

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

June 20, 1990

John C. Somberg, Physician
Albert Einstein College of Medicine
25720 Saunders Road North
Lake Forest, Illinois 60045

Re: License No. 124347

Dear Dr. Somberg:

Enclosed please find Commissioner's Order No. 10554. 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: Kenneth Harfenist, Esq.
55 Old Turnpike Road
Suite 105
Nanuet, N.Y. 10954

**REPORT OF THE
REGENTS REVIEW COMMITTEE**

JOHN C. SOMBERG

CALENDAR NO. 10554



The University of the State of New York

IN THE MATTER

of the

Disciplinary Proceeding

against

JOHN C. SOMBERG

No. 10554

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

REPORT OF THE REGENTS REVIEW COMMITTEE

JOHN C. SOMBERG, 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.

This disciplinary proceeding was properly commenced and on July 27, 1989 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 is annexed hereto, made a part hereof, and marked as Exhibit "B".

The hearing committee unanimously concluded that respondent was guilty of the first specification of the charges and, by a vote of two to one, that respondent was guilty of the second

JOHN C. SOMBERG (10554)

specification of the charges. The hearing committee unanimously recommended that respondent receive a Censure and Reprimand and that respondent be fined the amount of ten thousand dollars (\$10,000.00).

The Commissioner of Health recommended to the Board of Regents that the findings of fact and conclusions of the hearing committee be accepted in full, but that its recommendation as to the penalty be modified, and that respondent's license be suspended for one year and that such suspension be stayed provided respondent adheres to the standard terms of probation and that respondent be fined ten thousand dollars (\$10,000.00). A copy of the recommendation of the Commissioner of Health is annexed hereto, made a part hereof, and marked as Exhibit "C".

On February 28, 1990, the scheduled date of our hearing, respondent appeared and was represented by his attorney, Kenneth Harfenist, Esq., who presented oral argument on behalf of respondent. Dianne Abeloff, Esq., presented oral argument on behalf of the Department of Health.

Petitioner's recommendation is the same as the Commissioner of Health's recommendation, as to the measure of discipline to be imposed, should respondent be found guilty.

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

JOHN C. SOMBERG (10554)

We have considered the record as transferred by the Commissioner of Health in this matter, as well as respondent's March 5, 1990 submission and petitioner's reply thereto.

We unanimously recommend the following to the Board of Regents:

1. The hearing committee's findings of fact and the Commissioner of Health's recommendation as to those findings be accepted, except finding of fact numbered 10(e) not be accepted and deemed corrected to read as follows:

e. The Board received an application from respondent for the 1988 examination on or about February 3, 1988;

2. The following additional finding of fact be accepted:

14. Respondent knew that he was not Board certified in medicine and also knew that he was not Board certified in cardiology at the time that he made the representations set forth in findings of fact numbered 4, 5, 6, 7, 8, and 9 herein and intentionally misrepresented that he was so Board certified;

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

JOHN C. SOMBERG (10554)

4. Respondent be found guilty, by a preponderance of the evidence, of the specifications of the charges.

Additionally, by a vote of two to one, we recommend the following to the Board of Regents, with regard to the penalty:

5. Respondent receive a Censure and Reprimand and be fined the amount of ten thousand dollars (\$10,000.00) upon each specification of the charges of which we recommend respondent be found guilty, said fine to be imposed concurrently for a total of ten thousand dollars (\$10,000.00), to be paid by certified check, to the order of the New York State Education Department, and mailed to the Executive Director, Office of Professional Discipline, New York State Education Department, One Park Avenue - Sixth Floor, New York, New York 10016-5802 within six months after the effective date of the service of the order of the Commissioner of Education to be issued in this matter.

Regent J. Edward Meyer, while concurring with the recommendation of the other committee members with regard to the aforesaid findings of fact and conclusions, agrees with the Commissioner of Health with regard to the appropriate penalty to be imposed on the ground that the misconduct at issue involved numerous misrepresentations by respondent warranting a more severe penalty.

JOHN C. SOMBERG (10554)

Respectfully submitted,

J. EDWARD MEYER

MELINDA AIKINS BASS

GEORGE POSTEL


Chairperson

Dated: May 8, 1993

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

-----X
IN THE MATTER : STATEMENT
OF : OF
JOHN C. SOMBERG, M.D. : CHARGES
-----X

JOHN C. SOMBERG, M.D., the Respondent, was authorized to practice medicine in New York State on July 1, 1975 by the issuance of license number 124347-1 by the New York State Education Department. The Respondent is currently registered with the New York State Education Department to practice medicine for the period January 1, 1989 through December 31, 1991, at 25 East 86th Street, New York, New York 10028.

FACTUAL ALLEGATIONS

A. From in or about 1980 through in or about 1988, respondent was granted staff privileges and appointed to the faculty of Albert Einstein College of Medicine of Yeshiva University, 1300 Morris Park Avenue, Bronx, New York, was granted admitting privileges and medical staff membership at Montefiore Medical Center, 111 East 210th Street, Bronx, New York, at North Central Bronx Hospital, 3424 Kossuth Avenue, Bronx, New York, and at Bronx Municipal Hospital Center, Pelham Pkwy S. and Eastchester Road, Bronx, New York.

EXHIBIT "A"

1. At various times during his employment and/or affiliation at these institutions, respondent submitted documents, including but not limited to, applications for privileges, questionnaires, requests for faculty appointment and curriculum vitae revision forms, which assert that respondent was certified by the American Board of Internal Medicine in 1976 or 1977 when respondent knew he was not certified. Respondent made said assertions with the intent to mislead these institutions regarding his credentials.

2. At various times during his employment and/or affiliation at these institutions, respondent submitted documents, including but not limited to, annual questionnaire and reappointment appraisal forms, which assert that respondent was certified by the American Board in Internal Medicine in Cardiology in 1982 when respondent knew he was not certified. Respondent made said assertions with the intent to mislead these institutions regarding his credentials.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

PRACTICING THE PROFESSION FRAUDULENTLY

The Respondent is charged with practicing the profession of medicine fraudulently under N.Y. Educ. Law, Section 6509(2) (McKinney 1985) in that the Petitioner charges:

1. The facts in Paragraph A.1. and A.2.

SECOND SPECIFICATION

WILLFULLY MAKING AND FILING A FALSE REPORT

The Respondent is charged with committing unprofessional conduct under N.Y. Educ. Law, Section 6509(9) (McKinney 1985) and his conduct in the practice of his profession evidences unprofessional conduct within the meaning of 8 N.Y.C.R.R. 29.1(b)(6)(1987) by willfully making and filing a false report, in that, the Petitioner charges:

2. The facts in Paragraph A.1. and A.2.

DATED: New York, New York

June 15, 1989



CHRIS STERN HYMAN, Counsel
Bureau of Professional Medical
Conduct

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

-----X
IN THE MATTER :
OF :
JOHN C. SOMBERG, M.D. :
-----X

REPORT
OF THE
HEARING COMMITTEE

TO: THE HONORABLE DAVID AXELROD, M.D.
COMMISSIONER OF HEALTH OF THE STATE OF NEW YORK

The undersigned Hearing Committee (the Committee) consisted of Rev. Edward J. Hayes, Chairman, Kenneth L. Gayles, M.D. and David D. Lyon, M.D. The Committee was duly designated, constituted and appointed by the State Board for Professional Medical Conduct (the Board). The Administrative Officer was Harry Shechtman, Administrative Law Judge.

The hearing was conducted pursuant to the provisions of New York Public Health Law Section 230 and New York State Administrative Procedure Act Sections 301-307 to receive evidence concerning the charges that the Respondent has violated provisions of New York Education Law Section 6509. Witnesses were sworn or affirmed and examined. A stenographic record of the hearing was made. Exhibits were received in evidence and made part of the record.

The Committee has considered the entire record herein and makes this Report of its Findings of Fact, Conclusions and Recommendations to the New York State Commissioner of Health.

EXHIBIT "B"

STATEMENT OF THE CASE

The Respondent is charged with practicing the profession fraudulently and willfully making and filing a false report pursuant to Section 6509(2) and (9) of the Education Law and Part 29.1(b)(6) of 8 NYCRR.

The factual allegations are:

1. From in or about 1980 through in or about 1988, Respondent was granted staff privileges and appointed to the faculty of Albert Einstein College of Medicine of Yeshiva University, 1300 Morris Park Avenue, Bronx, New York, was granted admitting privileges and medical staff membership at Montefiore Medical Center, 111 East 210th Street, Bronx, New York, at North Central Bronx Hospital, 3424 Kossuth Avenue, Bronx, New York, and at Bronx Municipal Hospital Center, Pelham Parkway South and Eastchester Road, Bronx, New York.

2. At various times during his employment and/or affiliation at these institutions, Respondent submitted documents, including but not limited to, applications for privileges, questionnaires, requests for faculty appointment and curriculum vitae revision forms, which assert that Respondent was certified by the American Board of Internal Medicine in 1976 or 1977 when Respondent knew he was not certified. Respondent made said assertions with the intent to mislead these institutions regarding his credentials.

3. At various times during his employment and/or affiliation at these institutions, Respondent submitted documents,

including but not limited to, annual questionnaire and reappointment appraisal forms, which assert that Respondent was certified by the American Board in Internal Medicine in Cardiology in 1982 when Respondent knew he was not certified. Respondent made said assertions with the intent to mislead these institutions regarding his credentials.

PROCEDURAL HISTORY

Statement of Charges dated:	June 15, 1989
Notice of Hearing and Statement of Charges served upon Respondent:	June 29, 1989
Notice of Hearing Returnable:	July 27, 1989
Place of Hearing:	NYS Dept. of Health 8 E. 40th Street New York, NY
Answer:	None filed
Bureau of Professional Medical Conduct appeared by:	Shelley G. Schwartz, Esq.
Respondent appeared by:	Kenneth Harfenist, Esq. 55 Old Turnpike Road Suite 105 Nanuet, NY 10954
Hearing held on:	July 27, 1989
Record closed on: (Respondent's Counsel advised the ALJ by telephone that he had no further evidence to submit.)	August 11, 1989
Deliberations held on:	September 15, 1989
Report submitted:	

WITNESSES CALLED BY PETITIONER

1. Elizabeth Hopkins
2. Susan Corson Day, M.D.

WITNESSES CALLED BY RESPONDENT

1. John C. Somberg, M.D., the Respondent
2. Isa Goldman, M.D.
3. Edmund Sonnenblick, M.D.
4. Barrie Levitt, M.D.
5. William Frishman, M.D.

FINDINGS OF FACT

1. JOHN C. SOMBERG, M.D., the Respondent, was authorized to practice medicine in New York State on July 1, 1975 by the issuance of license number 124347-1 by the New York State Education Department. The Respondent is currently registered with the New York State Education Department to practice medicine for the period January 1, 1989 through December 31, 1991, at 25 East 86th Street, New York, New York 10028.

2. The Respondent was first employed by the Albert Einstein College of Medicine in 1980. (Ex. B).

3. At the time of his recruitment, he was not requested to state whether he was certified nor did he state that he was certified by the American Board of Internal Medicine either in internal medicine or cardiology. (T. 70-71).

4. In a document entitled Curriculum Vitae, Revision Albert Einstein College of Medicine, completed and signed on July 21, 1980 by Respondent, it is indicated that he is Board certified in medicine and Board eligible in cardiology. (Ex. 3; P. 53).

5. In a document entitled Delineation of Clinical Privileges, Albert Einstein College of Medicine signed by respondent on October 6, 1981 it is indicated that he is Board Certified (ABIM) in 1977. (Ex. 3; pp. 14-16).

6. In an annual questionnaire for Montefiore Medical Center signed by the Respondent on January 24, 1984 it is indicated that he is Board Certified in medicine and cardiology. (Ex. 3, p. 51).

7. In an annual questionnaire for Montefiore Medical Center signed by the Respondent on November 5, 1985 it is indicated that he is Board Certified in medicine and cardiology. (Ex. 3, p. 50).

8. In an annual questionnaire for Montefiore Medical Center signed by the Respondent on April 20, 1987, it is indicated that he is Board Certified in medicine and cardiology. (Ex. 3, p. 72).

9. In a document entitled Application for Appointment to the Visiting Staff as Assistant Attending for New York City Health and Hospital Corporation signed by the Respondent, but undated, it is indicated that Respondent is certified by the American Board of Internal Medicine. Nomination for the appointment is dated June 18, 1980. (Ex. 3, P. 97).

10. The records of the American Board of Internal Medicine reveal the following:

- a. The Respondent first applied for admission to examination on October 6, 1976. (Ex. 4; p. 41).
- b. On June 22, 1977, the Respondent took the examination but did not pass and was so advised by letter dated October 14, 1977 addressed to him at 375 Harvard Street, Cambridge, Massachusetts. In that letter, the Respondent is advised that to take the examination in September 1978 he must request an application form between December 1, 1977 and March 15, 1978. (Ex. 4; p. 43).
- c. The Respondent applied for the forms by letter received by the Board on December 22, 1977 (Ex. 4, P. 33). The application was received by the Board on February 27, 1978. (Ex. 4; pp. 5, 30-32).
- d. On August 10, 1978, the Board received a letter from the Respondent withdrawing from the 1978 examination and asking for forms for the 1979 examination. (Ex. 4; p. 29).
- e. The Respondent next applied for the 1988 examination on January 12, 1987 (Ex. 4; pp. 5, 18, 19).
- f. The Respondent did not pass the 1988 examination. (Ex. 4; p. 8). (See also testimony of Elizabeth Ann Hopkins at pages 35-38.)

11. The Respondent in his curriculum vitae represents that he is a member of the New York State Medical Society. (Ex. B).

The Medical Society of the State of New York by its letter of July 24, 1989 writes that he is not nor has he ever been a member. (Ex. 8).

12. The Respondent in his curriculum vitae represents that he is a member of the Massachusetts Medical Society. (Ex. B).

The Massachusetts Medical Society by its letter of July 21, 1989 writes that he is not nor has he ever been a member. (Ex. 9).

13. The Respondent in his curriculum vitae represents that he is a member of the Editorial Board of the New England Journal of Medicine (Ex. B).

The New England Journal of Medicine by its letter of July 26, 1989 writes that he is not and never has been a member of its Editorial Board. (Ex. 6). (See also Ex. 7).

CONCLUSION

There is no doubt that the Respondent was not certified in either internal medicine or cardiology. The attorney for the Respondent was prepared to stipulate that Dr. Somberg was not Board certified in internal medicine. (T. 10 and 18).

The Respondent, however, claims that he believed he was Board certified. In support thereof he claims to have received a letter to that effect but lost it (T. 71-73). He does admit that he never received a certificate from the Board. (T. 103).

The Committee concludes that his testimony was not credible in the light of his misrepresentations in his curriculum vitae and the fact that he reapplied for the examination at a time after he allegedly received a letter advising him that he was

certified. If he had indeed received such a letter, there was no rationale for his application to take the examination the following year.

Peter J. Millock, General Counsel to the Health Department, has defined Fraudulent Practice as follows:

"A false representation or concealment of a fact, made in connection with the practice of medicine, which is intended to deceive another person so that that person will act upon it either to his detriment or to the gain of the licensee, is the fraudulent practice of medicine. The false representations can be made by words or conduct or by concealment of that which should have been disclosed."

The Committee by a unanimous vote concludes that the Respondent practiced the profession fraudulently pursuant to Section 6509(2) of the Education Law. The Committee is of the opinion that the deception is for "the gain of the licensee." There would be an effect upon his promotion (T. 165) and it would affect the billing for services to be rendered by the Electrocardiography P.C. which was in the process of development. (Ex. 3; p. 87).

The Committee, therefore, unanimously sustains the First Specification.


The Committee, by a vote of two to one, voted that the Respondent committed unprofessional conduct under Section 6509(9) of the Education Law and 8 NYCRR 29.1(b) and in that his acts constituted a willful making and filing of a false report.

RECOMMENDATION

The Committee hereby recommends unanimously that the Respondent, John C. Somberg, M.D., receive a penalty of Censure and Reprimand and that he be fined the amount of Ten Thousand (\$10,000.00) Dollars.

DATED: New York, New York
Nov. 1, 1989

Respectfully submitted,



Rev. Edward J. Hayes, Chairperson

Kenneth L. Gayles, M.D.
David T. Lyon, M.D.

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

IN THE MATTER :
OF : COMMISSIONER'S
JOHN C. SOMBERG, M.D. : RECOMMENDATION

-----X
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 July 27, 1989. Respondent, John C. Somberg, M.D., appeared by Kenneth Harfenist, Esq. The evidence in support of the charges against the Respondent was presented by Shelley G. Schwartz, 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 modified. Respondent has lied repeatedly about his qualifications. He has said he was board certified when he was not, a medical society member when he was not, and a medical journal editor when he was not. This pattern of fabrication warrants more than a censure and reprimand. A suspension of his license may better assure that care of future patients is not compromised by the same sort of behavior. I recommend that Respondent's license be suspended for one year and that such suspension be

EXHIBIT "C"

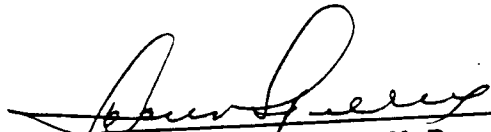
stayed provided Respondent adheres to the standard terms of probation. Respondent should also be fined \$10,000.

- 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 as described above.

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

DATED: Albany, New York

David Axelrod
1989


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

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

JOHN C. SOMBERG

CALENDAR NO. 10554



The University of the State of New York

IN THE MATTER

OF

JOHN C. SOMBERG
(Physician)

DUPLICATE
ORIGINAL
VOTE AND ORDER
NO. 10554

Upon the report of the Regents' Review Committee, a copy of which is made a part hereof, the record herein, under Calendar No. 10554, and in accordance with the provisions of Title VIII of the Education Law, it was

VOTED (May 25, 1990): That, in the matter of JOHN C. SOMBERG, respondent, the unanimous recommendation of the Regents Review Committee be accepted as follows:

1. The hearing committee's findings of fact and the Commissioner of Health's recommendation as to those findings be accepted, except finding of fact numbered 10(e) not be accepted and deemed corrected to read as follows:
 - e. The Board received an application from respondent for the 1988 examination on or about February 3, 1988;
2. The following additional finding of fact be accepted:
 14. Respondent knew that he was not Board certified in medicine and also knew that he was not Board certified in cardiology at the time that he made the representations set forth in findings of fact numbered 4, 5, 6, 7, 8, and 9 herein

JOHN C. SOMBERG (10554)

and intentionally misrepresented that he was so Board certified;

3. The conclusions of the hearing committee and the Commissioner of Health's recommendation as to those conclusions be accepted; and
4. Respondent be found guilty, by a preponderance of the evidence, of the specifications of the charges; and
5. That the recommendations of the hearing committee, Commissioner of Health, and Regents Review Committee as to the measure of discipline be modified; and
6. Based upon the Board of Regents view of the record, respondent's license to practice as a physician in the State of New York be suspended for one year and respondent be fined \$10,000 upon each specification of the charges of which respondent was found guilty, said suspensions to run concurrently and said fines to be imposed concurrently for a total of \$10,000, that execution of said suspensions be stayed, and that respondent be placed on probation for one year under the following terms:

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

JOHN C. SOMBERG (10554)

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; and
 - c. That respondent shall pay the \$10,000 fine imposed upon respondent, by certified check, to the order of the New York State Education Department, addressed to the Executive Director, Office of Professional Discipline, New York State Education Department, One Park Avenue - 6th Floor, New York, NY 10016-5802 within six months after the effective date of the service of the order of the Commissioner of Education to be issued in this matter and respondent shall submit satisfactory proof of such payment to the Director, Office of Professional Medical Conduct, Empire State Plaza, Albany, NY 12234;
2. If the Director of the Office of Professional Medical Conduct determines that respondent may have violated probation, the Department of Health may

JOHN C. SOMBERG (10554)

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;

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 8th day of

Thomas Sobol 1990.
Thomas Sobol
Commissioner of Education