



STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Dennis P. Whalen
Executive Deputy Commissioner

January 14, 1999

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Obioma Agomuoh, M.D.
16400 North Park Drive
Southfield, MI 48075

Jude Mulvey, Esq.
NYS Department of Health
Corning Tower Room 2509
Empire State Plaza
Albany, NY 12237

Michael L. Koenig, Esq.
Pamela Nichols, Esq.
O'Connell & Aronowitz, Esqs.
100 State Street
Albany, NY 12207

RE: In the Matter of Obioma Agomuoh, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 99-08) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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

Office of Professional Medical Conduct
New York State Department of Health
Hedley Park Place
433 River Street - Fourth Floor
Troy, New York 12180

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

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

Request for review of the Committee's determination by the Administrative Review Board stays penalties **other than suspension or revocation** until final determination by that Board. Summary orders are not stayed by Administrative Review Board reviews.

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

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

James F. Horan, Esq., Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Hedley Park Place
433 River Street, Fifth Floor
Troy, New York 12180

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

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

Sincerely,



Tyrone T. Butler, Director
Bureau of Adjudication

TTB: nm
Enclosure

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

COPY

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IN THE MATTER : DETERMINATION
OF : AND
OBIOMA AGOMUOH, M.D. : ORDER

BPMC-99-08

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Albert L. Bartoletti, M.D., (Chair), Margery Smith, M.D., and Rev. Cannon Robert E. Eggenschiller, S.M.T., duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to Section 230(10) of the Public Health Law.

Susan F. Weber, Esq., Administrative Law Judge, served as Administrative Officer.

The Department of Health appeared by Jude Brearton Mulvey, Esq., Assistant Counsel.

Respondent Obioma Agomuoh, M.D., appeared personally and was represented by the law firm of O'Connell and Aronowitz, Michael L. Koenig, Esq., and Pamela A. Nichols, Esq, of counsel.

A Pre-hearing Conference was held on September 3, 1998, followed immediately by the Hearing. Evidence was received and examined. Respondent participated fully and appeared as the only witness. A transcript of the proceeding was made. Proposed Findings of Fact and Conclusions of Law dated October 9, 1998, were submitted by both parties. Replies dated October 16, 1998 were also submitted.

On November 4, 1998, the Hearing Committee met and deliberated. After consideration of the entire record, the Hearing Committee issues this Determination and Order, pursuant to the Public Health Law and the Education Law of the State of New York.

STATEMENT OF THE CASE

This proceeding was commenced on May 7, 1998 by service of the Notice of Hearing and Statement of Charges upon Obioma Agomuah, M.D., Respondent herein. The Respondent was charged with eight specifications of professional misconduct, including conduct which evidences moral unfitness, practicing the profession fraudulently, willfully filing a false report, being found guilty of conduct in another state which would, if committed in New York, constitute professional misconduct under New York law, and licensure refusal in another state based upon conduct which, if committed in New York, would constitute professional misconduct. A copy of the Statement of Charges is attached to this Determination and Order as Appendix 1.

The charges relate to three acts or occurrences:

1. Respondent's 1995 New York State licensure application wherein he answered in the negative when asked whether he had resigned from any hospital or facility in order to avoid termination due to professional misconduct, unprofessional conduct, incompetence or negligence.
2. The Direct Referral charge based upon Respondent's withdrawal of licensure application in Ohio in settlement of charges of

unprofessional conduct in applying for a license to practice in Ohio in 1996.

3. Respondent's 1997 New York State licensure application, wherein he answered in the negative when asked whether any state had instituted charges against him for professional misconduct.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. These facts represent evidence found persuasive by the Hearing Committee in arriving at a particular conclusion. Conflicting evidence or testimony was considered and rejected in favor of the cited evidence. Unless otherwise stated, all Findings and Conclusions were unanimous. All Findings of Fact made by the Hearing Committee were established by at least a preponderance of the evidence.

1. Respondent was licensed to practice medicine in New York State on September 11, 1992, by issuance of license number 190378 by the New York State Education Department (Ex.1)¹.

1995 New York Registration Application

2. On January 4, 1995, Respondent submitted a registration application to New York State which was subsequently returned to him because he had failed to fully complete the form. Also appearing on the form was a printed warning to read the application carefully before attesting to its truthfulness and

¹ Citations are to Exhibits in evidence (Ex.) or pages of the hearing Transcript (Tr.). Numbered Exhibits are Petitioner's Exhibits; lettered Exhibits are Respondent's Exhibits.

completeness (Ex.3, p.22; Tr.78-79).

3. On January 17, 1998, Respondent re-submitted his application to New York State ("the 1995 Application", Ex. 3, p.23).

4. The 1995 Application included the following question, which Respondent answered in the negative:

1 © FOR HEALTH PROFESSIONALS ONLY: Since you last registered, has any hospital or licensed facility restricted or terminated your professional training, employment or privileges or have you ever voluntarily or involuntarily resigned or withdrawn from such association to avoid imposition of such action due to professional misconduct, unprofessional conduct, incompetence or negligence? (Ex.3, p.23)

5. Respondent signed the 1995 Application under penalty of perjury, attesting to the completeness and correctness of the application and any accompanying documentation and explanations, with the understanding that any false or misleading information could be the cause of disciplinary action (Ex. 3, p.23).

6. Respondent's fellowship in the Maternal-Fetal Medicine program at the University of Connecticut School of Medicine terminated upon Respondent's voluntary resignation on or about May 17, 1994 (Ex.5, p.1-3).

7. The voluntary resignation followed a period of probation during which Respondent's performance was closely supervised and he was given special assistance to raise his skill levels in areas considered to be unsatisfactory (Ex.5, p.20-26, 50-62).

8. The Educational Committee of the Medical School convened on November 2, 1993, to assess Respondent's status (Ex. 5, p.69).

9. The Educational Committee concluded that, "while there was some improvement in the areas that were outlined, this improvement was not sufficient for Dr. Agomuo to function as a Fellow in Maternal-Fetal Medicine in our Training Program. There had been some improvement in the knowledge base in Obstetrics. However, this was still far below what would be expected of a Fellow in Maternal-Fetal Medicine. It was felt that there was no improvement in the knowledge base and clinical skills in Maternal-Fetal Medicine..." (Ex.5, p.60).

10. Minutes of the Department's Education Committee meeting on November 2, 1993 cite Respondent's shortcomings in performing clinical duties fully, satisfactorily, and timely. Organizational and communication skills were a problem in dealing with patients, staff members, and referring physicians. Consults and reports continued to be deficient despite being given reminders and guidelines for turn-around. At the end of the probationary period, nine consult reports were still pending, and other medical records were incomplete (Ex. 5, p.59-62).

11. By letter dated November 3, 1993, Respondent was notified that it would not be possible for him to complete the training program, and that his status as a Fellow was terminated. Cited were deficiencies and lack of improvement in clinical skills in ultrasound, maternal-fetal medicine, organizational skills, and

reliability in completing clinical duties (Ex. 5, p.63-64).

12. After unsuccessfully appealing the termination decision, Respondent entered into an Agreement of Compromise and Release with the Medical School allowing Respondent's "voluntary resignation" from the Fellowship "for personal reasons." The Agreement further stated, in pertinent part, that

Under no circumstances shall this Agreement be construed as an admission by a party that any of the allegations made by another party prior to this Agreement are true. (Ex.5)

13. On January 17, 1995, when applying for license to practice medicine in New York State for the period 1/1/95 to 8/31/97, Respondent answered "No" to the question of whether he had voluntarily withdrawn or resigned professional training ... "due to professional misconduct, unprofessional conduct, incompetence or negligence." (Ex. 3, p.22)

Ohio Licensure

14. On or about March 1, 1996, Respondent filed an Application for Certificate to practice medicine in the State of Ohio. By letter dated November 13, 1996, the State Medical Board of Ohio notified Respondent that he was being charged with acts or omissions constituting "fraud, misrepresentation, or deception in applying for ...any license or certificate issued by the board", "publishing a false, fraudulent, deceptive or misleading statement" and failing to furnish satisfactory proof of good moral character as required by Ohio law (Ex.4)

15. In making the Ohio Application, Respondent had submitted several versions of his resume, upon which he sometimes listed his Fellowship at University of Connecticut and sometimes did not; he set forth different dates for various periods of employment or medical placements; and he denied resigning from or being placed on probation from graduate medical education. Ex.4).

16. In settlement of the Ohio charges, Respondent was granted permanent withdrawal of his application for medical licensure. In the Permanent Withdrawal effective March 13, 1997, Respondent stipulated that such action is in lieu of further formal disciplinary proceedings and admits the allegations against him as set forth in the notice which was attached as Exhibit A (Ex.4, p.2).

17. The Ohio Withdrawal also states that Respondent may not reapply for licensure in Ohio, and if he should do so, such application would be "considered null and void" (Ex. 4).

18. The conduct underlying the Ohio disciplinary charges, incorporated by reference in the Permanent Withdrawal, would, if committed in New York, constitute professional misconduct under N.Y. Education Law Section 6530(2) [practicing the profession fraudulently]; Section 6530(20) [moral unfitness]; or Section 6530 [willfully filing a false report] (McKinley's Supp.1998).

1997 New York Registration Application

19. On or about June 25, 1997, Respondent filed a Registration

Application for licensure in New York for the period September 1, 1997 to August 31, 1999 (Ex. 3, p.25).

20. The 1997 Application contained the following question, to which Respondent responded "No":

2(b) Has any other state or country instituted charges against you for professional misconduct, unprofessional conduct, incompetence or negligence, or revoked, suspended, or accepted surrender of a professional license held by you? (Ex.A, p.1)

21. Prior to June 25, 1997, the Ohio Medical Board had instituted charges against Respondent for professional misconduct, and had accepted Respondent's Permanent Withdrawal of Application for medical licensure in lieu of further formal disciplinary action (Ex.4).

22. The 1997 Application also contained question 2(c) which asks:

Has any hospital or licensed facility restricted or terminated your professional training, employment, or privileges, or have you voluntarily or involuntarily resigned or withdrawn from such association to avoid the imposition of such action due to professional misconduct, unprofessional conduct, incompetency or negligence? (Ex.A, p.1)

23. Respondent answered "Yes" to this question, and amplified his answer in a handwritten attachment in which he described his privilege suspension at Herrick Memorial Hospital in 1995, his Permanent Withdrawal of Application for licensure in Ohio, and mentioned the "brief time I spent at Connecticut for a fellowship." (Ex.A, p.2)

CONCLUSIONS

The following conclusions were made pursuant to the Findings

of Fact listed above. The Hearing Committee concluded that the following Factual Allegations were proven by a preponderance of the evidence (the numbered paragraphs refer to those set forth in the Statement of Charges, Factual Allegations). The citations following the colons refer to the Findings of Fact above which support each Factual Allegation.

Paragraph 1.: 2,3,4,5,6,7,8,9,10,11,12,and 13.

Paragraph 2.: 16 and 17.

Paragraph 3.: The subparagraphs under Paragraph 3 were not proven, but the body of Paragraph 3 is supported by Finding 16.

Paragraph 4.: 18.

Paragraph 5.: 19.

Paragraph 5a.: 20 and 21.

The Hearing Committee unanimously determined that the Specifications set forth below **should be sustained**. The citations in parentheses refer to the Factual Allegations from the Statement of Charges which support each Specification. The Hearing Committee concluded that the First, Second, and Eighth Specifications **should not be sustained**.

PRACTICING THE PROFESSION FRAUDULENTLY

Third and Fourth Specification: The allegations contained in Paragraphs 1 and 1a, and 5 and 5a.

WILLFULLY FILING A FALSE REPORT

Fifth and Sixth Specifications: The allegations contained in Paragraphs 1 and 1a, and 5 and 5a.

MISCONDUCT IN ANOTHER STATE

Seventh Specification: The allegations contained in Paragraphs 2 and 4.

DISCUSSION

Respondent has been charged with eight specifications alleging professional misconduct within the meaning of Education Law Section 6530. During its deliberations, the Hearing Committee consulted a January, 1996 memorandum from New York State Department of Health General Counsel containing suggested definitions for fraud, negligence and incompetence in the practice of medicine.

The Connecticut Fellowship

At the Hearing, Respondent testified that his problems in the Training Program at the University of Connecticut were caused by his lack of prior experience with ultrasound and computers, and that he did not know that ultrasound skill and computer literacy would be necessary to success in the Program. He felt that the highly technical nature of the program, together with "the subjective nature" of the examinations, were responsible for his difficulties (Tr. 34-36).

It seems clear from the exhibits and testimony that Respondent was ill-prepared for the Connecticut Fellowship. Lack of competency with ultrasound and inability to use a computer were certainly factors, as Respondent testified, but Respondent's difficulties went well beyond these. It is also clear that Training Program staff made significant efforts to resurrect Respondent. He was given remedial assignments and coached for examinations. His answers on the part oral, part written exams were then discussed with him. His deficiencies were detailed, and he was given a probationary period within which to improve. When it was determined that he was not improving as hoped, Respondent was allowed to withdraw from the program upon favorable terms, and was given credit for the time spent in the program.

It is true, as Respondent argued, that failure to successfully complete a highly technical advanced training program such as this one is not, by itself, proof of incompetence in the practice of medicine. However, the record of the Connecticut disciplinary proceeding reveals deficiencies in basic medical knowledge and skills, knowledge and skills that should have been acquired in residency. Documents in the record establish that Respondent's difficulties in the program began within the first month. This indicates that more than the advanced level of the program was at issue. The Hearing Committee was not persuaded by Respondent's testimony that more was expected of him than of the other fellows, or that others had more advantages, or that he was ill-treated because of

personality conflicts, jealousy, or other factors.

It may be that, because Respondent was allowed to withdraw "voluntarily ... for personal reasons", he actually believed that his unsatisfactory performance was not a result of his lack of competence. Perhaps Respondent expected his Connecticut Fellowship records to be permanently sealed for all purposes, or perhaps he mistakenly believed he had not been forced to resign or face expulsion. In any event, thereafter, when asked on applications whether he had ever resigned to avoid termination or imposition of an action due to incompetence, Respondent consistently responded that he had not.

The Hearing Committee determined that Respondent should, in fact, have answered in the affirmative, that he had withdrawn or resigned from the Connecticut Fellowship in order to avoid termination. The documentary evidence from the Fellowship in the record establishes that Respondent's lack of basic competence, rather than his failure to achieve according to a higher standard of the Fellowship, was the cause of Respondent's forced resignation. This evidence raised questions about Respondent's basic medical competence which no recent evidence in the record refutes.

The Ohio Licensure Withdrawal

The status of Respondent's appeal, if any, of the Ohio charges is irrelevant to this proceeding.

The conduct underlying the charges to which Respondent admitted in the Ohio licensure would, if committed in New York State, constitute professional misconduct under N.Y. Education Law Section 6530 (McKinley's Supp. 1998).

Respondent testified that, although he had received the November 13, 1996 letter from the Secretary of the State Medical Board of Ohio stating the charges against him, the document he signed on February 14, 1997, admitting to the underlying conduct, upon advice of an attorney, did not have the statement of charges attached. Therefore, he testified, he did not understand that by settling the Ohio charges by the Permanent Withdrawal, he would be admitting these charges. Respondent testified that he relied upon poor legal advice in executing the Permanent Withdrawal rather than fighting the charges (Tr.52-54, 59-62).

The Hearing Committee was sympathetic to Respondent's professed difficulties in applying for licensure in Ohio while hurrying to return a rental car without incurring a penalty, and without having his Curriculum Vitae with him to verify dates of employment. However, the Hearing Committee was not persuaded that the errors in his application were of no moment. The Hearing Committee did not look into the specifics of the allegations underlying the charges in Ohio, but rather relied upon the documentary evidence in the record. Even taking Respondent's explanations for these events at face value, the Hearing Committee felt Respondent either showed incredibly poor judgment or had been so utterly careless in dealing with such a

weighty matter as State medical licensure, as to call into question his competence or his credibility. Similarly, even if the specific charges were not attached to the Request for Permanent Withdrawal he signed, Respondent had previously read those charges. It must be concluded that he understood the import of his admission to them.

The Hearing Committee notes that Respondent has not included in the record a full and complete curriculum vitae or resume upon which the Committee could rely in evaluating the specific allegations concerning the alleged errors in dates and omissions in positions in this case.

The Hearing Committee viewed the Ohio licensure episode as the most significant of the charges. Respondent may or may not be able to convince the Ohio authorities that time constraints in filling out the application for licensure, confusion as to dates, or technical difficulties in transmitting required documents should be excused. But as matters stand, Respondent has admitted to conduct which, if it occurred in this State, would constitute professional misconduct here. This warrants professional discipline in New York.

The Hearing Committee also determined, however, that the 1996 Ohio licensure process had not gone forward to conclusion and therefore it was not the case that Respondent had been refused licensure in another state, as charged in the Eighth specification.

The 1997 New York Application

Although Respondent answered question 2(b) incorrectly, he answered 2© correctly, and appended a handwritten explanation in which he mentioned the Connecticut Fellowship, a suspension of privileges elsewhere (which was not dealt with in this proceeding) and the Ohio Permanent Withdrawal. The Respondent argued that the checked answers to (b) and © together with the handwritten explanation adequately answered the questions asked. The Hearing Committee did not find the written explanation coherent or fully accurate as compared with the facts proven at hearing.

SUMMARY

Respondent's official submissions for licensure in New York and Ohio display, at best, a consistent pattern of inaccuracy in reporting important facts to medical authorities. The repetitive nature of these inaccuracies render not credible the argument that Respondent misunderstood the questions or the import of his responses.

The Hearing Committee was sympathetic in that it found the Respondent clearly had difficulty with the medical licensing process. The charges before us do not involve any misconduct in dealing with patients. Rather, they concern keeping track of and accurately reporting professional data, characterizing the termination of a fellowship, and checking the appropriate boxes on licensing questionnaires. However, these tasks are an important part of professional practice and may not be slighted or minimized. Repeated failure to perform such tasks accurately

calls into question a professional's competence and credibility. Further, the documentary evidence from the Fellowship in the record raises concerns about Respondent's lack of basic medical competence in 1993, which no recent credible evidence in the record refutes.

Altogether, Respondent's conduct evidences the willful making or filing of a false report and practicing the profession fraudulently. The Hearing Committee sustains the Third, Fourth, Fifth, Sixth and Seventh Specifications. It finds that the First, Second, and Eighth Specifications were not proven.

DETERMINATION AS TO PENALTY

Pursuant to the Findings of Fact and Conclusions set forth above, the Hearing Committee unanimously determined that Respondent's license to practice medicine in New York State should **be suspended for a period of three years.**

Respondent testified that he is appealing the status of his medical licensing in Ohio. Should Respondent resolve the charges underlying the Ohio Permanent Withdrawal in his favor and be licensed to practice in Ohio, then he may apply to the Board of Professional Medical Conduct for reconsideration of this Determination.

Based upon the foregoing, IT IS HEREBY ORDERED THAT:

² Character Letters (Ex. D, E, and F) were not found sufficiently reliable to overcome the concerns raised by the Education Committee Minutes (Ex.5).

The license to practice medicine of Respondent **OBIOMA AGOMUOH, M.D.** is hereby **SUSPENDED**.

The **suspension is hereby stayed** until Respondent seeks to practice in the State of New York. At such time, and prior to practicing medicine in the State of New York, Respondent shall notify OPMC in writing of his desire or intention to practice in New York. Respondent's right to practice shall be conditioned as follows:

1. Respondent shall submit a complete and accurate application, fully and completely answering all questions, including accurate dates for each internship, residency, clinical fellowship, and any other period of employment or position held.

2. Respondent's **Suspension shall be stayed** for three years from the date his application is accepted, during which time Respondent shall be on **Probation**.

3. During his **three years' Probation**, Respondent shall work only in a supervised setting, such as a facility licensed by New York State, where close practice oversight is available on a daily basis and where quality assurance and risk management protocols are in effect. Respondent shall not practice medicine until the supervised setting proposed by Respondent is approved in writing by the Director of OPMC.

a. Respondent shall propose a supervisor who shall be subject to the written approval of the Director of

OPMC. The supervisor, who shall not be a friend or relative of Respondent, shall be on-site, unless otherwise determined by the Director.

- b. The supervisor shall be in a position to regularly observe and assess Respondent's medical practice. Respondent shall cause the supervisor to report within 24 hours any questionable medical conduct to OPMC.
- c. Respondent shall authorize the supervisor to have access to his patient records and to submit quarterly narrative reports regarding Respondent's overall quality of medical practice to the Director of OPMC.
- d. Respondent shall provide the supervisor with the Order and terms of probation and shall cause him or her to comply with OPMC schedules and requests for information.
- e. Respondent shall annually submit a signed Compliance Declaration to the Director of OPMC with truthfully attests whether Respondent has been in compliance with the employment setting and required supervision.

4. Respondent shall submit written notification to the New York State Department of Health addressed to the Director, Office of Professional Medical Conduct (OPMC), Corning Tower Building, 4th Floor, Empire State Plaza, Albany, New York, 12237; said notice is to include a full description of any employment and practice,

professional and residential addresses and telephone numbers within and without the 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 the commencement of any such investigation, charge, or action.

5. The period of probation is 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 or intends to leave the active practice of medicine in New York State for a period of thirty (30) days or more. He shall notify the Director of OPMC again prior to any change in that status.

6. 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.

7. Respondent shall comply with all terms, conditions, restrictions, limitations and penalties to which he 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 probation 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 by law.

This Order shall take effect **IMMEDIATELY.**

DATED: 31 Dec 98

BY: Albert L. Bartoletti M.D.

ALBERT L. BARTOLETTI, M.D.

Chairperson

MARGERY SMITH MD

REV. CANON ROBERT E. EGGENSCHILLER, S.M.T.

APPENDIX ONE



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

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IN THE MATTER : NOTICE
OF : OF
OBIOMA AGOMUOH, M.D. : HEARING

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TO: OBIOMA AGOMUOH, M.D.
16400 North Park Drive
Southfield, MI 48075

PLEASE TAKE NOTICE:

A hearing will be held pursuant to the provisions of N.Y. Pub. Health Law Section 230 and N.Y. State Admin. Proc. Act Sections 301-307 and 401. The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on the 5th day of June, 1998, at 10:00 in the forenoon of that day at the New York State Department of Health, Bureau of Adjudication, Hedley Park Place, 5th Floor 433 River Street, Troy, New York 12180 and at such other adjourned dates, times and places as the committee may direct.

At the hearing, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the hearing will be made and the witnesses at the hearing will be sworn and examined. You shall appear in person at the hearing and may be represented by counsel. You have the right to produce witnesses and evidence on

your behalf, to issue or have subpoenas issued on your behalf in order to require the production of witnesses and documents and you may cross-examine witnesses and examine evidence produced against you. A summary of the Department of Health Hearing Rules is enclosed.

The hearing will proceed whether or not you appear at the hearing. Please note that requests for adjournments must be made in writing and by telephone to the Bureau of Adjudication, Hedley Park Place, 5th Floor, 433 River Street, Troy, New York 12180, (518-402-0748), upon notice to the attorney for the Department of Health whose name appears below, and at least five days prior to the scheduled hearing date. Adjournment requests are not routinely granted as scheduled dates are considered dates certain. Claims of court engagement will require detailed Affidavits of Actual Engagement. Claims of illness will require medical documentation.

Pursuant to the provisions of N.Y. Pub. Health Law Section 230(10)(c) you shall file a written answer to each of the Charges and Allegations in the Statement of Charges no later than ten days prior to the date of the hearing. Any Charge and Allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such answer. The answer shall be filed with the Bureau of Adjudication, at the address indicated above, and a copy shall be forwarded to the attorney for the Department of Health whose name appears below. Pursuant to Section 301(5) of the State Administrative Procedure Act, the Department, upon reasonable notice, will provide at no charge a qualified interpreter of the deaf to interpret the proceedings

to, and the testimony of, any deaf person.

At the conclusion of the hearing, the committee shall make findings of fact, conclusions concerning the charges sustained or dismissed, and, in the event any of the charges are sustained, a determination of the penalty to be imposed or appropriate action to be taken. Such determination may be reviewed by the administrative review board for professional medical conduct.

THESE PROCEEDINGS MAY RESULT IN A
DETERMINATION THAT YOUR LICENSE TO PRACTICE
MEDICINE IN NEW YORK STATE BE REVOKED OR
SUSPENDED, AND/OR THAT YOU BE FINED OR
SUBJECT TO THE OTHER SANCTIONS SET OUT IN NEW
YORK PUBLIC HEALTH LAW SECTION 230-a. YOU ARE
URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU
IN THIS MATTER.

DATED: Albany, New York
April 28, 1998


PETER D. VAN BUREN
Deputy Counsel

Inquiries should be directed to: Jude Brearton Mulvey
Assistant Counsel
Division of Legal Affairs
Bureau of Professional
Medical Conduct
Corning Tower Building
Room 2509
Empire State Plaza
Albany, New York 12237-0032
(518) 473-4282

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

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IN THE MATTER : STATEMENT
OF : OF
OBIOMA AGOMUOH, M.D. : CHARGES

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OBIOMA AGOMUOH, M.D. [also known as Sylvester Agomuoh], the Respondent, was authorized to practice medicine in New York State on September 11, 1992 by the issuance of license number 190378 by the New York State Education Department.

FACTUAL ALLEGATIONS

1. Respondent, on or about January 17, 1995 filed a Registration Application for the period January 1, 1995 through August 31, 1997 with the New York State Education Department.
 - a. Respondent answered "no" to the question "Since you last registered, has any hospital or licensed facility restricted or terminated your professional training, employment or privileges or have you ever voluntarily or involuntarily resigned or withdrawn from such association to avoid imposition of such action due to professional misconduct, unprofessional conduct, incompetence or negligence" when, in fact, on or about May 17, 1994, Respondent resigned as a Fellow in the Maternal-Fetal Medicine Division of OB/GYN, The School of Medicine of the University of Connecticut Health Center to avoid termination due to incompetence and/or negligence, and Respondent knew such fact.

11/12/95
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2. The Ohio Medical Board, subsequent to its November 13, 1996 notification to Respondent of acts, conduct and omissions constituting professional misconduct, on or about March 13, 1997 accepted Respondent's Request for Permanent Withdrawal of Application for Medical Licensure. Pursuant to this Request for Permanent Withdrawal, Respondent admitted all allegations made against him by the Ohio Medical Board and agreed not to apply for a certificate to practice medicine in Ohio at any time in the future. If Respondent does make such application, the application will be denied.

3. In the Request for Permanent Withdrawal, Respondent admitted that he committed unprofessional conduct in violation of Ohio Revised Code Sections 4731.22 A), 4731(B)(5) and 4731.29 (A). More specifically, Respondent admitted that he committed fraud, misrepresentation, or deception in applying for or securing any license or certificate issued by the board, that he published a false, fraudulent, deceptive or misleading document, and that such conduct constituted a failure to furnish satisfactory proof of good moral character. The collective conduct underlying Respondent's admissions was the following:

- Respondent failed to disclose he was a Fellow in the Maternal-Fetal Medicine Division of OB/GYN, The School of Medicine of the University of Connecticut Health Center, Connecticut from July 1, 1993 until November 5, 1993, in response to an application question asking Respondent to identify all graduate medical education;

- Respondent submitted four separate C.V.'s to the Board in which he variously failed to include his employment and/or correct employment dates as assistant attending physician at Woodhull Hospital, Brooklyn, New York;
- Respondent failed to provide correct employment dates for employment as an attending physician at Union and St. Barnabas Hospitals in Bronx, New York on Resumes 1,2,3 and 4;
- Respondent failed to disclose that he was a Fellow in the Maternal-Fetal Medicine Division of OB/GYN, The School of Medicine of the University of Connecticut Health Center, Connecticut on Resumes 1,2 and 3 and failed to provide the correct employment dates for such service on Resume 4; and
- Respondent answered "no" to the question "Have you ever resigned from, withdrawn from, or have you ever been warned by, censured by, been put on probation by, been requested to withdraw from, dismissed from, been refused renewal of a contract by, or expelled from, a medical school, clinical clerkship, externship, preceptorship, or graduate medical education?", when, in fact, Respondent resigned from the Maternal/Fetal Medicine Division of OB/GYN, a fellowship program at The School of Medicine of the University of Connecticut Health Center, Connecticut, effective November 5, 1993.

4. The conduct underlying the Ohio Medical Board's acceptance of Respondent's Permanent Withdrawal of his Ohio Application would, if committed in New York State, constitute professional misconduct under N.Y. Education Law §6530(2) [practicing the profession fraudulently], and/or §6530 (20) [moral unfitness] and/or §6530 (21) [willfully filing a false report] (McKinney Supp. 1998).

5. Respondent, on or about June 25, 1997, filed a Registration Application for the period September 1, through August 31, 1999 with the New York State Education Department.

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- a. Respondent answered "no" to the question "Has any other state or country initiated charges against you for professional misconduct, unprofessional conduct, incompetence or negligence, or revoked, suspended, or accepted surrender of a professional license held by you?" when, in fact, the Ohio Medical Board on or about November 13, 1996 initiated charges against Respondent for professional misconduct and/or accepted Respondent's Permanent Withdrawal of Application for medical licensure (as is more fully set forth in paragraphs 2 and 3 above) and Respondent knew such fact.

SPECIFICATIONS

FIRST AND SECOND SPECIFICATIONS

MORAL UNFITNESS

Respondent is charged with professional misconduct under N.Y. Education Law §6530(20) (McKinney Supp. 1998) by reason of his conduct in the practice of medicine which evidences moral unfitness to practice medicine in that Petitioner charges:

- 1-1a
1. The facts contained in Paragraph 1 and 1a. 1/25/97
 2. The facts contained in Paragraph 5 and 5a. 1/27/97

THIRD AND FOURTH SPECIFICATIONS

PRACTICING THE PROFESSION FRAUDULENTLY

Respondent is charged with professional misconduct under N.Y. Education Law §6530(2) (McKinney Supp. 1998) by reason of his practicing the profession of medicine fraudulently in that Petitioner charges:

3. The facts contained in Paragraph 1 and 1a.
4. The facts contained in Paragraph 5 and 5a.

FIFTH AND SIXTH SPECIFICATIONS
WILLFULLY FILING A FALSE REPORT

Respondent is charged with professional misconduct under N.Y. Education Law §6530(21) (McKinney Supp. 1998) by reason of his willfully making or filing a false report in that Petitioner charges:

5. The facts contained in Paragraph 1 and 1a.
6. The facts contained in Paragraph 5 and 5a.

SEVENTH SPECIFICATION
MISCONDUCT IN ANOTHER STATE

Respondent is charged with professional misconduct under N.Y. Education Law §6530(9)(b) (McKinney Supp. 1998) by reason of being found guilty of improper professional practice or professional misconduct by another state where the conduct upon which the finding was based would, if committed in New York State, constitute professional misconduct under the laws of New York State, in that Petitioner charges:

7. The facts in paragraphs 2, 3 and/or 4.

EIGHTH SPECIFICATION
LICENSURE REFUSAL IN ANOTHER STATE

Respondent is charged with professional misconduct under N.Y. Education Law §6530(9)(d) by reason of having his application for license to practice medicine refused, where the conduct resulting in the refusal of an application for license would, if committed in New York State, constitute professional misconduct under the laws of New York State, in that Petitioner charges:

8. The facts contained in Paragraphs 2, 3 and/or 4.

DATED: *March 17, 1998*

Albany, New York

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