



# 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

February 9, 2004

## CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Sudarshan Kumar, M.B.B.S.  
171 East 84<sup>th</sup> Street, Apt. 24E  
New York, New York 10016

Anthony M. Benigno, Esq.  
NYS Department of Health  
ESP-Corning Tower-Room 2512  
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Wilfred T. Friedman, Esq.  
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The Bar Building  
36 West 44<sup>th</sup> Street – 8<sup>th</sup> Floor  
New York, New York 10036

### **RE: In the Matter of Sudarshan Kumar, M.B.B.S.**

Dear Parties:

Enclosed please find the Determination and Order (No. 04-27) 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.

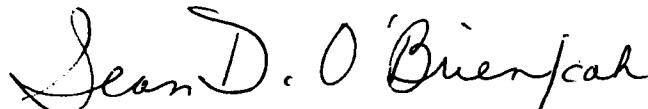
The notice of review served on the Administrative Review Board should be forwarded to:

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,

A handwritten signature in cursive script that reads "Sean D. O'Brien".

Sean D. O'Brien, Director  
Bureau of Adjudication

SDO:cah  
Enclosure

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

**IN THE MATTER  
OF  
SUDARSHAN KUMAR, M.B.B.S.**

**DETERMINATION  
AND  
ORDER**

**BPMC #04-27**

**COPY**

RUTH HOROWITZ, Ph.D., Chairperson, ADEL ABADIR, M.D., and RAMAN KAUL, M.D., 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 [“PHL”]. DENNIS T. BERNSTEIN, ESQ., ADMINISTRATIVE LAW JUDGE, served as Administrative Officer for the Hearing Committee.

After consideration of the entire record, the Hearing Committee submits this determination.

**STATEMENT OF CHARGES**

The Statement of Charges charges the Respondent with professional misconduct by being a habitual abuser of alcohol, or being dependent on or a habitual user of narcotics, barbiturates, amphetamines, hallucinogens, or other drugs having similar effects, or having a psychiatric condition which impairs the licensee’s ability to practice medicine (one specification), by practicing the profession of medicine fraudulently (four specifications), and by willfully making or filing a false report, or failing to file a report required by law or by the department of health or the education department (two specifications).

The charges are more specifically set forth in the Statement of Charges, a copy of which is attached to this Determination and Order as Appendix I.

### SUMMARY OF PROCEEDINGS

Notice of Hearing and Statement of Charges Dated:	April 30, 2003
Date of Service of Notice of Hearing and Statement of Charges:	May 22, 2003 <sup>1</sup>
Amended Answer to Charges Dated:	May 27, 2003 <sup>2</sup>
Prehearing Conference Date:	June 5, 2003
Hearing Dates:	June 6, 2003 July 11, 2003 July 25, 2003 September 12, 2003 <sup>3</sup>
Deliberation Date:	December 5, 2003 <sup>4</sup>
Place of Hearing:	NYS Department of Health 5 Penn Plaza, 6 <sup>th</sup> Floor New York, New York

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<sup>1</sup> During the Prehearing Conference the parties stipulated that service of the Notice of Hearing and Statement of Charges upon the Respondent was effected on May 22, 2003 (Prehearing Conference Tr. 13-15).

<sup>2</sup> Prior to the commencement of the hearing the original Answer to Charges dated May 24, 2003 (ALJ Exs. 1 and 1A) was replaced by an Amended Answer to Charges dated May 27, 2003 (Ex. A).

<sup>3</sup> On June 6, 2003 and July 11, 2003 the parties waived the requirement set forth in PHL § 230(10)(f) that the last hearing day must be held within 120 days of the first hearing day (Hearing Transcript pp. 196-197 and Intrahearing Conference Transcript pp. 17-18).

<sup>4</sup> The Hearing Committee was unable to meet on October 24, 2003, the original date scheduled for deliberations, due to a medical emergency that required a Panel Member's presence in Florida. Therefore, the deliberation date was rescheduled for December 5, 2003.

Petitioner Appeared By:

Anthony M. Benigno, Esq.  
Associate Counsel  
NYS Department of Health  
Division of Legal Affairs

Respondent Appeared By:

Wilfred T. Friedman, Esq.  
Friedman and Mahdavian, P.C.  
The Bar Building  
36 West 44<sup>th</sup> Street – 8<sup>th</sup> Floor  
New York, N.Y. 10036

### **WITNESSES**

For the Petitioner:

Joann V. Dawson  
Donald L. Reinhard  
Robert A. Maslansky, M.D.  
Sudarshan Kumar, M.B.B.S.

For the Respondent:

Sudarshan Kumar, M.B.B.S.  
Maya Kumar, R.N.  
David P. Thompson  
Fredric P. Hans  
Keshav Kubal, M.D.

### **FINDINGS OF FACT**

Numbers preceded by “Tr.” in parenthesis refer to hearing transcript page numbers. Numbers or letters preceded by “Ex.” in parenthesis refer to specific exhibits. These citations 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 unless otherwise specified.

## **FINDINGS AS TO THE RESPONDENT'S MEDICAL BACKGROUND**

1. Sudarshan Kumar, M.B.B.S. ["the Respondent"], was authorized to practice medicine in New York State on January 7, 1985 by the issuance of license number 161117 by the New York State Education Department (Ex. 3).
2. The Respondent attended medical school at Armed Forces Medical College in Poona, India (1975-1979), where he received his M.B.B.S. degree (Tr. 310; Ex. C).
3. After graduating medical school the Respondent received postgraduate medical training at Catholic Medical Center of New York and Mount Sinai Medical Center in New York, where he did a rotating internship (1980-1981), and, at New York Medical College, where he did a residency in general surgery (1981-1983) and a residency in anesthesiology (1983-1985). In 1986 he obtained board certification in anesthesiology. (Tr. 310-311; Ex. C).
4. Since 1985 the Respondent held positions at various hospitals, which included the following: Staff Anesthesiologist at St. Clare's Medical Center in New York, N.Y. (1985-1988); Staff Anesthesiologist (1988-2000), Chairman of the Quality Assurance Committee (1990-2000), and Co-Director of the Surgical Intensive Care Unit (1993-1995), at Beth Israel Medical Center-North Division, in New York, N.Y.; Staff Anesthesiologist (2000-2002) and Chairman of the Quality Assurance Committee (2000-2002) at Malcolm Grow Medical Center at Andrews Air Force Base in Maryland; and, Staff Anesthesiologist at St. Agnes Hospital in White Plains, N.Y., which is now known as the White Plains Pavilion of Westchester County Medical Center (2002-present). (Tr. 723-724; Ex. C).

5. In addition, the Respondent held two academic appointments which included the following: Clinical Instructor in Anesthesiology at Albert Einstein College of Medicine in New York (1990-2000); and, Assistant Professor in Anesthesiology at Uniformed Services University of Health Sciences in Maryland (2000-2002). (Ex. C).

### **FINDINGS AS TO EVENTS IN QUESTION**

6. On or about January 13, 1994 the Respondent, while working at Beth Israel Medical Center-North Division ["Beth Israel"], was informed that his intensivist on-call position and his anesthesia privileges as a voluntary attending physician at Beth Israel were suspended (Tr. 315-319; Ex. 4, pp. 8-9).
7. More specifically, the Respondent received a Beth Israel interoffice memorandum from Gail F. Donovan, Vice President of Operations, Sundar Koppolu, M.D., Associate Director of the Department of Anesthesiology, and, Martin M. Feuer, M.D., Associate Director of the Department of Medicine, dated January 13, 1994, informing him that on more than one occasion he had "been observed to be intoxicated while serving as the intensivist on-call for the North Division's Intensive Care Unit." This memorandum then went on to state:

Please be advised that, effective immediately, you are suspended from your intensivist on-call position. If you wish, you may request a leave of absence for medical reasons and enter a treatment program. Reinstatement will be conditioned upon your being cleared by Employee Health Service for return to duty. If you do not take a leave of absence by Friday, January 14, 1994 your employment will be terminated.

With reference to your position as a voluntary attending physician in the Department of Anesthesiology, your anesthesia privileges are temporarily suspended in order to permit an evaluation of your ability to continue to practice. As an alternative, you may take a leave of absence from your anesthesia privileges to enable you to enter treatment.

(Ex. 4, pp. 8-9).

8. The Respondent immediately applied for a medical leave of absence, met with Dr. Robert Nadig of Employee Health Service, and entered an outpatient treatment program (Tr. 212-213 and 320-321; Ex. 4, pp. 8-9).
9. On or about January 25, 1994 the Respondent was informed that he had been “medically cleared to return to work as an attending anesthesiologist”. However, upon his return to work his privileges at Beth Israel were restricted. He was not allowed to take anesthesia call for a minimum period of three months; he was required to enter and remain in a recommended outpatient treatment program; and, he was required to receive adequate supervision from Dr. Sundar Koppolu, the Chief of the Department of Anesthesiology. (Ex. 4, p. 13). The Respondent did not return to his intensivist on-call position.
10. From 1994 through 2001 the Respondent would drink alcoholic beverages on weekends, when not on call, sometimes to excess (Tr. 523-524 and 526-530).
11. In May of 2001 the Respondent, while enlisted in the United States Air Force [“Air Force”], consumed alcoholic beverages and could not perform his duties as a physician serving at Malcolm Grow Medical Center [“MGMC”] at Andrews Air Force Base. After reporting to his supervisor that he could not come to work because he was drunk, his supervisor and the operations officer picked him up at his residence and took him to the hospital. At the hospital he was examined by a psychiatrist and admitted for one day.



The Respondent's clinical privileges at MGMC were placed in abeyance and he was given non-clinical duties. In addition, the Respondent entered a four-week outpatient alcohol treatment program. (Tr. 250-254; Ex. 7, pp. 3 and 5).

12. The Respondent attended the alcohol treatment program for one month, stopped drinking and returned to work. He also attended AA meetings and weekly group therapy sessions at the hospital. (Ex. 7, p. 3).
13. On June 20, 2001 the Respondent called the Office of Professional Medical Conduct ["OPMC"] of the NYS Department of Health ["DOH"] to self-report his alcohol problem. He spoke to Joann V. Dawson, the Director of the Physician Monitoring Program, and specifically informed her that he had some problems with alcohol and is currently in outpatient treatment at Andrews Air Force Base. (Tr. 20-23; Ex. 8).
14. On September 10, 2001 the Respondent began drinking alcoholic beverages again. On September 11, 2001 he drank late into the night. On the following day, September 12, 2001, when the Respondent reported to work at MGMC, he was given a blood test which tested positive for the presence of alcohol. The Respondent's clinical privileges were immediately suspended and he was advised to attend an inpatient alcohol treatment program at a naval base facility in Norfolk, Virginia. (Tr. 254-258, 261-262, 266 and 370-371; Ex. 7, p. 3).
15. On September 27, 2001 the Respondent was interviewed by Donald L. Reinhard, a Senior Investigator employed by OPMC, concerning the alcohol problem and treatment that the Respondent had reported to Joann V. Dawson on June 20, 2001. Despite the fact that the Respondent had tested positive for alcohol on September 12, 2001 after reporting to duty at MGMC, the Respondent stated to Investigator Reinhard during this interview that he

had not tested positive for alcohol since he began the outpatient rehabilitation program.  
(Tr. 40-43; Ex. 9; See finding 14, *supra*).

16. The Respondent attended the inpatient alcohol treatment program at the Norfolk facility from mid October until mid November of 2001 (Tr. 371; Ex. 7, p. 4).
17. On June 21, 2002 the Respondent's clinical privileges at MGMC were revoked (Ex. 7, pp. 8-9).
18. In October of 2002 the Respondent applied for an appointment at St. Agnes Hospital in White Plains, N.Y. ["St. Agnes"]. (Ex. 5).
19. In order to obtain an appointment at St. Agnes, the Respondent completed the St. Agnes "Application for Appointment" form ["the St. Agnes Application"], which he dated October 22, 2002 (Ex. 5). On page 6 of the St. Agnes Application, the Respondent checked "No" as his answer to the following questions:

5. Has your medical staff membership or employment status at any other hospital ever been limited, curtailed, suspended, revoked, denied, reduced, voluntarily or involuntarily relinquished, not renewed, or subject to probationary conditions, or have proceedings toward any of those ends been instituted or recommended by a medical staff official, committee or governing board?

6. Have your clinical privileges at any other hospital or health care institution been limited, curtailed, suspended, revoked, denied, reduced, voluntarily or involuntarily relinquished, not renewed or subject to probationary conditions or have proceedings toward any of those ends been instituted or recommended by a medical staff official, committee or governing board?

17. Are you currently engaging, or have you ever engaged, in the use of illegal drugs or the unlawful use of legal drugs, medications, alcohol, or any other substances?

(Ex. 5, p. 7).

20. The Respondent's answers to questions 5, 6 and 17 appearing on page 6 of the St. Agnes Application were false. (See findings 6, 7, 8, 9, 11, 12, 14, 16, 17 and 19, *supra*).
21. Furthermore, when the Respondent answered questions 5, 6 and 17 appearing on page 6 of the St. Agnes Application, he knew that his answers were false. (Tr. 52-56 and 282-284; Ex. 11, pp. 2-3; Ex. 12, p. 2).
22. Finally, the Respondent submitted the St. Agnes Application to St. Agnes even though he knew it contained false information. (Ex. 5).

#### **SPECIFIC FINDINGS AS TO BEING A HABITUAL ABUSER OF ALCOHOL**

23. The Respondent has an alcohol dependency problem (Tr. 146) and suffers from serious alcohol abuse (Tr. 156).
24. The Respondent has demonstrated a pattern of regular alcohol abuse, to the point where his workplace has been placed in jeopardy on more than one occasion (Tr. 160-161; See findings 7, 11 and 14, *supra*).
25. Furthermore, the Respondent admitted that he is an alcoholic and that it has taken him a long time to come to that realization (Tr. 252-253). He also admitted that he has been an alcoholic for many years (Tr. 313-314).
26. The Respondent is a habitual abuser of alcohol (Tr. 161). (Tr. 144-161; See findings 6 through 17, *supra*).

## SPECIFIC FINDINGS AS TO FRAUDULENT PRACTICE

27. The Respondent, with intent to deceive, deliberately misrepresented and/or concealed several known facts in connection with the practice of medicine. (See findings 15 and 18 through 22, *supra*).
28. First, during the interview conducted on September 27, 2001 between the Respondent and Investigator Reinhard of OPMC regarding the alcohol problem and treatment that the Respondent self-reported to Joann V. Dawson on June 20, 2001, the Respondent knowingly and intentionally misrepresented that he had not tested positive for alcohol since he began the outpatient rehabilitation program. (See findings 14 and 15, *supra*).
29. Secondly, the Respondent knowingly and intentionally made false representations in the St. Agnes Application when he checked "No" as his answer to each of the following questions:

5. Has your medical staff membership or employment status at any other hospital ever been limited, curtailed, suspended, revoked, denied, reduced, voluntarily or involuntarily relinquished, not renewed, or subject to probationary conditions, or have proceedings toward any of those ends been instituted or recommended by a medical staff official, committee or governing board?

6. Have your clinical privileges at any other hospital or health care institution been limited, curtailed, suspended, revoked, denied, reduced, voluntarily or involuntarily relinquished, not renewed or subject to probationary conditions or have proceedings toward any of those ends been instituted or recommended by a medical staff official, committee or governing board?

(See findings 6, 7, 8, 9, 11, 12, 14, 16, 17 and 18 through 22, *supra*).

30. Thirdly, the Respondent knowingly and intentionally answered falsely the following question in the St. Agnes Application when he checked “No” as his answer:

17. Are you currently engaging, or have you ever engaged, in the use of illegal drugs or the unlawful use of legal drugs, medications, alcohol, or any other substances?

(See findings 7, 14 and 18 through 22, *supra*).<sup>5</sup>

### **SPECIFIC FINDINGS AS TO FALSE REPORT**

31. The Respondent willfully made and/or filed a false report. (See findings 18 through 22, *supra*).
32. More specifically, in October of 2002 the Respondent completed the St. Agnes Application. (See findings 18 and 19, *supra*).
33. The Respondent’s answers to questions 5, 6 and 17 appearing on page 6 of the St. Agnes Application were false and the Respondent knew that these answers were false. (See findings 19 through 21, *supra*).
34. Despite the knowledge that the St. Agnes Application contained false information, the Respondent submitted the St. Agnes Application to St. Agnes in order to secure an appointment at the hospital. (See findings 19 through 22, *supra*).

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<sup>5</sup> The Hearing Committee notes that the Respondent has admitted that he knew that his answer to this question was untrue. (See Answering Factual Allegation E appearing in the Respondent’s Amended Answer dated May 27, 2003; Ex. A).

## **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 unless otherwise specified.

The Respondent is a habitual abuser of alcohol. The Petitioner has proved by a preponderance of the evidence that the Respondent is a habitual abuser of alcohol.

The Respondent did practice medicine fraudulently or beyond its authorized scope. The Petitioner has proved by a preponderance of the evidence that there was an intentional misrepresentation or concealment of a known fact by the Respondent in connection with the following: 1) the Respondent's statement to OPMC Investigator Reinhard on September 27, 2001 that he had not tested positive for alcohol since he began outpatient rehabilitation; and, 2) the Respondent's application for an appointment at St. Agnes.

The Respondent did willfully make or file a false report, or failed to file a report required by law or by the department of health or the education department. The Petitioner has proved by a preponderance of the evidence that the Respondent willfully misrepresented or concealed a known fact in connection with his application for an appointment at St. Agnes.

## **DISCUSSION**

In reaching its findings and its conclusions derived therefrom, the Hearing Committee conducted a thorough evaluation of the testimony of each of the witnesses who testified at the hearing and an extensive review of the documents admitted into evidence. With regard to the testimony presented, the witnesses were assessed according to their training, experience, credentials, demeanor and credibility. In its evaluation of the testimony of each witness, the Hearing Committee considered the possible bias or motive of the witness as well as whether the testimony of the witness was supported or contradicted by other independent objective evidence.

### **Discussion of the Witnesses**

The Petitioner relies primarily upon the medical testimony of Robert A. Maslansky, M.D., and the factual testimony of Joann V. Dawson, OPMC Investigator Donald L. Reinhard, and the Respondent, in its efforts to establish its case against the Respondent. Dr. Maslansky provided expert testimony regarding the various alcohol abuse issues. While Ms. Dawson and Investigator Reinhard testified primarily about statements made by the Respondent during different interviews, the Respondent was questioned about the various problems he had at Beth Israel and at MGMC. The Respondent was also questioned about the St. Agnes Application.

Dr. Robert A. Maslansky was presented as an expert in the field of addiction medicine. He is board certified in both internal medicine and addiction medicine.

Dr. Maslansky went to medical school at Columbia College of Physicians & Surgeons in New York, N.Y., where he received his M.D. degree (1956). He completed a residency in internal medicine at University of Minnesota (1956-1960). After his residency, Dr. Maslansky served in the United States Army Medical Corps (1960-1962), had a private practice in

Minneapolis, Minnesota (1962-1964), and served as Director of the Department of Medical Education at Cook County Hospital in Chicago, Illinois (1974-1978). Furthermore, since 1978 Dr. Maslansky has served as the Director of the Addiction Rehabilitation Program at NYU-Bellevue Hospital Center in New York, N.Y. (1978-present). He has also served as a Lecturer at the New School for Social Research in New York, N.Y. (1985-1999) and as a Consultant for the United States Bureau of Prisons (1974-1997). In addition, Dr. Maslansky has an impressive list of publications. (Tr. 135-137; Ex. 6).

The Hearing Committee found Dr. Maslansky to be a very convincing and highly credible witness. He was straightforward, non-evasive, extremely knowledgeable and his testimony was balanced and unbiased. His credentials were quite impressive and he demonstrated a far-reaching command of the field of addiction medicine in general and the treatment of alcoholism in particular. The Hearing Committee noted that a large concentration of Dr. Maslansky's practice involves the treatment of alcoholism and patients with alcohol problems (Tr. 136-137), which added extra weight to his expertise.

The Petitioner's first factual witness was Joann V. Dawson. Ms. Dawson is employed by OPMC as the Director of the Physician Monitoring Program. She has served in this position since January 1996. (Tr. 20-21). The Hearing Committee found Ms. Dawson to be a highly credible witness who appeared honest, sincere, straightforward, non-evasive and without a motive to lie. However, her testimony that the Respondent told her that "he had never been treated for alcoholism before this..." was unconvincing (Tr. 22).

Following the testimony of Ms. Dawson, the Petitioner presented Donald L. Reinhard, a Senior Investigator employed by OPMC, who has been employed by DOH for over eighteen years (Tr. 36). Investigator Reinhard was also found by the Hearing Committee to be



honest, sincere, straightforward, non-evasive and without a motive to lie. Furthermore, his testimony was supported, in part, by the testimony of the Respondent. The Hearing Committee believed him and found his testimony highly credible.

The final witness presented by the Petitioner was the Respondent. The Respondent's testimony during the direct examination conducted by the Petitioner was frequently self-serving and evasive. The Respondent repeatedly refused to give direct answers to questions asked by the Petitioner. (Tr. 211-284).

The Respondent's case relies primarily on the factual testimony of Maya Kumar, R.N., David P. Thompson, Fredric P. Hans, Keshav Kubal, M.D., and the Respondent.

Maya Kumar, R.N., the Respondent's wife, testified about the Respondent's alcohol problem, the Respondent's efforts to deal with his alcohol problem, and the impact his alcohol problem had on family life (Tr. 517-532). The Hearing Committee found Mrs. Kumar to be a sincere and credible witness. The Hearing Committee noted that although Mrs. Kumar was supportive of the Respondent, she recognized that he was an alcoholic and she did not minimize the problems caused by his alcohol abuse.

Following the testimony of Mrs. Kumar, the Respondent presented David P. Thompson, Major, U.S. Air Force, retired. Major Thompson was the operations officer for the 89<sup>th</sup> surgical operation squadron at Andrews Air Force Base, which was the squadron that the Respondent was assigned to. Major Thompson, who came in contact with the Respondent on a regular basis, testified primarily about the various events relating to the Respondent's problems with alcohol at Andrews Air Force Base. (Tr. 546-572).

Major Thompson, who appeared honest, sincere, non-evasive and without a motive to lie, was also found by the Hearing Committee to be a credible witness. Although his testimony tended to support the Petitioner's position regarding the alcohol abuse issue, it was of limited value to the resolution of the fraudulent practice and false report issues.

At the conclusion of Major Thompson's testimony, the Hearing Committee requested the Respondent to produce his Sobriety Monitor and his Practice Monitor for the purpose of reporting on how he is doing in the alcohol monitoring program that he is currently attending (Tr. 629-643). The Respondent is currently attending an alcohol monitoring program administered by the Committee for Physicians' Health ["CPH"], which is a division of the Medical Society of the State of New York. The Respondent, following a request made by OPMC, initially contacted CPH for alcohol monitoring in or about January of 2003 (Tr. 768-769 and 771-772; Ex. 12). The Respondent actually started the CPH monitoring program in March of 2003 (Tr. 772-773; Ex. M).

Pursuant to the Hearing Committee's request, the Respondent presented Fredric P. Hans and Keshav Kubal, M.D., as his final witnesses. Fredric P. Hans is the Respondent's Sobriety Monitor. Mr. Hans' primary responsibility is to conduct random urine testing for the presence of drugs and/or alcohol. (Tr. 656 and 675-676; Exs. J and K). Keshav Kubal, M.D., is the Respondent's Practice Monitor (Tr. 727-728; Ex. L). Dr. Kubal is also an anesthesiologist and serves as the Associate Director of the Department of Anesthesiology at the White Plains Pavilion of the Westchester County Medical Center in White Plains, N.Y. ["WCMC"], which was formerly known as St. Agnes Hospital. (Tr. 722-724).

Dr. Kubal sees the Respondent at WCMC on a daily basis, Monday through Friday (Tr. 734 and 750). As the Associate Director of the Anesthesiology Department, Dr. Kubal has the responsibility to ensure that the Respondent takes care of his patients properly (Tr. 751-752). As the Respondent's Practice Supervisor, Dr. Kubal has the additional responsibility of observing the Respondent's behavior, including the Respondent's way of practicing, punctuality, appropriateness of behavior, and interaction with colleagues and patients (Tr. 753). Dr. Kubal is also required to report to CPH anything out of the ordinary or suspicious, such as inappropriate behavior, substandard medical care, etc. (Tr. 754-755).

The Hearing Committee found both Mr. Hans and Dr. Kubal to be honest, sincere, straightforward, non-evasive and without a motive to lie. The Hearing Committee believed them and found their testimony credible. However, although their testimony is not relevant to the resolution of the factual issues relating to the specific charges, their testimony would be helpful in the determination of an appropriate penalty should there be a finding of misconduct.

The most important witness to testify in support of the Respondent's case, was the Respondent himself. Although the Respondent had testified earlier in the hearing during the presentation of the Petitioner's case, the Respondent was recalled as a witness to testify in support of his own case. The Respondent is a board certified anesthesiologist who is presently employed at WCMC. The Hearing Committee was impressed with the Respondent's educational background and work experience and found him to be a well-trained anesthesiologist. (See findings 2 through 5, *supra*). The Hearing Committee noted that the Respondent appears to be well-liked and highly respected by his colleagues (Tr. 735-736 and 758-759).

However, the Hearing Committee was not impressed with the Respondent's testimony and had various concerns about his credibility. He did not maintain a consistent level of believability throughout his testimony. For example, at different times during his testimony, he willingly admitted that he had an alcohol problem and was an alcoholic. (See finding 25, *supra*). However, at other times during his testimony, he made unconvincing attempts to justify or minimize his failure to disclose his suspension and curtailment of privileges at Beth Israel (Tr. 223-224 and 315-331) as well as his curtailment and suspension of privileges and ultimately termination of employment at MGMC (Tr. 281-282, 393-398 and 435-442). (See findings 6, 7, 9, 11, 14, 17 and 19, *supra*). Consequently, while he appeared sincere and certain portions of his testimony appeared forthright and truthful, other portions of his testimony appeared self-serving and questionable.

#### **Discussion of the Charges**

In order to resolve the alcohol abuse issue, it was necessary to evaluate the medical testimony of Dr. Maslansky, the factual testimony of the Respondent, Mrs. Kumar and Major Thompson, and the relevant documentary evidence relating to the Respondent's employment at Beth Israel, the Respondent's service in the Air Force and his employment at MGMC, and the Respondent's conversations with Joann V. Dawson and Investigator Reinhard of OPMC.

The Hearing Committee noted that the evidence of the Respondent's alcohol problem was overwhelming. The Hearing Committee further noted that until the Respondent actually started the CPH monitoring program, he failed to effectively address his alcohol problem despite having been given several opportunities to enter a rehabilitation program and stop drinking.

The resolution of the fraudulent practice issues required the evaluation of the factual testimony of Ms. Dawson, Investigator Reinhard, the Respondent and Major Thompson, as well as the relevant documentary evidence relating to the Respondent's employment at Beth Israel, the Respondent's service in the Air Force and his employment at MGMC, the St. Agnes Application, and the Respondent's conversations with Joann V. Dawson and Investigator Reinhard.

The Hearing Committee found the documentary evidence to be very persuasive. The Respondent clearly lied when he completed the St. Agnes Application and he knew that he had lied. (See findings 20 and 21, *supra*). In addition, the Respondent knowingly lied when he told Investigator Reinhard that he had not tested positive for alcohol since he began the outpatient rehabilitation program. It was undisputed that he had tested positive for the presence of alcohol fifteen days earlier. (See findings 14 and 15, *supra*). However, the evidence was insufficient that the Respondent actually told Ms. Dawson that, "other than his current treatment, he had never received treatment for alcoholism before", when he self-reported his alcohol problem to OPMC. Consequently, the Hearing Committee believes that the fraudulent practice specification relating to this particular statement was not established by a preponderance of the evidence.

Finally, the resolution of the false report issues required the evaluation of the factual testimony of Investigator Reinhard, the Respondent and Major Thompson, as well as the relevant documentary evidence relating to the Respondent's employment at Beth Israel, the Respondent's service in the Air Force and his employment at MGMC, the St. Agnes Application, and the Respondent's conversations with Investigator Reinhard.

The evidence clearly established that the Respondent made a false report when he completed the St. Agnes Application that contained false information that he knew was false. Additionally, the evidence further established that the Respondent filed a false report when he, knowing that the St. Agnes Application contained false information, submitted it to St. Agnes to secure an appointment at the hospital. (See findings 32 through 34, *supra*).

**VOTE OF THE HEARING COMMITTEE**

**(All votes were unanimous unless otherwise specified)**

**Factual Allegations**

- A Sustained
- B Not Sustained, except that on or about June 20, 2001 Joann V. Dawson, Director of the Physician Monitoring Unit of the Office of Professional Medical Conduct (OPMC), received a call from Respondent self-reporting his alcohol problem.
- C Sustained
- D Sustained
- E Sustained, except that in or about October of 2002 Respondent submitted an application for appointment, dated October 22, 2002, to St. Agnes Hospital, White Plains, New York.

**Specifications**

**Being a Habitual Abuser of Alcohol**

1<sup>st</sup> Specification Sustained

Sustained Factual Allegations in Support of the 1<sup>st</sup> Specification: A and C

**Fraudulent Practice**

2<sup>nd</sup> Specification Not Sustained

3<sup>rd</sup> Specification Sustained

Sustained Factual Allegation in Support of the 3<sup>rd</sup> Specification: C

4<sup>th</sup> Specification Sustained

Sustained Factual Allegations in Support of the 4<sup>th</sup> Specification: A and E

5<sup>th</sup> Specification Sustained

Sustained Factual Allegations in Support of the 5<sup>th</sup> Specification: C, D and E

False Report

6<sup>th</sup> Specification Sustained

Sustained Factual Allegations in Support of the 6<sup>th</sup> Specification: A and E

7<sup>th</sup> Specification Sustained

Sustained Factual Allegations in Support of the 7<sup>th</sup> Specification: C, D and E

**DETERMINATION AS TO PENALTY**

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determines that the Respondent's license to practice medicine in the State of New York should be suspended for a period of three years ["the suspension"], that the suspension is to be stayed, and that the Respondent is to be placed on probation for the three-year period of the suspension. In addition, the terms of probation shall include a requirement for Impairment Monitoring. The complete terms of probation are attached to this Determination and Order as Appendix II.

This determination was reached after due and careful consideration of the full spectrum of penalties available pursuant to PHL § 230-a, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties. The Hearing Committee's selection of a specific penalty was made after a thorough evaluation of the underlying acts of misconduct and the question of whether the public is placed at risk by the Respondent. The Hearing Committee also conducted a thorough examination of the Respondent's testimony and demeanor during the hearing.

The Hearing Committee believes that in view of all the circumstances, a three-year stayed suspension, connected to probation, is an appropriate penalty. Furthermore, the Hearing Committee recognizes that its primary responsibility is to protect the public and it firmly believes that it is fulfilling this responsibility by imposing probation with provision for Impairment Monitoring.

The Hearing Committee found the Respondent to be a skilled anesthesiologist who appears to be well-liked and highly respected by his colleagues. In addition, there has been absolutely no evidence that the Respondent has ever caused patient harm as a result of his alcohol use. Furthermore, the Respondent is currently participating in the CPH monitoring program and, according to his Sobriety Monitor, Fredric P. Hans, the Respondent has not tested positive for alcohol (Tr. 683-684). The Respondent's Practice Monitor, Keshav Kubal, M.D., indicated that the Respondent has been forthcoming and alcohol free (Tr. 734-740 and 762-764). Dr. Kubal, in his quarterly workplace monitor report to CPH, gave the Respondent a "Consistently High Quality" rating in the following categories: "Record keeping"; "Available for practice and on-call schedule"; "Professional conduct/behavior with patients"; and, "Professional



conduct/behavior with colleagues/staff". Dr. Kubal, in commenting about the Respondent, also noted that he was "Very satisfied with his performance". (Ex. L).

Given the totality of the circumstances regarding this matter, the Hearing Committee believes that the revocation of the Respondent's medical license is not warranted.

Nevertheless, the Respondent has been on the road to recovery before and has relapsed on each occasion. The Hearing Committee is troubled by the Respondent's history of alcohol abuse and his previous attempts at rehabilitation, which ultimately proved unsuccessful.

The Hearing Committee believes that the most effective way to address its concerns is to require some oversight of the Respondent's practice as a hospital anesthesiologist. While probation provides continuing supervision over a period of time, straight probation, although useful, is not enough. It needs to be supplemented by a specialized form of oversight. Impairment Monitoring would provide the necessary specialized oversight, thereby insuring the safety of the public.

The Hearing Committee does not wish to be misunderstood as to in any way condoning the Respondent's conduct. The penalty imposed herein is designed to affirm the Hearing Committee's disapproval of the Respondent's conduct while imposing a fair punishment and offering sufficient protection to the public.

The Hearing Committee believes that by allowing the Respondent to practice medicine under the strict conditions it is imposing, the public is sufficiently protected and the Respondent can continue to provide an important service to the community.

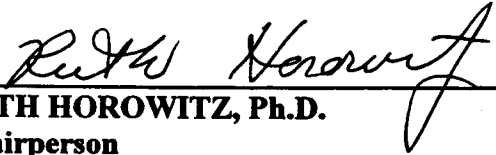
## ORDER

Based upon the foregoing, IT IS HEREBY ORDERED THAT:

1. The 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Specifications of professional misconduct, as set forth in the Statement of Charges (Appendix I), are **SUSTAINED**; and
2. The 2<sup>nd</sup> Specification of professional misconduct contained within the Statement of Charges (Appendix I) is **DISMISSED**; and
3. The Respondent's license to practice medicine in the State of New York is hereby **SUSPENDED** for a period of three years ["the suspension"], the suspension is to be **STAYED** and the Respondent is to be placed on **PROBATION** for the three-year period of the suspension; and
4. The **TERMS OF PROBATION** shall include a requirement for **IMPAIRMENT MONITORING**; and
5. The Respondent shall comply with all **TERMS OF PROBATION** as set forth in Appendix II, which is attached hereto and made part of this Order; and

6. This **ORDER** shall be effective upon service on the Respondent which shall be either by certified mail at the Respondent's last known address (to be effective upon receipt or seven days after mailing, whichever is earlier) or by personal service (to be effective upon receipt).

**Dated: New York, New York  
February 5, 2004**

  
**RUTH HOROWITZ, Ph.D.**  
Chairperson

**ADEL ABADIR, M.D.**  
**RAMAN KAUL, M.D.**

**TO: SUDARSHAN KUMAR, M.B.B.S.**  
171 East 84<sup>th</sup> Street, Apt. 24E  
New York, N.Y. 10016

**WILFRED T. FRIEDMAN, ESQ.**  
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**ANTHONY M. BENIGNO, ESQ.**  
Associate Counsel  
NYS Department of Health  
Division of Legal Affairs  
Empire State Plaza  
Corning Tower, Room 2512  
Albany, N.Y. 12237

APPENDIX I

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

IN THE MATTER  
OF  
SUDARSHAN KUMAR, M.B.B.S.

STATEMENT  
OF  
CHARGES

Sudarshan Kumar, M.B.B.S., the Respondent, was authorized to practice medicine in New York State on or about January 7, 1985, by the issuance of license number 161117 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. In or about December 1993, Respondent's privileges and/or responsibilities were suspended at Beth Israel Medical Center due to the hospital's belief that he was intoxicated while on call in the Intensive Care Unit. Respondent agreed to be evaluated and enter an alcohol treatment program as deemed appropriate. On January 25, 1994, Respondent was medically cleared to return to work under the condition that he enter an outpatient treatment program. Respondent's on-call duties in the Intensive Care Unit were suspended for at least three months after his reinstatement.
- B. On or about June 20, 2001 Joann Dawson, Director of the Physician Monitoring Unit of the Office of Professional Medical Conduct (OPMC), received a call from Respondent self-reporting his alcohol problem. During that conversation Respondent stated to Ms. Dawson that, other than his current treatment, he had never received treatment for alcoholism before.
- C. Respondent consumed substantial amounts of alcoholic beverages during the period of March, 2001 through April 2001. In May of 2001 Respondent had been consuming alcoholic beverages and could not perform his duties

as a physician for the United States Air Force. Respondent thereafter received out-patient rehabilitation treatment for a period of 4-5 weeks. Respondent began consuming substantial amounts of alcoholic beverages again in September of 2001. On September 11, 2001 he drank late into the night. On or about September 12, 2001 while at work Respondent tested positive for alcohol. Thereafter, Respondent's clinical privileges were suspended. On or about September 27, 2001 Senior Investigator Donald Reinhard of OPMC spoke with Respondent who informed him that he has had no positives since he began rehab. Respondent thereafter received in-patient rehabilitation treatment at a naval hospital in Norfolk, Virginia.

- D. As a result of the facts alleged in paragraph C and testing positive for unauthorized use of benzodiazepine, on or about June 21, 2002 the United States Air Force revoked Respondent's clinical privileges at Malcolm Grow Medical Center.
- E. On or about October 25, 2002 Respondent submitted an application for appointment to St. Agnes Hospital, White Plains, New York. On page 6 of the application, with intent to deceive St. Agnes, Respondent answered no to the following questions: (1) Has your medical staff membership or employment status at any other hospital ever been limited, curtailed, suspended, revoked, denied, reduced, voluntarily or involuntarily relinquished, not renewed, or subject to probationary conditions, or have proceedings toward any of those ends been instituted or recommended by a medical staff official, committee or governing board?; (2) Have your clinical privileges at any other hospital or health-care institution been limited, curtailed, suspended, revoked, denied, reduced, voluntarily or involuntarily relinquished, not renewed or subject to probationary conditions or have proceedings toward any of those ends been instituted or recommended by a

medical staff official, committee or governing board?; (3) Are you currently engaging, or have you ever engaged, in the use of illegal drugs or the unlawful use of legal drugs, medications, alcohol, or any other substances?

## **SPECIFICATION OF CHARGES**

### **FIRST SPECIFICATION BEING A HABITUAL ABUSER OF ALCOHOL**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(8) by being a habitual abuser of alcohol, or being dependent on or a habitual user of narcotics, barbiturates, amphetamines, hallucinogens, or other drugs having similar effects, or having a psychiatric condition which impairs the licensee's ability to practice as alleged in the facts of the following:

1. The facts as alleged in paragraph A and/or C.

### **SECOND THROUGH FIFTH 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 as alleged in the facts of the following:

2. The facts as alleged in paragraphs A and B.
3. The facts as alleged in paragraph C.
4. The facts as alleged in paragraphs A and E.
5. The facts as alleged in paragraphs C, D and E.


**SIXTH THROUGH SEVENTH SPECIFICATIONS**

**FALSE REPORT**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(21) by wilfully making or filing a false report, or failing to file a report required by law or by the department of health or the education department, as alleged in the facts of:

6. The facts as alleged in paragraphs A, and E.
7. The facts as alleged in paragraphs C, D and E.

DATED: April 30, 2003  
Albany, New York

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

## APPENDIX II

### **TERMS OF PROBATION**

1. Respondent shall conduct himself in all ways in a manner befitting his professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his profession. Respondent acknowledges that if he commits professional misconduct as enumerated in New York State Education Law §6530 or §6531, those acts shall be deemed to be a violation of probation and that an action may be taken against Respondent's license pursuant to New York State Public Health Law §230(19).
2. Respondent shall submit written notification to the New York State Department of Health addressed to the Director, Office of Professional Medical Conduct ("OPMC"), Hedley Park Place, 433 River Street Suite 303, Troy, New York 12180-2299; said notice is to include a full description of any employment and practice, professional and residential addresses and telephone numbers within or without New York State, and any and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty days of each action.
3. Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of Respondent's compliance with the terms of this Order. Respondent shall personally meet with a person designated by the Director of OPMC as requested by the Director.
4. Any civil penalty not paid by the date prescribed herein shall be subject to all provisions of law relating to debt collection by New York State. This includes but is not limited to the imposition of interest, late payment charges and collection fees; referral to the New York State Department of Taxation and Finance for collection; and non-renewal of permits or licenses [Tax Law section 171(27); State Finance Law section 18; CPLR section 5001; Executive Law section 32].
5. The period of probation shall be tolled during periods in which Respondent is not engaged in the active practice of medicine in New York State. Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in or intends to leave the active practice of medicine in New York State for a period of thirty (30) consecutive days or more. Respondent shall then notify the Director again prior to any change in that status. The period of probation shall resume and any terms of probation which were not fulfilled shall be fulfilled upon Respondent's return to practice in New York State.



6. Respondent's professional performance may be reviewed by the Director of OPMC. This review may include, but shall not be limited to, a review of office records, patient records and/or hospital charts, interviews with or periodic visits with Respondent and his staff at practice locations or OPMC offices.
7. Respondent shall maintain legible and complete medical records which accurately reflect the evaluation and treatment of patients. The medical records shall contain all information required by State rules and regulations regarding controlled substances.
8. Respondent shall remain drug/alcohol free.

Respondent shall remain active in self-help groups such as, but not limited to, Narcotics Anonymous, Alcoholics Anonymous and Caduceus.

Respondent shall notify all treating physicians of his history of alcohol/chemical dependency. Respondent shall advise OPMC of any controlled or mood-altering substance given or prescribed by treating physicians.

Respondent shall practice only when monitored by qualified health care professionals ("sobriety monitor", "practice supervisor" and "therapist") proposed by Respondent and approved, in writing, by the Director of OPMC. Monitors shall not be family members or personal friends, or be in professional relationships which would pose a conflict with monitoring responsibilities.

Respondent shall ensure that the monitors are familiar with Respondent's drug/alcohol dependency and with the terms of this Order. Respondent shall cause the monitors to report any deviation from compliance with the terms of this Order to OPMC. Respondent shall cause the monitors to submit required reports on a timely basis.

Respondent shall submit, at the request of a monitor, to random, unannounced observed blood, breath and/or urine screens for the presence of drugs/alcohol. This monitoring will be on a random, seven-days a week, twenty-four hours a day basis. Respondent shall report for a drug screen within four (4) hours of being contacted by the monitor. Respondent shall cause the monitor to report to OPMC within 24 hours if a test is refused or delayed by Respondent or a test is positive for any unauthorized substance.

Respondent shall meet with a sobriety monitor on a regular basis who will submit quarterly reports to OPMC certifying Respondent's sobriety. These reports are to include a) forensically valid results of all drug/alcohol monitoring tests to be performed at a frequency of no less than once a week for the first 12 months of the period of probation, then at a frequency to be proposed by the sobriety monitor and approved by OPMC and b) an assessment of self-help group attendance (*e.g.*, AA/NA/Caduceus, etc.), 12 step progress, etc.

Respondent shall avoid all substances which may cause positive urines, such as poppy seeds/mouthwash/cough medication. Any positive result will be considered a violation of this Order.

Respondent shall practice medicine only when supervised in his medical practice. The practice supervisor shall be on-site at all locations, unless determined otherwise by the Director of OPMC. Respondent shall not practice medicine until a practice supervisor has been approved. Respondent shall ensure that the practice supervisor is in a position to regularly observe and assess Respondent's medical practice. Respondent shall cause the practice supervisor to report within 24 hours any suspected impairment, inappropriate behavior, questionable medical practice or possible misconduct to OPMC.

Respondent shall cause the practice supervisor to review Respondent's practice regarding the prescribing, administering, dispensing, inventorying, and disposal of controlled substances.

Respondent shall cause the practice supervisor to submit quarterly reports to OPMC regarding the quality of Respondent's medical practice, including the evaluation and treatment of patients, physical and mental condition, time and attendance or any unexplained absences from work, prescribing practices, and compliance or failure to comply with any term of probation.

Respondent shall continue in counseling or other therapy with a therapist as long as the therapist determines is necessary, or for the period of time dictated in the Order.

Respondent shall cause the therapist to submit a proposed treatment plan and quarterly reports to OPMC certifying whether Respondent is in compliance with the treatment plan. Respondent shall cause the therapist to report to OPMC within 24 hours if Respondent leaves treatment against medical advice, or displays any symptoms of a suspected or actual relapse.

Respondent shall comply with any request from OPMC to obtain an independent psychiatric/chemical dependency evaluation by a health care professional proposed by the Respondent and approved, in writing, by the Director of OPMC.

9. Respondent shall comply with all terms, conditions, restrictions, limitations and penalties to which he is subject pursuant to the Order and shall assume and bear all costs related to compliance. Upon receipt of evidence of noncompliance with, or any violation of these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding and/or any such other proceeding against Respondent as may be authorized pursuant to the law.