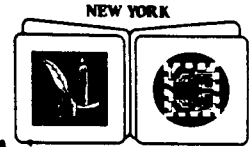


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FEB 23 1990



OFFICE OF PROFESSIONAL DISCIPLINE  
THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK  
OFFICE OF PROFESSIONAL MEDICAL CONDUCT  
DIVISION OF LEGAL AFFAIRS  
PROFESSIONAL MEDICAL CONDUCT

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

February 16, 1990

MAR 08 1990

RECEIVED

Lambert R. Abeyatunge, Physician  
119 No. Genesee Street  
Montour Falls, N.Y. 14865

68-701 Raposa Road  
Cathedral City, Ca. 92234

Re: License No. 113939

Dear Dr. Abeyatunge:

Enclosed please find Commissioner's Order No. 9987. 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: Charles O. Ingraham, Esq.  
Aswad & Ingraham  
46 Front Street  
Binghamton, N.Y. 13905

RECEIVED

MAY 1 1990

Office of Professional  
Medical Conduct

REPORT OF THE  
REGENTS' REVIEW COMMITTEE

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LAMBERT R. ABEYATUNGE

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CALENDAR NO. 9987



# **The University of the State of New York**

IN THE MATTER  
of the  
Disciplinary Proceeding  
against

**LAMBERT R. ABEYATUNGE**

**No. 9987**

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

LAMBERT R. ABEYATUNGE, 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 August 23, 1988, September 27, 1988, and December 19, 1988 a hearing was held before a hearing committee of the State Board for Professional Medical Conduct. A copy of the 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".

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LAMBERT R. ABEYATUNGE (9987)

The hearing committee concluded that respondent was not guilty of the first, second, and third specifications of the charges. The hearing committee recommended that no sanctions be imposed upon the respondent's license to practice as a physician in the State of New York. Apparently this is an attempt to recommend that the statement of charges against respondent be dismissed.

The Commissioner of Health recommended to the Board of Regents that the findings of fact of the hearing committee be accepted. In addition, the Commissioner of Health has apparently recommended that the conclusions of the hearing committee with regard to the second and third specifications of the charges be accepted and has recommended that its conclusion with regard to the first specification not be accepted and respondent be found guilty of negligence on more than one occasion under said first specification. The Commissioner of Health further recommended that the recommendation of the hearing committee be rejected and that, in lieu thereof, respondent be Censured and Reprimanded. A copy of the recommendation of the Commissioner of Health is annexed hereto, made a part hereof, and marked as Exhibit "C".

On November 2, 1989 respondent did not appear before us in person but was represented by his attorney, Charles O. Ingraham, Esq., who presented oral argument on behalf of respondent. Anna Colello, Esq., presented oral argument on behalf of the Department of Health. Before this meeting proceeded further the parties

**LAMBERT R. ABEYATUNGE (9987)**

consented to the recusal of panel member Patrick J. Picariello, and further agreed to go forward with only the two remaining Regents Review Committee panel members.

The recommendation of petitioner (Department of Health) as to the measure of discipline to be imposed, should respondent be found guilty, was a Censure and Reprimand.

Respondent's recommendation as to the measure of discipline to be imposed, should respondent be found guilty, was that no penalty is indicated, but if any he would recommend reprimand only.

We have considered the record as transferred by the Commissioner of Health in this matter as well as respondent's memorandum.

We unanimously recommend the following to the Board of Regents:

1. The findings of the hearing committee be accepted;
2. The conclusions of the hearing committee with regard to the first specification not be accepted, but the conclusions of the hearing committee with regard to the second and third specifications be accepted;
3. The recommendation of the hearing committee not be accepted;
4. The Commissioner of Health's recommendation as to the findings of the hearing committee be accepted;
5. The Commissioner of Health's recommendation as to the

LAMBERT R. ABEYATUNGE (9987)

conclusions of the hearing committee, as indicated in Exhibit "C", be accepted;

6. The Commissioner of Health's recommendation as to the hearing committee's recommendation regarding the measure of discipline be modified;
7. Respondent be found guilty, by a preponderance of the evidence, of the first specification of the charges as indicated by the Commissioner of Health, and not guilty of the second and third specifications of the charges; and
8. Based upon a more serious view of respondent's misconduct, respondent's license to practice as a physician in the State of New York be suspended for one year upon the specification of the charges of which respondent was found guilty, as aforesaid, and that execution of said suspension be stayed at which time respondent be placed on probation for one year under the terms of probation which are annexed hereto, made a part hereof, and marked as Exhibit "D".

Respectfully submitted,

EMLYN I. GRIFFITH

JANE M. BOLIN

  
Chairperson

Dated: December 14, 1989

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

-----X

IN THE MATTER : STATEMENT

OF : OF

LAMBERT R. ABEYATUNGE, M.D. : CHARGES

-----X

LAMBERT R. ABEYATUNGE, M.D., the Respondent, was authorized to engage in the practice of medicine in the State of New York on May 15, 1981 by the issuance of License Number 113939 by the State Education Department. 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 105 North Genesee Street, Montour Falls, New York 14865.

FACTUAL ALLEGATIONS

A. On or about January 3, 1983, the Respondent performed a transabdominal rectopexy and incidental appendectomy on Patient A (more fully identified in Appendix A), at the Schuyler Hospital, Montour Falls, New York. During said surgery a large retractor was left inside Patient A's abdomen undetected, and the abdomen was closed. Following discovery of the retractor by a nurse's examination on January 9, confirmed by x-ray, the

Respondent surgically removed the retractor on January 10, 1983.

**The Respondent:**

1. inappropriately left a retractor inside of Patient A following surgery;
2. failed to perform appropriate post-operative care which would have allowed earlier discovery of the retractor.

B. On or about October 4, 1983, Patient A was admitted, through the emergency room, to Schuyler Hospital. Patient A was admitted with a diagnosis of acute respiratory infection and was described in the emergency room as short of breath, cyanotic, dizzy, and hypotensive, among other things. Following transfer to the intensive care unit and referral to the Respondent, the Respondent examined Patient A between 12:08 and 12:30 a.m., and diagnosed psychotic disorder, dehydration and chronic constipation. Following physical examination, Patient A "began to bolt straight up in bed, calling out in pain", which the Respondent attributed to psychiatric causes. At approximately 1:30 a.m., after the Respondent had left the hospital and arrived home, he was notified that Patient A had several more violent episodes and was becoming lethargic and nonresponsive. The Respondent ordered that the psychiatry department be contacted, which was done. At approximately 2:00 a.m., Patient A began to develop electro-mechanical dissociation, which the Respondent was notified of at approximately 2:15 a.m. The Respondent ordered Dopamine drip and informed a nurse that if



no results were obtained with the Dopamine, to stop further efforts. Patient A expired at approximately 2:30 a.m. The Respondent:

1. misdiagnosed Patient A's condition, particularly Patient A's acute abdominal condition;
2. failed to properly treat Patient A.

#### SPECIFICATION OF CHARGES

##### FIRST SPECIFICATION

##### NEGLIGENCE AND/OR INCOMPETENCE ON MORE THAN ONE OCCASION

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

1. The facts contained in paragraphs A and B.

##### SECOND AND THIRD SPECIFICATIONS GROSS NEGLIGENCE AND/OR INCOMPETENCE

The Respondent is charged with professional misconduct by reason of practicing the medical profession with gross negligence and/or gross incompetence under N.Y. Educ. Law §6509(2) (McKinney 1985), in that Petitioner alleges:

2. The facts contained in paragraph A.
3. The facts contained in paragraph B.

DATED: Albany, New York

*July 14, 1982*

*Peter D. Van Buren*

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PETER D. VAN BUREN

Deputy Counsel

Bureau of Professional Medical  
Conduct

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

-----  
IN THE MATTER :  
OF :  
LAMBERT R. ABEYATUNGE, M.D. :  
-----  
REPORT OF  
THE HEARING  
COMMITTEE

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

Stanley L. Grossman, M.D., Chairperson, Msgr. Peter J. Owens and Joseph E. Geary, 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 §230(1) of the Public Health Law, served as the Hearing Committee in this matter pursuant to §230(10)(3) of the Public Health Law. Donald A. MacHarg, Esq., served as the Administrative Officer.

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

SUMMARY OF PROCEEDINGS

Service of Notice of  
Hearing and Statement of  
Charges against  
Respondent:

August 2, 1988

Hearing dates:

August 23, September 27 and  
December 19, 1988

Deliberations:

February 10, 1989

Places of hearing:

A.E. Smith State Office Building,  
Courtroom No. 1, and Meeting Room  
2, Concourse Level, Empire State  
Plaza, Albany, NY

Department of Health  
appeared by:

Ralph Bavaro, Esq.  
Associate Counsel  
OPMC, Corning Tower  
Empire State Plaza  
Albany, NY

Respondent appeared by:	Charles O. Ingraham, Esq. 46 Front Street Binghamton, NY
Witness for Department of Health:	Raphael S. Chung, M.D. 2847 Paxton Road Shaker Heights, Ohio
Witnesses for Respondent:	Lambert R. Abeyatunge, M.D. Respondent 119 North Genesee Street Montour Falls, NY
	Bonnie Lee Huston, R.N. 992 Hudson Acres Drive Pine City, New York, formerly employed as an ICU charge nurse by Schuyler Hospital, Montour Falls, NY
	Parker J. Ward, M.D. 157 East Main Street Norwich, NY
Post-hearing submissions:	Petitioner's Proposed Findings of Fact and Conclusions of Law
	Respondent's Proposed Findings of Fact and Post Hearing Memorandum

#### SUMMARY OF CHARGES

Based on allegations relating to two different occasions involving the same patient, Respondent is charged with negligence and/or incompetence on more than one occasion and with gross negligence and/or incompetence. On the first occasion, Respondent is alleged to have inappropriately left a retractor inside the patient following surgery and to have failed to perform appropriate post-operative care allowing earlier discovery of the instrument. On the second occasion, he is alleged to have misdiagnosed the patient's acute abdominal condition and to have failed to properly treat the patient.

### FINDINGS OF FACT

1. Respondent was authorized to practice medicine in the State of New York May 15, 1981 by the issuance of License Number 113939 by the State Education Department and is currently registered to practice medicine in this State. Respondent is a board-certified surgeon (Dept. Ex. 1; T. 162-163).

2. Patient A, date of birth December 4, 1926, was admitted to Schuyler Hospital, Montour Falls, New York January 1, 1983 and was an inpatient until January 14, 1983. The patient was admitted to the same hospital October 4, 1983 (Dept. Exs. 2, 4).  
January, 1983 Admission

3. Patient A was admitted to the hospital January 1, 1983 with a diagnosis of a prolapsed rectum. On January 3, 1983, Respondent performed a transabdominal rectopexy and incidental appendectomy, assisted by Dr. A [REDACTED] (Dept. Ex. 2: pp. 40, 42-43; T. 171).

4. Dr. A [REDACTED] is a general practitioner-surgeon. In 1983, he was not a board-certified surgeon but had operating privileges at Schuyler Hospital, doing gall bladders, hernias and uncomplicated colons and post-surgical coverage (T. 236-238).

5. During Patient A's surgery January 3, 1983, Respondent utilized a curved, "retractable" (adjustable), surgical retractor to retract the patient's small bowel. The retractor was not a Deaver and had no provision for a handle. The opinions expressed by the Department's witness, Dr. Chung, were based on his erroneous assumption that the retractor was a Deaver with a removable handle and are therefore not credited (Dept. Exs. 3A,

3B; Resp. Ex. F; T. 83-84, 173, 178, 359-360). The dimensions of Resp. Ex. F as measured by the Committee are 1 11/16" in width, 10 1/2" in length fully extended, 8 1/2" in length fully closed.

6. The retractor asked for and used by Respondent was kept on an accessory G.I. tray, separate from the standard G.I. tray. Respondent is the only surgeon who uses the retractor in Schuyler Hospital. The retractor is hospital property (T. 179-180, 258-260).

7. Respondent did not remove the retractor before closing the surgical incision (Dept. Exs. 2, 3; T. 180, 207).

8. The scrub nurse and circulating nurse made a pre-count and a post-count of the instruments, needles and sponges used in the surgery and found the counts correct. Respondent stated in his operative record that the count was correct (Dept. Ex. 2: pp. 40-43; T. 48-53, 75, 182-184).

9. Respondent rendered post-operative follow-up care to Patient A from the time of the surgery January 3 until January 5. Respondent transferred Patient A's care to Dr. A [REDACTED] from January 5 to January 10 while Respondent was out of town and resumed the patient's care the morning of January 10 (Dept. Ex. 2: Physician's Orders - pp. 20 et seq., Progress Notes - pp. 63-64, Nurses' Record - pp. 4-13; T. 74, 187-188).

10. During her post-operative period, Patient A experienced pain and restlessness. Although pain would be expected the first one or two days after the patient's surgery, the patient continued to complain of pain, for which she was given

Demerol and other pain-relieving medications (Dept. Ex. 2: Nurses' Record, Medication Record - pp. 24-25; T. 40, 73).

11. During Respondent's post-operative care of Patient A from January 3 to January 5, Respondent did not detect the presence of the retractor when he performed abdominal examinations (Dept. Ex. 2; T. 73).

12. January 9, at 7:30 p.m., a hard mass was palpated by a nurse in the right lower quadrant of Patient A's abdomen. Dr. A [REDACTED] was notified and he ordered x-rays, which revealed the presence of a foreign body, a metal retractor (Dept. Exs. 2: Nurses' Record, p. 12; 3).

13. Respondent was informed the morning of January 10 of the presence of a foreign body in Patient A. He felt an object close to the patient's incision, examined the x-rays, obtained consent to operate and removed the retractor (Dept. Ex. F), which was directly under the peritoneal layer (Dept. Ex. 2: pp. 56, 61; T. 188-190).

14. Patient A was discharged from the hospital January 14, 1983, and kept one follow-up appointment at Respondent's office (Dept. Ex. 2: pp. 16-17, 35, 61; T. 194).

#### October, 1983 Admission

15. Patient A was brought by ambulance to the Schuyler Hospital emergency room the night of October 3, 1983. Patient A had a history of a psychiatric disorder, for which she was receiving medication, and she was accompanied by a caretaker. In

the ambulance, the patient had respiratory difficulty, nausea and dizziness (Dept. Ex. 4: pp. 1, 3,<sup>1</sup> 10, 11, 21).

16. Patient A was seen in the emergency room by Dr. A [REDACTED] at 11:24 p.m. At that time, the patient was short of breath, cyanotic and dizzy. She was at first talkative, then agitated, then quiet and nonresponsive. The patient's pulse was 134 to 115, respiration 10 and blood pressure 50 palpable to 70. She was in shock when admitted and in poor condition when she was transferred to the hospital ICU at midnight. Dr. A [REDACTED]'s diagnosis of the patient was acute respiratory infection (Dept. Ex. 4: pp. 2, 4, 12).

17. Dr. A [REDACTED]'s admitting orders included an order for blood gases stat. The results of the blood gas test were reported at 1:13 a.m., showing among other findings metabolic acidosis (Dept. Ex. 4: pp. 6, 7, 12, 15; T. 342).

18. Dr. A [REDACTED] told an ICU charge nurse that he was transferring Patient A to the care of Respondent, that the patient's condition was not that serious and that the nurse could wait until the following morning to inform Respondent (T. 265-266). Dr. A [REDACTED] told Respondent as he was leaving the hospital that he wanted Respondent to see Patient A in the morning. Respondent, however, went to see Patient A at that time. The patient recognized Respondent and conversed with him calmly.

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<sup>1</sup> The date 10/4/84, at the foot of the page, is apparently a typing error.



The patient complained of not feeling well and some abdominal pain. (Dept. Ex. 4: p. 24; T. 195-198, 271-273).

19. Patient A was admitted to the ICU because the only adult bed available for an incoming medical or surgical patient was in the ICU (Resp. Ex. H). The patient was admitted to the ICU with an IV infusing 100 mg. Solu-Cortef @ 100 cc. per hour. A cardiac monitor showed a 100-120 sinus rhythm. Although a nurse's aide palpated 50-70 blood pressure on admission, the charge nurse auscultated blood pressure of 120/80 and so informed Respondent. There were no signs of shock (Dept. Ex. 4: pp. 3, 12, 24, 25; T. 270-273, 282-283, 285).

20. Respondent's history and physical examination of Patient A noted inter alia: Brought to the Emergency Room by ambulance by the caretaker for nausea, abdominal pain; has felt sick to stomach but has not vomited; recently spent some time in a psychiatric hospital for severe psychiatric disorder and she is on (specified medications); blood pressure 120/80; thready radial pulse; thrashing around in bed; some evidence of dehydration; lungs-bilateral few rales present; distended abdomen with a large amount of hard stool palpable in the whole colon; bowel sounds hyperactive; no tenderness. Admitting diagnosis: psychotic disorder, dehydration; chronic constipation (Dept. Ex. 4: p. 3).

21. Respondent admits that he made a wrong diagnosis (T. 220).

22. Although Respondent had performed abdominal surgery on Patient A on two occasions in January, 1983, he did not consider

that, because of their circumstances, they increased the chance of adhesions. (T. 252-254).

23. The final diagnosis made following an autopsy performed on Patient A was: 1. Gangrene of the small bowel due to volvulus; 2. Hemoperitoneum - 600 cc. Cause of death - due to loss of fluid, hypovolemia and shock secondary to intestinal obstruction (Dept. Ex. 4: p. 26).

24. At approximately 12:30 a.m., October 4, Patient A bolted up in bed calling out in pain. The patient's caretaker present at the time explained that the patient "often acted out" in a "bizarre" demonstration to attract attention. Respondent saw such an episode at 1 a.m. and "talked patient down." He prescribed Dalmane 30 mg. (Dept. Ex. 4: p. 12; T. 200-201, 273-274).

25. Respondent ordered Tigan for nausea, Elavil, Lithium, Milk of Magnesia with Cascara, and Dalmane (Dept. Ex. 4: p. 16; T. 249).

26. Respondent left the hospital shortly after 1 a.m. He had not seen the emergency room or ambulance records. The blood gas report had not been received (T. 201-202, 211, 220-221, 245-246).

27. Between 1:30 a.m. and 1:35 a.m., Patient A had more violent episodes, then became more lethargic and non-responsive. Respondent was called on the telephone at home and notified of the change in condition. Respondent instructed the nurse to call a named person at the State mental hospital to rule out the possibility of continued bizarre behavior. Respondent did not

make any change in his orders (Dept. Ex. 4: pp. 12-13; T. 203, 222-223, 276).

28. At 2:00 a.m., Patient A was alert when the charge nurse gave the first 50 mg. of Elavil but became unresponsive before the second dose. At 2:15 a.m., Patient A's electrocardiogram showed electro-mechanical dissociation. Respondent was immediately informed by telephone while resuscitation was begun. Respondent ordered increased IV and dopamine to elevate the blood pressure. Efforts were unsuccessful and Patient A expired at 2:30 a.m. Respondent was notified (Dept. Ex. 4: pp. 13-14; T. 203-205, 276-277).

#### CONCLUSIONS OF LAW

##### Factual Allegations

1. Allegation A.1: Respondent inappropriately left a retractor inside of Patient A following surgery.

The Committee by unanimous vote sustains the allegation. (Finding of Fact 7)

2. Allegation A.2: Respondent failed to perform appropriate post-operative care which would have allowed earlier discovery of the retractor.

The Committee by unanimous vote does not sustain the allegation.

a. Following Patient A's surgery, Respondent performed post-operative care for the first two days, after which another physician performed such care. (Finding of Fact 9)

b. During the two days of Respondent's post-operative care, pain was normally to be expected and abdominal examinations and nurses' observations revealed nothing to suggest the presence of a foreign body. (Findings of Fact 10, 11)

3. Allegation B.1: When Patient A was a hospital patient October 4, 1983, Respondent misdiagnosed Patient A's condition, particularly Patient A's acute abdominal condition.

The Committee by unanimous vote sustains the allegation.

a. Respondent admits that he misdiagnosed the patient. (Finding of Fact 21)

4. Allegation B.2: Respondent failed to properly treat Patient A.

The Committee by unanimous vote sustains the allegation.

a. Not having made a correct diagnosis of a gangrenous bowel, Respondent failed to properly treat for that condition. (Findings of Fact 24, 25, 27, 28)

#### Specification of Charges

The Committee in reaching the Conclusions set forth below was guided by a memorandum of the General Counsel of the Department of Health dated September 19, 1988, which updated a 1982 memorandum, on the subject of Definitions of Professional Misconduct under the New York Education Law. A copy of the September 19, 1988 memorandum is annexed to this Report.

The Committee's considered judgment is that Respondent committed two mistakes - not removing a retractor and a misdiagnosis - that were unrelated although they involved the same person as a patient, and that such mistakes could happen in the practice of any competent surgeon and occurred despite Respondent's exercise of reasonable care and adherence to accepted medical standards. The retractor left in the patient had been used by Respondent since he started practice. There was nothing to put Respondent on notice that the retractor was still in the patient and he relied on the nurses' count as is customary.

Applying the standards of the courts cited in the memorandum of the Department of Health General Counsel, Respondent's errors do not constitute a pattern of conduct showing a lack of skill or knowledge necessary to perform, day in and day out, the characteristic tasks of Respondent's field of practice (surgery) in a reasonably effective way. In the absence of such a pattern of conduct, a basis for a conclusion of incompetence on the part of Respondent is lacking.

First Specification -- Practicing the Profession with Negligence and/or Incompetence on more than One Occasion

With respect to Allegation A.1, the Committee by a negative vote of two to one does not sustain the specification as to negligence and by unanimous vote does not sustain the specification as to incompetence.

With respect to Allegations A.2, B.1 and B.2, the Committee by unanimous vote does not sustain the specification as to negligence and/or incompetence.

The First Specification is accordingly not sustained.

Second and Third Specifications -- Practicing the Profession with Gross Negligence and/or Gross Incompetence

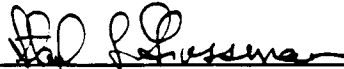
The First Specification not having been sustained, these Specifications, which posit a greater degree of fault, by unanimous vote of the Committee are not sustained.

RECOMMENDATION

The recommendation of the Committee is that Respondent's license to practice medicine in the State of New York not be revoked or suspended and that he not be fined or made subject to any other sanctions set out in New York Education Law §6511.

DATED: Albany, New York  
March 29, 1989

Respectfully submitted,

  
STANLEY L. GROSSMAN, M.D.  
Chairperson

Msgr. Peter J. Owens  
Joseph E. Geary, M.D.

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

OF :

LAMBERT R. ABEYATUNGE, M.D. :

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 August 23, September 27 and December 19, 1988. Respondent, Lambert R. Abeyatunge, M.D., appeared by Charles O. Ingraham, Esq. The evidence in support of the charges against the Respondent was presented by Ralph 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 of the Committee should be accepted in full;

- B. The Conclusions of the Committee with regard to Factual Allegations should be sustained. However, the Conclusions of the Committee with regard to Specification of Charges should not be sustained. The Respondent deviated from standard medical practice in two respects. First, he left the retractor in Patient A. A complete examination of Patient A after surgery and prior to closure should have revealed the retractor. It is inconceivable that a full and careful inspection would not have revealed the large instrument even if it had moved. The correct instrument count by the nurse does not excuse the physician. Second, Respondent misdiagnosed Patient A's condition, particularly her acute abdominal condition. Respondent failed to take into account fully all physical symptoms. That the circumstances were difficult does not remove the onus from the physician. In light of these two acts of negligence, the Committee should have sustained the First Specification.
- C. The Recommendation of the Committee should be rejected and, in lieu thereof, Respondent should be censured and reprimanded.
- D. 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 as modified above.

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

Dated: Albany, New York  
*May 18* 1989


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



EXHIBIT "D"

TERMS OF PROBATION  
OF THE REGENTS REVIEW COMMITTEE

LAMBERT R. ABEYATUNGE

CALENDAR NO. 9987

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 conduct himself in all ways in a manner befitting his professional status, and shall conform fully to the moral and professional standards of conduct imposed by law and by his 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;
  - d. That respondent shall submit written proof to the New York State Department of Health, addressed to the Director, Office of 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. 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.

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

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**LAMBERT R. ABEYATUNGE**

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**CALENDAR NO. 9987**



# **The University of the State of New York**

IN THE MATTER

OF

**LAMBERT R. ABEYATUNGE**  
(Physician)

**DUPLICATE  
ORIGINAL  
VOTE AND ORDER  
NO. 9987**

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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 No. 9987, and in accordance with the provisions of Title VIII of the Education Law, it was

**VOTED** (January 17, 1990): That, in the matter of LAMBERT R. ABEYATUNGE, respondent, the recommendation of the Regents Review Committee be accepted as follows:

1. The findings of the hearing committee be accepted;
2. The conclusions of the hearing committee with regard to the first specification not be accepted, but the conclusions of the hearing committee with regard to the second and third specifications be accepted;
3. The recommendation of the hearing committee not be accepted;
4. The Commissioner of Health's recommendation as to the findings of the hearing committee be accepted;
5. The Commissioner of Health's recommendation as to the conclusions of the hearing committee, as indicated in Exhibit "C", be accepted;
6. The Commissioner of Health's recommendation as to the

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\*Regent Gerald J. Lustig, M.D. abstained

hearing committee's recommendation regarding the measure of discipline be modified;

7. Respondent is guilty, by a preponderance of the evidence, of the first specification of the charges as indicated by the Commissioner of Health, and not guilty of the second and third specifications of the charges; and
8. Based upon a more serious view of respondent's misconduct, respondent's license to practice as a physician in the State of New York be suspended for one year upon the specification of the charges of which respondent was found guilty, as aforesaid, and that execution of said suspension be stayed at which time respondent be placed on probation for one year under the terms of probation prescribed by the Regents Review Committee;

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 31<sup>st</sup> day of January, 1990.

*Thomas Sobol*

Commissioner of Education