



STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

An onia C. Novello, M.D., M.P.H., Dr.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

May 15, 2002

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

David W. Smith, Esq.
NYS Department of Health
5 Penn Plaza-6th Floor
New York, New York 10001

Robert S. Asher, Esq.
295 Madison Avenue, Suite 700
New York, New York 10017

David Tomback, M.D.
118-18 Union Turnpike
Kew Gardens, New York 11215

RE: In the Matter of David Tomback, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 02-169) 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 licensee or the Department may seek a review of a committee determination.

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

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:cah
Enclosure

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

IN THE MATTER
OF
DAVID TOMBACK, M. D.

DETERMINATION
AND
ORDER

BPMC-02-169

COPY

JOHN A. D'ANNA, M.D., Chairperson, RICHARD S. KOPLIN, M.D. and MS. EUGENIA HERBST, duly designated members of the State Board for Professional Medical Conduct appointed by the Commissioner of Health of the State of New York pursuant to Section 230(1) of the Public Health Law, served as the Hearing Committee in this matter pursuant to Section 230(10)(e) of the Public Health Law. JEFFREY ARMON, ESQ., served as Administrative Officer for the Hearing Committee. After consideration of the entire record, the Hearing Committee submits this Determination.

SUMMARY OF PROCEEDINGS

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|---|--|
| Notice of Hearing/Statement of Charges: | December 11, 2001 |
| Dates of Hearing: | February 13 and March 7, 2002 |
| Department of Health appeared by: | DONALD P. BERENS, JR., ESQ. General Counsel, NYS Department of Health |
| | BY: DAVID W. SMITH, ESQ. NYS Department of Health 5 Penn Plaza- 6th Floor New York, New York 10001 |
| Representative for Respondent : | ROBERT S. ASHER, ESQ. 295 Madison Avenue, Suite 700 New York, New York 10017 |
| Witnesses for the Department of Health: | Gilbert Diaz Hedva Shamir, M.D. |

Witness for the Respondent:

David Tomback, M.D. (Respondent)

Deliberations held:

April 17, 2002

NOTE: Numbers in parenthesis refer to transcript pages or exhibits, and they denote evidence that the Hearing Committee found persuasive in determining a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the evidence cited. All Hearing Committee findings were unanimous unless otherwise specified.

Petitioner's Exhibits are designated by Numbers.

Respondent's Exhibits are designated by Letters.

T = Transcript

The Department submitted a written motion, dated March 11, 2002, to amend the Statement of Charges to add "...suspension and/or..." to Paragraphs A.1.b., A.2.b., A.3.b., A.4.b. and B.1. of the Factual Allegations (ALJ Ex. 1). No objection to this motion was received from Respondent and the Administrative Law Judge determined such amendment would not be prejudicial and would serve to conform the Charges to the proof in the record. Accordingly, this motion was granted and the Committee so advised. A copy of the original Statement of Charges (Ex. 1) is attached to this Determination and Order as Appendix II.

FINDINGS OF FACT

1. The Respondent was authorized to practice medicine in New York State on or about September 8, 1998 by the issuance of license number 212034 by the New York State Education Department. (Ex. 3)

2. Respondent attended the Sackler School of Medicine at Tel Aviv University in Israel from 1990 until his graduation in May, 1994. (Ex. 3; T. 158)

3. In an application dated October 29, 1993, Respondent applied to the North Shore University Hospital (NSUH) residency program. He was accepted and began his residency there on or about July 1, 1994. (Ex. 4A; T. 159-60)

4. Respondent was informed by the Chairman of the NSUH Department of Medicine on or about the first day of his residency that he would not be permitted to provide patient care because the school had been advised that Respondent was a fugitive. In a letter from the NSUH dated July 13, 1994, Respondent was notified that he was being summarily suspended from his residency appointment pending clarification of his legal status. (Ex. 4B; T.160, 162-3)

5. Respondent's father filed a criminal complaint against Respondent, who was arrested and subsequently indicted in September, 1994. The indictment was ultimately dismissed in March, 1996. (Ex. E; T. 164-7)

6. Respondent contested the decision by NSUH to summarily suspend him, and a hearing to review that decision was held before the hospital's graduate staff review committee on August 25, 1994. A decision to uphold the suspension was subsequently issued. Respondent never returned to the residency program, although he advised NSUH in 1996 that the indictment had been dismissed. A letter from the hospital, dated April 3, 1996, informed Respondent that his contract for graduate training had been for a one year period ending June 30, 1995 and that he could not be reinstated. (Ex. 14, Ex.. M; T. 168)

7. Respondent submitted an application, dated April 13, 1995, for appointment to a House Staff position to the Department of Physical Medicine and Rehabilitation at Mount Sinai Medical Center. Respondent did not disclose on the application his prior employment at the NSUH or the reason for his suspension from that facility's residency program. (Ex. 7, Ex. 7-A)

8. Respondent submitted an application, dated March 15, 1995, for employment at St. Vincent's Medical Center of Richmond. Respondent did not disclose on the application his prior employment at the NSUH or the reason for his suspension from that facility's residency program. (Ex. 8)

9. Respondent submitted an application, dated April 9, 1996, for employment at the Atlantic City Medical Center (ACMC). Respondent did not disclose on the application his prior employment at the NSUH or the reason for his suspension from that facility's residency program. (Ex. 5)

10. Respondent submitted an application, dated September 3, 1997, for Residency and Appointment at the Department of Veteran Affairs. Respondent did not disclose on the application his prior employment at the NSUH or the reason for his suspension from that facility's residency program. (Ex. 9)

11. Respondent submitted an Application for License and First Registration with the New York State Education Department on or about November 29, 1995. Respondent did not disclose on the application his prior employment at the NSUH or the reason for his suspension from that facility's residency program. He indicated that he performed research from May, 1994 through June, 1995 and listed the name of his employer for that period as "Weizzman Institute". Respondent answered "no" to the question "Has any hospital...restricted or terminated your professional training, employment or privileges...?" (Ex. 10)

12. Respondent was employed in the residency program of the St. Vincent's Medical Center of Richmond from July 1, 1995 through February 12, 1996. On or about February 12, 1996, Respondent was suspended, and subsequently terminated, by the Medical Center. On or about April 12, 1996, Respondent and the Medical Center entered into a Letter of Understanding by which the Medical Center permitted Respondent to resign his employment for personal reasons. (Ex. 16, Ex. 17)

13. Respondent was employed in the residency program of the Atlantic City Medical Center from approximately June, 1996 through March, 1997. In a complaint filed on or about May 5, 1997 with the Atlantic County, New Jersey Superior Court, Respondent brought suit against the ACMC for wrongful discharge from employment. It was alleged in the complaint that Respondent “..was terminated as an internal medicine resident physician...”. The complaint was dismissed by the Court on or about October 16, 1998. (Ex. 6, Ex. 17)

14. Respondent submitted an Application for License and First Registration with the New York State Education Department on or about August 29, 1998. Respondent did not disclose on the application his prior employment at the NSUH or the reason for his suspension from that facility’s residency program. He failed to disclose his prior employment at the ACMC or the reason for his leaving that facility’s residency program. He indicated that he performed research from May, 1994 through June, 1995 and listed the name of his employer for that period as “Tel Aviv University”. Respondent answered “no” to the question “Has any hospital...restricted or terminated your professional training, employment or privileges...?” (Ex. 11)

15. In or about July, 1997, Respondent entered a residency program at the MSMC’s Department of Rehabilitation Medicine. On or about November 10, 1999, an abusive and profane E-mail message was received by Dr. Jose Wolenski, a former roommate of Respondent. It was determined that the message was sent from a MSMC library using the password of a third physician, Dr. Artis Atarik. (Ex. 12, Ex. 15; T. 37-8)

16. On or about November 16, 1999, Respondent provided a written, signed statement indicating that “this episode will not be repeated again in the future.” The statement was in reference to the sending of the E-mail message and was witnessed by Gilbert Diaz, Investigation Supervisor at MSMC and James Grant, another security supervisor. (Ex. 12; T.27-8, 32, 35-7)

17. On or about December 14, 1999, Respondent, then a PGY-4 resident, was summarily suspended and terminated from the MSMC's Department of Rehabilitation Medicine residency program. Respondent contested this determination and a hearing before a disciplinary committee of the Medical Center at which Respondent testified, was held on December 29, 1999. At that hearing, Respondent admitted that he had been fired from the APMC residency program. (Ex. 15, p.128)

CONCLUSIONS OF LAW

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

The Hearing Committee concluded that Factual Allegations A. and A.1. through and including A.5., and Factual Allegations B. and B.1. through and including B.4 should be **SUSTAINED**. The Committee by a majority vote of 2-1 determined that Factual Allegation C. should **NOT BE SUSTAINED**.

The Hearing Committee further determined that the First, Second, Third and Fifth Specifications of Charges of professional misconduct should **BE SUSTAINED**. By a majority vote of 2-1, the Committee determined that the Fourth Specification should **NOT BE SUSTAINED**.

DISCUSSION

Respondent was charged with multiple Specifications of Charges alleging professional misconduct within the meaning of Education Law §6530. This statute sets forth numerous forms of actions which constitute professional misconduct, but does not provide definitions of such categories of misconduct. During the course of its deliberations on these charges, the Hearing Committee consulted a memorandum prepared by the General Counsel for the Department of Health. This document, entitled "Definitions of Professional Misconduct Under the New York Education Law", sets forth suggested definitions for certain types of professional misconduct.

The following definition was utilized by the Hearing Committee during its deliberations:

Fraudulent practice of medicine is the intentional misrepresentation or concealment of a known fact, made in connection with the practice of medicine.

The Committee relied upon this definition in considering the Specifications of professional misconduct.

Respondent testified that he did not disclose his prior residency at North Shore on subsequent applications for employment at Mount Sinai, St. Vincent's or Atlantic City because he was only a resident at North Shore for about twelve days and received no postgraduate training or experience from that position. The Committee strongly disagreed with Respondent's explanation and believed he had an obligation to disclose the residency *and* to explain the circumstances which resulted in his suspension. Once he was accepted into the North Shore residency program, he was required to reveal that fact, regardless of the short period of employment or whether the application for employment at other facilities specifically asked for an employment history. The Committee believed the Respondent intentionally withheld the information, perhaps because of embarrassment associated with his family circumstances. The Committee sustained Factual Allegations A.1. through A.5. and determined the intentional concealment of these facts to constitute the fraudulent practice of medicine. Factual Allegation B.1., related to failing to disclose the NSUH residency on the 1995 and 1998 licensure applications, was sustained for the same reasons.

Respondent testified that he failed to disclose his Atlantic City Medical Center residency because of a "paperwork error". He asserted that he was not terminated from that residency program. In the complaint filed in May, 1997 against ACMC for wrongful discharge, it is alleged that Respondent "was terminated as an internal medicine resident physician". Respondent alleged that the language used in the complaint was not accurate, was solely the work of his attorney and that he (Respondent) had no knowledge that the attorney had described the discharge as a "termination". Respondent contended that he voluntarily withdrew from the program and produced a hand written letter, dated March 15, 1997, to

verify such a resignation. Conveniently, this letter had never been produced before the final day of this proceeding. The Committee found Respondent to be completely incredible on this point and rejected his testimony that he was unaware of the language of the complaint filed on his behalf. It was also noted that Respondent admitted at the December, 1999 MSMC disciplinary hearing that he had been fired from the ACMC residency program. The Committee concluded that Respondent had been terminated from employment at ACMC and sustained Factual Allegations B.2. and B.4.

Respondent was extremely disingenuous in his testimony that listing "research" during 1994-1995 on the two licensure applications and indicating "Weizzman Institute" and "Tel Aviv University" without writing "at" did not suggest the research was performed at those locations. He admitted that the research was not performed "for" or "at" the Weizzman Institute. He could not recall the names of any mentors for whom he performed the research. Respondent produced some written notes purporting to represent a portion of his "research". The Committee considered such materials to not constitute what would commonly be considered to be medical research and determined that representations on the 1995 and 1998 licensure applications were false and were intended to account for the period of time in which he had been suspended from the NSUH residency program. Factual Allegation B.4. was sustained.

The Committee considered the intentional concealment or misrepresentation of these facts to constitute the fraudulent practice of medicine and further determined that Respondent fraudulently obtained his license to practice medicine. Respondent was also found to have violated the requirements of Public Health Law Section 2805-k (1) by failing to disclose the name(s) of all hospitals where he was employed or held privileges and the reason(s) for discontinuation of all employment and privileges. The First, Second, Third and Fifth Specifications of Charges of professional misconduct were sustained.

By a 2-1 vote, the Committee did not sustain the Specification that Respondent engaged in conduct evidencing moral unfitness to practice medicine. The majority did not consider the fact that Respondent had been found to have practiced fraudulently, as a result of the concealment and misrepresentation of his work history, to be equivalent to evidence of moral unfitness. To the contrary, the minority voting member of the Committee believed that that the acts by Respondent of fraudulent practice did, in fact, demonstrate that he had engaged in conduct evidencing moral unfitness.

By the same 2-1 vote, a majority of the Committee members determined that the Department did not meet its statutory burden of proof to demonstrate by a preponderance of the evidence that Respondent

sent the November, 1999 abusive and insulting E-mail message to his former roommate, Dr. Wolenski. The Department only called one witness, the MSMC's Investigation Supervisor, to testify about how it was determined that Respondent sent the message. The testimony of Mr. Diaz was viewed by the majority as unclear and contradictory and the accuracy of the documentation of the investigation was not up to standards. The two members of the Committee felt that it would have been helpful to have heard testimony from Dr. Wolenski about his relationship with the Respondent, from Dr. Atarik whose computer password was used to send the message and/or from Mr. Grant, the other hospital security supervisor present during the interrogation of Respondent. Respondent alleged he wrote the statement that "the episode would not be repeated" only because he was coerced to do so by hospital personnel. He further alleged he was not even present in the hospital on the date that the message was sent, and, in fact, was attending a conference out of town. The majority voting members concluded that there was insufficient evidence in the record to prove or disprove those allegations. It was noted that the written statement was not a clear admission and that no one else verified the testimony of Mr. Diaz that Respondent did orally admit sending the message while being questioned. Accordingly, Factual Allegation C was not sustained.

The Committee member in the minority believed that, while the documentation regarding the incident was substandard and it would have been helpful to hear testimony from additional witnesses, there was sufficient credible evidence in the record to sustain the Allegation. That Committee member believed that it was significant that Respondent made no reference to the alleged intimidation by hospital security staff during the MSMC disciplinary hearing conducted only five weeks after the E-mail incident. The transcript of that hearing also demonstrated that he made no statement and provided insufficient evidence in support of his contention that he was not present in the hospital and was actually out of town on the day that the message was sent.

DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, by a 2-1 majority vote, determined that Respondent's license to practice medicine in New York should be suspended for two years from the effective date of this Determination and Order, and that he

thereafter be placed on probation for an additional five years in accordance with the Terms of Probation as set forth in Appendix I. This determination was reached upon due consideration for the full spectrum of penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties.

The entire Committee viewed Respondent to be a deceptive, angry, manipulative and irresponsible individual unwilling to accept responsibility for his own actions. The Respondent was considered to unreasonably manipulate facts to his personal advantage. His entire testimony was without candor and was accorded little weight by the Committee in its evaluation of the charges. For one reason or another, he failed to complete any of four different residency programs he participated in from 1994 through 1999.

A two member majority of the Committee believed that Respondent may suffer from some form of mental impairment and that an evaluation and course of treatment would be appropriate. Section 230-a (2) of the Public Health Law was relied upon in determining that the appropriate penalty would be suspension of Respondent's license for a two year period, during which Respondent would be evaluated for the need for psychiatric therapy. Should it be determined that such therapy would be appropriate, Respondent would be required to successfully complete a program of treatment before resuming his medical career. The majority believed that there was no evidence to indicate that Respondent's actions resulted in patient harm and determined that revocation of his license would be premature and excessive punishment. Their conclusion was that Respondent could rehabilitate himself through treatment and that the public could be reasonably protected if he were to comply with the Terms of Probation.

The minority voting member believed that license revocation was the only appropriate penalty that could be imposed. This Committee member felt Respondent's myriad excuses, shifting of blame and evasiveness reflected a pattern of conscious deception which made his testimony completely incredible and concluded that Respondent's actions were evidence of moral unfitness in the practice of medicine which could not be rehabilitated.

ORDER

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

1. The First through Third and Fifth Specifications of professional misconduct as set forth in the Statement of Charges (Ex. 1) are **SUSTAINED**; and,
2. The Fourth Specification of Charges of professional misconduct is **NOT SUSTAINED** and is **DISMISSED**; and
3. The license of Respondent to practice medicine in New York State be hereby **SUSPENDED** for a period of two years; and
4. Respondent shall be placed on **PROBATION** for a period of five years following the period of suspension, and he shall comply with all Terms of Probation as set forth in Appendix I, attached hereto and made a part of this Determination and Order; and
5. This Order shall be effective upon service on the Respondent or his attorney by personal service or by certified or registered mail.

DATED: Troy, New York

May 13th, 2002

REDACTED

JOHN A. D'ANNA, M.D., Chairperson

**RICHARD S. KOPLIN, M.D.
MS. EUGENIA HERBST**

TO:

David W. Smith, Esq.
New York State Department of Health
Bureau of Professional Medical Conduct
5 Penn Plaza- 6th Floor
New York, New York 10001

Robert S. Asher, Esq.
295 Madison Avenue, Suite 700
New York, New York 10017

David Tomback, M.D.
118-18 Union Turnpike
Kew Gardens, New York 11215

APPENDIX I

APPENDIX I

Terms of Probation

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, 4th Floor, 433 River Street, 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 each action.
3. Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide periodic written verification of Respondent's compliance with the terms of this Order. Respondent shall personally meet with a person designated by the Director of OPMC as requested by the Director.
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's professional performance may be reviewed by the Director of OPMC. This review may include, but shall not be limited to, a review of office records, patient records and/or hospital charts, interviews with or periodic visits with Respondent and his/her staff at practice locations or OPMC offices.
6. Respondent shall maintain legible and complete medical records which accurately reflect the evaluation and treatment of patients.

7. Respondent shall practice medicine only when monitored by a licensed physician, board certified in Respondent's specialty, ("practice monitor") proposed by Respondent and subject to the written approval of the Director of OPMC. The practice monitor shall not be a family member or personal friend, or be in a professional relationship which could pose a conflict with monitoring responsibilities.
 - a. Respondent shall ensure that the practice monitor is familiar with the Order and Terms of Probation, and willing to report to OPMC. Respondent shall cause the practice monitor to report within 24 hours any suspected impairment, inappropriate behavior, questionable medical practice or possible misconduct to OPMC.
 - b. Respondent shall make available to the monitor any and all records or access to the practice requested by the monitor, including on-site observation. The practice monitor shall visit Respondent's medical practice at each and every location, on a random unannounced basis at least monthly and shall examine a selection of records maintained by Respondent, including patient records, prescribing information and office records. The review will determine whether the Respondent's medical practice is conducted in accordance with the generally accepted standards of professional medical care. Any perceived deviation of accepted standards of medical care or refusal to cooperate with the monitor shall be reported within 24 hours to OPMC.
 - c. Respondent shall be solely responsible for all expenses associated with monitoring, including fees, if any, to the monitoring physician.
 - d. Respondent shall cause the practice monitor to report quarterly, in writing, to the Director of OPMC.
 - e. Respondent shall maintain medical malpractice insurance coverage with limits no less than \$2 million per occurrence and \$6 million per policy year, in accordance with Section 230(18)(b) of the Public Health Law. Proof of coverage shall be submitted to the Director of OPMC prior to Respondent's practice after the effective date of this Order.
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. Upon 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.

APPENDIX II

IN THE MATTER
OF
DAVID TOMBACK, M.D.

STATEMENT
OF
CHARGES

DAVID TOMBACK, M.D., the Respondent, was authorized to practice medicine in New York State on or about September 8, 1998, by the issuance of license number 212034 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. In or about March, 1994, Respondent entered into a residency program at North Shore University Hospital (NSUH). NSUH summarily suspended him from his residency program. In or about April, 1996, Respondent entered into a three-year residency program at Atlantic City Medical Center (ACMC). Respondent was terminated from such residency program in March, 1997.
1. Respondent failed to disclose on his application for House Staff employment filed in April, 1995 with the Department of Physical Medicine and Rehabilitation at Mount Sinai Medical Center (MSMC):

- a. his prior employment at NSUH; and
- b. his termination therefrom and the reasons for such termination.

2. Respondent failed to disclose, on his application for employment at St. Vincent's Medical Center of Richmond in March, 1995:

- a. his prior employment at NSUH; and
- b. his termination therefrom and the reasons for such termination.

3. Respondent failed to disclose, on his application for employment at Atlantic City Medical Center in April, 1996:

- a. his prior employment at NSUH; and

- b. his termination therefrom and the reasons for such termination.

- 4. Respondent failed to disclose, on his application for Residency and Appointment at the Department of Veterans Affairs, an affiliate of the MSMC, in September, 1997:
 - a. his prior employment at NSUH; and
 - b. his termination therefrom and the reasons for his termination.

- 5. Respondent knowingly failed to disclose the information set forth in Paragraphs 1-4 above, with the intent to mislead.

- B. In November, 1995 and February, 1998, Respondent filed An Application for License and First Registration with the New York State Education Department. Respondent deliberately and with intent to deceive:

1. Failed to disclose his NSUH residency and termination on both the '95 and '98 Applications.
 2. Failed to disclose his APMC residency and termination in his '98 Application.
 3. Falsely represented on both Applications that he was engaged in research at the University of Tel Aviv during 1994-95.
 4. Answered "No" to a question on both Applications asking if any hospital had ever terminated his professional training.
- C. On or about November 10, 1999, while a Resident at MSMC, Department of Physical Medicine and Rehabilitation, Respondent sent an E-mail to another MSMC employee, who was Respondent's roommate, containing threatening and abusive language. In order to mislead and divert suspicion from himself

in the sending of the E-mail, Respondent made unauthorized use of another person's password and E-mail identity.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

OBTAINING A LICENSE FRAUDULENTLY

Respondent is charged with committing professional misconduct as defined by N.Y. Educ. Law §6530(1) by fraudulently obtaining a license to practice medicine in New York State as alleged in the facts of the following:

1. Paragraphs B and B1-4.

SECOND AND THIRD SPECIFICATIONS

PRACTICING THE PROFESSION FRAUDULENTLY

Respondent is charged with committing professional misconduct as defined by N.Y. Educ. Law §6530(3) by practicing the profession of medicine fraudulently as alleged in the facts of the following:

2. Paragraphs A and A1-5.
3. Paragraphs B and B1-4.

FOURTH SPECIFICATION

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:

4. Paragraphs A and A1-5; Paragraphs B and B1-4; Paragraph C.

FIFTH SPECIFICATION

FAILING TO PROVIDE INFORMATION REGARDING AFFILIATIONS AND/OR

REASONS FOR DISCONTINUATION

Respondent is charged with committing professional misconduct as defined

in N.Y. Educ. Law §6530(14) by violating the requirements of NY Pub. Health Law §2805-k(1)(a) and/or (b) as alleged in the facts of the following:

5. Paragraphs A and A1-4.

DATED: December // , 2001
New York, New York

REDACTED

ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct