



STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12237

Mark R. Chassin, M.D., M.P.P., M.P.H.
Commissioner

Paula Wilson
Executive Deputy Commissioner

February 14, 1994

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Rick Zimmer, Esq.
Assistant Counsel
NYS Department of Health
Corning Tower - Room 2438
Albany, New York 12237

Edward P. Grace, M.D.
1430 North Wilton Avenue
Apt. 116
Bartow, Florida 33830

Edward Rappaport, Esq.
40 North Main Street
Suite 12
Gloversville, New York 12078

RE: In the Matter of Edward P. Grace, M.D.

Dear Mr. Zimmer, Mr. Rappaport and Dr. Grace:

Enclosed please find the Determination and Order (No. BPMC 94-16) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon 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.

Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified mail or in person** to:

Office of Professional Medical Conduct
New York State Department of Health
Corning Tower - Fourth Floor (Room 438)
Empire State Plaza
Albany, New York 12237

If your license or registration certificate is lost, misplaced or its whereabouts is otherwise unknown, you shall submit an affidavit to that effect. If subsequently you locate the requested items, they must than be delivered to the Office of Professional Medical Conduct in the manner noted above.

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), "(t)he 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.

Request for review of the Committee's determination by the Administrative Review Board stays all action until final determination by that Board. Summary orders are not stayed by Administrative Review Board reviews.

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
Corning Tower - Room 2503
Empire State Plaza
Albany, New York 12237-0030

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.

Very truly yours,

Tyrone T. Butler / t.t.b.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:mmn
Enclosure

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

-----X
IN THE MATTER ; DETERMINATION
OF ; AND
EDWARD P. GRACE, M.D. ; ORDER
-----X

No. BPMC 94-18

DAVID T. LYON, M.D. Chairman, JOSEPH CHANATRY, M.D. and Mr. JOHN T. VERNIEU 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. Michael P. McDermott, Esq., Administrative Law Judge, served as Administrative Officer for the Hearing Committee.

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

SUMMARY OF THE PROCEEDINGS

Notice of Hearing and Statement of Charges:	November 16, 1993
Amended Statement of Charges:	December 3, 1994
Pre-Hearing Conference:	December 7, 1993
Hearing Dates:	December 20, 1994
Place of Hearing:	New York State Department of Health Albany, New York 12237
Date of Deliberations:	January 24, 1994

Petitioner appeared by: Peter J. Millock, Esq.
General Counsel
NYS Department of Health
By: Rick Zimmer, Esq.
Assistant Counsel

Respondent appeared by: Edward Rappaport, Esq.
40 North Main Street
Suite 12
Gloversville, N.Y. 12078

WITNESSES

For the Petitioner:

- 1) David Rowland

For the Respondent:

- 1) John A. Lyons
- 2) Alice Lyons
- 3) Paul E. Grace
- 4) Edward P. Grace, M.D., The Respondent

STATEMENT OF CHARGES:

Essentially the Statement of Charges, charges the respondent with practicing the profession fraudulently and with conduct evidencing moral unfitness to practice medicine.

The Charges are more specifically set forth in the Statement of Charges, a copy of which is attached hereto and made a part hereof.

FINDINGS OF FACT

Numbers in parentheses refer to transcript page numbers or exhibits. These citations represent evidence found persuasive by the Hearing Committee in arriving at a particular finding.

Conflicting evidence, if any, was considered and rejected in favor of the cited evidence. All hearing Committee findings were unanimous unless otherwise specified.

GENERAL FINDINGS

1. The Respondent is a physician duly licensed to practice medicine in the State of New York under license number 145873 issued by the State Education Department on May 1, 1981 (Pet's. Ex. 3).

2. The Respondent received his medical education at the Cairo University Medical School in Egypt and graduated in 1969 (Tr. 73-74).

3. The Respondent's medical education was in English (Tr. 141-142).

4. The Respondent came to the United States in 1972 and worked in the medical field from January, 1972 through approximately June 30, 1986, after which time he returned to Egypt (Pet's. Ex. 11; Tr. 74-76, 141).

5. The Respondent returned to the United States in March, 1988 and went to Arkansas where he practiced medicine for approximately a year and a half (Pet's Ex. 11; Tr. 25, 126).

6. The Respondent has spoken English on a daily basis since 1972 (Tr. 142).

FINDINGS AS TO THE CHARGES

7. On December 15, 1989, the Arkansas State Medical Board

issued an Order and Notice of Hearing charging the Respondent with violating Arkansas Code Ann. 17-93-409(3), aiding or abetting an unlicensed person to practice medicine (Pet's. Ex. 12).

8. On May 2, 1990 the Arkansas State Medical Board determined that: "the incidents complained of, in the allegations of the complaint on the Order and Notice of Hearing, are basically true because all parties have testified that these actions occurred, second, that this type of medical treatment does not rise to quality medicine but does not rise to the level of violation of the Medical Practices Act and therefore the charges will be dismissed" (Pet's. Ex. 5).

9. The Respondent submitted an application, signed on July 23, 1990, to Nathan Littauer Hospital, 99 East State Street, Gloversville, New York 12078, for medical staff appointment and clinical privileges (Pet's. Ex. 6).

10. The Respondent checked "No" on the application in response to the question "Have any disciplinary actions been initiated or are any pending against you by any state licensure board?" (Pet's. Ex. 6, hand numbered p. 8, Question C1).

11. The Respondent checked "No" on the application in response to the question "Have you ever been involved in any professional misconduct action in any state?" (Pet's. Ex. 6, hand numbered p. 8, Question C7).

12. The Respondent checked "No" on the application in response to the question "Has your professional liability

insurance coverage ever been terminated by action of the insurance company?" (Pet's. Ex. 6, hand numbered p. 12, Question VI (A)(5)(a)).

13. The Respondent's malpractice insurance was terminated at the initiation of the St. Paul Property and Liability Insurance Company with his insurance coverage ending on November 16, 1989. The Respondent was notified of the termination (Pet's. Ex. 10; Tr. 82).

14. The Respondent submitted a registration application signed on December 11, 1990, to the New York State Department of Education for re-registration of his license to practice medicine in New York State (Pet's. Ex. 4).

15. The Respondent checked "No" on the application in response to the question "Since you last registered has any state other than New York instituted charges against you for professional misconduct, unprofessional conduct, incompetence or negligence or revoked, suspended or accepted surrender of a professional license held by you?" (Pet's. Ex. 4).

CONCLUSIONS

The Respondent's medical education at the Cairo University Medical School in Egypt was in English.

Except for the period July, 1986 to March, 1988, the Respondent has lived in the United States since 1972 and has spoken English on a daily basis.

The Hearing Committee has had the opportunity to observe the

Respondent; to ask him questions; and to listen to his responses during the course of the hearing on December 20, 1993.

Based on the foregoing, the Hearing Committee concludes that the Respondent was sufficiently conversant in English to have correctly answered the unambiguous questions on the Nathan Littauer Hospital application form and on the New York State Education Department registration application.

The Hearing Committee further concludes: (1) the Respondent made false representations of that which should have been disclosed, (2) the Respondent knew the representations were false, and (3) the Respondent intended to mislead through the false representation.

The Hearing Committee rejects the Respondent's contention that it was his difficulties with the English language that caused him to misinterpret the questions involved.

The Hearing Committee also rejects the Respondent's contention that he has been the victim of discrimination. There is absolutely no evidence in the record to support such an allegation.

VOTE OF THE HEARING COMMITTEE

All votes were unanimous

FIRST THROUGH FOURTH SPECIFICATIONS: (Practicing the Profession Fraudulently.)

SUSTAINED as to all the charges.

FIFTH THROUGH EIGHT SPECIFICATIONS: (Conduct Evidencing Moral

Unfitness to Practice Medicine.)

SUSTAINED as to all the charges.

DETERMINATION

The Hearing Committee has voted to **SUSTAIN** four specifications of Practicing the Profession Fraudulently and four specifications of Conduct Evidencing Moral Unfitness to Practice Medicine.

The Hearing Committee believes that honesty is an important characteristic of moral fitness for licensure as a physician in New York State. While the Hearing Committee has voted to **SUSTAIN** the specification of Moral Unfitness, the Committee is aware that the specifications are not in any way related to patient care and accordingly a lesser penalty should be imposed.

The Hearing Committee has determined that the appropriate penalty in this case should be a **CENSURE AND REPRIMAND** and a fine as follows:

- 1) \$3,000.00 for each of four specifications of Practicing the Profession Fraudulently, $\$3000.00 \times 4 = \$12,000.00$
- 2) \$500.00 for each of four specifications of Conduct Evidencing Moral Unfitness to Practice Medicine, $\$500.00 \times 4 = \2000.00

TOTAL FINE: \$14,000.00

ORDER

It is hereby **ORDERED** that:

1. The Respondent is hereby **CENSURED AND REPRIMANDED.**

2. A fine in the amount of Fourteen Thousand (\$14,000.00) Dollars is imposed upon the Respondent. Payment of the fine shall be made within thirty (30) days of the effective date of this ORDER to the New York State Department of Health, Bureau of Accounts Management, Revenue and Cash Unit, Corning Tower Building, Room 1245, Empire State Plaza, Albany, New York, 12237.

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

DATED: Schenectady, New York

FEBRUARY 10, 1994



**DAVID T. LYON, M.D.
CHAIRPERSON**

**Joseph Chantry, M.D.
John T. Vernieu**

Any civil penalty not paid by the date prescribed herein shall be subject to all provisions of law relating to debt collection by the state of New York. This includes but is not limited to the imposition of interest, late payment charges and collection fees; referral to the New York State Department of Taxation and Finance for collection; and non-renewal of permits or licenses (tax law 171(27); state finance law 18; cplr 5001; executive law 32).

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

-----X
: AMENDED
IN THE MATTER : STATEMENT
OF : OF
EDWARD P. GRACE, M.D. : CHARGES
-----X

EDWARD P. GRACE, M.D., the Respondent, was authorized to practice medicine in New York State on May 1, 1981 by the issuance of license number 145873 by the New York State Education Department. The Respondent is not currently registered with the New York State Education Department to practice medicine in New York State.

FACTUAL ALLEGATIONS

Petitioner EXHIBIT #2 *in evd*
FOR IDENTIFICATION
LORA KAYE SAUCEDA, CSR, 40
Plc 2 1993

A. Respondent submitted an application, signed on July 23, 1990, to Nathan Littauer Hospital, 99 East State Street, Gloversville, New York 12078, for medical staff appointment and clinical privileges. Respondent knowingly and intentionally made the following false statements on this application;

1. Respondent checked "No" on the application in response to the question "Have any disciplinary actions been initiated or are any pending against you by any state licensure board?". Respondent had, in fact, been the subject of a disciplinary proceeding before the Arkansas State Medical Board, on or about May 2, 1990.

2. Respondent checked "No" on the application in response to the question "Have you ever been involved in any professional misconduct action in any state?" Respondent had, in fact, been the subject of a disciplinary proceeding before the Arkansas State Medical Board, on or about May 2, 1990.

3. Respondent checked "No" on the application in response to the question "Has your professional liability insurance coverage ever been terminated by action of the insurance company?". Respondent, in fact, had his professional liability insurance coverage terminated by the St. Paul Fire and Marine Insurance Company, on or about November 16, 1989.

B. Respondent submitted a registration application signed by Respondent on December 11, 1990, to the New York State Department of Education for re-registration of his license to practice medicine in New York State. Respondent knowingly and

intentionally made the following false statement on this application:

1. Respondent checked "no" on the application in response to the question "Since you last registered has any state other than New York instituted charged [sic] against you for professional misconduct, unprofessional conduct, incompetence or negligence or revoked, suspended or accepted surrender of a professional license held by you?". Respondent had, in fact, been the subject of a disciplinary proceeding before the Arkansas State Medical Board, on or about May 2, 1990.

FIRST THROUGH FOURTH SPECIFICATIONS

PRACTICING THE PROFESSION FRAUDULENTLY

Respondent is charged with professional misconduct under N.Y. Educ. Law § 6530 (2) (McKinney's Supp. 1993) [formerly N.Y. Educ. Law §6509(2)] by reason of his having practiced the profession fraudulently, in that Petitioner charges;

1. The facts in paragraphs A and A.1.
2. The facts in paragraphs A and A.2.
3. The facts in paragraphs A and A.3
4. The facts in paragraphs B and B.1.

FIFTH THROUGH EIGHTH SPECIFICATIONS

CONDUCT EVIDENCING MORAL UNFITNESS TO PRACTICE MEDICINE

Respondent is charged with professional misconduct under N.Y. Educ. Law §6530 (20) (McKinney's Supp. 1993) [formerly N.Y. Educ. Law §6509(9) and 8 NYCRR §29.1 (b)(5)] by reason of his having committed conduct in the practice of medicine which evidences moral unfitness to practice medicine, in that Petitioner charges;

5. The facts in paragraphs A and A.1.
6. The facts in paragraphs A and A.2.
7. The facts in paragraphs A and A.3.
8. The facts in paragraphs B and B.1.

DATED: Albany, New York
December 3, 1993



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