



# STATE OF NEW YORK DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Antonia C. Novello, M.D., M.P.H., Dr.P.H.  
*Commissioner*

Dennis P. Whalen  
*Executive Deputy Commissioner*

January 26, 2001

## **CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Lee Davis, Esq.  
NYS Department of Health  
Corning Tower Room 2509  
Empire State Plaza  
Albany, New York 12237

Sherri Anne Turner, M.D.  
11302 Soward Drive  
Kensington, MD 20895

### **RE: In the Matter of Sherri Anne Turner, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 01-21) 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 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  
Hedley Park Place  
433 River Street - Fourth Floor  
Troy, New York 12180

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), "the 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 penalties other than suspension or revocation 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.

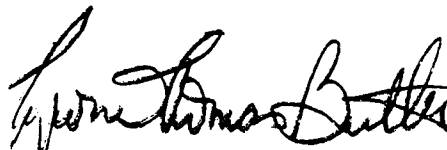
The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Administrative Law Judge  
New York State Department of Health  
Bureau of Adjudication  
Hedley Park Place  
433 River Street, Fifth Floor  
Troy, New York 12180

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 black ink, appearing to read "Tyrone T. Butler". The signature is written in a cursive style with a large initial 'T'.

Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:nm  
Enclosure

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

**COPY**

**IN THE MATTER  
OF  
SHERRI ANNE TURNER, M.D.**

**DETERMINATION  
AND  
ORDER  
BPMC 01 - 21**

**ARSENIO G. AGOPOVICH, M.D.** (Chair), **RAVENDRA N. SHARMA, M.D.**  
and **NANCY J. MACINTYRE, R.N., Ph.D.**, duly designated members of the State Board for  
Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to §230(10)  
of the Public Health Law.

**MARC P. ZYLBERBERG, ESQ., ADMINISTRATIVE LAW JUDGE, ("ALJ")**  
served as the Administrative Officer.

The Department of Health appeared by **LEE A. DAVIS, ESQ.**, Assistant Counsel.

Respondent, **SHERRI ANNE TURNER, M.D.**, did not appear personally and was  
not represented by an attorney. Respondent did submit a number of documents for the Hearing  
Committee's consideration.

Evidence was received and examined. A Transcript of the proceeding 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.

## PROCEDURAL HISTORY

Date of Notice of Hearing:	May 8, 2000
Date of Statement of Charges:	May 8, 2000
Service of Notice of Hearing and Statement of Charges:	May 26, 2000
Answer to Statement of Charges:	None

The first day of the Hearing was scheduled for July 20, 2000. At the request of Respondent, the Hearing Committee adjourned the Hearing to November 6, 2000 because of Respondent's serious illness. On October 31, 2000 Respondent requested accommodations of phone conferencing with the Hearing Committee on the day of the Hearing (Respondent's Exhibit # A)<sup>1</sup>. On November 6, 2000, 10:00 AM, the date and time of the scheduled Hearing, Respondent was not available by phone (see Transcript). At 3:53 PM on November 6, 2000, Respondent contacted the ALJ. The ALJ granted Respondent time to submit her defense by November 22, 2000.

Hearing Held: - (First Hearing day):	November 6, 2000
Witnesses called by the Petitioner, Department of Health:	None
Witnesses called by the Respondent, Sherri Anne Turner, M.D.:	None

The record remained open (request of Respondent) for the receipt of documents that Respondent wanted to submit to the Hearing Committee due to her unavailability at the Hearing.

Respondent's Exhibits # C, # D & # E received and accepted in evidence:	November 21, 2000
Department's Summation and Response:	November 22, 2000
Deliberations Held: (last day of Hearing)	January 9, 2001

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<sup>1</sup> Refers to exhibits in evidence submitted by the New York State Department of Health (Department's Exhibit #) or by Dr. Sherri Anne Turner (Respondent's Exhibit #).

## 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 [**"P.H.L."**]).

This case was brought by the petitioner, New York State Department of Health, Bureau of Professional Medical Conduct (**"Department"**) pursuant to §230 of the P.H.L.

SHERRI ANNE TURNER, M.D., (**"Respondent"**) is charged with professional misconduct, within the meaning of §6530(42) of the Education Law of the State of New York (**"Education Law"**), by reason of failing to comply with an agreement entered into to by Respondent to aid her in her medical education.

A copy of the Notice of Hearing and 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 the documentary evidence that the Hearing Committee found persuasive in arriving at a particular finding. Where there was conflicting evidence the Hearing Committee considered all of the evidence presented and rejected what was not relevant, believable or credible in favor of the cited evidence. The Department, which has the burden of proof, was required to prove its case by a preponderance of the evidence. The Hearing Committee unanimously agreed on all Findings of Fact. All Findings of Fact made by the Hearing Committee were established by at least a preponderance of the evidence.

1. Respondent was licensed to practice medicine in New York State on October 30, 1981 by the issuance of license number 148514 by the New York State Education Department (Department's Exhibits # 1 & # 4).

2. Respondent is not currently registered with the New York State Education Department to practice medicine (Department's Exhibit # 1); [T-38]<sup>2</sup>.

3. The State Board for Professional Medical Conduct has obtained personal jurisdiction over Respondent (determination made by the ALJ; Respondent had no objection regarding service effected on her); (P.H.L. §230[10][d]); [T-13].

4. On September 21, 1977, Respondent was awarded a scholarship from the Public Health Service Scholarship Training Program for the period beginning July 1, 1977 and ending June 30, 1978. The award provided a \$6,750.00 stipend and a \$5,425.00 tuition grant to aid in her education at Tufts University Medical School (Department's Exhibits # 1 & # 5).

5. One of the conditions of the above award (signed and agreed to by Respondent) was that Respondent fulfill a service obligation of one year as a commissioned officer in the Public Health Service or as a civilian member of the National Health Service Corps, following completion of academic training, for each academic year of support (Department's Exhibits # 1 & # 5).

6. Effective October 1, 1977, the Public Health Service Scholarship Training Program was replaced by the National Health Service Corps Scholarship Program (Department's Exhibits # 1 & # 5).

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<sup>2</sup> Numbers in brackets refer to Hearing transcript page numbers [T- ].

7. On April 19, 1978, Respondent signed a National Health Service Corps Scholarship Program contract<sup>3</sup> and received a \$6,648.00 stipend and a \$6,507.00 tuition grant to aid in her medical education. This 1978 contract required similar service obligations as set forth in the 1977 contract (Department's Exhibits # 1 & # 5).

8. In October 1979, during the fall of her final year in medical school, Respondent indicated a desire to pursue a surgical internship. Respondent was informed that entering into a surgical internship might result in a default of her contractual obligations to serve as a commissioned officer in the Public Health Service or as a civilian member of the National Health Service Corps, following completion of her academic training (Department's Exhibit # 5).

9. In May 1980 Respondent was granted a one year deferment on the condition that she complete a three month primary care rotation and submit a signed statement by a medical director that she completed the rotation (Department's Exhibit # 5).

10. On January 5, 1981, Respondent was declared in default of her contractual obligations for failing to submit the required documentation and failure to abide by the service obligations (Department's Exhibits # 1 & # 5).

11. In 1984 or 1985 the United States of America ("**Plaintiff**") filed a Civil Action ("**Civil Action**") against Sherri Anne Turner, M.D. (Defendant therein labeled as Respondent herein). Plaintiff, in the Civil Action, sought restitution against Respondent for the scholarship moneys advanced and accrued interest under both the 1977 and 1978 contracts plus treble damages in accordance with the United States Code ("**U.S.C.**") (42 U.S.C. §2540). Respondent appeared *pro se* in the Civil Action (Department's Exhibits # 1 & # 5).

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<sup>3</sup> According to the District Court (Department's Exhibit # 5 at p. 17), the terms of the contract between Respondent and the Public Health Service (subsequently replaced by the National Health Service Corps) were dictated by applicable federal statutes and regulations.



12. On May 4, 1987, a Judgment was entered against Respondent in the United States District Court for the Eastern District of New York in the Civil Action brought by the United States of America against Respondent. The amount of the judgment awarded by the District Court was \$109,363.79 plus interest from October 27, 1986 (Department's Exhibits # 1 & # 5).

13. The District Court found that Respondent had failed to submit the required documentation. The District Court also indicated that as a result of Respondent's material breach of her obligation, "the government has been deprived of two years of her services as a physician in a medically underserved area of this country" (Department's Exhibit # 5 at p. 25).

14. Respondent did not comply with the 1977 and the 1978 agreements she entered into for aid in her medical education (Department's Exhibit # 5).

15. Respondent has not filed a written answer to each (or any) of the charges and allegations contained in the Statement of Charges (P.H.L. §230[10][c]); [T-24].

16. Paragraphs A, B, and C of the Factual Allegations contained in the May 8, 2000 Statement of Charges is deemed admitted by operation of law (P.H.L. §230[10][c]); (See Appendix I); [T-24-25].

17. The charge of professional misconduct within the meaning of Education Law §6530(42) is deemed admitted by operation of law (P.H.L. §230[10][c]); (See Appendix I).

18. Respondent asserted that she rendered medical care to an under-served population for seven years in Saginaw, Michigan (approximately 1986 to 1993). Respondent further asserted that she has never been sued for malpractice or charged with incompetence (Respondent's Exhibit # C).

## CONCLUSIONS OF LAW

The Hearing Committee makes the following conclusions, pursuant to the Findings of Fact listed above. All conclusions as to the allegations contained in the Statement of Charges were by a unanimous vote of the Hearing Committee.

The Hearing Committee concludes that the Factual Allegations, in the May 8, 2000 Statement of Charges are SUSTAINED.

Based on the above, the complete Findings of Fact, and the Discussion that follows, the Hearing Committee unanimously concludes that the SPECIFICATION of Misconduct contained in the Statement of Charges is SUSTAINED.

The rationale for the Hearing Committee's conclusions is set forth below.

## DISCUSSION

Respondent is charged with one specification alleging professional misconduct within the meaning of §6530(42) of the Education Law. The record establishes that Respondent committed professional misconduct pursuant to §6530(42) of the Education Law.

The undisputed facts contained in the District Court's Memorandum and Order establishes that Respondent failed to comply with agreements that she made with the Public Health Service and then with the National Health Service Corp. It is clear that Respondent's conduct constitutes a violation of §6530(42) of the Education Law. Therefore, Respondent is guilty of professional misconduct under the laws of the State of New York.

Respondent is guilty of procrastination, failure to provide the documentation required and failure to perform the public service that she had agreed to provide. This case does not involve professional incompetence or any medical acts of negligence. Due to Respondent's apparent lack of following the requirements of contractual obligations and the regulations and requirements of the National Health Service Corps, she was inflicted with a monetary fine and penalty of almost \$110,000 for a \$25,330 debt. Respondent claims that she has provided more medical service to the underserved population than was required under the public health contracts (7 years in Saginaw, Michigan and 7 years in Bronx, New York). Even if Respondent is believed, the undisputed facts remain that Respondent failed to comply with the stipend and tuition aid agreements she entered into, in 1977 and 1978, to aid her in completing her medical education.

#### **DETERMINATION AS TO PENALTY**

The Hearing Committee pursuant to the Findings of Fact, Conclusions of Law and Discussion set forth above determines that Respondent's license to practice medicine in New York should be **SUSPENDED** until Respondent satisfies the debt owed pursuant to the judgment of the United States District Court or until Respondent is released from said debt or until Respondent makes arrangements to resolve said debt. In addition, the suspension of Respondent's license shall not be lifted or removed until Respondent provides evidence of current clinical knowledge and ability at the time of her application for re-registration in New York State.

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.

The Hearing Committee struggled at arriving at an appropriate penalty under the circumstances presented by the Department and by the Respondent. We were mindful of the fact that Respondent's misconduct occurred at least 10 years prior to her current medical difficulties. We also observed that Respondent appears to have a pattern of non-compliance which was present before her automobile accidents (disregard for contractual obligations; failure to provide documentation) and continues to today (failure to be available, even by telephone, for her Hearing). From the submissions and information obtained by the Hearing Committee, it was apparent that Respondent had a solid education, both in medicine and in law. Respondent should have a good understanding of the system and rules and regulations of our society. However, Respondent has been careless in obeying these rules and has blamed the system or others for her defaults.

The Hearing Committee determines that revocation of Respondent's license is too harsh of a penalty under the circumstances of this case. We discussed the possibility of limiting Respondent's license to non-patient care and/or non-clinical settings but Respondent was not charged with patient care misconduct. Similarly, educational training, other limitations or other restrictions would be inappropriate because of lack of proof regarding Respondent's abilities and competence. The imposition of additional monetary penalties would be pointless under Respondent's present circumstances. The performance of (additional) public service and a period of probation is inappropriate since Respondent is presently not registered in New York State and is medically disabled at the present.

We believe that suspending Respondent's license until she resolves her debt is appropriate because it is in direct relation to the misconduct that Respondent committed. It is also an appropriate penalty because, presumably, Respondent would have not become a physician without the stipends and awards given to her in 1977 and 1978. Therefore, until Respondent arranges for repayment or other satisfaction, she should not be practicing as a physician. In other words, Respondent was given a contingent benefit and should not gain because of her failure to fulfil her part of the bargain (2 years of public service or repayment of the money received). Consequently Respondent should not be practicing medicine until she has fulfilled her requirement (which has now been converted by the United States District Court to a monetary amount).

The Hearing Committee was also mindful of its duty to protect the public. Although no evidence was presented regarding Respondent's clinical abilities and competence, Respondent submitted documents which indicate that she has not been practicing medicine since approximately 1997. We have some concern regarding the amount of time Respondent has been, and will continue to be, out of the main stream of the practice of medicine. Hence we deem appropriate to require that Respondent provides evidence of current clinical knowledge and ability at the time of her application for re-registration in New York State.

Taking all of the facts, details, circumstances and particulars in this matter into consideration, the Hearing Committee determines that the above is the appropriate sanction under the circumstances. The Hearing Committee concludes that the sanction imposed strikes the appropriate balance between the need to punish Respondent, deter future misconduct, by Respondent and others, and protect the public.

All other issues raised by both parties have been duly considered by the Hearing Committee and would not justify a change in the Findings, Conclusions or Penalty Determination contained herein.

By execution of this Determination and Order, all members of the Hearing Committee certify that they have read and considered the complete record of this proceeding.

**ORDER**

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

1. The **FIRST SPECIFICATION** contained in the Statement of Charges (Department's Exhibit # 1) is **SUSTAINED**; and
2. Respondent's license to practice medicine in the State of New York is hereby **SUSPENDED**; and
3. **ACTUAL SUSPENSION** of Respondent's license to practice medicine in the State of New York shall continue until Respondent satisfies the debt owed pursuant to the judgment of the United States District Court or until Respondent is released from said debt or until Respondent makes arrangements to resolve said debt; and
4. The **ACTUAL SUSPENSION** of Respondent's license to practice medicine in the State of New York shall not be lifted or removed until Respondent provides evidence of current clinical knowledge and ability at the time of her application for re-registration in New York State; and
5. This Order shall be effective on personal service on the Respondent or 7 days after the date of mailing of a copy to Respondent by certified mail or as provided by P.H.L. §230(10)(h).

**DATED:** New York  
7/04, January, 15, 2001



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**ARSENIO G. AGOPOVICH, M.D.**  
**RAVENDRA N. SHARMA, M.D.**  
**NANCY J. MACINTYRE, R.N., Ph.D.**

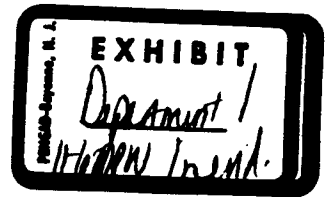
To:

Sherri Anne Turner, M.D.  
11302 Soward Drive  
Kensington, MD 20895

Lee A. Davis, Esq.  
Assistant Counsel  
New York State Department of Health  
Bureau of Professional Medical Conduct  
Corning Tower, Room 2509  
Empire State Plaza  
Albany, NY 12237-0032



# APPENDIX I



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

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IN THE MATTER : NOTICE  
OF : OF  
SHERRI ANNE TURNER, M.D. : HEARING

-----X

TO: SHERRI ANNE TURNER, M.D.  
11302 SOWARD DRIVE  
KENSINGTON, MD ~~20893-1422~~  
20895

PLEASE TAKE NOTICE:

A hearing will be held pursuant to the provisions of N.Y. Pub. Health Law Section 230 and N.Y. State Admin. Proc. Act Sections 301-307 and 401. The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on the 20<sup>th</sup> of July, 2000, at 10:00 in the forenoon of that day at the Clarion Inn, 611 Roy-Schenectady Road, Latham, New York 12110 and at such other adjourned dates, times and places as the committee may direct.

At the hearing, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the hearing will be made and the witnesses at the hearing will be sworn and examined. You shall appear in person at the hearing and may be represented by counsel. You have the right to produce witnesses and evidence on your behalf, to issue or have subpoenas issued on your behalf in order to require the production of witnesses and documents and you may cross-

examine witnesses and examine evidence produced against you. A summary of the Department of Health Hearing Rules is enclosed.

The hearing will proceed whether or not you appear at the hearing. Please note that requests for adjournments must be made in writing and by telephone to the Bureau of Adjudication, Hedley Park Place, 5th Floor, 433 River Street, Troy, New York 12180, (518-402-0748), upon notice to the attorney for the Department of Health whose name appears below, and at least five days prior to the scheduled hearing date. Adjournment requests are not routinely granted as scheduled dates are considered dates certain. Claims of court engagement will require detailed Affidavits of Actual Engagement. Claims of illness will require medical documentation.

Pursuant to the provisions of N.Y. Pub. Health Law Section 230(10)(c) you shall file a written answer to each of the Charges and Allegations in the Statement of Charges no later than ten days prior to the date of the hearing. Any Charge and Allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such answer. The answer shall be filed with the Bureau of Adjudication, at the address indicated above, and a copy shall be forwarded to the attorney for the Department of Health whose name appears below. Pursuant to Section 301(5) of the State Administrative Procedure Act, the Department, upon reasonable notice, will provide at no charge a qualified interpreter of the deaf to interpret the proceedings to, and

the testimony of, any deaf person.

At the conclusion of the hearing, the committee shall make findings of fact, conclusions concerning the charges sustained or dismissed, and, in the event any of the charges are sustained, a determination of the penalty to be imposed or appropriate action to be taken. Such determination may be reviewed by the administrative review board for professional medical conduct.

THESE PROCEEDINGS MAY RESULT IN A  
DETERMINATION THAT YOUR LICENSE TO PRACTICE  
MEDICINE IN NEW YORK STATE BE REVOKED OR  
SUSPENDED, AND/OR THAT YOU BE FINED OR  
SUBJECT TO THE OTHER SANCTIONS SET OUT IN  
NEW YORK PUBLIC HEALTH LAW SECTION 230-a.  
YOU ARE URGED TO OBTAIN AN ATTORNEY TO  
REPRESENT YOU IN THIS MATTER.

DATED: Albany, New York  
May 8, 2000

  
PETER D. VAN BUREN  
Deputy Counsel

Inquiries should be directed to: Lee A. Davis, Esq.  
Assistant Counsel  
Division of Legal Affairs  
Bureau of Professional  
Medical Conduct  
Corning Tower Building  
Room 2509  
Empire State Plaza  
Albany, New York 12237-0032  
(518) 473-4282

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

-----X

IN THE MATTER : STATEMENT  
OF : OF  
SHERRI ANNE TURNER : CHARGES

-----X

SHERRI ANNE TURNER, M.D., the Respondent, was authorized to practice medicine in New York State on October 30, 1981, by the issuance of license number 148514, by the New York State Education Department. The Respondent is not currently registered with the New York State Education Department to practice medicine.

**FACTUAL ALLEGATIONS**

A. On September 21, 1977, Respondent was awarded a scholarship from the Public Health Service ("PHS") Scholarship Training Program that provided a \$6,750.00 stipend and \$5,425.00 tuition grant to aid in her education Tufts University Medical School. One condition of the award required Respondent to fulfill a service obligation of one year as a commissioned officer in the Public Health Service, or as a civilian member of the National Health Service Corps ("NHSC") for each academic year of support.

B. Effective October 1, 1977, the PHS Scholarship Training program was replaced by the NHSC Scholarship Program.

On April 19, 1978, Respondent signed an NHSC Scholarship Program contract, and received a \$6,507.00 tuition grant and \$6,648.00 stipend pursuant to said contract. This contract provided similar service requirements as that signed the year previously by Respondent.

C. On January 5, 1981, Respondent was declared in default of her contract for failing to abide by the service obligations. On May 4, 1987, Judgment was entered against Respondent in the United States District Court for the Eastern District of New York in the amount of \$109,363.79, plus interest from October 27, 1986 based upon said default.

### **SPECIFICATIONS OF MISCONDUCT**

#### **FIRST SPECIFICATION**

Respondent is charged with professional medical misconduct pursuant to N.Y. Education Law §6530(42) by reason of her failing to comply with any provision of a written agreement with the state or any municipality within which Respondent has agreed to provide medical service, or refusing to repay funds in lieu of such service as consideration of awards made by the state or any municipality thereof for her professional education in medicine, or failing to comply with any agreement entered into to aid her medical education, in that Petitioner charges:

1. The facts in Paragraphs A, B and C.

DATED: May 8, 2000  
Albany, New York



PETER D. VAN BUREN  
Deputy Counsel  
Bureau of Professional  
Medical Conduct