



# 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.  
*Commissioner*

Dennis P. Whalen  
*Executive Deputy Commissioner*

April 6, 2000

## **CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Daniel Guenzburger, Esq.  
NYS Department of Health  
5 Penn Plaza – Sixth Floor  
New York, New York 10001

Sein Myint, M.D.  
20-34 37<sup>th</sup> Street  
Astoria, New York 11105

### **RE: In the Matter of Sein Myint, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 00-103) 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,

A handwritten signature in black ink, appearing to read "Tyrone T. Butler". The signature is written in a cursive style with a large initial 'T'.

Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:nm  
Enclosure

COPY

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

-----X  
IN THE MATTER : DETERMINATION  
OF : AND  
SEIN MYINT, M.D. : ORDER  
-----X

BPMC-00-103

Thea Pellman, Chairperson, Thomas Muldoon, M.D., and Anthony Clemendor, M.D., 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. Jane B. Levin, Esq., Administrative Law Judge, served as Administrative Officer for the Hearing Committee.

After consideration of the entire record, the Hearing Committee submits this determination.

SUMMARY OF THE PROCEEDINGS

Notice of Hearing and Statement of Charges:	January 10, 2000
Hearing date:	February 24, 2000
Deliberation date:	February 24, 2000
Place of Hearing:	NYS Department of Health 5 Penn Plaza New York, N.Y.
Petitioner appeared by:	Henry M. Greenberg, Esq. General Counsel

NYS Department of Health  
By: Daniel Guenzburger, Esq.  
Assistant Counsel

Respondent appeared by:

Pro Se

**WITNESSES**

**For the Petitioner:**

Documentary evidence only was submitted.

**For the Respondent:**

1) Sein Myint, M.D. (Respondent)

**STATEMENT OF CHARGES**

Essentially, the Respondent is charged with the fraudulent practice of medicine, making of false reports, and moral unfitness. 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. Sein Myint, M.D. the Respondent, was authorized to practice medicine in New York State on or about June 18, 1997 by the issuance of license number 207017 by the New York State Education Department (Pet. Ex. 2).

2. The Respondent is a board certified internist (T. 42), employed at Western Queens Hospital (T. 30).

3. After completion of his residency training at Jamaica Hospital, and as part of the process of seeking employment, Respondent submitted a letter of reference dated June 20, 1997 to the Staten Island University Hospital that purported to be from William O'Connell, M.D. Associate Director of the Department of Medicine at the Jamaica Hospital Medical Center (Pet. Ex. 3).

4. Respondent also submitted a letter of reference dated June 20, 1997 to the Victory Memorial Hospital that purported to be from Thomas Santucci Jr., M.D. Director of the Department of Medicine at the Jamaica Hospital Medical Center (Pet. Ex. 5).

5. Without authorization from either Dr. Santucci or Dr. O'Connell, Respondent wrote the letter of reference on letterhead that he picked up at Jamaica Hospital and mailed the forged letter to the Staten Island University Hospital and Victory Memorial Hospital (T. 28).

6. Respondent stated that the reason he forged the letters

of reference was because "I would be dead if they wrote." In response to further questioning from Panel members, Respondent elaborated that what he meant by this was that he expected a letter of reference from either Dr. O'Connell or Dr. Santucci would not be favorable to him (T. 24-25).

7. Respondent assumed that Dr. Santucci would give him a negative letter of reference because he did not get hired for a position at the Jamaica Hospital emergency room after asking Dr. Santucci to give him a reference for that position (T. 71).

8. Respondent received satisfactory evaluations during his residency training (T. 69). Respondent stated that he forged the letters because he felt that during his residency he had received unfair evaluations, and that his work was better than satisfactory (T. 69).

9. Respondent felt that the conditions at the Jamaica residency program were very bad and that those in charge of the program, which attracts many foreign medical graduates, mentally tortured the resident (T. 76). He stated that a particular group of Indian physicians were "out to get" residents from other nationalities (T. 80).

10. After submitted the fabricated letter to Victory Memorial, Respondent obtained employment at that institution, but left that employment on his own volition for a job at Western Queens (T. 29, 62).

## CONCLUSIONS OF LAW

1. The Hearing Committee concludes that the Respondent knowingly and falsely, and with intent to deceive, forged letters of recommendation from Dr. O'Connell and Dr. Santucci in order to obtain employment.

2. Although the Respondent did engage in fraudulent actions, the Panel does not find him morally unfit to practice medicine, since there was no patient harm, and there were extenuating circumstances.

### VOTE OF THE HEARING COMMITTEE

(All votes were unanimous, except where specified.)

#### FIRST AND SECOND SPECIFICATIONS:

(Fraudulent practice)

A SUSTAINED, with the exception that Respondent acted alone  
A1 SUSTAINED  
B SUSTAINED  
B1 SUSTAINED

#### THIRD AND FOURTH SPECIFICATIONS:

(False reports):

A SUSTAINED  
A1 SUSTAINED  
B SUSTAINED  
B1 SUSTAINED

#### FIFTH SPECIFICATION:

(Reporting misconduct)

WITHDRAWN

#### SIXTH SPECIFICATION:

(Moral unfitness)

A NOT SUSTAINED  
A1 NOT SUSTAINED  
B NOT SUSTAINED

DETERMINATION OF THE HEARING COMMITTEE AS TO PENALTY

After careful consideration of the evidence presented against the Respondent, the Hearing Committee has determined that the Respondent's license to practice medicine in the State of New York should be suspended for a period of two years, with the entire period of suspension stayed.

The Committee fully realizes the serious nature of the charges of fraud, and has carefully considered the full range of penalties available. In reaching its decision, the Committee took into account the following mitigating factors:

1) The Respondent acknowledged his wrongdoing, stated that he took full responsibility for his actions, and demonstrated true remorse.

2) The Respondent perceived that he was being discriminated against in his residency because of cultural differences, and believed his evaluations, which rated him as average, did not accurately reflect his perception of his performance. He was convinced he would not get a positive letter of recommendation, and did not comprehend that he could take other procedural steps.

3) The Respondent's solution, of forging his reference letters, was based on anger and immaturity, and his desperation to obtain a job after being unemployed for several months with the pressure of a wife and two very young children to support.



4) The Respondent, who is a young doctor at the beginning of his career, is of obvious intelligence, hardworking, and with a demonstrated concern for his patients. This case did not involve any patient harm, and no evidence of pecuniary gain.

The Committee wishes to impress upon the Respondent the seriousness of the charges against him. We feel that some of his problems in this matter stem from his limited English language and communication skills, a concern repeatedly noted in his residency evaluations. We further note a generalized expression of anger and urge the Respondent to seek counselling to help him deal with these emotions in a more constructive way.

ORDER

Based upon the foregoing IT IS HEREBY ORDERED THAT

1. Respondent's license to practice medicine in the State of New York is hereby suspended for two years, with the entire period of suspension stayed.

2. 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: New York, New York  
March 2000  
*April 4, 2000*

  
THEA PELLMAN  
Chairperson

THOMAS MULDOON, M.D.  
ANTHONY CLEMENDOR, M.D.

IN THE MATTER  
OF  
SEIN MYINT, M.D.

STATEMENT  
OF  
CHARGES

SEIN MYINT, M.D., the Respondent, was authorized to practice medicine in New York State on or about June 18, 1997, by the issuance of license number 207017 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A. Respondent submitted a letter of reference dated November 24, 1997 to the Staten Island University Hospital that purported to be from William O'Connell, M.D., Associate Director of the Department of Medicine at the Jamaica Hospital Medical Center. Respondent fabricated the letter with the assistance of an unidentified former resident of the Jamaica Hospital Medical Center. By said conduct, Respondent:

1. Knowingly and falsely represented that the letter he had provided was an authentic letter of reference from William O'Connell, M.D., when, in fact, he knew that the letter was a fabrication.

Respondent intended to mislead.

*withdrawn  
2/24/00*

2. Willfully failed to report to the Office of Professional Conduct information about a licensee which reasonably appears to show that the licensee is guilty of professional misconduct.

B. Respondent submitted a letter of reference dated June 20, 1997 to the Victory Memorial Hospital that purported to be from Thomas Santucci Jr., M.D., Director of the Department of Medicine at the Jamaica Hospital Medical Center. By said conduct, Respondent:

1. Knowingly and falsely represented that the letter he had provided was an authentic letter of reference from Thomas Santucci, Jr., M.D., when, in fact, he knew that the letter was a fabrication. Respondent intended to mislead.

### **SPECIFICATION OF CHARGES**

#### **FIRST AND SECOND SPECIFICATIONS**

##### **FRAUDULENT PRACTICE**

Respondent is charged with committing professional misconduct as defined by N.Y. Educ. Law §6530(2)(McKinney Supp. 1999) by practicing the profession of medicine fraudulently as alleged in the facts of the following:

1. Paragraphs A and A1.
2. Paragraphs B and B1.

#### **THIRD AND FOURTH SPECIFICATIONS**

##### **FALSE REPORTS**

Respondent is charged with committing professional misconduct as defined in

N.Y. Educ. Law §6530(21)(McKinney Supp. 1999) by wilfully making or filing a false report, as alleged in the facts of:

3. Paragraphs A and A1.
4. Paragraphs B and B1.

**FIFTH SPECIFICATION**  
**REPORTING MISCONDUCT**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(13)(McKinney Supp. 1999), by wilfully failing to report to the Board of Professional Medical Conduct information about a licensee which reasonably appears to show that the licensee is guilty of professional misconduct as required by Public Health Law §230(11), as alleged in the facts of:

5. Paragraphs A and A2.

**SIXTH SPECIFICATION**  
**MORAL UNFITNESS**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(20)(McKinney Supp. 1999) 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:

6. Paragraphs A, A1, ~~A2~~, B, and/or B1.

*Withdrawn*

*Withdrawn*

1/10/00

DATED: ~~November~~, 1999  
New York, New York



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ROY NEMERSON  
Deputy Counsel  
Bureau of Professional  
Medical Conduct