



# STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower    The Governor Nelson A. Rockefeller Empire State Plaza    Albany, New York 12237

Mark R. Chassin, M.D., M.P.P., M.P.H.  
*Commissioner*

Paula Wilson  
*Executive Deputy Commissioner*

October 6, 1994

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Terrence Sheehan, Esq.  
Associate Counsel  
NYS Department of Health  
Bureau of Professional Medical Conduct  
5 Penn Plaza - Sixth Floor  
New York, New York 10001

Omar S. Zaki, M.D.  
20 Gas Light Lane  
Framingham, MA 01701

RECEIVED

OCT 07 1994

Office of  
MEDICAL CONDUCT

EFFECTIVE DATE 10/13/94

**RE: In the Matter of Omar S. Zaki, M.D.**

Dear Mr. Sheehan and Dr. Zaki :

Enclosed please find the Determination and Order (No. 94-213) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified mail or in person** to:

Office of Professional Medical Conduct  
New York State Department of Health  
Corning Tower - Fourth Floor (Room 438)  
Empire State Plaza  
Albany, New York 12237

If your license or registration certificate is lost, misplaced or its whereabouts is otherwise unknown, you shall submit an affidavit to that effect. If subsequently you locate the requested items, they must then be delivered to the Office of Professional Medical Conduct in the manner noted above.

As prescribed by the New York State Public health Law §230, subdivision 10, paragraph (i), and §230-c subdivisions 1 through 5, (McKinney Supp. 1992), "(t)he determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the licensee or the Department may seek a review of a committee determination.

Request for review of the Committee's determination by the Administrative Review Board stays all action until final determination by that Board. Summary orders are not stayed by Administrative Review Board reviews.

All notices of review must be served, by **certified mail**, upon the Administrative Review Board **and** the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

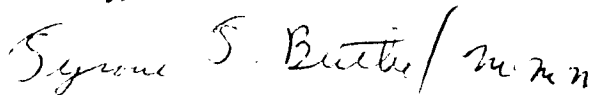
The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Administrative Law Judge  
New York State Department of Health  
Bureau of Adjudication  
Empire State Plaza  
Corning Tower, Room 2503  
Albany, New York 12237-0030

The parties shall have 30 days from the notice of appeal in which to file their briefs to the Administrative Review Board. Six copies of all papers must also be sent to the attention of Mr. Horan at the above address and one copy to the other party. The stipulated record in this matter shall consist of the official hearing transcript(s) and all documents in evidence.

Parties will be notified by mail of the Administrative Review Board's Determination and Order.

Sincerely,

A handwritten signature in cursive script, appearing to read "Tyrone T. Butler / mmn".

Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:mmn

Enclosure

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

**IN THE MATTER  
OF  
EDWARD OMAR ZAKI, M.D.**

**DETERMINATION  
AND  
ORDER**

No. BPMC-94-213

**SAMUEL H. MADELL, M.D.**, (Chair), **C. FRED PECKHAM, JR, D.O.** and **KENNETH KOWALD** duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to §230(10)(e) of the Public Health Law.

**MARC P. ZYLBERBERG, ESQ.**, **ADMINISTRATIVE LAW JUDGE**, served as the Administrative Officer.

The Department of Health appeared by **TERRENCE SHEEHAN, ESQ.**, Associate Counsel.

Respondent, **EDWARD OMAR ZAKI, M.D.**, failed to appear personally at the hearing and was not represented by counsel. However he did submit a response to a Notice of Referral Proceeding dated March 3, 1994 and a Statement of Charges, dated February 24, 1994.

A hearing was held on September 8, 1994. Evidence was received and examined. A Transcript of the proceedings was made. After consideration of the record, the Hearing Committee issues this Determination and Order, pursuant to the Public Health Law and the Education Law of the State of New York.

## STATEMENT OF CASE

The State Board for Professional Medical Conduct is a duly authorized professional disciplinary agency of the State of New York. (§230 et seq. of the Public Health Law of the State of New York [hereinafter P.H.L.])

This case, brought pursuant to P.H.L. §230(10)(p), is also referred to as an "expedited hearing". The scope of an expedited hearing is strictly limited to evidence or sworn testimony relating to the nature and severity of the penalty to be imposed on the licensee<sup>1</sup> (Respondent).

EDWARD OMAR ZAKI, M.D., (hereinafter "Respondent" [also known as OMAR S. ZAKI]) is charged with professional misconduct within the meaning of §6530(9)(d) of the Education Law of the State of New York (hereinafter N.Y.S. Education Law), to wit: "professional misconduct ... by reason of having disciplinary action taken by a duly authorized professional disciplinary agency of another state, for conduct, which conduct, would, if committed in New York State constitute professional misconduct under the Laws of New York State. (Petitioner's Exhibit # 1 and §6530(9)(d) of the N.Y.S. Education Law).

In order to find that Respondent committed professional misconduct, the Hearing Committee, pursuant to §6530(9)(d) of the N.Y.S. Education Law, must determine: (1) whether Respondent had some disciplinary action taken or instituted against him by a duly authorized professional disciplinary agency of another state and (2) whether Respondent's conduct on which the disciplinary action was taken would, if committed in New York State, constitute professional misconduct under the laws

---

<sup>1</sup> P.H.L. §230(10)(p), fifth sentence.

of New York State.

A copy of the Statement of Charges is attached to this Determination and Order as Appendix I.

### **FINDINGS OF FACT**

The following Findings of Fact were made after a review of the entire record in this matter. These facts represent evidence found persuasive by the Hearing Committee in arriving at a particular finding. Unless otherwise noted, all Findings and Conclusions herein were unanimous.

1. Respondent was authorized to practice medicine in New York State in 1972 by the issuance of license number 114194 by the New York State Education Department. (Petitioner's Exhibits # 1 and # 5)<sup>2</sup>

2. The Respondent is currently registered with the New York State Education Department to practice medicine for the period January 1, 1994 through December 31, 1995. (Petitioner's Exhibits # 1 and #5)

3. R. Scott Gonfrade served the Notice of Referral Proceeding, the Statement of Charges and summary of Department of Health Hearing Rules on Respondent by giving same to Respondent's wife, Anne Zaki, on March 9, 1994, at 2:30 P.M. (Petitioner's Exhibit # 2)

---

<sup>2</sup> refers to exhibits in evidence submitted by the New York State Department of Health (Petitioner's Exhibit) or by Respondent, Edward Omar Zaki, M.D. (ALJ's Exhibit)

4. The Virginia Board of Medicine, under the Code of the State of Virginia (hereinafter "Virginia Board") is a state agency charged with regulating the practice of medicine pursuant to the Laws of the State of Virginia. (Petitioner's Exhibits # 3 and # 4)

5. On September 3, 1991, the Virginia Board charged, by Statement of Particulars<sup>3</sup>, Respondent with systematically performing laboratory tests, on at least twenty-two (22) separate patients, which were not medically indicated. Respondent was also charged with excessively charging for the aforementioned tests, and failing to provide appropriate medical care to five (5) patients, in violation of the laws of Virginia. (Petitioner's Exhibit # 3)

6. As a result of the September 3, 1991 charges, Respondent and the Virginia Board entered into a Consent Order, entered February 10, 1992<sup>4</sup>. (Petitioner's Exhibit #4)

7. In the Consent Order, Respondent waived his rights to a formal hearing and his right to contest the allegations contained in the Virginia Statement of Particulars. Respondent permanently surrendered his license to practice medicine in the Commonwealth of Virginia and agreed not to petition for reinstatement of said license at anytime in the future. (Petitioner's Exhibit # 4)

8. Respondent has applied to surrender his license to practice medicine in the State of New York. (ALJ's Exhibit # 1 and Petitioner's Exhibit # 5)

---

<sup>3</sup> Before the Board of Medicine, IN RE: Omar S. Zaki, M.D. Statement of Particulars, dated September 3, 1991 and signed by Hilary H. Connor, M.D., Executive Director, Virginia Board of Medicine. (Petitioner's Exhibit # 3)

<sup>4</sup> Before the Board of Medicine, IN RE: Omar S. Zaki, M.D. Consent Order, seen and agreed to by Omar S. Zaki, February 4, 1992, received, entered and signed by Hilary H. Connor, M.D., Executive Director, Virginia Board of Medicine, on February 10, 1992. (Petitioner's Exhibit # 4)

9. Petitioner has refused to accept Respondent's proposed surrender of his license. [T-6]<sup>5</sup>

10. Respondent denies any wrongdoing to the underlying charges and has not admitted the allegations set forth in the Virginia Statement of Particulars. (ALJ's Exhibit # 1 and Petitioner's Exhibit # 4)

11. Respondent has admitted to, and provided documentation of, being physically and mentally impaired and "totally and permanently disabled for practicing medicine"<sup>6</sup>. (ALJ's Exhibit # 1)

12. The Hearing Committee accepts the allegations contained in the Virginia Statement of Particulars and adopts those allegations as its own Findings of Fact. The Virginia Statement of Particulars is annexed hereto as appendix II and is incorporated herein.

### **CONCLUSIONS OF LAW**

The Hearing Committee makes the following conclusions, pursuant to the Findings of Fact listed above. All conclusions resulted from a unanimous vote of the Hearing Committee.

The Hearing Committee concludes that the following Factual Allegations, from the February 24, 1994 Statement of Charges, are SUSTAINED<sup>7</sup>:

---

<sup>5</sup> Numbers in brackets refer to transcript page numbers. [T- ]

<sup>6</sup> October 13, 1993 letter from Lee Birk, M.D., regarding Respondent. (ALJ's Exhibit # 1)

<sup>7</sup> The numbers in parentheses refer to the Findings of Fact previously made herein by the Hearing Committee and support each Factual Allegation.

First unnumbered Paragraph on page 2 : ( 5 )

Second unnumbered Paragraph on page 2 : ( 6 - 7 )

The first unnumbered paragraph on page 1 does not consist of factual allegations, but requires a conclusion for this Hearing Committee to make, as discussed infra.

The Hearing Committee further concludes, based on the above Factual Conclusion, that the SPECIFICATION on the first page of the Statement of Charges is SUSTAINED

The Hearing Committee concludes that the Department of Health has shown by a preponderance of the evidence that Respondent was charged with disciplinary action by the State of Virginia, thereafter surrendered his license and his conduct in Virginia would constitute professional misconduct under the laws of New York State. The Department of Health has met its burden of proof.

**Service of Charges and of Notice of Hearing.**

P.H.S. §230(10)(d) requires that the Charges and Notice of Hearing be served on the licensee personally, at least twenty (20) days before the Hearing. If personal service cannot be made, due diligence must be shown and certified under oath. Thereafter, registered or certified mail to the licensee's last known address must be served, at least fifteen (15) days before the Hearing.

From the affidavit submitted, personal service of the Notice of Referral Proceeding and the Statement of Charges on Respondent was effected through his wife and was timely. In addition, Respondent contacted the Administrative Officer and submitted documents (ALJ's Exhibit # 1) for the Hearing Committee's consideration. Respondent presented no objection to the manner of service of the



Statement of Charges and the Notice of Referral Proceeding. Therefore, service was proper.

**Professional Misconduct under §6530(9)(d) of the N.Y.S. Education Law.**

The Virginia Board of Medicine is a duly authorized professional disciplinary agency. In 1991, said Virginia Board charged Respondent with violating Virginia Statutes and instituted disciplinary action against Respondent. After the institution of said disciplinary action, Respondent entered into a Consent Order, wherein he applied to surrendered his license to practice medicine in Virginia. His application of surrender was accepted by the Virginia Board.

During the course of its deliberations on these charges, the Hearing Committee consulted a memorandum, prepared by Peter J. Millock, General Counsel for the New York State Department of Health, dated February 5, 1992. This document, entitled: Definitions of Professional Misconduct under the New York Education Law, (hereinafter "Misconduct Memo"), sets forth suggested definitions of practicing the profession: (a) with negligence on more than one occasion and (b) with incompetence on more than one occasion.

The definitions from the Misconduct Memo were considered by the Hearing Committee during its deliberations.

Taking all of the allegations of Statement of Particulars as true, the Hearing Committee finds that the record establishes that Respondent performed numerous and excessive testings and procedures on his patients. Respondent ordered a wide variety of tests that were not medically indicated. The record further establishes that Respondent, after reporting diagnoses to insurance companies failed to offer or provide any follow-up medical care or treatment regarding those diagnosed conditions.

The Hearing Committee finds that Respondent's conduct, if committed in New York State, constitutes professional misconduct, as defined by the Misconduct Memo and under §6530 of the N.Y.S. Education Law as follows:

- (3) practicing the profession with negligence on more than one occasion; and
- (5) practicing the profession with incompetence on more than one occasion; and
- (35) ordering of excessive tests or treatment not warranted by the condition of the patient.

Therefore, Respondent has committed professional misconduct pursuant to §6530(9)(d) of the N.Y.S. Education Law.

### **DETERMINATION**

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determines that Respondent's license to practice medicine in New York State should be REVOKED.

This determination is reached after due and careful consideration of the full spectrum of penalties available pursuant to P.H.L. §230-a, including:

- (1) Censure and reprimand; (2) Suspension of the license, wholly or partially;
- (3) Limitations of the license; (4) Revocation of license; (5) Annulment of license or registration; (6) Limitations; (7) the imposition of monetary penalties; (8) a course of education or training; (9) performance of public service and (10) probation.

Since Respondent did not appear at this proceeding, he was not subject to direct or cross-examination nor to questions from the Hearing Committee in this proceeding. Therefore the Committee is bound by the documentary evidence presented, by Petitioner, as well as by Respondent.

The record establishes that Respondent committed significant violations of Virginia Laws. Respondent's lack of integrity, character and moral fitness is evident in his course of conduct, as represented by the documents in evidence. In addition, his admitted impairment is meaningful and necessitates the findings and results reached by the Hearing Committee.

The Hearing Committee concludes that if this case had been held in New York, on the facts presented, the pattern of excessive testing and the lack of adequate follow-up of medical care and treatment by Respondent, would have resulted in a vote for revocation of Respondent's license.

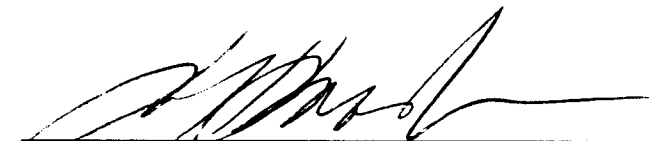
The Hearing Committee has noted that the State of Virginia has accepted the surrender of Respondent's license. The Hearing Committee considers Respondent's misconduct, together with his physical and mental conditions to be very serious. With a concern for the health and welfare of patients in New York State, the Hearing Committee determines that revocation of Respondent's license is the appropriate sanction to impose under the circumstances.

## **ORDER**

Based on the foregoing, **IT IS HEREBY ORDERED THAT:**

1. The Specification of professional misconduct contained within the Statement of Charges (Petitioner's Exhibit # 1) is **SUSTAINED**, and
2. Respondent's license to practice medicine in the State of New York is hereby **REVOKED**.

**DATED:** Albany, New York  
September, *30* 1994

  
\_\_\_\_\_  
**SAMUEL H. MADELL, M.D., (Chair),**

**C. FRED PECKHAM, JR, D.O.  
KENNETH KOWALD**

To: **TERRENCE SHEEHAN, ESQ.,**  
Associate Counsel,  
New York State Department of Health  
Bureau of Professional Medical Conduct  
5 Penn Plaza, 6th Floor  
New York, New York 10001

**OMAR S. ZAKI, M.D.**  
20 Gas Light Lane  
Framingham, MA, 01701

## **A P P E N D I X   I**

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

-----X  
IN THE MATTER : STATEMENT  
OF : OF  
EDWARD OMAR ZAKI, M.D. : CHARGES  
A.K.A OMAR S. ZAKI, M.D. :  
-----X

EDWARD OMAR ZAKI, M.D., the Respondent, was authorized to practice medicine in New York State on 1972 by the issuance of license number 114194 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, 1994 through December 31, 1995 at 20 Gas Light Lane, Framingham, MA 01701.

SPECIFICATION OF CHARGES

HAVING DISCIPLINARY ACTION TAKEN BY ANOTHER STATE

Respondent is charged with professional misconduct in violation of N.Y. Educ. Law Section 6530(9)(d) (McKinney Supp. 1994) in that Respondent surrendered his license after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the surrender of the license would, if

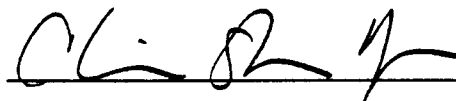
committed in New York State, constitute professional misconduct under N.Y. Educ. Law Sections 6530(3)(5) and (35) (McKinney Supp. 1994). Specifically, Petitioner charges:

On or about September 3, 1991, the Virginia Board of Medicine issued a Statement of Particulars charging that Respondent systematically ordered unnecessary laboratory tests for twenty two (22) patients and failed to provide appropriate medical care to five (5) patients.

On or about February 10, 1992, Respondent resolved these charges of professional misconduct by entering into a Consent Order with the Virginia State Board of Medicine in which he permanently surrendered his Virginia medical license and agreed to never seek its reinstatement.

DATED: New York, New York

February 24, 1994



CHRIS STERN HYMAN  
Counsel  
Bureau of Professional Medical  
Conduct

## **A P P E N D I X    I I**



VIRGINIA:

BEFORE THE BOARD OF MEDICINE

IN RE: OMAR S. ZAKI, M.D.

STATEMENT OF PARTICULARS

In addition to the matters set forth in the Board's notice dated September 3, 1991, the Board alleges that Omar S. Zaki, M.D., may have violated Sections 54.1-2915.A (1) and (3) as further defined in Section 54.1-2914.A (9), (10), (13) and (15) of the Code of Virginia (1950), as amended, in that:

1. On February 8, 1988 and February 16, 1988, during his treatment of Patient A, Dr. Zaki systematically performed laboratory tests which were not medically indicated and excessively charged for such tests.

2. Between January 3, 1990, and January 11, 1990, during his treatment of Patient B, Dr. Zaki systematically performed laboratory tests which were not medically indicated and excessively charged for such tests. Further, Dr. Zaki reported to Patient B's insurance company a diagnosis of hyperthyroidism, chronic obstructive pulmonary disease and cardiac arrhythmia; however, Dr. Zaki failed to advise the patient of his findings regarding these conditions, and failed to offer any follow-up medical care or treatment regarding these diagnosed conditions.

3. On May 9, 1990, during his treatment of Patient C, Dr. Zaki systematically performed laboratory tests which were not medically indicated and excessively charged for such tests. Further, Dr. Zaki reported to Patient C's insurance company a diagnosis of mixed hyperlipidemia, hyperthyroidism, urinary tract infection, pernicious anemia, diabetes mellitus and coronary artery disease; however, Dr. Zaki failed to advise the patient of his findings regarding these conditions, and failed to offer any follow-up medical care or treatment regarding these diagnosed conditions.

4. Between March 3, 1989 and March 10, 1989 during his treatment of Patient D, Dr. Zaki systematically performed laboratory tests which were not medically indicated and excessively charged for such tests.

5. On May 17, 1990, during his treatment of Patient E, Dr. Zaki systematically performed laboratory tests which were not medically indicated and excessively charged for such tests. Further, Dr. Zaki reported to Patient E's insurance company a diagnosis of mixed hyperlipidemia, hyperthyroidism, urinary tract infection, pernicious anemia, coronary artery disease and anemia; however, he failed to advise the patient of his findings regarding these conditions, and failed to offer any follow-up medical care or treatment regarding these diagnosed conditions.

6. Between June 1, 1990 and July 31, 1990, during his treatment of Patient F, Dr. Zaki systematically performed laboratory tests which were not medically indicated and excessively charged for such tests. Further Dr. Zaki reported to Patient F's insurance company a diagnosis of coronary artery disease, infectious mononucleosis, cardiac arrhythmia, chronic obstructive pulmonary disease, hyperthyroidism, urinary tract infection, pernicious anemia, mixed hyperlipidemia, and chronic hepatitis; however he failed to advise the patient of his findings regarding these conditions, and failed to offer any follow-up medical care or treatment regarding these diagnosed conditions.

7. On June 11, 1990, during his treatment of Patient G, Dr. Zaki systematically performed laboratory tests which were not medically indicated and excessively charged for such tests. Further, Dr. Zaki reported to Patient G's insurance company a diagnosis of dermatitis, skin infection, animal bite, hyperthyroidism, pernicious anemia and anemia; however, he failed to advise the patient of his findings regarding these conditions, and failed to offer any follow-up medical care or treatment regarding these diagnosed conditions.

8. Between February 11, 1986 and February 18, 1986, during his treatment of Patient H, Dr. Zaki systematically performed laboratory tests which were not medically indicated and excessively charged for such tests.

9. Between February 10, 1982 and April 18, 1986, during his treatment of Patient I, Dr. Zaki systematically performed laboratory tests which were not medically indicated and excessively charged for such tests.

10. Between April 13, 1979 and March 10, 1986, during his treatment of Patient J, Dr. Zaki systematically performed laboratory tests which were not medically indicated and excessively charged for such tests.

11. Between February 14, 1979 and September 18, 1985, during his treatment of Patient K, Dr. Zaki systematically performed laboratory tests which were not medically indicated and excessively charged for such tests.

12. Between January 17, 1983 and January 6, 1985, during his treatment of Patient L, Dr. Zaki systematically performed laboratory tests which were not medically indicated and excessively charged for such tests.

13. Between May 7, 1981 and September 29, 1983, during his treatment of Patient M, Dr. Zaki systematically performed laboratory tests which were not medically indicated and excessively charged for such tests.

14. On January 3, 1984, during his treatment of Patient N, Dr. Zaki systematically performed laboratory tests which were not medically indicated and excessively charged for such tests.

15. Between October 23, 1978 and June 21, 1985, during his treatment of Patient O, Dr. Zaki systematically performed laboratory tests which were not medically indicated and excessively charged for such tests.

16. Between April 2, 1985 and February 4, 1986, during his treatment of Patient P, Dr. Zaki systematically performed laboratory tests which were not medically indicated and excessively charged for such tests.

17. On April 2, 1985, during his treatment of Patient Q, Dr. Zaki systematically performed laboratory tests which were not medically indicated and excessively charged for such tests.

18. On April 9, 1986, during his treatment of Patient R, Dr. Zaki systematically performed laboratory tests which were not medically indicated and excessively charged for such tests.

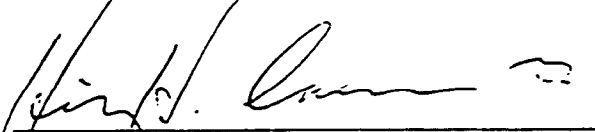
19. Between July 23, 1985 and October 11, 1985, during his treatment of Patient S, Dr. Zaki systematically performed laboratory tests which were not medically indicated and excessively charged for such tests.

20. On March 5, 1985, during his treatment of Patient T, Dr. Zaki systematically performed laboratory tests which were not medically indicated and excessively charged for such tests.

21. On June 26, 1985, during his treatment of Patient U, Dr. Zaki systematically performed laboratory tests which were not medically indicated and excessively charged for such tests.

22. On July 30, 1985, during his treatment of Patient V, Dr. Zaki systematically performed laboratory tests which were not medically indicated and excessively charged for such tests.

FOR THE BOARD



Hilary H. Connor, M.D.  
Executive Director  
Virginia Board of Medicine

DATE: 9-3-91