



STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12237

Mark R. Chassin, M.D., M.P.P., M.P.H.
Commissioner

Paula Wilson
Executive Deputy Commissioner

August 9, 1993

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Keith Barnard, M.D.
1476 East 48th Street
Brooklyn, New York

William L. Wood, Esq.
Wood & Scher
The Harwood Building
One Chase Road
Scarsdale, New York 10583

David W. Smith, Esq.
NYS Department of Health
Bureau of Professional Medical Conduct
5 Penn Plaza - Sixth Floor
New York, New York 10001-1810

EFFECTIVE DATE 08/16/93

RE: In the Matter of Keith Barnard, M.D.

Dear Dr. Barnard, Mr. Wood and Mr. Smith:

Enclosed please find the Determination and Order (No. BPMC-93-123) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified mail or in person** to:

New York State Department of Health
Office of Professional Medical Conduct
Corning Tower - Fourth Floor (Room 438)
Empire State Plaza
Albany, New York 12237

If your license or registration certificate is lost, misplaced or its whereabouts is otherwise unknown, you shall submit an affidavit to that effect. If subsequently you locate the requested items, they must than be delivered to the Office of Professional Medical Conduct in the manner noted above.

As prescribed by the New York State Public Health Law, §230, subdivision 10, paragraph (i), and §230-c subdivisions 1 through 5, (McKinney Supp. 1992), "(t)he determination of a committee on professional medical conduct may be reviewed by the administrative review board for professional medical conduct." Either the licensee or the Department may seek a review of a committee determination.

Request for review of the Committee's determination by the Administrative Review Board stays all action until final determination by that Board. Summary orders are not stayed by Administrative Review Board reviews.

All notices of review must be served, by **certified mail**, upon the Administrative Review Board **and** the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

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

James F. Horan, Esq., Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Corning Tower -Room 2503
Empire State Plaza
Albany, New York 12237-0030

The parties shall have 30 days from the notice of appeal in which to file their briefs to the Administrative Review Board. Six copies of all papers must also be sent to the attention of Mr. Horan at the above address and one copy to the other party. The stipulated record in this matter shall consist of the official hearing transcript(s) and all documents in evidence.

Parties will be notified by mail of the
Administrative Review Board's Determination and Order.

Very truly yours,

Tyrone T. Butler, nam

Tyrone T. Butler, Director
Bureau of Adjudication
(518) 473-1385

TTB:nam
Enclosure

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

-----X
:
IN THE MATTER :
OF :
KEITH BARNARD, M.D. :
:
-----X

DETERMINATION
AND
ORDER
NO. BPMC-93-123

The Hearing Committee, composed of Calvin P. Simons, M.D., Chairperson, Pearl D. Foster, M.D., and Victor B. Marrow, was duly designated and appointed by the Commissioner of Health of the State of New York pursuant to New York Public Health Law § 230, subd. 10(e). Eugene A. Gaer, Esq., Administrative Law Judge, served as Hearing Officer for the Committee.

The Committee, each of whose members has considered the entire record in this matter, hereby renders its decision with regard to the charges of medical misconduct filed against Keith Barnard, M.D. (the "Respondent").

STATEMENT OF CHARGES

Respondent is charged by Petitioner Department of Health (the "Petitioner") with one count of professional misconduct, i.e., practicing the profession fraudulently, as set forth in New York Education Law § 6530, subd. 2. The charge relates to a false statement of Respondent in an application for staff privileges at Interfaith Medical Center in Brooklyn

("Interfaith").¹ Petitioner's allegations are more particularly set forth in the Statement of Charges, a copy of which is attached hereto as Appendix I.

RECORD OF PROCEEDINGS

Notice of Hearing and Statement of Charges dated:	May 6, 1993
Pre-hearing Conference:	June 16, 1993
Hearing and Deliberation date:	June 23, 1993
Place of Hearing:	New York State Department of Health 5 Penn Plaza New York, New York 10001
Petitioner represented by:	David W. Smith, Esq. Assistant Counsel Bureau of Professional Medical Conduct 5 Penn Plaza New York, New York 10001
Respondent represented by:	William L. Wood, Jr., Esq. Wood & Scher The Harwood Building Scarsdale, New York 10583

WITNESSES

Petitioner called no witnesses.

Respondent testified in his own behalf and called no other witnesses.

¹The Statement of Charges dated the Interfaith application in "September 1993". By stipulation of the parties, this date was amended to read "September 1983". Tr. 7-8.

FINDINGS OF FACT

The following findings of fact were made after review of the entire record by the Committee. Petitioner was required to meet the burden of proof by a preponderance of the evidence.

Citations indicate evidence found persuasive by the Committee in arriving at the finding. "Tr." citations are to the transcript of the June 23, 1993, hearing. "P.Ex." citations are to the exhibits introduced by Petitioner. Evidence which conflicted with any finding of the Committee was considered and rejected. All findings of fact were established by a preponderance of the evidence.

1. Respondent was authorized to practice medicine in the State of New York on March 11, 1983, by the issuance of License No. 153331 by the Department of Education. P.Ex. 2, p. 3. He is currently licensed to practice medicine in the State. P.Ex. 6; Tr. 11. At all times relevant to this proceeding his office has been located in Brooklyn. Tr. 34-39.

2. Respondent received his M.D. degree from the Medical School of the State University of New York at Buffalo on June 1, 1977. P.Ex. 2, p. 5; Tr. 11.

3. Respondent satisfactorily completed a one-year internship at New Rochelle Hospital Medical Center from July 1,

1977, to June 30, 1978. P.Ex. 5, p. 4; Tr. 11.

4. Respondent satisfactorily completed one year in the general surgery residency program at New York University Medical Center ("NYU") from July 1, 1978, to June 30, 1979, and one year of a residency in orthopedic surgery at NYU from July 1, 1979, to June 30, 1980. P.Ex. 4, pp. 2, 25; P.Ex. 5, pp. 6-7; Tr. 11. Respondent was not reappointed to a second year in the orthopedic surgery residency program at NYU. P.Ex. 4, p. 5; P.Ex. 5, pp. 7-7a; Tr. 19-22.

5. Respondent served in the residency program of the Division of Orthopedic Surgery at Bronx-Lebanon Hospital Center from July 1, 1980, to June 30, 1981, but did not receive credit for that period toward the eligibility requirements of the American Board of Orthopaedic Surgery (the "specialty board requirements"). P.Ex. 5, pp. 12-17; Tr. 11.

6. Respondent served for a year in the orthopedic residency program at Harlem Hospital in 1981 and 1982 but did not receive credit for that year toward the specialty board requirements. Tr. 11, 25-27.

7. On September 9, 1983, Respondent submitted an application to Interfaith for appointment to the medical staff of

the emergency room (the "Interfaith application"). P.Ex. 3, pp. 1-5; Tr. 11-12.

8. In the Interfaith application Respondent stated that he had "completed residency in orthopedic trauma surgery." P.Ex. 3, p. 3. He checked "Yes" as his answer to the question "Are You Board Eligible?" P.Ex. 3, p. 3. Respondent knew at the time that these statements were false in that he had not completed an orthopedic residency program and was not board eligible. Tr. 12.

9. The Interfaith application was accepted and Respondent served for several years as an attending physician in the emergency room at Interfaith. Tr. 12-13, 34; cf. P.Ex. 3, p. 9. He did not perform surgical procedures in that capacity. Tr. 13, 15.

**CONCLUSIONS AS TO
FACTUAL ALLEGATIONS**

This proceeding relates to a single act committed by Respondent. In September 1983, as part of his application for employment as an attending physician in the emergency room at Interfaith Hospital, Respondent stated that he had "completed residency in orthopedic trauma surgery" and that he was "board eligible."

These statements were untrue. Respondent did hold appointments for a total of three years as a resident in various orthopedic surgery programs (one year each at three different hospitals). However, he did not receive credit toward his specialty board requirements for at least two of those years. Consequently he could not claim in September 1983 to have completed an orthopedic residency. Nor was he "board eligible". P.Ex. 3, p.3. Respondent knew all this at the time he submitted his application to Interfaith. Tr. 12.

At the hearing Respondent freely admitted that "it was wrong" to have made a false statement on his application and expressed his regret over having done so. Tr. 12. He declined to offer any explanation for his action, but he did assert that his claim to have completed an orthopedic residency had no bearing on whether he received the emergency room appointment. Tr. 12, 15, 24. This was because his commitment to work in the Interfaith emergency room was part of a larger service agreement between the hospital and the practice group to which he belonged. Tr. 29-31.

No practical consequences are known to have followed from Respondent's false statement. In his capacity as an emergency room attending physician, he was not called upon to perform orthopedic surgical procedures, which were routinely referred to the orthopedic residents on the house staff. Tr. 12-13, 16.

Petitioner conceded at the hearing that there is no evidence that Respondent ever performed any procedure for which he was not qualified or that any patient was ever harmed because of Respondent's misstatement. Tr. 9-10.

Nonetheless this act cannot be overlooked. Once a physician joins a hospital staff on the representation of possessing certain qualifications, he or she will obviously be assigned duties appropriate to those qualifications. Equally obvious is the possibility that patients might suffer injury if treated by someone who lacks the training and experience requisite for the proper performance of those duties.

It is, in any event, immaterial whether anyone was actually harmed, or even misled, by Respondent's misrepresentation. The public is entitled to expect that members of the licensed professions will conduct themselves with honesty. Respondent knowingly made a false statement about his background and professional status in the course of obtaining a hospital appointment. Such an act was clearly inconsistent with professional integrity and was inarguably a fraudulent act within the meaning of the Education Law.

Accordingly, **Paragraphs A and A-1**, as modified by stipulation, are **SUSTAINED**.

**DISPOSITION
OF SPECIFICATIONS**

Having entered the foregoing Findings of Fact and Conclusions as to the Allegations, the Committee, by unanimous vote, has determined that Respondent's false statement in the September 1983 Interfaith application constituted fraudulent practice of medicine. Accordingly the **FIRST SPECIFICATION** is **SUSTAINED**.

ORDER

The Committee, by unanimous vote, has determined that the following penalty should be, and it hereby is,

ORDERED that Respondent **KEITH BARNARD, M.D.**, shall be **CENSURED** and **REPRIMANDED** for the commission of fraudulent conduct in the practice of the profession, and it is further

ORDERED that Respondent **KEITH BARNARD, M.D.**, shall pay as a **CIVIL PENALTY** the sum of **THREE THOUSAND DOLLARS** (\$3,000).

Dated: New York, New York
July **30**, 1993

By:  **CALVIN J. SIMONS, M.D.**
(Chairperson)

PEARL D. FOSTER, M.D.
VICTOR B. MARROW

APPENDIX I

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

-----X
IN THE MATTER : STATEMENT
OF : OF
KEITH BERNARD, M.D. : CHARGES
-----X

KEITH BERNARD, M.D., the Respondent, was authorized to practice medicine in New York State on March 11, 1983 by the issuance of license number 152221 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, 1993 through December 31, 1994.

FACTUAL ALLEGATIONS

A. On or about September, 1993, Respondent filed an Application for Appointment to the medical staff at Interfaith Medical Center, 555 Prospect Place, Brooklyn, New York 11238.

1. In such Application, Respondent stated that he had completed a residency in Orthopedic Trauma Surgery. Such statement was false and Respondent knew it was false at the time he made it.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

PRACTICING THE PROFESSION FRAUDULENTLY

Respondent is charged with committing professional misconduct by practicing the profession fraudulently within the meaning of N.Y. Educ. Law Section 6530(2) (McKinney Supp. 1993),
Petitioner charges:

1. The facts in Paragraph A and A1.

DATED: New York, New York

May 6, 1993


CHRIS STERN HYMAN
Counsel
Bureau of Professional
Medical Conduct