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

June 28, 2000

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Robert Bogan, Esq.
NYS Department of Health
433 River Street – 4th Floor
Hedley Building
Troy, New York 12180

Vincent R. Forshan, D.O.
15851 Dodville Drive
Hacienda, California 91745

Robert J. Sullivan, Esq.
Nossman, Guthner, Knox & Elliott, LLP
915 L Street – Suite 1000
Sacramento, California 95814-3701

RE: In the Matter of Vincent R. Forshan, D.O.

Dear Parties:

Enclosed please find the Determination and Order (No. 00-196) 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.

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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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
Hedley Park Place
433 River Street - Fourth Floor
Troy, New York 12180

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 then 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), "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.

Request for review of the Committee's determination by the Administrative Review Board stays penalties other than suspension or revocation 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.

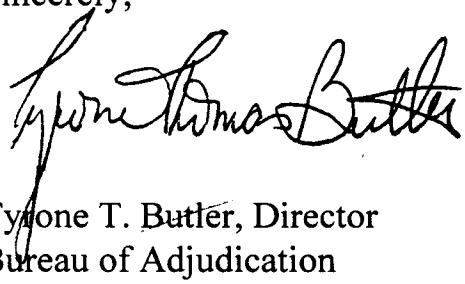
The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
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,



Tyrone T. Butler, Director
Bureau of Adjudication

TTB:cah
Enclosure

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

COPY

IN THE MATTER

OF

VINCENT R. FORSHAN, D.O.

DETERMINATION

AND

ORDER

BPMC #00-196

A Notice of Referral Proceeding and Statement of Charges, both dated, January 8, 2000, were served upon the Respondent, **VINCENT R. FORSHAN, D.O.**

ANDREW J. MERRITT, M.D., Chairperson, **NANCY J. STUBBE, M.D.** and **D. MARISA FINN,** duly designated members of the State Board of Professional Medical Conduct, 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 the Administrative Officer.

A hearing was held on June 14, 2000 at the Offices of the New York State Department of Health, Hedley Park Place, 433 River Street, Troy, New York. The Department appeared by **HENRY M. GREENBERG, ESQ.,** General Counsel, by **ROBERT BOGAN, ESQ.,** of Counsel. The Respondent failed to appear. A Response to the Statement of Charges was submitted on behalf of the Respondent by **ROBERT J. SULLIVAN, ESQ.,** Nossman, Guthner, Knox & Elliott, LLP, Suite 1000, 915 L Street, Sacramento, California 95814-3701.

Evidence was received and transcripts of these proceeding were made.

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

STATEMENT OF CASE

This case was brought pursuant to Public Health Law Section 230(10)(p). The statue provides for an expedited hearing where a licensee is charged solely with a violation of Education Law Section 6530(9). In such case, a licensee is charged with misconduct based upon a prior criminal conviction in New York or another jurisdiction, or upon a prior administrative adjudication regarding conduct which would amount to professional misconduct, if committed in New York. The scope of an expedited hearing is limited to a determination of the nature and severity of the penalty to be imposed upon the licensee.

In the instant case, the Respondent is charged with professional misconduct pursuant to Education Law Section 6530(9)(b) and (d). A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order as Appendix 1.

WITNESSES

For the Petitioner: None

For the Respondent: None

FINDINGS OF FACT

The following Findings and Fact were made after a review of the entire record in this matter. Numbers in parenthesis 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 stated.

1. **VINCENT R. FORSHAN, D.O.,** the Respondent, was authorized to practice medicine in New York state on December 11, 1974, by the issuance of license number 122654 by the New York State Education Department. (Pet's. Ex. 4)

2. On August 3, 1999, the Osteopathic Medical Board, State of California, (hereinafter "California Board") by a Stipulation in Settlement, (hereinafter "California Settlement") required Respondent to renew his corporation registration and pay all fees in full, revoked his corporate license, stayed the revocation and placed him on five (5) years probation with conditions, to include his successful completion of the PACE program, and to pay $30,000.00 costs and $2,400.00 restitution.

The action by the "California Board" was based on admissions by the Respondent that the following facts were true and accurate:

COUNT ONE

Re Injury/Informed Consent Issue

A. At all time relevant herein, respondent was a practicing plastic surgeon in the Rancho Mirage/Palm Desert area of Riverside County. Respondent necessarily used both his arms and hands when he performed plastic surgery. He did some switching of his hands in surgery, depending upon which side of the patient he stood, and he usually controlled the needle driver with his right hand and did the "fine work" with tweezers with his left hand.

B. On April 27, 1991, respondent fell from a ladder at his home.

C. Respondent was examined on May 7, 1991 by S.C. Shah, M.D. who found tingling numbness and radicular pain so severe respondent could not work on that date. The tingling and numbness was in the left arm and hand and movement of the head and neck increased the pain.

D. Respondent was examined by Ronald Portnoff, M.D. on May 14, 1991, who noted that respondent was working "with great difficulty, " that he had "extreme pain when holding his arms as shoulder level, which is necessary for him to operate," and that his fingers went to sleep with neck motion. This same doctor, on May 29, 1991, recommended Respondent cease surgery, as it appeared to significantly aggravate his condition.

E. On June 24, 1991, respondent filed a disability claim with UNUM, on of his insurance carriers.

F. On or about July 3, 1991, respondent was examined by William R, Barnes, D.O. who found respondent to be permanently and totally disabled.

G. On December 5, 1991, respondent underwent a neurological consult with Volker K. Sonntag, M.D. concerning his injuries from the April, 1991 fall. Dr. Sonntag noted that respondent was left-handed and that his condition was getting worse. Later that month, Respondent underwent surgery in an attempt to alleviate symptoms of neck pain, and pain radiating to the thumb, index finger and long finger along with tingling, paresthesia and numbness.

H. On January 29, 1992 at his office in Rancho Mirage, California, respondent operated on patient M.C. The patient was never informed of respondent's injuries in 1991 or his surgery in December of 1991.

I. On February 26, 1992, at his office in Rancho Mirage, California, Respondent operated on patient K.L. The patient was never informed on respondent's injuries in 1991 or his surgery in December 1991.

J. On May 22, 1992, Respondent was examined by Dr. Jeffrey Rush, on behalf of Respondent's insurance carrier. Respondent told Dr. Rush that he was not working and had last worked on April 26, 1991. Respondent indicated his condition was worse and he was in much pain.

K. On June 17, 1992, Dr. Portnoff again examined Respondent. He saw no improvement and felt the condition was probably worse. He opined that respondent was not able to work as plastic surgeon.

Respondent failed to inform patient K.L. and patient M.C. of his injuries and recent surgery, without which information neither patient could make an adequately informed consent to surgery by Respondent.

COUNT THREE

Re False Statement on License Renewal Application

A. On respondent's license renewal form, signed on September 11,1997, respondent, under penalty of perjury, answered "no" to the following question: "Since your last renewal...is there any investigation or litigation pending against you involving your 1) medical license, 2) practice, 3) hospital privileges, or 4) medical society membership?"

B. In truth and fact, respondent knew he had malpractice actions pending against him by patient K. McM.

C. In truth and fact, respondent knew that there was a pending investigation of his license by the Board.

COUNT FOUR

Re False Statement on License Application in Nevada

A. On February 27, 1997, in respondent's application to the Nevada Board of Osteopathic Medicine for licensure in Nevada as a osteopath, respondent swore that his answers to the questions on the application were true and correct. He answered "no" to the following question: "24. Have you ever been investigated for, charged with, or conviction of unprofessional conduct, professional incompetence, gross or repeated malpractice, or any other violation of a statute, rule or regulation governing the practice of medicine by any medical licensing board or other agency, hospital or medical society?"

B. In truth and fact, respondent knew that he had been and was under investigation by the Osteopathic Medical Board of California.

COUNT SIX

Re Misrepresentations to Patient D.R.

A. In August of 1996, D.R. consulted with respondent at respondent's office in Rancho Mirage, California in order to have drooping upper eyelids corrected. Respondent suggested that rather than the traditional surgical cutting on the eyelids that laser surgery would achieve the eye lift the patient wanted plus give her whole face a fresh look. D.R. agreed to this procedure at an extra cost with the express proviso, to which respondent agreed, that if the laser treatment was not effective for her eyelids, that he would re-do her eyelids using the traditional surgical procedure for no charge.

B. On or about September 6, 1996, respondent performed laser surgery on patient D.R.

C. The laser surgery failed to correct the drooping eyelid problem. Although corrective surgery was originally scheduled for March of 1997, it was postponed a year due to respondent's last minute unavailability to the dated scheduled in March 1997. Thereafter, the patient's need to have the surgery performed during an annual vacation period postponed the surgery until 1998.

D, On February 4, 1998, respondent met with patient D.R. During this consultation, respondent became somewhat irritated with the patient. Respondent made a statement to the patient that he (respondent) was fed up and thinking of going to Africa. When discussion of scheduling of the surgery arose, respondent asked her whether she could have the surgery performed before mid-March. However, she indicated she could not, and respondent then scheduled the surgery for March 10, 1998. At no time during the

consultation did respondent indicate to the patient that respondent would be retiring later in February or that he would be unavailable to her for the March, 1998 no-charge surgery.

E. In late February, 1998, patient D.R. was informed that respondent had retired from practice and would not do the scheduled procedure on her, despite his promise to do so.

F. Respondent knew that he would not be available to perform this no-charge re-do surgery on the patient when he met with her on February 4, 1998, yet he scheduled her for that surgery regardless.

COUNT SEVEN

Re False Billing to Insurance Company

A. On or about July 24, 1994, respondent performed a bilateral breast implant removal on his patient, K.McM.

B. On or about March 13, 1995, K.McM. again consulted Respondent, who planned a "mastopexy" for her.

C. On or about March 29, 1995, Respondent performed a bilateral mastopexy to correct "bilateral breast deformity and macromastia secondary to breast implant removal."

D. Respondent knew that mastopexy is a purely cosmetic surgery rather than a functional surgery and that purely cosmetic surgery is not likely covered by issurance.

E. Knowing that he had performed a bilateral mastopexy, Respondeny submitted bills to the patient's insurance carrier for both a simple masectomy and for a reduction mamoplasty, neither of which operation was performed but either of which is considered functional rather than cosmetic surgery and, thereby, covered by insurance.

F. Upon inquiry by the insurance company seeking further information on the medical necessity of the operation, respondent repeatedly asserted that the operation was breast reduction surgery (mammoplasty) required for the patient's health and well-being.

COUNT NINE
(Re Repeated Negligent Acts or Incompetence)

A. On January 6, 1992, patient M.C. consulted with respondent about several surgical procedures:

B. On January 29, 1992, respondent performed, among other things, an intra nasal procedure which included a complete lower (i.e., "inferior") turbinates resection without medical indication for a complete resection.

C. Respondent failed to discuss with the patient any resection of the patient's inferior turbinates and failed to discuss with her the possible risks, complications, and after effects of such resection. The patient did not ask for or want such surgery and did not consent to it.

D. As a practitioner in the desert climate of the Palm Springs area and a resident of that area, respondent knew, or in the exercise of reasonable care should have known, of the potential problems with complete inferior turbinates resection in such a dry, hot environment.

E. The inferior turbinates are vital respiratory structures. Removal of such turbinates is irreparable.

F. Repondent's complete inferior turbinates resection rendered the patient a respiratory cripple.

G. The pathology report on the excised turbinates revealed a small tumorous growth in one of the turbinates.

H. Respondent knew, or in the exercise of reasonable care should have known, of the tumorous growth in one of the inferior turbinates. Respondent was also negligent or incompetent 1) in not removing the growth, labeling it carefully, sending it for pathological evaluation, and postponing any further turbinate surgery until pathology results were known, and 2) for joining both inferior turbinate structures together in one specimen of turbinates that was sent to the pathology laboratory.

I. Respondent's records contain no physical description of this patient's overall problem or anatomy. Not until the day of surgery is a history and physical reflected in the chart, which was prepared by someone other than respondent and only countersigned by respondent.

J. Respondent's operative report on this patient was a generic "canned" report. It was not specific to this patient's specific surgery except for this patient's name and age.

K. Respondent failed to follow-up with the patient regarding the pathology report.

COUNT TEN
(Repeated Negligent Acts or Incompetence)

A. On or about October 7, 1991 and again very shortly before her surgery, patient K.L. consulted with Respondent about extensive cosmetic procedures.

B. On February 26, 1992, Respondent performed a number of cosmetic surgical procedures on his patient, K.L., including replacement of ruptured breast implants, bilaterally.

C. Respondent's surgery resulted in significant deformity of the patient's breasts due to respondent's negligence or incompetence in his placement of the implants and the size of the pockets.

D. Respondent was further negligent or incompetent in his failure, thereafter, to recognize that the pockets were too big and correct the problem.

E. Respondent's records on this patient show virtually nothing which reflects the patient's medical history or physical condition until the day of surgery, when a history was taken not by Respondent but by his nurse anesthetist.

HEARING COMMITTEE CONCLUSIONS

After a review of the entire record in the this case, the Hearing Committee concludes that the acts when the respondent acknowledged to be true and accurate in his Stipulation in Settlement, Case No. 98-11, before the Osteopathic Medical Board, State of California, would, if committed in New York state constitute professional misconduct under the laws of New York state pursuant to:

- New York Education Law §6530(2) (practicing the profession fraudulently);

- New York Education Law §6530(3) (negligence on more than one occasion);

- New York Education Law §6530(4) (gross negligence);

- New York Education Law §6530(7) (practicing the profession while impaired);

- New York Education Law §6530(16) (failure to comply with local laws, rules, or regulations governing the practice of medicine);

- New York Education Law §6530(20) (moral unfitness);

- New York Education Law §6530(21) (making or filing a false report);

- New York Education Law §6530(30) (abandonment),

VOTE OF THE HEARING COMMITTEE

SPECIFICATIONS

FIRST SPECIFICATION

Respondent is charged with professional misconduct by reason of his having violated New York Education Law §6530(9)(b) by reason of having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York state, constitute professional misconduct under the laws of New York state.

VOTE: SUSTAINED (3-0)

SECOND SPECIFICATION

Respondent is charged with professional misconduct by reason of his having violated New York State Education Law §6530(9)(d) by reason of his having had his license revoked or other disciplinary action taken against him after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation or other disciplinary action would, if committed in New York state, constitute professional misconduct under the law of New York state.

VOTE: SUSTATINED (3-0)

HEARING COMMITTEE DETERMINATION

The Hearing Committee rejects the contention stated in the Respondent's "Response to Statement of Charges" denying that cause exists for the revocation of the Respondent's New York medical license.

The facts which the Respondent has acknowledged as true and accurate would, if committed in New York state, constitute professional misconduct under the laws of New York state.

The Hearing Committee determines unanimously (3-0) that the Respondent's license to practice medicine in the state of New York should be **REVOKED.**

ORDER

IT IS HEREBY ORDERED THAT:

1. The Respondent's license to practice medicine in the Sate of New York is hereby **REVOKED.**

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: 6/26 **New York**
, 2000

Andrew J. Merritt MD
ANDREW J. MERRITT, M.D.
Chairperson

NANCY J. STUBBE, M.D.
D. MARISA FINN

STATE OF NEW YORK : DEPARTMENT OF HEALTH

STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

----------X

IN THE MATTER	STATEMENT
OF	OF
VINCENT R. FORSHAN, D.O.	CHARGES

----------X

VINCENT R. FORSHAN, D.O., the Respondent, was authorized to practice medicine in New York state on December 11, 1974, by the issuance of license number 122654 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about August 3, 1999, the Osteopathic Medical Board, State of California, (hereinafter "California Board") by a Stipulation in Settlement, (hereinafter "California Settlement") required Respondent to renew his corporation registration and pay all fees in full, revoked his corporate license, stayed the revocation and place in five (5) years probation with conditions, to include this successful completion of the PACE program, and to pay $30,000.00 costs and $2,400.00 restitution, based on gross negligence in operating on two (2) patients without informing them of his physical disability; dishonesty in that, on his license renewal form he falsely indicated that he was not under a pending investigation when he knew he was, that on a Nevada application for licensure he falsely answered that he was not under investigation when he knew he was, his failure to advise a patient of his pending retirement and his unavailability to perform surgery he had promised to perform, and falsely reported the nature of surgery performed to an insurance carrier for payment; and repeated acts of negligence in regard to two (2) patients.

B. The conduct resulting in the California Board's disciplinary action against Respondent would constitute misconduct under the laws of New York state, pursuant to the following sections of New York state law:

1. New York Education Law §6530(2) (practicing the profession fraudulently);

2. New York Education Law §6530(3) (negligence on more than one occasion);

3. New York Education Law §6530(4) (gross negligence);

4. New York Education Law §6530(7) (practicing the profession while impaired);

5. New York Education Law §6530(16) (failure to comply with local laws, rules, or regulations governing the practice of medicine); and/or

6. New York Education Law §6530(20) (moral unfitness);

7. New York Education Law §6530(21) (making or filing a false report); and/or

8. New York Education Law §6530(30) (abandonment).

SPECIFICATIONS

FIRST SPECIFICATION

Respondent is charged with professional misconduct by reason of his having violated New York Education Law §6530(9)(b) by reason of having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York state, constitute professional misconduct under the laws of New York state, in that the Petitioner charges:

1. The facts in paragraphs A and/or B.

SECOND SPECIFICATION

Respondent is charged with professional misconduct by reason of his having violated New York State Education Law §6530(9)(d) by reason of his having had his license revoked or other disciplinary action taken against him after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation or other disciplinary action would, if committed in New York state, constitute professional misconduct under the laws of New York state, in that the Petitioner charges:

2. The facts in paragraphs A and/or B.

DATED: Jan. 28, 2000
Albany, New York

Peter D. Van Buren

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