

Public



STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303 Troy, New York 12180-2299

Richard F. Daines, M.D.
Commissioner

Wendy E. Saunders
Chief of Staff

June 17, 2009

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Khaled Omar Elbanna, M.D.

Redacted Address

Anthony Z. Scher, Esq.

Wood & Scher
222 Bloomingdale Road - Suite 311
White Plains, New York 10605

Michael G. Bass, Esq.
NYS Department of Health
ESP-Corning Tower-Room 2405
Albany, New York 12237

Robert Bogan, Esq.
NYS Department of Health
Hedley Park Place
433 River Street - Suite 303
Troy, New York 12180

RE: In the Matter of Khaled Omar Elbanna, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 09-115) 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), (McKinney Supp. 2007) and §230-c subdivisions 1 through 5, (McKinney Supp. 2007), "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,

Redacted Signature

James F. Horan, Acting Director
Bureau of Adjudication

JFH:cah

Enclosure

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

1075Y

IN THE MATTER
OF
KHALED OMAR ELBANNA, M.D.

DETERMINATION
AND
ORDER
EPMC #09-115

A hearing was held on May 20, 2009, at the offices of the New York State Department of Health ("the Petitioner"). A Notice of Hearing and a Statement of Charges, both dated March 25, 2009, were served upon the Respondent, **Khaled Omar Elbanna, M.D.** Pursuant to Section 230(10)(e) of the Public Health Law, **Sheldon H. Putterman, M.D.**, Chairperson, **Alexander M. Yvars, M.D.**, and **Mary Ann T. Cresanti, N.P.**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. **John Wiley, Esq.**, Administrative Law Judge, served as the Administrative Officer.

The Petitioner appeared by **Thomas Conway, Esq.**, General Counsel, by **Michael G. Bass, Esq.**, and **Robert Bogan, Esq.**, of Counsel. The Respondent appeared in person and was represented by Wood & Scher, **Anthony Z. Scher, Esq.**, of Counsel.

Evidence was received and transcripts of these proceedings were made.

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

BACKGROUND

This case was brought pursuant to Public Health Law Section 230(10). This statute provides for a hearing to determine whether there is a preponderance of evidence in

support of the allegations and specifications in the Statement of Charges and, if so, the penalty to be imposed. In the instant case, the Respondent is charged with professional misconduct pursuant to Education Law Section 6530(1), (2), (9)(b), (9)(d) and (21). Copies of the Notice of Hearing and the Statement of Charges are attached to this Determination and Order as Appendix 1.

WITNESSES

For the Petitioner:	Mr. Christopher Morley
For the Respondent:	Khaled Omar Elbanna, M.D. Cathy Delorme-Pagan, M.D. Amr Ali Nayel, M.D.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers below in parentheses refer to exhibits, denoted by the prefix "Ex." or to transcript pages, denoted by the prefix "Tr." These citations refer to evidence found persuasive by the Hearing Committee in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence. All Hearing Committee findings were unanimous.

1. Khaled Omar Elbanna, M.D., the Respondent, was authorized to practice medicine in New York State on May 20, 2002, by the issuance of license number 224801 by the New York State Education Department (Petitioner's Ex. 3).

2. On December 16, 2002, the Florida Board of Medicine ("Florida Board"), by an Order Denying License and Petition for Waiver ("Florida Order"), denied the Respondent a license to practice medicine, based on his failure to appear before the Florida Board to discuss application issues (Petitioner's Ex. 4; Tr. pp. 67-71).

3. On or about March 5, 2002, the Respondent prepared and/or submitted to the New York State Education Department, an Application for License and First

Registration, wherein he falsely answered "No" to question "15. Has any hospital or licensed facility restricted or terminated your professional training, employment, or privileges or have you ever voluntarily or involuntarily resigned or withdrawn from such association to avoid imposition of such measures?" In fact, the Respondent resigned from his residency at the University Hospital of Cleveland on December 31, 1999, at the Hospital's suggestion and was terminated from his residency at Thomas Jefferson Hospital on July 1, 2001. Further, in question 18, the Respondent falsely stated "7/1997" to "12/2000" as the dates for his residency at the "Department of Anesthesiology, University Hospitals of Cleveland." (Petitioner's Ex. 3 and 8; Respondent's Ex. E, pp. 30-31; Tr. pp. 55-66, 92-96).

4. On or about September 20, 2003, the Respondent prepared and/or submitted to New York Hospital Queens an Application for Clinical Privileges and Appointment to the Medical Staff, wherein he falsely answered "No" to question "X. DISCIPLINARY ACTIONS. Have any of the following ever been, or are any currently in the process of being denied, revoked, suspended, reduced, limited, placed on probation, not renewed or voluntarily relinquished?...membership in any internship, residency or other training program prior to completion." (Petitioner's Ex. 3, 4 and 8; Respondent's Ex. E, pp. 30-31; Tr. pp. 59-65, 94-96).

5. On or about December 1, 2003, the Respondent prepared and/or submitted to the New York State Education Department, a Registration Renewal Document, wherein he falsely answered "No" to question "2.b. Since your last registration application, has any licensing or disciplinary authority revoked, annulled, cancelled, accepted surrender of, suspended, placed on probation or refused to issue or renew a professional license or certificate held by you now or previously, or fined, censured, reprimanded or otherwise disciplined you?" (Petitioner's Ex. 3 and 4; Tr. pp. 67-71).

6. On August 23, 2004, the Illinois Department of Financial and Professional Regulation ("Illinois Board"), by an Order ("Illinois Order"), denied the Respondent a temporary license, denied the Respondent the right to sit for an examination that would assist him in obtaining licensure, and reaffirmed the denial of the Respondent's application for a license by endorsement, based on practicing medicine without a license, making a conscious attempt to mislead the Illinois Board by submitting a false letter to the Illinois Board, and improper completion of the licensure application by failing to disclose failed examinations. (Petitioner's Ex. 6; Respondent's Ex. E, pp. 5-6, 14, 17-18, 28-29, 32-34; Tr. pp. 75-85).

HEARING COMMITTEE CONCLUSIONS

The Hearing Committee concludes that the conduct of the Respondent resulting in the Illinois Order would constitute professional misconduct under the laws of New York State, had the conduct occurred in New York State, pursuant to:

- New York Education Law Section 6530(2) - "Practicing the profession fraudulently or beyond its authorized scope;" and
- New York Education Law Section 6530(20) - "Conduct in the practice of medicine which evidences moral unfitness to practice medicine;"

The Statement of Charges also alleged that the conduct found objectionable by the Illinois Board, had it occurred in New York State, would have violated New York Education Law Section 6530(16) - "A willful or grossly negligent failure to comply with substantial provisions of federal, state, or local laws, rules, or regulations governing the practice of medicine;" The Hearing Committee does not sustain this allegation because the Statement of Charges does not specify the laws, rules or regulations allegedly violated. The Petitioner stated at the hearing that the law in question was the law against practicing medicine without a license (transcript p. 18). In order to avoid due process

notification deficiencies, this information needed to be in the Statement of Charges. Disclosing this information for the first time at the hearing left the Respondent at an unacceptable disadvantage.

VOTE OF THE HEARING COMMITTEE

The citations below to paragraphs with an alphabetical letter designation are to Factual Allegations in the Statement of Charges. This is followed by the corresponding numbered Findings of Fact from this Determination and Order

FIRST SPECIFICATION

"Respondent violated New York Education Law Section 6530(1) by obtaining the license fraudulently, in that Petitioner charges:

1. The facts in paragraph B." (Finding of Fact 3).

VOTE: Sustained (3-0)

SECOND SPECIFICATION

"Respondent violated New York Education Law Section 6530(2) by practicing the profession fraudulently, in that Petitioner charges:

2. The facts in paragraph C." (Finding of Fact 4).

VOTE: Sustained (3-0)

THIRD SPECIFICATION

"Respondent violated New York Education Law Section 6530(2) by practicing the profession fraudulently, in that Petitioner charges:

3. The facts in paragraphs A and/or D." (Findings of Fact 2 and 5).

VOTE: Sustained (3-0)

FOURTH SPECIFICATION

"Respondent violated New York Education Law Section 6530(9)(b) by having been found guilty of improper professional practice or professional misconduct by a duly

authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York state, constitute professional misconduct under the laws of New York state, in that Petitioner charges:

4. The facts in paragraphs E and/or F." (Finding of Fact 6).

VOTE: Sustained (3-0)

FIFTH SPECIFICATION

"Respondent violated New York Education Law Section 6530(9)(d) by having disciplinary action taken and/or having his application for a license refused by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the disciplinary action involving the license and/or refusal would, if committed in New York state, constitute professional misconduct under the laws of New York state, in that Petitioner charges:

5. The facts in paragraphs E and/or F." (Finding of Fact 6).

VOTE: Sustained (3-0)

SIXTH SPECIFICATION

"Respondent violated New York Education Law Section 6530(21) by willfully making or filing a false report required by law or by the department of health or the education department, in that Petitioner charges:

6. The facts in paragraphs A and D." (Findings of Fact 2 and 5).

HEARING COMMITTEE DETERMINATION

The Respondent was charged with a number of dishonest acts committed on several occasions. He had explanations for these acts, none of which was convincing. These dishonest acts started with the Respondent's application for his New York license to practice medicine. On this application, he was asked in question 15, "Has any hospital or licensed facility restricted or terminated your professional training, employment, or

privileges or have you ever voluntarily or involuntarily resigned or withdrawn from such association to avoid imposition of such measures?" The Respondent answered "No." (Petitioner's Ex. 3). This was a false answer.

The Respondent resigned from an anesthesiology residency at the University Hospitals of Cleveland on December 31, 1999, at the request of the residency program, which was dissatisfied with the quality of his work. The Petitioner relied on the following March 20, 2002, letter from Howard S. Nearman, M.D., Professor and Chairman at the University Hospitals of Cleveland, to Ms. Angela Denson of the Florida Board of Medicine:

In response to your letter dated March 1, 2002, Dr. Khaled O. El-Banna was a resident in this Department from July 1, 1997, to December 31, 1999. He is a likeable, respectful, young physician, and he resigned this residency at our suggestion. His clinical performance did not keep up with overall expectations for our residency program, although there were periods of satisfactory performance. (Petitioner's Ex. 8).

The Respondent testified that he did resign from this residency, but that the reason was that he had decided that anesthesiology was not the right specialty for him. (Tr. pp. 55-57). The Respondent relied on a May 4, 2000, letter from Helmut F. Cascorbi, M.D., to Charles M. Intenzo, M.D., of the Thomas Jefferson University Hospital. According to the Respondent, Dr. Cascorbi was Chairman of the Anesthesiology Department at the time of the Respondent's resignation (Tr. p. 56). The letter stated:

Dr. El-Banna was a resident in this department from July 1, 1997, to December 31, 1999. He is a likeable, respectful, young physician, and he resigned this residency because he realized that anesthesiology was not what he would like to do in his practice. Dr. El-Banna is a highly motivated, thoughtful young man, interested in learning and concepts. I recommend him highly for a residency in Nuclear Medicine. (Petitioner's Ex. 5, p. 63).

This conflict of evidence is resolved by the Respondent's own written words. The New York State Department of Education uses a verification service to assist it in the processing of applications to practice medicine. In question 17 of the verification service's questionnaire, the Respondent wrote:

I was asked to resign after a patient in the OR developed signs of PE. I was accounted responsible [illegible word]. Currently I am appealing the decision. (Petitioner's Ex. 3, p. 51).

The Respondent contended that although this statement is in his handwriting, it is a statement circumstances forced him to write. He testified that he was told that this was the information that the verification service had received from the University Hospitals of Cleveland. He was told that if he disputed this reason for his resignation, the application process would be stopped, according to the Respondent. The Respondent testified that he reluctantly wrote down the reason to keep the application process moving. (Tr. p. 93).

The Hearing Committee finds the Respondent's evidence on this issue not credible. The Respondent testified that he never worked with Dr. Nearman and had no contact with him (Tr. pp. 59, 98-99). What motivation would Dr. Nearman, someone who had no contact with the Respondent during his residency, have to make false accusations against the Respondent? The Respondent offered no explanation for Dr. Nearman or anyone else at the University Hospitals of Cleveland to make false accusations against him. It would be bizarre if such accusations would be made up by people who had nothing against the Respondent and had no negative information about his performance in his residency. On the other hand, it is understandable that a professor such as Dr. Cascorbi would be willing to do a resident a favor and not disclose the true reason for the resignation.

It is also doubtful that the Respondent was told that the application process would come to a halt if the Respondent did not agree with the information received from the University Hospitals of Cleveland. Why can there be no conflicting information from the various sources contacted by the verification service? Why can a decision on the application not be made unless everyone wrote the same thing? The Respondent wrote that he was asked to resign for cause and the most likely reason that he did so is that it is

true. It will be concluded that the Respondent resigned from the residency because he was asked to resign based on the unacceptable quality of his work.

Another reason that the Respondent's "No" answer to question 15 was false is that he was terminated from another residency program, a residency program at the Thomas Jefferson Hospital in Philadelphia, Pennsylvania. The Respondent had a one-year contract that was supposed to be renewed for a second year (Tr. p. 102). At the end of the first year, the program director decided not to renew the Respondent's contract and the residency, therefore, was terminated after one year. Question 15 asked whether any hospital had "terminated your professional training..." This is exactly what Thomas Jefferson Hospital did. The question is not limited to terminations for a specific cause or causes. Any termination for any reason requires a "Yes" answer. This the Respondent did not do.

The Respondent gave another false answer on his New York application for licensure. He wrote that his residency at the University Hospital of Cleveland started in July of 1997 and ended in December of 2000 (Petitioner's Ex. 3, p. 9). In fact, he resigned from this residency in December of 1999 (Petitioner's Ex. 8).

The Respondent's Application for Clinical Privileges and Appointment to Medical Staff submitted to the New York Hospital Queens also fails to disclose the early termination of the two residencies. The question to which the Respondent answered "No" was "X. DISCIPLINARY ACTIONS. Have any of the following ever been, or are any currently in the process of being denied, revoked, suspended, reduced, limited, placed on probation, not renewed or voluntarily relinquished?...membership in any internship, residency or other training program prior to completion." (Petitioner's Ex. 5). In the Respondent's opening statement, it was stated that the Respondent explained the situation with the two residencies to New York Hospital Queens human resources staff

when he was filling out the application and that he was told that "No" was the correct answer (Tr. pp. 27-29). However, the Respondent offered no testimony or exhibits in support of this contention. This application was not mentioned in the Respondent's testimony. The only items of evidence in the hearing record regarding this allegation are the application itself and the evidence on the Respondent's leaving the two residencies prior to completion. The Respondent "voluntarily relinquished" the University Hospitals of Cleveland residency "prior to completion." The Thomas Jefferson Hospital residency was "not renewed...prior to completion." The Respondent should have answered "Yes," but instead, provided the false answer "No".

The Respondent's New York State Reregistration Renewal Document also had a false answer. The question was "2.b. Since your last registration application, has any licensing or disciplinary authority revoked, annulled, cancelled, accepted surrender of, suspended, placed on probation or refused to issue or renew a professional license or certificate held by you now or previously, or fined, censured, reprimanded or otherwise disciplined you?" The Respondent answered "No." (Petitioner's Ex. 3). In fact, the Florida Board, in the Florida Order (Petitioner's Ex. 4), refused to issue a license to practice medicine to the Respondent because he failed to appear before the Florida Board to discuss issues with his application. The Respondent testified as to the reason that he answered "No" to this question:

As I said, my understanding was the application was denied, but it wasn't the license. And I had the understanding that she – I could apply again at any time with no problems at all.

* * *

I said that the application was turned down because I didn't appear, but I didn't – my understanding was that the license itself could be issued if I applied again. That's – I didn't have any outstanding issues that would prevent me from obtaining the license. (Tr. pp. 70-71).

The Respondent contended, in effect, that when a license is denied for an unimportant or easily resolvable issue, he is free to refuse to disclose the denial of the application on his reregistration application. This argument is rejected. It is New York State, not the Respondent, that has the authority to decide whether the denial of an application to practice medicine in another state is a problem requiring New York State's attention. The Respondent had no right to conceal the Florida license denial on the application.

The final group of dishonest acts can be found in the Illinois Order (Petitioner's Ex. 6). The Respondent sent a letter to the Illinois Board on February 13, 2003, informing the Illinois Board that he had successfully completed a two-month training program required by the Illinois Board. The Respondent had been informed on February 8, 2003, by the physician in charge of the training program, Dominic Imburgia, M.D., that he had not successfully completed the program (Tr. p. 83). The Illinois Order also held that the Respondent had practiced medicine without a license and had improperly completed his licensure application by failing to disclose failed examinations. The Respondent's defense against the findings in the Illinois Order was an explanation of events that contradicted the Illinois Order. Pursuant to Education Law Section 6530(9)(b), this defense must be rejected. The findings of fact in Illinois must be accepted as true by this Hearing Committee pursuant to this statute. The Hearing Committee also finds that the work performed by the Respondent in the office of Dr. Imburgia prior to the two-month training period (Respondent's Ex. E, pp. 28-29) would have constituted practicing medicine without a license under New York State law, had it occurred in New York State.

All the Respondent's arguments and evidence, including the testimony of Dr. Delorme-Pagan and Dr. Nayel, have been considered and have been found insufficient to avoid the conclusion that the Respondent is a dishonest person. The Petitioner

recommended revocation of the Respondent's license to practice medicine, a penalty that this Hearing Committee believes to be unnecessarily harsh. The Respondent needs to be convinced that his dishonest conduct cannot continue. Suspension of his license for one year should accomplish that purpose. After the completion of the suspension, the Respondent will be placed on probation for five years so that the truthfulness of his answers on applications can be monitored.

ORDER

IT IS HEREBY ORDERED THAT:

1. The license of the Respondent, Khaled Omar Elbanna, M.D., is suspended for one year.
2. At the conclusion of the suspension, the Respondent will be placed on probation for five years. The terms of probation are found in paragraphs 3 through 10 of this Order.
3. The Respondent shall submit to the Office of Professional Medical Conduct ("OPMC") (NYS Department of Health, Office of Professional Medical Conduct, Hedley Park Place, 433 River Street, Suite 303, Troy, New York 12180-2299) copies of all applications submitted during the period of probation to hospitals, government agencies, health maintenance organizations, insurance companies and any other medically related entities, regardless of geographical area. The submission to OPMC must be within 30 days of the date of submission of the application.
4. The 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.
5. The Respondent shall submit to OPMC written notification of any change in 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.
6. The Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of the Respondent's

compliance with the terms of this Order and shall personally meet with a person designated by OPMC when so requested.

7. The period of probation shall be tolled during periods in which the Respondent is not engaged in the active practice of medicine in New York State. After the period of probation begins, the Respondent shall notify OPMC, in writing, if the Respondent is not currently engaged in or intends to leave the active practice of medicine in New York State for a period of 30 consecutive days or more. The Respondent shall notify OPMC 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 the Respondent's return to practice in New York State.

8. The Respondent's professional performance may be reviewed by OPMC. This review may include, but shall not be limited to, a review of office records, patient records and hospital charts, interviews with or periodic visits with the Respondent and his staff at practice locations or OPMC offices.

9. The Respondent shall maintain legible and complete medical records that accurately reflect the evaluation and treatment of patients. The medical records shall contain all information required by State regulations regarding controlled substances.

10. Upon receipt of evidence of noncompliance with the terms of probation, OPMC or the State Board for Professional Medical Conduct may initiate a violation of probation proceeding and/or any other proceeding against the Respondent as may be authorized by law.

11. This Order shall be effective upon service on the Respondent in accordance with the requirements of Public Health Law Section 230(10)(h).

DATED: New York, New York

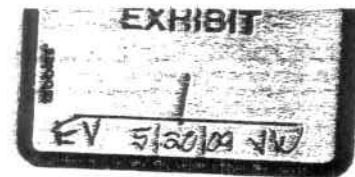
June 16, 2009

Redacted Signature

Sheldon H. Putterman, M.D.
Chairperson

Alexander M. Yvars, M.D.
Mary Ann T. Cresanti, N.P.

APPENDIX I



IN THE MATTER
OF
KHALED O. ELBANNA, M.D.
CO-04-11-5758A

NOTICE
OF
HEARING

TO: Khaled O. Elbanna, M.D., c/o Anthony Z. Scher, Esq.
Wood & Sher
222 Bloomingdale Road, Suite 311
White Plains, New York 10605

PLEASE TAKE NOTICE:

A hearing will be held pursuant to the provisions of New York Public Health Law §230 and New York State Administrative Procedure Act §§301-307 and 401. The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on May 20, 2009, at 10:00 a.m., at the Offices of the New York State Department of Health, Hedley Park Place, 433 River Street, 5th Floor, Troy, NY 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, that 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 who shall be an attorney admitted to practice in New York state. 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 New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Hedley Park Place, 433 River Street, Fifth Floor South, Troy, NY 12180, ATTENTION: HON. SEAN D. O'BRIEN, DIRECTOR, BUREAU OF ADJUDICATION, (henceforth "Bureau of Adjudication"), (Telephone: (518-402-0748), upon notice to the attorney for the Department of Health whose name appears below, 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 New York Public Health Law §230(10)(c), you shall file a written answer to each of the charges and allegations in the Statement of Charges not less than ten days prior to the date of the hearing. Any charge or 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 §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. Pursuant to the terms of New York State Administrative Procedure Act §401 and 10 N.Y.C.R.R. §51.8(b), the Petitioner demands, hereby, disclosure of the evidence that the Respondent intends to introduce at the hearing, including the names of witnesses, a list of and copies of documentary evidence and a description of physical or other evidence that cannot be photocopied.

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 OTHER SANCTIONS SET OUT IN NEW YORK PUBLIC HEALTH LAW §§230-a. YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: Albany, New York
March 25, 2009

Redacted Signature

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

Inquiries should be directed to:
Michael G. Bass
Assistant Counsel
New York State Department of Health
Office of Professional Medical Conduct
Corning Tower Building, Room 2512
Empire State Plaza
Albany, New York 12237-0032
(518) 473-4282

IN THE MATTER
OF
KHALED OMAR ELBANNA, M.D.

AMENDED
STATEMENT
OF
CHARGES

KHALED OMAR ELBANNA, M.D., Respondent, was authorized to practice medicine in New York State on or about May 20, 2002, by the issuance of license number 224801 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. On or about December 16, 2002, the State of Florida, Board of Medicine (hereinafter "Florida Board"), by an Order Denying License and Petition for Waiver (hereinafter "Florida Order"), denied Respondent a license to practice medicine, based on his failure to appear before the Florida Board to discuss application issues.
- B. On or about March 5, 2002, Respondent prepared and/or submitted to the New York State, Education Department, an Application for License and First Registration, wherein he falsely answered "No" to question "15. Has any hospital or licensed facility restricted or terminated your professional training, employment, or privileges or have you ever voluntarily or involuntarily resigned or withdrawn from such association to avoid imposition of such measures?" In fact, Respondent resigned from his residency at the University Hospital of Cleveland on December 31, 1999, at the Hospital's suggestion, and was terminated from his residency at Thomas Jefferson Hospital on July, 1, 2001. Further, in question "18", Respondent falsely

stated "7/1997" to "12/2000" as the dates for his residency at the "Department of Anesthesiology, University Hospitals of Cleveland."

- C. On or about September 20, 2003 Respondent prepared and/or submitted to New York Hospital of Queens an Application for Clinical Privileges and Appointment to the Medical Staff, wherein he falsely answered "No" to question "X. DISCIPLINARY ACTIONS. Have any of the following ever been, or are any currently in the process of being denied, revoked, suspended, reduced, limited, placed on probation, not renewed, or voluntarily relinquished?...membership in any internship, residency or other training program prior to completion".
- D. On or about December 1, 2003, Respondent prepared and/or submitted to the New York State, Education Department, a Registration Renewal Document, wherein he falsely answered "No" to question "2.b. Since your last registration application, has any licensing or disciplinary authority revoked, annulled, cancelled, accepted surrender of, suspended, placed on probation or refused to issue or renew a professional license or certificate held by you now or previously, or fined, censured, reprimanded or otherwise disciplined you?".
- E. On or about August 23, 2004, the State of Illinois, Department of Financial and Professional Regulation, Division of Professional Regulation (hereinafter "Illinois Board"), by an Order (hereinafter "Illinois Order"), denied Respondent a temporary license, denied Respondent the right to sit for an examination that would assist him in obtaining licensure, and reaffirmed the denial of Respondent's application for licensure by endorsement, based on

Respondent's failure to comply with requirements of the Illinois Board by practicing medicine without a license to practice medicine, making a conscious attempt to mislead the Illinois Board, by submitting a false letter to the Illinois Board and improper completion of his application.

F. The conduct resulting in the Illinois Board disciplinary action against Respondent would constitute misconduct under the laws of New York State, pursuant to the following sections of New York State law:

1. New York Education Law §6530(2) (practicing the profession fraudulently);
2. New York Education Law §6530(16) (willful or grossly negligent failure to comply with substantial provisions of federal, state, or local laws, rules, or regulations governing the practice of medicine);
3. New York Education Law §6530(20) (conduct in the practice of medicine which evidences moral unfitness).

SPECIFICATIONS

FIRST SPECIFICATION

Respondent violated New York Education Law §6530(1) by obtaining the license fraudulently, in that Petitioner charges:

1. The facts in paragraph B.

SECOND AND THIRD SPECIFICATIONS

Respondent violated New York Education Law §6530(2) by practicing the profession fraudulently, in that Petitioner charges:

2. The facts in paragraph C.
3. The facts in paragraphs A and/or D.

FOURTH SPECIFICATION

Respondent violated New York Education Law §6530(9)(b) by having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York state, constitute professional misconduct under the laws of New York state, in that Petitioner charges:

4. The facts in paragraphs E and/or F.

FIFTH SPECIFICATION

Respondent violated New York Education Law §6530(9)(d) by having disciplinary action taken and/or having his application for a license refused by a

duly authorized professional disciplinary agency of another state, where the conduct resulting in the disciplinary action involving the license and/or refusal would, if committed in New York state, constitute professional misconduct under the laws of New York state, in that Petitioner charges:

5. The facts in paragraphs E and/or F.

SIXTH SPECIFICATION

Respondent violated New York Education Law §6530 (21) by willfully making or filing a false report required by law or by the department of health or the education department, in that Petitioner charges:

6. The facts in paragraphs A and D.

Dated: *March 25*, 2009

Albany, New York

Redacted Signature

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