination may be reviewed by the administrative review board for professional medical conduct.

SINCE THESE PROCEEDINGS MAY RESULT IN A
DETERMINATION THAT SUSPENDS OR REVOKES YOUR LICENSE
TO PRACTICE MEDICINE IN NEW YORK STATE AND/OR
IMPOSES A FINE FOR EACH OFFENSE CHARGED, YOU ARE

URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN
THIS MATTER.

DATED: Albany, New York
March 30, 1992

Peter D. Van Buren

PETER D. VAN BUREN
Bureau of Professional
Medical Conduct

Inquiries should be addressed to:

Kevin P. Donovan
Assistant Counsel
(518) 473-4282

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

-----X
IN THE MATTER : STATEMENT
OF : OF
DONALD PIRODSKY, M.D. : CHARGES
-----X

DONALD PIRODSKY, M.D., the Respondent, was authorized to practice medicine in New York State on December 6, 1973, by the issuance of license number 118590 by the New York State Education Department. The Respondent is currently registered with the New York State Education Department to practice medicine for the period January 1, 1991, through December 31, 1992, at 7000 East Genesee Street, Fayetteville, New York 13066.

SPECIFICATION

The Respondent is charged with professional misconduct within the purview of New York Education Law §6530(9)(a) (added by Ch. 606, Laws of 1991) [formerly New York Education Law §6509 (McKinney 1985)] in that he has been convicted of committing an act constituting a crime under New York State law, specifically:

Respondent did plead guilty to and was sentenced for assault in the second degree, in violation of N.Y. Penal Law §120.05(2)

(McKinney 1987), a class D felony, in that Respondent, on or about November 14, 1989, intentionally caused serious physical injury to Susan Pirodsky by means of a dangerous instrument, by stabbing Susan Pirodsky in the back with a knife causing a lung to collapse and blood and fluid to fill the lung and chest cavity area.

DATED: Albany, New York
March 30, 1992

Peter D. Van Buren

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

APPENDIX II