



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

PUBLIC

August 20, 2003

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Rajeev Kassal, M.D.
REDACTED

Ihor B. Evanick, Esq.
NYS Department of Health
Bureau of Professional Medical Conduct
Corning Tower, Room 2512
Empire State Plaza
Albany, New York 12237-0032

Richard P Jacobson, Esq.
1683 Western Avenue
Albany, New York 12203

RE: In the Matter of Rajeev Kassal, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 03-219) 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.

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.

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,

REDACTED
James F. Horan, Acting Director
Bureau of Adjudication

JFH:djh
Enclosure

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

COPY

DETERMINATION

AND

ORDER

BPMC NO. 03-219

**IN THE MATTER
OF
RAJEEV KASSAL, M.D.**

Richard F. Kasulke, M.D., Chairperson, **John W. Choate, M.D.**, and **Judith Glusko, R.N.**, duly designated members of the State Board for Professional Medical Conduct, appointed by the Commissioner of Health of the State of New York pursuant to Section 230(1) of the Public Health Law, served as the Hearing Committee in this matter pursuant to Sections 230(1)(e) and 230(12) of the Public Health Law. **Susan F. Weber, Esq.**, served as Administrative Officer for the Hearing Committee.

After consideration of the entire record, the Hearing Committee submits this Determination and Order.

STATEMENT OF CHARGES

The Petitioner charges the Respondent Rajeev Kassal, M.D., with professional misconduct by reason of allegedly making a false report, practicing medicine fraudulently, moral unfitness, and failing to provide information required under PHL Section 2805-k. The charges are more specifically set forth in the Statement of Charges, a copy of which is attached hereto as Appendix 1 and made a part of this Determination and Order.

SUMMARY OF PROCEEDINGS

Notice of Hearing and Statement
Of Charges
Dated: May 15, 2003

Respondent's Answer: June 16, 2003

Pre-hearing Conference: July 3, 2003

Hearing Date: July 3, 2003

Transcript Received: July 29, 2003

Deliberation Date: July 3, 2003

Place of Hearing: NYS Department of Health
433 River St.
Troy, New York

Petitioner Appeared By: Donald P. Berens, Jr., Esq.
General Counsel
NYS Department of Health
By: Ihor B. Evanick, Esq.
Bureau of Professional Medical

Conduct
Corning Tower Room 2509
Empire State Plaza
Albany, NY 12237-0032

Respondent Appeared By: Richard P. Jacobson, Esq.
1683 Western Avenue
Albany, NY 12203

WITNESSES

For the Petitioner: None

For the Respondent: Rajeev Kassal, M.D.

FINDINGS OF FACT

Numbers in parenthesis refer to transcript pages or exhibits¹ and denote evidence that the Hearing Committee found persuasive in determining a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence. All Hearing Committee findings were unanimous.

1. Rajeev Kassal, MD (“Respondent”), a native of India, came to the United States in 1992, under a special visa to continue his medical education, following medical school, an internship, a house surgeonship, and three years’ general practice in New Delhi, India. (Ex. 5-A, p.5)
2. In 1997, Dr. Kassal was certified in pediatrics by the American Board of Pediatrics. (Ex. D) In 1999, Dr. Kassal was certified in neonatology by the American Board of Pediatrics, Subboard of Neonatal-Perinatal Medicine. (Ex.E)
3. Respondent was authorized to practice medicine in New York under a limited permit from October 9, 1996 through October 9, 1998, under permit number P. 97493 issued by the New York State Education Department. (Ex. 5A)
4. Respondent commenced his residency in pediatrics at New York University Medical Center (NYU) in September, 1992. Respondent was placed on academic probation on December 14, 1992. On January 19, 1993, NYU Pediatrics Program Director Robert Lembo, MD, notified him that he was considered a “sub-intern” and would not be offered a position in the program in the next academic year. (Ex. 1A, p.49 – 52A).

¹ “Ex” denotes Exhibits; “T” denotes Transcript page references.

5. On his Annual Resident In-Training Evaluation, dated July 19, 1993, Dr. Lembo found Respondent's work "Marginal" and noted that "the resident has some unresolved problems and is transferring to another program..." which was listed as "Lincoln Hospital." (Ex. 1 A, p.47-47A)
6. Dr. Lembo did not check the box stating that "The resident's performance ... was unsatisfactory. The resident has been terminated from the program." (Ex. 1-A,p.47)
7. Respondent applied for and was accepted as a Pediatric Resident at Lincoln Medical and Mental Health Center (LMMHC), where he worked from July 1993 through June 1996. (Ex. 2A)
8. In his application to LMMHC, Respondent listed his previous employer as NYU, from 9/23/92 to 6/28/93. (Ex. 2A, p.78A)
9. Respondent left LMMHC in good standing in June of 1996. (Ex. A)
10. Respondent applied for privileges or employment at Nyack Hospital by an application dated June 21, 1996. In response to question C. RESIDENCIES, Respondent listed LMMHC, but did not report that he had been a resident at NYU from 9/23/92 to 6/28/93, nor the terms of his leaving that institution. (Ex. 3-A, p.34)
11. Following completion of the LMMHC residency, Respondent received a Neonatal-Perinatal fellowship position for the period July 1, 1996 to June 30, 1997 at Stony Brook University Hospital (SBUH), by letter dated May 16, 1996. (Ex. 4A, p.19)
12. In his application for the SBUH position, apparently filled out May 22, 1996, after his appointment to the position, Respondent did not list the NYU residency under "Educational Information". However, he did list that residency -- "Pediatric Resident (subinternship) Training, New York"-- along with all his other educational experiences, under the section "Chronological

Information”.² (Ex 4A,p.30-31)

13. By letter dated May 7, 1997, Respondent was notified that SBUH was not renewing his contract for the neonatology training program. (Ex. 4A, p. 99)
14. Respondent did not successfully complete the SBUH fellowship program, under which he served the last six months on probation. (Ex. 4A, p. 36)
15. In his Application for Limited Permit from the NYS Education Department, dated August 9, 1996, Respondent answered “NO” to question number 16: “Has any hospital or licensed facility restricted or terminated your professional training, employment, or privileges or have you ever voluntarily withdrawn from such association to avoid imposition of such measures?” (Ex.5A, p. 4)

DISCUSSION

Respondent Rajeev Kassal, MD, is a board certified pediatrician and neonatologist practicing in Missouri. A native of India, Dr. Kassal received his education through medical school in New Delhi. After practicing in India for three years after an internship and surgical position, Dr. Kassal immigrated to the United States, in 1992, to continue his medical education, under the auspices of ECFMG. The charges herein concern making allegedly false or misleading statements or intentional omissions on applications to medical institutions and on an application for a limited license to practice in New York State.

² The form does not ask for the name of the institution but rather only the time period, the experience, the location (“city, state”) and the supervisor/contact person.

Respondent obtained an internship position at NYU commencing September 1, 1992. The Hearing Committee found entirely credible Dr. Kassal's testimony about the problems of working as a young resident not fluent in idiomatic, American-accented English, in the extremely hectic New York City hospital. (See, T. 79 – 80) Dr. Kassal speaks excellent English, but his accent and diction were apparently difficult for other staff and his students to understand. Additionally, internship rotations started in July, but Respondent joined the program two months later, in September.

The NYU file documents many allegations of Respondent's performance shortcomings at that institution. Although Respondent received two formal negative performance evaluations, and NYU apparently made an effort to provide counseling and assistance to him, evidence indicates he did not avail himself of this help. He was placed on probation and eventually reduced to "sub-intern". He left the residency in June, 1993, after less than a year, and received no credit for his work there. He was not offered the opportunity to repeat his unsuccessful first year at NYU. In Respondent's final evaluation, Program Director Lembo found Respondent's work "Marginal" and reported that Respondent was "Transferring to another program." Significantly, Lembo did not report that Respondent was "terminated from the program." (Ex. 1-A, p.47 – 52A) Based upon Dr. Lembo's evaluation, Respondent had ample reason to consider his leaving NYU as entirely voluntary.

In April, 1993, prior to leaving NYU, Respondent had applied for a pediatric residency at Lincoln. The Individual House Staff Contract (Ex. 2-A p.69& 69A), which was signed by the Respondent, is typewritten. Only Respondent's name, address, New Delhi medical school, and ECFMG status are typed in. The NYU position is not included. Page 78 of the exhibit, the part of the Lincoln job application which Respondent filled out himself by hand, includes the NYU pediatric residency as his then-current position. Respondent testified that he did not execute typed page 69A; rather, it was apparently filled in by staff. However, since Respondent himself listed the NYU

position on page 78, he clearly did not intend to hide the position. Allegations that the Lincoln document was fraudulently or willfully inaccurate are not sustained.

As he neared completion of the Lincoln program, Respondent applied for a fellowship in pediatrics at Children's Medical Center at Stony Brook, in May, 1996 (Ex. 4-A), and for employment at Nyack Hospital, by application dated June 21, 1996 (Ex. 3-A). In his application to Nyack, Respondent failed to list the NYU position under "C. RESIDENCIES" and failed to reveal that he'd been placed on probation there. (Ex 3-A, p 34.) This was indeed "a mistake", as Respondent testified, one which he says he realized as he applied for the Stony Brook position (T. p 42). Respondent listed the NYU residency on the Stony Brook application in the "Chronological Information" section. (Ex 4-A, p. 31) While Respondent clearly should have listed the NYU position under "Educational Information, Medical and Dental", he also failed to list his positions in New Delhi in that section. All such information was provided in the chronological section, however. But by including the NYU residency in the chronological rather than the residencies section, Respondent did not find it necessary to explain the unhappy circumstances of his "marginal" performance and transfer from NYU. This omission misrepresented Respondent's background to his benefit.

It should be noted that the Stony Brook application was filled out May 22, 1996, after Respondent had been offered and had accepted appointment to the Stony Brook fellowship in neonatology. By letter dated May 16, 1996, Dr. LaGamma, Acting Director of Pediatrics, had offered Respondent the position. (T. p 47) Consequently, it was evident to the panel that filling out the application form was clearly a formality, as Respondent testified. Therefore, the panel determined that Respondent's lack of care and accuracy in placing all the information exactly where it should have been located on the form is not a serious matter. Further, the other apparent irregularities in the placement of information on the form were convincingly explained as resulting from differences in usage of terms such as "graduation." In India, Respondent testified, "graduation" refers

to medical school, which usually directly follows high school. (T. p 48)

While pursuing his studies at Stony Brook and doing night coverage at Nyack Hospital, by application dated August 7, 1996, Respondent applied for a Limited Permit from the New York State Education Department. Although Respondent accurately listed all his positions, including the uncompleted NYU residency, he did not acknowledge, in answering question 16, that he had left NYU early. However, in light of Dr. Lembo's description of Respondent's departure as "transferring to another program" rather than "termination," the Hearing Committee found Respondent's testimony on that point entirely persuasive. It is reasonable to conclude that Respondent answered question 16 correctly.

VOTE OF THE HEARING COMMITTEE

The Hearing Committee unanimously voted as follows: Paragraphs A, D, E, F, G, I, and J³ are **SUSTAINED**. Paragraphs B, C, and H are **NOT SUSTAINED**.

DETERMINATION OF PENALTY

The Hearing Committee finds that Respondent erred in filling out applications, in certain cases, by leaving pertinent information out or by putting it in the wrong place. In doing so, he was not fully forthcoming in relating his prior history. The Hearing Committee found that the Respondent failed to provide information about his uncompleted internship at NYU and the probation prior to his leaving. This created an inaccurate picture of Respondent's educational history and performance.

³ Stony Brook placed respondent on probation for the last six months of his contract, which was not renewed.(Ex.4-A, p.36, 99) This took place in May of 1997, after Respondent's August 2, 1996 application for limited licensure in NY. (Ex.5-A, p. 5A) Therefore, that information could not have been included in the NYS licensing application.

In some instances, Respondent's errors or omissions are most convincingly explained by the totality of the circumstances – Respondent provided the requisite information but elsewhere on the form – as in the Stony Brook and Lincoln applications; by cultural differences between medical education in India and the United States – citing “NYU Medical College” as his professional school instead of Maulana Azad Medical College on the NYS licensing application; or by patent ambiguities in the form itself – as in the Stony Brook application. In completing such forms in future, Respondent might wish to obtain some assistance and give the form a higher level of care. However, the Hearing Committee cannot condone a pattern of inaccuracies resulting in distorted reports of Respondent's background, regardless of how they occurred. It was the Respondent's responsibility to see that the information he gave was accurate and complete. This he failed to do, and he admitted his mistake.

The Hearing Committee found it important to consider that there are no charges concerning substandard patient care, insurance or Medicaid fraud, or other misconduct alleged against Dr. Kassal. In the nearly ten years of training and professional medical practice encompassed by the charges herein, Dr. Kassal has successfully completed his medical education, received two board certifications, and embarked upon a medical practice in an underserved area of Missouri. His only alleged transgressions have involved inaccurately and misleadingly completing application forms seven and more years ago, apparently to camouflage his failed residency at NYU. Whatever patient care shortcomings Respondent may have displayed at NYU, he appears to have remedied them in subsequent positions. In any event, no such charges are before this Panel. Respondent does not practice in New York, and apparently has no plans to do so.

The Hearing Committee finds that Respondent Rajeev Kassal committed professional misconduct as defined in NY Education Law Section 6530(21) by willfully making and filing a false report, in that he did not properly and clearly report his uncompleted NYU residency, the probation, and the non-renewal of his NYU contract on

the applications for Nyack Hospital, Stony Brook University Hospital, and the Limited Permit from New York State Education Department.

In view of the totality of the facts presented and the mitigating circumstances involved, and the fact that Respondent is aware of his errors, the Hearing Committee unanimously agreed that a penalty of censure and reprimand is appropriate in this case.

ORDER

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

1. The Respondent, RAJEEV KASSAL, M.D. is hereby **Censured and Reprimanded.**
2. This Order shall be effective upon service on the Respondent or the Respondent's attorney by personal service or certified mail.

**DATED: Saranac Lake, New York
August 18, 2003**

REDACTED

**RICHARD F. KASULKE, M.D., Chairperson
JOHN W. CHOATE, M.D.
JUDITH GLUSKO, R.N.**

APPENDIX 1

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

IN THE MATTER
OF
RAJEEV KASSAL, M.D.

STATEMENT
OF
CHARGES

RAJEEV KASSAL, M.D., the Respondent, was authorized to practice medicine in New York State under a Limited Permit only for the period October 9, 1996 through October 9, 1998, by the issuance of permit number P. 97493 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. The Respondent was a resident at New York University Medical Center (NYU) from September, 1992 through June 1993. Performance evaluations documented concerns regarding his clinical skills, level of preparedness and veracity. Respondent was placed on academic probation on December 14, 1992 and subsequently received notice of termination. Respondent went on vacation before his termination date of June 28, 1993 and has never returned. Furthermore, NYU has not heard from Respondent regarding a forwarding address either personal or professional.
- B. Respondent was a Resident in Pediatrics at Lincoln Medical & Mental Health Center (L.M.M.H.C.) from July, 1993 through June, 1996. During his residency, the Respondent was placed on probation.

- C. In May of 1996 the Program Director of Pediatrics at L.M.M.H.C. in correspondence to NYU stated that there was a deficit in the Respondent's professional history. This deficit occurs in the Individual House Staff Contract effective September 21, 1993 which was executed by the Respondent on April 1, 1993. The box provided specifically for PREVIOUS HOUSE STAFF TRAINING was fraudulently and/or willfully left blank.
- D. Respondent applied for privileges/employment at Nyack Hospital by application executed June 21, 1996. In response to question C. RESIDENCIES, the Respondent listed L. M. M. H. C. however, fraudulently and/or willfully left out NYU as an institution where he had been a resident.
- E. Respondent applied for privileges\employment at Nyack Hospital by application executed June 21, 1996. He fraudulently and/or willfully answered "no" to the question of whether he had ever suspended, placed on probation or formally reprimanded.
- F. Respondent entered into a fellowship at Stony Brook University Hospital (SBUH) from July, 1996 through June, 1997. Respondent's acceptance into the Neonatal Fellowship Program was based upon his professional history. Correspondence dated November 3, 1997 from the Chief, Division of Newborn Medicine states that the Respondent fraudently and/or willfully omitted any reference to his presence in residency at NYU.
- G. Respondent's performance during his first year of fellowship at SBUH resulted in probation and a termination of his fellowship. Respondent left SBUH after this evaluation.

- H. Respondent finished his fellowship in neonatology at Robert Wood Johnson University Hospital/St. Peter's University Hospital, New Brunswick, N. J. from July 1, 1997 through June 30, 1999.
- I. Respondent applied for a Limited Permit from the New York State Education Department. The application was dated August 7, 1996 and issued October 9, 1996 through the expiration date of October 9, 1998. The permit number is P. 97493.
- J. In response to the Limited Permit application question no.16; "Has any hospital or licensed facility restricted or terminated your professional training, employment or privileges or have you ever voluntarily or involuntarily resigned or withdrawn from such association to avoid imposition of such measures?", the Respondent's fraudulent and/or willful answer to this question was "no".

FIRST THROUGH SIXTH SPECIFICATIONS
WILLFULLY FILING A FALSE REPORT

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(21) by willfully making and filing a false report, in that Petitioner charges:

1. The facts set forth in paragraphs A B, and C.
2. The facts set forth in paragraphs A, B, and D.
3. The facts set forth in paragraphs A, B, and E.
4. The facts set forth in paragraphs A and F.
5. The facts set forth in paragraphs A, B, F, G, I, and J.

SIXTH THROUGH TENTH SPECIFICATIONS
FRAUDULENT PRACTICE

Respondent is charged with committing professional misconduct as defined by N.Y. Educ. Law § 6530(2) by practicing the profession of medicine fraudulently, in that Petitioner charges:

6. The facts set forth in paragraphs A B, and C.
7. The facts set forth in paragraphs A, B, and D.
8. The facts set forth in paragraphs A, B, and E.
9. The facts set forth in paragraphs A and F.
10. The facts set forth in paragraphs A, B, F, G, I, and J.

ELEVENTH THROUGH FIFTEENTH SPECIFICATIONS

MORAL UNFITNESS

Respondent is charged with committing professional misconduct as defined by N.Y. Educ. Law § 6530(20) by conduct in the practice of medicine which evidences moral unfitness, in that Petitioner charges:

11. The facts set forth in paragraphs A B, and C.
12. The facts set forth in paragraphs A, B, and D.
13. The facts set forth in paragraphs A, B, and E.
14. The facts set forth in paragraphs A and F.
15. The facts set forth in paragraphs A, B, F, G, I, and J.

SIXTEENTH THROUGH EIGHTEENTH SPECIFICATIONS

VIOLATION OF PUBLIC HEALTH LAW 2805-K

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(14) by violating Public Health Law § 2805-k, in that Petitioner charges:

16. The facts set forth in paragraph C.
17. The facts set forth in paragraphs D and E.
18. The facts set forth in paragraph F.

DATED: May 15, 2003
Albany, New York

REDACTED

Peter D. Van Buren
Deputy Counsel
Bureau of Professional
Medical Conduct