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

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

Azmi L. Abdelmessih, Physician
E. J. Noble Hospital
77 Barney Street
Gouverneur, N.Y. 13642

January 15, 1993

Dear Dr. Abdelmessih:

Re: License No. 147792

Enclosed please find Commissioner's Order No. 12937. This Order goes into effect five (5) days after the date of this letter.

If the penalty imposed by the Order in your case is a revocation or a surrender of your license, you must deliver your license and registration to this Department within ten (10) days after the date of this letter. 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. In the event you are also served with this Order by personal service, the effective date of the Order is the date of personal service.

If the penalty imposed by the Order in your case is a **revocation or a surrender of your license,** you may, pursuant to Rule 24.7 (b) of the Rules of the Board of Regents, a copy of which is attached, apply for restoration of your license after one year has elapsed from the effective date of the Order and the penalty; but said application is not granted automatically.

Very truly yours,

DANIEL J. KELLEHER
Director of Investigations
By:

GUSTAVE MARTINE
Supervisor

DJK/GM/er

CERTIFIED MAIL - RRR
cc: Philip Kramer, Esq.
59-61 Court Street
P.O. Box 1865
Binghamton, N.Y. 13902

REPORT OF THE
REGENTS REVIEW COMMITTEE

AZMI ABDELMESSIH

CALENDAR NO. 12937

The University of the State of New York

IN THE MATTER

of the

Disciplinary Proceeding

against

AZMI ABDELMESSIH **No. 12937**

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

REPORT OF THE REGENTS REVIEW COMMITTEE

Between July 25, 1991 and September 13, 1991 a hearing was held in the instant matter on four sessions before a hearing committee of the State Board for Professional Medical Conduct which subsequently rendered a report of its findings, conclusions, and recommendation, a copy of which, without attachments, is annexed hereto, made a part hereof, and marked as Exhibit "A". The amended statement of charges is annexed hereto, made a part hereof, and marked as Exhibit "B". Although the charges refer to an allegation C.3 being part of the seventh specification, there is no allegation C.3 against respondent contained in the statement of charges. Respondent's answer to the amended statement of charges is annexed hereto, made a part hereof, and marked as Exhibit "C".

The hearing committee concluded that respondent was guilty of practicing fraudulently and unprofessional conduct (first through

fourth specifications) and negligence on more than one occasion (seventh specification); and was not guilty of the other specifications. The hearing committee recommended that respondent's license to practice medicine be revoked.

The Commissioner of Health, by designee, recommended to the Board of Regents that the findings, conclusions, and recommendation of the hearing committee be accepted. A copy of the recommendation of the Commissioner of Health is annexed hereto, made a part hereof, and marked as Exhibit "D".

On May 27, 1992, respondent appeared in person and was represented by Philip J. Kramer, Esq. Cindy M. Fascia, Esq. presented oral argument on behalf of the Department of Health.

Petitioner's written recommendation as to the measure of discipline to be imposed, should respondent be found guilty, was revocation.

Respondent's written recommendation as to the measure of discipline to be imposed, should respondent be found guilty, was public service. Respondent also recommended in his proposals that no further punishment is warranted or required.

We have considered the record in this matter as transferred by the Department of Health, respondent's memorandum, respondent's proposed findings, conclusions and disposition, and petitioner's May 21, 1992 memorandum, along with the following which is received and considered solely as to the issue of penalty: Mr. Conole's May 11, 1992 letters, Mr. Conole's May 27, 1992 memorandum, the May 21,

1992 letter from five persons at Edward John Noble Hospital, the letters from respondent's attorney dated May 14, 1992, May 19, 1992, and May 22, 1992, the affidavit from respondent's attorney, and petitioner's May 15, 1992 letter including enclosures which are received and considered only in rebuttal to the mitigating circumstances advanced by respondent. The affidavit from Patient C was withdrawn by respondent and, in any event, is not admissible.

A. FRAUD

I. HOSPITAL APPLICATIONS

We accept the hearing committee's* findings and conclusions that respondent is guilty of both practicing fraudulently (third and fourth specifications) and unprofessional conduct for willfully filing a false report (first and second specifications). These specifications relate to respondent's eight combined fraudulent answers in his applications for privileges at Our Lady of Lourdes Memorial Hospital and at United Health Services. It is undisputed that respondent omitted information and falsely answered questions on these applications regarding Ohio Valley Medical Center where his hospital privileges had previously been suspended pursuant to court order; and regarding two prior medical malpractice actions where respondent had been named as a defendant. Respondent's

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*Since the Health Commissioner's designee accepted the entire hearing committee report, the analysis herein as to the hearing committee's findings, conclusions, and recommendation will apply to the recommendation of said designee.

memorandum to the Department of Health page 3 (hereafter respondent's memorandum); respondent's proposed findings, conclusions and disposition to the Regents (hereafter respondent's proposals) pages 1 and 8; and hearing committee findings 1-10.

The result of respondent's false answers and omissions was that the name Ohio Valley Medical Center was concealed on these two applications. Transcript page 558 (hereafter T. ____). Thus, in these applications requesting this information, respondent did not disclose to either prospective employer that he ever had any connection with the Ohio Valley Medical Center. T. 559**.

Respondent concedes that his conduct with respect to these two applications was "clearly wrong". Respondent's memorandum page 3; and respondent's proposals page 8. As respondent stated, the prospective employers "were entitled to have their applications answered fully and accurately ... and the hospitals had the right to take the action which they did to terminate the doctor's privileges." Respondent's proposed findings and conclusions to the Health Department page 5.

Respondent knowingly falsified the answers and responses on these applications. T. 553, 554, and 555. While it is undisputed that, at the time respondent submitted these applications, he knew

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**Our determination does not rely on the provisions of the Public Health Law regarding the obligations of the hospitals to keep accurate records about physicians.

that he was submitting false documents, issues for our resolution have been raised by respondent as to his intent at the time he committed this conduct.

Proof "of 'the intentional misrepresentation or concealment of a known fact' is required to sustain this charge" of fraudulent practice. Berger v. Board of Regents of the State of New York, 178 A.D.2d 748 (3rd Dept. 1991), quoting Brestin v. Commissioner of Education of the State of New York, 116 A.D.2d 357 (3rd Dept. 1986). However, that intent may be inferred from the surrounding circumstances, Kim v. Board of Regents of University of the State of New York, 172 A.D.2d 880 (3rd Dept. 1991); and Berger, supra, or from respondent's knowledge of the falsehood. Chaudhry v. Sobol, 170 A.D.2d 893 (3rd Dept. 1991). In our unanimous opinion, respondent's intent has been established by this record.

We agree with the hearing committee's conclusions, on page 8 of its report, that respondent "intentionally perpetrated a falsehood upon Lourdes and United Health to obtain privileges" and wilfully submitted a false report. Our additional findings of fact, together with the hearing committee's findings of fact, support these conclusions. See, Amarnick v. Sobol, 173 A.D.2d 914 (3rd Dept. 1991); and Brestin v. Commissioner of Education of the State of New York, supra, (sufficient findings of fact are required to uphold determination of fraud).

The hearing committee correctly rejected respondent's defense that he did not practice fraudulently in falsely completing these

applications because he wanted to put the events at Ohio Valley Medical Center behind him and to start a new life in New York. T. 570. See, Kim, supra. Respondent acted for his own benefit by deliberately depriving both hospitals of vital information that they were entitled to receive to fully investigate and consider these applications. Rather than excuse his behavior, respondent's explanation shows that respondent intended to deceive and mislead both employers. Fraudulent practice is established pursuant to Education Law §6509(2) even if respondent did not specifically intend to harm the hospitals. Based on respondent's intentional and "blatant falsehood within an official document arising out of his medical practice", respondent's "obvious and serious violations of professional behavior cannot be excused." Hearing committee report page 8. Therefore, the "requisite intent was amply demonstrated" in this record. Radnay v. Sobol, 175 A.D.2d 432 (3rd Dept. 1991).

The revocation by the Regents of a physician license, for intentional false statements and omissions in applications to different hospitals, was upheld in Kim v. Board of Regents of the State of New York, supra. There, the physician was guilty of practicing fraudulently and unprofessional conduct pursuant to 8 N.Y.C.R.R. §29.1(b)(6) for repeatedly concealing prior employment and falsely representing his professional history. In Matter of Tjoa, Calendar No. 12480, the Regents revoked a physician's license for the licensee's two willful failures to disclose a medical

malpractice action, falsely answering a question on an application for privileges, and negligence on more than one occasion.

II. PATIENTS B AND D

Respondent is also charged with practicing fraudulently for failing to inform two patients that he had no hospital applications (allegations D.2, D.3, and F.2). In our unanimous opinion, the fifth specification should be sustained as one act of fraud and the sixth specification should be sustained as another act of fraud. Respondent has thus been proven, in this matter, to have committed fraud on patients and, as indicated in part I above on hospitals.

Respondent treated Patients B and D after he lost his hospital privileges. At the time these patients sought the relevant medical care from respondent, respondent knew that he had no privileges, temporary or otherwise, at any hospital. T. 544, 547, 549, 20, and 54. In accordance with accepted standards of medical care, respondent was under a duty to inform these patients that he did not have hospital privileges. T. 179-181, 183-184, and 252-254. Yet, as these patients testified credibly, respondent did not inform them, at any time during the course of their care by respondent and prior to their seeking hospital attention, of his lack of hospital privileges. T. 22-24, 37, 54-55, 59-62, and 77-78.

Both Patients B and D would not have remained under the care of respondent had they known that he did not have hospital privileges. By virtue of respondent's concealment of his lack of

hospital privileges, both patients were deprived of the opportunity to plan for and obtain the medical care they sought. Unbeknownst to these patients and contrary to their assumptions that their physician would care for them in the hospital should they need hospital care, they were not to be attended at the hospital by respondent and would instead have been reliant on other unknown physicians who had no record of their condition and no knowledge of their concerns.

Furthermore, respondent made affirmative statements to Patients B and D which were intended to and did result in these patients continuing to obtain office care from respondent. He led both patients to believe that he would attend to their medical needs in and out of his office.

As shown in our additional findings of fact regarding the fifth and sixth specifications, both Patients B and D were exposed to additional risks of harm due to respondent's deviations from accepted standards of medical care. Also, both patients were subjected to very upsetting experiences when they learned from others that respondent did not have hospital privileges. Patient B presented herself to the hospital for a cesarean section which she believed respondent would perform; was "terrified" to learn that she would be delivered vaginally by an unknown physician; and was unprepared to handle these circumstances. T. 61. Patient D was prepared to seek nearby hospital emergency room care for profuse bleeding when she was dissuaded by respondent from seeking

such care before she travelled a greater distance to his office in a snow storm. She eventually had a D and C performed by respondent in his office without any assistance and without hospital care. Although it was not negligent (allegation F.1) for respondent to perform such procedure in view of the emergent circumstances presented once Patient D arrived at his office, it was fraudulent, however, for respondent, who knew that he had not forthrightly disclosed his true status, to have previously deprived Patient D of her opportunity to obtain emergency or other medical care from a physician with hospital privileges and of her choice to plan for her medical needs when they arise.

Respondent's dishonest conduct with respect to Patients B and D demonstrates respondent's willingness to sacrifice patient welfare for his own self-interest. As petitioner claimed, the repeated deceit respondent exhibited in these cases and in the hospital application cases evinces a deficit in his integrity and a betrayal of the trust conferred upon him as a physician in New York.

The hearing committee's report is unclear regarding the fraud allegations as to Patients B and D. On one hand, the hearing committee sustained allegations D.2 and D.3 and did not specify whether they sustained allegation F.2. On the other hand, they did not sustain the fifth specification which was based upon allegations D.2 and D.3, and did not sustain the sixth specification which was based upon allegation F.2. Compare,

hearing committee report pages 13 and 14.

Moreover, the hearing committee, without rendering findings of fact as to respondent's intent in these cases, clearly believed Patient D and disbelieved respondent's testimony. Hearing committee report page 18. The hearing committee stated that respondent's conduct as to Patient D was not "forthright" and that his claims to the contrary were contradicted by the record. Id. Additionally, hearing committee finding D.6 shows that, as Patient D testified and respondent denied, Patient D first learned about respondent's lack of hospital privileges from another source on the day after she arrived at respondent's office bleeding profusely, which was over a month after respondent began providing medical care to Patient D.

Regarding Patient B, the hearing committee declared that respondent failed in his duty to inform Patient B and led her to believe that he would deliver her. Hearing committee report page 13. As Patient B testified and in spite of respondent's claims, see, paragraph 13 of respondent's answer to amended statement of charges, the hearing committee found that Patient B, who had been told by respondent of potential problems from placenta previa, was not informed by respondent that, if she had a complication, someone else would have to provide her with hospital attention. Hearing Committee report page 13. Again, the hearing committee did not credit respondent's position that he had made these representations to the patient.

The version of facts accepted by the hearing committee and the assessment of credibility rendered by the hearing committee should have led it to sustain the fifth and sixth specifications. However, it applied an erroneous standard inconsistent with its determination as to the hospital applications and with judicial and Regent precedents regarding practicing fraudulently. In reliance on its finding that there was not "sufficient evil intent", the hearing committee concluded that respondent's conduct does not constitute fraud in the case of Patient D. Id., at 18. In the case of Patient B, the hearing committee concluded that respondent did not intend to defraud this patient but rather intended "to avoid further upsetting an already agitated patient." Id. at 14. Therefore, in our opinion, the hearing committee, similar to the case of Patient D, did not find respondent's conduct as to Patient B to be fraudulent in the absence of any perceived evil intent.

Fraud is established without the necessity of proving evil intent or any specific intent to harm a patient. In contrast to the fifth and sixth specifications, the hearing committee did not require such proof as to the third and fourth specifications. Whether or not respondent specifically intended to harm the hospitals or the patients, the elements of practicing fraudulently have been established in this record. By intentionally misrepresenting or concealing a known fact for his own interest or benefit, in violation of his professional obligations, respondent perpetrated fraud on two hospitals and on two patients. This is

not a case where a physician does not tell a patient information for the sole purpose of protecting the patient's welfare. We note, in the case of Patient B, that respondent testified Patient B did not seem anxious. T. 469. The anxiety the hearing committe noted for Patient B was provoked by respondent's conduct which should have been expected to cause any reasonable patient to become upset upon learning, in the hospital before she was about to deliver her first baby, that the physician she had depended on and had been led to believe would provide her care at such time of need, did not possess any hospital privileges.

We reject respondent's defenses to the fraud charges concerning Patients B and D. Respondent acknowledged that, at no time before March 3, 1988, did he inform Patient D, who he first saw on February 2, 1988 for a check-up and pap smear, of his lack of privileges. As to Patient B, who he first saw on February 4, 1988 to confirm a pregnancy, respondent did not claim to so inform her before April 1, 1988. Respondent's own position shows that he concealed from these patients, during their first visits when such advice was required to be given and for over one month thereafter, that he would not provide them hospital based medical care at any time. At the time of the patients' first visits, respondent was still hoping to regain hospital privileges. See respondent's answer to amended statement of charges paragraph 13. Respondent clearly chose not to reveal to these patients, to whom he continued to offer his care, that he was unable to care for them in a

hospital and that they could select another physician and plan if his true status was unacceptable to them. Thus, respondent already committed his fraud on Patients B and D before he claims to have disclosed his lack of hospital privileges.

Moreover, as Patients B and D testified, respondent never advised them, during the more than 7 months Patient B was under his care and the more than one month Patient D was under his care, that he would not provide them hospital based medical care. We agree with the hearing committee to the extent it found respondent's claims to have advised Patients B and D to be not worthy of belief. If respondent sincerely wanted to disclose this information to these patients, he would not have waited until Patient D went to his office rather than the hospital on March 3, 1988 while she was lying on the table for a D and C to be performed because of her bleeding and until Patient B received the April 1, 1988 ultrasound report while she was crying about the finding of placenta previa. Yet, he did not thereafter raise this subject with Patient B at more appropriate or other times. See, respondent's proposals page 18. Respondent's claims as to disclosing this important information to these patients are incredible. In our opinion, had respondent been forthright with Patients B and D, they would not have been subjected to the experiences they suffered.

In view of our finding that respondent did not tell Patients B and D about his lack of privileges, we must address respondent's claim that he did not commit fraud on Patients B and D because he

posted a notice in his office while they were receiving his services. Respondent's testimony shows that no notice was posted while Patient D was his patient and while Patient B saw respondent for her first two visits. The idea to post an office notice was developed by his attorney following the March 3, 1988 incident with Patient D. T. 408-409. This incident occurred after Patient B's first two visits with respondent. Therefore, the notice respondent claimed to have posted in his office was not designed to provide the patients with timely information early in their commencement of a patient relationship with respondent and, therefore, did not attempt to provide notice before the fraud was already committed.

In any event, respondent recognizes that the alleged notice "failed to do its job." Respondent's proposals page 19. It was respondent's obligation to advise his patients of his status: it was not his patients obligation to discover information which respondent did not provide them. We credit Patient B's testimony that: she did not see any notice posted in respondent's office as to his lack of hospital privileges; she probably looked at his bulletin board on each office visit; she did not learn this from respondent or his office; and she was led by respondent's statements to believe that he would deliver her baby. T. 55, 67, and 78.

Respondent has not proven that there was a notice posted which Patient B saw. Even if we were to assume arguendo that the notice was eventually posted by respondent, Patient B would have been

misled both by respondent's statements, that he would deliver her baby, and by respondent's silence as to the hospital privileges she naturally assumed he possessed. Furthermore, the form notice, dated March 18, 1988, would, in our opinion, not convey sufficient and meaningful information to alert Patient B, if she saw the notice, that respondent would not attend to her obstetrical and gynecological needs in the hospital. The unclear notice did not mention the subject of respondent's hospital privileges, the patient's need to obtain a different hospital attending physician, hospitals in general, or the specific hospital where respondent knew the patient would seek care.

Moreover, the notice, even if it had been timely, conspicuously posted and seen, clear, and informative, which this notice was not, would not have been a reasonable or appropriate mechanism for providing the patients with the needed advice. Acceptable standards of medical practice required that the patient be notified of such subject on a direct face-to-face basis where the patient can ask questions and ascertain whether she would be satisfied with the arrangements. T. 182-188. The record demonstrates that respondent intentionally failed to inform his patients properly, provide them sufficient advice, and give them an opportunity to choose a different physician and medical plan.

B. MORAL UNFITNESS

The charges that respondent practiced fraudulently were repeated as separate charges under the rubric of unprofessional

conduct for conduct which evidences moral unfitness to practice the profession. In our unanimous opinion, respondent is guilty, by a preponderance of the evidence, of this unprofessional conduct charged in the eighth through eleventh specifications, to the same extent as he is guilty of the third through sixth specifications. Respondent committed his deceitful and dishonest conduct for his own benefit. We disagree with the hearing committee's evaluation, on pages 8-9 of its report, that respondent has not violated "moral standards in the conduct established." We note that while respondent's circumstances do not constitute a defense to the eighth through eleventh specifications regarding respondent's moral unfitness in the practice of his profession as to hospitals and patients, these circumstances were considered in mitigation of the penalty to be imposed for respondent's professional misconduct.

C. **NEGLIGENCE**

This matter also involves respondent's various acts of negligence which were committed on more than one occasion. Although the hearing committee concluded that "8 counts of negligence" were sustained (hearing committee report page 18), its report does not show that as many as 8 counts were sustained. The hearing committee appears to have sustained the seventh specification to the extent of allegations C.1, C.2, D.1, E.1, and E.2. We note that the only negligence described on page 14 of its report pertains to allegation D.1 and that, even if we were to assume that the hearing committee meant to conclude that respondent

also committed negligence as to allegations D.2 and D.3, there still would not be a total of 8 allegations of negligence sustained. We modify the hearing committee's conclusions because, in our opinion, respondent has been proven to have committed negligence on more than one occasion to the extent of the four allegations of C.1, C.2, D.1, and E.2. This negligence arises from the care respondent provided to three patients (A, B, and C).

We accept the hearing committee's findings and conclusions that respondent is guilty of negligence as to allegations C.1 and C.2. See, petitioner's brief, proposed findings, conclusions and recommendation pages 4-11. With respect to allegation C.1, we expressly find that the dilation and curettage (D and C) performed by respondent on Patient A was not medically indicated. T. 270. Under the circumstances presented by Patient A, the D and C was an unnecessary procedure which should not have been performed. T. 269, 270, and 273; and hearing committee conclusions pages 10 and 11. Furthermore, Patient A was exposed to the risk of scarring to the uterus which could further aggravate her fertility difficulties. T. 270. After having heard the testimony from petitioner's expert that it was "wrong" and "incorrect" to do this procedure, which testimony we find persuasive and credible, respondent testified that he will do the same procedure again if a patient presents with similar circumstances and that, as a general rule, it is his approach to do a D and C on every woman who has an early spontaneous abortion. T. 273, 520, 538. In our unanimous

opinion, respondent's negligent conduct presents a risk of harm to the public.

Respondent performed this non-medically indicated D and C on Patient A without obtaining the patient's consent for such procedure (allegation C.2). Patient A would not have consented to a D and C in respondent's office. T. 132-133. She credibly testified that see knew what a D and C was and, if respondent had told her that he would perform a D and C, she would not have gone into the room with respondent. T. 132. When Patient A learned that respondent performed a D and C rather than the tissue biopsy to which she had consented, she was left "mortified" and without trust in respondent. T. 132 and 136.

We note our rejection of respondent's defense that petitioner was obligated to call Patient A's sister as a witness. In view of petitioner's prima facie case as to allegation C.2, respondent cannot complain here because he could have sought to produce this witness who had recommended him to Patient A.

We do not accept the hearing committee's findings and conclusion as to allegation E.1. The hearing committee merely found and concluded that respondent did not perform ultrasound on Patient C. However, respondent did not, as charged, fail to monitor this patient with ultrasound because the patient had informed respondent that see did not consent to such testing. T. 490. This defense raised by respondent, that the matter of ultrasound was discussed with the patient and that it was the

patient's decision not to undergo an ultrasound, was ignored by the hearing committee. Moreover, there was insufficient proof adduced by petitioner to rebut these factual assertions testified to by respondent.

We wish to clarify, in finding respondent guilty of allegation E.2, that respondent's guilt as to said allegation is independent of allegation E.1. Although the hearing committee's conclusions as to allegation E.2 referred to a connection between the absence of ultrasound tests and the advice respondent provided Patient C, we base our conclusion as to allegation E.2 solely on respondent's failure to give appropriate instructions to Patient C when she called respondent's office. This separate act of guilt on May 9, 1989 represents, by itself, a deviation from accepted standards of medical practice. T. 234 and 235. Rather than advise the patient, who had reported vaginal bleeding and pressure, that she should lie on her side and call back later, respondent should have provided the patient with the correct instruction that she should be evaluated with a physical examination. T. 234. In view of both the patient's symptoms suggesting preterm labor and her history, respondent's negligence resulted in the patient's losing time and the opportunity to halt the labor and prolong the pregnancy. We agree with petitioner's expert that the suggestion that labor might ensue, under these circumstances known to respondent, "has to be responded to in a quicker fashion because you don't have as much time to act". T. 235. Therefore, we reject respondent's defense

that his conduct, in regard to allegation E.2, was proper and appropriate.

The penalty for respondent's misconduct should be commensurate with the gravity and flagrant nature of his behavior. Respondent placed his patients in unnecessary danger by valuing his own gain over the well being of his patients. He also placed his own interests over the hospitals' right to know the truth about his background. He has repeatedly demonstrated that he is unworthy of the trust conferred upon him by his licensure. These acts of misconduct show that respondent has blatantly disregarded the truth, flouted the professional standards of the medical community, and disregarded the welfare of his patients. In our unanimous opinion, the penalty of revocation is warranted for the misconduct we have found.

We unanimously recommend the following:

1. The findings of fact of the hearing committee and the recommendation of the Health Commissioner's designee as to those findings of fact be accepted, except the date "May 19, 1989" in finding of fact C.6 be corrected and deemed to read "May 9, 1989";
2. The following additional findings of fact, referable to the Hospital Applications and to Patients A through D, be accepted:

Hospital Applications 11	At the times respondent made and filed the two applications, respondent knew that he had falsified the answers and responses on these applications and knew that he omitted required information.
Hospital Applications 12	On these two applications, respondent intentionally misrepresented and concealed known facts.
D.7	Respondent lost his hospital privileges before he treated Patient D.
D.8	At all relevant times when respondent treated Patient D, respondent knew that he had no privileges, temporary or otherwise, at any hospital. T. 544, 547, 549, and 20.
D.9	A physician practicing medicine in the State of New York, who does not have hospital privileges, is under a duty to inform his patients of his lack of hospital privileges. T. 179-181, 183-184, and 252-254.
D.10	Respondent deliberately did not tell Patient D that he did not have hospital privileges and, while respondent provided her care, Patient D did not know that respondent did not

have such privileges. T. 22-24 and 37.

D.11 Patient D was aware of the possibility of her having withdrawal bleeding as a result of hormone therapy and was prepared to go to the hospital emergency room on March 3, 1988 due to her bleeding. T. 24-26 and 45.

D.12 Patient D assumed respondent had hospital privileges and would care for her in the hospital in the event she needed hospital care. T. 25, 26, 47, and 252.

D.13 Respondent concealed this information and misled Patient D for the purpose of protecting his own self-interest.

D.14 Respondent's failure to inform Patient D directly of his hospital status constituted a deviation from accepted standards of medical practice. T. 252.

D.15 No notice as to respondent's lack of hospital privileges was posted in respondent's office when Patient D was treated by respondent at the office. T. 21-24, 40-41, and 424.

D.16 When Patient D was ready to go to the

hospital emergency room on March 3, 1988 with her pain becoming more intense, respondent told her "Oh, no, no, no, don't go to the emergency room, I'll meet you at the office." T. 25-26. Respondent wanted Patient D to come to his office for an examination before deciding whether she had to go to the hospital. T. 374.

D.17 Based on respondent's instruction, Patient D and her husband drove at 7:00 p.m., or a little thereafter, 5.2 miles through a "bad snow storm" to meet respondent at his office. T. 26 and 35.

D.18 On the telephone and when Patient D arrived at his office, respondent never told Patient D that he did not have any hospital privileges and did not discuss with her the possibility or advisability of her going to the hospital. T. 37.

D.19 Lourdes Hospital, where respondent knew he did not then have hospital privileges, was only 1.1 miles from Patient D's home. T. 35.

D.20 Upon her arrival at respondent's office that evening, Patient D was

bleeding profusely. T. 27-28.

D. 21 After Patient D said "maybe I should go to the emergency room", respondent indicated, without mentioning his lack of hospital privileges, that "there isn't time". T. 27-28 and 37.

D.22 Respondent's deception and concealment as to his lack of hospital privileges deprived Patient D of her opportunity to obtain medical care from a physician who did have hospital privileges and of her choice to plan for her medical needs. Had Patient D sought medical care at the hospital, she would have found herself unattended by her physician and reliant on other unknown physicians who had no record of her condition and no knowledge of her wishes. T. 252-253.

D.23 Due to respondent's concealment of his lack of hospital privileges, Patient D was subjected to a D and C in respondent's office at a time when respondent was alone without assistance and she was at "near shock-like levels" of blood pressure and pulse. T. 29, 250, 257, and 260.

D.24 In this office setting, Patient D was

exposed to additional risk of harm that would not have existed at the hospital 1.1 miles away because there was no opportunity for respondent to obtain assistance in putting at least fluids into Patient D and to obtain hospital resuscitation equipment and blood to monitor circulation. T. 250, 260, 261, and 262.

D.25 On the next day, March 4, 1988, Patient D had follow-up care at Lourdes Hospital and first learned that respondent did not have hospital privileges. T. 31 and 34.

D.26 Had Patient D known that respondent did not have hospital privileges, she would not have continued with him as her physician. T. 50.

B.10 Respondent's privileges at United Health Services was terminated in September 1987. T. 544 and 549.

B.11 Respondent filed a reapplication for privileges at United Health Services which was pending until a final decision was made in or about May 26, 1988 rejecting respondent's application for privileges there. T. 544, 545, and 547.

B.12 At all relevant times when respondent treated Patient B, respondent knew that he had no privileges, temporary or otherwise, at any hospital. T. 544, 547, 549, and 54.

B.13 A physician practicing medicine in New York, who does not have hospital privileges, is under a duty to inform his patients, at the time of the very first visit, of his lack of hospital privileges. T. 179-184 and 252-254.

B.14 During Patient B's entire course of care by respondent, respondent deliberately did not tell Patient B that he did not have any hospital privileges and that he could not deliver her baby. T. 64 and 74.

B.15 During Patient B's entire course of care by respondent, Patient B never understood that Dr. Kassis would deliver her baby or that anyone other than respondent would be responsible for the delivery. T. 55 and 59.

B.16 Patient B did not see any notice posted in respondent's office advising respondent's patients that respondent did not have any hospital privileges. T. 55 and 67.

B.17 During her first pregnancy, Patient B, who was twenty years old in 1988, was scared and wanted her physician to be with her through the whole pregnancy and delivery. T. 79 and petitioner's Exhibit 8.

B.18 Patient B told respondent that she would be delivering at United Health Services (Wilson). T. 73 and 60.

B. 19 During Patient B's first two office visits, respondent deliberately did not tell Patient B that he did not have hospital privileges at United Health Services. At that time he hoped, but had no guarantees, that his reapplication would be granted. T. 55, 61, and 545.

B.20 During Patient B's first two office visits, respondent did not have any notice, as to his lack of hospital privileges, posted on his bulletin board. The idea to post such a notice was not recommended to respondent until after these first two visits. After respondent consulted his attorney with regard to the March 1988 events concerning Patient D, respondent's attorney advised respondent to post such a notice. T. 408-409.

B.21 Respondent told Patient B that he would deliver her baby and be there for her at the time of the delivery. T. 55, 59, 65, and 66.

B.22 Patient B was under the impression that respondent would be at the hospital to deliver her baby. T. 39 and 73.

B.23 Patient B never saw any notice posted in respondent's office which showed her that respondent lacked hospital privileges. T. 54-55, 61, and 67-68.

B.24 Prior to the evening when Patient B went into labor, she never met Dr. Kassis, never went to his office for care, never authorized her records be forwarded to him, and never knew that he would deliver her baby. T. 62.

B.25 Patient B believed that, due to the diagnosis of placenta previa, she was supposed to have a cesarean section. No other method of delivery had been discussed with her. She had taken a class on cesarean sections to prepare for her delivery, but had not taken a class on vaginal delivery. T. 58, 60, 70, 75, 76, and 77.

B.26 On September 6, 1988, Patient B travelled to United Health Services

Hospital because she was in labor. Patient B then first learned that her physician, respondent, was not going to delivery her, that Dr. Kassis would deliver her, and respondent could not deliver her since he had no privileges at the hospital. She also first learned that, due to an ultrasound performed on that date, a cesarean section would not be performed and that she would be trying to give birth naturally. T. 60 and 61.

B.27 Prior to her arrival at the hospital while in labor, Patient B had no idea that respondent did not have privileges at that hospital. T. 61.

B.28 Patient B was not prepared to give birth without her physician and to deliver vaginally. As a result of this sudden information, Patient B was terrified and scared. Patient B and her family were all very upset by this incident. T. 61, 63, 77, 78, 84, 85, and 87.

B. 29 When Patient B's mother called respondent after this incident to express her anger, respondent did not deny that he had not told Patient B about his lack of privileges and that he had not prepared Patient B for her

delivery. T. 86.

B.30 Respondent's deception and concealment as to his lack of hospital previleges deprived Patient B of the opportunity to seek additional help, consultation, and supervision from physicians who would be directly responsible for her care when see had complications such as premature labor. Similarly, respondent deviated from accepted medical standards by not informing Patient B that another physician would have to deliver her baby due to his lack of hospital privileges. Patient B was deprived of the opportunity to seek specialized or additional care from physicians who would be directly responsible for her in a crisis situation. T. 181, 183, and 184.

B.31 Respondent exposed Patient B to a risk of harm from a preterm birth involving the possibility of placenta previa. T. 184, 190, 205, and 206.

B.32 Had Patient B known that respondent did not have hospital privileges, she would not have continued with him as her physician. T. 78.

B.33 Patient B switched to another physician once she learned that

respondent did not have hospital privileges. T. 63.

A.9 The dilation and curettage respondent performed on Patient A was not medically indicated. T. 270.

A.10 By performing this procedure, respondent exposed Patient A to the risk of scarring to the uterus which could further aggravate her fertility difficulties. T. 270.

C.8 Respondent failed to give appropriate instructions to Patient C when she called his office on May 9, 1989. T. 234.

C.9 By telling Patient C to rest, respondent delayed her transportation to a hospital and lost the opportunity to prolong the pregnancy. T. 233.

3. The conclusions of the hearing committee and the recommendation of the Health Commissioner's designee as to those conclusions be modified.

4. Respondent be found guilty, by a preponderance of the evidence, of the first through fourth specifications of unprofessional conduct for willfully filing false reports

and practicing the profession fraudulently, all involving respondent's filing of separate applications with two hospitals in which he intentionally falsified answers and information requested of him, and omitted required information; the fifth and sixth specifications of practicing the profession fraudulently involving respondent's intentional concealing from and affirmative statements to two patients regarding his lack of hospital privileges; the eighth through eleventh specifications of unprofessional conduct for conduct in the practice of the profession which evidences moral unfitness to practice the profession, all involving the conduct for which he is guilty as to the first through sixth specifications; and the seventh specification of negligence on more than one occasion to the extent involving respondent's performing a dilation and curettage which was not indicated; failing to obtain the patient's consent for such dilation and curettage; failing to order subsequent sonograms despite an ultrasound report showing a placenta previa; and failing to give appropriate instructions to a patient when she called his office and stated that she was bleeding (allegations C.1, C.2, D.1, and E.2); and respondent be found not guilty of the remaining charges; and

5. The recommendation of the hearing committee and the

recommendation of the Health Commissioner's designee as to that recommendation be accepted, and respondent's license to practice medicine in the State of New York be revoked upon each specification of the charges of which respondent has been found guilty, as aforesaid.

Respectfully submitted,

FLOYD S. LINTON

THEODORE M. BLACK, SR.

NANCY A. RUCKER

Floyd S Linton
Chairperson

Dated: December 23, 1992

VOTE AND ORDER

AZMI ABDELMESSIH

CALENDAR NO. 12937

The University of the State of New York

IN THE MATTER

OF

AZMI ABDELMESSIH
(Physician)

DUPLICATE ORIGINAL VOTE AND ORDER NO. 12937

Upon the report of the Regents Review Committee, a copy of which is made a part hereof, the record herein, under Calendar No. 12937, and in accordance with the provisions of Title VIII of the Education Law, it was

VOTED (January 15, 1993): That, in the matter of AZMI ABDELMESSIH, respondent, the recommendation of the Regents Review Committee be accepted as follows:

1. The findings of fact of the hearing committee and the recommendation of the Health Commissioner's designee as to those findings of fact be accepted, except the date "May 19, 1989" in finding of fact C.6 be corrected and deemed to read "May 9, 1989";
2. The additional findings of fact, referable to the Hospital Applications and to Patients A through D, as set forth in the Regents Review Committee report (pp. 21-31), be accepted;
3. The conclusions of the hearing committee and the recommendation of the Health Commissioner's designee as to those conclusions be modified;
4. Respondent is guilty, by a preponderance of the evidence, of the first through fourth specifications of unprofessional conduct for willfully filing false reports and practicing the profession fraudulently, all involving

respondent's filing of separate applications with two hospitals in which he intentionally falsified answers and information requested of him, and omitted required information; the fifth and sixth specifications of practicing the profession fraudulently involving respondent's intentional concealing from and affirmative statements to two patients regarding his lack of hospital privileges; the eighth through eleventh specifications of unprofessional conduct for conduct in the practice of the profession which evidences moral unfitness to practice the profession, all involving the conduct for which he is guilty as to the first through sixth specifications; and the seventh specification of negligence on more than one occasion to the extent involving respondent's performing a dilation and curettage which was not indicated; failing to obtain the patient's consent for such dilation and curettage; failing to order subsequent sonograms despite an ultrasound report showing a placenta previa; and failing to give appropriate instructions to a patient when she called his office and stated that she was bleeding (allegations C.1, C.2, D.1, and E.2); and respondent is not guilty of the remaining charges; and

5. The recommendation of the hearing committee and the recommendation of the Health Commissioner's designee as to that recommendation be accepted, and respondent's license to practice medicine in the State of New York be revoked upon each specification of the charges of which respondent has been found guilty, as aforesaid;

and that Deputy Commissioner Henry A. Fernandez 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, Henry A. Fernandez, Deputy Commissioner, for and on behalf of the State Education Department and the Board of Regents, do hereunto set my hand, at the City of Albany, this 15th day of January, 1993.

HENRY A. FERNANDEZ
DEPUTY COMMISSIONER