



STATE OF NEW YORK DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

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

Dennis P. Whalen
Executive Deputy Commissioner

Public

April 26, 2006

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Hank Ross, M.D.
REDACTED

Howard Fensterman, Esq.
Abrams, Fensterman, Fensterman, et al
1111 Marcus Avenue – Suite 107
Lake Success, New York 11042

Hank Ross, M.D.
161 Willis Avenue
Mineola, New York 11501

Christine M. Radman, Esq.
NYS Department of Health
Office of Professional Medical Conduct
90 Church Street – 4th Floor
New York, New York 10007-2919

RE: In the Matter of Hank Ross, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 06-86) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), and §230-c subdivisions 1 through 5, (McKinney Supp. 1992), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the 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., Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Hedley Park Place
433 River Street, Fifth Floor
Troy, New York 12180

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

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

Sincerely,

REDACTED

Sean D. O'Brien, Director
Bureau of Adjudication

SDO:djh

Enclosure

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

COPY

IN THE MATTER
OF
HANK ROSS, M.D.

DETERMINATION
AND
ORDER
BPMC 06 - 86

Sheldon H. Putterman, M.D. (Chairperson), Paul S. Carton, M.D., and Ms. Lois Voyticky, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to §230(10) of the Public Health Law. Marc P. Zylberberg, Esq., Administrative Law Judge, ("ALJ") served as the Administrative Officer.

The Department of Health appeared by Christine M. Radman, Esq., Associate Counsel, and Dianne Abeloff, Esq., Associate Counsel.

Respondent, Hank Ross, M.D., appeared personally and was represented by Abrams, Fensterman, Fensterman, Flowers, Greenberg & Eisman, LLP by Howard Fensterman, Esq., Daniel H. Smith, Esq., and Danielle Visvader, Esq of Counsel.

Evidence was received and examined, including witnesses who were sworn or affirmed. Transcripts of the proceeding were made. After consideration of the record, the Hearing Committee issues this Determination and Order.

PROCEDURAL HISTORY

Date of Notice of Hearing and Statement of Charges:	September 27, 2005
Date of Answer to Charges:	October 19, 2005
Date of Amended Statement of Charges:	November 3, 2005
Date of (second) Amended Statement of Charges: (also dated November 7, 2005 and labeled Amended Statement of Charges - Department's Exhibit # 1)	November 8, 2005
Pre-Hearing Conferences Held:	October 25, 2005 November 4, 2005
Hearings Held: - (First Hearing day):	November 7, 2005 December 8, 2005 January 10, 2006
Intra-Hearing Conferences Held:	November 7, 2005 December 8, 2005 January 10, 2006 March 9, 2006
Location of Hearings:	Offices of New York State Department of Health 90 Church St., 4 th Floor New York, NY 10007
Witnesses called (in the order they testified) by the Petitioner, Department of Health:	Mary Jane O'Brien Patricia Ann Cooney
Witnesses called (in the order they testified) by the Respondent, Hank Ross, M.D.	Hank Ross, M.D. Wendy Z. Noto Frank R. DiMaio, M.D. Victor Frankel, M.D. (via telephone).
Department's Findings of Fact, Applicable Law, Conclusions of Law, Summation, and Recommended Sanction:	Dated March 9, 2006
Department's proposed Panel instructions:	Dated March 17, 2006

Respondent's Post-Hearing Memorandum:

Dated March 9, 2006

Respondent's Jury Charges:

Received March 20, 2006

Deliberations Held: (last day of Hearing)

March 23, 2006

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 ["P.H.L."]). This case was brought by the New York State Department of Health, Bureau of Professional Medical Conduct ("Petitioner" or "Department") pursuant to §230 of the P.H.L. Hank Ross, M.D. ("Respondent") is charged with twenty-six (26) specifications of professional misconduct as set forth in §6530 of the Education Law of the State of New York ("Education Law").

Respondent is charged with professional misconduct by reason of: (1) practicing the profession of medicine fraudulently¹; (2) Willfully making or filing a false report, or failing to file a report required by law or by the department of health or the education department²; (3) violating section twenty-eight hundred five-k [2805-k] of the Public Health Law³; and (4) engaging in conduct in the practice of the profession of medicine that evidences moral unfitness to practice⁴.

¹ Education Law §6530(2) - (the First through Seventh Specifications of the Amended Statement of Charges [Department's Exhibit # 1-C]).

² Education Law §6530(21) - (the Eighth through Fourteenth Specifications [labeled as eight through thirteen] of the Amended Statement of Charges [Department's Exhibit # 1-C]).

³ Education Law §6530(14) - (the Fifteenth through Nineteenth Specifications of the Amended Statement of Charges [Department's Exhibit # 1-C]).

⁴ Education Law §6530(20) - (Twentieth through Twenty-Sixth Specifications of the Amended Statement of Charges [Department's Exhibit # 1-C]).

These Charges and Specifications of professional misconduct result from Respondent's alleged acts and conduct since 1989 and do not involve direct patient contact. Respondent denies all of the factual allegations and all of the Specifications of misconduct contained in the original Statement of Charges. The Amended Statement of Charges and the second Amended Statement of Charges are also deemed to be denied. A copy of the second Amended Statement of Charges is attached to this Determination and Order as Appendix 1.

FINDINGS OF FACT

The following Findings of Fact ("Findings") were made after a review of the entire record available to the Hearing Committee in this matter. These facts represent documentary evidence and testimony found persuasive by the Hearing Committee in arriving at a particular finding. Where there was conflicting evidence the Hearing Committee considered all of the evidence presented and rejected what was not relevant, believable or credible in favor of the cited evidence. The Department, which has the burden of proof, was required to prove its case by a preponderance of the evidence. The Hearing Committee unanimously agreed on all Findings of Fact. All Findings of Fact made by the Hearing Committee were established by at least a preponderance of the evidence.

1. Respondent was licensed to practice medicine in New York State on July 15, 1985 by the issuance of license number 163233 by the New York State Education Department (Department's Exhibit # 2)⁵.

⁵ Refers to exhibits in evidence submitted by the New York State Department of Health (Department's Exhibit #) or by Dr. Hank Ross (Respondent's Exhibit #).

2. The State Board for Professional Medical Conduct has obtained personal jurisdiction over Respondent and has jurisdiction over Respondent's license and this disciplinary proceeding (determination made by the ALJ; Respondent had no objection regarding service effected on him); (P.H.L. §230[10][d]); (Department's Exhibit # 1); [P.H.T-30-31]⁶.

3. Respondent received a Bachelor of Arts ("B.A.") degree in Biology from Boston University on May 18, 1980. Respondent received a medical diploma from Universidad Del Noreste in Tampico, Mexico on June 2, 1980. Respondent was issued a certificate indicating his satisfactory completion of one academic year of supervised clinical training sponsored by New York Medical College (Fifth Pathway Program) on June 30, 1982 (Department's Exhibits # 2, # 6-A and # 8-A); [T-183-185, 289].

4. Respondent did not receive a B.A. degree (or any other degree) from CW Post College or CW Post University in 1976 (or any other year) (Department's Exhibit # 15); [T-214].

5. Respondent was licensed to practice medicine in Arkansas on August 9, 1982 by the issuance of license number C-6289 by the Arkansas State Medical Board. Respondent's Arkansas license expired on March 1, 1995 and Respondent did not renew his Arkansas license (Department's Exhibit # 3-A); [T-191-192, 289].

6. Respondent was an orthopedic resident at the Catholic Medical Center of Brooklyn and Queens from July 1, 1985 through June 30, 1987. On December 4, 1986, while on a rotation through the pediatric orthopedic program at Kings County Hospital, Respondent assisted in a procedure in which a tibial tendon transfer was performed on the wrong leg of a child (Department's Exhibits # 6-A and # 9-A).

⁶ Numbers in brackets refer to Hearing transcript page numbers [T-], or to Pre-Hearing transcript page numbers [P.H.T-], or to Intra-Hearing transcript page numbers [I.H.T-]. The Hearing Committee did not review the Pre-Hearing or the Intra-Hearing transcripts but, when necessary, was advised of the relevant legal decisions or rulings made by the ALJ.

7. On February 29, 1988, Respondent was personally served with a New York State Department of Health Notice of Hearing and Statement of Charges (dated November 17, 1987), ("1987 Charges") relating to the above mentioned December 4, 1986 procedure at Kings County Hospital. Hearings on the 1987 Charges were conducted in 1988 (March 31, May 16, May 17, and August 3). On October 21, 1988 the Hearing Committee recommended that the 1987 Charges be dismissed (Department's Exhibit # 16).

8. On April 24, 1989 the Regents Review Committee recommended a censure and reprimand for Respondent which recommendation was accepted by the Board of Regents on May 19, 1989. The effective date of the Commissioner's Order was June 28, 1989 but a New York State Court stayed (on June 25, 1989) the censure and reprimand Order of the Commissioner until September 21, 1989 when the stay of the censure and reprimand was rescinded. On November 1, 1990 the censure and reprimand was upheld (affirmed) by the Appellate Division, Third Department (Department's Exhibits # 16 and # 8-A); [T-288-289].

9. Respondent was an orthopedic resident at the Hospital for Joint Diseases from July 1, 1987 through June 30, 1989. Respondent was suspended from his duties as a fourth year orthopedic resident for a period of five (5) weeks (December 26, 1988 through February 1, 1989) (Department's Exhibit # 8-A); [T-58-59, 288].

10. By letter dated December 29, 1989 ("December 1989 letter"), Winthrop University Hospital issued Respondent a letter of severe reprimand for failing to present information on his March 1, 1989 Application for Membership to the Medical Staff. The December 1989 letter indicated to Respondent that his "failure to present information which could have had an adverse effect on your application for staff privileges is a grievous matter." (Department's Exhibit # 6-A @ Page 264).

11. By letter dated January 8, 1990 ("January 1990 letter"), Booth Memorial Medical Center issued Respondent a letter regarding his May 6, 1989 Application for Appointment to its Medical Staff informing him that "It is necessary that we now point out to you that with regard to the reappointment process, full disclosure, including any pending action is required, ..." (Department's Exhibit # 9-A @ Page 108).

12. By letter dated January 19, 1990, Respondent supplied a letter to Booth Memorial Medical Center in which he indicated that the reason the question referred to was answered in the negative was that Respondent had been informed by his attorney that a "stay" of the disciplinary penalty had been issued by the Appellate Division of the State of New York. In fact, the "stay" was issued on June 25, 1989, more than six (6) weeks after Respondent's May 6, 1989 Booth Memorial Medical Center Application for Appointment to the Medical Staff and Clinical Privileges (Department's Exhibit # 9-A, and # 16); [T-80-82].

13. By letter dated May 15, 1990 Mercy Hospital notified Respondent that he had failed to properly represent himself in his March 15, 1989 Application for Appointment to the Medical Staff of Mercy Hospital in regard to his medical malpractice litigation and in regard to his New York State Department of Health disciplinary history (Respondent had been notified by letter from Mercy Hospital, dated November 17, 1989, that they wanted more information). The litigation matter "did not come up during your (Respondent's) interview with me or with the Credentials Committee, in spite of the fact that you (Respondent) were specifically asked." (Department's Exhibit # 7-A @ Pages 78 and 385).

14. As a result of a sub-optimal outcome in the surgical management of a patient presenting at Winthrop University Hospital in November of 1999 with a traumatic ankle break, Respondent was placed on focused review for a period of one year, during which time all his postoperative fracture fixation x-rays were to be personally reviewed by the Chief of Orthopedic Services (Department's Exhibit # 6-A); [T-289].

15. By letter dated February 19, 2002 the New York State Office of Professional Conduct informed Respondent that it was investigating Respondent's medical practice regarding care and treatment of a patient (LR 00-05-2043A). Respondent appeared for an interview on April 8, 2002. By letter dated June 27, 2002 Respondent was informed that the case (LR 00-05-2043A) "has been closed without further action anticipated" (Department's Exhibit # 14); [T-289].

16. By letter dated March 3, 2004, Winthrop University Hospital reminded Respondent that his current malpractice insurance and privilege delineations allowed Respondent to only provide consultative and admitting privileges. No fracture, dislocation, manipulation, or surgical privileges were available to Respondent at that facility (Department's Exhibit # 6-A @ Page 10).

FACTUAL ALLEGATIONS FROM THE AMENDED STATEMENT OF CHARGES

(Department's Exhibit # 1-C - see Appendix 1).

A. In Respondent's 2005-2007 New York State biennial registration application (dated September 10, 2004) the "No" box is checked for question # 2(e) which states:

2. Since your last registration application,

e. Has any hospital or licensed facility restricted or terminated your professional training, employment, or privileges, or have you voluntarily or involuntarily resigned or withdrawn from such association to avoid the imposition of such action due to professional misconduct, unprofessional conduct, incompetency, or negligence? (Department's Exhibit # 2 @ Page 13).

17. This response is incorrect because Respondent's privileges were restricted by Winthrop University Hospital as indicated in March of 2004 (see Findings # 16).

Factual Allegation A.1.a. of the Amended Statement of Charges is Sustained.

B. In Respondent's January 20, 2003 Aperture Universal Application to Empire Blue Cross/Blue Shield the "No" box is checked for the following questions:

1. During your education, internship, residency, fellowship, preceptorship or additional training as applicable, were you ever disciplined, suspended, placed on probation, formally reprimanded, or asked to resign? (Department's Exhibit # 11-A @ Page 70).

18. This response is incorrect because Respondent was suspended in 1988 during his residency by the Hospital for Joint Diseases (see Findings # 9).

Factual Allegation B.1.a. of the Amended Statement of Charges is Sustained.

1. Have you ever been disciplined, reprimanded, or fined by any state board of medical examiners, professional conduct board, ... or state or federal agency that disciplines physicians or allied health professionals? (Department's Exhibit # 11-A @ Page 70).

19. This response is incorrect because Respondent was disciplined in 1989 by a (New York) state agency that disciplines physicians (see Findings # 7 and #8).

Factual Allegation B.1.b. of the Amended Statement of Charges is Sustained.

4. Have you ever been the subject of an investigation by any private, federal, or state health program - or is any such action pending? (Department's Exhibit # 11-A @ Page 70).

20. This response is incorrect because Respondent was the subject of an investigation and appeared for an interview at the New York State Health Department Office of the Professional Medical Conduct Bureau in April 2002 (see Findings # 15). This response is also incorrect because Respondent was the subject of an investigation (and was charged) in 1987 (see Findings # 6, # 7, and #8).

Factual Allegation B.1.c. of the Amended Statement of Charges is Sustained.

1. Have your clinical privileges at any hospital or healthcare institution or organization ever been limited, suspended, revoked, not renewed, or subject to probationary or other disciplinary conditions, or have proceedings toward any of these ends been instituted or recommended by any hospital or healthcare institution, medical staff or committee, or governing board? (Department's Exhibit # 11-A @ Page 70).

21. This response is incorrect because Respondent's clinical privileges were limited and/or other disciplinary conditions were instituted in 1999 at Winthrop University Hospital (see Findings # 14).

Factual Allegation B.1.e. of the Amended Statement of Charges is Sustained.

22. The fact that Respondent's Arkansas license expired on March 1995 and he did not renew said license does not appear to be covered by the Factual Allegations of the Amended Statement of Charges (Department's Exhibit # 1-C). Paragraph 1.B.1.d is not sustained (see Findings # 5).

Factual Allegation B.1.d. of the Amended Statement of Charges is NOT Sustained.

B1. In Respondent's January 20, 2003 Aperture Universal Application to Empire Blue Cross/Blue Shield it is documented that Respondent had completed an undergraduate school at Boston University with dates of attendance listed from 1972-1976 (Department's Exhibit # 11-A @ Page 63).

23. This information is incorrect because Respondent received his undergraduate degree from Boston University in 1980 and did not attend Boston University between 1972 and 1976 (see Findings # 3).

Factual Allegation B.1.f. of the Amended Statement of Charges is Sustained.

C. In Respondent's November 1, 1997 Application for Appointment to the Medical Staff of North Shore University Hospital at Syosset, and in Respondent's January 13, 2003 Application for Reappointment, the "No" box is checked for the following questions:

November 1, 1997 Application:

1. Voluntarily or involuntarily, are or have any of the following ever been denied, revoked, suspended, relinquished, withdrawn, reduced, limited, placed on probation, not renewed, investigated or are any of the following presently pending or stayed?

a. Medical license in any state (Department's Exhibit # 10-A @ Page 19).

24. This response is incorrect because Respondent's Arkansas license expired in 1995 (relinquished or not renewed) (see Findings # 5).

25. This response is incorrect because Respondent's New York medical license was investigated starting in 1987 and the investigation resulted in discipline in 1989 (see Findings # 6, # 7 and #8).

Factual Allegation C.1.a. and C.1.c. of the Amended Statement of Charges are Sustained.

e. Membership on any hospital medical staff (Department's Exhibit # 10-A @ Page 19).

26. This response is incorrect because Respondent was suspended in 1988 during his residency by the Hospital for Joint Diseases (see Findings # 9).

Factual Allegation C.1.b. of the Amended Statement of Charges is Sustained.

f. Clinical privileges, prerogatives/rights on any medical staff (Department's Exhibit # 10-A @ Page 19).

27. This response is incorrect because Respondent was suspended in 1988 during his residency by the Hospital for Joint Diseases (see Findings # 9).

Factual Allegation C.1.b. of the Amended Statement of Charges is Sustained.

i. Any other type of professional sanction (Department's Exhibit # 10-A @ Page 19).

28. This response is incorrect because Respondent was sanctioned in New York by his profession in 1989 (see Findings # 8).

Factual Allegation B.1.c. of the Amended Statement of Charges is Sustained.

5. Are there presently or have there ever been any professional medical or dental misconduct proceedings in this state or any other state concerning your professional practice? (Department's Exhibit # 10-A @ Page 19).

29. This response is incorrect because Respondent was the subject of a professional medical misconduct proceeding in New York State in 1989 (see Findings # 7 and # 8).

Factual Allegation B.1.c. of the Amended Statement of Charges is Sustained.

January 13, 2003 Application to North Shore University Hospital at Syosset:

1. Voluntarily or involuntarily, are or have any of the following ever been denied, revoked, suspended, relinquished, withdrawn, reduced, limited, placed on probation, not renewed, investigated, or are any of the following presently pending or stayed?

a. Medical license in any state (Department's Exhibit # 10-A @ Page 7).

30. This response is incorrect because Respondent's Arkansas license expired in 1995 (relinquished or not renewed) (see Findings # 5).

31. This response is incorrect because Respondent's New York medical license was investigated starting in 1987 and the investigation resulted in discipline in 1989 (see Findings # 6, # 7 and #8).

Factual Allegation C.1.a. and C.1.c. of the Amended Statement of Charges are Sustained.

e. Membership on any hospital medical staff (Department's Exhibit # 10-A @ Page 7).

32. This response is incorrect because Respondent was suspended in 1988 during his residency by the Hospital for Joint Diseases (see Findings # 9).

Factual Allegation C.1.b. of the Amended Statement of Charges is Sustained.

f. Clinical privileges, prerogatives/rights on any medical staff (Department's Exhibit # 10-A @ Page 7).

33. This response is incorrect because Respondent was suspended in 1988 during his residency by the Hospital for Joint Diseases (see Findings # 9).

Factual Allegation C.1.b. of the Amended Statement of Charges is Sustained.

i. Any other type of professional sanction (Department's Exhibit # 10-A @ Page 7).

34. This response is incorrect because Respondent was sanctioned in New York by his profession in 1989 (see Findings # 8).

Factual Allegation C.1.c. of the Amended Statement of Charges is Sustained.

5. Are there presently or have there ever been any professional medical or dental misconduct proceedings in this state or any other state concerning your professional practice? (Department's Exhibit # 10-A @ Page 7).

35. This response is incorrect because Respondent was the subject of a professional medical misconduct proceeding in New York State in 1989 (see Findings # 7 and # 8).

Factual Allegation C.1.c. of the Amended Statement of Charges is Sustained.

D. In Respondent's May 6, 1989 Application for Appointment to the Medical Staff and for Clinical Privileges to Booth Memorial Medical Center the "No" box is checked for the following questions:

II.D.1. Have any disciplinary actions been taken or are any pending against you by any state licensure board? (Department's Exhibit # 9-A @ Page 12).

36. This response is incorrect because Respondent was served with disciplinary charges in 1988 and this response is incorrect because as of May 6, 1989 the disciplinary charges against Respondent were still pending (see Findings # 7 and # 8).

Factual Allegation D.1.a.i. of the Amended Statement of Charges is Sustained.

IV.B. Has your employment, medical staff appointment or privileges ever been suspended, diminished, revoked or refused at any hospital or other institution? (Department's Exhibit # 9-A @ Page 14).

37. This response is incorrect because Respondent was suspended in 1988 during his residency by the Hospital for Joint Diseases (see Findings # 9).

Factual Allegation D.1.a.ii. of the Amended Statement of Charges is Sustained.

In Respondent's May 6, 1989 Application for Appointment to the Medical Staff and for Clinical Privileges to Booth Memorial Medical Center it is documented that Respondent obtained a B.A. degree from Boston University in 1975 (Department's Exhibit # 9-A @ Page 12 - response to question III.A.).

38. This information is incorrect because Respondent received his undergraduate degree from Boston University in 1980 (see Findings # 3).

Factual Allegation D.1.a.iii. of the Amended Statement of Charges is Sustained.

D2. In Respondent's September 17, 1991 Application for Medical Staff Reappointment and Clinical Privileges to Booth Memorial Medical Center the "No" box is checked for the following questions:

II.C.1. Have any disciplinary actions been taken or are any pending against you by any state licensure board or other governmental agency? (Department's Exhibit # 9-A @ Page 73).

39. This response is incorrect because Respondent was disciplined in 1989 by a (New York) state licensure board (see Findings # 7 and # 8).

Factual Allegation D.2.a.i. of the Amended Statement of Charges is Sustained.

III.B. Has your employment, medical staff appointment or privileges ever been suspended, diminished, revoked or refused at any hospital or other institution? (Department's Exhibit # 9-A @ Page 74).

40. This response is incorrect because Respondent was suspended in 1988 during his residency by the Hospital for Joint Diseases (see Findings # 9).

Factual Allegation D.2.a.ii. of the Amended Statement of Charges is Sustained.

E. In Respondent's April 11, 1989 Application for Appointment to the Medical Staff of the Hospital for Joint Diseases the "No" box is checked for the following questions:

II.C.5.⁷ Have any disciplinary actions been initiated or are pending against you by any state licensure board? (Department's Exhibit # 8-A @ Page 20).

41. This response is incorrect because Respondent had the 1987 New York State disciplinary action initiated and still pending against him (see Findings # 7 and # 8).

Factual Allegation E.1.a.i. of the Amended Statement of Charges is Sustained.

III.C During your residency were you ever suspended, placed upon probation, formally reprimanded, asked to resign? (Department's Exhibit # 8-A @ Page 21).

No Factual Allegation remains as to this paragraph from the Amended Statement of Charges.

IV.B. Has your employment, medical staff appointment or privileges ever been suspended, diminished, revoked or refused at any hospital or other health care facility? (Department's Exhibit # 8-A @ Page 21).

No Factual Allegation remains as to this paragraph from the Amended Statement of Charges.

E.2 In Respondent's June 7, 2001, Application For Reappointment to the Hospital for Joint Diseases the "No" box is checked to the following question:

II. Information Update - Please indicate whether there is any change to the information provided on your initial or most recent reappointment application form.

A.6. Have there been any disciplinary actions or investigations by any state licensing board? (Department's Exhibit # 8-A @ Page 6).

7

The Amended Statement of Charges @ page 6 labels paragraph II.C.1. as II. C.(5.). The Hearing Committee considers this to be a minor typographical error and addresses the substance of the Factual Allegation.

42. There is insufficient evidence to determine the validity of Respondent's response on his most recent reappointment application form which date is unknown (Department's Exhibit # 8-A).

43. This response may be correct (see Findings # 15).

Factual Allegation E.2.a.i. of the Amended Statement of Charges is NOT Sustained.

Factual Allegation E.2.a.ii. of the Amended Statement of Charges is NOT Sustained.

F. In Respondent's March 15, 1989 Application for Appointment to the Medical Staff of Mercy Hospital the "No" box is checked for the following question:

B. Have your privileges at any hospital ever been suspended, diminished, revoked or not renewed?
(Department's Exhibit # 7-A @ Page 361).

44. This response is incorrect because Respondent was suspended in 1988 during his residency by the Hospital for Joint Diseases (see Findings # 9).

Factual Allegation F.1.a.i. of the Amended Statement of Charges is Sustained.

In Respondent's March 15, 1989 Application for Appointment to the Medical Staff of Mercy Hospital, New York State is listed as the only state in which Respondent was licensed to practice medicine (Department's Exhibit # 7-A @ Page 362).

45. This information is incorrect because Respondent was licensed to practice medicine in the State of Arkansas in 1982 (see Findings # 5).

Factual Allegation F.1.a.ii. of the Amended Statement of Charges is Sustained.

In Respondent's March 15, 1989 Application for Appointment to the Medical Staff of Mercy Hospital a B.A. degree is listed as being received from C.W. College in Old Westbury, New York in 1976. (Department's Exhibit # 7-A @ Page 358).

46. This information is incorrect because Respondent received his undergraduate degree from Boston University in 1980 (see Findings # 3 and # 4).

Factual Allegation F.1.a.iii. of the Amended Statement of Charges is Sustained.

F.2. In Respondent's June 5, 2001 "2001 Reappointment Application" to Mercy Medical Center the "NO" box is checked for the following questions:

Has your employment, medical staff appointment or clinical privileges AT ANY HOSPITAL OR HEALTH CARE FACILITY ever been voluntarily or involuntarily suspended, revoked, refused, limited or not renewed? (capital letters in original) (Department's Exhibit # 7-A @ Page 112).

47. This response is incorrect because Respondent was suspended in 1988 during his residency by the Hospital for Joint Diseases (see Findings # 9).

Factual Allegation F.2.a.ii. of the Amended Statement of Charges is Sustained.

Are there any pending professional misconduct proceedings and/or findings of professional misconduct in this or any other state? (Department's Exhibit # 7-A @ Page 112).

48. This response is incorrect because Respondent had a finding of professional misconduct in 1989 by New York State (see Findings # 7 and #8).

Factual Allegation F.2.a.i. of the Amended Statement of Charges is Sustained.

G.1. In Respondent's March 1, 1989, Application for Membership to the Medical Staff to Winthrop -University Hospital, there is no response or details to the following questions:

Have your privileges at any hospital ever been suspended, diminished, revoked or not renewed? (Department's Exhibit # 6-A @ Page 363).

49. This lack of response is incorrect because Respondent was suspended in 1988 during his residency by the Hospital for Joint Diseases (see Findings # 9).

Factual Allegation G.1.a.i. of the Amended Statement of Charges is Sustained.

Have you ever been denied membership or a renewal thereof, or been subject to disciplinary proceedings in any medical organization? (Department's Exhibit # 6-A @ Page 363).

50. This lack of response is incorrect because Respondent was the subject of disciplinary proceedings starting in 1988 (see Findings # 7 and #8).

Factual Allegation G.1.a.ii. of the Amended Statement of Charges is Sustained:

G.2. In Respondent's April 29, 1996 Application for Reappointment to the Medical Staff of Winthrop-University Hospital (Department's Exhibit # 6-A @ Pages 312-315); and in Respondent's April 17, 1998 Application for Reappointment to the Medical Staff of Winthrop-University Hospital (Department's Exhibit # 6-A @ Pages 283-286); and in Respondent's January 25⁸, 2002 Application for Reappointment to the Medical Staff of Winthrop-University Hospital (Department's Exhibit # 6-A @ Pages 119-122); and in Respondent's January 29, 2004 Application for Reappointment to the Medical Staff of Winthrop-University Hospital (Department's Exhibit # 6-A @ Pages 12-15) the "No" box is checked in answer to the same (or substantially the same) following questions on each form:

3. Have you ever had any professional misconduct proceedings pending against you in New York or elsewhere? (Department's Exhibit # 6-A @ Pages 312, 283, 119, 12).

51. This response is incorrect because Respondent did have a professional misconduct proceeding pending against him in New York starting in 1988 (see Findings # 7 and #8).

Factual Allegation G.2.a.i. of the Amended Statement of Charges is Sustained for each of the four (4) reappointment applications.

8. Have any of the following ever been denied, revoked, suspended, reduced, limited, placed on probation, not renewed, imposed, or voluntarily or involuntarily relinquished?... (Department's Exhibit # 6-A @ Pages 313, 284, 120, 13).

⁸ The Amended Statement of Charges @ page 9 labels paragraph 2 indicates a date of January 24th, 2002. The Hearing Committee considers this to be a minor error and addresses the substance of the Factual Allegation.

Medical or professional license or registration in New York or other state?

52. This response is incorrect because Respondent's Arkansas license expired in 1995 (relinquished or not renewed) (see Findings # 5).

Factual Allegation G.2.a.ii. of the Amended Statement of Charges is Sustained for each of the four (4) reappointment applications.

Staff membership at any other institution?

Clinical privileges at any other institution?

Any type of professional sanction?

53. These responses are incorrect because Respondent was suspended in 1988 during his residency by the Hospital for Joint Diseases and Respondent did have a professional sanction against him in 1989 (see Findings # 7, and # 8, and # 9).

Factual Allegation G.2.a.i. and G.2.a.iii. of the Amended Statement of Charges are Sustained for each of the four (4) reappointment applications.

FACTUAL ALLEGATION CONCLUSIONS

54. The Hearing Committee makes the conclusion, and draws the inference, that subsequent to the Respondent's receipt of notifications that his applications for appointment for hospital privileges failed to present complete information (December 1989 letter and January 1990 letter), Respondent's actions and/or inactions were done knowingly and with the intent to deceive. Respondent's conduct shows a willful intent to mislead and deceive others. Respondent's conduct, after being notified of errors, omissions, and inaccuracies is not just negligence. Respondent's conduct, after being notified of errors, omissions, and inaccuracies is not just gross negligence. Respondent's conduct, after being notified of errors, omissions, and inaccuracies is more than a reckless disregard of his responsibilities. Respondent's conduct can only be categorized as intentionally and willfully deceptive and misleading.

55. The conduct of Respondent (subsequent to the December 1989 letter and the January 1990 letter) in allowing incorrect or inaccurate representations to be made within his applications for appointment and reappointment provides sufficient proof that false representations were made by Respondent. The Hearing Committee believes this to be true even if Respondent did not fill out the applications and even if Respondent did not sign the applications.

56. The Hearing Committee concludes that (subsequent to the December 1989 letter and the January 1990 letter) Respondent knew the representations that would be made on his behalf in future applications would be false and Respondent intended to mislead others through his continuing false representations.

Factual Allegation A.2. of the Amended Statement of Charges is Sustained.

Factual Allegation B.2. of the Amended Statement of Charges is Sustained.

Factual Allegation C.2. of the Amended Statement of Charges is Sustained.

Factual Allegation D.1.b. of the Amended Statement of Charges is NOT Sustained.

Factual Allegation D.2.b. of the Amended Statement of Charges is Sustained.

Factual Allegation E.1.b. of the Amended Statement of Charges is NOT Sustained.

Factual Allegation E.2.b. of the Amended Statement of Charges is Sustained.

Factual Allegation F.1.b. of the Amended Statement of Charges is NOT Sustained.

Factual Allegation E.2.b. of the Amended Statement of Charges is Sustained.

Factual Allegation G.1.b. of the Amended Statement of Charges is NOT Sustained.

Factual Allegation G.2.b. of the Amended Statement of Charges is Sustained.

CONCLUSIONS OF LAW

The Hearing Committee makes the conclusion by a unanimous vote that all of the Factual Allegations contained in the November 8, 2005 Amended Statement of Charges are **SUSTAINED** except for Factual Allegation B.1.d., D.1.b., E.1.b., E.2.a.i., E.2.a.ii., F.1.b., and G.1.b.

Based on the above, the complete Findings of Fact and the discussion below, the Hearing Committee, by a unanimous vote, concludes:

1. the seven (7) Specifications of FRAUDULENT PRACTICE contained in the Amended Statement of Charges are **SUSTAINED**.
2. the seven (7) Specifications of FALSE REPORT contained in the Amended Statement of Charges are **SUSTAINED**.
3. the five (5) Specifications of VIOLATION OF SECTION 2805-K OF THE PUBLIC HEALTH LAW contained in the Amended Statement of Charges are **SUSTAINED**.
4. the seven (7) Specifications of MORAL UNFITNESS contained in the Amended Statement of Charges are **NOT SUSTAINED**.

The rationale for the Hearing Committee's conclusions is set forth below.

DISCUSSION

Respondent is charged with twenty six (26) specifications alleging professional misconduct within the meaning of §6530 of the Education Law. §6530 of the Education Law sets forth a number and variety of forms or types of conduct which constitute professional misconduct. However §6530 of the Education Law does not provide definitions or explanations of some of the misconduct charged in this matter.

The ALJ provided to the Hearing Committee certain verbal instructions and verbal definitions of medical misconduct as alleged in this proceeding. These verbal instructions and definitions were obtained from: (1) a memoranda entitled Definitions of Professional Misconduct under the New York Education Law⁹ (ALJ's Exhibit # 2); (2) a memoranda prepared by the ALJ

⁹ Copies of ALJ Exhibits # 2 and # 3 were provided to both parties at the Pre-Hearing conference [P.H.T-5-15]; [T-4-5].

from prior Determinations and Orders (ALJ's Exhibit # 3 - see footnote # 9); (3) Department's proposed panel instructions; and (4) Respondent's Jury Charges. The Hearing Committee also carefully reviewed the Department's March 9, 2006 submission and the Respondent's March 9, 2006 submission. During the course of its deliberations on these charges, the Hearing Committee considered the following instructions from the ALJ:

Preponderance of the Evidence

The burden of proof in this proceeding rests on the Department. The Department must establish by a fair preponderance of the credible evidence that the allegations made are true. Credible evidence means the testimony or exhibits found worthy to be believed. Preponderance of the evidence means that the allegation presented is more likely than not to have occurred (more likely true than not true). The evidence that supports the claim must appeal to the Hearing Committee as more nearly representing what took place than the evidence opposed to its claim. The Charges of misconduct must be supported by the sustained or believed allegations by a preponderance of the evidence. The Hearing Committee understands that the Department must establish each and every element of the charges by a preponderance of the evidence.

Practicing the Profession Fraudulently

Fraudulent practice of medicine is an intentional misrepresentation or concealment of a known fact, in connection with the practice of medicine. An individual's knowledge that he is making a misrepresentation or concealing a known fact with the intention to mislead may properly be inferred from certain facts. In order to support the charge that medicine has been practiced fraudulently, the Department must prove by a preponderance of the evidence that (1) Dr. Ross made a false representation, whether by words, conduct, or concealment of that which should have been disclosed; (2) Dr. Ross knew that the representation was false; and (3) Dr. Ross intended to mislead

through the false representation. The Hearing Committee is the sole arbiter of whether fraud occurred and must base its determination on the credible facts and not on whether others believe that fraud occurred or did not occur.

Willfully making or filing a false report

In order to sustain the charge of willfully making or filing a false report, the Department must prove by a preponderance of the evidence that (1) Dr. Ross willfully made or filed a false report, or (2) Dr. Ross failed to file a report that is required by law or by the Department of Health or the Education Department. A report is false if it contains information which is untrue or inaccurate as to the truth. For one's conduct to be "willful" it must be done voluntarily and intentionally (the word [willfully] often denotes an act which is intentional, or knowing, or voluntary, as distinguished from accidental [Black's Law Dictionary at page 1434 (5th ed. 1979)]). The Department must prove, by a preponderance of the evidence, that Dr. Ross voluntarily and intentionally made or filed a false report OR the Department must prove, by a preponderance of the evidence, that Dr. Ross voluntarily and intentionally failed to file a report that is required by law or by the Department of Health or the Education Department.

Violation of Public Health Law §2805-k

Public Health Law §2805-k was read to the Hearing Committee by the ALJ. Our understanding of the relevant requirements of §2805-k as it pertains to this Hearing and the Factual Allegations contained in the Amended Statement of Charges are:

1. Prior to granting or renewing professional privileges or association of any physician, ... or hiring a physician, ..., a hospital or facility approved pursuant to this article shall request from the physician, ... and the physician, ... shall be required to provide the following information (emphasis added):

- (a) The name of any hospital or facility with or at which the physician, ... had or has any association, employment, privileges or practice;
- (b) Where such association, employment, privilege or practice was discontinued, the reasons for its discontinuation;
- (c) Any pending professional medical, ... misconduct proceedings or any pending medical malpractice actions in this state or another state, the substance of the allegations in such proceedings or actions, and any additional information concerning such proceedings or actions as the physician, ... may deem appropriate;
- (d) The substance of the findings in such actions or proceedings ...
- (g) A verification by the physician, dentist or podiatrist that the information provided by the physician, dentist or podiatrist is true and accurate.

Moral Unfitness

To sustain a specification of moral unfitness, the Department must show that Respondent committed an act or acts which "evidences moral unfitness". The act or acts must be "conduct in the practice of the profession of medicine". There is a distinction between a finding that an act "evidences moral unfitness" and a finding that a particular person is morally unfit. In a proceeding before the State Board for Professional Medical Conduct, the Hearing Committee is asked to decide if certain alleged conduct is suggestive of, or would tend to prove, moral unfitness. The Hearing Committee is not called on to make an overall judgment regarding a Respondent's moral character. It is noteworthy that an otherwise moral individual can commit an act "evidencing moral unfitness" due to a lapse in judgment or other temporary aberration.

The standard for moral unfitness in the practice of medicine is twofold. First, there may be a finding that the accused has violated the public trust which is bestowed by virtue of his licensure as a physician. Physicians have privileges that are available solely due to the fact that one is a physician.

The public places great trust in physicians solely based on the fact that they are physicians. For instance, physicians have access to controlled substances and billing privileges that are available to them solely because they are physicians. Patients are asked to place themselves in potentially compromising positions with physicians, such as when they disrobe for examination or treatment. Hence, it is expected that a physician will not violate the trust the public has bestowed on him or her by virtue of his or her professional status.

Second, moral unfitness can be seen as a violation of the moral standards of the medical community which the Hearing Committee, as delegated members of that community, represent. We determined that the first prong of the above definition does not apply to the circumstances of this proceeding. Thereafter we focused on whether Dr. Ross violated the moral standards of the medical community which we represent.

The Hearing Committee used ordinary English usage and understanding for all other terms and allegations. The Hearing Committee was aware of its duty to keep an open mind regarding the allegations and testimony. With regard to the testimony presented, the Hearing Committee evaluated all the witnesses for possible bias or motive. The witnesses were also assessed according to their training, experience, credentials, demeanor, and credibility. We considered whether the testimony was supported or contradicted by other independent objective evidence. The Hearing Committee understood that as the trier of fact we may accept so much of a witnesses' testimony as is deemed true and disregard what we find and determine to be false.

Credibility

The testimony of the witnesses (other than Respondent's) was not crucial to the allegations for two reasons. First, the documents accepted in evidence speak for themselves. Second, the majority of the factual allegations are not contested. Respondent admitted that the applications contain "mistakes or inaccuracies".

The Hearing Committee found the two witnesses presented by the Department, Mary Jane O'Brien and Patricia Ann Cooney to be credible individuals. Ms. O'Brien is a medical conduct investigator for the Department and Ms. Cooney is the program director for the Office of Professional Medical Conduct for the New York City office and the New Rochelle office. Both testified regarding some details of their investigation which was mostly contained within the documents obtained from the various hospitals that Respondent was involved with.

Respondent has the most at stake in this proceeding. Respondent "accepted" responsibility for the applications and for everything that goes out of his office [T-200, 282-283]. Even though Respondent "accepted" responsibility for his actions, the remainder of his testimony was to place the blame of his errors, omissions, deceptions and false responses on his mother and on his office managers. The Hearing Committee is willing to accept, albeit skeptically, Respondent's position that Respondent's mother submitted the original applications to Winthrop University Hospital on March 1, 1989, to Mercy Hospital on March 15, 1989, to the Hospital for Joint Diseases on April 11, 1989, and to Booth Memorial Medical Center on May 6, 1989.

Respondent's position that he neither read nor signed (or signed without reading) the applications in evidence, despite being put on notice by the very hospitals deceived (for example the December 1989 letter and the January 1990 letter), proved untrustworthy. The Hearing Committee was not willing to accept or believe that Respondent could keep himself deliberately

ignorant of the content of applications which he was required to subsequently submit, especially after being notified of problems with his 1989 applications. The following testimony from Respondent is illustrative of Respondent's failure to comprehend his responsibilities [T-266-267 (questions by Ms. Radman of Dr. Ross)]:

5 Q I direct your attention now to
6 the Hospital for Joint Diseases exhibit,
7 which is 8 --

8 A 8-A.

9 Q 8-A. Dr. Ross, you signed a
10 contract with the Hospital for Joint
11 Diseases, the orthopedic institute, your
12 first year of residency in 1987 and then
13 again your second year in 1988; correct?

14 A Yes.

15 Q And as you can see from the title
16 of the contract, you were hired as a house
17 staff officer at a fixed annual salary;
18 correct?

19 A Yes.

20 Q The contract delineated the terms
21 of appointment, hours, vacation, sick leave,
22 duties and responsibilities, among other
23 provisions; correct?

...

5 A I didn't read it then, and I
6 haven't read it now.

The Hearing Committee unanimously agreed that Respondent is obligated to uphold the same standard charged to any other physician when it comes to carefully and accurately completing, signing, attesting to, and submitting hospital applications for privileges, aperture applications for provider status, and state re-licensure forms. Respondent's failure to accept his responsibility was done willfully and intentionally. Respondent's conduct is irresponsible and unprofessional.

Respondent presented three (3) witnesses in addition to himself. Dr. Frankel and Dr. DiMaio mostly testified as to Respondent's competence as an orthopedist, which was not relevant to the charges but was considered by the Hearing Committee when forming an appropriate penalty. We did note that Dr. DiMaio, the current chair of the orthopedic department at Winthrop University Hospital, was unaware of Respondent's 1989 New York State censure and reprimand. Ms. Wendy Z. Noto has been Respondent's office manager for the last twelve (12) years. She appeared credible but did not assuage Respondent's responsibilities regarding his applications and other submissions.

Respondent is charged with committing professional misconduct under Education Law §6530(2) by practicing the profession of medicine fraudulently.

As discussed above (see also Findings # 54, # 55, and # 56) the Hearing Committee concludes that Respondent made false representations in (1) his 2005-2007 New York State biennial registration application; (2) his January 20, 2003 Aperture Application; (3) his November 1, 1997 and January 13, 2003 North Shore University Applications; (4) his September 17, 1991 Booth Memorial Application; (5) his June 5, 2001 Mercy Medical Center Application; and (6) his April 29, 1996, April 17, 1998, January 25, 2002, and January 29, 2004 Applications to Winthrop-University Hospital. Respondent knew the representations that he made in these applications were false and Respondent intended to mislead the recipients of the applications by making said false representations. The Hearing Committee unanimously concludes and determines that Respondent is guilty of committing professional misconduct by practicing the profession of medicine fraudulently.

In matters which involved Respondent's licensing and medical practice Respondent is responsible for the actions of his staff (office managers) including his mother who acted as such. The Respondent gave these individuals the power to act on his behalf and they did so as his agent and Respondent retained responsibility for their acts which were done within the scope of their duties as his agents. Respondent obtained and accepted the benefits granted by the applications that were submitted, including, being licensed to practice medicine in the State of New York, receiving (or continuing) hospital privileges at Winthrop University Hospital, Mercy Hospital, Booth Memorial Medical Center, and North Shore University Medical Center. If Respondent's position, that he never filled out, signed or submitted these applications, is taken literally then he never applied for or properly renewed his license to practice medicine in New York State and he has been illegally practicing medicine for all these years.

The Hearing Committee gave Respondent the benefit of any doubt and assessed responsibility to have turned from one of negligence to one of intentional acts after he was notified of his errors in the December 1989 letter and the January 1990 letter. Respondent's conduct after receipt of these notices showed a reckless disregard for the truth. Respondent's failure to assure accuracy was intentional and with knowledge. As a starting point Respondent could have provided to his office manager, Ms. Noto, a corrected Winthrop University Hospital application which we were told was the sample that she used.

Respondent is charged with committing professional misconduct under Education Law §6530(21) by wilfully making or filing a false report.

As discussed above the Hearing Committee concludes that Respondent voluntarily and intentionally made and filed: (1) his 2005-2007 New York State biennial registration application; (2) his January 20, 2003 Aperture Application; (3) his November 1, 1997 and January 13, 2003

North Shore University Applications; (4) his September 17, 1991 Booth Memorial Application; (5) his June 5, 2001 Mercy Medical Center Application; and (6) his April 29, 1996, April 17, 1998, January 25, 2002, and January 29, 2004 Applications to Winthrop-University Hospital. There is no question that each of the above mentioned applications contain information which is untrue and inaccurate. There is no question in our minds that these untruths or inaccuracies were not done accidentally.

The Hearing Committee notes that if Respondent's arguments regarding this issue were to be believed then Respondent would still be guilty of this Specification. Respondent's position is that he did not fill out the applications, knew nothing about them and he did not sign them or even submit them. If this were accurate then Respondent would be guilty of failing to file a report required by law.

The Hearing Committee unanimously concludes and determines that Respondent is guilty of professional misconduct by willfully making and filing false reports.

Respondent is charged with committing professional misconduct under Education Law §6530(14) by violating section twenty-eight hundred five-k (2805-k) of the Public Health Law.

In Respondent's applications (1997 & 2003) to North Shore University Hospital, the Hearing Committee determines that prior to being granted professional privileges or having his privileges renewed, Respondent did not provide information regarding the discontinuation (suspension) of his hospital privileges or practice at the Hospital for Joint Diseases in 1988-1989 and Respondent failed to provide the reasons for its discontinuation (violations of §2805-k[1][a] and [b]). Pursuant to Respondent's testimony he did not sign the 1997 or the 2003 applications. Therefore Respondent failed to verify the information provided was true and accurate (violations of §2805-k[1][g]).

The Hearing Committee believes that a finding of a violation of §2805-k[1][g] is not inconsistent with the earlier findings that Respondent submitted fraudulent applications (see all Findings and specifically # 54, # 55, and # 56 and the discussion above). Similarly the Hearing Committee believes that a finding of a violation of §2805-k[1][g] is not inconsistent with the earlier findings that Respondent willfully made and filed false reports (see all Findings and specifically # 54, # 55, and # 56 and the discussion above).

In Respondent's 1989 application to Booth Memorial Medical Center, the Hearing Committee determines that prior to being granted professional privileges, Respondent did not provide information regarding his pending professional medical proceedings nor the substance of the findings of said proceedings as of that date (violations of §2805-k[1][c] & [d]). The Hearing Committee determines that prior to being granted professional privileges Respondent did not provide information regarding the discontinuation (suspension) of his hospital privileges or practice at the Hospital for Joint Diseases in 1988-1989. Respondent also failed to provide the reasons for its discontinuation (violations of §2805-k[1][b]). Pursuant to Respondent's testimony he did not sign the 1989 application. Therefore Respondent failed to verify the information provided was true and accurate (violation of §2805-k[1][g]).

In Respondent's 1989 application to the Hospital for Joint Diseases, the Hearing Committee determines that prior to being granted professional privileges, Respondent did not provide information regarding his pending professional medical proceedings nor the substance of the findings of said proceedings as of that date (violations of §2805-k[1][c] & [d]). Pursuant to Respondent's testimony he did not sign the 1989 application. Therefore Respondent failed to verify the information provided was true and accurate (violation of §2805-k[1][g]).

In Respondent's 1989 and 2001 applications to Mercy Hospital, the Hearing Committee determines that prior to being granted professional privileges or having his privileges renewed, Respondent did not provide information regarding the discontinuation (suspension) of his hospital privileges or practice at the Hospital for Joint Diseases in 1988-1989. Respondent also failed to provide the reasons for its discontinuation (violations of §2805-k[1][b]). Pursuant to Respondent's testimony he did not sign the 1989 or the 2001 applications. Therefore Respondent failed to verify the information provided was true and accurate (violations of §2805-k[1][g]).

In Respondent's 1989 application to Winthrop University Hospital, the Hearing Committee determines that prior to being granted professional privileges Respondent did not provide information regarding his pending professional medical proceedings nor the substance of the findings of said proceedings as of that date (violations of §2805-k[1][c] & [d]). The Hearing Committee determines that prior to being granted professional privileges Respondent did not provide information regarding the discontinuation (suspension) of his hospital privileges or practice at the Hospital for Joint Diseases in 1988-1989. Respondent also failed to provide the reasons for its discontinuation (violations of §2805-k[1][b]). In Respondent's 1996, 1998, 2002, and 2004 applications to Winthrop University Hospital, the Hearing Committee determines that prior to having his privileges renewed, Respondent did not provide information regarding the discontinuation (suspension) of his hospital privileges or practice at the Hospital for Joint Diseases in 1988-1989. Respondent also failed to provide the reasons for its discontinuation (violations of §2805-k[1][b]). Pursuant to Respondent's testimony he did not sign the 1989, 1996, 1998, 2002, and 2004 applications. Therefore Respondent failed to verify the information provided was true and accurate (violations of §2805-k[1][g]).

As to Respondent's applications submitted subsequent to 1989 the Hearing Committee did not sustain a violation of §2805-k(1)(c) or (d) because by the time these re-applications were submitted there were no pending professional medical misconduct proceedings.

The Hearing Committee unanimously concludes and determines that Respondent is guilty of professional misconduct by violating section 2805-k of the Public Health Law.

Respondent is charged with committing professional misconduct under Education Law §6530(20) by engaging in conduct in the practice of the profession of medicine that evidences moral unfitness to practice.

The Hearing Committee believes that Respondent's conduct was unprofessional, irresponsible, intentional, and deliberate. Respondent has shown no improvement over the years and appears to lack the ethical or legal understanding of his responsibility as a physician to the honor of the profession. Respondent was warned a number of times but refused to heed.

However, there was no actual patient involvements and no violation of patient contact or patient care. Respondent did not breach his fiduciary relationship with a patient or engage in conduct which inhibited his judgment as an independent physician. Respondent did not bring public disrepute to the medical profession nor did he breach the trust bestowed on him solely because he is a licensed physician.

The evidence that Respondent violated the public trust or the moral standards of the community was insufficient for the Hearing Committee to conclude that all of the elements applicable under the provided definition of moral unfitness were proved by a preponderance.

The Hearing Committee unanimously concludes and determines that the Department did not prove by a preponderance of the evidence that Respondent is guilty of engaging in the practice of the profession of medicine that evidences moral unfitness to practice.

Respondent's other Arguments

Respondent claims that once he was asked about specific information, he correctly provided "the information that was mistakenly presented incorrectly on the applications." First, that claim does not necessarily hold true as can be seen by Findings # 12. Second, Respondent's own witness was unaware of Respondent's 1989 New York State sanction. Third, the applications need to stand or fall on their own. Respondent's responses must be accurate.

Respondent claims that "There is no logical reason why Respondent would lie about issues that had already been revealed." That statement is probably true and the Hearing Committee does not know why Respondent did what he did. Unfortunately for Respondent he did lie on numerous occasions and we believe he did benefit from those lies. None of the applications have a statement which indicates what Respondent argues, to wit: other than what we already know tell us about ... All of the applications contain similar language and questions which a reasonable person of reasonable intelligence should be able to answer truthfully.

Respondent claims that "Where a physician is found to provide an honest and reasonable explanation for misrepresentations or inaccuracies on paperwork, that physician should not be found to have committed fraud Bottros v. DeBuono, 256 A.D.2d 1034, 683 N.Y.S.2d 333 (3d Dep't 1998)". The Hearing Committee believes that subsequent to the December 1989 letter and the January 1990 letter Respondent's explanations were neither reasonable nor honest.

DETERMINATION AS TO PENALTY

After a full and complete review of all of the evidence presented and pursuant to the Findings of Fact, Conclusions of Law and Discussion set forth above, the Hearing Committee determines that Respondent's license to practice medicine in New York State should be suspended for one (1) year.

Thereafter Respondent should be required to be on probation for two (2) years under the annexed Terms of Probation (Appendix 2). During the one year term of suspension Respondent must successfully complete at least ten (10) hours of Continuing Medical Education ("CME") on office practice or/and office management courses and ten (10) hours on medical ethics or/and medical professionalism courses. These CME courses should preferably be in Respondent's practice specialty and proof of attendance and satisfactory completion must be submitted before the end of Respondent's suspension to the Director of OPMC as identified in the Terms of Probation.

These twenty (20) hours of CME are in addition to any other required CME (which are taken to stay current in the practice of medicine) and must be pre-approved by the Director of the OPMC. During his suspension and during the two year period of probation Respondent should also be required to submit copies of any and all hospital applications, reappointment applications, renewals, or insurance company applications to the Director of OPMC.

This determination is reached after due and careful consideration of the full spectrum of penalties available pursuant to P.H.L. §230-a, including: (1) Censure and reprimand; (2) Suspension of the license, wholly or partially; (3) Limitations of the license; (4) Revocation of license; (5) Annulment of license or registration; (6) Limitations; (7) the imposition of monetary penalties; (8) a course of education or training; (9) performance of public service; and (10) probation.

The Hearing Committee extensively discussed the appropriate penalties necessary to address Respondent's misconduct in this case. In the final analysis the Hearing Committee had to decide on one of two options: either Respondent's license should be revoked, or Respondent's license should be suspended for a period of time and he should be placed on probation, with certain conditions.

Respondent's lack of professionalism and lack of respect for the ethical rules of the medical profession, and dismissal of their importance was troubling to the Hearing Committee. The Hearing Committee found that Respondent appeared to have no understanding, even during the Hearing, that his behavior was completely unprofessional. His actions were intentional and deliberate and his attempt to insulate himself in ignorance of the filing and application requirements was not believable or acceptable.

Integrity is essential to the practice of medicine. It is imperative that physicians deal truthfully not only with patients and other physicians, but with hospitals and facilities, third party insurers and state regulators. This standard and its enforcement is the foundation on which our health care system rests. Allowing physicians who make a habit of placing their own interests above those of their prospective employers and ultimately their patients erodes our health care system for everyone.

The Hearing Committee cannot understand why the involved hospitals failed to take more severe actions against Respondent either by suspending him or not renewing his privileges. As far back as 1989 a severe censure and reprimand by Winthrop University Hospital proved to be insufficient to help Respondent correct his behavior. The information requested in the Hospital applications, the biennial registration, and the insurance application serve a purpose and are for the protection of the patients and society. These institutions depended and acted on the information they were provided to the benefit of Respondent. By responding fraudulently and deceptively Respondent presented a negative view of the reputation and integrity of other physicians in New York.

Respondent has accepted very little to no responsibility for his actions. The Hearing Committee has a serious concern about Respondent's arrogance and lack of understanding of his lack of professionalism. Respondent's conduct provides evidence of his disregard for the legal underpinnings of the practice of medicine and for the ethical and moral precepts thereof. We hope that he will come to realize, during his suspension from the practice of medicine, that he needs to change his practice. If this punishment makes Respondent properly, correctly, and truthfully fill out and sign future applications then the Hearing Committee has been successful.

Respondent has committed fraud. This act is a serious transgression as it belies a fundamental lack of integrity. Physicians are not infallible nor are they held to that standard; however, honesty and accountability are standards that are inviolate. Their breach corrupts the profession, endangers the public, and taints the trust and respect that society places in their physicians, an effect which cannot be minimized.

The Hearing Committee believes that the penalty imposed should help curb future unprofessional practice by Respondent. No patient contact or harm has been shown by the Department in this Hearing. The Hearing Committee believes that Respondent may be able to provide benefit to society with his medical license. We believe that revocation of Respondent's license would be more punishment than necessary. While we may agree with Respondent that he is not an individual who is looking to defy the laws, rules, and regulations of New York State, it appears that Respondent is not concerned about following these laws, rules, and regulations either.

The sanction imposed is not cumulative but concurrent. In other words, a finding of fraud on a majority of the seven specifications charged would have resulted in the sanction imposed. Similarly, a finding of filing a false report on a majority of the seven specifications charged would have resulted in the sanction imposed. A finding of a violations of §2805-k would have resulted

in the sanction imposed. Conversely, a finding of moral unfitness would not have increased the sanction imposed. The reason for this concurrence is that the actual conduct of Respondent is the same even though the laws, rules, and regulations that he violated are different.

No additional fines or sanction were deemed appropriate under the circumstances presented. Taking all of the facts, details, circumstances, and particulars in this matter into consideration, the Hearing Committee determines that the above is the appropriate action under the circumstances. All other issues raised by both parties have been duly considered by the Hearing Committee and would not justify a change in the Findings, Conclusions or Determination contained herein.

By execution of this Determination and Order, all members of the Hearing Committee certify that they have read and considered the complete record of this proceeding.

ORDER

Based on the foregoing, **IT IS HEREBY ORDERED THAT:**

1. The **FIRST** through **NINETEENTH SPECIFICATIONS** contained in the Amended Statement of Charges (Department's Exhibit # 1-C) are **SUSTAINED**; and
2. All Factual Allegations contained in the Amended Statement of Charges (Department's Exhibit # 1-C) are **SUSTAINED** except for Factual Allegation **B.1.d., D.1.b., E.1.b., E.2.a.i., E.2.a.ii., F.1.b., and G.1.b.**; and
3. The **TWENTIETH** through **TWENTY-SIXTH SPECIFICATIONS** contained in the Amended Statement of Charges (Department's Exhibit # 1-C) are **NOT SUSTAINED**; and
4. Respondent's license to practice medicine in the State of New York is hereby **SUSPENDED** for **ONE (1) YEAR**; and

5. Respondent shall be on PROBATION for TWO (2) YEARS as indicated in the annexed terms of probation (Appendix 2) which terms are fully incorporated in this Determination and Order; and

6. The period of probation shall begin after the completion of Respondent's suspension; and

7. During the one year term of suspension Respondent must successfully complete at least ten (10) hours of CME on office practice or/and office management courses and at least ten (10) hours of CME on medical ethics or/and medical professionalism courses; and

8. During Respondent's suspension and for the two year period of probation thereafter, Respondent shall be required to submit copies of any and all hospital applications, reappointment applications, renewals, or insurance company applications to the Director of OPMC.

9. This Order shall be effective on personal service on the Respondent or seven (7) days after the date of mailing of a copy to Respondent by certified mail or as provided by P.H.L. §230(10)(h).

DATED: New York
April, 25 2006

REDACTED

SHELDON H. PUTTERMAN, M.D. (CHAIR)
PAUL S. CARTON, M.D.
LOIS VOYTICKY

Hank Ross, M.D.

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TO: DR. HANK ROSS - RESPONDENT

**GUIDELINES FOR CLOSING A MEDICAL PRACTICE FOLLOWING A
REVOCATION, SURRENDER OR SUSPENSION OF A MEDICAL LICENSE**

1. Respondent shall immediately cease and desist from engaging in the practice of medicine (in New York State) in accordance with the terms of the Order. In addition, Respondent shall refrain from providing an opinion as to professional practice or its application and from representing himself as being eligible to practice medicine.
2. Respondent shall have delivered to OPMC at Hedley Park Place, 433 River Street 4th Floor, Troy, NY 12180-2299 his original license to practice medicine in New York State and current biennial registration within five (5) days of the effective date of the Order.
3. Respondent shall within fifteen (15) days of the Order notify his patients of the cessation of his medical practice and will refer all patients to another licensed practicing physician for their continued care, as appropriate.
4. Respondent shall make arrangements for the transfer and maintenance of the medical records of his patients. Within thirty (30) days of the effective date of the Order, Respondent shall notify OPMC of these arrangements including the appropriate and acceptable contact person's name, address, and telephone number who shall have access to these records. Original records shall be retained for at least six years after the last date of service rendered to a patient or, in the case of a minor, for at least six years after the last date of service or three years after the patient reaches the age of majority whichever time period is longer. Records shall be maintained in a safe and secure place which is reasonably accessible to former patients. The arrangements shall include provisions to ensure that the information on the record is kept confidential and made available only to authorized persons. When a patient and/or his or her representative requests a copy of the patient's medical record or requests that the original medical record be forwarded to another health care provider, a copy of the record shall be promptly provided or forwarded at a reasonable cost to the patient (not to exceed seventy-five (75) cents per page.) Radiographic, sonographic and like materials shall be provided at cost. A qualified person shall not be denied access to patient information solely because of their inability to pay.
5. In the event that Respondent holds a Drug Enforcement Agency (DEA) certificate, Respondent shall within fifteen (15) days advise the DEA in writing of the licensure action and shall surrender his DEA controlled substance privileges to the DEA. Respondent shall promptly surrender any unused DEA #222 U.S. Official Order Forms Schedules 1 and 2 to the DEA.



TO: DR. HANK ROSS - RESPONDENT

**GUIDELINES FOR CLOSING A MEDICAL PRACTICE FOLLOWING A
REVOCATION, SURRENDER OR SUSPENSION OF A MEDICAL LICENSE**

PAGE 2

6. Respondent shall within fifteen (15) days return any unused New York State official prescription forms to the Bureau of Controlled Substances of the New York State Department of Health. Respondent shall cause all prescription pads bearing his name to be destroyed. If no other licensee is providing services at his practice location, all medications shall be properly disposed.
7. Respondent shall not share, occupy or use office space in which another licensee provides health care services. Respondent shall cause all signs to be removed within fifteen (15) days and stop all advertisements, professional listings whether in telephone directories or otherwise, professional stationery or billings by which his eligibility to practice is represented.
8. Respondent shall not charge, receive or share any fee or distribution of dividends for professional services rendered by himself or others while barred from engaging in the practice of medicine. Respondent may be compensated for the reasonable value of services lawfully rendered and disbursements incurred on a patient's behalf prior to the effective date of this Order.
9. If Respondent is a shareholder in any professional service corporation organized to engage in the practice of medicine and if his license is revoked, surrendered or suspended for a term of six months or more under the terms of this Order, Respondent shall divest himself of all financial interest in the professional services corporation in accordance with New York Business Corporation Law. Such divestiture shall occur within 90 days. If Respondent is the sole shareholder in a professional services corporation, the corporation must be dissolved or sold within ninety (90) days of the effective date of this Order.
10. Failure to comply with the above directives may result in a civil penalty or further criminal penalties as may be authorized pursuant to the law. Under Section 6512 of the Education Law it is a Class E Felony, punishable by imprisonment of up to 4 years, to practice the profession of medicine when such professional license has been suspended, revoked or annulled. Such punishment is in addition to the penalties for professional misconduct set forth in section 230-a of the Public Health Law, which includes fines of up to \$10,000 for each specification of charges of which the Respondent is found guilty and may include revocation of a suspended license.

APPENDIX 1

EXHIBIT
Dept 1C
Inevd
11/7/05 Bm
PER640 800-631-9999

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

IN THE MATTER
OF
HANK ROSS, M.D.

AMENDED
STATEMENT
OF
CHARGES

Hank Ross, M.D., the Respondent, was authorized to practice medicine in New York State on or about July 15th, 1985, by the issuance of license number 163233 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. On or about September 10th, 2004, Respondent submitted his 2005-2007 New York State biennial registration application on which he responded "No" to the question: "2. Since your last registration application, e. Has any hospital or licensed facility restricted or terminated your professional training, employment, or privileges, or have you voluntarily or involuntarily resigned or withdrawn from such association to avoid the imposition of such action due to professional misconduct, unprofessional conduct, incompetency, or negligence?".
 - 1. Respondent failed to disclose that:
 - a. On or about March 3rd, 2004, Winthrop University Hospital restricted his privileges at that facility to consultation and admittance; specifically disallowing fracture, dislocation, manipulation, and surgical privileges.
 - 2. Respondent did so knowingly and with intent to deceive.

B. On or about January 20th, 2003, Respondent submitted an Aperture Universal Application to Empire Blue Cross/ Blue Shield on which he responded "No" to the questions: "During your education, internship, residency, fellowship, preceptorship or additional training as applicable, were you ever disciplined, suspended, placed on probation, formally reprimanded, or asked to resign?", "Have you ever been disciplined, reprimanded, or fined by any state board of medical examiners, professional conduct board, or state or federal agency that disciplines physicians or allied health professionals?", "Have you ever been the subject of an investigation by any private, federal, or state health program-or is any such action pending?", and "Have your clinical privileges at any hospital or healthcare institution ever been limited, suspended, revoked, not renewed, or subject to probationary or other disciplinary conditions, or have proceedings toward any of these ends been instituted or recommended by any hospital or healthcare institution, medical staff or committee, or governing board?". In addition, Respondent documented that his undergraduate degree was awarded by Boston University, with dates of attendance listed as 1972-1976.

1. Respondent failed to disclose that:

- a. The Hospital for Joint Diseases suspended him from their Orthopedic residency program for five weeks from December 26th, 1988 through February 1st, 1989.
- b. The Commissioner of Education of the State of New York, for and on behalf of the State Education Department and the Board of Regents ordered on June 23rd, 1989, effective June 28th, 1989 (No. 9477) that Respondent receive a Censure and Reprimand, after the Regents Review Committee unanimously recommended, on April 24th, 1989, that the Board of Regents

find Respondent guilty of Practicing Medicine with Gross Negligence. The order was stayed on June 25th, 1989. The stay was rescinded September 21st, 1989. The finding and penalty, in full force and effect from that date on, was ultimately upheld by the Appellate Division, Third Department on November 1st, 1990.

- c. On or about May 26th, 2000, The New York State Office of Professional Conduct initiated an investigation, for which Respondent appeared at an interview on April 8th, 2002, involving his surgical/post-operative management of an otherwise healthy patient's leg fracture, resulting in the development of compartment syndrome ultimately leading to the amputation of the leg.
 - d. He did not renew his Arkansas medical license # C-6289, which was issued August 9th, 1982, and expired on March 1st, 1995.
 - e. As a result of a sub-optimal outcome in the surgical management of a patient presenting at Winthrop University Hospital in November of 1999 with a traumatic ankle break, Respondent was placed on focused review for a period of one year, during which time all his postoperative fracture fixation x-rays were to be personally reviewed by the Chief of Orthopedic Services.
 - f. His B.A. from Boston University was received on May 18th, 1980.
2. Respondent did so knowingly and with intent to deceive.

- C. On or about November 1st, 1997, Respondent submitted an Application for Appointment to the Medical Staff to North Shore University Hospital at Syosset, and then again at least one subsequent time, including but not limited to, on or about January 13th, 2003, for Reappointment to the Medical Staff, on which he responded "No" to the same questions on each form: 1. "Voluntarily or involuntarily, are or have any of the following ever been denied, revoked, suspended, relinquished, withdrawn, reduced, limited, placed on probation, not renewed, investigated or are any of the following presently pending or stayed?" (a.) Medical license in any state, (e.) Membership on any hospital medical staff, (f.) Clinical privileges, prerogatives/rights on any medical staff, (i.) Any other type of professional sanction, and 5. "Are there presently or have there ever been any professional medical or dental misconduct proceedings in this state concerning your professional practice?"
1. Respondent failed to disclose:
 - a. The status of his Arkansas medical license.
 - b. His 1988-1989 Hospital for Joint Diseases residency suspension.
 - c. The New York State Department of Education June 28th, 1989 Censure and Reprimand.
 2. Respondent did so knowingly and with intent to deceive.
- D. Respondent has held Appointment to the Medical Staff and Clinical Privileges at Booth Memorial Medical Center.
1. On or about May 6th, 1989, Respondent submitted an Application for Appointment to the Medical Staff and Clinical Privileges to Booth Memorial Medical Center in which he responded "No" to the questions:

II. D.(1.) "Have any disciplinary actions been taken or are pending against you by any state licensure board?", and IV. B. "Has your employment, medical staff appointment or privileges ever been suspended, diminished, revoked or refused at any hospital or other institution?". Respondent also documented in III. A. that he obtained a B.A. degree from Boston University in 1975.

a. Respondent failed to disclose:

i. That the New York State Board for Professional Medical Conduct effected personal service of the Notice of Hearing - Statement of Charges upon him at the Hospital for Joint Diseases on February 29th, 1988. The hearing was duly commenced on March 31st, 1988, and continued May 16th, May 17th, and August 3rd of 1988, after which the hearing committee's October 21st, 1988 recommendation was transmitted to the Commissioner of Health whose recommendation was duly received by the Regents Review Committee before which Respondent appeared in person on February 21st, 1989. On April 24th, 1989, the committee unanimously recommended that the decision and order of the Board of Regents find Respondent guilty of Practicing Medicine with Gross Negligence.

ii. His 1988-1989 Hospital for Joint Diseases residency suspension.

iii. That his B.A. from Boston University was received on May 18th, 1980.

b. Respondent did so knowingly and with intent to deceive.

2. On at least one subsequent Application For Medical Staff Reappointment And Clinical Privileges to Booth Memorial Medical Center, including but not limited to, one submitted on or about September 17th, 1991, he responded "No" to the questions: II. C.(1.) "Have any disciplinary actions been taken or are any pending against you by any state licensure board or other governmental agency?", and III. B. "Has your employment, medical staff appointment or privileges ever been suspended, diminished, revoked or refused at any hospital or other institution?".
 - a. Respondent failed to disclose:
 - i. The New York State Department of Education June 28th, 1989 Censure and Reprimand.
 - ii. His 1988-1989 Hospital for Joint Diseases residency suspension.
 - b. Respondent did so knowingly and with intent to deceive.

E. Respondent has held Appointment to the Medical Staff and Clinical Privileges at the Hospital for Joint Diseases.

1. On or about April 11th, 1989, Respondent submitted an Application for Appointment to the Medical Staff to the Hospital for Joint Diseases on which he responded "No" to questions: II. C.(5.) "Have any disciplinary actions been initiated or are pending against you by any state licensure board?", III. C. "During your residency were you ever suspended, placed on probation, formally reprimanded, asked to resign?", and IV. B. "Has your employment, medical staff appointment or privileges ever been suspended, diminished, revoked or refused at any hospital or other health care facility?"

- a. Respondent failed to disclose:
 - i. The pending status of the 1989 decision of the Regents Review Committee in regard to his alleged professional misconduct.
 - b. Respondent did so knowingly and with intent to deceive.
- 2. On or about June 7th, 2001, Respondent submitted an Application For Reappointment to the Hospital for Joint Diseases on which he responded "No" to the question: "Have there been any disciplinary actions or investigations by any state licensing board?".
 - a. Respondent failed to disclose:
 - i. The New York State Department of Education June 28th, 1989 Censure and Reprimand.
 - ii. The OPMC investigation initiated in May of 2000.
 - b. Respondent did so knowingly and with intent to deceive.

F. Respondent has held Appointment to the Medical Staff and Clinical Privileges at Mercy.

- 1. On or about March 15th, 1989, Respondent submitted an Application for Appointment to the Medical Staff to Mercy Hospital on which he responded "No" to the question: "Have your privileges at any hospital ever been suspended, diminished, revoked or not renewed?", listed New York State as the only state in which he was licensed to practice medicine, and documented a B.A. degree received from C.W. Post College in Old Westbury in 1976.
 - a. Respondent failed to disclose:
 - i. His 1988-1989 Hospital for Joint Diseases residency suspension.

- ii. His Arkansas medical license.
 - iii. That he did not receive a B.A from C.W. Post in 1976, nor any other educational institution until 1980.
 - b. Respondent did so knowingly and with intent to deceive.
- 2. On at least one subsequent Reappointment Application to Mercy Medical Center, including but not limited to, one submitted on or about June 5th, 2001, he responded "No" to the questions: 1. "Has your employment, medical staff appointment or clinical privileges AT ANY HOSPITAL OR HEALTH CARE FACILITY ever been voluntarily or involuntarily suspended, revoked, refused, limited or not renewed?", and 8. "Are there any pending professional misconduct proceedings and/or findings of professional misconduct in this or any other state?".
 - a. Respondent failed to disclose:
 - i. The New York State Department of Education June 28th, 1989 Censure and Reprimand.
 - ii. His 1988-1989 Hospital for Joint Diseases residency suspension.
 - b. Respondent did so knowingly and with intent to deceive.

G. Respondent has held Appointment to the Medical Staff at Winthrop University Hospital.

- 1. On or about March 1st, 1989, Respondent submitted an Application for Appointment to the Medical Staff to Winthrop University Hospital, on which he did not provide answers nor details to questions: "Have your privileges at any hospital ever been suspended, diminished, revoked or not renewed?" and "Have you ever been denied membership or a renewal, or been subject to disciplinary proceedings in any medical

organization”?

a. Respondent failed to disclose:

- i. His 1988-1989 Hospital for Joint Diseases residency suspension.
- ii. The pending status of the 1989 decision of the Regents Review Committee in regard to his alleged professional misconduct.

b. Respondent did so knowingly and with intent to deceive.

2. On at least four subsequent Reappointment Application(s) to Winthrop University Hospital, including but not limited to, those submitted on or about April 29th, 1996; on or about April 17th, 1998; on or about January 24th, 2002: and on or about January 29th, 2004, he responded “No” to the same questions on each form: 3. “Have you ever had any professional misconduct proceedings pending against you in New York or elsewhere?”, and 8. “Have any of the following ever been denied, revoked, suspended, reduced, limited, placed on probation, not renewed, imposed, or voluntarily or involuntarily relinquished, or voluntarily or involuntarily relinquished in lieu of disciplinary action: Medical or professional license or registration in New York or other state?, Staff membership at any institution?, Clinical privileges at any other institution?, and Any type of professional sanction?”.

a. Respondent failed to disclose:

- i. The New York State Department of Education June 28th, 1989 Censure and Reprimand.
- ii. The status of his Arkansas medical licence.
- iii. His 1988-1989 Hospital for Joint Diseases residency suspension.

- b. Respondent did so knowingly and with intent to deceive.

SPECIFICATION OF CHARGES

SPECIFICATIONS ONE THROUGH SEVEN

FRAUDULENT PRACTICE

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

1. Paragraph A and each of its subparagraphs.
2. Paragraph B and each of its subparagraphs.
3. Paragraph C and each of its subparagraphs.
4. Paragraph D and each of its subparagraphs.
5. Paragraph E and each of its subparagraphs.
6. Paragraph F and each of its subparagraphs.
7. Paragraph G and each of its subparagraphs.

SPECIFICATIONS EIGHT THROUGH THIRTEEN

FALSE REPORT

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

8. Paragraph A and each of its subparagraphs.
9. Paragraph B and each of its subparagraphs.
10. Paragraph C and each of its subparagraphs.
11. Paragraph D and each of its subparagraphs.

12. Paragraph E and each of its subparagraphs.
13. Paragraph F and each of its subparagraphs.
14. Paragraph G and each of its subparagraphs..

SPECIFICATIONS FIFTEEN THROUGH NINETEEN
Violation of Section 2805-k of the Public Health Law

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(14) by violating section twenty-eight hundred five-k of the Public Health Law, as alleged in the facts of:

15. Paragraph C and each of its subparagraphs, except C(2).
16. Paragraph D and each of its subparagraphs, except D(2).
17. Paragraph E and each of its subparagraphs, except E(2).
18. Paragraph F and each of its subparagraphs, except F(2).
19. Paragraph G and each of its subparagraphs, except G(2).

SPECIFICATIONS TWENTY THROUGH TWENTY-SIX
MORAL UNFITNESS

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

20. Paragraph A and each of its subparagraphs.
21. Paragraph B and each of its subparagraphs.
22. Paragraph C and each of its subparagraphs.
23. Paragraph D and each of its subparagraphs.
24. Paragraph E and each of its subparagraphs.
25. Paragraph F and each of its subparagraphs.

26. Paragraph G and each of its subparagraphs.

8/12

DATED: November 3rd, 2005
New York, New York

REDACTED

Roy Nemerson
Deputy Counsel
Bureau of Professional
Medical Conduct

APPENDIX 2

Terms of Probation for HANK ROSS, M.D.

1. 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.
2. Respondent shall submit written notification to the New York State Department of Health addressed to the Director, Office of Professional Medical Conduct ("OPMC"), Hedley Park Place, 433 River Street Suite 303, Troy, New York 12180-2299; said notice is to include a full description of any employment and practice, professional and residential addresses and 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, within thirty days of the initiation of such action.
3. Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of Respondent's compliance with the terms of this Determination and Order. Respondent shall personally meet with a person designated by the Director of OPMC as requested by the Director.
4. 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 Respondent is not currently 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 then notify the Director again 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.

5. Respondent shall maintain legible and complete medical records which accurately reflect the evaluation and treatment of patients. The medical records shall contain all information required by State rules and regulations regarding controlled substances.
6. Respondent shall enroll in and successfully complete at least ten (10) hours of CME on office practice or/and office management courses and ten (10) hours of CME on medical ethics or/and medical professionalism courses. These CME courses should be in Respondent's practice specialty and proof of attendance and satisfactory completion must be submitted, before the end of Respondent's suspension, to the Director of OPMC. These twenty (20) hours of CME are in addition to any other required CME (which are taken to stay current in the practice of medicine) Said CME courses shall be subject to the prior written approval of the Director of OPMC and be completed within the first year prior to the beginning of probation. Failure to do so shall be grounds for a violation of probation proceeding.
7. During Respondent's suspension and for the two year period of probation thereafter, Respondent shall be required to submit copies of any and all hospital applications, reappointment applications, renewals, or insurance company applications to the Director of OPMC.
8. Respondent shall comply with all terms, conditions, restrictions, limitations and penalties to which he is subject pursuant to the Order and shall assume and bear all costs related to compliance. On receipt of evidence of noncompliance with, or any violation of these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding and/or any such other proceeding against Respondent as may be authorized pursuant to the law.