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

April 25, 2005

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Jerry Katzman, M.D.
P.O. Box 16
Sacket Harbor, New York 13685

Carolyn Shearer, Esq.
Bond, Schoeneck & King, PLLC
111 Washington Avenue
Albany, New York 12210

Amy B. Merklen, Esq.
NYS Department of Health
Division of Legal Affairs
Corning Tower, Room 2512
Empire State Plaza
Albany, New York 12237-0032

RE: In the Matter of Jerry Katzman, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 05-78) 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,

Sean D O'Brien

Sean D. O'Brien, Director
Bureau of Adjudication

SDO:djh
Enclosure

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

IN THE MATTER

OF

JERRY KATZMAN, M.D.

COPY

DETERMINATION

AND

ORDER

BPMC-05-78

A Notice of Hearing and a Statement of Charges, both dated January 7, 2005, were served upon the Respondent, **JERRY KATZMAN, M.D.** **PETER B. KANE, M.D.**, Chairperson, **DONALD CHERR, M.D.** and **MS. JEAN KRYM**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to Section 230(10)(e) of the Public Health Law. **JOHN WILEY, ESQ.**, served as the Administrative Officer.

The New York State Department of Health ("the Department") appeared by **DONALD P. BERENS, JR., ESQ.**, General Counsel, by **AMY B. MERKLEN, ESQ.**, of Counsel. The Respondent appeared by Bond, Schoeneck & King, **CAROLYN SHEARER, ESQ.**, of Counsel.

Evidence was received and witnesses sworn and heard, and transcripts of these proceedings were made.

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

PROCEDURAL HISTORY

Answer Filed	January 24, 2005
Pre-Hearing Conference	January 24, 2005 February 3, 2005
Witness for the Petitioner	David A. Ewing-Chow, M.D.
Witnesses for the Respondent	Jerry Katzman, M.D. Ms. Peggy Ann Husted
Hearing Date	February 3, 2005
Deliberation Date	April 7, 2005

STATEMENT OF CASE

The State Board for Professional Medical Conduct is a duly authorized professional disciplinary agency of the State of New York (Section 230, et seq., of the Public Health Law of the State of New York).

This case was brought by the Department's Office of Professional Medical Conduct ("Petitioner") pursuant to Section 230 of the Public Health Law. In the Statement of Charges, the Respondent was charged with 32 specifications of professional misconduct, as defined in Section 6350 of the Education Law of the State of New York ("Education Law"). During the February 3, 2005, session of the pre-hearing conference, the Petitioner withdrew Specifications 16 and 32. In Specifications 1 through 15, the Respondent is charged with practicing the profession of medicine fraudulently, which constitutes professional misconduct pursuant to Education Law Section 6530(2). In Specifications 17 through 31, the Respondent is charged with willfully making or filing a false report, or failing to file a report required by law, the Department, or the New York State Department of

Education, which constitutes professional misconduct pursuant to Education Law Section 6530(21).

These charges concern answers he gave and statements he made on four forms or applications that he filed with various organizations and government agencies: an Application for Appointment for Samaritan Medical Center (Petitioner Ex. 3), a Participating Physician Application for Specialty Surgery Center of Central New York (Petitioner Ex. 4), a form used to update the Respondent's New York State Physician Profile (Petitioner Ex. 5), and a Subject Statement filed with the National Practitioner Data Bank ("NPDB") (Petitioner Ex. 7). The Petitioner contends that all the statements and answers at issue contained false information and that the Respondent made these false statements and answers knowing that they were false and with an intention to deceive. A copy of the Statement of Charges is attached to this Determination and Order as Appendix I.

The Respondent denied that there was any false information in his statements and answers in Petitioner Ex. 4, 5 and 7. He acknowledged that there were three answers that contained inaccurate information in Petitioner Ex. 3 (the answers to question V.5 - Education and Training – Fellowship/Preceptorship, question VI – Specialty Certification, and question XI.1 – Professional Liability Data – Legal Actions), but contended that these false statements were honest mistakes, not the result of an intention to deceive. The Respondent contends that all his other answers on this application contained no false information.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. All findings and conclusions set forth below are the unanimous determinations of the Hearing Committee. Conflicting evidence, if any, was considered and rejected in favor

of the cited evidence. Numbers below in parentheses refer to exhibits (denoted by the prefix "Ex.") or transcript page numbers ("Tr."). These citations refer to evidence found persuasive by the Hearing Committee in arriving at a particular finding.

Having heard testimony and considered documentary evidence presented by the Petitioner and the Respondent, the Hearing Committee hereby makes the following findings of fact:

1. Jerry Katzman, M.D., the Respondent, was authorized to practice medicine in New York State on December 31, 1987, by the issuance of license number 146553 by the New York State Education Department.
2. The Respondent has been engaged in the practice of ophthalmology in the State of Florida since 1985 (Tr. 39-40).
3. In the early 1990s, the Respondent had several contracts with Humana Health Plans of Florida ("Humana"). Some contracts were with various health maintenance organizations ("HMOs") owned by or affiliated with Humana and some contracts were for conventional, fee-for-service health insurance provided by Humana. Most of these contracts did not have expiration dates. Instead, they could be terminated by 60 days or 90 days written notice by one party to the other. Physicians in the Humana HMOs needed to obtain privileges from Humana, a process that was renewed every two years. (Privileges were not needed for a physician to participate in Humana's conventional health insurance program.) The Respondent first obtained HMO privileges from Humana in 1989. Privileges were renewed in 1991 and 1993. (Tr. 42-48, 80-81, Respondent Ex. G).
4. In 1992, Humana conducted an investigation of the patient charts for several of its patients who had received eye surgery from the Respondent. Hearings were conducted

on August 6, 1993, and December 10, 1993, as part of this investigation. The peer review committee that conducted the second hearing made a recommendation to Humana that the Respondent's privileges not be terminated, but that they be limited because of quality of care problems. Larry Perich, M.D., a member of the peer review committee stated, among other things, that the purpose of the limitations was to ensure in the Respondent's cataract surgery "that the proper wound architecture is used in removal of the lens and placement of implant is proper..." (Respondent Ex. C, Excerpt of Proceedings, December 10, 1993).

5. On January 26, 1994, Bruce W. MacLeod, Humana's Vice President and General Manager, sent a letter to the Respondent's attorney (Respondent Ex. C). The letter stated that Humana had accepted the peer review committee's December 10, 1993 recommendations. The letter placed the following limitations on the Respondent's privileges:

    1. Limitation of Dr. Katzman's surgical privileges to the extent that Dr. Katzman would be required to have a supervising surgeon attend approximately 20 cases with Dr. Katzman.

    2. Monitoring of pre-operative evaluations prior to the approval of any surgery by the supervising physician for a period of 90 days.

    3. Review of all post-operative evaluations for adequate documentation and legibility.

    4. A post-operative survey of Dr. Katzman's patients, for 90 days, for the purpose of determining patient satisfaction.

    5. Implementation of a system to improve communication between Dr. Katzman and the primary care providers.

    6. A re-review by the Hearing Committee of all surgical pre-op and post-op charts that were conducted during the 90-day period, with Dr. Katzman present.

The letter stated that the limitation of privileges was an adverse action under the Health Care Quality Improvement Act of 1986 and, therefore, would be reported to NPDB. The letter also cancelled one of the Respondent's HMO contracts with Humana, a contract dated February 4, 1992. The reason given for this cancellation was that the Respondent was "no longer actively receiving referrals for Humana members," not the quality of care problems that led to the limitation of privileges.

6. The Respondent entered into and paid a medical malpractice settlement in 1987 (Tr. 67, Petitioner Ex. 9, Respondent Ex. B).
7. The Respondent has never been board certified in any specialty, nor was he ever scheduled to sit for the April 2002 board examination in ophthalmology (Tr. 70-71, Petitioner Ex. 9, Respondent Ex. B).
8. The Respondent has not participated in nor completed a fellowship with the Oculoplastic Fellowship Society of New York (Tr. 69-70, Respondent Ex. B).
9. On December 13, 2001, the Respondent signed and submitted an Application for Appointment to the Samaritan Medical Center, located in Watertown, New York (Petitioner Ex. 3).
10. On the Samaritan application, the Respondent was asked, "Have any judgments or settlements been made against you in professional liability cases?" The Respondent answered "No," which was an intentionally false answer. (Tr. 67, 125-126, 223-224, 231-232, 245-248, Petitioner Ex. 3 and 9, Respondent Ex. B).
11. On the Samaritan application, the Respondent was asked, "Have you ever resigned, agreed to a reduction, change or limitation of privileges or membership to avoid disciplinary action?" The Respondent answered "No," which was an intentionally false answer in that he agreed to a limitation of his Humana privileges to avoid termination of

those privileges (Tr. 22, Petitioner Ex. 3 and 8). Contrary to Factual Allegation A.2 of the Statement of Charges, the hearing record does not support a finding that the Respondent agreed with Humana that his privileges not be renewed (Petitioner Ex. 3, Respondent Ex. C).

12. On the Samaritan application, the Respondent was asked, "Have you ever been denied membership or privileges requested or renewal of membership or privileges or been subject to disciplinary action in any medical or dental organization?..." The Respondent answered "No." Contrary to Factual Allegation A.3 of the Statement of Charges, the hearing record does not support a finding that this is a false statement because Humana had refused to renew the Respondent's membership for disciplinary reasons (Petitioner Ex. 3, Respondent Ex. C).

13. On the Samaritan application, the Respondent was asked, "Has any hospital or licensed facility restricted or terminated your professional training, employment, or privileges or have you voluntarily or involuntarily resigned or withdrawn from such association to avoid imposition of such measures?" The Respondent answered "No," which is an accurate answer. (Tr. 42-46, Petitioner Ex. 3, Respondent Ex. G).

14. On the Samaritan application, the Respondent was asked to list any fellowship that he had participated in and whether he had completed it. The Respondent listed "Oculoplastic Fellowship, New York, Oct/14/1984" and circled "Yes" under "Completed." This was intentionally false information submitted by the Respondent. (Tr. 62-63, 69-70, 136-137, 222, Petitioner Ex. 3, Respondent Ex. B).

15. On the Samaritan application, the Respondent was asked to provide the names of any specialty boards by which he was certified. The Respondent answered that he was scheduled to take the ophthalmology board examination in April of 2002. This was an

intentionally false answer by the Respondent. (Tr. 70-71, 138-140, 244, 249, Petitioner Ex. 3 and 9, Respondent Ex. C).

16. After Humana notified NPDB of its adverse action, the Respondent submitted to NPDB a Subject Statement dated May 14, 1997 (Petitioner Ex. 7).

17. In the NPDB Subject Statement, the Respondent claimed that the Humana investigation did not involve quality of care issues, when, in fact, the subject matter of the Humana proceeding was, in part, quality of care. The Respondent's Subject Statement was intentionally false. (Tr. 21-22, Petitioner Ex. 7 and 8, Respondent Ex. C).

18. In the NPDB Subject Statement, the Respondent claimed that the Humana investigation was triggered by patient complaints about delays caused by others in being referred to the Respondent for surgery, not by patient complaints about treatment received from the Respondent. Contrary to Factual Allegation B.2 of the Statement of Charges, the hearing record does not support the allegation that this was a false statement. (Petitioner Ex. 7).

19. On August 1, 2002, the Respondent signed and submitted to the New York State Department of Health a form that contained information for inclusion in his New York State Physician Profile (Petitioner Ex. 5).

20. On the Physician Profile form, the Respondent was asked, "Within the past 10 years, has there been any loss or involuntary restriction of your hospital privileges or removal of your medical staff membership related to the quality of patient care you delivered and where procedural due process has been afforded, exhausted or waived." The Respondent answered "No," which is an accurate answer (Tr. 42-46, Petitioner Ex. 5, Respondent Ex. G).

21. On the Physician Profile form, the Respondent was asked, "Have you failed to renew your professional privileges or resigned from medical staff membership in lieu of a pending disciplinary case against you related to the quality of patient care you delivered?" Contrary to Factual Allegation C.2 of the Statement of Charges, the hearing record does not support a finding that this is a false answer because the Respondent agreed with Humana not to renew his privileges after the Humana investigation (Petitioner Ex. 5, Respondent Ex. C).

22. On February 20, 2002, the Respondent completed, signed and submitted a Participating Physician Application to the Specialty Surgery Center of Central New York (Petitioner Ex. 4).

23. On the Specialty Surgery Center application, the Respondent was asked, "Have your clinical privileges, membership, contractual participation or employment by any medical organization (e.g. ...health plan, health maintenance organization (HMO), ...private payer...or other health delivery entity or system), ever been denied, suspended, restricted, reduced, subject to probationary conditions, revoked or not renewed for possible incompetence, improper professional conduct or breach of contract, or is such action pending?" The Respondent answered "No," which was an intentionally false answer in that the Respondent's privileges at Humana had been limited because of quality of care problems. Contrary to Factual Allegation D.1 of the Statement of Charges, the hearing record does not support a finding that the Respondent was prohibited from renewing his membership with Humana for the reasons specified in this question on the application. (Petitioner Ex. 4, Respondent Ex. C).

24. On the Specialty Surgery Center application, the Respondent was asked, "Have you ever surrendered, allowed to expire, voluntarily or involuntarily withdrawn a request for

membership or clinical privileges or voluntarily or involuntarily had any clinical privileges reduced, suspended or limited in any way, terminated contractual participation or employment or resigned from any medical organization (e.g. ...health plan, health maintenance organization (HMO), private payer...) while under investigation for possible incompetence or improper professional conduct, or breach of contract, or in return for such investigation not being conducted..." The Respondent answered "No" to this question. Contrary to Factual Allegation D.2 of the Statement of Charges, the hearing record does not support a finding that this is a false answer because the Respondent let his Humana contract expire without possibility for renewal in lieu of being terminated by Humana. (Petitioner Ex. 4, Respondent Ex. C).

DISCUSSION

Most of the allegations against the Respondent are about the Humana investigation and related statements and answers he made on four forms and applications afterward. According to the Petitioner, these statements and answers were false because they either mischaracterized the nature of the Humana proceeding or concealed its existence. The Petitioner argued that the Humana proceeding was about quality of care deficiencies. The Respondent contends that it is the Petitioner that has mischaracterized the nature of the Humana investigation and that none of the related statements and answers on the four documents are false. The Respondent's position is that the Humana investigation was about the legibility of his medical records, not about quality of care. Resolution of this dispute is dependent on the credibility of the Respondent and the Petitioner's witness, Dr. Ewing-Chow.

Dr. Ewing-Chow, the Chief of Ophthalmology at Samaritan, testified that he was assigned to verify some of the information on the Respondent's Application for Appointment

(Petitioner Ex. C). He testified that on March 1, 2002, he spoke on the telephone with Dr. Martin Quigley, Chairman of Humana's Credentialing Department. Dr. Ewing-Chow testified that Dr. Quigley said that because of patient care issues, Humana took action against the Respondent. According to Dr. Ewing-Chow, Dr. Quigley stated that there were eleven patient care deficiencies and that there were two major issues: unnecessary cataract surgery and inappropriate YAG laser surgery on post-operative cataract patients. The witness stated that Dr. Quigley said that because of these problems, Humana placed several limitations on the Respondent's privileges (described in finding of fact 5, above). (Tr. 17-24). According to a March 4, 2002, memorandum written by Dr. Ewing-Chow, he was told by Dr. Quigley that the Respondent's attorney negotiated the limitations on the Respondent's privileges in order to avoid termination of Humana's association with the Respondent (Petitioner Ex. 8).

The Respondent criticized Dr. Ewing-Chow's testimony as being hearsay and, therefore, unreliable. It is true that this evidence is hearsay. However, it is hearsay corroborated by the Respondent's own Exhibit C. As will be described below in the analysis of the credibility of the Respondent, several documents in Exhibit C demonstrate that there were quality of care problems addressed in the Humana proceeding, not recordkeeping problems alone, and that the limitations on the Respondent's privileges were in response to the quality of care problems. While hearsay evidence alone can often be inadequate to prove a fact, this case is not about hearsay evidence alone.

Another alleged problem with Dr. Ewing-Chow's testimony is that he would have been in competition with the Respondent had the Respondent received surgical privileges at Samaritan. The Respondent had submitted the application to Samaritan because he had been hired by the Watertown Eye Center, a job that he could not keep if he did not

receive privileges at Samaritan (Tr. 118). The Respondent, if he received such privileges, would stay at the Watertown Eye Center and be in direct competition with Dr. Ewing-Chow. According to the Respondent, he and Dr. Ewing-Chow would be the only surgeons in Watertown performing refractive surgery (Tr. 121-122). In other words, the Respondent's arrival in Watertown ended Dr. Ewing-Chow's monopoly for this type of surgery. Because of this situation, the Respondent contended that Dr. Ewing-Chow did what he needed to do to eliminate the competition and that his testimony cannot be trusted.

The Respondent's argument regarding Dr. Ewing-Chow's credibility is unconvincing. It is one thing to prove that there is a motive for someone to fabricate damaging information about another person. It is an entirely different thing to demonstrate that the person with this motive acted on it. Dr. Ewing-Chow would have to be a person of exceptionally deficient character to fabricate such damaging information about another physician's professional competence. The Hearing Committee observed Dr. Ewing-Chow throughout his testimony and does not conclude that he is such a person. It is also noteworthy that there have been two other ophthalmologists who have applied for privileges at Samaritan since Dr. Ewing-Chow became Samaritan's Chief of Ophthalmology and both applications were granted (Tr. 33-34). Dr. Ewing-Chow did not sabotage these applicants.

In sharp contrast to the testimony of Dr. Ewing-Chow, the testimony of the Respondent regarding the nature of the Humana proceeding was totally unconvincing. The Respondent testified repeatedly that the only problems disclosed in that proceeding were problems with the legibility of his patient charts, that there were no patient complaints about him or adverse patient outcomes, and no findings by Humana of quality of care problems (Tr. 51-52, 72-73, 91-92, 95-96, 150-151, 154-155). The Respondent also acknowledged

that Humana had a concern about the frequency with which he performed Yag laser surgery on patients who had received cataract surgery from the Respondent (Tr. 98-100, 105). However, the Respondent characterized this as a legibility issue also, explaining that if a medical chart cannot be read for legibility reasons, then the person attempting to read the chart will not realize that there is sufficient justification for the surgery in the chart (Tr. 109-110). To the same effect is the Respondent's testimony at pages 184 to 189 and pages 196 to 199 of the transcript. The Respondent contended from the beginning to the end of his testimony that no problems other than a legibility problem were disclosed in the Humana proceeding.

The testimony of the Respondent on the nature of the Humana proceeding is not credible. This conclusion is based primarily on the testimony of Dr. Ewing-Chow and Petitioner Ex. 8, described above, on the documents from the Humana proceeding in Respondent Ex. C, and on Humana's reporting of the results of its proceeding to NPDB in the quality of care category (Petitioner Ex. 7, Respondent Ex. B). Respondent's Ex. C contains an Excerpt of Proceedings from the August 6, 1993, Humana hearing. Bruce Frieman, M.D., announced the interim recommendation of the peer review committee. He stated that the committee "has determined that Dr. Katzman should not be suspended from participation in the Humana Health Care Plan." It is unlikely that Dr. Frieman would say this unless suspension had been under consideration. It is equally unlikely that suspension had been under consideration if no evidence of quality of care problems had surfaced in the investigation.

Respondent's Ex. C also contains a letter dated August 30, 1993, from Mr. MacLeod to the Respondent. It states that Humana had decided to accept the recommendation that the Respondent's privileges not be terminated. Why was termination under consideration

in what supposedly was only a legibility case? The letter also states that "the Quality Management Committee has voted to renew the suspension of your privileges until the current quality of care investigation is concluded." Why would the Respondent's privileges be suspended if no problem more serious than illegible charts had surfaced during the investigation? Why would Mr. MacLeod characterize the investigation as a quality of care investigation if, as the Respondent contended, it was not?

Respondent Ex. C also contains an Excerpt of Proceedings from the December 10, 1993, Humana hearing. In that transcript, Larry Perich, M.D., a member of the peer review committee, announced the committee's recommendation to Humana. Dr. Perich stated that the committee did "not want to terminate [the Respondent's] privileges with the Humana Care Plan..." Again, there is no reason for a committee member to say this if termination of privileges was not under consideration. Termination of privileges would not have been under consideration if the investigation had disclosed only legibility problems. Dr. Perich also stated that the committee recommended "supervision of the surgical technique for cataract surgery to be done to insure that the proper wound architecture is used in removal of the lens, and placement of implant is proper..." It could not be clearer that this is a description of a remedy for a quality of care problem, not a legibility problem. The committee recommended that limitations be placed on the Respondent's privileges with Humana. These limitations were adopted by Humana in Mr. MacLeod's January 26, 1994, letter. The limitations are quoted in finding of fact 5, above.

If the problems with the Respondent's patient care disclosed in the Humana investigation were as limited as the Respondent claimed, the limitations on his privileges would have been considerably less stringent. Legibility problems adequately explain the monitoring of the Respondent's pre-operative evaluations, post-operative evaluations and

patient charts. Legibility problems do not explain the need for the presence of a supervising surgeon during 20 surgeries performed by the Respondent. Legibility problems do not explain the need for a survey of the Respondent's patients to determine "patient satisfaction." What can the patients know about the legibility of the Respondent's patient charts?

Humana reported the results of its proceeding to NPDB. As the Respondent acknowledged in his Subject Statement to NPDB (Petitioner Ex. 7) and in a March 27, 2002, letter he sent to Dr. Stephen Blonsky, the Chair of the Credentialing Committee at Samaritan (Respondent Ex. B), Humana characterized the problem with the Respondent as quality of care issues. The Respondent claimed in the letter to Dr. Blonsky that Humana originally reported the problem as "other," but later changed the category to "quality of care" because of "legal pressure." No further explanation of the legal pressure, such as who was exerting this pressure and why, was offered. When the Respondent was asked during this hearing about Humana's choice of the quality of care code for the report to NPDB, he did not state that this was the result of legal pressure. Instead, he testified that, "I don't think there was any other code they could use." (Tr. 145). This makes no sense. The coding system of NPDB cannot be so defective that problems unrelated to quality of care must be categorized as quality of care. In the letter to Dr. Blonsky, the Respondent mentioned that there was an "other" code. The Respondent has given two explanations for Humana's report to NPDB that are unconvincing and inconsistent with each other.

As the Respondent testified, he was given the opportunity to explain and read his charts to the Humana investigators and peer review committee (Tr. 96-97). If there were only legibility problems in his surgical practice, he would have been able to demonstrate this early in the investigation and there would have been no statement by Dr. Perich in the

December 10, 1993, Excerpt of Proceedings about proper wound architecture and whether the Respondent's placement of the implant was proper. There also would have been no limitation of the Respondent's privileges beyond those that address recordkeeping problems. As stated above, some of the limitations placed on the Respondent's privileges by Humana cannot be explained by a concern regarding legibility problems.

The Hearing Committee concludes that the Humana proceeding disclosed quality of care problems as well as a legibility problem and that Humana limited the Respondent's privileges to deal with all the problems disclosed in its proceeding. The Hearing Committee also concludes that on several documents signed or submitted afterward, the Respondent either lied about the nature of the Humana proceeding or failed to disclose its existence despite having a duty to make such disclosure. It does not follow, however, that the Hearing Committee can sustain every factual allegation in the Statement of Charges regarding the Humana proceeding and the Respondent's subsequent statements and answers or absence of answers about it. Some factual allegations on the subject have no support in the hearing record. The factual allegations related to the Humana proceeding, therefore, must be addressed individually.

Factual Allegation A. 2 – On the Samaritan application, the Respondent was asked, "Have you ever resigned, agreed to a reduction, change or limitation of privileges or membership to avoid disciplinary action?" The Respondent answered "No." The Petitioner contended that the "No" answer was false because the Respondent had agreed with Humana to have his privileges limited and to not renew his privileges. The Respondent's position is that this is a truthful answer because the Humana limitations on his privileges were imposed on him, rather than the result of an agreement between himself and Humana. The Respondent also argued that no prohibition on renewal of privileges was

imposed by Humana. Regarding the limitation of privileges, the Petitioner's position is accepted. Petitioner Ex. 8 states that Dr. Quigley told Dr. Ewing-Chow that the Respondent's attorney negotiated the privilege limitations with Humana to avoid termination of Humana's association with the Respondent. This evidence, although it is hearsay, is more convincing and reliable than the testimony of the Respondent, a witness found not credible by the Hearing Committee. As stated above, the Respondent's testimony on the nature of the Humana proceedings was in conflict with his own exhibits and not worthy of belief. This renders highly suspect his testimony on all aspects of the Humana proceeding and every other contested issue. Regarding the alleged inability of the Respondent to renew his privileges, there is no evidence in support of this in the hearing record. Neither in the testimony of any witness nor in any exhibit is it stated that part of the penalty imposed by Humana is the inability of the Respondent to renew privileges. The only item of evidence that is remotely related to this part of the factual allegation is Mr. MacLeod's January 26, 1994, letter, the letter that imposes the limitations on the Respondent's privileges. In this letter, it is stated that one of the Respondent's contracts with Humana would be terminated (Respondent Ex. C). However, the letter states that the reason for this contract termination is that the Respondent was no longer taking patient referrals under the contract. The letter clearly differentiates the reason for the contract cancellation from the reason for the privilege limitations. Therefore, this factual allegation will be sustained regarding limitation of privileges only.

Factual Allegation A.3 – On the Samaritan application, the Respondent was asked, "Have you ever been denied membership or privileges requested or renewal of membership or privileges or been subject to disciplinary action in any medical or dental organization?" The Petitioner alleged that the Respondent's "No" answer was false

because Humana had refused to renew the Respondent's membership. The Petitioner's position is not supported by the hearing record. As stated above, there is no evidence that Humana employed this sanction. This factual allegation will not be sustained.

Factual Allegation A.4 – On the Samaritan application, the Respondent was asked whether any "hospital or licensed facility" had taken various types of disciplinary action against the Respondent or whether he had resigned from such an organization to avoid imposition of discipline. The Respondent answered "No." This is an accurate answer. Humana limited the Respondent's privileges granted by its HMO. An HMO is not a hospital or a licensed facility. This factual allegation will not be sustained.

Factual Allegation B.1 – The Respondent was charged with making a false assertion on his Subject Statement to NPDB that the Humana investigation did not involve any quality of care issues when he knew that it did. The Subject Statement states in detail that there were no quality of care issues in the Humana proceeding and that the only problem was his recordkeeping. This is a false answer, as the Respondent knew when he made it. This factual allegation will be sustained.

Factual Allegation B.2 – The Respondent was charged with making a false assertion on his Subject Statement to NPDB about the reason that the Humana investigation was commenced. The Subject Statement states that the investigation was commenced because of delays in the receipt of surgery for Humana patients. This factual allegation contends that the investigation was commenced because of "patient complaints regarding the care and treatment rendered by Respondent." There is no evidence in the hearing record of such complaints being the reason the investigation was initiated. There is no evidence that such complaints even existed. There is evidence of quality of care problems

discovered during the investigation, but no evidence that quality of care complaints caused the initiation of the investigation. This factual allegation will not be sustained.

Factual Allegation C.1 – On the Respondent's New York State Physician Profile form, the Respondent was asked whether there had been any loss or involuntary restriction of hospital privileges because of the quality of his patient care. The question also asked whether medical staff membership had been removed for this reason. The Respondent answered "No." The Petitioner contends that this was a false answer because of the limitation of Humana privileges. As stated above, only HMO privileges, not hospital privileges, were limited in the Humana proceeding. This factual allegation will not be sustained.

Factual Allegation C.2 – On the Respondent's New York State Physician Profile form, he was asked whether he had ever failed to renew professional privileges in lieu of a pending disciplinary case involving quality of care. He answered "No." The Petitioner alleges that this was a false answer because the Respondent had agreed not to renew his privileges with Humana in the Humana proceeding. As stated above, there is no evidence in the hearing record of any such agreement. This factual allegation will not be sustained.

Factual Allegation D.1 – On the Respondent's application to the Specialty Surgery Center of Central New York, the Respondent was asked, "Have your clinical privileges, membership, contractual participation or employment by any medical organization (e.g. ...health plan, health maintenance organization (HMO), ...private payer...or other health delivery entity or system), ever been denied, suspended, restricted, reduced, subject to probationary conditions, revoked or not renewed for possible incompetence, improper professional conduct or breach of contract, or is such action pending?" The Respondent answered "No." The Petitioner contends that this was a false answer because the

Respondent knew that his privileges with Humana had been limited and because he knew that he was prohibited from renewing his Humana membership. As stated above, the Respondent's Humana privileges were limited for quality of care problems, but there is no evidence that he was prohibited from renewing his Humana membership. This factual allegation will be sustained regarding the limitation of privileges only.

Factual Allegation D.2 – On the Specialty Surgery Center application, the Respondent was asked, "Have you ever surrendered, allowed to expire, voluntarily or involuntarily withdrawn a request for membership or clinical privileges or voluntarily or involuntarily had any clinical privileges reduced, suspended or limited in any way, terminated contractual participation or employment or resigned from any medical organization (e.g. ...health plan, health maintenance organization (HMO), private payer...) while under investigation for possible incompetence or improper professional conduct, or breach of contract, or in return for such investigation not being conducted..." The Respondent answered "No" to this question. The Petitioner alleges that this was a false answer because the Respondent let his Humana contract expire without possibility of renewal in lieu of being terminated by Humana. There is no evidence in the hearing record that any such sanction was agreed to or imposed. This factual allegation will not be sustained.

There are three Factual Allegations in the Statement of Charges that are unrelated to the Humana proceeding – Factual Allegations A.1, A.5 and A.6. Factual Allegation A.1 accuses the Respondent of giving a false answer on the Samaritan application to the question, "Have any judgments or settlements been made against you in professional liability cases?" The Respondent answered "No,' despite the fact that he had settled a professional liability case in 1987 (Tr. 67, Respondent Ex. B). Factual Allegation A.5

alleges that the Respondent provided false information in response to a request on the Samaritan application for any fellowships that he had participated in. The Respondent answered that he had completed a fellowship that he described on the application as "Oculoplastic Fellowship, New York, Oct/14/1984" (Petitioner Ex. 3). The Respondent participated in no such fellowship (Tr. 69). Factual Allegation A.6 accuses the Respondent of giving false information on the Samaritan application regarding board certification. The Respondent's application states that he was scheduled to take the board examination in ophthalmology in April 2002. As correctly stated in the factual allegation, he was not scheduled to take the examination in April 2002. At the time that the application was submitted, the Respondent was not scheduled to take the examination on any date (Tr. 70-71, 138-140).

The Respondent's position regarding these three factual allegations is unlike his position on the factual allegations related to the Humana proceeding. The Respondent claimed that he provided no false information on any form or application regarding the Humana proceeding. For these three factual allegations, the Respondent admitted that the information that he provided was false (Tr. 67, 69, 70-71). The Respondent claimed, however, that in each instance the error was an honest mistake. He contended that his office manager, Peggy Husted, filled out the Samaritan application for him and that she wrote the inaccurate information on the application by mistake. The Respondent testified that he read the application quickly before he signed it. He called his reading of the application a "very cursory review." (Tr. 63). According to the Respondent, because he did only a cursory review, he did not notice Ms. Husted's mistakes. Both the Respondent and Ms. Husted testified as to how the mistakes were made. The Hearing Committee did not find their testimony credible.

The question concerning prior judgments and settlements is, "Have any judgments or settlements been made against you in professional liability cases?" The Respondent testified that Ms. Husted answered "No," despite the existence of a malpractice settlement from 1987, because she mistakenly believed that the question was limited to the previous five years. The Respondent testified that the reason she thought there was a five-year limitation is that the previous question on the application asked for all professional liability carriers during the previous five years. Ms. Husted, therefore, thought that the five-year limitation applied to the question at issue as well. (Tr. 125-126). Ms. Husted testified that she was not functioning well on the day that she filled out the Samaritan application because on that day the Respondent's Florida office was closing, a very hectic and stressful time since this meant that she was losing her job. She also testified that she had suffered several traumatic experiences in her personal life. (Tr. 221, 224). On direct examination, when asked about the reason for the mistake on the judgments and settlements question, she stated, "I answered no to that, because I assumed that was personal. I didn't take it as malpractice, because it didn't say malpractice cases, okay?" (Tr. 223). On direct examination, Ms. Husted did not give the five-year limit of the previous question on the application as a reason for her mistake. On cross-examination, Ms. Husted stated that she thought that the question was about the Respondent's personal liability cases (Tr. 231). She then added that another reason for her mistake was that the previous question on the application asked only about the past five years (Tr. 231-232).

The testimony of the Respondent and Ms. Husted is totally unconvincing. The question on the application asked about "professional liability cases" (Petitioner Ex. C). No matter how upset and distracted Ms. Husted was on the day that she answered this question, she could not have thought that "professional liability cases" meant "personal

liability cases." She could not have thought that "professional liability cases" did not include malpractice cases because the word "malpractice" was not used in the question. She had worked in the Respondent's office for approximately 15 years at the time that she filled out the Samaritan application (Tr. 219). She had filled out many credentialing applications for the Respondent (Tr. 220). She must have known, even on her worst day, that the term "professional liability cases" included malpractice cases. The part of the explanation based on the five-year limitation in the previous question is equally unconvincing. It is true that the previous question was limited to the immediately preceding five-year period. However, in this section of the questionnaire, the Professional Liability Data section, this is the only question of nine that is so time limited. Two other questions ask whether certain events "ever" happened. The question with the five-year time limit appears in a different subsection, "Insurance," of the Professional Liability Data section from the "Legal Actions" subsection in which the question about professional liability cases appears. The Respondent's evidence on the professional liability question is patently absurd and is rejected.

The Respondent and Ms. Husted gave false testimony on the question about professional liability cases. Their testimony is the Respondent's only evidence on his claim of unintentional error regarding the answers about fellowships and board certification examinations. The benefit of the doubt will not be given to a party who relies on two such discredited witnesses. It will be concluded that the errors in these answers were intentional. Factual Allegations A.1, A.5 and A.6 will be sustained.

In Factual Allegations A.7, C.3 and D.3, the Petitioner presents an alternate theory for its case against the Respondent. In these three allegations, the Petitioner claims that the false answers on the Samaritan application, the New York State Physician Profile form

and the Specialty Surgery Center application were the result of the Respondent submitting the documents without reading them and having no knowledge of their content, despite affirming that the contents were accurate. Factual Allegation C.3, which applies to the New York Physician Profile form, will not be sustained because the hearing record does not disclose any false statements on that form. Factual Allegations A.7 and D.3 will not be sustained because, as stated above, the Hearing Committee finds the false statements in those documents to be intentional acts of the Respondent rather than the result of his submitting documents of which he did not know the contents.

For each factual allegation, the Petitioner alleged that the Respondent committed professional misconduct in two ways – practicing medicine fraudulently (Education Law Section 6530[2]) and willfully making or filing a false report (Education Law Section 6530[21]). For each factual allegation sustained by the Hearing Committee, it is the Hearing Committee's conclusion that fraud was committed. The Respondent intentionally made a false statement or failed to disclose a fact when under a duty to do so in order to avoid the negative consequences of truthful responses. On the Samaritan and Specialty Surgery Center applications, he intended to obtain professional privileges that might well have been denied had truthful answers been given. On the NPDB Subject Statement, he intended to mislead anyone who consults the NPDB before making decisions regarding employment of or professional association with physicians. Likewise, for each factual allegation sustained by the Hearing Committee, the false information submitted by the Respondent was submitted willfully. His claim of unintentional errors is unconvincing.

DETERMINATION AS TO PENALTY

The Hearing Committee has determined to revoke the Respondent's license to practice medicine. 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 to a specified area or type of practice; (4) Revocation of the license; (5) Annulment of the license or registration; (6) Limitations on registration or the issuance of any further license; (7) The imposition of monetary penalties; (8) A course of education or training; (9) Performance of public service, and (10) Probation.

This determination is based on two factors. One is the fact that the Respondent gave false answers on three documents. This case is not about one aberrant failure by the Respondent. The other factor is that the Respondent continued his dishonesty during the hearing. Under oath, he repeatedly mischaracterized the nature and subject matter of the Humana proceeding. He did not give truthful testimony on the three false answers that were supposedly the result of honest mistakes.

If a physician who has repeatedly submitted fraudulent documents wants leniency in a professional misconduct hearing, he needs to admit what he did and give a convincing reason for concluding that it will not happen again. A physician who demonstrates at the hearing that he continues to be dishonest should not and will not be shown any leniency.

ORDER

IT IS HEREBY ORDERED THAT:

1. Factual Allegations A.1, A.5, A.6, and B.1, are sustained.
2. Factual Allegations A.2 and D.1 are sustained regarding the limitation of privileges charge only.
3. Factual Allegations A.3, A.4, A.7, B.2, C.1, C.2, C.3, D.2 and D.3 are not sustained.
4. Specifications 1, 5, 6, 8, 17, 21, 22 and 24 are sustained.

5. Specifications 2, 13, 18 and 29 are sustained as to the limitation of privileges charge only.

6. Specifications 3, 4, 7, 9, 10, 11, 12, 14, 15, 19, 20, 23, 25, 26, 27, 28, 30 and 31 are not sustained.

7. The license of the Respondent to practice medicine in New York State is revoked.

8. This **ORDER** shall be effective upon service on the Respondent pursuant to Public Health Law section 230(10)(h).

DATED: Cazenovia, New York
4/22, 2005

Peter B. Kane, M.D.
Chairperson

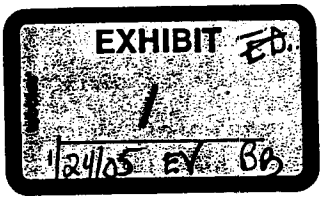
Donald Cherr, M.D.
Jean Krym

APPENDIX 1

STATE OF NEW YORK : DEPARTMENT OF HEALTH

STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER OF JERRY KATZMAN, M.D.	NOTICE OF HEARING



TO: Jerry Katzman, M.D.
P O. Box 16
Sacket Harbor, New York 13685

PLEASE TAKE NOTICE:

A hearing will be held pursuant to the provisions of N.Y. Pub. Health Law § 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 3rd of February, 2005, at 10:00 in the morning of that day at the Office of Professional Medical Conduct, Hedley Building, 433 River Street, Troy, New York 12180 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
January 7, 2004

Peter D. Van Buren

PETER D. VAN BUREN
Deputy Counsel

Inquiries should be directed to:

Amy Merklen
Assistant Counsel
Division of Legal Affairs
Bureau of Professional
Medical Conduct
Corning Tower Building
Room 2512
Empire State Plaza
Albany, New York 12237-0032
(518) 486-1841

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

IN THE MATTER

OF

JERRY KATZMAN, M.D.

STATEMENT

OF

CHARGES

JERRY KATZMAN, M.D., the Respondent, was authorized to practice medicine in New York State on or about December 31, 1987, by the issuance of license number 146553 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. Respondent, on or about December 13, 2001, completed, signed and submitted an Application for Appointment for privileges at Samaritan Medical Center located in Watertown, New York. Respondent intentionally provided false information, in that:

1. Respondent was asked, "Have any judgments or settlements been made against you in professional liability cases?" Respondent checked "no", when, in fact, Respondent paid a medical malpractice settlement in 1987.

2. Respondent was asked, "Have you ever resigned, agreed to a reduction, change or limitation of privileges or membership to avoid disciplinary action?" Respondent checked "no", when in fact, Respondent agreed to have his privileges at Humana Health (an HMO) be limited and not renewed.

3. Respondent was asked, "Have you ever been denied membership or privileges requested or renewal of membership of privileges or been subject to disciplinary action in any medical or dental organization? Or, are you involved in a pending action?" Respondent checked "no", when in fact, Respondent knew that Humana Health had refused to renew Respondent's membership.

4. Respondent was asked, "Has any hospital or licensed facility restricted or terminated your professional training, employment, or privileges or have you voluntarily or involuntarily resigned or withdrawn from such association to avoid imposition of such measures?" Respondent checked "no", when in fact. Respondent knew he had agreed to limited privileges and not re-new his privileges with Humana Health in order to avoid termination.

5. Respondent was asked to list any Fellowship/Preceptorship he participated in and whether or not it had been completed. Respondent listed or caused to be listed "Oculoplastic Fellowship, New York, Oct/14/1984" and circled "yes" under completed, when in fact, Respondent had not done a fellowship or preceptorship in New York for Oculoplastia at any time.

6. Respondent was asked to provide the names of any specialty boards by which Respondent was certified. Respondent represented that he was sitting for the April 2002 board examination, when in fact, Respondent knew that he was not board certified and that the earliest possible date Respondent could even sit for the certification exam would be April 2003.

7. In the alternative, Respondent on December 13, 2001 signed the Samaratin Application and certified that the information provided was "true and will be true, complete and accurate in all respects and contains or shall contain no misstatment of material fact necessary to make the statements made not misleading," when, in fact, Respondent had not read the information provided and was without knowledge of its truth and correctness. Respondent submitted or caused another to submit the Samaritan Application with knowledge that the information provided in said application was false or with reckless disregard for the truth of the information or in the alternative, without knowledge of the truth of that information.

B. Respondent. on or about January 1997, provided a statement of explanation to the National Practitioner's Data bank (hereinafter "NPDB") regarding Humana Health's action against him. Respondent knowingly provided false information. in that:

1. Respondent reported to the NPDB that the Humana investigation did not involve any quality of care issues, when in fact, Respondent knew Humana found at least two quality of care issues pertaining to Respondent's care and treatment of patients.

2. Respondent further reported that Humana's investigation was triggered by an automatic efficiency mechanism within the Humana administration, when in fact, the investigation was initiated by patient complaints regarding the care and treatment rendered by Respondent.

C. Respondent, on or about August 1, 2002, completed, signed and submitted information for his New York State Physician Profile. Respondent knowingly provided false information, in that:

1. Respondent was asked, "Within the past 10 years, has there been any loss or involuntary restriction of your hospital privileges or removal of your medical staff membership related to the quality of patient care you delivered and where procedural due process has been afforded, exhausted or waived?" Respondent checked "no", when in fact, Respondent knew that his Humana privileges had been restricted after an 1994 investigation into the Respondent's quality of patient care.

2. Respondent was asked, "Have you failed to renew your professional privileges or resigned from medical staff membership in lieu of a pending disciplinary case against you related to the quality of patient care you delivered?" Respondent checked "no", when in fact, Respondent knew he had agreed not to renew his privileges with Humana after an 1994 investigation into the Respondent's quality of patient care.

3. In the alternative, Respondent on August 1, 2002 signed the New York State Physician Profile Application, "Under penalties of perjury, I declare and affirm that

the statements made in this profile, including accompanying documents, are true, complete and correct." when, in fact, Respondent had not read the information provided and was without knowledge of its truth and correctness. Respondent submitted or caused another to submit the NYS Physician Profile Application with knowledge that the information provided in said application was false or with reckless disregard for the truth of the information or in the alternative, without knowledge of the truth of that information.

D. Respondent, on or about February 2002, completed, signed and submitted an application to the Specialty Surgery Center of Central New York. Respondent knowingly provided false information, in that:

1. Respondent was asked, "Have your clinical privileges, membership, contractual participation or employment by any medical organization (e.g. hospital medical staff, medical group independent practice association (IPA), health plan, health maintenance organization (HMO), preferred provider organization (PPO), private payer (including those that contract with public programs), medical society, professional association, medical school faculty position or other health delivery entity or system), ever been denied, suspended, restricted, reduced, subject to probationary conditions, revoked or not renewed for possible incompetence, improper professional conduct or breach of contract, or is any such action pending?" Respondent circled "no", when in fact, Respondent knew that his privileges with Humana Health, an HMO had been restricted and Respondent was prohibited from renewing his membership.

2. Respondent was asked, "Have you ever surrendered, allowed to expire, voluntarily or involuntarily withdrawn a request for membership or clinical privileges or voluntarily or involuntarily had any clinical privileges reduced, suspended or limited in any way, terminated contractual participation or employment or resigned

from any medical organization, (e.g. hospital medical staff, medical group independent practice association (IPA), health plan, health maintenance organization (HMO), preferred provider organization (PPO), private payer [sic] (including those that contract with public programs), medical society, professional association, medical school faculty position or other health delivery entity or system) while under investigation for possible incompetence improper professional conduct, or breach of contract, or in return for such an investigation not being conducted or is any such action pending?" Respondent circled "no", when in fact, Respondent knew he let his Humana contract expire without possibility for renewal in lieu of being terminated by Humana.

3. In the alternative, Respondent on or about February 20, 2002, signed the Specialty Surgical Center Application and affirmed that the information provided was "true, current, correct, and complete to the best of my knowledge and belief and is furnished in good faith," when, in fact, Respondent had not read the information provided and was without knowledge of its truth and correctness. Respondent submitted or caused another to submit the Specialty Surgical Center Application with knowledge that the information provided in said application was false or with reckless disregard for the truth of the information or in the alternative, without knowledge of the truth of that information.

JW

SPECIFICATIONS OF CHARGES

FIRST THROUGH SIXTEENTH 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:

1. The allegations contained in paragraphs A and A.1.
2. The allegations contained in paragraphs A and A.2
3. The allegations contained in paragraphs A and A.3
4. The allegations contained in paragraphs A and A.4
5. The allegations contained in paragraphs A and A.5
6. The allegations contained in paragraphs A and A.6
7. The allegations contained in paragraphs A and A.7.
8. The allegation contained in paragraphs B and B.1.
9. The allegation contained in paragraphs B and B.2.
10. The allegations contained in paragraphs C and C.1.
11. The allegations contained in paragraphs C and C.2
12. The allegations contained in paragraphs C and C.3.
13. The allegations contained in paragraphs D and D.1.
14. The allegations contained in paragraphs D and D.2.
15. The allegations contained in paragraphs D and D.3.

SEVENTEENTH THROUGH THIRTY-SECOND 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:

17. The allegations contained in paragraphs A and A.1.
18. The allegations contained in paragraphs A and A.2
19. The allegations contained in paragraphs A and A.3
20. The allegations contained in paragraphs A and A.4
21. The allegations contained in paragraphs A and A.5
22. The allegations contained in paragraphs A and A.6
23. The allegations contained in paragraphs A and A.7.
24. The allegation contained in paragraphs B and B.1.
25. The allegation contained in paragraphs B and B.2.
26. The allegations contained in paragraphs C and C.1.
27. The allegations contained in paragraphs C and C.2
28. The allegations contained in paragraphs C and C.3.
29. The allegations contained in paragraphs D and D.1.
30. The allegations contained in paragraphs D and D.2.
31. The allegations contained in paragraphs D and D.3.

DATED: January 7, 2005
Albany, New York

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