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ATTORNEY GENERAL OF NEW JERSEY
Division of Law
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Newark, New Jersey 07101
Attorney for the State Board
of Medical Examiners

FILED
June 1, 2004

**NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS**

By: Mileidy Perez
Deputy Attorney General ,
Tel. (973)648-2500

STATE OF NEW JERSEY
DEPARTMENT OF LAW &
PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
BOARD OF MEDICAL EXAMINERS

IN THE MATTER OF THE LICENSE OF

SALOMON EPSTEIN, M.D.
License No. MA32001

:

Administrative Action

:

MODIFIED FINAL ORDER

TO PRACTICE MEDICINE AND SURGERY
IN THE STATE OF NEW JERSEY

:

OF DISCIPLINE

.

This matter was opened to the New Jersey State Board of Medical Examiners upon receipt of information which the Board has reviewed and on which the following findings of fact and conclusions of law are made;

FINDINGS OF FACT

1. Respondent, Salomon Epstein, M.D., is the holder of License No. MA32001 and was licensed to practice medicine and surgery in the State of New Jersey from 1976 until 2003 after which time Respondent permitted his license to lapse.

2. On or about May 1, 2000, the State of New York, Department of Health, State Board of Professional Medical Conduct

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("New York Board") issued a Consent Order wherein Respondent admitted guilt to twelve counts of poor record keeping in full satisfaction of the charges against him, and imposed a five (5) year suspension, which was stayed, to be served as a period of probation. Pursuant to the terms of the Consent Order Respondent could only practice under the supervision of a practice monitor who is directed to visit Respondent's practice on a random, unannounced monthly basis and to examine up to one third of the records each month to determine if Respondent was in compliance with the New York Board record keeping requirements. Respondent was also to complete 30 credits of continuing education in obstetrics and gynecology. (Copy of order and available supporting materials are annexed hereto and made a part hereof).

3. On or about June 26, 2001, the State of New Jersey Board of Medical Examiners entered a Final Order of Discipline ("FOD") based on the sister state disciplinary action against Respondent's license in New York. The FOD suspends Respondent's license to practice medicine and surgery in New Jersey for a period of five (5) years, stayed the suspension to be served as probation. The FOD further orders that prior to resuming active practice in New Jersey, Respondent shall provide adequate documentation that he attended a board-approved record keeping course and orders Respondent to appear before the Board to demonstrate his fitness to practice medicine in New Jersey prior to resuming active practice

in New Jersey. (Copy of order and available supporting materials are annexed hereto and made a part hereof).

4. By Adjudication and Order dated June 11, 2003, the Pennsylvania State Board of Medicine ("Pennsylvania Board") denied Respondent's application for licensure after finding Respondent guilty of the unprofessional conduct of deliberately misrepresenting his disciplinary history on his application by not disclosing that New Jersey had taken disciplinary action against him. (Copy of order and available supporting materials are annexed hereto and made a part hereof).

5. On or about February 5, 2004, the New York Board issued a Consent Order adopting the terms of a Consent Agreement wherein Respondent admitted to the Thirteenth and Twentieth Specifications set forth in the Statement of Charges filed by the New York Board in full satisfaction of the charges against him. Specifically, Respondent admitted violating the terms of probation and having an application for a license refused by a duly authorized professional disciplinary agency of another state. Pursuant to the Consent Agreement and Order Respondent is placed on probation until May 1, 2008 and subject to permanent limitations on his license. Specifically, Respondent shall have a physician with appropriate qualifications to provide coverage at all practice locations when Respondent will be absent from the area or otherwise not available to promptly present to the office or a hospital in that area as

necessary for patient and Respondent shall use pulse oximetry during all terminations of pregnancy. (Copy of order and available supporting materials are annexed hereto and made a part hereof).

CONCLUSION OF LAW

1. The above disciplinary action taken by the sister state of Pennsylvania on June 11, 2003, and New York on February 5, 2004, provides grounds to take disciplinary action against Respondent's license to practice medicine and surgery in New Jersey pursuant to N.J.S.A. 45:1-21(g) in that Respondent has had his license to practice medicine and surgery suspended in another State and N.J.S.A. 45:1-21(b) in that Respondent has engaged in the use of misrepresentation.

2. Respondent's failure to submit his biennial renewal in 2003 resulting in a lapsed license status provides grounds to automatically suspend Respondent's license to practice medicine and surgery in the State of New Jersey pursuant to N.J.S.A. 45:1-7.1(b).

DISCUSSION OF FINALIZATION

On May 12, 2004, the Board reviewed the recent disciplinary actions taken by the New York and Pennsylvania Boards in conjunction with the FOD filed by the Board against Respondent on June 26, 2001. The Board also reviewed correspondence received from counsel for Respondent, Edgard R. Casper, Esq., as well as the assigned deputy attorney general and determined that the recent

sister state actions provided sufficient grounds to modify the FOD issued by the Board to extend the term of probation an additional three (3) years, mirroring the three (3) year extension of the probationary term issued by the New York Board.

ACCORDINGLY, IT IS on this 1st day of June, 2004,

ORDERED AND AGREED THAT:

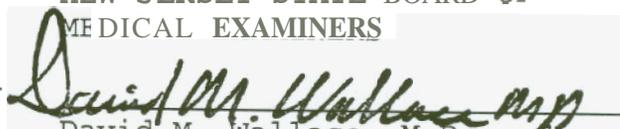
1. This Modified Final Order of Discipline incorporates the five (5) year stayed suspension to be served as probation set forth in the Final Order of Discipline ("FOD") issued by the Board on June 26, 2001, and modifies the FOD to impose a three (3) year extension of the probationary term ordered therein.

2. Prior to resuming active practice in New Jersey, Respondent shall provide adequate documentation that he has attended a board-approved record keeping course.

3. Prior to resuming active practice in New Jersey, Respondent shall be required to appear before the Board (or a committee thereof) to demonstrate his fitness to do so, and any practice in this State prior to said appearance shall constitute grounds for a charge of unlicensed practice. In addition, the Board reserves the right to place restrictions on Respondent's practice should his license be reinstated.

NEW JERSEY STATE BOARD OF
MEDICAL EXAMINERS

BY



Board President

FILED

June 26, 2001

**NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS**

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
BOARD OF MEDICAL EXAMINERS

IN THE MATTER OF THE SUSPENSION
OR REVOCATION OF THE LICENSE OF

Administrative Action

SALOMON EPSTEIN, M.D.
License No. MA 32001

FINAL ORDER
OF DISCIPLINE

TO PRACTICE MEDICINE AND SURGERY
IN THE STATE OF NEW JERSEY

:
:
.

This matter was opened to the New Jersey State Board of Medical Examiners upon receipt of information which the Board has reviewed and on which the following findings of fact and conclusions of law are made.

FINDINGS OF FACT

1. Respondent, Salomon Epstein, M.D., License No. MA 32001, is a physician licensed in the State of New Jersey.
2. Respondent entered into a Consent Order with the New York Eoard in April 2000 based upon his treatment of twelve patients.
3. Respondent was initially charged with practicing the profession negligently on more than one occasion as to the twelve patients, practicing incompetently on more than one occasion as to the twelve patients, and with failing to maintain a medical record which accurately reflected the case and treatment of the twelve patients. The factual allegations exhibited a pattern of disregard

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for accepted standards of care dating from 1988 through 1995 in his treatment of patients for whom he provided abortion and other gynecological services. Respondent's records revealed an absence of post-operative follow-up care, failure to provide appropriate covering physician care, or to advise the patient with information regarding availability of hospital accessibility in the event of an emergency. Respondent: failed to prescribe Rhogam/MicRogram after termination of pregnancy for the positive patients. As to Patient H, Respondent failed to determine that the patient was actually pregnant prior to performing a termination of pregnancy procedure.

4. The New York Board resolved the matter by authorizing the entry of a Consent Order wherein Respondent admitted guilt to twelve counts of poor record keeping in full satisfaction of the charges against him, and imposed a five (5) year suspension, which was stayed, to be served as a period of probation. Respondent may practice only under the supervision of a practice monitor who is directed to visit Respondent's's practice on a random, unannounced monthly basis and to examine up to one third of the records each month to determine if Respondent is in compliance with the New York Board record keeping requirements. Respondent was also to complete 30 credits of continuing medical education in obstetrics and gynecology.

CONCLUSIONS OF LAW

1. The above New York action provides grounds for disciplinary actio: against Respondent's license to practice medicine and surgery in New Jersey pursuant to N.J.S.A. 45:1-21(g),

in that it is based on admissions that would give rise to discipline in this State.

~~CONCLUSION ON FINALIZATION~~

Based on the foregoing findings and conclusions, a Provisional Order of Discipline ("POD") was entered by this Board on March 21, 2001 and served upon Respondent. The POD was subject to finalization by the Board at 5:00 p.m. on the 30th business day following entry unless Respondent requested a modification or dismissal of the stated Findings of Fact or Conclusions of Law by submitting a written request for modification or dismissal setting forth in writing any and all reasons why said findings and conclusions should be modified or dismissed and submitting any and all documents or other written evidence supporting Respondent's request for consideration and reasons therefor.

Respondent submitted a response through his attorney, Robert S. Asher, Esquire, which requested a modification of the Order so that it only reflected the charges to which Respondent pled guilty. Respondent claims that the charges of practicing negligently could only be sustained had they been sustained in New York. Because Dr. Epstein only pled guilty to the charges of poor record keeping,, it is his position that New Jersey can only hold him accountable for those charges.

Respondent's submissions were reviewed by the Board, and the Board determined that further proceedings were not necessary and that no material discrepancies had been raised. The New York action in which findings were made as to record keeping violations

provides a sufficient predicate for discipline in New Jersey. The Board is in no way relying on allegations that were not sustained in New York. Moreover, the Board is not bound by the penalty disposition in another jurisdiction. Nonetheless, the Board was persuaded that the submitted materials merited further consideration and modified its original POD which actively suspended Respondent's license for five years.

ACCORDINGLY, IT IS on this 26th day of June, 2001
ORDERED that:

1. Respondent's license to practice medicine and surgery in the State of New Jersey be and hereby is suspended for a period of five years, stayed to be served as probation. Further, prior to resuming active practice in New Jersey, Respondent shall provide adequate documentation that he has attended a board-approved record keeping course.

2. Prior to resuming active practice in New Jersey, Respondent shall be required to appear before the Board (or a committee thereof) to demonstrate his fitness to do so, and any practice in this State prior to said appearance shall constitute grounds for the a charge of unlicensed practice. In addition, the Board reserves the right: to place restrictions on Respondent's practice should his license be reinstated.

NEW JERSEY STATE BOARD OF
MEDICAL EXAMINERS

By: 
Gregory H. Rokosz, D.O., J.D.
Board President

**DIRECTIVES APPLICABLE TO ANY MEDICAL BOARD LICENSEE
WHO IS DISCIPLINED OR WHOSE SURRENDER OF LICENSURE
HAS BEEN ACCEPTED**

APPROVED BY THE BOARD ON MAY 10, 2000

All licensees who are the subject of a disciplinary order of the Board are required to provide the information required on the Addendum to these Directives. The information provided will *be* maintained separately and will not be part of the public document filed with the Board. Failure to provide the information required may result in further disciplinary action for failing to cooperate with the Board, as required by N.J.A.C. 13:45C-1 et seq. Paragraphs 1 through 4 below shall apply when a license is suspended or revoked or permanently surrendered, with or without prejudice. Paragraph 5 applies to licensees who are the subject of an order which, while permitting continued practice, contains a probation or monitoring requirement.

1. Document Return and Agency Notification

The licensee shall promptly forward to the Board office at Post Office Box 183, 140 East Front Street, 2nd floor, Trenton, New Jersey 08625-0183, the original license, current biennial registration and, if applicable, the original CDS registration. In addition, if the licensee holds a Drug Enforcement Agency (DEA) registration, he or she shall promptly advise the DEA of the licensure action. (With respect to suspensions of a finite term, at the conclusion of the term, the licensee may contact the Board office for the return of the documents previously surrendered to the Board. In addition, at the conclusion of the term, the licensee should contact the DEA to advise of the resumption of practice and to ascertain the impact of that change upon his/her DEA registration.)

2. Practice Cessation

The licensee shall cease and desist from engaging in the practice of medicine in this State. This prohibition not only bars a licensee from rendering professional services, but also from providing an opinion as to professional practice or its application, or representing him/herself as being eligible to practice. (Although the licensee need not affirmatively advise patients or others of the revocation, suspension or surrender, the licensee must truthfully disclose his/her licensure status in response to inquiry.) The disciplined licensee is also prohibited from occupying, sharing or using office space in which another licensee provides health care services. The disciplined licensee may contract for, accept payment from another licensee for or rent at fair market value office premises and/or equipment. In no case may the disciplined licensee authorize, allow or condone the use of his/her provider number by any health care practice or any other licensee or health care provider. (In situations where the licensee has been suspended for less than one year, the licensee may accept payment from another professional who is using his/her office during the period that the licensee is suspended, for the payment of salaries for office staff employed at the time of the Board action.)

A licensee whose license has been revoked, suspended for one (1) year or more or permanently surrendered must remove signs and take affirmative action to stop

advertisements by which his/her eligibility to practice is represented. The licensee must also take steps to remove his/her name from professional listings, telephone directories, professional stationery, or billings. If the licensee's name is utilized in a group practice title, it shall be deleted. Prescription pads bearing the licensee's name shall be destroyed. A destruction report form obtained from the Office of Drug Control (973-504-6558) must be filed. If no other licensee is providing services at the location, all medications must be removed and returned to the manufacturer, if possible, destroyed or safeguarded. (In situations where a license has been suspended for less than one year, prescription pads and medications need not be destroyed but must be secured in a locked place for safekeeping.)

3. Practice Income Prohibitions/Divestiture of Equity Interest in Professional Service Corporations and Limited Liability Companies

A licensee shall not charge, receive or share in any fee for professional services rendered by him/herself or others while barred from engaging in the professional practice. The licensee may be compensated for the reasonable value of services lawfully rendered and disbursements incurred on a patient's behalf prior to the effective date of the Board action.

A licensee who is a shareholder in a professional service corporation organized to engage in the professional practice, whose license is revoked, surrendered or suspended for a term of one (1) year or more shall be deemed to be disqualified from the practice within the meaning of the Professional Service Corporation Act. (N.J.S.A. 14A:17-11). A disqualified licensee shall divest him/herself of all financial interest in the professional service corporation pursuant to N.J.S.A. 14A:17-13(c). A licensee who is a member of a limited liability company organized pursuant to N.J.S.A. 42:1-44, shall divest him/herself of all financial interest. Such divestiture shall occur within 90 days following the the entry of the Order rendering the licensee disqualified to participate in the applicable form of ownership. Upon divestiture, a licensee shall forward to the Board a copy of documentation forwarded to the Secretary of State, Commercial Reporting Division, demonstrating that the interest has been terminated. If the licensee is the sole shareholder in a professional service corporation, the corporation must be dissolved within 90 days of the licensee's disqualification.

4. Medical Records

If, as a result of the Board's action, a practice is closed or transferred to another location, the licensee shall ensure that during the three (3) month period following the effective date of the disciplinary order, a message will be delivered to patients calling the former office premises, advising where records may be obtained. The message should inform patients of the names and telephone numbers of the licensee (or his/her attorney) assuming custody of the records. The same information shall also be disseminated by means of a notice to be published at least once per month for three (3) months in a newspaper of general circulation in the geographic vicinity in which the practice was conducted. At the end of the three month period, the licensee shall file with the Board the name and telephone number of the contact person who will have access to medical records of former

patients. Any change in that individual or his/her telephone number shall be promptly reported to the Board. When a patient or his/her representative requests a copy of his/her medical record or asks that record be forwarded to another health care provider, the licensee shall promptly provide the record without charge to the patient.

5. Probation/Monitoring Conditions

With respect to any license who is the subject of any Order imposing a probation or monitoring requirement or a stay of an active suspension, in whole or in part, which is conditioned upon compliance with a probation or monitoring requirement, the licensee shall fully cooperate with the Board and its designated representatives, including the Enforcement Bureau of the Division of Consumer Affairs, in ongoing monitoring of the licensee's status and practice. Such monitoring shall be at the expense of the disciplined practitioner.

(a) Monitoring of practice conditions may include, but is not limited to, inspection of the professional premises and equipment, and inspection and copying of patient records (confidentiality of patient identity shall be protected by the Board) to verify compliance with the Board Order and accepted standards of practice.

(b) Monitoring of status conditions for an impaired practitioner may include, but is not limited to, practitioner cooperation in providing releases permitting unrestricted access to records and other information to the extent permitted by law from any treatment facility, other treating practitioner, support group or other individual/facility involved in the education, treatment, monitoring or oversight of the practitioner, or maintained by a rehabilitation program for impaired practitioners. If bodily substance monitoring has been ordered, the practitioner shall fully cooperate by responding to a demand for breath, blood, urine or other sample in a timely manner and providing the designated sample.

Salomon N. Epstein, M.D.
NJ License #MA 32001

ADDENDUM

Any licensee who is the subject of an order of the Board suspending, revoking or otherwise conditioning the license, shall provide the following information at the time that the order is signed, if it is entered by consent, or immediately after service of a fully executed order entered after a hearing. The information required here is necessary for the Board to fulfill its reporting obligations:

Social security Number¹: _____

List the Name and Address of any and all Health Care Facilities with which you are affiliated:

List the Names and Address of any and all Health Maintenance Organizations with which you are affiliated:

Provide the names and addresses of every person with whom you are associated in your professional practice: (You may attach a blank sheet of stationery bearing this information).

¹ Pursuant to 45 CFR Subtitle A Section 61.7 and 45 CFR Subtitle A Section 60.8, the Board is required to obtain your Social Security Number and/or federal taxpayer identification number in order to discharge its responsibility to report adverse actions to the National Practitioner Data Bank and the HIP Data Bank.

**NOTICE OF REPORTING PRACTICES OF BOARD
REGARDING DISCIPLINARY ACTIONS**

Pursuant to N.J.S.A. 52:14B-3(3), all orders of the New Jersey State Board of Medical Examiners are available for public inspection. Should any inquiry be made concerning the status of a licensee, the inquirer will be informed of the existence of the order and a copy will be provided if requested. All evidentiary hearings, proceedings on motions or other applications which are conducted as public hearings and the record, including the transcript and documents marked in evidence, are available for public inspection, upon request.

Pursuant to 45 CFR Subtitle A 60.8, the Board is obligated to report to the National Practitioners Data Bank any action relating to a physician which is based on reasons relating to professional competence or professional conduct:

- (1) Which revokes or suspends (or otherwise restricts) a license,
- (2) Which censures, reprimands or places on probation,
- (3) Under which a license is surrendered.

Pursuant to 45 CFR Section 61.7, the Board is obligated to report to the Healthcare Integrity and Protection (HIP) Data Bank, any formal or official actions, such as revocation or suspension of a license (and the length of any such suspension), reprimand, censure or probation or any other loss of license or the right to apply for, or renew, a license of the provider, supplier, or practitioner, whether by operation of law, voluntary surrender, non-renewability, or otherwise, or any other negative action or finding by such Federal or State agency that is publicly available information.

Pursuant to N.J.S.A. 45:9-19.13, if the Board refuses to issue, suspends, revokes or otherwise places conditions on a license or permit, it is obligated to notify each licensed health care facility and health maintenance organization with which a licensee is affiliated and every other board licensee in this state with whom he or she is directly associated in private medical practice.

In accordance with an agreement with the Federation of State Medical Boards of the United States, a list of all disciplinary orders are provided to that organization on a monthly basis.

Within the month following entry of an order, a summary of the order will appear on the public agenda for the next monthly Board meeting and is forwarded to those members of the public requesting a copy. In addition, the same summary will appear in the minutes of that Board meeting, which are also made available to those requesting a copy.

Within the month following entry of an order, a summary of the order will appear in a Monthly Disciplinary Action Listing which is made available to those members of the public requesting a copy.

On a periodic basis the Board disseminates to its licensees a newsletter which includes a brief description of all of the orders entered by the Board.

From time to time, the Press Office of the Division of Consumer Affairs may issue releases including the summaries of the content of public orders.

Nothing herein is intended in any way to limit the Board, the Division or the Attorney General from disclosing any public document.


Antonia C. Novello, M.D., M.P.H.
Commissioner
NYS Department of Health
Dennis P. Whalen
Executive Deputy Commissioner
NYS Department of Health
Anne F. Salle, Director
Office of Professional Medical Conduct

William P. Dillon, M.D.
Chair
Denise M. Bolan, R.P.A.
Vice Chair
Ansel R. Marks, M.D., J.D.
Executive Secretary

May 1, 2000

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Salomon Epstein, M.D.
6910 Avenue U
Brooklyn, NY 11234

RE: License No. 129491

Dear Dr. Epstein:

Enclosed please find Order #BPMC 00-131 of the New York State Board for Professional Medical Conduct. This Order and any penalty provided therein goes into effect May 1, 2000.

If the penalty imposed by the Order is a surrender, revocation or suspension of this license, you are required to deliver to the Board the license and registration within five (5) days of receipt of the Order to Board for Professional Medical Conduct, New York State Department of Health, Hedley Park Place, Suite 303, 433 River Street, Troy, New York 12180.

Sincerely,



Ansel R. Marks, M.D., J.D.
Executive Secretary
Board for Professional Medical Conduct

Enclosure

cc: Robert Asher, Esq.
295 Madison Avenue
New York, NY 10017

Kevin P. Donovan, Esq.

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

IN THE MATTER
OF
SALOMON EPSTEIN, M.D.

CONSENT
ORDER
BPMC 00-131

Upon the proposed agreement of SALOMON EPSTEIN, M.D., (Respondent) for Consent Order, which application is made a part hereof, it is *agreed to and*

ORDERED, that the application and the provisions thereof are hereby adopted and so ORDERED, and *it is further*

ORDERED, that this order shall be effective upon issuance by the Board. which may be accomplished by mailing, by first class mail, a copy of the Consent Order to Respondent at the address set forth in this agreement or to Respondent's attorney by certified mail, or upon transmission via facsimile to Respondent or Respondent's attorney, whichever is earliest.

SO ORDERED

DATED: 4/28/00


WILLIAM P. DILLON, M.D.

Chair
State Board for Professional
Medical Conduct

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

IN THE MATTER
OF
SALOMON EPSTEIN, M.D.

CONSENT
AGREEMENT
AND
ORDER

Salomon Epstein, M.D., (Respondent) says that:

On or about December 3, 1976, I was licensed to practice as a physician in the State of New York, having been issued License No. 129491 by the New York State Education Department.

My current address is 6910 Avenue U, Brooklyn, New York 11234, and I will advise the Director of the Office of Professional Medical Conduct of any change of my address.

I understand that the New York State Board for Professional Medical Conduct has charged me with thirty-six specifications of professional misconduct.

A copy of the Statement of Charges is annexed hereto, made a part hereof, and marked as Exhibit "A".

I admit guilt to the twenty-fifth through thiny-sixth specifications, in full satisfaction of the charges against me. I hereby agree to the following penalty: a five year suspension of my license to practice medicine in New York State, which suspension shall be stayed in its entirety conditioned on my full compliance with the Terms of Probation attached hereto as Exhibit B for a probationary period of five years.

I further agree that the Consent Order for which I hereby apply shall impose the following

conditions

That, except during periods of actual suspension, Respondent shall maintain current registration of Respondent's license with the New York State Education Department Division of Professional Licensing Services, and pay all registration fees. This condition shall be in effect beginning thirty days after the effective date of the Consent Order and will continue while the licensee possesses his license; and

That Respondent shall fully cooperate in every respect with the Office of Professional Medical Conduct (OPMC) in its administration and enforcement of this Order and in its investigation of all matters regarding Respondent. Respondent shall respond in a timely manner to each and every request by OPMC to provide written periodic verification of Respondent's compliance with the terms of this Order. Respondent shall meet with a person designated by the Director of OPMC as directed. Respondent shall respond promptly and provide any and all documents and information within Respondent's control upon the direction of OPMC. This condition shall be in effect beginning upon the effective date of the Consent Order and will continue while the licensee possesses his license.

I hereby stipulate that any failure by me to comply with such conditions shall constitute misconduct as defined by New York State Education Law §6530(29).

I agree that in the event I am charged with professional misconduct in the future, this agreement and order shall be admitted into evidence in that proceeding.

I hereby **make this Application to the State Board for Professional Medical Conduct (the Board) and request that it be granted.**

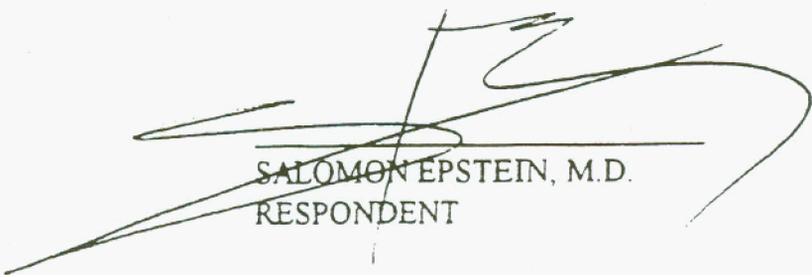
I understand that, **in the event that this Application is not granted by the Board, nothing contained herein shall be binding upon me or construed to be an admission of any act of misconduct alleged or charged against me, such Application shall not be used against me in any way and shall be kept in strict confidence during the pendency of the professional misconduct disciplinary proceeding; and such denial by the Board shall be made without prejudice to the continuance of any disciplinary proceeding and the final determination by the Board pursuant to the provisions of the Public Health Law.**

I agree that, **in the event the Board grants my Application, as set forth herein, an order of the Chairperson of the Board shall be issued in accordance with same. I agree that such order shall be effective upon issuance by the Board, which may be accomplished by mailing, by first class mail, a copy of the Consent Order to me at the address set forth in this agreement, or to my attorney, or upon transmission via facsimile to me or my attorney, whichever is earliest.**

I am making this Application **of my own free will and accord and not under duress, compulsion or restraint of any kind or manner. In consideration of the value to me of the acceptance by the Board of this Application, allowing me to resolve this matter without the various risks and burdens of a hearing on the merits, I knowingly waive any right I may have to contest the Consent Order for which I hereby apply, whether administratively or judicially, and ask that the Application be granted.**

AFFIRMED:

DATED 4/14/00



SALOMON EPSTEIN, M.D.
RESPONDENT

The undersigned agree to the attached application of the Respondent and to the proposed penalty based on the terms and conditions thereof.

DATE: 4/14/00



ROBERT S. ASHER
Attorney for Respondent

DATE: 4/19/00



KEVIN P. DONOVAN
Associate Counsel
Bureau of Professional
Medical Conduct

DATE: 4/28/00



ANNE F. SAILE
Director
Office of Professional
Medical Conduct

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

-----X

IN THE MATTER : STATEMENT
OF : OF
SALOMON EPSTEIN, M.D. : CHARGES

-----X

SALOMON EPSTEIN, M.C., the Respondent, was authorized to practice medicine in New York State on or about December 3, 1976 by the issuance of license number 129491 by the New York State Education Department. The Respondent is currently registered with the New York State Education Department to practice medicine for the period January 1, 1999, through December 31, 1999, with a registration address of 6910 Avenue U, Brooklyn, New York 11234.

FACTUAL ALLEGATIONS

A. Respondent treated Patient A {patients are identified in the appendix attached hereto and made a part hereof) from on or about September 2, 1993 at his office at 147 Front Street, Binghamton New York and again on September 15, 1993 via telephone contact. Respondent's care and treatment of Patient A failed to meet acceptable standards of medical *care* in that:

1. Respondent failed to maintain a record which accurately reflects the evaluation and treatment of Patient A.
2. Respondent failed to give appropriate post-operative instructions to Patient A to follow in the event of an emergency and/or complication.

EXHIBIT "A"

3. Respondent performed an abortion on Patient A and then failed to be available to provide appropriate care and treatment for Patient A and/or to provide for another appropriate covering physician and/or hospital to treat Patient A for complications of said abortion.

B. Respondent treated Patient B on or about February 10, 1993, at his Binghamton, New York office. Respondent's care and treatment of Patient B failed to meet acceptable standards of medical care in that:

1. Respondent failed to maintain a record which accurately reflects the evaluation and treatment of Patient B.
2. Respondent performed an abortion on Patient B and then failed to be available to provide appropriate care and treatment for Patient B and/or to provide for another appropriate covering physician and/or hospital to treat Patient B for complications of said abortion.

C. Respondent treated Patient C on or about December 9, 1992, at his Binghamton, New York office. Respondent's care and treatment of Patient C failed to meet acceptable standards of medical care in that:

1. Respondent failed to maintain a record which accurately reflects the evaluation and treatment of Patient C.
2. Respondent performed an abortion on Patient C and then failed to be available to provide appropriate care and treatment for Patient C and/or to provide for another appropriate covering physician and/or hospital to treat Patient C for complications of said abortion.

D. Respondent treated Patient D on or about June 2, 1990, at his Bronx, New York office. Respondent's care and treatment of Patient D failed to meet acceptable standards of medical care in that:

1. Respondent failed to maintain a record which accurately reflects the evaluation and treatment of Patient D.
2. Respondent failed to perform or record an appropriate physical examination, including a review of Patient D's medical system.
3. Respondent failed to properly perform or record a complete pelvic examination of Patient D.
4. Respondent failed to perform a blood pressure check on Patient D, even though Respondent was aware that Patient D was ingesting oral contraceptives.

E. Respondent treated Patient E from June 5, 1990 *through on or about October 26, 1990 at his Bronx, New York office. Respondent's care and treatment of Patient E failed to meet acceptable standards of medical care in that:

1. Respondent failed to maintain a record which accurately reflects the evaluation and treatment of Patient E.
2. Respondent failed to take or record an appropriate medical history, including a complete menstrual, obstetrical or surgical history.
3. Respondent failed to perform or record an appropriate physical examination, including a review of Patient E's medical systems.
4. Respondent failed to perform or record a complete pelvic examination of Patient E.
5. Respondent failed to evaluate and treat appropriately for Patient E's anemia.
6. Respondent failed to refer Patient E to a hematologist for followup care and treatment.
7. Respondent failed to obtain or record the results of Patient E's Hepatitis B Surface Antigen test.
8. Respondent failed to note or record the outcome of Patient E's pregnancy.

F. Respondent treated Patient F from on or about July 11, 1995 to on or about July 25, 1995, at his Bronx New York office.

Respondent's care and treatment of Patient F failed to meet acceptable standards of medical care in that:

1. Respondent failed to maintain a record which accurately reflects the evaluation and care of Patient F.
2. Respondent failed to order, perform or obtain results of a CBC, blood type and RH and antibody screen prior to performing a termination of pregnancy on Patient F.
3. Respondent failed to prescribe Rhogam/MicRogham after the termination of pregnancy if Patient F was found to be RH negative.
4. Respondent failed to record accurately Patient F's initial patient history.
5. Respondent failed to administer a proper physical examination of Patient F.

G. Respondent treated Patient G from on or about June 1, 1991, to on or about June 15, 1991, at his Bronx, New York office. Respondent's care and treatment of Patient G failed to meet acceptable standards of medical care in that:

1. Respondent failed to maintain a record which accurately reflects the evaluation and care of Patient G.
2. Respondent failed to order, perform or obtain the results of a CBC, blood type, Rh and antibody screen prior to performing a termination of pregnancy.
3. Respondent failed to prescribe Rhogam/MicRogham after the termination of abortion if Patient G was found to be Rh negative.
4. Respondent, failed to record accurately Patient G's initial patient history.
5. Respondent failed to administer a proper physical examination of Patient G.

H. Respondent treated Patient H from on or about December 6, 1985, to on or about July 22, 1988 at his Bronx, New York office. Respondent's care and treatment of Patient H failed to meet acceptable standards of medical care in that:

1. Respondent failed to maintain a record which accurately reflects the evaluation and treatment of Patient H.
2. Respondent failed to perform proper and adequate physical examinations of Patient H prior to performing termination of pregnancies.
3. With respect to termination of pregnancy on December 6, 1985:
 - a. Respondent failed to establish appropriately that Patient H was pregnant prior to performing said termination of pregnancy.
 - b. Respondent failed to order, obtain or record the results of a urine pregnancy test or BCG blood test for pregnancy on Patient H.
 - c. Respondent failed to rule out an ectopic pregnancy with either sonography or followup blood pregnancy testing after receiving the results of the December, 1985 pathology report.
4. With respect to a termination of pregnancy performed on July 22, 1988:
 - a. Respondent performed an untimely termination of pregnancy when Patient H was only 6.2 weeks pregnant.
 - b. Respondent failed to rule out an ectopic pregnancy with either sonography or followup BCG blood pregnancy testing after receiving the results of the July, 1988 pathology report.

I. Respondent treated Patient I on or about June 14, 1994 to on or about August 5, 1995 at his Bronx, New York office. Respondent's care and treatment of Patient I failed to meet acceptable standards of medical care, in that:

1. Respondent failed to maintain a record which accurately reflects the evaluation and treatment of Patient I.
2. Respondent failed to take or record an appropriate medical history on Patient I.
3. Respondent repeatedly failed to perform or record an appropriate physical examination, including a review of systems on Patient I.
4. Respondent failed to perform or record a complete pelvic examination of Patient I.
5. Respondent failed to perform or record a blood pressure reading on Patient I even though Respondent was aware that Patient I was ingesting oral contraceptives.
6. Respondent failed to perform a PAP smear test on or about March 23, 1986, June 10, 1988 and May 27, 1989 on Patient I.
7. Respondent prescribed and/or provided oral contraceptives to Patient I without obtaining the results of a PAP smear test establishing the status of Patient I's cervix.
8. Respondent failed to followup appropriate: the results of Patient I's April 15, 1993 PAP smear result by informing Patient I of the need to repeat the PAP smear within 6 months.
9. Respondent performed a PAP smear test on or about June 14, 1994 and failed to make appropriate progress notes in the medical records of Patient I.

J. Respondent treated Patient J from on or about December 14, 1993 to on or about September 12, 1994, at his Bronx, New York office. Respondent's care and treatment of Patient J failed to meet acceptable standards of medical care in that:

1. Respondent failed to maintain a record which accurately reflects the evaluation and treatment of Patient J.
2. Respondent failed to take or record an appropriate medical history of Patient J.
3. Respondent failed to perform or record an appropriate physical examination of Patient J, including a review of Patient J's systems.

4. Respondent failed to take or record a complete pelvic examination of Patient J.
5. Respondent failed to take or record a blood pressure reading of Patient J even though Respondent was well aware that Patient J was taking an oral contraceptive.
6. Respondent failed to establish whether or not Patient J was pregnant on or about December 14, 1993 by ordering, performing or recording the results of a UCG or BHCG pregnancy test.
7. Respondent failed to evaluate appropriately Patient J's period of amenorrhea.
8. Respondent failed to followup appropriately Patient J's elevated blood pressure of 160/118 during the September 12, 1994 visit.

K. Respondent treated Patient K from on or about October 2, 1993 to on or about March 14, 1995 at his Bronx, New York office. Respondent's care and treatment of Patient K failed to meet acceptable standards of medical care in that:

1. Respondent failed to maintain a record which accurately reflects the evaluation and treatment of Patient K.
2. Respondent failed to take or record appropriate medical history on Patient K.
3. Respondent failed to perform or record an appropriate physical examination on Patient K.
4. Respondent failed to evaluate appropriately Patient K's amenorrhea on or about October 2, 1993.
5. Respondent failed to order, perform or obtain results of a urine/blood pregnancy test; provera test; thyroid function tests; and prolactin level on Patient K.
6. Respondent failed to timely followup the results of Patient K's pap smear test in October of 1993.
7. Respondent failed to inform Patient K of the abnormal results of the pap smear test performed in October 1993.

L. Respondent treated Patient L from on or about June 20, 1991 at his Bronx, New York City office. Respondent's care and treatment of Patient L failed to meet acceptable standards of medical care in that:

1. Respondent failed to maintain a record which accurately reflects the evaluation and treatment of Patient L.
2. Respondent failed to take or record an appropriate medical history on Patient L.
3. Respondent failed to perform or record an appropriate physical examination of Patient L.
4. Respondent failed to address Patient L's elevated hemoglobin results.

SPECIFICATIONS

FIRST THROUGH TWELFTH SPECIFICATION

NEGLIGENCE ON MORE THAN ONE OCCASION

Respondent is charged with negligence on more than one occasion a violation of N.Y. Educ. Law Section 6530 (3) (McKinney Supp. 1999) in that Petitioner charges two or more of the following:

1. The facts in Paragraphs A and A.1, A.2 and/or A.3.
2. The facts in Paragraphs B and B.1 and/or B.2.
3. The facts in Paragraphs C and C.1, and/or C.2.
4. The facts in Paragraphs D and D.1, D.2, D.3, and/or D.4.
5. The facts in Paragraphs E and E.1, E.2, E.3, E.4, E.5, E.6, E.7, and/or E.8.
6. The facts in Paragraphs F and F.1, F.2, F.3, F.4, and/or F.5.
7. The facts in Paragraphs G and G.1, G.2, G.3, G.4, and/or G.5.

- a. The facts in Paragraphs H and H.1, H.2, H.3a, H.3b, H.3c, H.4a, and/or H.4b.
9. The facts in Paragraphs I and I.1, I.2, I.3, I.4, I.5, I.6, I.7, I.8, and/or I.9.
10. The facts in Paragraphs J and J.1, J.2, J.3, J.4, J.5, J.6, J.7, and/or J.8.
11. The facts in Paragraphs K and K.1, K.2, K.3, K.4, K.5, K.6, and/or K.7.
12. The facts in Paragraphs L and L.1, L.2, L.3, and/or L.4.

THIRTEENTH THROUGH TWENTY-FOURTH SPECIFICATIONS
INCOMPETENCE ON MORE THAN ONE OCCASION

Respondent is charged with incompetence on more than one occasion in violation of N.Y. Educ. Law Section 6530 (50 (McKinney Supp. 1999) in that Petitioner charges two or more of the following:

13. The facts in Paragraphs A and A.1, A.2 and/or A.3.
14. The facts in Paragraphs B and B.1 and/or B.2.
15. The facts in Paragraphs C and C.1, and/or C.2.
16. The facts in Paragraphs D and D.1, D.2, D.3, and/or D.4.
17. The facts in Paragraphs E and E.1, E.2, E.3, E.4, E.5, E.6, E.7, and/or E.8.
18. The facts in Paragraphs F and F.1, F.2, F.3, F.4, and/or F.5.
19. The facts in Paragraphs G and G.1, G.2, G.3, G.4, and/or G.5.
20. The facts in Paragraphs H and H.1, H.2, H.3a, H.3b, H.3c, H.4a, and/or H.4b.
21. The facts in Paragraphs I and I.1, I.2, I.3, I.4, I.5, I.6, I.7, I.8, and/or I.9.
22. The facts in Paragraphs J and J.1, J.2, J.3, J.4, J.5, J.6, J.7, and/or J.8.

23. The facts in Paragraphs K and K.1, K.2, K.3, K.4, K.5, K.6, and/or K.7.
24. The facts in Paragraphs L and L.1, L.2, L.3, and/or L.4.

TWENTY-FIVE THROUGH THIRTY-SIXTH SPECIFICATIONS
RECORDKEEPING

Respondent is charged with failing to maintain a record which accurately reflects the care and treatment of Patients in violation of N.Y. Educ. Law Section 6530(32) (McKinney Supp. 1999) in that Petitioner charges two or more of the following:

25. The facts in Paragraphs A and A.1.
26. The facts in Paragraphs B and B.1.
27. The facts in Paragraphs C and C.1.
28. The facts in Paragraphs D and D.1.
29. The facts in Paragraphs E and E.1.
30. The facts in Paragraphs F and F.1.
31. The facts in Paragraphs G and G.1.
32. The facts in Paragraphs H and H.1.
33. The facts in Paragraphs I and I.1.
34. The facts in Paragraphs J and J.1.
35. The facts in Paragraphs K and K.1.
36. The facts in Paragraphs L and L.1.

DATED: April 19, ²⁰⁰⁰~~1999~~
Albany, New York

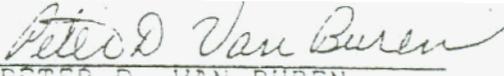

PETER D. VAN BUREN
Deputy Counsel
Bureau of Professional
Medical Conduct

EXHIBIT "B"

Terms of Probation

1. Respondent shall conduct **himself in all ways** in a manner befitting his professional status, and shall conform fully to *the* moral and professional standards of conduct and obligations imposed by law and by his profession.
2. Respondent shall submit written notification to the New York State Department of Health addressed to the Director of ~~the~~ Office of Professional Medical Conduct, New York State Department of Health, 433 River Street, Suite 303, Troy, NY 121 80-2299; said notice is to include a full description of any employment and practice, professional and residential addresses and telephone numbers within ~~or~~ without New York State, and any and all investigations, charges, convictions or disciplinary actions by any local, state ~~or~~ federal agency, institution or facility, within thirty days of each action.
3. Any civil penalty not paid by the date prescribed herein shall be subject to all provisions of law relating to debt collection by New York State. This includes but is not limited to the imposition of interest, late payment charges and collection fees; referral to the New York State Department of Taxation and Finance for collection, and non-renewal of permits or licenses [Tax Law section 171(27)]; State Finance Law section 18; CPLR section 5001; Executive Law section 32].
4. The period of probation shall be tolled during periods in which Respondent is not engaged in *the* active practice of medicine in New York State. Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in ~~in~~ or intends to leave the active practice of medicine in New York State for a period of thirty (30) consecutive days or more. Respondent shall then *notify* the Director again prior to any change in that status. The period of probation shall resume and any terms of probation which were not fulfilled shall be fulfilled upon Respondent's return to practice in New York State.
5. Respondent's professional performance may be reviewed by the Director of OPMC. This review may include, but shall not be limited to, a review of office records, patient records and/or hospital charts, interviews with ~~or~~ periodic visits with Respondent and his staff at practice locations or OPMC offices.
6. Respondent shall maintain legible and complete medical records which accurately reflect the evaluation and treatment of patients. The medical records shall contain all information required by State rules and regulations regarding controlled substances.

7. **Respondent shall create a document for each patient containing the patient's complete history, signs, symptoms, diagnosis, treatment, follow up care and instructions. This document shall be kept on file and available to be promptly provided to any future physicians or facilities to provide treatment to the patient. Respondent shall provide each patient with a copy of this document within one week of each visit by the patient to Respondent.**
8. **If Respondent maintains any offices outside New York City, such offices shall be staffed during normal business hours. Respondent shall be physically present at such offices a minimum of two days per week.**
9. **On the days in which Respondent is absent from the area of any of his offices, Respondent shall have available a physician who is qualified to care for the patients Respondent has treated, who has agreed to cover for Respondent in his absence, and a staff person who will be available to contact Respondent or the covering physician so that the patient will be seen in a timely manner.**
10. **Within thirty (30) days of the effective date of the Order, Respondent shall practice medicine only when monitored by a licensed physician, board certified in an appropriate specialty, ("practice monitor") proposed by Respondent and subject to the written approval of the Director of OPMC.**
 - a. **Respondent shall make available to the monitor any and all records or access to the practice requested by the monitor, including on-site observation. The practice monitor shall visit Respondent's medical practice at each and every location, on a random unannounced basis at least monthly and shall examine a selection of no less than 20% and up to 33% of records maintained by Respondent, including patient records, prescribing information and office records. The review will determine whether the Respondent's medical practice is conducted in accordance with the generally accepted standards of professional medical care. Any perceived deviation of accepted standards of medical care or refusal to cooperate with the monitor shall be reported within 24 hours to OPMC.**
 - b. **Respondent shall be solely responsible for all expenses associated with monitoring, including fees, if any, to the monitoring physician.**
 - c. **Respondent shall cause the practice monitor to report quarterly, in writing, to the Director of OPMC.**
 - d. **Respondent shall maintain medical malpractice insurance coverage with**

limits no less than \$2 million per occurrence and \$6 million per policy year. in accordance with Section 230(18)(b) of the Public Health Law. Proof of coverage shall be submitted to the Director of OPMC prior to Respondent's practice after the effective date of this Order..

11. Respondent shall **enroll in and complete a continuing education program in the area of obstetrics and gynecology to be equivalent to at least 30 credit hours of Continuing Medical Education, over and above the recommended minimum standards set by the American Board of Obstetrics and Gynecology. Said continuing education program shall be subject to the prior written approval of the Director of OPMC and be completed within the period of probation or as otherwise specified in the Order.**

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

COFFER

PROTHONOTARY

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
STATE BOARD OF MEDICINE

2003 JUN 12 AM 10:16

Department of State

In the Matter of the
Application for a License
To Practice Medicine and Surgery
of Salomon N. Epstein, M.D.

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:
:

Docket No. 1270-49-02
File No. 02-49-04797

ADJUDICATION AND ORDER

Suzanne Rauer, Esquire
Hearing Examiner

Commonwealth of Pennsylvania
Governor's Office of General Counsel
Department of State
P.O. Box 2649
Harrisburg, PA 17105-2649
(717) 772-2686

HISTORY

This matter comes before *the* hearing examiner for the Department of State on an appeal by Salomon N. Epstein, M.D. (Applicant) of the Board's August 27, 2002 provisional denial of Applicant's application for a license to practice medicine and surgery in the Commonwealth, which was received by the Board on May 31, 2002. Applicant was notified of that Board determination by correspondence dated August 30, 2002 from Amy L. Nelson, Counsel, State Board of Medicine. The Board's provisional denial of licensure was based upon the Medical Practice Act, Act of December 20, 1985, P.L. 457, No. 112, *as mended*, 63 P.S. §422.1 *et seq.* (MPA) at 63 P.S. §§422.22 and 422.41, which authorize the Board to refuse to issue a license *where* the applicant has had his license to practice medicine and surgery disciplined by *the* licensing authority of another state; where an applicant has been guilty of immoral or unprofessional conduct; or where an applicant has made misleading, deceptive, untrue or fraudulent representations in obtaining a license. On May 1, 2000, Applicant's license to practice medicine in New York was suspended for five years, that suspension stayed in favor of five years probation with conditions, including a monitored practice, pursuant to a Consent Agreement and Order in which Applicant *agreed* to admit guilt to 12 counts of poor record keeping in resolution of numerous charges of negligence, incompetence and poor record keeping. As a result of the New York action, on June 26, 2001 Applicant's license in New Jersey was suspended for five years, that suspension to be served as probation, with the requirement that Applicant appear before the

New Jersey Board prior to active practice in that state. Applicant failed to reveal the New Jersey action in his application for a license to practice medicine and surgery in the Commonwealth.

Applicant submitted a request for a hearing regarding the Board's provisional denial of licensure on September 24, 2002, within the 30 day appeal period specified in the Board's August 30, 2002 correspondence. A hearing was held on December 17, 2002 before Hearing Examiner Suzanne Rauer. Benjamin A. Cero, Esquire was present on behalf of the Commonwealth. Edgar R. Casper, Esquire appeared at the *hearing* on behalf of Applicant, who was also present. The record in this matter closed on January 2, 2003 with the filing of the hearing transcript.

FINDINGS OF FACT

1. Applicant holds licenses to practice medicine in New York, New Jersey, the District of Columbia, Florida and Connecticut. (Board Exhibit B-1)

2. Applicant's last known address of record with the Board is 173 Old Army Road, Basking Ridge, NJ 07920. (Board records)

3. On May 31, 2002, Applicant submitted to the Board an application for a license to practice medicine and surgery in the Commonwealth. (Board Exhibit B-1)

4. In April 2000, the New York State Board for Professional Medical Conduct and Applicant entered into a Consent Agreement and Order, pursuant to which Applicant's license to practice medicine and surgery in New York was suspended for five years effective May 1, 2000, that suspension to be stayed in favor of five years probation with conditions. (Board Exhibit B-1)

5. One of the conditions of probation of his New York license requires Applicant to practice medicine in that state only when monitored by a licensed physician, board certified in an appropriate specialty, proposed by Applicant and subject to the written approval of the Director of the Office of Professional Medical Conduct. (Board Exhibit B-1)

6. The Consent Agreement and Order, pursuant to which Applicant admitted guilt to 12 counts of inadequate record keeping, was in settlement of charges of negligence, incompetence and inadequate record keeping. (Board's Exhibit B-1)

7. On June 26, 2001, the State of New Jersey, Department of Law and Public Safety, Division of Consumer Affairs, Board of

Medical Examiners, entered an order suspending Applicant's license to practice medicine and surgery in that state, suspension of his license to be stayed in favor of five years probation, with the conditione that Applicant provide documentation that he *has* attended a board-approved record keeping course and that, prior to actively practicing in New Jersey, Applicant appear before the Board to demonstrate his fitness to *do so*. (Board Exhibit B-1)

8. The New Jersey Board's action was based upon Applicant's Consent Agreement and Order with the New York Board. (Board Exhibit B-1)

9. Applicant failed to disclose the New Jersey Board's action against his license to practice medicine and surgery in that state on his application for licensure in Pennsylvania. (Board Exhibit B-1)

10. Applicant is in compliance with the guidelines set forth for monitoring of his practice in New York. (Applicant's Exhibit P-1; W.T. 12-14)

11. As of the date of the hearing in this matter, Applicant's New York license continued on a probationary status, with required monitoring by Spiro Gallousis, M.D., a board-approved monitor specializing in obstetrics and gynecology. (Applicant's Exhibits P-1 and P-2; N.T. 8-9)

12. As of the date of the hearing in this matter, Applicant had not yet appeared before the New Jersey Board to prove his fitness to practice medicine and surgery in that state. (N.T. 25-26)

13. Applicant completed a five hour course in record keeping

in compliance with the New Jersey order. (N.T. 17-18, 25)

14. Applicant was served with all pleadings, orders and notices filed of record in this matter. {Docket No, 0256-49-00}

CONCLUSIONS OF LAW

1. *The* Board has jurisdiction in this matter. (Finding of Fact No. 3)

2. Applicant has been afforded reasonable notice and an opportunity to be heard in this proceeding. (Findings of *Fact* No. 14).

3. Applicant is subject to refusal, revocation, suspension or other corrective measures under the Medical Practice Act of 1985 (MPA) at 63 P.S. §§422.22, 422.41 and 422.42, which authorize the Board to refuse to issue a license where the applicant has had a license to practice the profession revoked or suspended or has had other disciplinary action taken or an application for a license refused, revoked or suspended by a proper licensing authority of another state. (Findings of Fact Nos. 4-13)

4. Applicant is subject to refusal, revocation, suspension or other corrective measures under the Medical Practice Act of 1985 (MPA) at 63 P.S. §§422.22, 422.41 and 422.42, which authorize the Board to refuse to issue a license where *the* applicant has engaged in unprofessional conduct. (Findings of Fact Nos. 4-13) .

5. Applicant is subject to refusal, revocation, suspension or other corrective measures under the Medical Practice Act of 1985 (MPA) at 63 P.S. §§422.22, 422.41 and 422.42, which authorize the Board to refuse to issue a license where an applicant has made misleading, deceptive, untrue or fraudulent representations in obtaining a license.

DISCUSSION

In denying the instant application, the Board cited the MPA at 63 P.S. 88422.22 and 422.41, which provide as follows:

§ 422.22, Licenses and certificates; general qualification.

(a) Types of licenses and certificates.-The board may grant the following licenses and certificates:

- (1) License without restriction.
- (2) Interim limited license.
- (3) Graduate license.
- (4) Institutional license.
- (5) Temporary license.
- (6) Extraterritorial license,
- (7) Midwife license.
- (8) Physician assistant certificate.

(b) Qualifications.-The board shall not issue a license or certificate to an applicant unless the applicant establishes with evidence, verified by an affidavit of affirmation of the applicant, that the applicant is of legal age, is of good moral character and is not addicted to the intemperate use of alcohol or the habitual use of narcotics or other habit-forming drugs and that the applicant has completed the educational requirements prescribed by the board and otherwise satisfies the qualifications for the license or certificate contained in or authorized by this act. The board shall not issue a license or certificate to an applicant who has been convicted of a felony under the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act, or of an offense under the laws of another jurisdiction which, if committed in this Commonwealth, would be a felony under The Controlled Substance, Drug, Device and Cosmetic Act, unless:

- (1) at least ten years have elapsed from the date of conviction;

(2) the applicant satisfactorily demonstrates to the board that he has made significant progress in personal rehabilitation since the conviction such that licensure of the applicant should not be expected to create a substantial risk of harm to the health and safety of his patients or *the public* or a substantial risk of further criminal violations; and

(3) the applicant atherwise satisfies the qualifications contained in or authorized by this act'. As used in this section the term "convicted" shall include a judgment, an admission of guilt or a plea of nolo contendere.

(c) Refusal.-The board may refuse to issue a license or certificate to an applicant based upon a ground for such action contained in section 41.

(d) Limitation.-The board shall not refuse to issue a license or certificate to an applicant unless the applicant has been afforded *the* procedural protections required by this act.

§ 422.41. Reasons for refusal, revocation, suspension or other corrective actions against a licensee or certificate holder

The board shall have authority to impose disciplinary or corrective measures on a board-regulated practitioner for any or all of the following reasons:

* * *

(2) Making misleading, deceptive, untrue or fraudulent representations in the practice of the profession or practicing fraud or deceit, either alone or as a conspirator, in obtaining a license, certification or registration or in obtaining admission to a medical college.

* * *

(4) Having a license or other authorization to practice the profession revoked or suspended or having other disciplinary action taken, or an application for a license or other authorization refused, revoked or suspended by a proper licensing authority of another state, territory, possession or country, or a branch of the Federal Government.

(8) Being guilty of immoral or unprofessional conduct. Unprofessional conduct shall include departure *from* or failing to conform to an ethical or quality standard of the profession.

The MPA at 63 P.S. §422.42 provides as follows:

§ 422.42. **Types of corrective action.**

(a) Authorized actions.-When the board is empowered to take disciplinary or corrective action against a board-regulated practitioner under the provisions of this act or pursuant to other statutory authority, the board may:

(1) Deny the application for a license, certificate or any other privilege granted by the board.

(2) Administer a public reprimand with or without probation.

(3) Revoke, suspend, limit or otherwise restrict a license or certificate.

(4) Require the board-regulated practitioner to submit to the care, counseling or treatment of a physician or a psychologist designated by the board.

(5) Require the board-regulated practitioner to take refresher educational courses.

(6) Stay enforcement of any suspension, other than that imposed in accordance with section 40, and place a board-regulated practitioner on probation with the right to vacate the probationary order for noncompliance.

(7) Impose a monetary penalty in accordance with this act.

(b) Failure to comply with conditions,-Failure of a board-regulated practitioner to comply with conditions set forth by the board shall be grounds for reconsideration of the matter and institution of formal charges against the board-regulated practitioner.

Applicant had his license to practice medicine and surgery in New York suspended for five years, that suspension stayed in favor of probation with the condition, *inter alia*, that Applicant's practice be monitored by a physician approved by the New York Board. This action resulted from Applicant's admission to 12 counts of record keeping violations in resolution of 12 counts of negligence on more than one occasion, 12 counts of incompetence on more than one occasion, and 12 counts of record keeping violations. The New Jersey Board reviewed the charges against Applicant, and determined that those charges, and the New York Board's action suspending Applicant's license in that state, constituted grounds for similar action against Applicant's license to practice medicine in New Jersey, with the further provisos that Applicant must complete a record keeping course approved by the New Jersey Board, and must appear before the New Jersey Board to prove his fitness to practice medicine and surgery prior to actively practicing in that state. As of the time of the hearing, Applicant had completed the record keeping course but had not yet appeared before the New Jersey Board as required. Applicant failed to document the New Jersey Board's action against his license in that state on his application for licensure in Pennsylvania as required.

Applicant did not address the circumstances leading up to his sent Agreement and Order with the New York Board, but did testify that he worked with his monitor to create forms for recording that would address issues raised by the New York Board. He completed a five hour continuing medical education course on record keeping as required by the New Jersey Board. Applicant

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187-1009 004 0000

187-1009 004 0000 to deny
187-1009 004 0000

the New Jersey action was based upon the New York action, and because Applicant has never practiced in New Jersey, the New Jersey action need not be considered by this Board in determining whether to issue Applicant a license to practice in Pennsylvania. There was also some vague testimony that Applicant was unaware that the New Jersey Board took disciplinary action against his license.

The hearing examiner does not give credence to either argument. Pursuant to the Board's enabling statute, the Medical Practice Act, the Board is authorized to refuse licensure to any applicant who has had disciplinary action taken against his license in another state. Nothing in the language of the Act excludes reciprocal action from that provision. Neither is there a requirement that Applicant practice in the state where disciplinary action has been taken, since that would defeat the purpose of the reciprocal provisions of the Act. Furthermore, the hearing examiner finds it less than credible that Applicant was not aware that his license in New Jersey was disciplined in a manner similar to the sanction imposed in New York. Respondent was represented by counsel in the New Jersey action, and submitted a response to the New Jersey Board's Provisional Order of Discipline, requesting modification of the order to reflect only those charges to which Applicant admitted guilt in New York. This does not sound like a person who is unaware that his license in New Jersey has been disciplined. Given that no satisfactory answer has been given on record in this matter as to why such important information was included in Applicant's application for licensure in Pennsylvania, the hearing examiner finds it more probable than not



Antonia C. Novello, M.D., M.P.H., Dr. P.H.
Commissioner
NYS Department of Health

Dennis P. Whalen
Executive Deputy Commissioner
NYS Department of Health

Dennis J. Graziano, Director
Office of Professional Medical Conduct

PUBLIC

Michael A. Gonzalez, R.P.A.
Vice Chair

Ansel R. Marks, M.D., J.D.
Executive Secretary

January 29, 2004

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Sdomon N. Epstein, M.D.
6910 Avenue U
Brooklyn, NY 11234

Re: License No. 129491

Dear Dr. Epstein:

Enclosed please find Order #BPMC 04-15 of the New York State Board for Professional Medical Conduct. This order and any penalty provided therein goes into effect February 5, 2004.

If the penalty imposed by the Order is a surrender, revocation or suspension of this license, you are required to deliver to the Board the license and registration within five (5) days of receipt of the Order to the Board for Professional Medical Conduct, New York State Department of Health, Hedley Park Place, Suite 303, 433 River Street, Troy, New York 12180.

Sincerely,

Ansel R. Marks, M.D., J.D.
Executive Secretary
Board for Professional Medical Conduct

Enclosure

cc: Anthony Z. Scher, Esq.
Wood & Scher
The Harwood Building
Scarsdale, NY 10583

IN THE MATTER
OF
SALOMON EPSTEIN, M.D.

CONSENT
ORDER

BPMC No. 04-15

Upon the application of SALOMON EPSTEIN, M.D. (Respondent) in the attached Consent Agreement and Order, which is made a part of this Consent Order, it is

ORDERED, that the *Consent Agreement*, and its terms, are adapted and SO ORDERED, and it is further

ORDERED, that this Order shall be effective upon issuance by the Board, either

- by mailing of a copy of this Consent Order, either by first class mail to Respondent at the address in the attached Consent Agreement or by certified mail to Respondent's attorney, OR
- upon facsimile transmission to Respondent or Respondent's attorney, Whichever is first.

SO ORDERED.

DATED: 1/28/04


MICHAEL A. GONZALEZ, R.P.A.
Vice Chair
State Board for Professional Medical Conduct

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

IN THE MATTER
OF
SALOMON EPSTEIN, M.D.

CONSENT
AGREEMENT
AND
ORDER

SALOMON EPSTEIN, M.D. (Respondent), representing that all of the following statements are *true*, deposes and says:

On or about December 3, 1976, I was licensed to practice as a physician in the State of New York, having been issued License No. 129491 by the New York State Education Department.

My current address is 6910 Avenue U, Brooklyn, New York 11234, and I will advise the Director of the Office of Professional Medical Conduct of any change of my address.

I understand that the New York State Board for Professional Medical Conduct has charged me with Twenty specifications of professional misconduct.

A copy of the Statement of Charges, marked as Exhibit "A", is attached to and part of this Consent Agreement.

I admit guilt to the Thirteenth and Twentieth Specifications in full satisfaction of the charges against me, and agree to the following penalty:

I will have permanent limitations on my license requiring me:

1) to have a physician with appropriate qualifications to provide coverage at all practice locations when I will be absent from the area or otherwise not available to promptly present to my office or a hospital in that area as necessary for patient

care, and

2) to use pulse oximetry during all terminations of pregnancy; and further I will be on probation and fully comply with the Terms of Probation attached hereto as Exhibit B, until May 1, 2008.

I further agree that the Consent Order shall impose the following conditions:

That Respondent shall maintain current registration of licensure with the New York State Education Department Division of Professional Licensing Services (except during periods of actual suspension), and shall pay all registration fees. This condition shall take effect thirty (30) days after the Consent Order's effective date and will continue so long as Respondent remains licensed in New York State; and

That Respondent shall cooperate fully with the office of Professional Medical Conduct (OPMC) in its administration and enforcement of this Order and in its investigations of matters concerning Respondent. Respondent shall respond in a timely manner to all OPMC requests for written periodic verification of Respondent's compliance with this Order. Respondent shall meet with a person designated by the Director of OPMC, as directed. Respondent shall respond promptly and provide all documents and information within Respondent's control, as directed. This condition shall take effect upon the Board's

issuance of the Consent Order and will continue so long as Respondent remains licensed in New York State.

I stipulate that my failure to comply with any conditions of this Order shall constitute misconduct as defined by New York State Education Law §6530(29).

I agree that if I am charged with professional misconduct in future, this Consent Agreement and Order shall be admitted into evidence in that proceeding.

I ask the Board to adopt this Consent Agreement.

I understand that if the Board does not adopt this Consent Agreement, none of its terms shall bind me or constitute an admission of any of the acts of alleged misconduct; this Consent Agreement shall not be used against me in any way and shall be kept in strict confidence; and the Board's denial shall be without prejudice to the pending disciplinary proceeding and the Board's final determination pursuant to the Public Health Law.

I agree that, if the Board adopts this Consent Agreement, the Chair of the Board shall issue a Consent Order in accordance with its terms. I agree that this Order shall take effect upon its issuance by the Board, either by mailing of a copy of the Consent Order by first class mail to me at the address in this Consent Agreement, or to my attorney by certified mail, OR upon facsimile transmission to me or my attorney, whichever is first.

I ask the Board to adopt this Consent Agreement of my own free will and not under duress, compulsion or restraint. In consideration of the value to me of the Board's adoption of this Consent Agreement, allowing me to resolve this matter without the various risks and burdens of a hearing on the merits, I knowingly waive my right to contest the Consent Order for which I apply, whether administratively or

judicially, I agree to be bound by the Consent Order, and ask that the Board adopt this Consent Agreement.

DATE: JAN 8th 2004



SALOMON EPSTEIN, M.D.
RESPONDENT

The undersigned agree to Respondent's attached Consent Agreement and to its proposed penalty, terms and conditions.

DATE: 1/15/04


ANTHONY Z. SCHER
Attorney for Respondent

DATE: 1/20/04


KEVIN P. DONOVAN
ASSOCIATE COUNSEL
Bureau of Professional Medical Conduct

DATE: 1/29/04


DENNIS J. GRAZIANO
Director
Office of Professional Medical Conduct

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

IN THE MATTER
OF
SALOMON EPSTEIN, M.D. :

STATEMENT
OF
CHARGES

SALOMON EPSTEIN, M.D., the Respondent, was authorized to practice medicine in New York State on or about December 3, 1976, by the issuance of license number 129491 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. Respondent treated Patient A (patients are identified in the attached Appendix A), a 28 year old female, by performing a termination of pregnancy (TOP) on or about May 26, 2000, at his office in Brooklyn, New York. Respondent's care and treatment of Patient A failed to meet acceptable standards of care in that:

1. Respondent failed to appropriately monitor the patient's oxygen saturation during the procedure.
2. Respondent failed to submit tissue from the procedure for pathology assessment.
3. Respondent failed to appropriately respond to post-discharge patient reports of pain, nausea and/or vomiting.
4. Respondent failed to be available to respond to post-operative complaints and/or have appropriate coverage.
5. Respondent failed to appropriately document telephone communication from the patient concerning post-operative pain, nausea and/or vomiting,
6. Respondent failed to appropriately create and maintain a document containing the patient's complete history, signs, symptoms, diagnosis, treatment, followup care and instructions and/or to provide a copy of such document to the patient within one week of the patient's office visit as required by the Terms of Probation in Board Order #00-131, dated April 28, 2000,

Exhibit A

B. Respondent treated Patient B, a 24 year old female, by performing a TOP at his office in Binghamton, New York, on or around November 28, 2001.

Respondent's care and treatment of Patient B failed to meet acceptable standards of care in that:

1. Respondent failed to appropriately monitor the patient's oxygen saturation during the procedure.
2. Respondent inappropriately performed a TOP in his office and/or without adequate access to a hospital, for what he reported to be a 16 week gestational age fetus.
3. Respondent inappropriately performed the procedure without use of osmotic dilators for the cervix.
4. Respondent failed to appropriately respond to patient complaints of post-operative pain made by telephone on or around Friday, November 30, and/or Monday, December 3.
5. Respondent failed to be available to respond to post-operative complaints.
6. Respondent failed to have appropriate coverage as required by acceptable standards of care and/or by paragraph 9 of the Terms of Probation in Board Order #00-131, dated April 28, 2000.
7. Respondent inappropriately or fraudulently wrote in an undated note in his chart and/or told a physician at Lourdes Hospital that he had a covering physician at UHS Wilson Hospital.
8. Respondent failed to appropriately create and maintain a document containing the patient's complete history, signs, symptoms, diagnosis, treatment, followup care and instructions and/or to provide a copy of such document to the patient within one week of the patient's office visit as required by the Terms of Probation in Board Order #00-131, dated April 28, 2000.
9. Respondent failed to promptly provide the patient's medical record to the physician treating Patient B at Lourdes Hospital, after Respondent was called by the physician who admitted her from the Emergency Department, as required by paragraph 7 of the Terms of Probation in Board Order #00-131, dated April 28, 2000.

C. Respondent treated Patient C, a 29 year old female, by performing a TOP at his office in Binghamton, New York, on or around December 22, 1999. Respondent's care and treatment of Patient C failed to meet acceptable standards of care in that:

1. Respondent failed to appropriately monitor the patient's oxygen saturation during the procedure.

2. Respondent discharged the patient from his office too soon after she was administered Midazolam (Versed).
3. Respondent failed to appropriately respond to telephone communications concerning post-operative pain and/or bleeding.

D. Respondent treated Patient D, a 20 year old female, by performing a TOP at his office in Binghamton, New York, on or around November 4, 1999. Respondent's care and treatment of Patient D failed to meet acceptable standards of care in that:

1. Respondent failed to appropriately monitor the patient's oxygen saturation during the procedure.
2. Respondent inappropriately performed a TOP in his office and/or without adequate access to a hospital, for what he reported to be an 18 week gestational age fetus.

E. Respondent treated Patient E, a 34 year old female, by performing a TOP at his office in Binghamton, New York, on or around February 20, 2002.

Respondent's care and treatment of Patient E failed to meet acceptable standards of care in that:

1. Respondent failed to appropriately monitor the patient's oxygen saturation during the procedure.
2. Respondent discharged the patient from his office too soon after she was administered Midazolam (Versed).
3. Respondent failed to appropriately create and maintain a document containing the patient's complete history, signs, symptoms, diagnosis, treatment, followup care and instructions and/or to provide a copy of such document to the patient within one week of the patient's office visit as required by the Terms of Probation in Board Order #00-131, dated April 28, 2000.

F. In an interview with personnel of the Office of Professional Medical Conduct on or around January 29, 2001 Respondent fraudulently or inappropriately named a physician who he claimed was providing coverage for him during his absences from his office in Binghamton, New York, when such physician had not agreed to be his covering physician.

G. By Board Order #00-131 of the State Board for Professional Medical Conduct, Respondent was required to comply with various terms of probation, including his conformance to the moral and professional standards of conduct and obligations imposed by law and by his profession. Respondent's care of Patients A, B, E and/or the conduct set forth in paragraph F failed to meet such standards.

H. By Board Order #00-131, of the State Board for Professional Medical Conduct, Respondent was required to comply with various terms of probation, including, when he was absent from the area of any of his offices, to have available a physician who is qualified to care for the patients who has agreed to cover for Respondent, Respondent failed to have such a covering physician available at the time he treated:

1. Patient A.
2. Patient B.
3. Patient E.

I. By Adjudication and Order dated June 11, 2003, the Pennsylvania State Board of Medicine refused Respondent's application for licensure after finding him guilty of the unprofessional conduct of deliberately misrepresenting his disciplinary history on his application by not disclosing that New Jersey had taken disciplinary action against him. Such conduct, if committed in New York state would constitute professional misconduct, namely fraud in the practice of medicine [N.Y. Educ. Law § 6530(2)] and/or conduct in the practice of medicine which evidences moral unfitness to practice medicine [N.Y. Educ. Law § 6530(21)].

SPECIFICATIONS OF MISCONDUCT

FIRST SPECIFICATION

NEGLIGENCE ON MORE THAN ONE OCCASION

Respondent is charged with practicing the **profession** with negligence on more than one occasion within the meaning of N.Y. Educ. Law § 6530(3) in that **Petitioner** charges two or more of the following:

1. The facts of paragraphs A and A.1, A and A.2, A and A.3, A and A.4, A and A.5, A and A.6, B and B.1, B and B.2, B and B.3, B and B.4, B and B.5, B and B.6, B and B.7, B and B.8, C and C.1, C and C.2, C and C.3, D and D.1, D and D.2, E and E.1, E and E.2 and/or E and E.3.

SECOND SPECIFICATION

INCOMPETENCE ON MORE THAN ONE OCCASION

Respondent is charged *with* practicing the profession with incompetence on more than one occasion within the meaning of N.Y. Educ. Law § 6530(5) in that **Petitioner** charges two or more of the following:

2. The facts of paragraphs A and A.1, A and A.2, A and A.3, A and A.4, A and A.5, A and A.6, B and B.1, B and B.2, B and B.3, B and B.4, B and B.5, B and B.6, B and B.7, B and B.8, C and C.1, C and C.2, C and C.3, D and D.1, D and D.2, E and E.1, E and E.2 and/or E and E.3.

THIRD THROUGH SEVENTH SPECIFICATIONS

GROSS NEGLIGENCE

Respondent is charged with practicing the profession *with* gross negligence on a particular occasion within the meaning of N.Y. Educ. Law § 6530(4) in that **Petitioner** charges:

3. The facts of paragraphs A and A.1, A and A.2, A and A.3 and/or A and A.4, A and A.5 and/or A and A.6.
4. The facts of paragraphs B and B.1, B and B.2, B and B.3, B and B.4, B and B.5, B and B.6, B and B.7 and/or B and B.8.
5. The facts of paragraphs C and C.1, C and C.2 and/or C and C.3.
6. The facts of paragraphs D and D.1 and/or D and D.2.
7. The facts of paragraphs E and E.1, E and E.2 and/or E and E.3.

EIGHTH SPECIFICATION

GROSS INCOMPETENCE

Respondent is charged with practicing the profession with gross incompetence within the meaning of N.Y. Educ. Law § 6530(6) in that Petitioner charges:

8. The facts of paragraphs A and A.1, A and A.2, A and A.3, A and A.4, A and A.5, A and A.6, and B.1, B and B.2, B and 8.3, B and 8.4, B and B.4, B and 8.5, B and B.6, B and 8.7, B and 8.8, C and C.1, C and C.2, C and C.3, D and D.1, D and 0.2, E and E.1, E and E.2 and/or E and E.3.

NINTH AND TENTH SPECIFICATIONS

FRAUD

Respondent is charged with practicing the profession fraudulently within the meaning of N.Y. Educ. Law § 6530(2) in that Petitioner charges:

9. The facts of paragraph B and B.6.
10. The facts of paragraph F.

ELEVENTH AND TWELFTH SPECIFICATIONS

CONDUCT EVIDENCING MORAL UNFITNESS

Respondent is charged with conduct evidencing moral unfitness within the meaning of N.Y. Educ. Law § 6530(20) in that Petitioner charges:

11. The facts of paragraph 8 and 8.6
12. The facts of paragraph F.

THIRTEENTH THROUGH FIFTEENTH SPECIFICATIONS

VIOLATION OF A TERM OF PROBATION

Respondent is charged with violating a term of probation imposed on the licensee pursuant to section two hundred thirty of the public health law within the meaning of N.Y. Educ. Law § 6530(29) in that Petitioner charges:

13. The facts of paragraphs A and A.6.
14. The facts of paragraphs B and B.6.

15. The facts of paragraph G.

SIXTEENTH THROUGH EIGHTEENTH SPECIFICATIONS
FAILURE TO MAINTAIN RECORDS

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(32) by failing to maintain a record for each patient which accurately reflects the care and treatment of the patient in that Petitioner charges:

16. The facts of paragraphs A and A.6.
17. The facts of paragraphs 8 and B.7.
18. The facts of paragraphs C and C.3.

NINETEENTH SPECIFICATION

GUILTY OF MISCONDUCT IN ANOTHER STATE

Respondent is charged with 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 within the meaning of N.Y. Educ. Law § 6530(9)(b) in that Petitioner charges:

19. The facts of paragraph I.

TWENTIETH SPECIFICATION

**HAVING AN APPLICATION FOR A LICENSE
REFUSED IN ANOTHER STATE**

Respondent is charged with having had his application for a license refused by a duly authorized professional disciplinary agency of another state where the conduct upon which the refusal was based would, if committed in New York state, constitute professional misconduct under the laws of New York state within the meaning of N.Y. Educ. Law § 6530(9)(d) in that Petitioner charges:

20. The facts of paragraph I.

DATED: *January 20*, 200*8*
Albany, *New York*

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

EXHIBIT "B"

Terms of Probation

1. Respondent's conduct shall conform to moral and professional standards of conduct and governing law. Any act of professional misconduct by Respondent as defined by New York State Education Law § 6530 or § 6531 shall constitute violation of probation and may subject Respondent to an action pursuant to New York State Public Health Law § 230(19).
2. Respondent shall provide the Director, Office of Professional Medical Conduct (OPMC), Hedley Park Place, 433 River Street Suite 303, Troy, New York 12180-2299 with the following information, in writing, and ensure that such information is kept current: a full description of Respondent's employment and practice; all professional and residential addresses and telephone numbers within and outside New York State; and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty (30) days of each action.
3. Respondent shall cooperate fully with, and respond in a timely manner to, OPMC requests to provide written periodic verification of Respondent's compliance with the terms of this Consent Order. Upon the Director of OPMC's request, Respondent shall meet in person with the Director's designee.
4. Respondent's failure to pay any monetary penalty by the prescribed date shall subject Respondent to all provisions of law relating to debt collection by New York State, including but not limited to: the imposition of interest, late payment charges and collection fees; referral to the New York State Department of Taxation and Finance for collection; and non-renewal of permits or licenses [Tax Law section 171(27); State Finance Law section 18; CPLR section 5001; Executive Law section 32].
5. The probation period shall toll when Respondent is not engaged in active medical practice in New York State for a period of thirty (30) consecutive days or more. Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in, or intends to leave, active medical practice in New York State for a consecutive thirty (30) day period. Respondent shall then notify the Director again at least fourteen (14) days before returning to active practice. Upon Respondent's return to active practice in New York State, the probation period will resume and Respondent shall fulfill any unfulfilled probation terms.
6. The Director of OPMC may review Respondent's professional performance. This review may include but shall not be limited to: a review of office records, patient records and/or hospital charts; and interviews with or periodic visits with Respondent and staff at practice locations or OPMC offices.
7. Respondent shall maintain complete and legible medical records that accurately reflect the evaluation and treatment of patients and contain all information required by State rules and regulations concerning controlled substances.
3. Respondent shall create a document for each patient containing the patient's complete history, signs, symptoms, diagnosis, treatment, follow up care and instructions. This document shall be kept on file and available to be promptly provided to any future physicians or facilities to provide treatment to the

patient. Respondent shall provide each patient with a copy of this document within one week of each visit by the patient to Respondent.

9. If Respondent maintains any offices outside New York City, such offices shall be staffed during normal business hours. Respondent shall be physically present at such offices a minimum of two days per week.
10. On the days in which Respondent is absent from the area of any of his offices, Respondent shall have available a covering physician, proposed by Respondent and approved in writing by the Director. The covering physician must be one who is qualified to care for the patients Respondent has treated, and who has agreed to cover for Respondent in his absence. Respondent shall also have a staff person who will be available to contact Respondent or the covering physician so that the patient will be seen in a timely manner.
11. Respondent shall practice medicine only when monitored by a licensed physician, board certified in an appropriate specialty, ("practice monitor") proposed by Respondent and subject to the written approval of the Director of OPMC.
 - a. Respondent shall make available to the monitor any and all records or access to the practice requested by the monitor, including on-site observation. The practice monitor shall visit Respondent's medical practice at each and every location, on a random unannounced basis at least monthly and shall examine a selection of no less than 20% and up to 33% of records maintained by Respondent, including patient records, prescribing information and office records. The review will determine whether the Respondent's medical practice is conducted in accordance with the generally accepted standards of professional medical care. Any perceived deviation of accepted standards of medical care or refusal to cooperate with the monitor shall be reported within 24 hours to OPMC.
 - b. Respondent shall be solely responsible for all expenses associated with monitoring, including fees, if any, to the monitoring physician.
 - c. Respondent shall cause the practice monitor to report quarterly, in writing, to the Director of OPMC.
 - d. Should the approved practice monitor be unable or unwilling to perform his/her duties, through no fault of Respondent, then Respondent may practice without an approved monitor for no more than thirty days. The new approved monitor shall review a sampling of cases handled during any time periods not covered in the reports of the preceding monitor.
 - e. Respondent shall maintain medical malpractice insurance coverage with limits no less than \$2 million per occurrence and \$6 million per policy year, in accordance with Section 230(18)(b) of the Public Health Law. Proof of coverage shall be submitted to the Director of OPMC prior to Respondent's practice after the effective date of this Order.
12. Respondent shall comply with this Order and all its terms, and shall bear all associated compliance costs. Upon receiving evidence of noncompliance with, or violation of, these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding, and/or any other such proceeding authorized by law, against Respondent.