

**CONSENT AGREEMENT
BETWEEN
RICHARD JOSEPH DEFRANCO, M.D.
AND
THE STATE MEDICAL BOARD OF OHIO**

This Consent Agreement is entered into by and between Richard Joseph DeFranco, M.D., and the State Medical Board of Ohio [Board], a state agency charged with enforcing Chapter 4731., Ohio Revised Code.

Dr. DeFranco enters into this Consent Agreement being fully informed of his rights under Chapter 119., Ohio Revised Code, including the right to representation by counsel and the right to a formal adjudicative hearing on the issues considered herein.

BASIS FOR ACTION

This Consent Agreement is entered into on the basis of the following stipulations, admissions and understandings:

- A. The Board is empowered by Section 4731.22, Ohio Revised Code, to limit, revoke, suspend a certificate, refuse to register or reinstate an applicant, or reprimand or place on probation the holder of a certificate for violation of Section 4731.22(B)(5), Ohio Revised Code, “[m]aking a false, fraudulent, deceptive, or misleading statement in the solicitation of or advertising for patients; in relation to the practice of medicine and surgery, osteopathic medicine and surgery, podiatry, or a limited branch of medicine; or in securing or attempting to secure any certificate to practice or certificate of registration issued by the board;” and/or Section 4731.22(B)(9), Ohio Revised Code, “[a] plea of guilty to, a judicial finding of guilt of, or a judicial finding of eligibility for intervention in lieu of conviction for, a felony;” and/or Section 4731.22(B)(22), Ohio Revised Code, “[a]ny of the following actions taken by the agency responsible for regulating the practice of medicine and surgery, osteopathic medicine and surgery, podiatry, or the limited branches of medicine in another state, for any reason other than the nonpayment of fees: the limitation, revocation, or suspension of an individual’s license to practice; acceptance of an individual’s license surrender; denial of a license; refusal to renew or reinstate a license; imposition of probation; or issuance of an order of censure or other reprimand,” and/or violation of “[i]mpairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice,” as that clause is used in Section 4731.22(B)(26), Ohio Revised Code.

- B. The Board enters into this Consent Agreement in lieu of formal proceedings based upon the violation of Sections 4731.22(B)(5), (B)(9), (B)(22) and/or (B)(26), Ohio Revised Code, as set forth in Paragraphs E through H below, and expressly reserves the right to institute formal proceedings based upon any other violations of Chapter 4731. of the Revised Code, whether occurring before or after the effective date of this Consent Agreement.
- C. Dr. DeFranco holds a training certificate to practice medicine and surgery in the State of Ohio, certificate number 57.011103.
- D. Dr. DeFranco states that he does not hold a training certificate in any other state or jurisdiction. Dr. DeFranco further states that he is also licensed to practice medicine and surgery in the State of New York and the Commonwealth of Pennsylvania, however these licenses are subject to probationary terms and conditions as detailed below in Paragraph F.
- E. Dr. DeFranco admits that, on or about April 10, 1998, he was arrested and charged with forgery because he diverted for self-use Vicodin that he prescribed in the name of his wife. Dr. DeFranco further admits that on or about May 8, 2000, the Court of Common Pleas of Erie County, Pennsylvania, placed him into the Probation Without Verdict Program, with conditions, based on one count of violation of 35 Pa. C.S. Section 780-113(a)(12), which is the acquisition or obtaining of possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge. Dr. DeFranco further admits that the aforementioned Probation Without Verdict Program in Pennsylvania is substantially equivalent to intervention in lieu of conviction under Ohio law. Dr. DeFranco admits that as a result of the arrest, he entered treatment at the William Farley Center, in Williamsburg, Virginia, [Farley Center] on April 10, 1998, for treatment of diagnoses including opioid dependence, and depression. Dr. DeFranco further admits that his final diagnoses included opioid alcohol dependence and dysthymia. Dr. DeFranco further admits that on or about June 20, 1998, he was discharged from the Farley Center and transferred to the Sante Center, in Argyle, Texas, for further treatment. Dr. DeFranco further admits that he was discharged on or about October 20, 1998, with diagnoses that included major depressive disorder and opiate dependence. Dr. DeFranco further admits that after his treatment at the Sante Center, he maintained sobriety for several months then relapsed on Vicodin and thereafter would use Vicodin episodically as to avoid detection on random urine toxicology testing.

Dr. DeFranco further admits that on or about October 3, 2002, he entered treatment at the WCA Hospital, Drug and Alcohol Clinic, in Jamestown, New York, for outpatient treatment because he experienced a first relapse involving opiates and alcohol. Dr. DeFranco further admits that he was discharged on or about January 31, 2003, with diagnoses that included opiate and alcohol dependence.

Dr. DeFranco further admits that in or about November 2003, he experienced a second relapsed involving alcohol and continued to drink until in or about January 2005, when he stopped drinking alcohol with the help of his Alcoholics Anonymous [A.A.] sponsor and the A.A. program.

Dr. DeFranco states that he has been sober since in or about February 2005, that he attends at least three A.A. meetings a week, that he attends at least one Caduceus meeting a week, that he attends aftercare meetings at St. Thomas Medical Center, a Board-approved treatment provider in Akron, Ohio, once a week and that he submits to random drug screens once a week.

- F. Dr. DeFranco further admits that on or about February 23, 1999, he entered into a Consent Agreement and Order with the State Board of Medicine of the Commonwealth of Pennsylvania [Pennsylvania Board] based upon his dependence on hydrocodone since 1996 and his suffering from depression. The order suspended his license and stayed the suspension for three years probation subject to terms and conditions, including that he that he remain in an approved treatment and monitoring program, undergo an evaluation of his fitness to practice, and follow any recommendations made by the evaluator. A copy of the Pennsylvania Board's 1999 Consent Agreement and Order is attached hereto and fully incorporated herein.

Dr. DeFranco further admits that on or about December 15, 1999, he entered a plea of guilty to Criminal Trespass in the Second Degree, a misdemeanor, in Penfield, New York, and received a sentence of Conditional Discharge for one year and was ordered to pay restitution. The trespass occurred at the home of his estranged wife's parents, while he attempted to obtain personal papers. He was undergoing treatment at the time for abusing pain medication and had relapsed by beginning to consume alcohol.

On or about July 12, 2001, the Hearing Committee of the State of New York, Department of Health, State Board for Professional Medical Conduct [New York Board] entered a Determination and an Order finding that he had committed professional misconduct based upon his conviction for criminal trespass in the second degree, a misdemeanor in New York, and recommended the imposition of a disciplinary sanction of three years probation, a fine of \$1,000.00, and continued involvement with the Pennsylvania Medical Society's Physician's Health Program and the New York Committee on Physician's Health unless the programs discharge him for successful completion. In or about October 2001, the State of New York, Department of Health, Administrative Review Board for Professional Medical Conduct reviewed the New York Board's Determination and Order, affirmed the finding that he had committed professional misconduct, ordered three years of probation, required that he continue with substance abuse counseling and removed the fine imposed the New York Board. Copies of the New York Board's 2001

Determination and Order and the Administrative Review Board's Determination and Order are attached hereto and fully incorporated herein.

Dr. DeFranco further admits that on or about March 26, 2002, he entered into a Consent Agreement and Order with the Pennsylvania Board based upon having been convicted of a crime, having had his license subjected to disciplinary action by another state, and submitting a false or deceptive biennial registration with the Pennsylvania Board. Dr. DeFranco further admits that he failed to disclose the New York conviction of December 15, 1999, on the Pennsylvania Board's renewal application dated October 18, 2000. The Consent Agreement and Order placed a public reprimand on his permanent Board record, imposed a civil penalty of two thousand dollars and placed his license on probation for a period of three years subject to terms and conditions including that he continue to participate in addiction counseling and abide by all of the recommendations of his addiction counselor and that he abide by all terms and conditions set forth in the New York Board's Determination and Order. A copy of the Pennsylvania Board's 2002 Consent Agreement and Order is attached hereto and fully incorporated herein.

Dr. DeFranco further admits that the New York Board issued a Consent Order effective on or about March 5, 2004, whereby his license to practice as a physician in the State of New York was suspended for three years, said suspension was stayed, and his license was placed on five years probation to be tolled until such time that he returns to active practice in New York State, subject to the terms of probation set forth in the Order. Dr. DeFranco further admits that the New York Board charged him with professional misconduct between at least the years of 1993 and 2002 by reason of his engagement in the habitual use of alcohol and/or narcotics, hallucinogens, or other drugs having similar effects, including hydrocodone, other pain killers, and alcohol. A copy of the New York Board's 2004 Consent Order is attached hereto and fully incorporated herein.

Dr. DeFranco further admits that on or about June 27, 2006, he entered into a Consent Agreement and Order with the Pennsylvania Board based in part upon his failure to abstain from the use of alcohol by experiencing a relapse that lasted from approximately November 2003 through January 28, 2005. Dr. DeFranco further admits that the Pennsylvania Board indefinitely suspended his license for no less than three years, such suspension was immediately stayed in favor of no less than three years of probation subject to terms and condition including that he comply and cooperate with the Pennsylvania Professional Health Monitoring Program in their monitoring of his impairment and enrollment in a monitoring program in Ohio. A copy of the Pennsylvania Board's 2006 Consent Agreement and Order is attached hereto and fully incorporated herein.

- G. Dr. DeFranco further admits that he applied for licensure to practice medicine and surgery in the State of Delaware, and in or about October 2004, he requested and was granted the withdrawal of his application for licensure in Delaware.
- H. Dr. DeFranco states and the Board acknowledges that Gregory Collins, M.D., Section Head, Alcohol & Drug Recovery Center of the Cleveland Clinic Foundation, a Board-approved treatment provider in Cleveland, Ohio, evaluated Dr. DeFranco and submitted a report to the Board on or about February 10, 2006, indicating that Dr. DeFranco has been enrolled as a chemical dependency fellow at University Hospitals of Cleveland since September 2005; that his diagnoses include alcohol and opioid dependence; that his treatment plan includes attendance at Caduceus group, continued weekly urine toxicology screens and active involvement in A.A.; and that Dr. DeFranco's ability to practice medicine and surgery has been assessed and he has been found capable of practicing according to acceptable and prevailing standards of care, so long as certain treatment and monitoring requirements are in place.

Dr. DeFranco states and the Board acknowledges that James Pallas, M.D., his treating psychiatrist with Althof, Levene, Risen & Associates, in Beachwood, Ohio, evaluated Dr. DeFranco and submitted a report to the Board on or about April 17, 2006, indicating that Dr. DeFranco's diagnoses include generalized anxiety disorder, dysthymia, and drug and alcohol dependence; that Dr. DeFranco has been compliant with his treatment plan, which consists of psychiatric medication and individual psychotherapy; and that Dr. DeFranco's ability to practice medicine and surgery has been assessed and he has been found capable of practicing according to acceptable and prevailing standards of care, so long as certain treatment and monitoring requirements are in place.

Dr. DeFranco states and the Board acknowledges that Victoria Sanelli, M.D., a psychiatrist who is approved by the Board to provide an assessment of Dr. DeFranco, with the Center for Akron Psychiatry, in Akron, Ohio, evaluated Dr. DeFranco and submitted a report to the Board on or about April 25, 2006, indicating that Dr. DeFranco's diagnoses include alcohol and opiate dependence and major depressive disorder – moderate and recurrent; that he is actively involved in a program of recovery, which includes random weekly urine drug screens and A.A., Caduceus and Aftercare meetings; and that Dr. DeFranco's ability to practice medicine and surgery has been assessed and he has been found capable of practicing according to acceptable and prevailing standards of care, so long as certain treatment and monitoring requirements are in place.

AGREED CONDITIONS

Wherefore, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of any formal proceedings at this time, Dr. DeFranco knowingly and voluntarily agrees with the Board to the following PROBATIONARY terms, conditions and limitations:

1. Dr. DeFranco shall obey all federal, state, and local laws, and all rules governing the practice of medicine in Ohio.
2. Dr. DeFranco shall submit quarterly declarations under penalty of Board disciplinary action or criminal prosecution, stating whether there has been compliance with all the conditions of this Consent Agreement. The first quarterly declaration must be received in the Board's offices on the first day of the third month following the month in which this Consent Agreement becomes effective. Subsequent quarterly declarations must be received in the Board's offices on or before the first day of every third month.
3. Dr. DeFranco shall appear in person for an interview before the full Board or its designated representative during the third month following the effective date of this Consent Agreement. Subsequent personal appearances must occur every three months thereafter, and/or as otherwise requested by the Board. If an appearance is missed or is rescheduled for any reason, ensuing appearances shall be scheduled based on the appearance date as originally scheduled.
4. Dr. DeFranco shall obtain permission from the Board for departures or absences from Ohio. Such periods of absence shall not reduce the probationary term, unless otherwise determined by motion of the Board for absences of three months or longer, or by the Secretary or the Supervising Member of the Board for absences of less than three months, in instances where the Board can be assured that probationary monitoring is otherwise being performed.
5. In the event Dr. DeFranco is found by the Secretary of the Board to have failed to comply with any provision of this Consent Agreement, and is so notified of that deficiency in writing, such period(s) of noncompliance will not apply to the reduction of the probationary period under this Consent Agreement.

MONITORING OF REHABILITATION AND TREATMENT

Drug Associated Restrictions

6. Dr. DeFranco shall keep a log of all controlled substances prescribed. Such log shall be submitted, in the format approved by the Board, thirty days prior to Dr. DeFranco's personal appearance before the Board or its designated representative, or as otherwise directed by the Board. Further, Dr. DeFranco shall make his patient records with regard to such prescribing available for review by an agent of the Board upon request.
7. Dr. DeFranco shall not, without prior Board approval, administer, personally furnish, or possess (except as allowed under Paragraph 8 below) any controlled substances as defined by state or federal law. In the event that the Board agrees at a future date to

modify this Consent Agreement to allow Dr. DeFranco to administer or personally furnish controlled substances, Dr. DeFranco shall keep a log of all controlled substances prescribed, administered or personally furnished. Such log shall be submitted in the format approved by the Board thirty days prior to Dr. DeFranco's personal appearance before the Board or its designated representative, or as otherwise directed by the Board. Further, Dr. DeFranco shall make his patient records with regard to such prescribing, administering, or personally furnishing available for review by an agent of the Board upon request.

Sobriety

8. Dr. DeFranco shall abstain completely from the personal use or possession of drugs, except those prescribed, dispensed or administered to him by another so authorized by law who has full knowledge of Dr. DeFranco's history of chemical dependency and of his psychiatric diagnoses.
9. Dr. DeFranco shall abstain completely from the use of alcohol.

Drug and Alcohol Screens/Supervising Physician

10. Dr. DeFranco shall submit to random urine screenings for drugs and alcohol on a weekly basis or as otherwise directed by the Board. Dr. DeFranco shall ensure that all screening reports are forwarded directly to the Board on a quarterly basis. The drug testing panel utilized must be acceptable to the Secretary of the Board.

Dr. DeFranco shall abstain from consumption of poppy seeds or any other food or liquid that may produce false results in a toxicology screen.

Within thirty days of the effective date of this Consent Agreement, Dr. DeFranco shall submit to the Board for its prior approval the name and curriculum vitae of a supervising physician to whom Dr. DeFranco shall submit the required urine specimens. In approving an individual to serve in this capacity, the Board will give preference to a physician who practices in the same locale as Dr. DeFranco. Dr. DeFranco and the supervising physician shall ensure that the urine specimens are obtained on a random basis and that the giving of the specimen is witnessed by a reliable person. In addition, the supervising physician shall assure that appropriate control over the specimen is maintained and shall immediately inform the Board of any positive screening results. Further, the supervising physician shall ensure that additional testing of urine specimens for ethyl glucuronide is done on a random basis to include at least two out of every six urine specimens.

The Board expressly reserves the right to disapprove any person or entity proposed to serve as Dr. DeFranco's designated supervising physician, or to withdraw approval of any person or entity previously approved to serve as Dr. DeFranco's designated supervising physician, in the event that the Secretary and Supervising Member of the Board determine that any such supervising physician has demonstrated a lack of cooperation in providing information to the Board or for any other reason.

Dr. DeFranco shall ensure that the supervising physician provides quarterly reports to the Board, in a format acceptable to the Board, as set forth in the materials provided by the Board to the supervising physician, verifying whether all urine screens have been conducted in compliance with this Consent Agreement, whether all urine screens have been negative, and whether the supervising physician remains willing and able to continue in his or her responsibilities.

In the event that the designated supervising physician becomes unable or unwilling to so serve, Dr. DeFranco must immediately notify the Board in writing, and make arrangements acceptable to the Board for another supervising physician as soon as practicable. Dr. DeFranco shall further ensure that the previously designated supervising physician also notifies the Board directly of his or her inability to continue to serve and the reasons therefore.

All screening reports and supervising physician reports required under this paragraph must be received in the Board's offices no later than the due date for Dr. DeFranco's quarterly declaration. It is Dr. DeFranco's responsibility to ensure that reports are timely submitted.

11. The Board retains the right to require, and Dr. DeFranco agrees to submit, blood or urine specimens for analysis for drugs and alcohol and for analysis of therapeutic levels of medication that may be prescribed for Dr. DeFranco's psychiatric disorder or for any other purpose, at Dr. DeFranco's expense upon the Board's request and without prior notice. Dr. DeFranco's refusal to submit a blood or urine specimen upon request of the Board shall result in a minimum of one year of actual license suspension.

Psychiatric Treatment

12. Within thirty days of the effective date of this Consent Agreement, Dr. DeFranco shall submit to the Board for its prior approval the name and qualifications of a psychiatrist of his choice. Upon approval by the Board, Dr. DeFranco shall undergo and continue psychiatric treatment monthly or as otherwise directed by the Board. Dr. DeFranco shall comply with his psychiatric treatment plan, including taking medications as prescribed and/or ordered for his psychiatric disorder. Dr. DeFranco shall ensure that psychiatric reports are forwarded by his treating psychiatrist to the

Board on a quarterly basis, or as otherwise directed by the Board. The psychiatric reports shall contain information describing Dr. DeFranco's current treatment plan and any changes that have been made to the treatment plan since the prior report; Dr. DeFranco's compliance with his treatment plan; Dr. DeFranco's mental status; Dr. DeFranco's progress in treatment; and results of any laboratory studies that have been conducted since the prior report. Dr. DeFranco shall ensure that his treating psychiatrist immediately notifies the Board of his failure to comply with his psychiatric treatment plan and/or any determination that Dr. DeFranco is unable to practice due to his psychiatric disorder. It is Dr. DeFranco's responsibility to ensure that quarterly reports are received in the Board's offices no later than the due date for Dr. DeFranco's quarterly declaration.

In the event that the designated treating psychiatrist becomes unable or unwilling to serve in this capacity, Dr. DeFranco must immediately so notify the Board in writing. In addition, Dr. DeFranco shall make arrangements acceptable to the Board for another treating psychiatrist within thirty days after the previously designated treating psychiatrist becomes unable or unwilling to serve, unless otherwise determined by the Board. Furthermore, Dr. DeFranco shall ensure that the previously designated treating psychiatrist also notifies the Board directly of his or her inability to continue to serve and the reasons therefore.

Monitoring Physician

13. Within thirty days of the effective date of this Consent Agreement, Dr. DeFranco shall submit the name and curriculum vitae of a monitoring physician for prior written approval by the Secretary or Supervising Member of the Board. In approving an individual to serve in this capacity, the Secretary and Supervising Member will give preference to a physician who practices in the same locale as Dr. DeFranco and who is engaged in the same or similar practice specialty. The monitoring physician shall not be Dr. DeFranco's primary care physician, treating physician, psychiatrist, or supervising physician.

The monitoring physician shall monitor Dr. DeFranco and his medical practice, and shall review Dr. DeFranco's patient charts. The chart review may be done on a random basis, with the frequency and number of charts reviewed to be determined by the Board.

Further, the monitoring physician shall provide the Board with reports on the monitoring of Dr. DeFranco and his medical practice, and on the review of Dr. DeFranco's patient charts. Dr. DeFranco shall ensure that the reports are forwarded to the Board on a quarterly basis and are received in the Board's offices no later than the due date for Dr. DeFranco's quarterly declaration.

While Dr. DeFranco participates in a residency/fellowship program accredited by the ACGME or AOA, the Board shall accept a quarterly statement from the director of Dr. DeFranco's residency/fellowship program, or alternatively, from the attending physician specifically designated by the residency/fellowship director as the person having responsibility to directly oversee Dr. DeFranco's clinical rotations, addressing Dr. DeFranco's performance (clinical and otherwise) in the residency/fellowship program, as well as his progress and status, if timely submitted, as satisfaction of the requirements of this paragraph. Should Dr. DeFranco desire to utilize this option in lieu of having a monitoring physician while he participates in a residency/fellowship program, Dr. DeFranco shall so notify the Board by providing a writing, signed by both himself and his residency/fellowship director, and, if applicable, by the attending physician specifically designated by the residency/fellowship director as the person having responsibility to directly oversee Dr. DeFranco's clinical rotations, to the Board before participating in the residency/fellowship program. Further, should Dr. DeFranco cease participation in an accredited residency/fellowship or should he obtain full medical licensure in Ohio and desire to practice outside his residency/fellowship, if legally authorized to do so pursuant to appropriate licensure, or should his residency/fellowship director or the designated attending physician become unable or unwilling to serve, Dr. DeFranco must immediately so notify the Board in writing and within thirty days make arrangements for a monitoring physician, as discussed above.

In the event that the designated monitoring physician becomes unable or unwilling to serve in this capacity, Dr. DeFranco must immediately so notify the Board in writing. In addition, Dr. DeFranco shall make arrangements acceptable to the Board for another monitoring physician within thirty days after the previously designated monitoring physician becomes unable or unwilling to serve, unless otherwise determined by the Board. Furthermore, Dr. DeFranco shall ensure that the previously designated monitoring physician also notifies the Board directly of his or her inability to continue to serve and the reasons therefore.

Approval of Employment

14. Should Dr. DeFranco obtain full medical licensure in Ohio, he shall obtain the approval of the Board for any medical practice or for any employment related to the health care fields. Dr. DeFranco shall not engage in the practice of medicine, other than continuation of his current residency/fellowship training program, unless and until such time that he obtains a full license to practice medicine and surgery in the State of Ohio and the Board has approved a practice plan; and thereafter, Dr. DeFranco's practice of medicine shall be only in accordance with such practice plan. The Board shall consider, among other factors, the adequacy and continuity of supervision, which will ensure the protection of the public, prior to approval or disapproval of the proposed employment. Further, should Dr. DeFranco desire modification to any previously approved practice plan(s), he shall submit to the Board

a revised practice plan, and he shall obtain the prior approval of the Board before making any modification to a previously approved practice plan.

Rehabilitation Program

15. Dr. DeFranco shall maintain participation in an alcohol and drug rehabilitation program, such as A.A., N.A., C.A., or Caduceus, no less than three times per week. Substitution of any other specific program must receive prior Board approval.

Dr. DeFranco shall submit acceptable documentary evidence of continuing compliance with this program which must be received in the Board's offices no later than the due date for Dr. DeFranco's quarterly declarations.

Aftercare

16. Dr. DeFranco shall contact an appropriate impaired physicians committee, approved by the Board, to arrange for assistance in recovery or aftercare.
17. Dr. DeFranco shall maintain participation in an aftercare program once per week.

Releases

18. Dr. DeFranco shall provide continuing authorization, through appropriate written consent forms, for disclosure by his treatment provider to the Board, to treating and monitoring physicians, and to others involved in the monitoring process, of information necessary for them to fulfill their respective duties and obligations.

Required Reporting by Licensee

19. Within thirty days of the effective date of this Consent Agreement, Dr. DeFranco shall provide a copy of this Consent Agreement to all employers or entities with which he is under contract to provide health care services or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, Dr. DeFranco shall provide a copy of this Consent Agreement to all employers or entities with which he contracts to provide health care services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments.
20. Within thirty days of the effective date of this Consent Agreement, Dr. DeFranco shall provide a copy of this Consent Agreement by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds any professional license. Dr. DeFranco further agrees to provide a copy of this Consent Agreement by certified mail, return receipt requested, at time of application to the proper licensing authority of any state in which he applies for any

professional license or for reinstatement of any professional license. Further, Dr. DeFranco shall provide this Board with a copy of the return receipt as proof of notification within thirty days of receiving that return receipt.

21. Dr. DeFranco shall provide a copy of this Consent Agreement to all persons and entities that provide Dr. DeFranco chemical dependency treatment and/or psychiatric treatment or monitoring.

FAILURE TO COMPLY

If, in the discretion of the Secretary and Supervising Member of the Board, Dr. DeFranco appears to have violated or breached any term or condition of this Consent Agreement, the Board reserves the right to institute formal disciplinary proceedings for any and all possible violations or breaches, including, but not limited to, alleged violations of the laws of Ohio occurring before the effective date of this Consent Agreement.

If the Secretary and Supervising Member of the Board determine that there is clear and convincing evidence that Dr. DeFranco has violated any term, condition or limitation of this Consent Agreement, Dr. DeFranco agrees that the violation, as alleged, also constitutes clear and convincing evidence that his continued practice presents a danger of immediate and serious harm to the public for purposes of initiating a summary suspension pursuant to Section 4731.22(G), Ohio Revised Code.

DURATION/MODIFICATION OF TERMS

Dr. DeFranco shall not request termination of this Consent Agreement for a minimum of five years. All subsequent training certificates or other certificates that may be granted by the Board to Dr. DeFranco shall be subject to the same probationary terms, conditions and limitations, unless otherwise determined by the Board, until Dr. DeFrance has completed at least a five year probationary period with the Board. In addition, Dr. DeFranco shall not request modification to the probationary terms, limitations, and conditions contained herein for at least one year. Otherwise, the above-described terms, limitations and conditions may be amended or terminated in writing at any time upon the agreement of both parties.

ACKNOWLEDGMENTS/LIABILITY RELEASE

Dr. DeFranco acknowledges that he has had an opportunity to ask questions concerning the terms of this Consent Agreement and that all questions asked have been answered in a satisfactory manner.

Any action initiated by the Board based on alleged violations of this Consent Agreement shall comply with the Administrative Procedure Act, Chapter 119., Ohio Revised Code.

Dr. DeFranco hereby releases the Board, its members, employees, agents, officers and

representatives jointly and severally from any and all liability arising from the within matter.

This Consent Agreement shall be considered a public record as that term is used in Section 149.43, Ohio Revised Code. Further, this information may be reported to appropriate organizations, data banks and governmental bodies. Dr. DeFranco acknowledges that his social security number will be used if this information is so reported and agrees to provide his social security number to the Board for such purposes.

EFFECTIVE DATE

It is expressly understood that this Consent Agreement is subject to ratification by the Board prior to signature by the Secretary and Supervising Member and shall become effective upon the last date of signature below.


RICHARD JOSEPH DEFRANCO, M.D.

12-7-2006

DATE


LANCE A. TALMAGE, M.D.
Secretary

12-13-06

DATE


RAYMOND J. ALBERT
Supervising Member

12/13/06

DATE


MARCIE PASTRICK
Enforcement Attorney

12/08/06

DATE

OHIO STATE MEDICAL BOARD

DEC 08 2006

11b

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BEFORE THE STATE BOARD OF MEDICINE

In the Matter of the License :
to Practice Medicine of : File No. 98-49-02471
Richard Joseph DeFranco, M.D. : VRP No. 205-56-7713
License No. MD-050273-L :

CONSENT AGREEMENT AND ORDER

The Commonwealth and Licensee stipulate as follows in settlement of the above-captioned case.

1. This matter is before the State Board of Medicine pursuant to the Medical Practice Act, Act of December 20, 1985, P.L. 457, No. 112, as amended, ("Act"), 63 P.S. §422.1 et seq.

2. At all relevant and material times, Richard Joseph DeFranco, M.D. ("Licensee") held a license to practice medicine in the Commonwealth of Pennsylvania, License No. MD-050273-L.

3. Licensee admits that the following facts are true:

a. Licensee's Pennsylvania license is current through December 31, 1998 and may be renewed thereafter upon the filing of the appropriate documentation and payment of the necessary fees.

b. Respondent's last address on file with the Board 6101 West Road, McKean, PA 16426.

c. Licensee has suffered from chemical abuse or dependency, specifically Hydrocodone since 1996.

d. Licensee has suffered the following consequences as a result of the dependency or abuse: lost employment and reputation, martial problems.

e. Licensee received treatment from April 8, 1998 to October 15, 1998.

f. Licensee has been in verified continuous recovery since April, 1998.

g. Licensee also suffers from depression.

h. Licensee has suffered the following consequences as a result of the depression: lost employment, marital problems, expense and inconvenience of treatment.

i. Licensee has been receiving treatment since April, 1998.

j. Licensee has been in verified continuous recovery since April, 1998.

OHIO STATE MEDICAL BOARD

JUL 25 2005

4. The activities of Licensee, described above, violate the Act at 63 P.S. §§422.41(5) in that Licensee is unable to practice the profession with reasonable skill and safety to patients by reason of illness, addiction to drugs or alcohol, or mental incompetence.

5. Licensee's license shall be suspended under the terms of this agreement, but the enforcement of that suspension shall be stayed for the length of time Licensee remains in an approved treatment and monitoring program and makes satisfactory progress, complies with the other terms of this agreement and adheres to all conditions as set forth in this agreement.

6. The Board may defer and ultimately dismiss the suspension so long as the Licensee has progressed satisfactorily in an approved treatment and monitoring program, provided Licensee has not been convicted of a felonious act under the Controlled Substance, Drug, Device and Cosmetic Act, or a felony relating to a controlled substance in another jurisdiction.

7. The parties consent to the issuance of the following Order in settlement of this matter:

a. Licensee violated the Act at 63 P.S. §422.41(5) in that Licensee is unable to practice the profession

with reasonable skill and safety to patients by reason of illness, addiction to drugs or alcohol, or mental incompetence.

b. This disciplinary action may be deferred and ultimately dismissed pursuant to the impaired professional statute, 63 P.S. §422.4, provided Licensee progresses satisfactorily in an approved treatment and monitoring program and complies with the terms and conditions of this agreement, successfully completing the probation. This Agreement shall not be considered a public document but may be shared with individuals and institutions for purpose of monitoring. Upon successful completion of the probation period, Licensee may petition the Board for ultimate dismissal of the disciplinary action.

c. Licensee's license, No. MD-050273-L, is **SUSPENDED** for a period of three (3) years, such Suspension to be immediately **STAYED** in favor of three (3) years **PROBATION**, unless that period of probation is extended or modified for cause by mutual agreement of

OHIO STATE MEDICAL BOARD

JUL 25 2005
MEDVRP.CA 398

Licensee and VRP case manager, said probation to be subject to the following terms and conditions:

GENERAL

(1) Licensee shall fully and completely comply and cooperate with the probation program, including program personnel, established by the Board and the Voluntary Recovery Program ("VRP");

(2) Licensee shall abide by and obey all laws of the United States, the Commonwealth of Pennsylvania and its political subdivisions and all rules and regulations and laws pertaining to the practice of the profession in this Commonwealth or any other state or jurisdiction in which Licensee holds a license to practice a health care profession. Provided, however, summary traffic violations shall not constitute a violation of this Order;

(3) Licensee shall at all times cooperate with the Bureau of Professional and

Occupational Affairs ("Bureau"), any of its agents or employees and the VRP and its agents and employees, in the monitoring, supervision and investigation of Licensee's compliance with the terms and conditions of this Order, including Licensee causing to be submitted at his own expense written reports, records and verifications of actions that may be required by the Bureau, VRP or any of its agents or employees;

(4) Licensee's failure to fully cooperate with and successfully complete the VRP program shall be deemed a violation of this Consent Agreement and Order;

(5) Licensee shall not falsify, misrepresent or make material omission of any information submitted pursuant to this Order;

(6) Licensee may not be absent from the Commonwealth of Pennsylvania for any period exceeding twenty (20) days unless Licensee seeks and receives prior written permission

from the Bureau or the VRP subject to any additional terms and conditions required by the Bureau or the VRP;

(7) Licensee shall notify the VRP, in writing, within twenty (20) days of the filing of any criminal charges, the initiation of any legal action pertaining to the practice of a health care profession, the initiation, action, restriction or limitation relating to Licensee by the professional licensing authority of any state or jurisdiction or the Drug Enforcement Agency of the U. S. Department of Justice, or any investigation, action, restriction or limitation relating to Licensee's privileges to practice a health care profession at any health care facility;

(8) Licensee shall notify the VRP by telephone within 72 hours and in writing within ten (10) days of the change of his home address, phone number, place of employment and/or practice at a health care facility;

EVALUATION - TREATMENT

(9) If an assessment/treatment evaluation has not been done by a VRP-Approved Provider within thirty (30) days prior to the effective date of this ORDER, within thirty (30) days subsequent of this ORDER, licensee shall obtain and forward to the Board and its representative, Unit 1, VRP, P.O. Box 10569, Harrisburg, PA 17105-0569, (717) 783-4857, 800-554-3428, a VRP-approved assessment/treatment evaluation assessing Licensee's fitness to actively practice the profession. If the assessment determines that Licensee is not fit to practice, Licensee shall immediately cease practicing the profession and remain inactive until a VRP-approved provider and VRP case manager determines that Licensee is fit to resume practice with reasonable skill and safety to patients.

(10) Licensee shall provide the VRP-approved provider with a copy of any prior evaluations and counseling records and with a copy of this Agreement and Order;

(11) Licensee shall submit to the VRP satisfactory evidence, in writing, that Licensee is fit to safely practice as a health care professional, along with a copy of the VRP-approved provider's assessment;

(12) If the assessment includes a recommendation that Licensee obtain treatment, Licensee must fully comply with those recommendations as part of these probationary requirements;

(13) Licensee shall ensure that written reports from the VRP-approved provider regarding a treatment program shall be submitted to the VRP upon request or at least every sixty (60) days after issuance of this Order. The reports shall contain, at least, the following information:

OHIO STATE MEDICAL BOARD

JUL 25 2005

MEDVRP.CA 398

(a) Verification that the provider has received a copy of this Consent Agreement and Order and understands the conditions of this probation;

(b) A treatment plan, if developed;

(c) Progress reports, including information regarding compliance with the treatment plan;

(d) Physical evaluations, if applicable;

(e) The results of any testing;

(f) Modifications in treatment plan, if applicable;

(g) Administration or prescription of any drugs to Licensee;

(h) Discharge summary and continuing care plan at discharge;

(14) Licensee shall identify a primary care physician who shall send written notification to the Bureau or VRP case manager

certifying Licensee's health status as requested;

SUPPORT GROUP ATTENDANCE

(15) Licensee shall attend and actively participate in any support group programs recommended by the provider or the VRP case manager at the frequency recommended by the provider, but no less than twice a week.

(16) Licensee shall provide written verification of attendance to the VRP on at least a monthly basis or as otherwise directed by the VRP;

ABSTENTION

(17) Licensee shall completely abstain from the use of controlled substances, mood altering drugs or drugs of abuse including alcohol in any form except under the following conditions:

(a) Licensee is a bona fide patient of a licensed health care practitioner

who is aware of Licensee's participation
in the VRP;

(b) Such medications are lawfully
prescribed by Licensee's treating
practitioner and approved by the VRP case
manager; and

(c) Licensee provides the VRP,
within seventy-two (72) hours of
receiving the medication, the name of
the practitioner prescribing the drug,
the illness or medical condition
diagnosed, the type, strength, amount and
dosage of the medication and a signed
statement consenting to the release of
medical information from the prescribing
practitioner to the VRP or its designated
representative for the purpose of
verification;

MONITORED/SUPERVISED PRACTICE

(18) Licensee may not work in any practice setting without direct monitoring/supervision;

(19) Licensee shall provide the VRP, in writing, within 72 hours notification of the following:

(a) Name and address of the monitor/supervisor responsible for Licensee's practice;

(b) The name(s) and address(es) of the place(s) at which Licensee will practice the profession and a description of Licensee's duties and responsibilities at such places of practice;

(c) Any restrictions on Licensee's practice;

(20) Licensee shall supply any monitor/supervisor or any current or prospective employer with a copy of this Consent Agreement and Order;

(21) Licensee shall have his monitor/
supervisor submit to the VRP the following
information in writing:

(a) Verification that the monitor/
supervisor has received a copy of this
Consent Agreement and Order and
understands the conditions of this
probation;

(b) An evaluation of Licensee's
work performance on a 60-day or more
frequent basis as requested by the VRP;
and

(c) Any suspected violation by
Licensee of this probation;

BODY FLUID TOXICOLOGY SCREENING

(22) Licensee shall submit, if requested,
to unannounced and observed body fluid
toxicology screens by the VRP for the
detection of substances prohibited under this
Order or to check depression medication levels
within twenty-four (24) hours after a request

is made. A positive result on a body fluid toxicology screen shall constitute an irrefutable violation of this Order unless Licensee has complied with the provisions of this Order pertaining to the use of drugs. Failure to provide a specimen when requested will be considered a violation of this Agreement;

(23) Licensee shall avoid all foods which contain poppy seeds. Ingestion of poppy seeds will not be accepted as a valid explanation for a positive screen;

REPORTING/RELEASES

(24) Licensee, his providers, monitor(s)/supervisor(s), employers or other persons shall cause any reports, data or other information required to be filed with the VRP or the Bureau under this Order, unless otherwise directed, with:

PHMP
Unit 1 VRP
Box 10569
Harrisburg, PA 17105-0569

(25) Licensee consents to the release by the Bureau or VRP of any information or data produced as a result of this probation to any treatment provider, employer or monitor/supervisor;

(26) Licensee shall sign waivers and/or release forms upon request of the Bureau or VRP or its designated representative for any and all records, inclusive of medical or other health related records, pertaining to treatment rendered to Licensee;

(27) Licensee shall execute any waivers or consent forms required to allow the Bureau or VRP to obtain access to any agreements or any other records generated through the Bureau or VRP or its agents;

COSTS

(28) Licensee shall bear the responsibility of all costs incurred by Licensee in complying with the terms of this Order, including psychiatric or psychotherapy

treatments, payment for Bureau or VRP toxicology screenings prior to each screen being conducted and production of treatment or other records;

BUREAU/VRP EVALUATIONS

(29) Upon request of the Bureau or VRP, the Licensee shall submit to evaluations, physical examination or interviews by a provider approved by the Bureau or VRP, and by Bureau or VRP representatives. Failure of Licensee to submit to such examination or interview when directed shall constitute a violation of this Order.

VIOLATION OF THIS ORDER

d. Notification of a violation of the terms or conditions of this Consent Agreement and Order shall result in the **IMMEDIATE VACATING** of the stay order, **TERMINATION** of the period of probation, and **ACTIVATION** of the entire three-year period of suspension of Licensee's license to practice medicine in the Commonwealth of Pennsylvania as follows:

(1) The prosecuting attorney for the Commonwealth shall file with the Board a Petition which indicates that Licensee has violated any terms or conditions of this Consent Agreement and Order; the filing of the Petition shall nullify the non-public nature of this Consent Agreement and Order under paragraph 7b, above;

(2) Upon a probable cause determination that Licensee has violated any of the terms or conditions of this Consent Agreement and Order, the Board shall, without holding a formal hearing, issue a preliminary order vacating the stay of the suspension in this matter, terminating the period of probation and activating the entire period of suspension of Licensee's license;

(3) Licensee shall be notified of the Board's Preliminary Order within three (3) days of its issuance by certified mail and first class mail postage prepaid, sent to the

last registered address on file with the Board;

(4) Within twenty (20) days of mailing of the notification of the Board's action, Licensee may answer the Commonwealth's Petition and request that a formal hearing be convened concerning Licensee's violation of probation, in which Licensee may seek relief from the Preliminary Order activating the suspension. Licensee shall serve the prosecuting attorney for the Commonwealth with a copy of the answer and all subsequent filings in this matter;

(5) If a request for a formal hearing is received from Licensee, the Board shall convene a formal hearing within forty-five (45) days from the date of the Board's receipt of Licensee's request for a formal hearing;

(6) If Licensee files an answer and request for a hearing within the twenty (20) day period, the Preliminary Order activating

the suspension shall remain in effect unless and until the Board issues a determination favorable to Licensee after holding the formal hearing;

(7) The facts and averments in this Consent Agreement and Order shall be deemed admitted and uncontested at this hearing;

(8) If the Board after such hearing makes a determination adverse to Licensee, the Board will issue a Final Order activating the suspension of Licensee's license and imposing any additional disciplinary measures it deems appropriate;

(9) If a request for a formal hearing is not received from Licensee within the prescribed twenty (20) day period, the Board's Preliminary Order shall become a Final Order twenty (20) days after the date of its mailing;

e. If the stay is terminated, Licensee shall still comply with all terms and conditions of probation during

the active suspension, other than those terms and conditions pertaining to practicing the profession. Continued failure by Licensee to comply with the unaffected terms and conditions of probation shall result in further disciplinary action against Licensee;

f. Licensee's failure to fully comply with any terms of this Order may also constitute grounds for additional disciplinary action;

g. Nothing in this Order shall preclude the Prosecuting Attorney for the Commonwealth from filing charges or the Board from imposing disciplinary or corrective measures for violations or facts not contained in this Consent Agreement;

h. Upon successful completion of probation, Licensee may petition the Board to dismiss this matter upon an affirmative showing that Licensee has complied with all terms and conditions and that Licensee's resumption of unmonitored practice does not present a threat to the public health and safety;

i. This case shall be deemed set discontinued upon Board adoption of the Agreement;

j. This Order shall take effect immediately upon Board adoption of the Consent Agreement.

8. Licensee's execution of this Consent Agreement shall constitute a consent for release of all medical and psychological records pertaining to Licensee to the Prosecuting Attorney, the Bureau and the VRP.

9. Licensee's execution of this Consent Agreement shall constitute a release for any employment, peer review records pertaining to Licensee's practice of medicine to the Prosecuting Attorney, the Bureau and the VRP.

10. Licensee waives the filing of an Order of Review in this matter. Licensee knowingly and voluntarily waives the right to an administrative hearing in this matter, and the rights related to that hearing: to be represented at the hearing; the right to present witnesses and evidence in defense or in mitigation of any sanction that may be imposed for violation; to cross-examine witnesses and to challenge the evidence.

presented by the Commonwealth; to present legal arguments by means of a brief; and to take an appeal from any final adverse decision.

11. Licensee agrees, as a condition of entering into this Consent Agreement, not to seek modification at a later date of the Stipulated Order adopting and implementing this Consent Agreement without first obtaining the express written concurrence of the Prosecution Division.

12. This Consent Agreement is between the Commonwealth and Licensee only. Except as otherwise noted, this Agreement is to have no legal effect unless and until the Office of General Counsel approves the contents as to form and legality and the Board issues the stipulated Order.

13. Should the Board not approve this Consent Agreement, presentation to and consideration of this Consent Agreement and other documents and matters by the Board shall not prejudice the Board or any of its members from further participation in the adjudication of this matter. The participants waive any objection to a Board member's consideration of this Agreement in the event that the member participated in a prior decision to prosecute this matter. This paragraph is binding on the participants even if the Board does not approve this Consent Agreement.

14. This agreement contains the whole agreement between the participants. There are no other terms, obligations, covenants, representations, statements or conditions, or otherwise, of any kind whatsoever concerning this agreement.

15. Licensee verifies that the facts and statements set forth in this Agreement are true and correct to the best of Licensee's knowledge, information and belief. Licensee understands that statements in this Agreement are made subject to the criminal penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.

Gloria M. Thompson
Gloria M. Thompson, Esquire
Bureau of Professional and
Occupational Affairs

DATED: 2/8/99

Richard Joseph DeFranco M.D.
Richard Joseph DeFranco, M.D.
Licensee

DATED:

ORDER

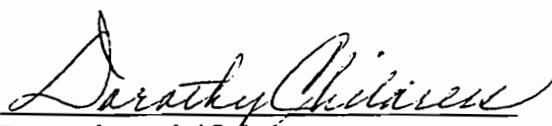
AND NOW, this *13th* day of *February*, 1999, the State Board of Medicine adopts and approves the foregoing Consent Agreement and incorporates the terms of paragraph 7, which shall constitute the Board's Order and is now issued in resolution of this matter.

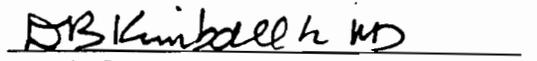
This Order shall take effect immediately.

BY ORDER:

BUREAU OF PROFESSIONAL AND
OCCUPATIONAL AFFAIRS

STATE BOARD OF MEDICINE


Dorothy Childress
Commissioner


Daniel B. Kimball, Jr., M.D.
Chairman

File No. 98-49-02471

Date of Mailing:

For the Commonwealth:

Gloria M. Thompson, Esquire
P. O. Box 2649
Harrisburg, PA 17105-2649

For Licensee:

Richard Joseph DeFranco, M.D.
6101 West Road
McKean, PA 16426

GMT/dws

15

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

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

STATEMENT
OF
CHARGES

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

FACTUAL ALLEGATIONS

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

SPECIFICATION

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

1. The facts in paragraph A.

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

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

OHIO STATE MEDICAL BOARD

JUL 25 2005

COPY

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

DETERMINATION
AND
ORDER

BPMC-01-157

A Notice of Referral Proceeding and Statement of Charges, both dated April 5, 2001, were served upon the Respondent, **RICHARD J. DEFRANCO, M.D.**. **GERALD S. WEINBERGER, M.D.**, Chairperson, **ROBERT KLUGMAN, M.D.** and **REV. EDWARD J. HAYES**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to Section 230(10)(e) of the Public Health Law. **STEPHEN L. FRY, ESQ.**, Administrative Law Judge, served as the Administrative Officer.

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

Evidence was received and transcripts of these proceedings were made.

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

STATEMENT OF CASE

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

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

WITNESSES

For the Petitioner:	NONE
For the Respondent:	RESPONDENT

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers below in parentheses refer to transcript page numbers or exhibits denoted by the prefixes "Tr." and "Ex.". These citations refer to evidence found persuasive by the Hearing Committee in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence. All Hearing Committee findings were unanimous unless otherwise specified.

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

HEARING COMMITTEE CONCLUSIONS

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

SPECIFICATION

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

VOTE: SUSTAINED (3-0)

HEARING COMMITTEE DETERMINATION

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

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

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

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

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

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

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

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

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

ORDER

IT IS HEREBY ORDERED THAT:

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

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

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

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

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

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

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

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

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

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

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

DATED: Ardsley, New York
7/10, 2001


GERALD S. WEINBERGER, M.D.
Chairperson

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

APPENDIX 1

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

IN THE MATTER

OF

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

NOTICE OF
REFERRAL
PROCEEDING

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

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

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law § 230(10)(p) and N.Y. State Admin. Proc. Act Sections 301-307 and 401. The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 17th day of May 2001, at 10:00 in the forenoon of that day at the Hedley Park Place, 5th Floor, 433 River Street, Troy, New York 12180.

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

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

If you intend to present sworn testimony, the number of witnesses and an estimate of the time necessary for their direct examination must be submitted to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication,

EXHIBIT

1/20/01

Hedley Park Place, 5th Floor, 433 River Street, Troy, New York, ATTENTION: HON. TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION, (hereinafter "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before May 7, 2001.

Pursuant to the provisions of N.Y. Public Health Law §230(10)(p), you shall file a written answer to each of the Charges and Allegations in the Statement of Charges no later than ten days prior to the hearing. Any Charge of Allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such an answer. The answer shall be filed with the Bureau of Adjudication, at the address indicated above, and a copy shall be forwarded to the attorney for the Department of Health whose name appears below. You may file a brief and affidavits with the Committee. Six copies of all such papers you wish to submit must be filed with the Bureau of Adjudication at the address indicated above on or before May 7, 2001, and a copy of all papers must be served on the same date on the Department of Health attorney indicated below. Pursuant to Section 301(5) of the State Administrative Procedure Act, the Department, upon reasonable notice, will provide at no charge a qualified interpreter of the deaf to interpret the proceedings to, and the testimony of, any deaf person.

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

The Committee will make a written report of its findings, conclusions as to guilt, and a determination. Such determination may be reviewed by the Administrative Review Board for Professional Medical Conduct.

SINCE THESE PROCEEDINGS MAY RESULT IN A DETERMINATION THAT SUSPENDS OR REVOKES YOUR LICENSE TO PRACTICE MEDICINE IN NEW YORK STATE AND/OR IMPOSES A FINE FOR EACH OFFENSE CHARGED, YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: Albany, New York

April 5, 2001



PETER D. VAN BUREN

Deputy Counsel

Bureau of Professional Medical Conduct

Inquiries should be addressed to:

Robert Bogan
Associate Counsel
New York State Department of Health
Office of Professional Medical Conduct
433 River Street - Suite 303
Troy, New York 12180
(518) 402-0820

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

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

STATEMENT
OF
CHARGES

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

FACTUAL ALLEGATIONS

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

SPECIFICATION

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

1. The facts in paragraph A.

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

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

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

In the Matter of

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

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

Administrative Review Board (ARB)

Determination and Order No. 01-157

COPY

**Before ARB Members Grossman, Lynch, Pellman, Price and Briber
Administrative Law Judge James F. Horan drafted the Determination**

**For the Department of Health (Petitioner):
For the Respondent:**

**Paul Robert Maher, Esq.
Sharif Mahdavian, Esq.**

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

Committee Determination on the Charges

The Petitioner commenced the proceeding by filing charges with BPMC alleging that the Respondent violated N. Y. Educ. Law §§ 6530(9)(a)(i)(McKinney Supp. 2001) by engaging in conduct that resulted in the Respondent's conviction for a crime under New York State. An expedited hearing (Direct Referral Proceeding) ensued pursuant to N.Y. Pub. Health Law §230(10)(p)(McKinney Supp. 2001), before a BPMC Committee, which rendered the

Determination now on review. In the Direct Referral Proceeding, the statute limits the Committee to determining the nature and severity for the penalty to impose against the licensee, see In the Matter of Wolkoff v. Chassin, 89 N.Y.2d 250 (1996).

The record before the Committee revealed the Respondent's conviction in Town Court in Penfield, New York for criminal trespass in the second degree, a misdemeanor. The Court sentenced the Respondent to a one-year conditional discharge. The trespass occurred at the home of the Respondent's estranged wife's parents, while the Respondent attempted to obtain personal papers. The Respondent was undergoing treatment at the time for abusing pain medication and the Respondent had relapsed by beginning to consume alcohol.

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

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

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

Review History and Issues

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

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

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

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

Determination

The ARB has considered the record and the parties' briefs. In reviewing a Committee's Determination, the ARB determines: whether the Determination and Penalty are consistent with the Committee's findings of fact and conclusions of law; and, whether the Penalty is appropriate and within the scope of penalties which N.Y. Pub. Health Law §230-a permits [N.Y. Pub. Health Law §230(10)(i), §230-c(1) and §230-c(4)(b)]. That authority allows the ARB to substitute our judgement for that of the Committee, in deciding upon a penalty Matter of Bogdan v. Med. Conduct Bd. 195 A.D.2d 86, 606 N.Y.S.2d 381 (3rd Dept. 1993); and in determining guilt on the charges, Matter of Spartalis v. State Bd. for Prof. Med. Conduct 205 A.D.2d 940, 613 NYS 2d 759 (3rd Dept. 1994). The ARB may choose to substitute our judgement on our own motion, Matter of Kabnick v. Chassin, 89 N.Y.2d 828 (1996).

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

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

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

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

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

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

We amend that paragraph to begin:

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

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

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

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

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

ORDER

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

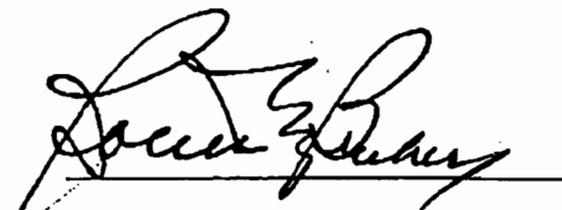
1. The ARB affirms the Committee's Determination that the Respondent committed professional misconduct.
2. The ARB overturns the Committee's Determination to fine the Respondent \$1000.00.
3. The ARB affirms the Committee's Determination to place the Respondent on probation for three years, but we modify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

Robert M. Briber
Thea Graves Pellman
Winston S. Price, M.D.
Stanley L. Grossman, M.D.
Therese G. Lynch, M.D.

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

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

Dated: October, 2001

A handwritten signature in black ink, appearing to read "Robert M. Briber", written over a horizontal line.

Robert M. Briber

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

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

Dated: Oct 2, 2001



Thea Graves Pellman

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

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

Dated: OCT 12 , 2001

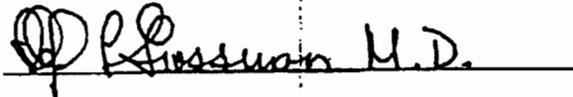
A handwritten signature in black ink, appearing to read "W. S. Price", is written over a horizontal line.

Winston S. Price, M.D.

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

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

Dated: September 28 2001

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

Stanley L Grossman, M.D.

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

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

Dated: Sept. 29, 2001

Therese G. Lynch, M.D.

Therese G. Lynch, M.D.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BEFORE THE STATE BOARD OF MEDICINE

PROTHONOTARY

2008 JUL 27 PM 3:16

Department of State

Commonwealth of Pennsylvania
Bureau of Professional and
Occupational Affairs

vs.

Richard J. DeFranco, M.D.,
Respondent

Docket No. 1452 49-01
File No. 0149-00923

NOTICE

Formal disciplinary action has been filed against you. You may lose your license, certificate, registration or permit to practice your profession or occupation. You may be subject to civil penalties of up to \$1,000 for each violation.

If you wish to defend against the charges in the attached order to show cause or to present evidence to mitigate any penalty that may be imposed, the procedures for doing so are explained in the order to show cause.

You have the right to retain an attorney. Although you may represent yourself without an attorney, you are advised to seek the help of an attorney.

All proceedings are conducted under the Administrative Agency Law and the General Rules of Administrative Practice and Procedures.

You are directed to respond to the charges by filing a written answer within 30 days of the date on the order to show cause. IF YOU DO NOT FILE AN ANSWER, DISCIPLINARY ACTION MAY BE TAKEN AGAINST YOU WITHOUT A HEARING. To file your answer, you must bring or send an original and three copies of your answer and any pleadings or other documents related to this matter to the following address:

Deanna S. Walton, Prothonotary
Bureau of Professional and Occupational Affairs
124 Pine Street, Suite 200
Harrisburg, PA 17101

You must also send a separate copy of your answer and any other pleadings or documents related to this case to the prosecuting attorney named in the order to show cause.

STATE MEDICAL BOARD
OF OHIO
2008 JUL 12 A 9:53

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BEFORE THE STATE BOARD OF MEDICINE**

Commonwealth of Pennsylvania	:		
Bureau of Professional and	:		
Occupational Affairs	:		
	:		
vs.	:	Docket No.	49-01
	:	File No.	0149-00923
Richard J. DeFranco, M.D.,	:		
Respondent	:		

ORDER TO SHOW CAUSE

AND NOW, this *27th* day of *November*, 2001, Richard J. DeFranco, M.D. ("Respondent") is hereby **ORDERED TO SHOW CAUSE** why the State Board of Medicine ("Board"), upon consideration of the Factual Allegations and the applicable law, should not suspend, revoke or otherwise restrict Respondent's license, or impose a civil penalty. This action is brought pursuant to the Medical Practice Act, Act of December 20, 1985, P.L. 457, No. 112, as amended, ("Act"), 63 P.S. §422.1 et seq., and will be conducted in accordance with the Administrative Agency Law, 2 Pa. C.S. §§501-508, 701-704, 63 P.S. §§2201-2207; and the General Rules of Administrative Practice and Procedure, 1 Pa. Code §§31.1-35.251.

IT IS FURTHER ORDERED that Respondent file an Answer to this Order to Show Cause in writing within thirty (30) days of the date of this Order stated above, in accordance with 1 Pa. Code §35.37.

FACTUAL ALLEGATIONS

1. Respondent holds a license to practice medicine and surgery in the Commonwealth of Pennsylvania, License No. MD-050273-L.

2. Respondent's license is active through December 31, 2002, and may be renewed thereafter upon the filing of the appropriate documentation and payment of the necessary fees.

3. At all times pertinent to the Factual Allegations, Respondent held a license to practice medicine and surgery in the Commonwealth of Pennsylvania.

4. Respondent's last known address on file with the Board is 2729 West 31st Street, Erie, Pennsylvania 16506.

5. On or about June 23, 1999, a Criminal Complaint was filed in the State of New York, County of Monroe, charging Respondent with one count of Burglary, a 2nd degree felony, in violation of section 140.25(2) of the Penal Law of New York, one count of Criminal Mischief, a 4th degree misdemeanor, in violation of section 145.00(1) of the Penal Law of New York, and one count of Attempted Petit Larceny in violation of section 110.25 of the Penal Law of New York.

6. True and correct copies of the Criminal Complaint is attached and incorporated as **Exhibit 1.**

7. Respondent drafted a written statement describing the facts surrounding the criminal charges.

8. A true and correct copy of the Respondent's Voluntary Statement¹⁵ attached and incorporated as **Exhibit 2.**

9. On or about June 23, 1999, Respondent pled guilty to Criminal Trespass of the Second Degree.

10. A true and correct copy of the Certificate of Conviction is attached and incorporated as **Exhibit 3.**

11. On or about December 15, 1999, in the above-referenced criminal proceedings Respondent was sentenced to Conditional Discharge for one (1) year, and ordered to pay Restitution.

12. A true and correct copy of the Sentencing Order is attached and incorporated as **Exhibit 3.**

COUNT ONE

13. Paragraphs 1 through 12 are incorporated by reference.

14. Based upon the foregoing Factual Allegations, the Board is authorized to suspend or revoke, or otherwise restrict Respondent's license, or impose a civil penalty under 63 P.S. §422.41(3) in that Respondent was convicted of a crime of moral turpitude in the courts of another state.

COUNT TWO

15. Paragraphs 1-14 are incorporated by reference.

16. On or about October 18, 2000, Respondent submitted or had submitted a biennial registration for the renewal period January 1, 2001 through December 21, 2002.

17. In response to question number 3: "Since your last renewal, have you been convicted, found guilty, pleaded nolo contendere, received probation without verdict, or received any other disposition (excluding acquittal, or dismissal), with respect to any criminal offence, including any drug law violations, or do you have any criminal charges pending or unresolved in any state or federal court?" Respondent answered in the affirmative by placing an X under yes.

18. A true and correct copy of the Renewal Notice is attached as **Exhibit 4.**

19. Respondent provided an explanation to answer number 3 stating that the Court of Common Pleas of Erie County, Pennsylvania, placed him into the Probation Without Verdict Program, with conditions, based on one count of violating 35 Pa. C.S. §780-113(a)(12).

20. A true and correct copy of the Respondent's statement is attached as **Exhibit 5.**

21. Respondent failed to disclose the New York conviction of December 15, 1999 on the renewal application dated October 18, 2000.

22. Based upon the foregoing Factual Allegations, the Board is authorized to suspend or revoke, or otherwise restrict Respondent's license, or impose a civil penalty under 63 P.S. §422.41(11) in that Respondent submitted a false or deceptive biennial registration with the board.

PENALTIES

If the Board finds that the Factual Allegations are true and correct, and determines that it has the authority to suspend or revoke the Respondent's license/certificate/registration or permit, the Board may, in its discretion, impose one or more of the following penalties:

- The revocation, suspension or other restriction of any licenses, certifications, registrations, permits or other authorizations to practice a profession held by Respondent in the Commonwealth of Pennsylvania, or the imposition of any other disciplinary or corrective action which the Act authorizes the Board to impose.
- The imposition of a civil penalty of up to one thousand dollars (\$1,000.00) for each and every violation of the Act. Where criminal proceedings are a basis for a violation of the Act, each count for which the Respondent was convicted may be considered a separate violation of the Act.

PROCEDURES

All proceedings are conducted in accordance with the Administrative Agency Law, 2 Pa. C.S. §§501-508, 701-704; 63 P.S. §§2201-2207; and the General Rules of Administrative Practice and Procedure, 1 Pa. Code §§31.1-35.251. **RESPONDENT IS HEREBY ORDERED TO FILE A WRITTEN ANSWER TO THIS ORDER TO SHOW CAUSE WITHIN THIRTY (30) DAYS OF THE DATE OF THIS ORDER.** The Answer shall specifically admit or deny each of the Factual Allegations made herein, and shall set forth the facts and state

concisely the matter of law upon which Respondent relies. If Respondent fails to file an Answer within the time allowed herein, the Factual Allegations may be deemed admitted, and the Board will issue an Order which may impose penalties as set forth above.

If Respondent desires a formal administrative hearing, at which he may defend against the allegations in the Order to Show Cause or to present evidence in mitigation of any penalty which may be imposed upon Respondent or any of Respondent's licenses, certifications, registrations, permits or other authorizations to practice a profession, a written request for hearing must be filed within thirty (30) days of this Order. **IF RESPONDENT FAILS TO FILE A WRITTEN REQUEST FOR HEARING WITHIN THIRTY (30) DAYS OF THIS ORDER, RESPONDENT WILL BE DEEMED TO HAVE WAIVED HIS RIGHT TO A HEARING AND FINAL JUDGMENT MAY BE ENTERED WITHOUT A HEARING.**

If a hearing is scheduled, Respondent will be notified of the specific time and place of the hearing. The hearing will be held before the Board or its duly designated Presiding Officer, in accordance with 1 Pa. Code §35.185. Respondent may appear, with or without counsel, offer testimony or other evidence on his behalf, and confront and cross-examine the Commonwealth's witnesses.

Answers, requests for hearings, preliminary motions, protests, petitions to intervene, or any other pleading must be filed with:

Deanna S. Walton, Prothonotary
Bureau of Professional and Occupational Affairs
124 Pine Street, Suite 200
Harrisburg, PA 17101
717-772-2686

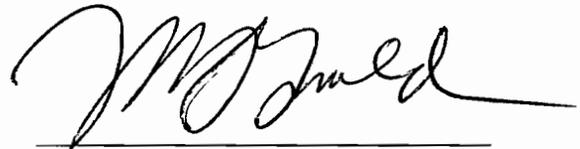
Also, you must send a separate copy of the Answer, and any other pleadings or documents,
to the prosecuting attorney named below at:

P.O. BOX 2649
HARRISBURG, PA 17105-2649

Notices and petitions to intervene must be filed within thirty (30) days of the date of this
Order, unless in extraordinary circumstances for good cause shown, a later filing is authorized by the
agency.

BY ORDER:

DEPARTMENT OF STATE



Mark D. Greenwald
Prosecuting Attorney
Commonwealth of Pennsylvania
Department of State
P.O. Box 2649
Harrisburg, PA 17105-2649
(717) 783-7200

DATE: 11/27/01

750
750
750

STATE OF NEW YORK : COUNTY OF MONROE
TOWN _____ COURT TOWN _____ OF PENFIELD

The People of the State of New York

against

Richard J. DeFRANCO DOB 01/04/63
Defendant

Accusatory Instrument
Felony Complaint

I, Deputy R. Murphy, employed _____, residing at _____

130 S. Plymouth Avenue, Rochester, by this Felony Complaint makes written accusation as follows:

That Richard J. DeFRANCO, on the 23rd day of June 1999, at 2017 Dublin Road in the Town of Penfield County of Monroe, New York, did

commit the offense of Burglary 2nd degree/Criminal Mischief 4th degree
Attempted Petit Larceny

a felony in violation of Section 140.25(2)/145.00(1)/110.05(155.25) of the Penal Law of the State of New York, in that (s)he did, at the aforesaid time and place

- Count One: Burglary in the second degree
- Count Two: Criminal Mischief in the fourth degree
- Count Three: Attempted Petit Larceny

The facts upon which this Felony Complaint is based are as follows:

That the defendant did, on the aforesaid date and location, at approximately 4:35am, cause damage to enter and remain unlawfully in a dwelling with intent to commit a crime therein. To wit: The defendant did damage a ground floor window and unlawfully enter the residence located at 2017 Dublin Road, and once inside said residence, the defendant attempted to steal property consisting of a metal foot locker containing photographs of an unknown value.

The foregoing allegations are based upon information and belief, the sources being an investigation conducted by your complainant while acting in his official capacity as a Deputy Sheriff with the Monroe County Sheriff's Office, the sworn deposition of Monique Bardenbaugh. The defendant, after being advised of his constitutional rights and waiving same, gave a voluntary admission stating in sum and substance that he committed the above acts.

The foregoing factual allegations are based upon personal knowledge of the complainant (and upon information and belief, the sources of complainants information and belief being,

FEB 08 2001

CLERK'S OFFICE

TRUE AND CORRECT COPY
CERTIFIED FROM THE RECORD
THIS 10 DAY OF July A.D. 06

EXHIBIT
tabbies
1

CITY or TOWN PITTSBURGH, STATE of NEW YORK, COUNTY of MONROE
DATE 6/23/99 TIME 0710 PLACE 799 LINDEN AVENUE

I, RICHARD JOSEPH DEFRANCO being duly sworn, am 36 years of age
and my address is 6101 WEST RD, MCKEAN, PA.
I have been duly warned by DEPUTY MURPHY, who has identified
himself as DEPUTY SHERIFF

that I have the right to remain silent and don't have to say anything if I don't want to; that anything I say can be used against me in a court of law; that I have the right to talk to a lawyer before making any statement and to have him here with me; that if I can't pay for a lawyer, one will be given to me before I make any statement, if I wish.

I understand what my rights are and am willing to make a statement. I do not want a lawyer at this time. No promises or threats have been made to me to induce me to make this statement.

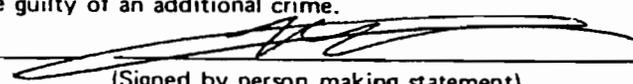
I AM MARRIED TO SANDRA FOR 6 YEARS. SHE IS THE DAUGHTER OF DAVE WILLIAMS WHO LIVES AT BUDWIN ROAD IN PENFIELD. I DON'T KNOW THE # BUT I'VE BEEN THERE MANY TIMES.

MY WIFE & I ARE HAVING DIFFICULTIES BECAUSE ABOUT A YEAR AGO I HAD AN AFFAIR. SANDRA TOOK MY PHOTOGRAPHS OF ME & THE GIRL I HAD THE AFFAIR WITH. SHE TOOK THEM, & MY FOOT LOCKER. SHE LOCKED THE PHOTOS IN MY FOOT LOCKER & PUT THE FOOT LOCKER IN THE BASEMENT OF HER FATHER'S HOUSE. THAT'S WHERE THEY'VE BEEN FOR APPROX 1 YEAR. SHE REFUSED TO RETURN THEM.

I'D BEEN THINKING ABOUT THE PHOTOS & THIS MORNING I DECIDED TO COME & GET THEM BACK. I DROVE UP FROM MY HOME IN MCKEAN & WENT TO SANDRA'S FATHER'S HOUSE, TO RETRIEVE MY PROPERTY. I PLANNED TO ENTER THE HOUSE, RETRIEVE MY PROPERTY, & FIX ANY DAMAGE TO THE HOUSE.

I GOT TO THE HOUSE AT ABOUT 4:35 AM, THIS MORNING. I PARKED MY CAR RIGHT IN THE DRIVEWAY & THOUGHT

I have read this statement consisting of ___ page(s) and the facts contained therein are true and correct. I have also been told that swearing to a false statement can make me guilty of an additional crime.

Witness: Robert Murphy MURPHY 

(Signed by person making statement)
Subscribed and sworn before me

this ___ day of ___ 19__

Witness:
TRUE AND CORRECT COPY
CERTIFIED FROM THE RECORD
THIS 10 DAY OF July A.D. 06

Deanne S. Walter
PROTHONOTARY

EXHIBIT
2

Notary Public

VOLUNTARY STATEMENT

CITY or TOWN PITTSFORD, STATE of NEW YORK, COUNTY of MONROE
DATE 6/23/99 TIME 0710 PLACE 789 HIDDEN AVENUE
I, RICHARD JOSEPH DEFRANCO being duly sworn, am 36 years of age
and my address is 6101 WEST RD, MCKEAN, PA
I have been duly warned by DEPUTY MURPHY, who has identified
himself as DEPUTY SHERIFF

that I have the right to remain silent and don't have to say anything if I don't want to; that anything I say can be used
against me in a court of law; that I have the right to talk to a lawyer before making any statement and to have him here
with me; that if I can't pay for a lawyer, one will be given to me before I make any statement, if I wish.

I understand what my rights are and am willing to make a statement. I do not want a lawyer at this time. No promises
or threats have been made to me to induce me to make this statement.

I MIGHT OR MIGHT NOT HAVE A KEY TO THE HOUSE. I
TRIED MY KEYS BUT NONE WORKED. I LOOKED FOR A
WINDOW THAT WOULD BE EASY TO REPAIR, A SMALL
ONE. I BROKE THE WINDOW WITH MY BOLT CUTTERS & THEN
CUT THE MAKE SHIFT BARS. I WALKED THROUGH THE
BASEMENT & SAW MY FOOT LOCKER THERE. I WALKED
OUT THE BACK DOOR TO MY CAR TO GET THE TOOLS
TO FIX THE WINDOW & I MET DEPUTY SMITH WHO
ASKED WHAT I WAS DOING.

I ONLY MEANT TO TAKE MY FOOT LOCKER & TO REPAIR
DAVE'S WINDOW. I WOULD NEVER STEAL FROM ANYBODY.

[Large handwritten signature area, possibly 'R. DeFranco']

I have read this statement consisting of ___ page(s) and the facts contained therein are true and correct. I have also been
told that swearing to a false statement can make me guilty of an additional crime.

Witness: Robert E. Murphy, Sheriff (SIGNED BY PERSON MAKING STATEMENT)
WITNESS: THIS 10 DAY OF July A.D. 1999 SUBSCRIBED AND SWORN BEFORE ME

Deanna S. Walton
PROTHONOTARY Notary Public

STATE OF NEW YORK : COUNTY OF Monroe

Town _____ COURT _____ Town _____ OF Penfield

The People of the State of New York

against

Richard DeFranco 1/4/63

Deiendant

Certificate of Conviction

This is to certify that a Judgment of Conviction has been entered in this court, before the Hon. John Lomenzo Jr., a Judge-Justice of this Court, on the 15 day of December, 1999, convicting the above named defendant of the offense of _____

Crim Trespass 2nd. to satisfy all other charges that

were pending against Mr. Franco. Copy of charges attached by information

and sentence was imposed as follows,

Conditional Discharge for 1 year. Restitution paid through

Attorney's office

Dated at:

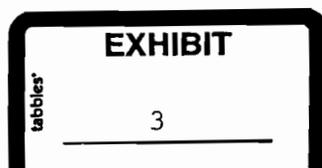
Penfield, N. Y.

this 23 day of July, 192001

[Handwritten Signature]

Judge-Justice-Clerk
TRUE AND CORRECT COPY
CERTIFIED FROM THE RECORD
THIS 10 DAY OF July A.D. 2006

[Handwritten Signature: Deanna S. Walton]
PROTHONOTARY



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND
OCCUPATIONAL AFFAIRS

M D - 0 5 0 2 7 3 - L

D E F R A R N E W

THIS IS YOUR RENEWAL NOTICE - REQUIRED FEE - \$125.00

STATE BOARD OF MEDICINE
P.O. BOX 8414
HARRISBURG, PA. 17105-8414

RICHARD JOSEPH DEFRANCO
2729 WEST 31ST STREET
ERIE, PA 16506

RE
YOU
COMPL

00 NOV 20 11 25 AM '00

YOUR CURRENT LICENSE TO PRACTICE MEDICINE AND SURGERY IN PENNSYLVANIA WILL EXPIRE ON DECEMBER 31, 2000. TO RENEW YOUR LICENSE THROUGH DECEMBER 31, 2002, COMPLETE THE QUESTIONS BELOW AND RETURN WITH A CHECK OR MONEY ORDER IN THE AMOUNT OF \$125.00 MADE PAYABLE TO THE "COMMONWEALTH OF PA." WRITE YOUR LICENSE NUMBER ON THE FRONT OF THE PAYMENT. A LATE FEE OF \$5.00 PER MONTH WILL BE CHARGED FOR RENEWALS POSTMARKED AFTER DECEMBER 31, 2000. A PROCESSING FEE OF \$20.00 WILL BE CHARGED FOR ANY CHECK OR MONEY ORDER UNPAID BY YOUR BANK, REGARDLESS OF THE REASON. IF YOU HAVE A CHANGE IN NAME AND/OR ADDRESS, INDICATE THE CHANGE NEXT TO THE PRE-PRINTED NAME AND ADDRESS ABOVE. A NAME CHANGE REQUIRES SUBMISSION OF A COPY OF A COURT ORDER, MARRIAGE CERTIFICATE, DIVORCE DECREE OR OTHER OFFICIAL DOCUMENT.

NOTICE: IF YOU PRACTICE IN PENNSYLVANIA, YOU MUST MAINTAIN THE REQUIRED AMOUNT OF PROFESSIONAL LIABILITY INSURANCE AND PAY THE REQUIRED FEE AND CAT FUND SURCHARGE. FAILURE TO DO SO WILL RESULT IN SUSPENSION OR REVOCATION OF YOUR LICENSE.

ANY DISCIPLINARY ACTION TAKEN IN ANOTHER STATE, TERRITORY OR COUNTRY SHALL BE REPORTED TO THE BOARD ON THE BIENNIAL RENEWAL NOTICE OR WITHIN 30 DAYS OF FINAL DISPOSITION, WHICHEVER IS SOONER.

THE FOLLOWING QUESTIONS MUST BE ANSWERED. IF YOU ANSWER "YES" TO QUESTIONS 2, 3, 4, OR 5 BELOW, YOU MUST PROVIDE COMPLETE DETAILS ON 8 1/2 X 11 SHEETS OF PAPER AND INCLUDE COPIES OF LEGAL DOCUMENTS, IF ANY. FAILURE TO PROVIDE DOCUMENTS WILL DELAY THE PROCESS.

YES NO

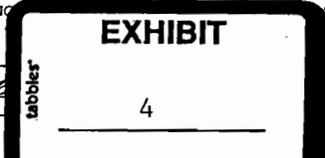
- () 1. DO YOU HOLD A LICENSE TO PRACTICE MEDICINE AND SURGERY (ACTIVE OR INACTIVE, CURRENT OR EXPIRED) IN ANY OTHER JURISDICTION? IF YES, LIST EACH ONE. NEW YORK - EXPIRED
- () 2. SINCE YOUR LAST RENEWAL, HAS ANOTHER STATE, TERRITORY OR COUNTRY TAKEN ANY DISCIPLINARY ACTION (INCLUDES VOLUNTARY SURRENDER OF A LICENSE) AGAINST YOU OR FILED CHARGES AGAINST YOU THAT HAVE NOT BEEN RESOLVED IN YOUR FAVOR?
- () 3. SINCE YOUR LAST RENEWAL, HAVE YOU BEEN CONVICTED, FOUND GUILTY, PLEADED NOLO CONTENDERE, RECEIVED PROBATION WITHOUT VERDICT, OR RECEIVED ANY OTHER DISPOSITION (EXCLUDING ACQUITTAL OR DISMISSAL), WITH RESPECT TO ANY CRIMINAL OFFENSE, INCLUDING ANY DRUG LAW VIOLATIONS, OR DO YOU HAVE ANY CRIMINAL CHARGES PENDING AND UNRESOLVED IN ANY STATE OR FEDERAL COURT? (A SUMMARY TRAFFIC VIOLATION SHOULD NOT BE CONSIDERED AS A CRIMINAL OFFENSE.)
- () 4. SINCE YOUR LAST RENEWAL, FOR DISCIPLINARY REASONS HAVE YOU WITHDRAWN AN APPLICATION FOR A LICENSE, HAD AN APPLICATION FOR A LICENSE DENIED OR REFUSED, OR AGREED NOT TO REAPPLY FOR A LICENSE IN ANOTHER STATE, TERRITORY OR COUNTRY? A LICENSE INCLUDES A REGISTRATION OR CERTIFICATION.
- () 5. SINCE YOUR LAST RENEWAL, HAVE YOU HAD PRACTICE PRIVILEGES DENIED, REVOKED, SUSPENDED, RESTRICTED, SURRENDERED IN LIEU OF DISCIPLINE OR EMPLOYMENT TERMINATED IN A HOSPITAL OR ANY HEALTH CARE FACILITY?
- () 6. SINCE YOUR LAST RENEWAL, HAVE YOU HAD YOUR DEA REGISTRATION DENIED, REVOKED OR RESTRICTED OR HAVE YOU HAD YOUR PROVIDER PRIVILEGES TERMINATED BY ANY MEDICAL ASSISTANCE AGENCY FOR CAUSE?

TRUE AND CORRECT COPY
CERTIFIED FROM THE RECORD
THIS 10 DAY OF July A.D. 06

IF YOU WANT YOUR LICENSE PLACED ON "INACTIVE" STATUS PLACE AN "X" IN THE BLANK TO THE RIGHT.
NO FEE IS REQUIRED. YOU ARE STILL REQUIRED TO ANSWER THE QUESTION, SIGN AND DATE BELOW.

Deanna S. Walton
PROTHONOTARY

MY REPRESENTATIONS AND RESPONSES IN THIS DOCUMENT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE. I UNDERSTAND THAT THEY ARE SUBJECT TO THE PENALTIES OF 18 PA. C.S. 4904, RELATING TO AUTHORITIES.

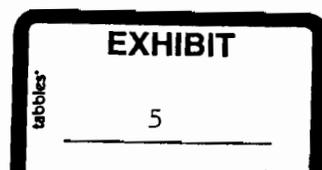


SIGNATURE [Signature]

M.D. DATE 10/18/00

3. On May 8, 2000, I was admitted to the Probation Without Verdict Program by the Honorable Stephanie Domitrovich, Judge of the Court of Common Pleas of Erie County, Pennsylvania. I was placed on the program for one year. A copy of the Order is attached hereto. I was placed on the program for a charge of one count of violating 35 Pa.C.S.A. §780-113(a)(12).

6. I voluntarily surrendered my DEA license on June 9, 1998. My license is currently subject to a Memorandum of Agreement, a copy of which is attached.



TRUE AND CORRECT COPY
CERTIFIED FROM THE RECORD
THIS 10 DAY OF July A.D. 06
Deanna S. Walter
PROTHONOTARY

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BEFORE THE STATE BOARD OF MEDICINE

Commonwealth of Pennsylvania
Bureau of Professional and
Occupational Affairs

vs.

Richard J. DeFranco, M.D.,
Respondent

:
:
:
:
: Docket No. 49-01
: File No. 0149-00923
:
:

CERTIFICATE OF SERVICE

I, Mark D. Greenwald, hereby certify that I have this 28th day of November, 2001 served a true and correct copy of the foregoing Notice and Order to Show Cause upon all parties of record in this proceeding in accordance with the requirements of §33.31 of the General Rules of Administrative Practice and Procedure, 1 Pa. Code §33.31 (relating to service by the agency).

CERTIFIED MAIL, RETURN RECEIPT REQUESTED:

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



Mark D. Greenwald
Prosecuting Attorney
Commonwealth of Pennsylvania
Department of State

P. O. Box 2649
Harrisburg, PA 17105-2649
(717) 783-7200

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BEFORE THE STATE BOARD OF MEDICINE

Commonwealth of Pennsylvania
Bureau of Professional and
Occupational Affairs

vs.

Richard J. DeFranco, M.D.,
Respondent

:
:
:
:
: Docket No. 49-01
: File No. 0149-00923
:
:

CERTIFICATE OF SERVICE

I, Mark D. Greenwald, hereby certify that I have this *3rd* day of *December*, 2001 served a true and correct copy of the foregoing Notice and Order to Show Cause upon all parties of record in this proceeding in accordance with the requirements of §33.31 of the General Rules of Administrative Practice and Procedure, 1 Pa. Code §33.31 (relating to service by the agency).

FIRST CLASS MAIL, POSTAGE PREPAID:

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



Mark D. Greenwald
Prosecuting Attorney
Commonwealth of Pennsylvania
Department of State

P. O. Box 2649
Harrisburg, PA 17105-2649
(717) 783-7200

MDG/TLK:pah

d. Respondent is currently engaged in the practice of medicine in the State of New York.

e. Respondent is not currently engaged in the practice of medicine in the Commonwealth of Pennsylvania

f. On or about June 23, 1999, a Criminal Complaint was filed in the State of New York, County of Monroe, charging Respondent with one count of Burglary in the 2nd degree, a Class C felony, in violation of §140.25(2) of the Penal Law of New York; one count of Criminal Mischief in the 4th degree, a Class A misdemeanor, in violation of §145.00(1) of the Penal Law of New York; and one count of Attempted Petit Larceny in violation of §110/155.25 of the Penal Law of New York, a Class B misdemeanor.

g. True and correct copies of the Criminal Complaint are attached and incorporated as Exhibit 1.

h. Respondent drafted a written statement describing the facts surrounding the criminal charges filed against him.

i. A true and correct copy of Respondent's Voluntary Statement is attached and incorporated as Exhibit 2.

j. On or about December 15, 1999, Respondent pled guilty to Criminal Trespass in the 2nd Degree, a Class A misdemeanor.

k. On or about December 15, 1999, Respondent was sentenced to Conditional Discharge for one year and ordered to pay restitution.

1. A true and correct copy of the Certificate of Conviction is attached and incorporated as Exhibit 3.

m. On or about October 18, 2000, Respondent submitted or had submitted a biennial registration for the renewal period of January 1, 2001 through December 31, 2002.

n. In response to question no. 3: "Since your last renewal, have you been convicted, found guilty, pleaded nolo contendere, received probation without verdict, or received any other disposition (excluding acquittal or dismissal), with respect to any criminal offense, including any drug law violations, or do you have any criminal charges pending or unresolved in any state or federal court?" Respondent answered in the affirmative by placing an X under yes.

o. A true and correct copy of the Renewal Notice is attached and incorporated as Exhibit 4.

p. Respondent provided an explanation to his affirmative answer to question no. 3, stating that the Court of Common Pleas of Erie County, Pennsylvania placed him into the Probation Without Verdict Program, with conditions, based on one count of violation 35 Pa. C.S. §780-113(a)(12).

q. A true and correct copy of Respondent's statement is attached and incorporated as Exhibit 5.

r. Respondent failed to disclose the New York conviction of December 15, 1999, on the renewal application dated October 18, 2000.

s. On or about February 8, 2001, Respondent's counsel, on behalf of Respondent, forwarded a letter to the Commonwealth advising that Respondent had failed to mention that he had been convicted of a crime in New York.

t. On or about July 12, 2001, the Hearing Committee of the State Board for Professional Medical Conduct entered a Determination and an Order finding that Respondent had committed professional misconduct by having been convicted of the crime of Criminal Trespass following a hearing conducted on June 20, 2001, and recommended the imposition of a disciplinary sanction of 3 years probation, a fine of \$1,000.00, and continued involvement with voluntary addiction recovery program and counseling as the underlying cause for the criminal conviction involved a substance abuse problem.

u. A true and correct copy of the Determination and Order are attached and incorporated as Exhibit 6.

v. The Administrative Review Board for Professional Medical Conduct in the State of New York reviewed the Hearing Committee's Determination and Order, affirmed the finding that Respondent had committed professional misconduct, ordered 3 years of probation, required that the Respondent continue with substance abuse counseling and removed the fine imposed by the Hearing Committee of the State Board for Professional Medical Conduct.

w. A true and correct copy of the Determination and Order of the Administrative Review Board for Professional Medical Conduct is attached and incorporated as Exhibit 7.

x. Respondent has been abiding by the recommendations of addictions counseling.

y. The actions of Respondent, described above, violated the Act at 63 P.S. §422.41(3), 63 P.S. §422.41(4) & 63 P.S. §422.41(11).

4. The participants consent to issuance of the following Order in settlement of this matter:

a. Respondent violated the Act at 63 P.S. §422.41(3), 63 P.S. §422.41(4) & 63 P.S. §422.41(11) by having been convicted of a crime, having had his license subjected to disciplinary action by another state, and submitting a false or deceptive biennial registration with the Board.

b. Respondent shall pay a **CIVIL PENALTY** of two thousand dollars (\$2,000.00) by cashier's check, certified check, U.S. Postal money order or attorney's check, made payable to "Commonwealth of Pennsylvania." Respondent shall return the full Civil Penalty with the signed Consent Agreement.

c. A **PUBLIC REPRIMAND** is placed on Respondent's permanent Board record.

d. In the event that Respondent initiates a medical practice in the Commonwealth of Pennsylvania, Respondent shall obtain a monitor who will review Respondent's medical records and charts maintained in the ordinary course of business and submit monthly reports to the administrative assistant for the State Board of Medicine of the Commonwealth of Pennsylvania for the duration of probation.

e. If Respondent initiates a medical practice in the Commonwealth of Pennsylvania, his license is subjected to the same terms and conditions as set forth in the Determination and Order of the New York Administrative Review Board for Professional Medical Conduct with comparable programs within the Commonwealth of Pennsylvania. This requirement is in addition to the terms and conditions set forth in this Consent Agreement and Order.

f. Respondent shall continue to participate in addictions counseling and abide by all of the recommendations of his addictions counselor. The failure of the Respondent to continue his participation in addictions counseling and abide by the recommendations of his addictions counselor shall constitute a violation of this Consent Agreement and Order.

g. Respondent shall abide by all terms and conditions set forth in the Determination and Order of the New York Administrative Review Board for Professional Medical Conduct dated July 10, 2001. Respondent's failure to abide by any of the terms and conditions set forth in the Determination and Order of the New York Administrative Review Board for Professional Medical Conduct shall constitute a violation of this Consent Agreement and Order.

h. Respondent's license, no. MD-050273-L is **PLACED ON PROBATION** for a period of 3 years subject to the terms and conditions that follow:

GENERAL

i) Respondent shall abide by and obey all laws of the United States, the Commonwealth of Pennsylvania and its political subdivisions and all rules and

regulations and laws pertaining to the practice of the profession in this Commonwealth or any other state or jurisdiction in which Respondent holds a license to practice. Provided, however, summary traffic violations shall not constitute a violation of this Order;

- ii) Respondent shall at all times cooperate with the Bureau of Professional and Occupational Affairs ("Bureau"), any of its agents or employees and the Bureau of Enforcement and Investigation ("BEI") and its agents and employees, in the monitoring, supervision and investigation of Respondent's compliance with the terms and conditions of this Order;
- iii) Respondent's failure to fully cooperate with and successfully comply with the terms and conditions of this probation shall be deemed a violation of this Consent Agreement and Order;
- iv) Respondent shall not falsify, misrepresent or make material omission of any information submitted pursuant to this Order;
- v) Respondent shall notify BEI, in writing, within twenty (20) days of the filing of any criminal charges, the initiation of any other legal action pertaining to the practice of Respondent's profession, the initiation, action, restriction or limitation relating to Respondent by the professional licensing authority of any state or jurisdiction.
- vi) Respondent shall notify BEI by telephone within 72 hours and in writing within ten (10) days of the change of his home address, phone number, place(s) of employment and/or practice;

REPORTING/RELEASES

vii) Respondent, his supervisor(s) or employers shall cause any reports, data or other information required to be filed with BEI under this Order, unless otherwise directed, with:

Probation Compliance Officer
Bureau of Enforcement and Investigation
Box 2649
Harrisburg, PA 17105-2649.

viii) Respondent consents to the release by the Bureau or BEI of any information or data produced as a result of this probation to any employer or prospective employer;

COSTS

ix) Respondent shall bear the responsibility of all costs incurred by Respondent in complying with the terms of this Order, including production of records;

VIOLATION OF THIS ORDER

x) Notification of a violation of the terms or conditions of this Consent Agreement and Order shall result in the TERMINATION of the period of probation, and the SUSPENSION of the Respondent's license to practice medicine in the Commonwealth of Pennsylvania as follows:

(1) The prosecuting attorney for the Commonwealth shall file with the Board a Petition which indicates that Respondent has violated any terms or conditions of this Consent Agreement and Order;

(2) Upon a probable cause determination that Respondent has violated any of the terms or conditions of this Consent Agreement and Order, the Board shall, without holding a formal hearing, issue a preliminary order terminating the period of probation and suspending Respondent's license;

(3) Respondent shall be notified of the Board's Preliminary Order within three (3) days of its issuance by certified mail and first class mail postage prepaid, sent to the last registered address on file with the Board;

(4) Within twenty (20) days of mailing of the notification of the Board's action, Respondent may answer the Commonwealth's Petition and request that a formal hearing be convened concerning Respondent's violation of probation, in which Respondent may seek relief from the Preliminary Order suspending his license. Respondent shall serve the prosecuting attorney for the Commonwealth with a copy of the answer and all subsequent filings in this matter;

(5) If a request for a formal hearing is received from Respondent, the Board shall convene a formal hearing within forty-five (45) days from the date of the Board's receipt of Respondent's request for a formal hearing;

(6) If Respondent files an answer and request for a hearing within the twenty (20) day period, the Preliminary Order suspending Respondent's license shall remain in effect unless and until the Board issues a determination favorable to Respondent after holding the formal hearing;

(7) The facts and averments in this Consent Agreement and Order shall be deemed admitted and uncontested at this hearing;

(8) If the Board after such hearing makes a determination adverse to Respondent that he has committed a substantive violation of probation, the Board will issue a Final Order suspending Respondent's license for a period of 3 years and imposing any additional disciplinary measures it deems appropriate; If the Board after such hearing makes a determination adverse to Respondent that he has committed a technical violation of probation, the Board will issue a Final Order imposing whatever disciplinary sanction it deems appropriate;

(9) If a request for a formal hearing is not received from Respondent within the prescribed twenty (20) day period, the Board's Preliminary Order suspending

Respondent's license for a period of 3 years shall become a

Final Order twenty (20) days after the date of its mailing;

- xi) If the stay is terminated, Respondent shall still comply with all terms and conditions of probation during the active suspension, other than those terms and conditions pertaining to practicing the profession. Continued failure by Respondent to comply with the unaffected terms and conditions of probation shall result in further disciplinary action against Respondent;
- xii) Respondent's failure to fully comply with any terms of this Order may also constitute grounds for additional disciplinary action;
- xiii) Nothing in this Order shall preclude the Prosecuting Attorney for the Commonwealth from filing charges or the Board from imposing disciplinary or corrective measures for violations or facts not contained in this Consent Agreement;
- xiv) Upon successful completion of probation, Respondent may request reinstatement of Respondent's license to unrestricted, non-probationary status by filing a petition with the Board making an affirmative showing that he has complied with all terms and conditions of probation;
 - i. This case shall be deemed settled and discontinued upon Board adoption of the Consent Agreement;
 - j. This Order shall take effect immediately upon Board adoption of the Consent Agreement;

5. Respondent acknowledges receipt of an Order to Show Cause in this matter. Respondent knowingly and voluntarily waives the right to an administrative hearing in this matter, and to the following rights related to that hearing: to be represented by counsel at the hearing; to present witnesses and testimony in defense or in mitigation of any sanction that may be imposed for a violation; to cross-examine witnesses and to challenge evidence presented by the Commonwealth; to present legal arguments by means of a brief; and to take an appeal from any final adverse decision.

6. This Consent Agreement is between the Commonwealth and Respondent only. Except as otherwise noted, this Agreement is to have no legal effect unless and until the Office of General Counsel approves the contents as to form and legality and the Board issues the stipulated Order.

7. Should the Board not approve this Consent Agreement, presentation to and consideration of this Consent Agreement and other documents and matters by the Board shall not prejudice the Board or any of its members from further participation in the adjudication of this matter. This paragraph is binding on the participants even if the Board does not approve this Consent Agreement.

8. Respondent agrees, as a condition of entering into this Consent Agreement, not to seek modification at a later date of the stipulated Order adopting and implementing this Consent Agreement without first obtaining the express written concurrence of the Prosecution Division.

9. This Agreement contains the whole agreement between the participants. There are no other terms, obligations, covenants, representations, statements or conditions, or otherwise, of any kind whatsoever, concerning this Agreement.

10. Respondent verifies that the facts and statements set forth in this Agreement are true and correct to the best of Respondent's knowledge, information and belief. Respondent understands that statements in this Agreement are made subject to the criminal penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.



Mark D. Greenwald
Prosecuting Attorney
Department of State



Richard J. DeFranco, M.D.
Respondent

DATED: 3/4/02

DATED: 2/26/02

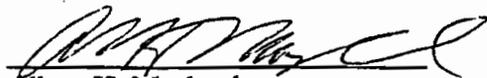
ORDER

AND NOW, this 26th day of March, 2002 the State Board of Medicine adopts and approves the foregoing Consent Agreement and incorporates the terms of paragraph 4, which shall constitute the Board's Order and is now issued in resolution of this matter.

This Order shall take effect immediately.

BY ORDER:

**BUREAU OF PROFESSIONAL AND
OCCUPATIONAL AFFAIRS**


Albert H. Masland
Commissioner

Date of mailing: 3/29/02

For the Commonwealth:

For Respondent:

mdg

STATE BOARD OF MEDICINE


Charles D. Hummer, M.D.
Chairman

Mark D. Greenwald, Esquire
P. O. Box 2649
Harrisburg, PA 17105-2649

Philip B. Friedman, Esquire
319 West 8th Street
Erie, PA 16502-1495

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

IN THE MATTER
OF
RICHARD J. DeFRANCO, M.D.

CONSENT
ORDER

BPMC No. 04-39

Upon the application of (Respondent) RICHARD J. DeFRANCO, M.D. in the attached Consent Agreement and Order, which is made a part of this Consent Order, it is

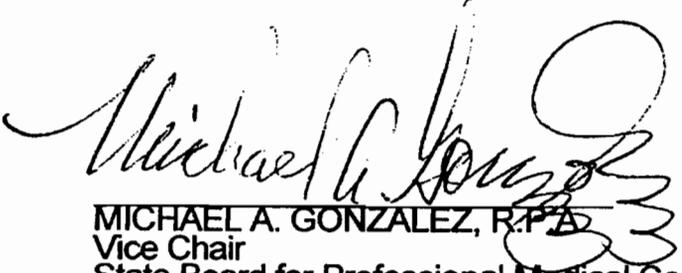
ORDERED, that the Consent Agreement, and its terms, are adopted and SO ORDERED, and it is further

ORDERED, that this Order shall be effective upon issuance by the Board, either

- by mailing of a copy of this Consent Order, either by first class mail to Respondent at the address in the attached Consent Agreement or by certified mail to Respondent's attorney, OR
- upon facsimile transmission to Respondent or Respondent's attorney, Whichever is first.

SO ORDERED.

DATED: 2/26/04


MICHAEL A. GONZALEZ, R.P.A.
Vice Chair
State Board for Professional Medical Conduct

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

IN THE MATTER
OF
RICHARD J. DeFRANCO, M.D.

CONSENT
AGREEMENT
AND
ORDER

RICHARD J. DeFRANCO, M.D., representing that all of the following statements are true, deposes and says:

That on or about January 17, 1991, I was licensed to practice as a physician in the State of New York, and issued License No. 184796 by the New York State Education Department.

My current address is 454 W. 7th Street, Erie, Pennsylvania, 16502, and I will advise the Director of the Office of Professional Medical Conduct of any change of address.

I understand that the New York State Board for Professional Medical Conduct has charged me with one specifications of professional misconduct.

A copy of the Statement of Charges, marked as Exhibit "A", is attached to and part of this Consent Agreement.

I plead guilty to the first specification, in full satisfaction of the charges against me, and agree to the following penalty:

Three years stayed suspension;

Five years probation, tolled until such time that Respondent returns to active practice in New York State, subject to the terms of probation set forth in Exhibit "B," attached hereto and made a part of this agreement and Order;

Respondent shall provide ninety (90) days notice to the Director of OPMC of his intention to return to active practice in New York State;

Respondent shall appear before and obtain approval from a Restoration Committee of the Board for Professional Medical Conduct that he is not impaired for the practice of medicine pursuant to PHL §230 (13) (a) as a condition precedent to his return to active practice in New York State; and

Respondent shall not practice in any jurisdiction where that practice is predicated on Respondent's New York State license while this order is in effect without permission of the Director of OPMC.

I further agree that the Consent Order shall impose the following conditions:

That Respondent shall maintain current registration of licensure with the New York State Education Department Division of Professional Licensing Services (except during periods of actual suspension), and shall pay all registration fees. This condition shall take effect thirty (30) days after the Consent Order's effective date and will continue so long as Respondent remains licensed in New York State; and

That Respondent shall cooperate fully with the Office of Professional Medical Conduct (OPMC) in its administration and enforcement of this Order and in its investigations of matters concerning Respondent. Respondent shall respond in a timely manner to all OPMC requests for written periodic verification of Respondent's compliance with this Order. Respondent shall meet with a person designated by the Director of OPMC, as directed. Respondent shall respond

promptly and provide all documents and information within Respondent's control, as directed. This condition shall take effect upon the Board's issuance of the Consent Order and will continue so long as Respondent remains licensed in New York State.

I stipulate that my failure to comply with any conditions of this Order shall constitute misconduct as defined by New York State Education Law §6530(29).

I agree that if I am charged with professional misconduct in future, this Consent Agreement and Order shall be admitted into evidence in that proceeding.

I ask the Board to adopt this Consent Agreement.

I understand that if the Board does not adopt this Consent Agreement, none of its terms shall bind me or constitute an admission of any of the acts of alleged misconduct; this Consent Agreement shall not be used against me in any way and shall be kept in strict confidence; and the Board's denial shall be without prejudice to the pending disciplinary proceeding and the Board's final determination pursuant to the Public Health Law.

I agree that, if the Board adopts this Consent Agreement, the Chair of the Board shall issue a Consent Order in accordance with its terms. I agree that this Order shall take effect upon its issuance by the Board, either by mailing of a copy of the Consent Order by first class mail to me at the address in this Consent Agreement, or to my attorney by certified mail, OR upon facsimile transmission to me or my attorney, whichever is first.

I ask the Board to adopt this Consent Agreement of my own free will and not under duress, compulsion or restraint. In consideration of the value to me of the Board's adoption of this Consent Agreement, allowing me to resolve this

matter without the various risks and burdens of a hearing on the merits, I knowingly waive my right to contest the Consent Order for which I apply, whether administratively or judicially, I agree to be bound by the Consent Order, and ask that the Board adopt this Consent Agreement.

DATED 1/5/4


RICHARD J. DeFRANCO, M.D.
RESPONDENT

The undersigned agree to Respondent's attached Consent Agreement and to its proposed penalty, terms and conditions.

DATE: 1/8/04


SHARIF MAHDAVIAN, ESQ.
Attorney for Respondent

DATE: 2-4-04


LEE A. DAVIS
Assistant Counsel
Bureau of Professional Medical Conduct

DATE: 2/23/04


DENNIS J. GRAZIANO
Director
Office of Professional Medical Conduct

EXHIBIT "A"

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

IN THE MATTER
OF
RICHARD J. DeFRANCO, M.D.

STATEMENT
OF
CHARGES

RICHARD J. DeFRANCO, M.D., the Respondent, was authorized to practice medicine in New York State on or about January 17, 1991, by the issuance of license number 184796 by the New York State Education Department. Respondent is not currently registered with the New York State Education Department to practice medicine.

FACTUAL ALLEGATIONS

A. Respondent, between at least the years 1993 and 2002, engaged in the habitual use of alcohol and/or narcotics, hallucinogens, or other drugs having similar effects, including Hydrocodone, other pain killers, and alcohol.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

**HABITUAL USE OF NARCOTICS,
HALLUCINOGENS, OR OTHER DRUGS**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(8) by reason of his being a habitual abuser of alcohol, and being dependent on or a habitual user of narcotics, barbiturates, amphetamines, hallucinogens, or other drugs having similar effects, which impairs Respondent's ability to practice, as alleged in the following:

1. The facts set forth in Paragraph A.

DATED: February 11, 2004
Albany, New York

Peter D. Van Buren

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

EXHIBIT "B"

Terms of Probation

1. Respondent's conduct shall conform to moral and professional standards of conduct and governing law. Any act of professional misconduct by Respondent as defined by New York State Education Law §6530 or §6531 shall constitute a violation of probation and may subject Respondent to an action pursuant to New York State Public Health Law §230(19).
2. Respondent shall maintain current registration of licensure with the New York State Education Department Division of Professional Licensing Services (except during periods of actual suspension), and shall pay all registration fees.
3. Respondent shall provide the Director, Office of Professional Medical Conduct (OPMC), Hedley Park Place, 433 River Street Suite 303, Troy, New York 12180-2299 with the following information, in writing, and ensure that such information is kept current: a full description of Respondent's employment and practice; all professional and residential addresses and telephone numbers within and outside New York State; and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty (30) days of each action.
4. Respondent shall cooperate fully with, and respond in a timely manner to, OPMC requests to provide written periodic verification of Respondent's compliance with the terms of this Consent Order. Upon the Director of OPMC's request, Respondent shall meet in person with the Director's designee.
5. Respondent's failure to pay any monetary penalty by the prescribed date shall subject Respondent to all provisions of law relating to debt collection by New York State, including but not limited to: the imposition of interest, late payment charges and collection fees; referral to the New York State Department of Taxation and Finance for collection; and non-renewal of permits or licenses [Tax Law section 171(27)]; State Finance Law section 18; CPLR section 5001; Executive Law section 32].
6. The probation period shall toll when Respondent is not engaged in active medical practice in New York State for a period of thirty (30) consecutive days or more. Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in, or intends to leave, active medical practice in New York State for a consecutive thirty (30) day period. Respondent shall then notify the Director again at least ninety (90) days before returning to active practice. Upon Respondent's return to active practice in New York State, the probation period will resume and Respondent shall fulfill any unfulfilled probation terms. Respondent shall appear before and obtain approval from a Restoration Committee of the Board for Professional Medical Conduct that he is not impaired for the practice of medicine pursuant to PHL §230 (13) (a) as a condition precedent to his return to active practice in New York State.
7. The Director of OPMC may review Respondent's professional performance. This review may include but shall not be limited to: a review of office records, patient records and/or hospital charts; and interviews with

or periodic visits with Respondent and staff at practice locations or OPMC offices.

8. Respondent shall maintain complete and legible medical records that accurately reflect the evaluation and treatment of patients and contain all information required by State rules and regulations concerning controlled substances.

IMPAIRMENT MONITORING

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

not practice medicine until a practice supervisor has been approved. Respondent shall ensure that the practice supervisor is in a position to regularly observe and assess Respondent's medical practice. Respondent shall cause the practice supervisor to report within 24 hours any suspected impairment, inappropriate behavior, questionable medical practice or possible misconduct to OPMC.

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

COPY

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BEFORE THE STATE BOARD OF MEDICINE**

**Commonwealth of Pennsylvania,
Bureau of Professional and
Occupational Affairs**

vs.

**Richard Joseph DeFranco, M.D.,
Respondent**

**Docket No. 1518-49-05
File No. 05-49-07930**

PROTHONOTARY
2006 JUN 29 11:11:10
Department of State

CONSENT AGREEMENT AND ORDER

The Commonwealth and Respondent stipulate as follows in settlement of the above-captioned case.

1. This matter is before the State Board Of Medicine ("Board") pursuant to the Medical Practice Act, Act of December 20, 1985, P.L. 457, No. 112, as amended, 63 P.S. §422.1 et seq..

2. At all relevant and material times, Richard Joseph DeFranco, M.D. ("Respondent") held a license to practice medicine and surgery in the Commonwealth of Pennsylvania, License No. MD-050273-L.

3. The Respondent admits that the following facts are true:

a. Respondent's license is current through December 31, 2006 and may be renewed thereafter upon the filing of the appropriate documentation and payment of the necessary fees.

b. Respondent's last address on file with the Board is 454 West 7th

TRUE AND CORRECT COPY
CERTIFIED FROM THE RECORD
THIS 10 DAY OF July, A.D. 2006

Heather S. Walton
PROTHONOTARY

STATE MEDICAL BOARD
OF OHIO
2006 JUL 12 A 9:53

Street, Erie, PA, 16502, however, the attorney for the Commonwealth has reason to believe that Respondent's current address is 2164 Cottage Grove Avenue, Cleveland Heights, OH 44118.

c. Respondent last practiced at Cleveland, Ohio.

d. On February 23, 1999, the Board issued its Order adopting the Voluntary Recovery Program Consent Agreement ("VRP Agreement") entered into between Respondent and the Commonwealth, File No. 98-49-02471, and, among other things, found Respondent to have violated the Medical Practice Act, Act of December 20, 1985, P.L. 457, No. 112, as amended, ("Act"), 63 P.S. §422.1 et seq. at 63 P.S. §422.41(5) in that Respondent was unable to practice the profession with reasonable skill and safety to patients by reason of illness, addiction to drugs or alcohol, or mental incompetence.

e. On or about August 27, 2001, Respondent agreed to extend the agreement until at least April 7, 2003, for violating Sections 7 (c) (1), (3), (4), (6), (8), (14), (19), (21), & (22) of the original agreement.

f. On or about January 23, 2003, Respondent agreed to extend the agreement until at least September 25, 2005, for violating Section 17, page 11 of the agreement, specifically having a relapse that was reported on or about September 25, 2002.

g. Between November 2003 and January 28, 2005, Respondent failed to abstain from the use of alcohol by experiencing a relapse that lasted from approximately November 2003 through January 28, 2005.

h. Between June 2001 and January 28, 2005, Respondent failed to return his drug screening enrollment packet and did not comply with random observed body fluid screening resulting in a lack of screening by PHMP since June 2001.

i. Respondent did not return his drug screening packet and did not comply with random observed body fluid screening in the Commonwealth of Pennsylvania because of his mistaken impression that testing being conducted in New York and Ohio was being accepted for compliance purposes.

j. PHMP will provide credit to testing conducted upon Respondent provided he is or has been enrolled in another state's monitoring program and that program provides PHMP with documentation of licensee's compliance with their monitoring agreement, including drug screening.

4. Based upon the factual allegations in paragraph 3 above, the Board is authorized to suspend, revoke or otherwise restrict Respondent's license under the Act.

5. The parties, intending to be legally bound, consent to the issuance of the following Order in settlement of this matter:

a. The Board is authorized to suspend, revoke or otherwise restrict Respondent's license under 63 P.S. §422.41(5) in that Respondent is unable to practice the profession with reasonable skill and safety to patients by reason of illness, addiction to drugs or alcohol, or mental impairment.

b. Respondent's license, No.MD-050273-L, is indefinitely **SUSPENDED**

for no less than three (3) years, such suspension to be immediately STAYED in favor of no less than three (3) years of PROBATION, said probation to be subject to the following terms and conditions:

- c. The suspension of Respondent's license shall be automatically and immediately STAYED in favor of no less than three (3) years of PROBATION subject to the following terms and conditions:

GENERAL

(1) Respondent shall fully and completely comply and cooperate with the Bureau of Professional and Occupational Affairs, Professional Health Monitoring Program ("PHMP"), Disciplinary Monitoring Unit ("DMU") and its agents and employees in their monitoring of Respondent's impairment under this Consent Agreement and Order ("Agreement").

(2) Respondent shall abide by and obey all laws of the United States, the Commonwealth of Pennsylvania and its political subdivisions and all rules and regulations and laws pertaining to the practice of the profession in this Commonwealth or any other state or jurisdiction in which Respondent holds a license to practice the profession. Summary traffic violations shall not constitute a violation of this Agreement.

(3) Respondent shall at all times cooperate with the PHMP and its agents and employees in the monitoring, supervision

and investigation of Respondent's compliance with the terms and conditions of this Agreement, including requests for, and causing to be submitted at Respondent's expense, written reports, records and verifications of actions that may be required by the PHMP.

(4) It shall be Respondent's responsibility to furnish or arrange to have furnished proof that he is or has been enrolled in another state's (Ohio) monitoring program and that program provides PHMP with documentation of licensee's compliance with their monitoring agreement, including drug screening.

(5) Respondent specifically agrees that his failure to provide proof that he is or has been enrolled in another state's (Ohio) monitoring program and arrange for that program to provide PHMP with documentation of his compliance with their monitoring agreement including drug screening shall result in a requirement that he submit to random observed body fluid screening in the Commonwealth of Pennsylvania.

(6) Respondent's failure to fully cooperate with the PHMP shall be deemed a violation of this Agreement.

(7) Respondent shall not falsify, misrepresent or make material omission of any information submitted pursuant to this Agreement.

(8) In the event Respondent relocates from his present

state of residence to another jurisdiction, within five days (5) days of relocating Respondent shall either enroll in the other jurisdiction's impaired professional program and have the reports required under this Agreement sent to the Pennsylvania PHMP, or if the other jurisdiction has no impaired professional program, Respondent shall notify the licensing board of the other jurisdiction that Respondent is impaired and enrolled in this Program. In the event Respondent fails to do so, in addition to being in violation of this Agreement, the periods of suspension and probation shall be tolled.

(9) Respondent shall notify the PHMP in writing within five (5) days of the filing of any criminal charges against Respondent, the initiation of any legal action pertaining to Respondent's practice of the profession, the initiation of charges, action, restriction or limitation related to Respondent's practice of the profession by a professional licensing authority of any state or jurisdiction or the Drug Enforcement Agency of the United States Department of Justice, or any investigation, action, restriction or limitation related to Respondent's privileges to practice the profession at any health care facility.

(10) Respondent shall notify the PHMP by telephone within 48 hours and in writing within five (5) days of any change

of Respondent's home address, phone number, employment status, employer and/or change in practice at a health care facility. Failure to timely advise the PHMP under this subsection due to the PHMP office being closed is not an excuse for not leaving a voice mail message with this information.

(11) Respondent shall cease or limit his/her practice if the PHMP case manager directs that Respondent do so.

EVALUATION - TREATMENT

(12) If an assessment/treatment evaluation has not been done by a PHMP-approved provider within thirty, (30) days prior to the effective date of this Agreement, or within thirty, (30) days subsequent to the effective date of this Agreement, Respondent shall have forwarded to the PHMP-DMU, P.O. Box 10749, Harrisburg, PA 17105-0749, (717) 783-4857, a written evaluation by a PHMP-approved provider assessing Respondent's fitness to actively practice the profession. If the provider determines that Respondent is not fit to practice, Respondent shall immediately cease practicing the profession and not practice until a PHMP-approved provider and the PHMP case manager determine that Respondent is fit to resume practice with reasonable skill and safety to patients.

(13) Respondent shall provide the PHMP-approved provider with a copy of any prior evaluations and counseling records and a copy of this Agreement.

(14) Respondent shall authorize, in writing, the PHMP to have a copy of the PHMP-approved provider's written evaluation reports.

(15) If the PHMP provider's evaluation includes recommendations that Respondent obtain treatment, Respondent

must fully comply with those recommendations as part of these probationary requirements.

(16) Respondent shall arrange and ensure that written treatment reports from all PHMP-approved providers are submitted to the PHMP upon request or at least every sixty (60) days after the effective date of this Agreement. The reports shall contain at least the following information:

(a) Verification that the provider has received a copy of this Agreement and understands the conditions of this probation;

(b) A treatment plan, if developed;

(c) Progress reports, including information regarding compliance with the treatment plan;

(d) Physical evaluations, if applicable;

(e) The results of any testing;

(f) Modifications in treatment plan, if applicable;

(g) Administration or prescription of any drugs to Respondent; and

(h) Discharge summary and continuing care plan at discharge.

(17) Respondent shall identify a primary care physician

who shall send written notification to the Respondent's PHMP case manager certifying Respondent's health status as requested.

SUPPORT GROUP ATTENDANCE

(18) Respondent shall attend and actively participate in any support group programs recommended by the provider or the PHMP case manager at the frequency recommended by the provider, but no less than twice a week.

(19) Respondent shall provide written verification of any and all support group attendance to the PHMP on at least a monthly basis or as otherwise directed by the PHMP.

ABSTENTION

(20) Respondent shall completely abstain from the use of controlled substances, caution legend (prescription) drugs, mood altering drugs or drugs of abuse including alcohol in any form, except under the following conditions:

(a) Respondent is a bona fide patient of a licensed health care practitioner who is aware of Respondent's impairment and participation in the PHMP;

(b) Such medications are lawfully prescribed by Respondent's treating practitioner and approved by the PHMP case manager; and

(c) Respondent provides the PHMP, by

telephone within 48 hours and in writing within five (5) days of receiving the medication, the name of the practitioner prescribing the drug, the illness or medical condition diagnosed, the type, strength, amount and dosage of the medication, and a signed statement consenting to the release of the medical information from the prescribing practitioner to the PHMP or its designated representative for the purpose of verification.

MONITORED PRACTICE

(21) "Practice" includes employment in any position requiring the maintenance of a current professional license.

(22) Licensee shall not work in any practice setting without workplace monitoring as required by PHMP.

(23) If Respondent is practicing, Respondent shall give any employer and supervisor a copy of this Agreement within five (5) days of the effective date of this Agreement.

(24) Licensee shall give any prospective employer and supervisor a copy of this Agreement when applying for employment in the practice of the profession.

(25) Respondent shall provide the PHMP by telephone within 48 hours, and in writing within five (5) days of the effective date of this agreement or obtaining employment, notification of the

following:

(a) Name and address of workplace monitor if a workplace monitor is required by PHMP;

(b) The name(s) and address(es) of the place(s) at which Respondent will practice the profession and a description of Respondent's duties and responsibilities at such places of practice; and

(c) Any restrictions on Respondent's practice.

(26) Respondent shall ensure that Respondent's supervisor submits to the PHMP the following information in writing:

(a) Verification that the employer and supervisor have received a copy of this Agreement and understand the conditions of this probation;

(b) An evaluation of Respondent's work performance on a 60-day or more frequent basis as requested by the PHMP; and

(c) Immediate notification of any suspected violation of this probation by Respondent.

BODY FLUID TOXICOLOGY SCREENING

(27) Respondent shall submit to random unannounced and observed body fluid toxicology screens for the detection of

substances prohibited under this Agreement as directed by the PHMP. A positive result on a body fluid toxicology screen shall constitute an irrefutable violation of this Agreement unless Respondent has complied with the provisions of this Agreement pertaining to the use of drugs. Failure to provide a specimen when requested will be considered a violation of this Agreement.

(28) Respondent shall avoid all foods that contain poppy seeds. Ingestion of poppy seeds will not be accepted as a valid explanation for a positive screen.

REPORTING/RELEASES

(29) Respondent, Respondent's providers, supervisor(s), employer(s) or other persons required to submit reports under this Agreement shall cause such reports, data or other information to be filed with the PHMP, unless otherwise directed, at:

PHMP-DMU
Box 10749
Harrisburg, PA 17105-0749

(30) Respondent consents to the release by the PHMP of any information or data produced as a result of this probation, including written provider evaluations, to any treatment provider, supervisor, Commonwealth's attorney, hearing examiner, and Board members in the administration and enforcement of this Agreement.

(31) Respondent shall sign any required waivers or release forms requested by the PHMP for any and all records, including medical or other health-related and psychological records, pertaining to treatment and monitoring rendered to Respondent during this probation and any corresponding criminal probation, as well as any employment, personnel, peer review or review records pertaining to Respondent's practice of the profession during this probation, to be released to the PHMP, the Commonwealth's attorney, hearing examiner and Board members in the administration and enforcement of this Agreement.

COSTS

(32) Respondent shall be responsible for all costs incurred in complying with the terms of this Agreement, including but not limited to psychiatric or psychotherapy treatments, PHMP-required toxicology screens prior to each screen's being conducted, and reproduction of treatment or other records. Any toxicology screens and any subsequent reanalysis of specimens required by PHMP shall be paid for by Licensee. Failure of Licensee to pay any of these costs in a timely manner shall constitute a violation of this Agreement.

BUREAU/PHMP EVALUATIONS

(33) Upon request of the PHMP, the Respondent shall

submit to mental or physical evaluations, examinations or interviews by a PHMP-approved treatment provider or the PHMP. Respondent's failure to submit to such an evaluation, examination or interview shall constitute a violation of this Agreement.

VIOLATION OF THIS ORDER

(34) Notification of a violation of the terms or conditions of this Agreement shall result in the **IMMEDIATE VACATING** of the stay order, **TERMINATION** of the period of probation, and **ACTIVATION** of the suspension, imposed in paragraph 5b above, of Respondent's license(s) to practice the profession in the Commonwealth of Pennsylvania, as follows:

(a) The prosecuting attorney for the Commonwealth shall present to the Board's Probable Cause Screening Committee ("Committee") a Petition, which indicates that Respondent has violated any terms or conditions of this Agreement.

(b) Upon a probable cause determination by the Committee that Respondent has violated any of the terms or conditions of this Agreement, the Committee shall, without holding a formal hearing, issue a preliminary order vacating the stay of the within suspension, terminating this probation and activating the suspension of Respondent's license.

(c) Respondent shall be notified of the Committee's preliminary order within three (3) business days of its issuance by certified mail and first class mail, postage prepaid, sent to Respondent's last registered address on file with the Board, or by personal service if necessary.

(d) Within twenty (20) days of mailing of the preliminary order, Respondent may submit a written answer to the Commonwealth's petition and request that a formal hearing be held concerning Respondent's violation of probation, in which Respondent may seek relief from the preliminary order activating the suspension. Respondent shall mail the original answer and request for hearing, as well as all subsequent writings in the matter, to the Department of State, Bureau of Professional and

Occupational Affairs' Prothonotary, 2601 North Third Street, Harrisburg, PA 17101, and a copy to the prosecuting attorney for the Commonwealth.

(e) If Respondent submits a timely answer and request for a formal hearing, the Board or a designated hearing examiner shall convene a formal hearing within forty-five, (45) days from the date of the Prothonotary's receipt of Respondent's request for a formal hearing.

(f) Respondent's submission of a timely answer and request for a hearing shall not stay the suspension of Respondent's license under the preliminary order. The suspension shall remain in effect unless the Board or the hearing examiner issues an order after the formal hearing staying the suspension again and reactivating the probation.

(g) The facts and averments in this Agreement shall be deemed admitted and uncontested at this hearing.

(h) If the Board or hearing examiner after the formal hearing makes a determination against Respondent, a final order will be issued sustaining the suspension of Respondent's license and imposing any additional disciplinary measures deemed appropriate.

(i) If Respondent fails to timely file an answer and request a hearing, the Board shall issue a final order affirming the suspension of Respondent's license.

(j) If Respondent does not make a timely answer and request for a formal hearing and a final order affirming the suspension is issued, or the Board or hearing examiner makes a determination against Respondent sustaining the suspension of Respondent's license, after at least three (3) years of active suspension and any additional imposed discipline, Respondent may petition the Board for reinstatement based upon an affirmative showing that Respondent has at least thirty six (36) months of sustained documented recovery, a PHMP-approved provider's evaluation that Respondent is fit to safely practice, and verification that Respondent has abided by and obeyed all laws of the United States, the Commonwealth of Pennsylvania and its political subdivisions, and all rules and regulations pertaining to the practice of the profession in this Commonwealth.

d. If the stay is terminated, Respondent shall still comply with all terms and conditions of probation during the active suspension, other than those terms and conditions pertaining to practicing the profession.

Continued failure by the Respondent to comply with the unaffected terms and conditions of probation shall result in further disciplinary action against Respondent.

e. Respondent's failure to fully comply with any terms of this Agreement may also constitute grounds for additional disciplinary action.

6. Nothing in this Agreement shall preclude the prosecuting attorney for the Commonwealth from filing charges or the Board from imposing disciplinary action or corrective measures for violations or facts not contained in this Agreement.

7. After successful completion of probation, Respondent may petition the Board to reinstate Respondent's license to unrestricted, non-probationary status upon an affirmative showing that Respondent has complied with all terms and conditions of this Agreement and that Respondent's resumption of unsupervised practice does not present a threat to the public health and safety.

8. This Agreement shall take effect immediately upon its approval and adoption by the Board.

9. Respondent acknowledges receipt of an Order to Show Cause in this matter. Respondent knowingly and voluntarily waives the right to an administrative hearing in this matter, and to the following rights related to that hearing: to be represented by counsel at the hearing; to present witnesses and testimony in defense or in mitigation of any sanction that may be imposed for a violation; to cross-examine witnesses and to challenge evidence presented by the Commonwealth; to present legal arguments by means of a brief; and to take an appeal from any final adverse decision.

10. Respondent agrees, as a condition of entering into this Agreement, not to seek modification of it at a later date without first obtaining the express written concurrence of the Prosecution Division of the Department of State.

11. This Agreement is between the prosecuting attorney and Respondent only. Except as otherwise noted, this Agreement is to have no legal effect unless and until the Office of General Counsel approves the contents as to form and legality and the Board approves and adopts the Agreement.

12. Should the Board not approve this Agreement, presentation to and consideration of it by the Board shall not prejudice the Board or any of its members from further participation in the adjudication of this matter. This paragraph is binding on the participants even if the Board does not approve this Agreement.

13. This Agreement contains the whole agreement between the participants. There are no other terms, obligations, covenants, representations, statements or conditions, or otherwise, of any kind whatsoever concerning this Agreement.

14. Respondent verifies that the facts and statements set forth in this Agreement are true and correct to the best of Respondent's knowledge, information and belief. Respondent understands that statements in this Agreement are made subject to the criminal penalties of 18 Pa.C.S. '4904 relating to unsworn falsification to authorities.



Mark D. Greenwald
Prosecuting Attorney
Department of State

DATED: 5/31/06



Richard Joseph DeFranco, M.D.
Respondent

DATED:

14 May 2006

ORDER

AND NOW, this 27th day of June, 2006, the State Board Of Medicine approves and adopts the foregoing Consent Agreement and incorporates the terms of paragraph 5, which shall constitute the Board's Order and is now issued in resolution of this matter.

This Order shall take effect immediately.

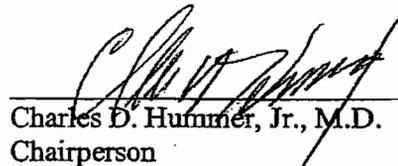
BY ORDER:

**BUREAU OF PROFESSIONAL AND
OCCUPATIONAL AFFAIRS**

STATE BOARD OF MEDICINE



Basil L. Merenda
Commissioner



Charles D. Hummer, Jr., M.D.
Chairperson

File No. 05-49-07930

Date of Mailing:

For the Commonwealth: Mark D. Greenwald, Prosecuting Attorney
P. O. Box 2649
Harrisburg, PA 17105-2649

For Respondent: James M. Connelly
The Mazza Law Group, P.C.
1315 South Allen Street, Suite 302,
State College, PA 16801-5923

mdg