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

August 26, 2003

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mehdi Mohtashemi, M.D.
2 Robin Drive
Rochester, New York 14618

Valerie B. Donovan, Esq.
NYS Department of Health
ESP-Corning Tower-Room 2512
Albany, New York 12237

RE: In the Matter of Mehdi Mohtashemi, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 03-222) 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.

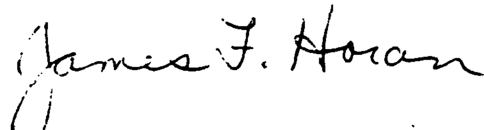
The notice of review served on the Administrative Review Board should be forwarded to:

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,



James F. Horan, Acting Director
Bureau of Adjudication

JFH:cah
Enclosure

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

IN THE MATTER OF MEHDI MOHTASHEMI, M.D.	DETERMINATION AND ORDER BPMC 03 -222

COPY

STEVEN V. GRABIEC, M.D. (Chair), **DIANA E. GARNEAU, M.D.**, and **MICHAEL WALKER**, 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 Valerie B. Donovan, Esq., Assistant Counsel.

Respondent, Mehdi Mohtashemi, M.D., appeared personally and represented himself (Respondent was represented by Woods, Oviatt and Gilman, LLP at the Pre-Hearing conference and then chose to discharge his attorneys and represent himself).

Evidence was received and examined, including witnesses who were sworn or affirmed. Transcripts of the proceeding were made. After consideration of the evidence presented, the Hearing Committee issues this Determination and Order pursuant to the Public Health Law and the Education Law of the State of New York.

PROCEDURAL HISTORY

Date of Notice of Hearing and Statement of Charges:	April 14, 2003
Date of Service of Notice of Hearing and Statement of Charges:	April 14, 2003
Date of Answer to Charges:	May 1, 2003
Pre-Hearing Conferences Held:	May 2, 2003; May 21, 2003
Hearings Held: - (First Hearing day):	May 21, 2003 May 22, 2003
Intra-Hearing Conference Held:	May 22, 2003
Location of Hearings:	The Clarion Riverside Hotel 120 East Main Street Rochester, NY 14604
Witnesses called (in the order they testified) by the Petitioner, Department of Health:	Patient B; Patient B's spouse; Patient A; Patient C; Nurse D; Chancellor Ibberson James W. Brenton, PA Cynthia A. Kelly, R.N. Stephen C. Gladysz, M.D.
Witnesses called (in the order they testified) by the Respondent, Mehdi Mohtashemi, M.D.:	Mehdi Mohtashemi, M.D.
Petitioner's proposed Findings of Fact, Conclusions of Law and Penalty Recommendation:	Received June 25, 2003
Respondent's proposed Findings of Fact, and Conclusions of Law:	None Received
Deliberations Held: (last day of Hearing)	July 22, 2003

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.

Mehdi Mohtashemi, M.D., ("**Respondent**") is charged with seven (7) specifications of professional misconduct, as delineated in §6530 of the Education Law of the State of New York ("**Education Law**"). Respondent is charged with professional misconduct by reason of: (1) engaging in conduct in the practice of the profession of medicine that evidences moral unfitness to practice [1]; and (2) willfully harassing, abusing or intimidating a patient [2]. These Charges and Specification of professional misconduct result from Respondent's treatment of three patients and conduct towards one nurse [3].

Respondent denies the factual allegations and the Specification of misconduct contained in the Statement of Charges, but admits that he provided care as an anesthesiologist to each patient and that he was in the same operating room as Nurse D on the date in question. A copy of the Statement of Charges (without the Appendix) and of the Answer is attached to this Determination and Order as Appendix 1 and 2 respectively.

---

[1] Education Law §6530(20) - (First through Fourth Specifications of the Statement of Charges [Petitioner's Exhibit # 1]).

[2] Education Law §6530(31) - (Fifth through Seventh Specifications of the Statement of Charges [Petitioner's Exhibit # 1]).

[3] The record and this Determination and Order refers to the patients and nurse by letter to protect privacy. Patients A, B and C and Nurse D are identified in the Appendix annexed to the Original Statement of Charges (Petitioner's Exhibit #1).

FINDINGS OF FACT

The following Findings of Fact were made after a review of all of the evidence presented in this matter. These facts represent the documentary evidence and testimony found persuasive by the Hearing Committee in arriving at a particular finding relevant to the Statement of Charges. 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. Unless otherwise noted, 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.

General Findings

1. Respondent was authorized to practice medicine in New York State on September 30, 1977 by the issuance of license number 132697 by the New York State Education Department (Petitioner's Exhibits # 1 and # 2); (Respondent's Exhibit # A)[4].

2. The State Board for Professional Medical Conduct has obtained personal jurisdiction over Respondent (determination made by the ALJ; Respondent had no objection regarding service effected on him); (P.H.L. §230[10][d]); (Petitioner's Exhibit # 1); [P.H.T-4-5][5].

3. Stephen C. Gladysz, M.D., testified as an expert for Petitioner. Dr. Gladysz was licensed in New York State in October, 1984. Dr. Gladysz was Board Certified in anesthesiology in 1984, and he is currently Chairman of the Departments of Anesthesiology at Mercy Hospital and Our Lady of Victory Hospital (Petitioner's Exhibit # 3).

---

[4] Refers to exhibits in evidence submitted by the New York State Department of Health (Petitioner's Exhibit #) or by Dr. Mehdi Mohtashemi (Respondent's Exhibit #).

[5] Numbers in brackets refer to Hearing transcript page numbers [T-] or to Pre-Hearing transcript page numbers [P.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.

4. Dr. Gladysz based his expert opinion on his review of the medical records of six patient from Rochester General Hospital, the interview reports of Patient C and Patient M[6] (incorrectly referred to as Patient J in the Transcript [T-180]), and the interview report of Dr. Mohtashemi [T-179-180].

PATIENT A

5. On May 2, 1997, Respondent provided care as an anesthesiologist to Patient A, a 41 year old woman who underwent a left lateral internal sphincterotomy at Rochester General Hospital. (Respondent's Exhibits # A and # C).

6. Prior to the date of surgery, Patient A had discussed having general anesthesia with her surgeon, and she was under the impression that she was going to have general anesthesia [T- 49-50].

7. On the date of surgery, Respondent told Patient A that he was giving her a local anesthetic. Patient A then "became hysterical" and cried because she wanted general anesthesia [T-50].

8. Respondent told Patient A that a local anesthetic was fine for this type of operation, and when she continued to object and cry, Respondent called Patient A "a baby" [T-50].

9. Patient A's surgeon and Respondent then spoke with Patient A. Patient A continued to believe she was going to have general anesthesia. Just before surgery, Respondent said to Patient A, "have it your way baby", in response to her continued agitation about wanting to have general anesthesia. Respondent's statement led Patient A to believe she was getting general anesthesia [T-51].

---

[6] This is the patient who was being operated on during the Nurse D incident.

10. Patient A was very upset when she realized she was given local anesthesia against her wishes and expectations [T-51].

11. Patient A felt that Respondent treated her in an insulting, demeaning and unsympathetic manner by calling her a "baby." She felt demoralized and humiliated [T-52].

12. After Patient A recovered from the surgery, she informed Rochester General Hospital of her dissatisfaction with the way she was treated [T-53].

13. Calling Patient A a "baby" when she insisted on having general anesthesia was not ethically sound behavior for a physician. Respondent was disrespectful to the patient and did not facilitate the pre-operative decision-making process [T-156-157, 160].

14. It was disrespectful for Respondent to state to Patient A "have it your way, baby" and that statement was misleading to the patient [T-162, 175].

15. If no agreement can be reached between the patient and her physicians regarding the type of anesthesia to be used for surgery, then the surgery should not proceed [T-159-160, 165-167, 173].

16. When a patient has a negative experience with anesthetic care, it affects her decision regarding future medical care [T-163].

PATIENT B

17. On August 16, 2001, Respondent provided care as an anesthesiologist to Patient B, a 61 year old man who underwent a laparoscopic cholecystectomy at Rochester General Hospital. (Respondent's Exhibits # A and # C).

18. Patient B asked Respondent prior to surgery, how long the surgery would take. Respondent answered that he didn't know. Patient B suggested asking the surgeon, and Respondent said "they lie, they all lie around here" [T-14].

19. Patient B's wife testified that she was in the hospital room prior to surgery with her husband. She stated that Respondent curtly replied to her husband's inquiry about how long surgery would take, with "everybody lies here" and "don't believe anything anybody says" [T-33-34].

20. Respondent's statement to Patient B made Patient B fearful [T-15].

21. After surgery, Patient B complained to Respondent that he was catheterized and could not urinate. Respondent said to Patient B "that's not my problem" [T-15-16]. Respondent then pointed at Patient B's smokeless tobacco tin and curtly stated, "the tobacco, that's your problem", and walked out [T-16].

22. Respondent's rude remarks contributed to Patient B's anxiety about his anesthetic experience related to this surgery [T-26].

23. Respondent's rude statement to Patient B did not meet ethical standards for an anesthesiologist. Respondent failed to facilitate the pre-operative process, which involves evaluation and providing information to the patient for informed decision making. Respondent should have formulated an informative answer [T-182-183].

24. Respondent's statement, in response to Patient B's urination concerns, "that's not my problem" and then walking out of the room, did not meet acceptable ethical standards for an anesthesiologist. Respondent was disrespectful to Patient B regarding what the patient perceived to be a significant problem [T-183-184].

25. The responses made by Respondent to Patient B could reasonably have the effect of reducing the patient's confidence in the medical system. Respondent's failure to properly address Patient B's concern of urinary retention could prolong the patient's discomfort and prolong the amount of time for definitive treatment [T-184-185].

PATIENT C

26. On January 17, 2001, Respondent provided care as an anesthesiologist to Patient C, a 70 year old man who underwent a left unicondylar knee replacement at Rochester General Hospital (Respondent's Exhibit # A); [T-65].

27. Respondent had difficulty administering Patient C's epidural, which caused Patient C a lot of pain. In response to Patient C's complaints of pain, Respondent repeatedly told Patient C in an agitated way that Patient C was being "bad" and uncooperative. Patient C asked for another doctor [T-66-67].

28. Respondent asked for a list of medications that Patient C was taking and Patient C's wife handed Respondent a list. Respondent rudely threw the list back at Patient C's wife [T-66].

29. Patient C was angry and upset by Respondent's behavior and thought that Respondent was rude [T-68].

30. It was below acceptable ethical standards for Respondent to throw the list of medications back at Patient C's wife. Respondent's behavior was disrespectful to the patient and his family and did not facilitate the pre-operative process [T-187].

31. Respondent was having difficulty placing the epidural and became impatient and rude toward Patient C, saying it was the patient who was being bad and uncooperative. Respondent's behavior did not meet ethical standards for an anesthesiologist. It is not appropriate for an anesthesiologist to yell at a patient or belittle a patient during a procedure [T-187-188].

32. Respondent did not treat Patient C with respect and dignity [T-188].

NURSE D

33. On July 26, 2001, Respondent provided care as an anesthesiologist to a patient who underwent an anterior lumbar fusion in an operating room at Rochester General Hospital. Nurse D was in that operating room during all or part of the time during which Respondent provided that care (Respondent's Exhibits # A and # C); [T-76-77].

34. In addition to Respondent and Nurse D, Dr. Whitbeck, surgeon; Jim Breton, PA; and Chancellor Ibberson, CST were involved in the surgery and were present in the operating room during all or part of the time of the procedure [T-77].

35. On July 26, 2001, while in the operating room Respondent unexpectedly pinched Nurse D's side, along her rib cage and pinched it very hard. At that point, Respondent did not say anything to Nurse D [T-78-79].

36. Approximately 45 minutes prior to closing the case, there was a delay obtaining an x-ray technician to determine whether it was appropriate to close. Dr. Whitbeck broke scrub and left the room for 5-10 minutes to get an x-ray technician [T-80-81, 105, 109, 130].

37. Respondent walked back to Nurse D, grabbed her face tightly and slammed her head into the wall [T- 83]. (VOTE of 2 to 1).

38. Nurse D said "Moh," and Respondent told Nurse D loudly to "Shut up. Not another word". Respondent's actions shocked and scared Nurse D [T-83-84, 112-113, 132].

39. Right after Nurse D got out of the patient's recovery area, she reported Respondent's behavior to Cynthia Kelly, the charge nurse. Nurse Kelly told Nurse D that she should file an incident report [T-86]. Nurse D wrote up an incident report [T-100].

40. It was inappropriate for Respondent to pinch Nurse D [T-193].

41. It was inappropriate for Respondent to assault Nurse D by banging her head against the wall. It is not ethically appropriate for a physician to assault a colleague [T-193-195].

CONCLUSIONS OF LAW

The Hearing Committee makes the following conclusions, pursuant to the Findings of Fact listed above, by unanimous vote. The Factual Allegations contained in the April 14, 2003 Statement of Charges are **SUSTAINED**.

Based on the above, the complete Findings of Fact and the discussion below, the Hearing Committee, by unanimous vote, concludes that all SEVEN SPECIFICATIONS (4 MORAL UNFITNESS and 3 WILLFUL ABUSE OR HARASSMENT) contained in the Statement of Charges are **SUSTAINED**. The rationale for the Hearing Committee's conclusions is set forth below.

DISCUSSION

Respondent is charged with seven (7) 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. §6530 of the Education Law does not provide definitions or explanations of the misconduct charged in this matter.

The ALJ provided to the Hearing Committee certain instructions and definitions of medical misconduct as alleged in this proceeding. These instructions and definitions include:

Moral Unfitness

To sustain a specification of moral unfitness, the Department must show that Respondent committed acts which "evidence 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.

Preponderance of the Evidence

The burden of proof in these proceedings 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. The evidence that supports the claim must appeal 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 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 witness' testimony as is deemed true, and disregard what we find and determine to be false.

The Hearing Committee determined that Patient A was credible regarding how Respondent spoke to her and how it made her feel. Even though Patient A's memory of the specifics of the surgery were vague and even though Respondent was correct in his medical advice on the use of the anesthetic; nevertheless, Respondent was incorrect in his approach to the care he provided to Patient A. Respondent's rude behavior toward Patient A fell below acceptable minimum standards of medical care.

Patient B and his spouse's testimonies were straightforward, unbiased, credible and balanced. No reason for them to lie was advanced and neither appear to have an ulterior motive which would cause them to fabricate their unpleasant experience with Respondent.

Patient C's testimony was credible, balanced with no motive to fabricate his experience. In fact, he stated that Respondent apologized to him the next day, and that he accepted the apology. Although Patient C was upset about Respondent calling him a "bad" patient when he was in pain, Patient C was more upset by Respondent's abusive behavior toward his wife.

Nurse D, a practicing nurse since 1984, presented testimony that was balanced and mostly credible. The majority of her testimony was corroborated by the other individuals (Mr. Ibberson and Mr. Breton) in the operating room other then Respondent. The Hearing Committee believed Nurse D's statement that the incident in the operating room was unexpected, threatening and outrageous. No credible reason was submitted for Nurse D to fabricate this incident.

Petitioner's other witnesses, Mr. Ibberson, Mr. Breton and Ms. Kelly provided credible testimony that was unbiased and balanced. All three of these witnesses have satisfactory working relationships with Respondent, and had no reason to fabricate facts.

Stephen Gladysz, M.D., testified as an expert for the Department. He presented his testimony in an even, impartial manner. Dr. Gladysz supported his opinions with sound ethical and medical principles which a physician must follow when providing patient care.

Respondent's testimony was not credible. For example, Respondent lied to the Hearing Committee when he stated that there had been not a single complaint against him until April 1998. Respondent had been counseled in 1996 about two complaints from Rochester General Hospital staff of being abused by Respondent.

Other examples of Respondent's untruthfulness include misleading the Rochester General Hospital psychiatrist in 2001. Respondent was required to have a psychiatric evaluation as corrective action in response to the incident with Nurse D. Respondent told the psychiatrist that he had no professional or personal problems with any co-workers. However, according to Respondent's own testimony to the Hearing Committee, the anesthesia Department at Rochester General Hospital had been receiving complaints from patients and staff, and had been "discriminating" against him for at least three years.

Respondent's testimony was not believable when it conflicted with the fact witnesses or when he testified about his theory of the case. His theories regarding what occurred as he interacted with each patient and Nurse D were not supported by Petitioner's witnesses or by the documentary evidence. Respondent continuously made bald assertions of fabrication, conspiracy and discrimination by others without presenting any witnesses or credible evidence to support those assertions.

Respondent often avoided answering the simple questions that were asked, provided non-responsive answers or when pressed, stated that he didn't speak, read or comprehend English well. For example, he stated that he doesn't speak English well enough to have called Patient A a "baby".

Clearly, this is not credible, as Respondent has been a practicing physician in the United States for 30 years.

Respondent's view of the four cases presented by Petitioner is that he cannot have committed misconduct because any complaint against him that is not related to clinical competency is irrelevant or at best a fabrication and that he has never harmed a patient. Clearly Respondent is incorrect and, as indicated by at least the 3 patients who testified, he has harmed patients. Patient harm occurred when, due to Respondent's conduct, he interfered with future patient care relationships and has caused disillusionment to Patients A, B, B's wife, C, and C's wife with current and future medical care.

The harm and interference with future patient care relationships caused by Respondent is a violation of the moral standards of the medical community and constitutes moral unfitness to practice the profession. Respondent's conduct toward Nurse D is also a violation of the moral standards of the medical community. Respondent's conduct toward Patients A, B and C constitutes willful abuse and harassment of a patient. His verbal abuse of his patients increased the stress and trauma of having major surgery for these patients.

In accordance with the above understanding the Hearing Committee unanimously determined that the allegations and the charges contained in the Statement of Charges were established by a preponderance of the evidence.

DETERMINATION AS TO PENALTY

After a full and complete review of all of the evidence presented during the Hearing including the parties' arguments and the submitted proposed conclusions and pursuant to the Findings of Fact, Conclusions of Law and Discussion set forth above, the Hearing Committee unanimously determines that Respondent's license to practice medicine in New York should be

SUSPENDED for NINETY (90) DAYS, during which time Respondent shall obtain an independent psychiatric evaluation by an OPMC approved physician at Respondent's expense. In addition, during his 90 day suspension, Respondent shall attend counseling/psychiatric course or courses on anger management, interpersonal relationships and patient relationships as approved by OPMC; and Respondent shall be placed on PROBATION for a period of THREE (3) YEARS under the terms of probation (attached as Appendix 3), including the requirement that Respondent shall be monitored, as approved by OPMC, by an anesthesiologist (or a professional person acceptable to OPMC [ie: nurse practitioner]) who shall report to OPMC every 3 months; and including a condition that, if recommended by the independent psychiatric evaluation obtained by Respondent as required above, Respondent shall engage in or continue counseling. OPMC shall review the independent psychiatric evaluation and shall determine if Respondent may have an impairment issue which needs to be addressed by further action by an investigation Hearing Committee.

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; (10) Probation and (11) Dismissal in the interest of justice.

The Hearing Committee does not believe that Censure and Reprimand is a sufficient penalty to address Respondent's conduct. This is especially true given Respondent's lack of insight and remorse together with his failure to understand the patient harm he has caused.

On the other extreme, the Hearing Committee agreed that revocation of Respondent's license would be too harsh a penalty for the proven conduct. Respondent appears to have the qualifications and abilities to be a productive asset to the medical community and the public.

The Hearing Committee believes that an actual suspension with a defined time period will provide the "time out" that Respondent needs to understand the seriousness of his professional misconduct. We believe that this Hearing process together with the above penalty will alert and help Respondent in his future responsibilities towards his patients. We also have included certain requirements which should help Respondent and provide adequate safety to the public. We do not believe any of the other available sanctions to be appropriate or relevant to Respondent's misconduct.

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 the transcripts and have considered all of the admitted evidence of this proceeding.

ORDER

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

1. The FIRST through SEVENTH SPECIFICATIONS contained in the Statement of Charges (Petitioner's Exhibit # 1) are **SUSTAINED**; and

2. The Factual Allegations contained in the Statement of Charges (Petitioner's Exhibit # 1) are **SUSTAINED**; and

3. Respondent's license to practice medicine in New York is **SUSPENDED FOR NINETY (90) DAYS**; and

4. Respondent will be placed on **PROBATION FOR A PERIOD OF THREE (3) YEARS** effective immediately; and

5. During Respondent's 90 day suspension, Respondent, at his own expense, shall obtain an independent psychiatric evaluation by an OPMC approved physician; and

6. During Respondent's 90 day suspension, Respondent shall attend counseling/psychiatric course or courses on anger management, interpersonal relationships and patient relationships as approved by OPMC; and

7. Respondent's terms of probation (attached as Appendix 3) shall include the requirement that Respondent shall be monitored, as approved by OPMC, by an anesthesiologist (or a professional person acceptable to OPMC [ie: nurse practitioner]) who shall report to OPMC every 3 months; and shall include a condition that Respondent shall engage in or continue counseling if recommended by the independent psychiatric evaluation obtained by Respondent as required above; and

8. All the terms of probation, attached as Appendix 3, shall be followed by Respondent; and

9. This Order shall be effective on personal service on the Respondent or 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
25 **August, 2003**

STEVEN V. GRABIEC, M.D. (Chair)
DIANA E. GARNEAU, M.D.
MICHAEL WALKER

TO:

Mehdi Mohtashemi, M.D.
2 Robin Drive
Rochester, NY 14618

Valerie B. Donovan, Esq.
New York State Department of Health
Bureau of Professional Medical Conduct
Corning Tower, Room 2512
Empire State Plaza
Albany, New York 12237

APPENDIX 1

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

IN THE MATTER OF MEHDI MOHTASHEMI, M.D.	STATEMENT OF CHARGES

MEHDI MOHTASHEMI, M.D., the Respondent, was authorized to practice medicine in New York State on or about September 30, 1977, by the issuance of license number 132697 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. Respondent, on or around May 2, 1997, provided care as an anesthesiologist to Patient A (all persons are identified in Appendix A), a 41 year old woman who was to undergo a left lateral internal sphincterotomy at Rochester General Hospital (RGH). Respondent's treatment and/or care of Patient A did not meet acceptable standards in that prior to surgery: Respondent stated to Patient A "let's act like a baby why don't we," or words to that effect, when Patient A became upset that Respondent did not intend to give her general anesthesia; and/or Respondent stated to Patient A "be a baby, have it your way," or words to that effect, when she insisted on having general anesthesia.

B. Respondent, on or around August 22, 2001, provided care as an anesthesiologist to Patient B, a 61 year old man who was to undergo a laparoscopic cholecystectomy at RGH. Respondent's treatment and/or care

of Patient B did not meet acceptable standards in that:

1. Respondent, in response to Patient B's pre-operative question regarding how long he would be under anesthesia, stated "I have no idea, and don't bother asking anyone else, especially the doctor, because everyone here lies to you anyway", or words to that effect.

2. Respondent, in response to Patient B's post-operative concern regarding his urination problems, rudely laughed and/or stated "that's not my problem," or words to that effect, and then left the room.

C. Respondent, on or around January 17, 2001, provided care as an anesthesiologist to Patient C, a 70-year old man who was to have a left knee unicondylar knee replacement at RGH. Respondent's treatment and/or care of Patient C did not meet acceptable standards in that after Patient C's wife handed Respondent a card listing the patient's medications, Respondent threw the card back at her, and/or Respondent became angry with Patient C while having difficulty attempting to place an epidural in Patient C.

D. On or around July 26, 2001, while providing care as an anesthesiologist to a patient who was undergoing an anterior lumbar fusion in an operating room at RGH, Respondent grabbed circulating Nurse D's right side along her rib cage and pinched her skin. Subsequently, during a delay in the operation, Respondent shouted at Nurse D to "shut up," or words to that effect, and/or grabbed Nurse D's face and slammed her head against the wall.

SPECIFICATION OF CHARGES

FIRST THROUGH FOURTH SPECIFICATIONS

MORAL UNFITNESS

Respondent is charged with committing professional misconduct as defined in New York Education Law §6530(20) by engaging in conduct in the practice of the profession of medicine that evidences moral unfitness to practice as set forth in the following:

1. The facts in paragraph A.
2. The facts in paragraphs B and B.1 and/or B and B.2..
3. The facts in paragraph C.
4. The facts in paragraph D.

FIFTH THROUGH SEVENTH SPECIFICATIONS

WILLFUL ABUSE OR HARASSMENT OF A PATIENT

Respondent is charged with committing professional misconduct as defined in New York Education Law § 6530(31) by reason of his willfully harassing, abusing or intimidating a patient as set forth in the following:

5. The facts in paragraph A.
6. The facts in paragraphs B and B.1 and/or B and B.2.
7. The facts in paragraph C.

DATED: April 14, 2003
Albany, New York

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

9

APPENDIX 2

Mehdi Mohtashemi, M.D.

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

EXHIBIT
RESP. A
5/2/03 MCS

In the Matter of

MEHDI MOHTASHEMI, M.D.

ANSWER

ORIGINAL

Respondent, MEHDI MOHTASHEMI, M.D., by his attorneys, Woods Oviatt Gilman LLP, for his Answer to the Statement of Charges herein:

1. Admits that he was authorized to practice medicine in New York State on or about September 30, 1977, by the issuance of license number 132697 by the New York State Education Department, and further alleges:

2. Denies each and every allegation set forth in Factual Allegation A, except admits that on or about May, 2, 1997, Respondent provided care as an anesthesiologist to Patient A as identified in Appendix A to the Statement of Charges, a 41 year old woman who underwent a left lateral internal sphincterotomy at Rochester General Hospital (RGH).

3. Denies each and every allegation set forth in Factual Allegation B, except admits that on or around August 16, 2001, Respondent provided care as an anesthesiologist to Patient B as identified in Appendix A to the Statement of Charges, a 61 year old man who underwent a laparoscopic cholecystectomy at RGH.

4. Denies each and every allegation set forth in Factual Allegation C, except admits that on or around January 17, 2001, Respondent provided care as an anesthesiologist to Patient C as identified in Appendix A to the Statement of Charges, a 70 year old man who had a left knee unicondylar knee replacement at RGH.

5. Denies each and every allegation set forth in Factual Allegation D, except admits that on or around July 26, 2001, Respondent provided care as an anesthesiologist to a patient

Woods Oviatt Gilman LLP
700 Crossroads Building
2 State Street
Rochester, New York 14614

who underwent an anterior lumbar fusion in an operating room at RGH and that Nurse D as identified in Appendix A to the Statement of Charges was in that operating room during all or part of the time during which Respondent provided that care.

6. Denies each and every other allegation set forth in the Specifications of Charges not heretofore either specifically admitted or denied.

Dated: May 1, 2003

WOODS OVIATT GILMAN LLP

By: [signature]

Beryl Nusbaum, Esquire
700 Crossroads Building
2 State Street
Rochester, New York 14614
585. 987.2800

Attorneys for Respondent

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

Valerie B. Donovan, Esquire
Assistant Counsel
Bureau of Professional Medical Conduct
Corning Tower Building
Room 2512
Empire State Plaza
Albany, New York 12237
518.486.1841

Index No.

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

In the Matter of

MEHDI MOHTASHEMI, M.D.

ORIGINAL

ANSWER

WOODS OVIATT GILMAN LLP

Attorneys for Respondent

Office and Post Office Address

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

Valerie B. Donovan, Esquire
Attorney(s) for Assistant Counsel
Bureau of Professional Medical Conduct
Corning Tower Building/Room 2512
Empire State Plaza, Albany, New York 12237 518.486.1841

Service of a copy of the within is hereby admitted.

Dated,

Attorney(s) for

Sir:— Please take notice

NOTICE OF ENTRY

that the within is a *(certified)* true copy of a
duly entered in the office of the clerk of the within named court on

Dated,

Yours, etc.
WOODS OVIATT GILMAN LLP

Attorneys for

Office and Post Office Address

To

Attorney(s) for

APPENDIX 3

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. Respondent acknowledges that if he commits professional misconduct as enumerated in New York State Education Law §6530 or §6531, those acts shall be deemed to be a violation of probation and that an action may be taken against Respondent's license pursuant to New York State Public Health Law §230(19).

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 each 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 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 he is not currently engaged in or if intends to leave the active practice of medicine in New York State for 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 on 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 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. The medical records shall contain all information required by State rules and regulations regarding controlled substances.

7. Respondent shall obtain an independent psychiatric evaluation by an OPMC approved physician at Respondent's expense.

8. Respondent shall attend counseling/psychiatric course or courses on anger management and interpersonal relationships and patient relationships as approved by OPMC.

9. Respondent's practice of medicine shall be monitored by a an anesthesiologist (or a professional person acceptable to OPMC [ie: nurse practitioner or other health care worker]), ("**practice monitor**") approved in advance, in writing, by the Director of the Office of Professional Medical Conduct or designee. Respondent may not practice medicine until an approved practice monitor and monitoring program is in place. Any practice of medicine prior to the submission and approval of a proposed practice monitor will be determined to be a violation of probation.

a. The practice monitor shall not be a family member, personal friend, or be in a professional relationship with Respondent which could pose a conflict with the monitor's responsibilities. Prior to the approval of any individual as monitor, Respondent shall cause the

proposed monitor to execute and submit to the Director of OPMC an acknowledgment of his/her agreement to undertake all of the responsibilities of the role of monitor. Said acknowledgment shall be made on a form provided by and acceptable to the Director. Respondent shall provide the monitor with a copy of the Determination and Order and all of its attachments and shall, without fail, cause the approved monitor to:

i. Report quarterly to OPMC regarding his/her monitoring of Respondent's practice.

ii. Report within 24 hours any abusive conduct by Respondent towards patients or other staff members including any inappropriate comments by Respondent to any patient,.

b. All expenses associated with monitoring, including fees to the monitoring individual, shall be the sole responsibility of the Respondent.

c. It is the responsibility of the Respondent to ensure that the reports of the practice monitor are submitted in a timely manner. A failure of the practice monitor to submit required reports on a timely basis will be considered a violation of the terms of probation.

10. Respondent shall engage in or continue counseling if recommended by an independent psychiatric evaluation obtained by Respondent as required by the Hearing Committee's Determination and Order.

11. 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.