STATE OF OPPORTUNITY.
Department of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

Public

July 7, 2015

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Anna Lewis, Esq.
NYS Department of Health
90 Church Street – 4th Floor
New York, New York 10007

Timothy Kilgannon, Esq.
Kilgannon & Kilgannon, LLP
1551 Kellum Place
Mineola, New York 11501

Joseph Bargellini, M.D.
1551 Kellum Place
Mineola, New York 11501

RE: In the Matter of Joseph Bargellini, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 15-179) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), (McKinney Supp. 2013) and §230-c subdivisions 1 through 5, (McKinney Supp. 2013), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the Respondent or the Department may seek a review of a committee determination.

All notices of review must be served, by certified mail, upon the Administrative Review Board and the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Chief Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Riverview Center
150 Broadway – Suite 510
Albany, New York 12204

The parties shall have 30 days from the notice of appeal in which to file their briefs to the Administrative Review Board. Six copies of all papers must also be sent to the attention of Mr. Horan at the above address and one copy to the other party. The stipulated record in this matter shall consist of the official hearing transcript(s) and all documents in evidence.

Parties will be notified by mail of the Administrative Review Board's Determination and Order.

Sincerely,

[redacted]

James F. Horan
Chief Administrative Law Judge
Bureau of Adjudication

JFH:cah

Enclosure

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

COPY

IN THE MATTER OF JOSEPH BARGELLINI, M.D.	DETERMINATION AND ORDER
	BPMC#15-179

A Notice of Violation of Probation Proceeding dated December 9, 2014 was served upon JOSEPH BARGELLINI, M.D., Respondent. JOEL ZINBERG, M.D., J.D., Chairperson, CASSANDRA E. HENDERSON, M.D., and DEBORAH WHITFIELD, M.A., Ph.D., duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to Section 230(10)(e) of the Public Health Law. WILLIAM J. LYNCH, ESQ., ADMINISTRATIVE LAW JUDGE, served as the Administrative Officer.

The Department of Health ("the Department") appeared by ANNA R. LEWIS, ESQ., of Counsel. The Respondent appeared by Kilgannon and Kilgannon, LLP, TIMOTHY KILGANNON, ESQ., of Counsel. Evidence was received, witnesses sworn and heard, and transcripts of these proceedings were made.

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

PROCEDURAL HISTORY

Date of Notice of Violation of Probation: October 23, 2014

Date of Request for Hearing:	November 13, 2014
Pre-Hearing Conference:	January 22, 2015
Hearing Dates:	January 29, 2015 March 13, 2015
Witnesses for Petitioner:	Randy Irwin Ronald C. Rosenberg, M.D.
Witnesses for Respondent:	Joseph Bargellini, M.D.
Receipt of Submissions:	April 24, 2015
Deliberation Held:	May 22, 2015

STATEMENT OF THE CASE

By letter dated October 23, 2014, the Director of the Office of Professional Medical Conduct ("OPMC") determined that Respondent was in violation of the terms of probation imposed by Determination and Order #13-45 and affirmed by Administrative Review Board ("ARB") Determination and Order #13-211. Respondent denied the allegations and requested a hearing on the matter. A copy of the Notice of Violation of Probation Proceeding is attached to this Determination and Order as Appendix I.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Unless otherwise noted, all findings and conclusions set forth below are the unanimous determinations of the Hearing Committee. Conflicting evidence, if any, was considered and

rejected in favor of the cited evidence. Numbers below in parentheses refer to exhibits (denoted by the prefix "Ex.") or transcript page numbers ("T."). These citations refer to evidence found persuasive by the Hearing Committee in arriving at a particular finding. Having heard testimony and considered documentary evidence presented by the Petitioner and Respondent, the Hearing Committee hereby makes the following findings of fact:

1. Joseph Bargellini, M.D., Respondent, was authorized to practice medicine in New York State on January 6, 2003, by the issuance of license number 227266 (Dept. Ex. 1, 15).

2. In Determination and Order #13-45, dated February 26, 2013, Respondent was found guilty of willfully making or filing a false report, failing to file a required report, practicing the profession fraudulently, willfully harassing, abusing or intimidating a patient, violating section 2805-k of the Public Health Law, and moral unfitness (Dept. Ex. 1).

3. Determination and Order #13-45 suspended Respondent's license for three years, stayed that suspension, placed Respondent on probation with a practice monitor, required Respondent to complete a course covering the topic of boundary violations within six months of the Order's effective date and to complete a course in ethics within the probationary period (Dept. Ex. 1).

4. An appeal to the ARB stayed the penalty until the issuance of ARB Determination and Order #13-211 which became effective seven days after its mailing on July 15, 2013. The ARB decision affirmed the penalty imposed by the Hearing Committee (Dept. Ex. 1A).

5. Respondent was placed on probation with a practice monitor which required that he was to only practice medicine when monitored by a licensed physician approved by the Director of OPMC. This term of probation became effective on August 22, 2013 (Dept. Ex. 1).

6. In April 2013, the Director of OPMC had approved Alan Stempler, M.D., to serve as Respondent's practice monitor, but Dr. Stempler never monitored Respondent's practice of medicine (T. 343).[1]

7. Respondent practiced medicine while he was not monitored by a physician from August 21, 2013 until December 16, 2013, and thereby violated his probation (T. 336, 344, 352).

8. On December 13, 2013, the Director of OPMC approved Ronald C. Rosenberg, M.D., to serve as Respondent's practice monitor. Dr. Rosenberg began monitoring Respondent's practice of medicine in December 2013 (T. 187; Dept. Ex. 5, 7, 8A-D).

9. Dr. Rosenberg had no contact with Respondent after October 12, 2014. Dr. Rosenberg went to Respondent's office on October 25, November 25, and December 29, 2014, but Respondent was not present in the office

1 Respondent claimed that the Department had failed to disclose documentation that Dr. Stempler had been approved as a practice monitor and claimed that this documentation was exculpatory. As detailed in the record, however, Respondent knew that Dr. Stempler had been approved, but continued practicing medicine while he was not being monitored by him. Therefore, this documentation does not tend to prove his innocence and is not exculpatory.

on any of those visits and no patient records were available. Dr. Rosenberg telephoned Respondent on January 4 and 5, 2015, but his calls were not returned by Respondent. Dr. Rosenberg sent Respondent an email on January 13, 2015, and received no response from Respondent (Dept. Ex. 16).

10. Respondent practiced medicine on October 27 and 29, 2014, November 8, 2014, and January 6, 2015 while he was not monitored by a physician, and thereby violated his probation (T. 382; Dept. Ex. 16).

11. As a term of his probation, Respondent was required to submit proof of medical malpractice insurance coverage with limits no less than $2 million per occurrence and $6 million per policy year. This requirement became effective on July 22, 2013 (Dept. Ex. 1).

12. Respondent did not submit proof of the medical malpractice insurance coverage required, and thereby violated his probation (Dept. Ex. 9, 10, Respondent Ex. G).[2]

13. Respondent, no later than January 22, 2014, was required to have enrolled in and completed a continuing medical education course covering the topic of boundary violations (Dept. Ex 1).

14. Respondent did not enroll in or complete the course as required by January 22, 2014, and thereby violated a term of his probation (T. 314, 355).

---

2 The Hearing Committee kept the record open to allow Respondent an opportunity to submit a copy of documentation which he had allegedly provided to the Department. The submission made by Respondent to the Hearing Committee on March 23, 2015, however, does not indicate that Respondent has the required medical malpractice insurance coverage.

15. By letter dated October 23, 2014, the Director of OPMC determined that Respondent was in violation of his terms of probation (Dept. Ex. 1).

16. In a faxed letter received by the Department on November 14, 2014, Respondent denied the allegations and requested a hearing (Dept. Ex. 14).

CONCLUSIONS OF LAW

The following conclusions were made pursuant to the finding above. All conclusions resulted from a unanimous vote of the Hearing Committee unless otherwise noted. Violating any term of probation constitutes professional medical misconduct pursuant to New York State Education Law § 6530(29).

During his initial testimony, the Hearing Committee was inclined to give Respondent the benefit of the doubt on some issues because the original investigator assigned by the Department to his case retired and the second left for medical reasons so neither was available to testify at the hearing. However, Respondent's continued testimony on cross examination revealed that Respondent had attempted to evade, delay and confound the Department's efforts to ensure his compliance with the terms of his probation. Respondent repeatedly shifted responsibility for his noncompliance with the terms of probation to others. As a result, the Hearing Committee concluded that Respondent's testimony was not credible.

A striking example of Respondent's untruthfulness and actions intended to evade the Department's efforts to achieve compliance with the terms of probation is a letter dated August 22, 2014 which he faxed to the Department. The letter reads as follows:

> August 22, 2014
>
> Joseph M. Bargellini
> Via Delle Pinzochere #3
> Florence, Italy 50122
>
> To:
> OPMC
> Albany, NY
>
> As per the ARB order I am to advise the OPMC of any address change. I have recently changed my address to Via Delle Pinzochere #3, Firenze Italy 50122. According to USPS they will not forward any mail to overseas address, business or personal. As such I will be unable to receive mail from my prior addresses in NY.

This letter admitted into evidence as Dept. Ex. 13 led the Department to believe that Respondent had moved to Italy. Respondent faxed a second letter to the Department dated November 10, 2014 (admitted into evidence as Dept. Ex. 14) in which he stated that he would be "returning to the United States after the New Year, 2015." On cross examination, however, Respondent testified that he never said in the letters that he was moving to Italy and claimed that he merely gave the Department a mailing address in Italy because he was annoyed with the Department and because he had difficulty receiving mail through the United States Postal Service either at his home or office in spite of his complaints to the postmaster. When asked by the Hearing Committee's chairperson if most

people would think that these letters meant that he had moved to Italy, Respondent was evasive and responded that he didn't know.

When asked by his attorney on redirect examination if he would have given the Department a change of address to Italy if he had known that the Department was going to send him a notice of violation of probation, Respondent answered that he would have used an address in Turkey because under the Hague rules no service of process can be made there without going through the Central Authority, which would have delayed these proceedings for six months. Later in his testimony, Respondent admitted that he did not go to Italy until December 20, 2014 and that was an occasion to visit an aunt (T. 380). Based on the letters in evidence and Respondent's testimony, the Hearing Committee concluded that Respondent was untruthful and intended to mislead the Department into believing that he had moved to Italy in August 2014.

The First Specification of Misconduct relates to probation term #7 of Determination and Order #13-45 which required Respondent to practice medicine only when monitored by a physician commencing on August 22, 2013 and until the completion of his period of probation. The Hearing Committee concluded that the Department established by a preponderance of the evidence that Respondent practiced medicine from August 22 to December 13, 2013 and from October 26, 2014 to at least January 6, 2015 without a practice monitor.

Respondent claimed that Dr. Alan Stempler monitored his practice from August 21 to December 13, 2013, but Respondent's only contact in 2013 with Dr. Stempler was on April 4, 2013 when Dr. Stempler agreed to serve as his practice monitor. When Respondent's penalty was stayed in April 2013 due to the ARB appeal, Respondent told Dr. Stempler that the practice monitoring requirement was on hold (T. 296). When the stay was lifted in July 2013, Respondent never contacted Dr. Stempler to inform him that he needed to begin monitoring his medical practice (T. 372). Respondent's testimony of his April 2013 meeting with Dr. Stempler suggests that Respondent had no intention of employing him as his practice monitor. Dr. Stempler told Respondent that he would charge him at an hourly rate for his review of prior patient records. In his testimony, Respondent expressed an understanding that Dr. Stempler would have to review these records to place Respondent's current treatment in a context, but he claimed that Dr. Stempler should do the review on his own time with no remuneration (T. 362-370). Respondent thought that Dr. Stempler's request for payment to review the prior patient records was egregious and created a fiscal dilemma (T. 301).

Dr. Rosenberg began monitoring Respondent's practice in December 2013, but had no contact with Respondent after October 12, 2014. Dr. Rosenberg returned to Respondent's office on October 25, November 25, and December 29, 2014, but no patient records were available. Dr. Rosenberg telephoned Respondent on January 4 and 5, 2015, but his calls

were not returned by Respondent. Dr. Rosenberg sent Respondent an email on January 13, 2015, but received no response from Respondent. Respondent admitted that he practiced medicine on October 27 and 29, 2014, November 8, 2014, and January 6, 2015, and the record establishes that Dr. Rosenberg did not monitor this medical practice by Respondent.

The Second Specification of Misconduct relates to probation term #7d of Determination and Order #13-45 which required Respondent to maintain medical malpractice insurance coverage with limits no less than $2 million per occurrence and $6 million per policy year, in accordance with § 230(18)(b)of the Public Health Law commencing on July 22, 2013 and until he no longer required a practice monitor at the completion of his period of probation. The Hearing Committee concluded that the Department established by a preponderance of the evidence that Respondent never obtained the required level of insurance. Respondent claimed that he had an umbrella policy with his wife; however, the documents submitted by Respondent are inconsistent and do not indicate that he has obtained the professional medical coverage required.

The Third Specification of Misconduct relates to probation term #8 of Determination and Order #13-45 which required Respondent to enroll in and complete a course covering the topic of boundary violations within the first six months of the probationary period which would have been no later than January 22, 2014. The record, however, establishes by a preponderance of the evidence that Respondent never enrolled in or

completed this course. Respondent contended that the Department never told him which classes would be approved, but in his testimony acknowledged that he had been informed of an approved course offered in California and Chicago which he was not willing to travel to. Respondent also claimed that he was never informed of a Professional Boundaries, Inc. ("PBI") course which was routinely approved by the Department, yet Respondent made no effort to take the PBI course even after being informed on the record in January 2015 of this alternative. Two of the Hearing Committee members felt that Respondent's failure to make an effort to enroll in the next available course was still further evidence of his disinterest in complying with the terms of his probation. The third panel member felt his not taking the course at that point was understandable. Regardless, the Hearing Committee unanimously concluded that Respondent had not taken the course within the required timeframe and thereby violated his probation.

DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determined that Respondent's license to practice medicine in New York State should be suspended until he has an approved practice monitor in place, obtained the required level of medical malpractice insurance and completed the courses as directed in Determination and Order #13-45 and ARB Order

#13-211. In addition, this Hearing Committee felt that Respondent required a more significant level of supervision during his probationary period. Therefore, the Hearing Committee concluded that Respondent's license should be limited to practice under the supervision of a practice monitor in an Article 28 Hospital or facility. The Committee felt that the period of probation must continue for a three year period after the suspension is lifted. This determination was reached upon due consideration of the full spectrum of penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties.

ORDER

Based upon the foregoing, IT IS HEREBY ORDERED THAT:

1. The determination by the Director of the Office of Professional Medical Conduct that Respondent is in violation of the terms of probation imposed by Determination and Order #13-45 and affirmed by Administrative Review Board Order #13-211 is SUSTAINED;

2. Respondent's license to practice medicine as a physician in New York State is hereby SUSPENDED commencing on the effective date of this Order until Respondent has complied with the following terms:

a. Respondent shall enroll in and complete a continuing medical education course covering the topic of boundary violations. This

course shall be subject to the prior written approval of the Director of OPMC;

b. Respondent shall enroll in and complete a continuing medical education course covering the topic of ethics relating to licensure maintenance. This course shall be subject to the prior written approval of the Director of OPMC;

c. Respondent shall have a practice monitor agreement in place with a licensed physician. The practice monitor shall be subject to the prior written approval of the Director of OPMC;

d. Respondent shall obtain medical malpractice insurance coverage with limits no less than $2 million per occurrence and $6 million per policy year, in accordance with § 230(18)(b)of the Public Health Law.

3. The suspension of Respondent's license shall continue until the Director of the Board for Professional Medical Conduct makes a written determination that Respondent is in compliance with the terms stated above in paragraph two above;

4. Respondent's license shall be limited to the practice of medicine under the supervision of a practice monitor in an Article 28 Hospital or facility. At the end of the probationary period, Respondent may apply to the Office of Professional Medical Conduct to have this limitation removed;

4. Respondent's license shall be limited to the practice of medicine under the supervision of a practice monitor in an Article 28 Hospital or facility. At the end of the probationary period, Respondent may apply to the Office of Professional Medical Conduct to have this limitation removed;

5. Respondent shall remain on probation with a practice monitor for a period of an additional three years commencing on the date that the suspension of his license is terminated. The terms of probation annexed to Determination and Order #13-45 shall continue in full force and effect throughout this extended period of probation;

6. This Determination and Order shall be effective upon service. Service shall be either by certified mail upon Respondent at Respondent's last known address and such service shall be effective upon receipt or seven days after mailing by certified mail, whichever is earlier, or by personal service and such service shall be effective upon receipt.

DATED: New York, New York
July 6, 2015

[redacted]

JOEL ZINBERG, M.D., J.D. (CHAIR)
CASSANDRA E. HENDERSON, M.D.
DEBORAH WHITFIELD, M.A., Ph.D.

TO: Anna Lewis, Esq.
Associate Counsel
New York State Department of Health
90 Church Street -4th Floor
New York, New York 10007

Timothy Kilgannon, Esq.
Kilgannon & Kilgannon, LLP
1551 Kellum Place
Mineola, New York 11501

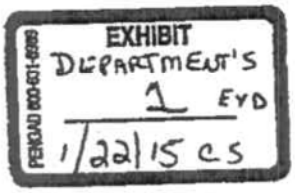
Joseph Bargellini, M.D.
1551 Kellum Place
Mineola, New York 11501

APPENDIX I

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

IN THE MATTER OF JOSEPH BARGELLINI, M.D.	NOTICE OF VIOLATION OF PROBATION PROCEEDING

TO: Joseph Bargellini, M.D.
[redacted]



Frank X. Kilgannon, Esq.
Timothy Kilgannon, Esq.
1551 Kellum Place
Mineola, New York 11501

PLEASE TAKE NOTICE:

In response to your request for a hearing pursuant to the provisions of New York Public Health Law §230(19), a Violation of Probation Proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law §230 and N.Y. State Admin. Proc. Act §§301-307 and 401. The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on January 29, 2015, at 10:00 a.m., at the Offices of the New York State Department of Health, 90 Church Street, 4th Floor, New York, NY 10007, and at such other adjourned dates, times and places as the committee may direct.

At the hearing, evidence will be received concerning the dispute of any facts forming the basis of the alleged violation of probation set forth in the attached letter. A stenographic record of the hearing will be made and the witnesses at the hearing will be sworn and examined. You shall appear in person at the hearing and may be represented by counsel

who shall be an attorney admitted to practice in New York State. You have the right to produce witnesses and evidence on your behalf, to issue or have subpoenas issued on your behalf in order to require the production of witnesses and documents, and you may cross-examine witnesses and examine evidence produced against you. A summary of the Department of Health Hearing Rules is enclosed.

The hearing will proceed whether or not you appear at the hearing. Please note that requests for adjournments must be made in writing and by telephone to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Riverview Center, 150 Broadway - Suite 510, Albany, NY 12204-2719, ATTENTION: HON. JAMES HORAN, DIRECTOR, BUREAU OF ADJUDICATION, (henceforth "Bureau of Adjudication"), (Telephone: (518-402-0748), upon notice to the attorney for the Department of Health whose name appears below, and at least five days prior to the scheduled hearing date. Adjournment requests are not routinely granted as scheduled dates are considered dates certain. Claims of court engagement will require detailed Affidavits of Actual Engagement. Claims of illness will require medical documentation.

Pursuant to the provisions of N.Y. Pub. Health Law §230, you may file an Answer not less than ten days prior to the date of the hearing. If you wish to raise an affirmative defense, however, N.Y. Admin. Code tit. 10, §51.5(c) requires that an answer be filed, but allows the filing of such an answer until three days prior to the date of the hearing. Any answer shall be forwarded to the attorney for the Department of Health whose name appears below. Pursuant to §301(5) of the State Administrative Procedure Act, the Department, upon reasonable notice, will provide at no charge a qualified interpreter of the deaf to interpret the proceedings to, and the testimony of, any deaf person. Pursuant to the

terms of N.Y. State Admin. Proc. Act §401 and 10 N.Y.C.R.R. §51.8(b), the Petitioner hereby demands disclosure of the evidence that the Respondent intends to introduce at the hearing, including the names of witnesses, a list of and copies of documentary evidence and a description of physical or other evidence which cannot be photocopied.

At the conclusion of the hearing, the committee shall make findings of fact, conclusions concerning the charges sustained or dismissed, and in the event any of the charges are sustained, a determination of the penalty to be imposed or appropriate action to be taken, based, inter alia, upon any violation found and upon the misconduct resulting in the imposition of the terms of probation. 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.

DATE: December 9, 2014
New York, New York

Roy Nemerson
Deputy Counsel
Bureau of Professional Medical Conduct
Division of Legal Affairs
New York State Department of Health

Inquiries should be addressed to:

Anna R. Lewis
Associate Counsel
Bureau of Professional Medical Conduct
Division of Legal Affairs
New York State Department of Health
(212) 417-4369

Howard A. Zucker, M.D., J.D.
Acting Commissioner of Health

NEW YORK
state department of
HEALTH

Sue Kelly
Executive Deputy Commissioner

October 23, 2014

Joseph Bargellini, M.D.
[redacted]

RE: VIOLATION OF PROBATION
Determination & Order BPMC # 13-211

Dear Dr. Bargellini:

After an investigation pursuant to N.Y. Public Health Law Section 230(19), I have determined, in my capacity as Director of the Office of Professional Medical Conduct (OPMC) of the New York State Department of Health, that you have violated the terms of probation imposed upon you by Determination and Order BPMC #13-45 (hereinafter "D & O), effective March 5, 2013, and affirmed by the Administrative Review Board's Determination and Order BPMC #13-211 (hereinafter "Order"), effective July 22, 2013. (A copy of the D & O is attached and marked as "Appendix A.") This letter initiates a violation of probation proceeding against you pursuant to N.Y. Public Health Law Section 230(19).

My determination that you have committed **each** of the specified probation violations is based on one or more of the facts enumerated in "Appendix B" and as cited in each Specification of Probation Violation. You may dispute or admit any enumerated fact by placing your signature or initials next to it, in the appropriate space.

Please take notice that if you do not dispute the facts forming the basis of my determination of probation violation within 20 days of the date of this letter, I shall submit this matter, and the undisputed facts set forth directly to a committee on professional conduct for its review and determination.

SPECIFICATIONS OF VIOLATIONS

FIRST THROUGH THIRD SPECIFICATIONS

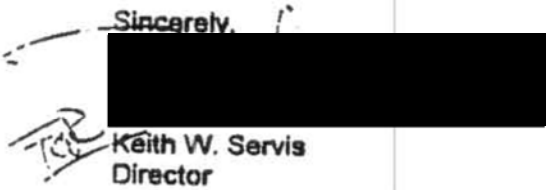
Violating Any Term of Probation or Condition or Limitation
N.Y. Education Law §6530 (29)
[Authority: D & O, Exhibit B, Term of Probation 7a.-d. and D & O Condition(s) at Pages 17-21]

1. Facts I, II, III, and III.A.
2. Facts I, II, IV, and IV.A.
3. Facts I, II, V, and V.A.

Please be advised that you have a right to a hearing to contest my determination that you have violated your probation, and you have the right to be represented by counsel. If you elect to dispute the facts forming the basis of my determination, you shall return the fully executed Appendix B setting forth the facts you specifically deny, as well as those you admit, within 20 days of the date of this letter, to: Keith W. Servis, Director, Office of Professional Medical Conduct, 433 River Street, Troy, N.Y. You shall be afforded a hearing before a committee on professional conduct, which will hear the matter and make findings of fact, conclusions of law and a determination. A stenographic record will be made of the hearing. The committee, after providing you with an opportunity to be heard, shall determine whether you have violated probation and shall impose an appropriate penalty, from among those set forth in N.Y. Public Health Law Section 230-a; these include: a Censure and Reprimand, Suspension of License, Limitation of License, Revocation of License, a Fine, a Course of Education or Training, and/or Public Service. In determining the appropriate penalty, the committee shall consider both the violation of probation and the prior adjudication of misconduct against you. The chairperson of the committee shall issue an order adopting the decision of the committee on professional conduct. The order may be reviewed by the administrative review board for professional medical conduct.

Please be on notice that, should you not dispute the facts forming the basis of my determination within 20 days of the date of this letter, or if my determination that you have violated your probation is sustained by a committee on professional conduct after a hearing, the Board may, among other things, revoke or suspend your license, issue a Censure and Reprimand, impose probation, and order payment of a substantial fine. Given the seriousness of these proceedings, I urge you to consult an attorney immediately.

Sincerely,



Keith W. Servis
Director
Office of Professional Medical Conduct
Riverview Center
150 Broadway, Suite 355
Albany, NY 12204 - 2719

Direct all correspondence to:

Anna R. Lewis, Associate Counsel
NYS Health Department - Division of Legal Affairs
90 Church Street
New York, NY 10007
212-417-4450 (fax 212-417-4392)

cc: Timothy Kilgannon, Esq.
Frank K. Kilgannon, Esq.
1551 Kellum Place
Mineola, New York 11501

APPENDIX A

Determination and Order BPMC #13-45

[attached]

Nirav R. Shah, M.D., M.P.H.
Commissioner

NEW YORK
state department of
HEALTH

Public

Sue Kelly
Executive Deputy Commissioner

February 26, 2013

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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NYS Department of Health
90 Church Street – 4th Floor
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Joseph Bargellini, M.D.
1551 Kellum Place
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RE: In the Matter of Joseph Bargellini, M.D.

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Sincerely,

James F. Horan
Chief Administrative Law Judge
Bureau of Adjudication

JFH:cah

Enclosure

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

COPY

IN THE MATTER OF JOSEPH BARGELLINI, M.D.	DETERMINATION AND ORDER

BPMC #13-45

A Notice of Hearing and Statement of Charges, both dated September 14, 2012, were served on JOSEPH BARGELLINI, M.D., Respondent. GREGORY FRIED M.D., Chairperson, MICHAEL J. REICHGOTT, M.D., Ph.D and RUTH HOROWITZ, Ph.D duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to Section 230(10)(e) of the Public Health Law. CHRISTINE C. TRASKOS, ESQ., ADMINISTRATIVE LAW JUDGE, served as the Administrative Officer.

The Department of Health ("the Department") appeared by JAMES DERING, General Counsel, by ANNA R. LEWIS, ESQ., of Counsel. The Respondent appeared by KILGANNON & KILGANNON, LLP, TIMOTHY KILGANNON, ESQ. and FRANK X. KILGANNON, ESQ. of COUNSEL. Evidence was received and witnesses sworn and heard, and transcripts of these proceedings were made.

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

PROCEDURAL HISTORY

Pre-Hearing Conference:	October 10, 2012
Hearing Dates:	October 25, 2012 December 4, 2012
Witnesses for Petitioner:	Patient A REDACTED Sondra Stoss
Witnesses for Respondent:	Craig Kaplan
Submission of briefs:	January 15, 2013
Deliberation Held:	January 22, 2013

STATEMENT OF CASE

The State Board for Professional Medical Conduct is a duly authorized professional disciplinary agency of the State of New York (§230 et seq of the Public Health Law of the State of New York [hereinafter "P.H.L."]).

This case was brought by the New York State Department of Health, Office of Professional Medical Conduct (hereinafter "Petitioner" or "Department") pursuant to §230 of the P.H.L. Joseph Bargellini, M.D.,("Respondent") is charged with Eight (8) specifications of professional misconduct, as defined in §6530 of the Education Law of the State of New York ("Education Law"). The charges include a violation of PHL §2805-K, willfully making