

THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, N.Y. 12234

OFFICE OF PROFESSIONAL DISCIPLINE  
ONE PARK AVENUE, NEW YORK, NEW YORK 10016-5802

August 15, 1990

Narain Govender, Physician  
P.O. Box 766  
Skaneateles, N.Y. 13152

Re: License No. 133121

Dear Dr. Govender:

Enclosed please find Commissioner's Order No. 10883/8866. This Order and any penalty contained therein goes into effect five (5) days after the date of this letter.

If the penalty imposed by the Order is a surrender, revocation or suspension of your license, you must deliver your license and registration to this Department within ten (10) days after the date of this letter. In such a case your penalty goes into effect five (5) days after the date of this letter even if you fail to meet the time requirement of delivering your license and registration to this Department.

Very truly yours,

DANIEL J. KELLEHER  
Director of Investigations  
By:

MOIRA A. DORAN  
Supervisor

DJK/MAH/er  
Enclosures

CERTIFIED MAIL- RRR

cc:

RECEIVED

AUG 20 1990

Office of Professional Discipline  
Medical Council

REPORT OF THE  
REGENTS REVIEW COMMITTEE

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NARAIN GOVENDER

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CALENDAR NOS. 10883/8866



# The University of the State of New York

IN THE MATTER

of the

Disciplinary Proceeding

against

**NARAIN GOVENDER**

**Nos. 10883/8866**

who is currently licensed to practice  
as a physician in the State of New York.

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## REPORT OF THE REGENTS REVIEW COMMITTEE

NARAIN GOVENDER, hereinafter referred to as respondent, was licensed to practice as a physician in the State of New York by the New York State Education Department.

The instant disciplinary proceeding was properly commenced and on February 24, 1988 and March 18, 1988 a hearing was held before a hearing committee of the State Board for Professional Medical Conduct. A copy of the amended statement of charges is annexed hereto, made a part hereof, and marked as Exhibit "A".

On May 17, 1988 the hearing committee rendered a report of its findings, conclusions, and recommendation a copy of which, without attachment, is annexed hereto, made a part hereof, and marked as Exhibit "B".

The hearing committee concluded that respondent was guilty of the first specification of the amended statement of charges based

**NARAIN GOVENDER (10883/8866)**

on incompetence on more than one occasion, and of the second specification of the amended statement of charges, and recommended that respondent be Censured and Reprimanded and required to undertake and complete, within his current licensing period, a minimum of 100 hours of education and training as approved by the American Board of Obstetrics and Gynecology.

On June 24, 1988 the Commissioner of Health recommended to the Board of Regents that the findings and conclusions of the hearing committee be accepted, and that the recommendation of the hearing committee be clarified as indicated in his June 24, 1988 recommendation, and that respondent's license be suspended and that such suspension be stayed provided that respondent, within one year of the effective date of such suspension, complete 100 hours of education and training in obstetrics and gynecology approved by the Office of Professional Medical Conduct. A copy of the June 24, 1988 recommendation of the Commissioner of Health is annexed hereto, made a part hereof, and marked as Exhibit "C".

On October 26, 1988 this matter was heard by a previous Regents Review Committee consisting of Chancellor Emeritus Willard A. Genrich, Simon J. Liebowitz, Esq., and Patrick J. Picariello, Esq. The previous Regents Review Committee raised concerns about the testimony of petitioner's sole expert witness, and recommended that this case be remanded to the hearing committee to specifically address the question of the credibility of petitioner's expert

**NARAIN GOVENDER (10883/8866)**

witness in regard to his assertions concerning his knowledge of respondent (see pp. 2-3 of the March 28, 1989 report of the previous Regents Review Committee which is annexed hereto, made a part hereof, and marked as Exhibit "D").

On April 14, 1989 the Board of Regents voted to accept the recommendation of the previous Regents Review Committee and to remand this case in accordance with the March 28, 1989 Regents Review Committee Report. A copy of the April 14, 1989 vote of the Board of Regents is annexed hereto, made a part hereof, and marked as Exhibit "E". On May 16, 1989 the Commissioner of Education issued an order implementing the April 14, 1989 vote of the Board of Regents remanding this case. A copy of the May 16, 1989 Order of the Commissioner of Education is annexed hereto, made a part hereof, and marked as Exhibit "F".

On November 20, 1989 the hearing committee held a further hearing in accord with the remand instructions contained in the May 16, 1989 Order of the Commissioner of Education. On February 6, 1990 the hearing committee issued a supplemental report reaffirming its previous findings of fact, conclusions, and recommendations, with a partial amendment of its previous recommendation as to the measure of discipline, and with nine additional findings of fact, as set forth in the supplemental report of the hearing committee. A copy of the February 6, 1990 supplemental report of the hearing committee, without attachment, is annexed hereto, made a part

**NARAIN GOVENDER (10883/8866)**

hereof, and marked as Exhibit "G".

On March 30, 1990 the Commissioner of Health recommended to the Board of Regents that the findings of fact, conclusions, and recommendation of the hearing committee be accepted. A copy of the March 30, 1990 recommendation of the Commissioner of Health is annexed hereto, made a part hereof, and marked as Exhibit "H".

On May 31, 1990 respondent appeared before us in person, but no attorney appeared before us to represent respondent. Respondent elected to proceed without an attorney and presented oral argument on his own behalf. Kevin C. Roe, Esq., presented oral argument on behalf of the Department of Health.

Petitioner's recommendation as to the measure of discipline to be imposed, should respondent be found guilty, was: suspension stayed on condition respondent obtains 100 hours continuing medical education in the obstetrics/gynecology field within one year.

Respondent elected not to make a recommendation as to the measure of discipline to be imposed should respondent be found guilty.

We have considered the record as transferred by the Commissioner of Health in this matter, which includes the original record as well as the record upon remand, and the transcript of the May 31, 1990 hearing before us.

This matter was remanded so that the hearing committee could reassess the credibility of the petitioner's expert witness, Dr.

**NARAIN GOVENDER (10883/8866)**

Selendy, in light of certain apparent inconsistencies in the testimony of Dr. Selendy. In particular, the hearing committee was to address Dr. Selendy's testimony that he did not know the respondent. We are satisfied, based upon the hearing committee's supplemental report and upon the record in this matter, that the testimony of Dr. Selendy is credible. We find that Dr. Selendy's original statement that he did not know the respondent was true as Dr. Selendy understood the question. Dr. Selendy did not know the respondent personally, but merely knew of him. Certainly, the limited professional contact that Dr. Selendy had with respondent could easily have been overlooked by Dr. Selendy, who apparently viewed the question as dealing with knowing respondent on a social basis or knowing respondent through extensive contact.

There is no evidence in the record of any bias against respondent by petitioner or petitioner's expert witness and we reject respondent's contentions that such bias was the basis for the charges or testimony herein. We agree with the hearing committee and Commissioner of Health that respondent practiced incompetently on more than one occasion with regard to patients A, B, and C, and that respondent failed to keep accurate records.

We recommend a modification of the recommendations of the hearing committee and Commissioner of Health as to the measure of discipline. We see no point in this case to adding a Censure and Reprimand to the one year stayed suspension we hereafter recommend.

**NARAIN GOVENDER (10883/8866)**

Under the circumstances herein, the Censure and Reprimand originally suggested by the hearing committee and never subsequently deleted by it, and which was ultimately supported by the Commissioner of Health, is superfluous. We also note that the hearing committee and Commissioner of Health have recommended an indefinite total suspension to be stayed if respondent completes a 100 hour course of education and training in obstetrics and gynecology within one year of the effective date of such suspension. As formulated, this recommendation is not authorized by Education Law §6511, which does not allow for indefinite total suspensions of licenses pending retraining in a particular area. In addition, our unanimous opinion is that a 50 hour course of training in obstetrics and gynecology is sufficient herein. The misconduct herein is confined to August and September, 1985. Respondent has otherwise had an unblemished record for the 13 years he has been licensed as a physician in New York State. Moreover, respondent indicated that he voluntarily pursues continuing medical education. Based on all the foregoing, the penalty we hereafter recommend is appropriate under the circumstances of this case.

We unanimously recommend the following to the Board of Regents:

1. The hearing committee's findings of fact and conclusions as to the question of respondent's guilt contained in the May 17, 1988 report of the hearing committee and the



**NARAIN GOVENDER (10883/8866)**

- February 6, 1990 supplemental report of the hearing committee be accepted, and the Commissioner of Health's June 24, 1988 and March 30, 1990 recommendations as to those findings of fact and conclusions be accepted;
2. The hearing committee's recommendations as to the measure of discipline contained in the May 17, 1988 report of the hearing committee and the February 6, 1990 supplemental report of the hearing committee be modified, and the Commissioner of Health's recommendations as to the measure of discipline contained in his June 24, 1988 and March 30, 1990 recommendations be modified;
  3. Respondent be found guilty, by a preponderance of the evidence, of the first specification of the amended statement of charges based on incompetence on more than one occasion, and the second specification of the amended statement of charges; and
  4. That, based upon the reasons previously set forth in this report, respondent's license to practice as a physician in the State of New York be suspended for one year upon each specification of the amended statement of charges of which we recommend respondent be found guilty, said suspensions to run concurrently, that execution of said suspensions be stayed, and respondent be placed on probation for one year under the terms set forth in the

NARAIN GOVENDER (10883/8866)

exhibit annexed hereto, made a part hereof, and marked as Exhibit "I", said probation terms to include a 50 hour course of training in obstetrics/gynecology.

Respectfully submitted,

EMLYN I. GRIFFITH

JANE M. BOLIN

PATRICK J. PICARIELLO

  
Chairperson

Dated:

7/10/90

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

-----X  
IN THE MATTER : AMENDED  
OF : STATEMENT  
NARAIN K. GOVENDER, M.D., : OF CHARGES  
-----X

The State Board for Professional Medical Conduct, upon information and belief, charges and alleges as follows:

1. NARAIN K. GOVENDER, M.D. hereinafter referred to as the Respondent, was authorized to engage in the practice of medicine in the State of New York on November 25, 1977 by the issuance of License Number 133121 by the State Education Department.
2. The Respondent is currently registered with the New York State Education Department to practice medicine for the period January 1, 1986 through December 31, 1988 from P.O. Box 766, Skaneateles, New York 13152.
3. The Respondent herein is charged with professional misconduct within the purview of N.Y. Educ. Law §6509 (McKinney 1985 and Supp. 1987) as set forth in the attached Specification.

FIRST SPECIFICATION

4. The Respondent is charged with professional misconduct by reason of practicing the medical profession with negligence and/or incompetence on more than one occasion within the meaning of N.Y. Educ. Law §6509(2) (McKinney 1985) in that:

(a) With respect to Patient A, (Patient A and all patients named herein are more fully identified in Appendix A), who underwent a cesarean section delivery performed by the Respondent at Chenango Memorial Hospital, Norwich, New York, on or about August 16, 1985, the Respondent:

(i) failed to correctly evaluate Patient A's condition pre-operatively;

(ii) induced labor and performed a cesarean section delivery prematurely.

(b) With respect to Patient B, treated by the Respondent for removal of an IUD and to rule out ectopic pregnancy, at Chenango Memorial Hospital on or about August 13, 1985, the Respondent:

unnecessarily performed a culdocentesis to rule out an ectopic pregnancy.

(c) With respect to Patient C, treated by the Respondent for abdominal pain and irregular vaginal bleeding,


in Chenango Memorial Hospital on or about September 24, 1985,  
the Respondent:

- (i) failed to properly evaluate Patient C's  
condition;
- (ii) performed an unnecessary hydrotubation.

SECOND SPECIFICATION

5. The Respondent is charged with professional misconduct by reason of committing unprofessional conduct as defined by the Board of Regents within the meaning of N.Y. Educ. Law §6509(9) (McKinney 1985) in that the Respondent failed to keep records which accurately reflected the evaluation and treatment of the above described Patients A, B and C in violation of N.Y. Admin. Code §29.2(a)(3) (1987).

DATED: Albany, New York  
*February 19, 1988*

  
\_\_\_\_\_  
PETER D. VAN BUREN  
Deputy Counsel  
Office of Professional Medical  
Conduct

STATE OF NEW YORK : DEPARTMENT OF HEALTH  
BUREAU OF PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER : REPORT BY  
OF : HEARING  
MIRIAM GOVENDER, M.D. : COMMITTEE

COMMISSIONER DAVID AXELROD, M.D.  
Commissioner of Health, State of New York

The hearing was held by the Hearing Committee with the following members: Albert M. ... (Chairman), ... and Sister Mary Theresa Murphy was ... and appointed by the State Board of Professional Medical Conduct (the Board). Joseph L. ... the Administrative Officer.

The hearing was conducted pursuant to the provisions of New York Public Health Law Section 209 and the Administrative Procedure Act Sections 201-207 to ... evidence concerning the charges that the Respondent ... of New York Education Law Section ... and sworn and examined. A stenographic report of the hearing was made. Exhibits were received in evidence and made a part of the record.

The following is a summary of the entire record in the above captioned matter and is based on a Report of the Findings of Fact, the Evidence and Recommendations to the New York State Board of Regents of Health (the Commission).

### SUMMARY OF PROCEEDINGS

Notice of Hearing and Statement of Charges:	January 4, 1938
Notice of Hearing Returnable:	February 24, 1938
Amended Statement of Charges:	February 19, 1938
Notice of Hearing:	Denounced January 24, 1938 Empire State Building Albany, New York
Notice of Hearing and Statement of Charges:	February 24, 1938
Notice of Hearing for Professionals: Notice of Hearing served by	Ralph J. Davero, Esq. Attorney at Law 105, Albany, New York
Notice of Hearing for Respondents:	George M. Leates, Esq. 417 North Jayuga Syracuse Syracuse, New York 14850
Hearings held at:	February 24, 1938 February 13, 1938
Proceedings held by Commission:	April 29, 1938
Attorney for Department of Health:	Salome Salandy, M. D. 312 E. 104th St. Brooklyn, New York
Attorney for Respondents:	Newton G. Osborne, M.D. 3185 Winterton Drive Tuxedoville, New York

## STATEMENT OF CHARGES

In the Statement of Charges, Respondent Narain Govender, M.D. is charged with professional misconduct within the meaning of the New York State Education Law, Section 6500, as set forth in the specifications in the Statement of Charges a copy of which is attached to the Report as Appendix "A".

## PRELIMINARY FINDINGS OF FACT

1. Respondent Narain Govender, M.D. was issued License No. 13421, authorizing him to practice medicine, by the New York State Department of Education on December 29, 1977 (Exh. 1).

2. At the time of the hearing, Respondent Govender was registered to practice medicine, for the period January 1, 1986 through December 31, 1988, from P. O. Box 768, Skaneateles, New York, 13152 (Exh. 2).

## FINDINGS OF FACT AND CONCLUSIONS

Introductory Note: The Findings of Fact and Conclusions and overall Recommendations of the Committee follow infra. To facilitate understanding, the Findings of Fact and Conclusions will be presented on a patient by patient basis.



Patient A:

Findings of Fact

A.1 Patient A, a female, date of birth May 5, 1967, was admitted to Chenango Memorial Hospital under Respondent Govender's directions at 12:40 PM on August 16, 1985 with his diagnosis that she was ... "in labor, post term, fetal distress, non-progression of labor" (T-pp 14, 141; Exhibit 4 - Admitting Record).

A.2 At the time of her admission, Patient A was fingertip dilated, having irregular contractions and showing no evidence of fetal distress (T-p 18; Exhibit 4 - Admitting Record).

A.3 Patient A was not then overdue (T-p 32).

A.4 Patient A's condition at 3:00 PM, over two hours after her admission, was of early labor, with contractions occurring at ten to fifteen minutes apart and still no evidence of fetal distress (T-p 19; Exhibit 4 - Labor Record).

A.5 At 3:15 PM Patient A was placed on a fetal monitor (Exhibit 5 - Monitor Strip).

A.6 An hour and a quarter later, at 4:30 PM, Patient A was out of bed and walking (T-p 19; Exhibit 4 - Labor Record).

A.7 Following IV administration of Oxytocin (pitocin) beginning at 5:50 PM, Patient A's contractions rate increased to two to three minute intervals and, with further increase of the medication, her membranes ruptured and meconium staining was obtained (T-pp 20, 290; Exhibit 4). Respondent Govender's directions at 12:40 PM on August 15, 1988 were to dilate to 4 centimeters. At 8:00 PM, Patient A was found to be four centimeters dilated with contractions occurring every two minutes and the Oxytocin was discontinued (T-pp 24, 292; Exhibit 4).

A.9 At this time Patient A was also removed from the fetal monitor whose record had indicated no evidence of fetal distress (T-p 25; Exhibit 5).

A.10 At 9:50 PM of the same day, Patient A was delivered of her pregnancy by Cesarean section (T-p 293; Exhibits 4 and 6).

A.11 The Operative Report of the Cesarean section procedure was not available for this hearing (T-p 26).

A.12 Dr. Balazs Selendy (the Department's expert witness) testified that in the following respects, the records kept by Respondent Govender did not accurately reflect the evaluation and treatment of Patient A:

a. Page 2 of the Antepartum Record, normally completed, as was Page 1, at the time of Patient A's initial examination, reflected information obtained at the time of her admission (T-p 36).

b. Page 3 of the same record lacked completion (T-pp 36-37).

c. Information contained in the patient's record are not consistent throughout (T-p 41; Exhibit 4).

#### Conclusions

1. The Hearing Committee unanimously concludes that Respondent Narain Govender, M.D. is guilty of having practiced medicine with incompetence as charged in Paragraph 4(a) of the Statement of Charges with respect to Allegation (a)(i). The Committee concludes that, in the absence of identifiable fetal distress and in view of the normalcy of Patient A's condition of early labor, no interference was indicated at the time of her admission. The Respondent erred in his initial evaluation of Patient A and his admitting diagnosis of her as being post term, with fetal distress and suffering non-progression of labor. The Respondent should have performed other preliminary tests.

2. The Hearing Committee unanimously concludes that Respondent Narain Govender, M.D. is guilty of having practiced medicine with incompetence as charged in Paragraph 4(a) of the Statement of Charges with respect to

Allegation 4(a)(ii). The Committee concludes that, whereas interference with Patient A's labor process was not indicated, the induction of labor and the early use of Oxytocin, instead of utilizing accepted means available for testing fetal stress or distress, were deviations from acceptable medical standards. The Committee further concludes that absent the induction and rupture brought on by the administration of Oxytocin, the Cesarean section was not indicated and thus premature for the pregnancy's delivery.

3. The Hearing Committee unanimously concludes that Respondent Narain Govender, M.D. was guilty of having practiced medicine with incompetence as charged in Paragraph 5 (Second Specification) of the Statement of Charges. The Committee concludes that Dr. Govender's manner of records keeping did not accurately reflect his evaluation of Patient A and of the treatment given her.

Patient B:

Findings of Fact

B.1 Patient B was first seen by Respondent Govender M.D. in his office on August 9, 1985, at which time she complained of lower abdominal pain and of having missed her period and requested the removal of an intrauterine contraceptive device (IUD) (T-pp 86, 320; Exhibits 8 and 9.

B.2 Upon examination of her, Respondent Govender was unable to locate the string of the IUD (T-p 320).

B.3 During the office visit, Respondent directed two tests for Patient A, a serum pregnancy test and a pelvic ultra sound test, which tests, when completed, revealed (1) that Patient B was not pregnant and (2) that the IUD was located within the uterine cavity (T-pp 88, 320, 321).

B.4 Following the tests, and notwithstanding the negative pregnancy result, Respondent entertained the possibility of an ectopic pregnancy (T-pp 87, 321; Exhibit 9).

B.5 Patient B was admitted to Chanango Memorial Hospital on August 18, 1935, and the following procedures were done: Examination under anesthesia, dilatation and curettage, removal of an embedded Copper 7 IUD, culdocentesis (Exhibit 8 - Report of Operation).

B.6 No fluids were obtained from the culdocentesis procedure (T-p 92; Exhibit 8 - Report of Operation).

B.7 Dr. Balazs Selendy testified that culdocentesis is not a diagnostic step for an active gestation; it shows the presence or absence of fluids (T-pp 90, 91, 101, 106).

B.8 Dr. Selendy further testified that his examination of the records of Patient B revealed a lack of

details in Respondent's office records covering his examination of Patient B and his rationale for proposing hospitalization (T-pp 94-95; Exhibit 9).

### Conclusions

1. The Hearing Committee unanimously concludes that Respondent Narain Govender, M.D. is guilty of having practiced medicine with incompetence as charged in Paragraph 4(b) of the Statement of Charges. The Committee concludes that the Respondent performed an unnecessary culdocentesis, during his concern for the possible presence of an ectopic pregnancy, since the procedure is not a helpful or satisfactory step in the diagnosis of ectopic gestation.

2. The Hearing Committee unanimously concludes that Respondent Narain Govender, M.D. is guilty of having practiced medicine with incompetence as charged in Paragraph 5 (Second Specification) of the Statement of Charges. The Committee concludes that the record of his office examination of Patient B was not complete or adequately described his findings.

Patient C:

Findings of Fact

C.1 Patient C, a mother of two, was seen by Respondent Govender in his office on September 9, 1985 at which time she complained of inability to conceive and requested a physical examination and pap smear (T-p 108; Exhibit 11).

C.2 On September 24, 1985, Patient C was admitted to Chanango Memorial Hospital with an admitting diagnosis of dysfunctional uterine bleeding with cervicitis and possible salpingitis chronic. (T-p 109; Exhibit 10 - Admitting Record).

C.3 After admission, Patient C underwent an examination under anesthesia, a Schiller test on the cervix with cauterization of the cervix, injection of Methylene blue dye through the Rubin's cannula to test for patency of the fallopian tubes (hydrotubation), curettage of the endometrial cavity and a diagnostic laparoscopy. (T-p 110; Exhibit 10 - Report of Operation).

C.4 At the time of Patient C's admission, infertility was not a concern in Respondent's evaluation of her condition (T-pp 331, 333, 337).

C.5 Respondent Narain Govender testified that he performed the hydrotubation, notwithstanding the showing of fallopian tubes' patency through the laparoscopy and his lack of concern over any fertility problem, because...."while I was there, I would check the patency of the tubes, which is just to me a very benign procedure... (T-p 335)

C.6 The Record contains two dissimilar Discharge Summaries, both relating to the September 24th admission and discharge of Patient C, but neither are consistent with the Report of the Operation (see T-pp 117, 248; Exhibit 10 - Report of Operation, Discharge Summaries(2)).

C.7 Respondent's outpatient records for Patient C contains no data substantiating his admission diagnosis (T-p 117).

#### Conclusions

1. The Hearing Committee unanimously concludes that Respondent Narain Govender, M.D. is guilty of practicing medicine with incompetence as charged in Paragraph 4(c) of the Statement of Charges with respect to Allegation 4(c)(i). The Committee concludes that Respondent improperly evaluated Patient C's condition. C's chief complaint was a request for an examination and a pap smear coupled with concern for



having failed to conceive within an eighteen months period. The doctor's records show no indication of a need for hospitalization and surgical procedures.

2. The Hearing Committee unanimously concludes that Respondent Narain Govender, M.D. is guilty of practicing medicine with incompetence as charged in Paragraph 4(c) of the Statement of Charges with respect to Allegation 4(c)(ii). The Committee concludes that the Respondent lacked justification for performing the hydrotubation, especially since patency of the fallopian tubes had already been established.

3. The Hearing Committee unanimously concludes that Respondent Narain Govender, M.D. is guilty of practicing medicine with incompetence as charged in Paragraph 5 (Second Specification) of the Statement of Charges. The Committee concludes that Respondent failed to keep records on Patient C which accurately reflected his evaluation and treatment of her.

#### GENERAL CONCLUSIONS

The Hearing Committee unanimously concludes that Respondent Narain Govender, M.D. is guilty of professional misconduct by reason of practicing the medical profession

with incompetence on more than one occasion within the meaning of New York State Education Law, Section 6509(2) as separately concluded with respect to Charges 4(a)(i) & (ii), 4(b) and 4(c)(i) & (ii) of the First Specification in that he demonstrated a lack of expertise or knowledge necessary to practice the profession.

The Hearing Committee unanimously concludes further that Respondent Govender is guilty of professional misconduct by reason of failing to keep accurate and proper records relating to Patients A, B and C.

#### RECOMMENDATIONS

Based on the Hearing Committee's consideration of all information presented to it, the Hearing Committee unanimously recommends that the Respondent be censured and reprimanded for his behavior.

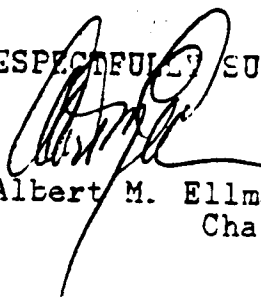
The Committee further recommends that the Respondent be required to undertake and complete, within his

current licensing period, a minimum of one hundred (100) hours of education and training as approved by the American Board of Obstetrics and Gynecology.

DATED:

5/17/88

RESPECTFULLY SUBMITTED,

  
Albert M. Ellman, M.D.  
Chairperson

Panel Members

Sister Mary Theresa Murphy  
Ernest A. Kopp, M.D.

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

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IN THE MATTER :  
OF : COMMISSIONER'S  
NARAIN GOVENDER, M.D. : RECOMMENDATION

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TO: Board of Regents  
New York State Education Department  
State Education Building  
Albany, New York

A hearing in the above-entitled proceeding was held on February 24 and March 18, 1988. The Respondent, Narain Govender, M.D., appeared by George M. Dentes, Esq. The evidence in support of the charges against the Respondent was presented by Ralph J. Bavaro, Esq.

NOW, on reading and filing the transcript of the hearing, the exhibits and other evidence, and the findings, conclusions and recommendation of the Committee,

I hereby make the following recommendation to the Board of Regents:

- A. The Findings of Fact and Conclusions of the Committee should be accepted in full;

- B. The Recommendation of the Committee should be clarified. The Committee recommends a censure and reprimand and 100 hours of education and training. As written, the education and training appears to be a condition for re-registration in December 1988 when Respondent's current registration expires. I do not understand that the current registration process is geared to review compliance with monitoring terms and conditions of continued practice. It is also not clear whether the American Board of Obstetrics and Gynecology is to approve the education and training, in general, or for Respondent, in particular. The latter, I suggest, would be an inappropriate delegation of authority. The former would not guarantee that Respondent's deficits were corrected. I, therefore, recommend that Respondent's license be suspended and that such suspension be stayed provided that Respondent, within one year of the effective date of such suspension, complete 100 hours of education and training in obstetrics and gynecology approved by the Office of Professional Medical Conduct.
- C. The Board of Regents should issue an order adopting and incorporating the Findings of Fact and Conclusions and further adopting as its determination the Recommendation described above.

The entire record of the within proceeding is transmitted with this Recommendation.

Dated: Albany, New York

June 24, 1988



DAVID AXELROD, M.D.  
Commissioner of Health  
State of New York



# The University of the State of New York

IN THE MATTER  
of the  
Disciplinary Proceeding  
against

NARAIN GOVENDER

No. 8866

who is currently licensed to practice as  
a physician in the State of New York.

---

## Report of the Regents Review Committee

NARAIN GOVENDER, hereinafter referred to as respondent, was licensed to practice as a physician in the State of New York by the New York State Education Department.

The instant disciplinary proceeding was duly commenced and on February 24, 1988 and March 18, 1988 a hearing was held before a hearing committee of the State Board for Professional Medical Conduct. A copy of the amended statement of charges is annexed hereto, made a part hereof, and marked as Exhibit "A".

The hearing committee rendered a report of its findings, conclusions, and recommendation a copy of which, without attachment, is annexed hereto, made a part hereof, and marked as Exhibit "B".

The hearing committee concluded that respondent was guilty of the first specification of the charges based upon incompetence on more than one occasion, guilty of the second specification, and

NARAIN GOVENDER (8866)

recommended that respondent be Censured and Reprimanded and required to undertake and complete, within his current licensing period, a minimum of one hundred hours of education and training as approved by the American Board of Obstetrics and Gynecology.

The Commissioner of Health recommended to the Board of Regents that the findings and conclusions of the hearing committee be accepted, and that the recommendation of the hearing committee be clarified as indicated in his recommendation, a copy of which is annexed hereto, made a part hereof, and marked as Exhibit "C".

On October 26, 1988 respondent appeared before us in person, but was not represented by an attorney. Ralph Bavaro, Esq., represented the Department of Health.

We have considered the record transferred to us by the Commissioner of Health in this matter, as well as various letters submitted by both parties herein and the transcript of our October 26, 1988 meeting.

The findings and conclusions of the hearing committee and the Commissioner of Health's recommendation as to those findings and conclusions depend on the testimony of petitioner's sole expert witness. The hearing committee's fact findings are replete with references to that expert's testimony. Fact findings A.12, B.7, and B.8 are nothing more than restatements of the testimony of that expert. We have grave concerns over the credibility of this expert witness based upon the present record which reflects that the expert witness denied knowing respondent or having had contact.

NARAIN GOVENDER (8866)

with any physician at the hospital where respondent was employed. There is evidence contradicting the assertions of petitioner's expert witness. We deem this conflict a crucial point in any assessment and determination of the credibility of petitioner's expert witness.

Unfortunately, there is no indication in either the hearing committee's report or the Commissioner of Health's recommendation that the aforesaid conflict regarding the testimony of said expert was resolved or even considered. In view thereof, it is our unanimous opinion that this matter should be remanded to the hearing committee as hereafter indicated.

We unanimously recommend the following to the Board of Regents:

1. The present findings, conclusions, and recommendation of the hearing committee and the Commissioner of Health's recommendation as to those findings, conclusions, and recommendation not be accepted;
2. This matter be remanded to the hearing committee to specifically address the question of the credibility of petitioner's expert witness in regard to his aforementioned assertions and, in this regard, both petitioner and respondent shall be given the opportunity to present further evidence, including cross-examination, in regard to the issue of said expert witness' knowledge of respondent;



NARAIN GOVENDER (8866)

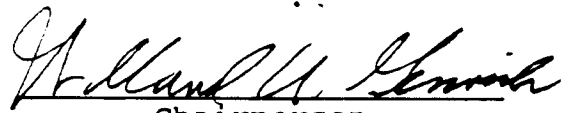
3. Upon conclusion of the hearing, the hearing committee shall issue a new report of its findings, conclusions, and recommendation in which the hearing shall also address the issue of the credibility of petitioner's expert witness in regard to his knowledge of respondent; and
4. The Commissioner of Health shall thereafter render his recommendation and this matter shall be reviewed by the Regents Review Committee, consisting of the same or different members, in whole or in part, and the record shall consist of the aforementioned prior record, letters, and transcript reviewed by this Committee as well as the additional record.

Respectfully submitted,

WILLARD A. GENRICH

SIMON J. LIEBOWITZ

PATRICK J. PICARIELLO

  
Chairperson

Dated: March 28, 1989

Approved April 14, 1989

No. 8866

Upon the report of the Regents Review Committee, under Calendar No. 8866, the record herein, and in accordance with the provisions of Title VIII of the Education Law, it was

Voted: That, in the matter of NARAIN GOVENDER, respondent, the recommendation of the Regents Review Committee be accepted as follows:

1. The present findings, conclusions, and recommendation of the hearing committee and the Commissioner of Health's recommendation as to those findings, conclusions, and recommendation not be accepted;
2. This matter be remanded to the hearing committee to specifically address the question of the credibility of petitioner's expert witness in regard to his assertions indicated in the report of the Regents Review Committee and, in this regard, both petitioner and respondent shall be given the opportunity to present further evidence, including cross-examination, in regard to the issue of said expert witness' knowledge of respondent;
3. Upon conclusion of the hearing, the hearing committee shall issue a new report of its findings, conclusions, and recommendation in which the hearing committee shall also address the issue of the credibility of petitioner's expert witness in regard to his knowledge of respondent; and

NARAIN GOVENDER (8866)

4. The Commissioner of Health shall thereafter render his recommendation and this matter shall be reviewed by the Regents Review Committee, consisting of the same or different members, in whole or in part, and the record shall consist of the aforementioned prior record, letters, and transcript reviewed by this Committee as well as the additional record;

and that the Commissioner of Education be empowered to execute, for and on behalf of the Board of Regents, all orders necessary to carry out the terms of this vote.



# The University of the State of New York

IN THE MATTER

OF

**NARAIN GOVENDER**  
(Physician)

**DUPLICATE**  
**ORIGINAL ORDER**  
**NO. 8866**

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Upon the report of the Regents Review Committee, under Calendar. No. 8866, the record herein, the vote of the Board of Regents on April 14, 1989, and in accordance with the provisions of Title VIII of the Education Law, which report and vote are incorporated herein and made a part hereof, it is

ORDERED that, in the matter of NARAIN GOVENDER, respondent, the recommendation of the Regents Review Committee be accepted as follows:

1. The present findings, conclusions, and recommendation of the hearing committee and the Commissioner of Health's recommendation as to those findings, conclusions, and recommendation not be accepted;
2. This matter be remanded to the hearing committee to specifically address the question of the credibility of petitioner's expert witness in regard to his assertions indicated in the report of the Regents Review Committee and, in this regard, both petitioner and respondent shall be given the opportunity to present further

NARAIN GOVENDER (8866)

evidence, including cross-examination, in regard to the issue of said expert witness' knowledge of respondent;

3. Upon conclusion of the hearing, the hearing committee shall issue a new report of its findings, conclusions, and recommendation in which the hearing committee shall also address the issue of the credibility of petitioner's expert witness in regard to his knowledge of respondent; and
4. The Commissioner of Health shall thereafter render his recommendation and this matter shall be reviewed by the Regents Review Committee, consisting of the same or different members, in whole or in part, and the record shall consist of the aforementioned prior record, letters, and transcript reviewed by this Committee as well as the additional record.

IN WITNESS WHEREOF, I, Thomas Sobol,  
Commissioner of Education of the State  
of New York, for and on behalf of the  
State Education Department and the Board  
of Regents, do hereunto set my hand and  
affix the seal of the State Education  
Department, at the City of Albany, this  
16<sup>th</sup> day of May, 1989.

*Thomas Sobol*

Commissioner of Education

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

-----X SUPPLEMENTAL  
IN THE MATTER : REPORT OF  
OF : THE HEARING  
NARAIN GOVENDER, M.D. : COMMITTEE  
-----X

TO: The Honorable David Axelrod, M.D.  
Commissioner of Health, State of New York

Albert M. Ellman, M.D. Chairperson, Ernest A. Kopp, M.D. and Sister Mary Theresa Murphy 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. Tyrone T. Butler, Administrative Law Judge, served as Administrative Officer for the Hearing Committee.

The Hearing Committee submitted its initial report to the Commissioner of Health, dated May 17, 1988, based upon its consideration of the entire record of the original proceedings. The Commissioner of Health's Recommendation, dated June 24, 1988, was submitted to the Board of Regents. By Order #8866 of the Commissioner of Education, dated May 16, 1989, the Board of Regents remanded the matter to the Hearing Committee to specifically address the question of the credibility of the petitioner's expert witness, Dr. Balazs Selendy, M.D., in regard to his assertions that he did not know the respondent. (OT. 12)

Transcript cites shall be designated as "OT", indicating the transcript of the initial hearing conducted on February 24, 1988 and March 18, 1988. The designation "RT" shall relate to cites from the remand hearing conducted on November 20, 1989.

Upon further consideration of the matter by the Hearing Committee including review of the Committee Report, dated May 17, 1988 and the presentation of evidence by both parties at a remand hearing on November 20, 1989, the Hearing Committee submits this supplemental report.

As a part of this report and attached to it as "Appendix A", is the committee's original report which is adopted in its entirety with the exception that the committee partially amends its original recommendations as will be noted below.

SUMMARY OF PROCEEDINGS

ORIGINAL PROCEEDINGS:

(See Appendix A, page 2)

REMAND PROCEEDINGS:

Hearing Date: November 20, 1989

Place of hearing: 29th Floor Conference Room  
Corning Tower Building  
Empire State Plaza  
Albany, New York

Department of Health  
appeared by:

Peter J. Millock, Esq.,  
General Counsel by  
Kevin C. Roe, Esq.  
Office of Professional  
Medical Conduct

Respondent appeared by:

Pro se

Deliberations were held on:

January 5, 1989

SUMMARY OF CHARGES

(See Appendix A, page 3)

WITNESSES

On behalf of the Department:

Balazs Selendy, M.D.

On behalf of the Respondent:

Narain Govender, M.D. (Respondent)

FINDINGS OF FACT

1. Dr. Balazs Selendy, M.D. appeared as an expert witness for the Department in an PMC hearing against the Respondent conducted on February 24, 1988. (OT. 10 -127)

2. During direct examination Dr. Selendy was asked by Department's counsel, Ralph A. Bavaro:

Q. "Dr. Selendy, do you know Dr. Govender?"

A. "No, I do Not."  
(OT. 12)

3. The Respondent, Dr. Govender, stated during direct examination, on March 18, 1988:

Q. "...You said you knew Dr. Selendy?"

A. "I knew him very well, from 1978."

Q. "In what way?"

A. " I have met him personally; we talked about charts, prenatal charts. I called him on the phone and discussed microsurgery." (OT. 298)

4. Dr. Selendy has had patients referred to him by the respondent but he does not know the respondent personally. (RT. 17)

5. Dr. Selendy and the Respondent have exchanged phone calls and attended meetings with other medical personnel over the course of years. (RT. 23 - 24)

6. Dr. Selendy and the Respondent have corresponded, in writing, with regard to a patient referred to Dr Selendy by the Respondent. (RT. 26)

7. Dr. Selendy is an Associate Attending Physician at the Mary Imogene Basset Hospital, Cooperstown, NY, since 1972. (OT. 11, Remand EX. 1)

8. Basset Hospital has a continuing medical education program that is utilized by Ob-Gyn doctors in the area. (RT. 52)

9. The Respondent and Dr. Selendy have not had any social contact. (RT. 55)

#### CONCLUSIONS

The Committee agrees unanimously that the Department's expert witness Dr. Balazs Selendy, did not commit perjury when he testified that he does not know the Respondent. Indeed, he testified on February 24, 1988, that he did not "know" the Respondent and at the remand hearing he continued to assert that he does not know the Respondent within his understanding of the term, "to know someone".

The Committee is aware of the position of Dr. Selendy, as consultant to other doctors in the area, and understands that as such he has probably over the years come into professional contact with the respondent as well as others interested practitioners in the Ob-Gyn specialty.



Dr. Selendy's testimony at the remand hearing was credible in that he admitted to limited professional contacts with Dr. Govender, however, he did not consider this contact as "knowing" him. (RT. 33).

The Committee is not convinced that Dr. Selendy committed perjury, in testimony given at either the original or remand hearings, and we have no other reason to question the credibility of his expert testimony, regarding medical opinions, upon which the Committee relied in deciding the original issues.

Therefore, we reaffirm our original report, dated May 17, 1988, including: The findings of fact, conclusions and recommendations. However for the sake of clarity we will partially amend our recommendation in the following manner:

The recommendation that:

"The Committee further recommends that the Respondent be required to undertake and complete, within his current licensing period, a minimum of one hundred (100) hours of education and training as approved by the American Board of Obstetrics and Gynecology."

...shall be deleted and the following substituted in its place:

The Respondent's license shall be suspended and such suspension stayed provided that the Respondent within one year of the effective date of such suspension, complete one hundred (100) hours of education and training in obstetrics and gynecology approved by the Office of Professional Medical Conduct.

DATED: New York, N.Y.

*February 6, 1990*

Respectfully submitted



Albert M. Ellman, M.D.  
Chairperson  
Sister Mary Theresa Murphy  
Ernest A. Kopp, M.D.

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

-----X

IN THE MATTER :

OF :

NARAIN GOVENDER, M.D. :

-----X

COMMISSIONER'S

RECOMMENDATION

TO: Board of Regents  
New York State Education Department  
State Education Building  
Albany, New York

A hearing in the above-entitled proceeding was held on November 20, 1989. Respondent, Narain Govender, M.D., appeared Pro se. The evidence in support of the charges against the Respondent was presented by Kevin C. Roe, Esq.

NOW, on reading and filing the transcript of the hearing, the exhibits and other evidence, and the findings, conclusions and recommendation of the Committee,

I hereby make the following recommendation to the Board of Regents:

- A. The Findings of Fact and Conclusions of the Committee should be accepted in full;
- B. The Recommendation of the Committee should be accepted; and
- C. The Board of Regents should issue an order adopting and incorporating the Findings of Fact and Conclusions and further adopting as its determination the Recommendation described above.

The entire record of the within proceeding is transmitted with this Recommendation.

DATED: Albany, New York  
*March 30, 1990*

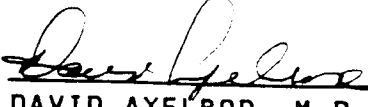
  
DAVID AXELROD, M.D.  
Commissioner of Health  
State of New York

EXHIBIT "I"

TERMS OF PROBATION  
OF THE REGENTS REVIEW COMMITTEE

NARAIN GOVENDER

CALENDAR NOS. 10883/8866

1. That respondent shall make quarterly visits to an employee of and selected by the Office of Professional Medical Conduct of the New York State Department of Health, unless said employee agrees otherwise as to said visits, for the purpose of determining whether respondent is in compliance with the following:
  - a. That respondent, during the period of probation, shall act in all ways in a manner befitting respondent's professional status, and shall conform fully to the moral and professional standards of conduct imposed by law and by respondent's profession;
  - b. That respondent shall submit written notification to the New York State Department of Health, addressed to the Director, Office of Professional Medical Conduct, Empire State Plaza, Albany, NY 12234 of any employment and/or practice, respondent's residence, telephone number, or mailing address, and of any change in respondent's employment, practice, residence, telephone number, or mailing address within or without the State of New York;
  - c. That respondent shall submit written proof from the Division of Professional Licensing Services (DPLS), New York State Education Department (NYSED), that respondent has paid all registration fees due and owing to the NYSED and respondent shall cooperate with and submit whatever papers are requested by DPLS in regard to said registration fees, said proof from DPLS to be submitted by respondent to the New York State Department of Health, addressed to the Director, Office of Professional Medical Conduct, as aforesaid, no later than the first three months of the period of probation; and
  - d. That respondent shall submit written proof to the New York State Department of Health, addressed to the Director, Office of

NARAIN GOVENDER (10883/8866)

Professional Medical Conduct, as aforesaid, that 1) respondent is currently registered with the NYSED, unless respondent submits written proof to the New York State Department of Health, that respondent has advised DPLS, NYSED, that respondent is not engaging in the practice of respondent's profession in the State of New York and does not desire to register, and that 2) respondent has paid any fines which may have previously been imposed upon respondent by the Board of Regents; said proof of the above to be submitted no later than the first two months of the period of probation;

2. That respondent shall, at respondent's expense, enroll in and diligently pursue a course of training in obstetrics/gynecology, said course of training to be selected by respondent and previously approved, in writing, by the Director of the Office of Professional Medical Conduct, said course to consist of 50 hours and to be satisfactorily completed during the period of probation, such completion to be verified in writing and said verification to be submitted to the Director of the Office of Professional Medical Conduct;
3. If the Director of the Office of Professional Medical Conduct determines that respondent may have violated probation, the Department of Health may initiate a violation of probation proceeding and/or such other proceedings pursuant to the Public Health Law, Education Law, and/or Rules of the Board of Regents.

**ORDER OF THE COMMISSIONER OF  
EDUCATION OF THE STATE OF NEW YORK**

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**NARAIN GOVENDER**

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**CALENDAR NOS. 10883/8866**



# The University of the State of New York

IN THE MATTER

OF

**NARAIN GOVENDER**  
(Physician)

**DUPLICATE  
ORIGINAL  
VOTE AND ORDER  
NOS. 10883/8866**

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Upon the report of the Regents Review Committee, a copy of which is made a part hereof, the record herein, under Calendar Nos. 10883/8866, and in accordance with the provisions of Title VIII of the Education Law, it was

**VOTED (July 27, 1990):** That, in the matter of NARAIN GOVENDER, respondent, the recommendation of the Regents Review Committee be accepted as follows:

1. The hearing committee's findings of fact and conclusions as to the question of respondent's guilt contained in the May 17, 1988 report of the hearing committee and the February 6, 1990 supplemental report of the hearing committee be accepted, and the Commissioner of Health's June 24, 1988 and March 30, 1990 recommendations as to those findings of fact and conclusions be accepted;
2. The hearing committee's recommendations as to the measure of discipline contained in the May 17, 1988 report of the hearing committee and the February 6, 1990 supplemental report of the hearing committee be modified, and the Commissioner of Health's recommendations as to the measure of discipline contained in his June 24, 1988 and March 30, 1990 recommendations be modified;
3. Respondent is guilty, by a preponderance of the evidence,

NARAIN GOVENDER (10883/8866)

of the first specification of the amended statement of charges based on incompetence on more than one occasion, and the second specification of the amended statement of charges; and

4. That, based upon the reasons previously set forth in the Regents Review Committee report, respondent's license to practice as a physician in the State of New York be suspended for one year upon each specification of the amended statement of charges of which respondent was found guilty, said suspensions to run concurrently, that execution of said suspensions be stayed, and respondent be placed on probation for one year under the terms prescribed by the the Regents Review Committee which include a 50 hour course of training in obstetrics/gynecology;

and that the Commissioner of Education be empowered to execute, for and on behalf of the Board of Regents, all orders necessary to carry out the terms of this vote;

and it is

ORDERED: That, pursuant to the above vote of the Board of Regents, said vote and the provisions thereof are hereby adopted and **SO ORDERED**, and it is further

ORDERED that this order shall take effect as of the date of the personal service of this order upon the respondent or five days after mailing by certified mail.

IN WITNESS WHEREOF, I, Thomas Sobol, Commissioner of Education of the State of New York, for and on behalf of the State Education Department and the Board of Regents, do hereunto set my hand and affix the seal of the State Education Department, at the City of Albany, this 6<sup>th</sup> day of

August, 1990.  
Thomas Sobol  
Commissioner of Education