



STATE OF NEW YORK DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Dennis P. Whalen
Executive Deputy Commissioner

March 16, 1999

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Kathleen Wasson, Esq.
NYS Department of Health
5 Penn Plaza Sixth Floor
New York, NY 10001

Vincent DeLuca, M.D.
10-45 Totten Street
Beechurst, NY 11357-2846

RE: In the Matter of Vincent DeLuca, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No.99-54) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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,



Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nm
Enclosure

IN THE MATTER
OF
VINCENT DeLUCA, M.D.

DETERMINATION
AND
ORDER

BPMC-99-54

DIANA GARNEAU, M.D., Chairperson, **FRED LEVINSON, M.D.**, and **MS. EUGENIA HERBST**, duly designated members of the State Board for Professional Medical Conduct, appointed by the Commissioner of Health of the State of New York pursuant to Section 230(1) of the Public Health Law, served as the Hearing Committee in this matter pursuant to Sections 230(1)(e) and 230(12) of the Public Health Law. **VITO F. TIRONE, ESQ.**, served as Administrative Officer for the Hearing Committee.

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

STATEMENT OF CHARGES

Respondent was authorized to practice medicine in New York State on September 26, 1960 by the issuance of license number 084726 and licensed to practice medicine as of April 30, 1998 with the New York State Department of Education. On June 16, 1998, Respondent was served with a Notice of Hearing and Statement of Charges. Respondent was charged with misconduct under New York Education Law Section 6530 (2)(28).

The Statement of Charges essentially charges the Respondent with professional misconduct by reason of having practiced the profession of medicine fraudulently and by failing to respond to written communications from the Department of Health to make available relevant records with respect to an inquiry about the licensee's professional misconduct.

The charges are more specifically set forth in the Statement of Charges, a copy of which is attached hereto and made a part of this Determination and Order.

SUMMARY OF PROCEEDINGS

Commissioner's Order and Notice of Hearing Dated:	June 10, 1998
Amendment to Statement of Charges Dated:	August 10, 1998
Prehearing Conference:	August 7, 1998
Hearing Date:	August 11, 1998
Deliberation Date:	September 22, 1998
Place of Hearing:	NYS Department of Health 5 Penn Plaza New York, New York
Petitioner Appeared By:	Henry M. Greenberg, Esq. General Counsel NYS Department of Health By: Kathleen S. Wasson, Esq. Senior Attorney
Respondent Appeared By:	Not represented

WITNESSES

For the Petitioner:	None
For the Respondent:	None

FINDINGS OF FACT

Having considered evidence presented by the Department of Health, the Respondent having failed both to respond to the charges and to attend the hearing where an opportunity to present testimony and evidence was afforded to him, the Hearing Committee hereby makes the following findings.

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

GENERAL FINDINGS

1. Respondent was authorized to practice medicine in New York State on or about September 26, 1960, by the issuance of license number 084726 by the New York State Education Department. (State Exh. 2)
2. From 1980 to 1983 and from 1988 to 1998 Respondent listed himself in the Medical Directory of New York State (MSSNY) as an attending physician in Obstetrics and Gynecology at The Brooklyn Hospital Center when he knew such information was false. (State Exh.3)

3. Respondent has not been an attending physician in the Department of Obstetrics and Gynecology at The Brooklyn Hospital Center since 1980. (State Exh. 5)
4. The Medical Society of the State of New York, Division of Management Information Services and Physician Records, sends out questionnaires every two years requesting updated information from physicians listed in the Medical Directory of New York State. If information is not provided by a physician in response to the questionnaire, the prior Directory listing will continue to appear, but is noted as containing old information by a dagger symbol. (State Exh. 4)
5. Respondent has not updated his MSSNY Directory listing since 1980 .
Therefore, Respondent continued to be listed in the MSSNY Directories from 1980-1983 and from 1988-1998 as an attending physician in the Department of Obstetrics and Gynecology at The Brooklyn Hospital Center even though such information was false. (State Exh. 3,4)

6. Pursuant to the OPMC investigation of Respondent's exclusion from the Medical Assistance Program (Medicaid) by the Department of Social Services, Rosemary Burke, R.N., M.B.A., a Nurse Investigator employed by OPMC, sent four letters to Respondent at 1045 Totten Street, Whitestone, NY 11357, by both regular and certified mail. The letters notified Respondent of the OPMC investigation of his medical practice and of his opportunity to be interviewed by OPMC. The letters also requested patient records and other documents. Respondent was further informed that his failure to respond as requested within thirty (30) days may constitute medical misconduct under Education Law Section 6530. (State Exh. 6-10)
7. None of the letters sent by regular mail were ever returned to OPMC by the Post Office as undelivered. Respondent signed for receipt of the first certified letter. The other three certified letters were returned to OPMC by the Post Office as unclaimed. (State Exh. 6-10)
8. Between on or about May 7, 1997 and June 25, 1997, Nurse Investigator Rosemary Burke verified that both addresses to which she had sent mail for Respondent were correct, using the following sources: (1) Respondent's New York State Education Department, Division of Professional Licensing file listing his address as 1045 Totten Street, Beechurst, NY 11357-2846; (2)

Respondent's New York State Division of Motor Vehicles file listing his address as 1045 Totten Street, Beechurst, NY 11357; (3) Respondent's Credit Analysis file listing his address as 1045 Totten Street, Whitesone, NY 11357; and (4) The Medical Society of the State of New York Directory for 1997-1998, Vol. 65., listing Respondent's address as 1045 Totten Street, Whitestone, NY 11357. (State Exh. 6)

9. On or about June 25, 1997, Nurse Investigator Rosemary Burke made several additional attempts to reach Respondent by telephone; first by using the number listed in the Medical Society of the State of New York Directory for 1997-98, Vol. 65; second by using a number provided by the person who answered the telephone at the first number dialed and said it was the wrong number; and third by using a number obtained from New York Telephone Directory Assistance. She was never able to reach Respondent by telephone at any of these numbers. (State Exh. 6)

10. Although numerous attempts were made by OPMC to contact the Respondent from the onset of the investigative process through the day before the hearing, Respondent never once replied or made contact with OPMC in any manner whatsoever. (State Exh. 6)

11. Respondent was personally served with the Notice of Hearing and Statement of Charges in this proceeding on June 18, 1998. Nevertheless, Respondent did not appear on the hearing date in this matter. (State Exh. 1)

12. Respondent did not file an Answer to the charges in this matter and, as a matter of law, is deemed to have admitted the charges herein. Public Health Law Section 230(10)(c).

CONCLUSIONS

In reaching its findings, the Hearing Committee reasoned as follows:

As to charges that the Respondent practiced fraudulently, credible evidence has been submitted that Respondent was incorrectly listed in the Medical Directory of New York State as an attending physician at the Brooklyn Hospital Center. (State Exh. 3) However, there is no evidence that Respondent took affirmative action to misrepresent his credentials but rather failed to update his listing. (State Exh. 3, 4) The Committee notes that Respondent had been an attending physician at said hospital for a substantial period prior to his last update in the Medical Directory of New York State. (T 31-33)

As to charges that the Respondent failed to produce records, credible evidence was presented to the Committee of numerous and varied attempts to contact Respondent pursuant to OPMC's investigation. OPMC's requests to interview Respondent, that Respondent produce patient records and other documents and notification of the proceedings went unanswered.(State Exh. 6-10; T17-22, 25-27)

VOTE OF THE HEARING COMMITTEE

The Hearing Committee votes unanimously as follows:

While incorrectly listed in the Medical Directory of New York State, the evidence does not support the allegation that Respondent intended to mislead or conceal through said misrepresentation. (T12-13) As to the first specification that the Respondent practiced fraudulently the charge is Not Sustained.

Substantial evidence exists that Respondent failed to respond to written communications from the Department of Health and to make available any relevant records with respect to an inquiry or complaint about the licensee's professional misconduct. As to the second specification that the Respondent failed to produce records the charge is Sustained.

DETERMINATION OF THE HEARING COMMITTEE
AS TO PENALTY

The Hearing Committee unanimously determines that Respondent's blatant disregard to produce records constitutes professional misconduct and warrants nothing less than revocation of Respondent's license to practice medicine in the State of New York.

ORDER


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

- 1.** The license to practice medicine of Respondent Vincent DeLuca is hereby **REVOKED.**

IT IS FURTHER HEREBY ORDERED THAT:

- 2.** This Order shall take effect **IMMEDIATELY.**

Dated: Pittsford, New York
3/15, 1999



DIANA GARNEAU, M.D., (Chairperson)

FRED LEVINSON M.D.
EUGENIA HERBST

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

IN THE MATTER
OF
VINCENT DELUCA, M.D.

STATEMENT
OF
CHARGES

VINCENT DELUCA, M.D., the Respondent, was authorized to practice medicine in New York State on or about September 26, 1960, by the issuance of license number 084726 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. From in or before 1980 to the present, Respondent has knowingly, and with intent to deceive, listed himself in the Medical Directory of New York State (MSSNY) as an attending physician in Obstetrics and Gynecology at The Brooklyn Hospital Center. At no time was the Respondent ever a member of either the professional staff or house staff at The Brooklyn Hospital Center and Respondent knew that the MSSNY listing was false when he made it.
- B. In or about 1996 and 1997, Respondent failed to respond to letters from the Department of Health, mailed on or about December 11, 1996; April 8, 1997; April 21, 1997 and May 21, 1997, and failed to provide medical records requested pursuant to an investigation involving Respondent's exclusion from the Medical Assistance Program (Medicaid) by the Department of Social Services.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION
FRAUDULENT PRACTICE

Respondent is charged with committing professional misconduct as defined by N.Y. Educ. Law §6530(2)(McKinney Supp. 1998) by practicing the profession of medicine fraudulently as alleged in the facts of the following:

1. Paragraph A.

SECOND SPECIFICATION
FAILURE TO PRODUCE RECORDS

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(28)(McKinney Supp. 1998) by failing to respond within thirty days to written communications from the Department of Health and to make available any relevant records with respect to an inquiry or complaint about the licensee's professional misconduct, as alleged in the facts of:

1. Paragraph B.

DATED: June 10, 1998
New York, New York



ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct