Public

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

IN THE MATTER OF LATEEF GIWA, M.D.	CONSENT ORDER BPMC #00-330

Upon the proposed agreement of LATEEF GIWA, 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: 11/28/00

William P. Dillon, MD
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 LATEEF GIWA, M.D.	CONSENT AGREEMENT AND ORDER

LATEEF GIWA, M.D., (Respondent) says:

That on or about June 30, 1974, I was licensed to practice as a physician in the State of New York, having been issued License No. 119661 by the New York State Education Department.

My current address is 29 West Shore Drive, Port Washington, New York 11050, 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 one specification 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 specification, in full satisfaction of the charges against me. I hereby agree to the following penalty:

My medical license shall be suspended for one year, said suspension shall be stayed. Additionally, I shall be placed on probation for a period of one year under the same terms as BPMC Order No. 99-81 (a copy of the terms of

probation is attached as Exhibit 2). The period of suspension and probation shall run consecutively to those imposed by BPMC Order No. 99- 81. I shall be fined the sum of $30,000.

Unless otherwise specified herein, the fine is payable in full within thirty (30) days of the effective date of this Order. Payments must be submitted to:

Bureau of Accounts Management
New York State Department of Health
Empire State Plaza
Corning Tower, Room 1245
Albany, New York 12237

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 active 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/her 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/her 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 11/10/00

Lateef Giwa, MD

LATEEF GIWA, 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: 11/20/00

NEIL GREENBERG, ESQ.
Attorney for Respondent

DATE: 11/21/00

ANTHONY M. BENIGNO
Assistant Counsel
Bureau of Professional
Medical Conduct

DATE: November 22, 2000

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
LATEEF GIWA, M.D.	: CHARGES

----------X

Lateef Giwa, M.D., the Respondent, was authorized to practice medicine in New York State on June 30, 1974, by the issuance of license number 119661 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 April 1, 1999 through March 31, 2001, with a registration address of 99 Tulip Avenue, Suite 109, Floral Park, NY 11001

FACTUAL ALLEGATIONS

A. On or about April 21, 1999, the New York State Board for Professional Medical Conduct issued BPMC Order No. 99-81, a copy is annexed hereto as Exhibit 1, which among other things, suspended the Respondent's medical license for two months. Subsequent to Respondent receiving a copy of said Order and during the period of suspension, Respondent performed three procedures at Long Island Jewish Medical Center, New Hyde Park, New York.

EXHIBIT A

SPECIFICATION OF MISCONDUCT

FIRST SPECIFICATION

VIOLATION OF A BOARD ORDER

Respondent is charged with professional misconduct under N.Y. Education Law section 6530(29) by reason of his having violated a condition imposed upon him pursuant to Section 230 of the Public Health Law, by BPMC Order #99-81, in that Petitioner charges:

1. The facts in paragraph A.

DATED: November 21, 2000
Albany, New York

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

STATE OF NEW YORK
DEPARTMENT OF HEALTH

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

Dennis P. Whalen
Executive Deputy Commissioner

April 21, 1999

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Dianne Abeloff, Esq.
NYS Department of Health
Metropolitan Regional Office
5 Penn Plaza – 6th Floor
New York, NY 10001

Lateef O. Giwa, M.D.
29 West Shore Dr.
Port Washington, NY 11050

Neil Greenburg, Esq.
900 Merchants Concourse
Suite 214
Westbury, NY 11590

RE: In the Matter Lateef Olakunle Giwa, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 99-81) 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.

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.

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.

EXHIBIT 1

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 Butler

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:mla
Enclosure

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

COPY

IN THE MATTER OF LATEEF OLAKUNLE GIWA, M.D.

DETERMINATION AND ORDER

ORDER #99-81

A Notice of Hearing and a Statement of Charges, dated November 2, 1998, respectively , were served upon the Respondent, Lateef Olakunle Giwa, M.D. **MICHAEL R. GOLDING, M.D. (Chair), NORTON SPRITZ, M.D. and DIANNE C. BONANNO**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee (hereinafter the Committee) in this matter pursuant to Section 230(10)(e) of the Public Health Law. **JEFFREY W. KIMMER, ADMINISTRATIVE LAW JUDGE,** served as the Administrative Officer. The Department of Health appeared by Dianne Abeloff, Esq., Associate Counsel. The Respondent appeared by Neil H. Greenberg, Esq. Evidence was received and witnesses sworn and heard and transcripts of these proceedings were made.

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

PROCEDURAL HISTORY

Date of Notice of Hearing and Statement of Charges:	November 2, 1998
Dates of Hearing:	November 23, 1998 December 11, 1998 December 14, 1998 January 11, 1999 January 13, 1999
Dates of Deliberations:	February 8, 1999 March 4, 1999

STATEMENT OF CASE

The Statement of Charges alleged sixteen specifications of professional misconduct, including gross negligence, negligence on more than one occasion, gross incompetence, incompetence on more than one occasion, patient abandonment, practicing the profession fraudulently and violating Public Health Law § 2805-k.

A copy of the Statement of Charges is attached to this Determination and Order and made a part thereof as Appendix I.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the evidence presented in this matter. Unless otherwise noted by an asterisk, all Findings and Conclusions herein are the unanimous determination of the Committee unless noted by an asterisk. Having heard testimony and considered evidence presented by the Department of Health and the Respondent respectively, the Committee hereby makes the following findings of fact. Conflicting evidence, if any, was considered and rejected in favor of the evidence cited. Numbers in parentheses refer to transcript page numbers or exhibits. These citations represent evidence found persuasive by the Committee in arriving at a particular finding. All Findings of Fact made by the Committee were established by at least a preponderance of the evidence

1. LATEEF OLAKUNLE GIWA, M.D., (hereinafter " Respondent"), was authorized to practice medicine in New York State on or about June 30, 1974 by the issuance of license number 119661 by the New York State Education. (Pet. Exs. 1 & 2)

PATIENT A

2. Patient A was admitted to Queens Hospital Center, Queens, N.Y. on or about April 18, 1996, with an x-ray finding of a mass in the right upper lobe. (T.42- 43, Ex. 3)

3. On or about May 6, 1996, Respondent intended to operate to remove the mass in the right lung. He started the procedure with a bronchoscopy. The findings on bronchoscopy were negative. (T. 45; Ex. 3)

4. On that date, Respondent continued the procedure with a mediastinoscopy.

(T. 45, 53; Pet. Exh. 4)

5. After Respondent performed the biopsies of the paratracheal nodes the patient developed bleeding. (T. 53)

6. Respondent controlled the bleeding; but the source of the bleeding was not identified. Respondent performed a right median sternotomy. Respondent opened the mediastinal pleura over the pulmonary artery; dissection was begun to free the lung when massive bleeding ocurred. (T. 58, 103; Pet. Ex. 3)

7. After the patient bled out, Respondent removed the patient's right lung to visualize how the injury to the superior vena cava happened. A physician who is performing surgery on a patient should not remove the lung of a patient after the patient has died on the operating room table. (T.63-65)

PATIENT B

8. Patient B, a 76 year old man with a past medical history of supraglottic laryngectomy for cancer of the larynx, and right lower lobectomy for squamous cell carcinoma of the lung, was admitted to Queens Hospital on January 2, 1996, with a mass in his right lung. (T. 123; Ex. 5)

9. At the time of his admission into the hospital and throughout his hospitalization, Patient B symptoms could not be definitively ascribed to his having a mass in the right lung. (T. 123, 171, 806-807; Ex. 5)

10. On or about February 5, 1996, Respondent performed a cervical mediastinoscopy. Respondent wrote in his operative report that the lesion was distal at the bifurcation of the trachea anteriorly. The biopsy of that lesion revealed that there was metastatic disease to the low mediastinal lymph nodes. (T. 127-128, 167-168; Ex. 5)

11. Given the location of the tumor, Respondent could not remove all of the tumor. This planned completion pneumonectomy could not be a curative procedure because part of the tumor would remain behind. Performing a

completion pneumonectomy for palliative purposes in lung cancer could not have added to this patient's survival, especially in a symptom-free patient where there was nothing to palliate and should not have been performed. (T. 127-129,135,136,159,173 - 175, 178)

12. Respondent, upon finding tumor in the lower part of the bronchus, but before seeing that the tumor had extended into the diaphragm and the atrium, suspended surgery and spoke with the pulmonologist and oncologist. They wanted the Respondent to continue with surgery. The decision to terminate the surgery rested ultimately with the surgeon, not the oncologist or pulmonologist. This is particularly true since the Tumor Board which reviewed Patient B's case had been operated under an incorrect assumption. Respondent knew that in thoracic surgery there was no such thing as debulking a tumor.The Tumor Board evaluation was based on incorrect information. Respondent knew this; however, he still relied on their statements to proceed with Patient B's surgery. (T. 140,151,676, 794-798)

PATIENT C

14. Patient C was admitted to Queens Hospital on or about January 5, 1995, for detoxification. He had a four week history of productive cough, shortness of breath on exertion, weight loss and a chest x-ray which revealed left pleural thickening. (T. 225; Ex. 7)

15. Respondent planned to perform a decortication procedure. This procedure has a potential for significant blood loss. The morning of surgery Patient C informed the resident that he wanted to be a Jehovah's Witness and refused blood transfusion during that day's surgery. Respondent learned this information after the patient was already anesthetized. Respondent did not speak to the patient about this decision. Respondent did not discuss with the patient risks affiliated with performing the surgery without replacement blood, nor did he offer the patient the opportunity to go to a facility that performs bloodless surgery. (T. 228,230, 819; Ex. 7)

16. The decortication was performed and at the close of the procedure there was no evidence of bleeding. The Respondent left the O.R. at or about noon. Shortly after Patient C was transferred from the O.R. table to the SICU bed, he started to

bleed so heavily that he had to be transferred back to the O.R. table and an immediate re-exploration was done by the surgical resident. The bleeding became apparent a few minutes after he was transferred to the SICU bed. (T. 231-232, 296; Ex.7)

17. At or around 12:30 Patient C's blood pressure was going down and his pulse rate was going up. The anesthesiologist gave the patient Hespan and Ephedrine. Hespan is a volume expander given to replace blood loss when blood cannot be given or to stop the bleeding. (T. 836-838; Pet. Ex.7A.)

18. Although the decortication procedure was necessary it was not an emergency procedure. The procedure could have been performed at a later date without any harm to the patient. (T.226-227)

19. A patient who cannot receive blood transfusion needs to be watched more closely than a patient who can receive a transfusion. (T. 838)

20. Respondent left the O.R. prior to the end of the procedure and before the patient was transferred to the SICU bed. He left to go to another hospital to perform elective surgery. Respondent never made arrangements for another attending surgeon to cover for him when he left Queens Hospital Center for another hospital. (T. 297, 812-815, 822, 823; Ex.7)

21. A surgeon has the responsibility to remain in the hospital until the patient leaves the operating room and is transferred to either the recovery room or surgical intensive care unit.. Respondent did not remain in the hospital until Patient C was transferred to the recovery room or surgical intensive care unit. (T.233, 235, 238)

PATIENT D

22. On or about November 17, 1994, Patient D was admitted to Queens Hospital. Shewas a 74 year old woman with a history of smoking, diabetes mellitus over 20 years, hypertension, pulmonary disease, and connective tissue disorder who was on numerous medications. Patient D had cramps in her left calf when walking 10-20 feet. (T. 311, 372; Ex. 9)

23. Respondent performed aortobifemoral bypass surgery on Patient D. In 10-20% of the cases aortobifemoral bypass surgery can be done on the basis of claudication alone.
(T. 467, 472; Ex. 9)

24. Patient D developed complications subsequent to surgery. The hospital chart indicated that Respondent was informed of the difficulties; however, there were no entries from Respondent indicating that he was ever at the bedside treating the patient. A physician has a duty to attend to and treat his patient subsequent to surgery. Respondent failed to attend this patient subsequent to surgery. (T. 327-328, 476; Ex. 9)

HOSPITAL APPLICATION AND REAPPLICATION FORMS

25. From 1995 through June 30, 1997 the Respondent was a staff surgeon at Queens Hospital Center, Jamaica, New York. On or about August 5, 1996, Respondent was notified by certified mail that the Queens Hospital Center had amended his surgical privileges to require the Chief of Thoracic Surgery to assist Respondent, or Respondent had to first-assist the Chief of Thoracic Services, as deemed necessary in Thoracic Surgery on a case-by-case basis, until such time as the Chief is assured that no negative trend as to judgment or surgical technique is present. (Exs. 10 & B)

26. Subsequent to receiving the letter of August 5, 1996, the Respondent had a discussion with the Chief of Surgery at the Queens Hospital Center regarding the effect of the letter on his privileges at the Queens Hospital Center. The Chief of Surgery assured him that his privileges had not been reduced in any way. After August 5, 1996, the Respondent continued to perform surgery at the Queens Hospital Center in the same manner as he did prior to that date and filled in for the Chief of the Thoracic Surgery service at that facility, when he went on vacation. (T.855-857)

27. The Respondent submitted an Application for Medical Staff Appoinment and Clinical Privileges to the Jamaica Hospital dated June 7, 1996, approximately 2 months prior to the issuance of the letter from the Queens Hospital Center. (Ex. 12)

CONCLUSIONS

The following conclusions were made pursuant to the Findings of Fact listed above. The Hearing concluded that the following Factual Allegations were proven by a preponderance of the evidence (the paragraphs noted refer to those set forth in the Statement of Charges, Factual Allegations). The citations in parentheses refer to the Findings of Fact (supra), which support each Factual Allegation:

Paragraph A.: (2, 3,4,6);
Paragraph A.5: (7);
Paragraph B.: (8,10,11);
Paragraph B.2: (9,11,12);
Paragraph C.: (13,14,19);
Paragraph C.1: (14-18);
Paragraph C.2: (19-20);
Paragraph D.: (21, 22);
Paragraph D.2: (23).

It should be noted that the Petitioner **withdrew Paragraph A.2.** from the Statement of Charges. Additionally, the determination that Paragraph D.1. was not proven was not unanimous.

The Committee further concluded that the following Specifications should **be sustained**. The citations in parentheses refer to the Factual Allegations from the Statement of Charges, which support each specification:

PRACTICING THE PROFESSION WITH GROSS NEGLIGENCE

First through Fourth Specifications: (Paragraphs A.5., B.2., C.1., C.2. and D.2);

PRACTICING THE PROFESSION WITH NEGLIGENCE ON MORE THAN ONE OCCASION

Fifth Specification: (Paragraphs A.5., B.2., C.1., C.2. and D.2.);

PATIENT ABANDONMENT

Eleventh and Twelfth Specifications: (Paragraphs C.1. and D.2.);

The Committee voted to **not sustain** the sixth through tenth and the thirteenth through sixteenth specifications.

DISCUSSION

Respondent was charged with violating six subdivisions of professional misconduct within the meaning of Education Law §6530. This statute sets forth numerous forms of conduct which constitute professional misconduct, but does not provide definitions of the various types of misconduct. During the course of its deliberations on these charges, the Committee consulted a memorandum from the

General Counsel for the Department of Health. This document, entitled "Definitions of Professional Misconduct Under the New York Education Law", sets forth suggested definitions for gross negligence, negligence, gross incompetence, incompetence, and the fraudulent practice of medicine.

The following definitions were utilized by the Committee during its deliberations:

Negligence is the failure to exercise the care that would be exercised by a reasonably prudent licensee under the circumstances.

Incompetence is a lack of the skill or knowledge necessary to practice the profession.

Gross Negligence is the failure to exercise the care that would be exercised by a reasonably prudent physician under the circumstances, and which failure is manifested by conduct that is egregious or conspicuously bad.

Gross Incompetence is an unmitigated lack of the skill or knowledge necessary to perform an act undertaken by the licensee in the practice of medicine.

Using the above-referenced definitions as a framework for its deliberations, the Committee unanimously concluded, by a preponderance of the evidence, that the specifications of professional misconduct relating to gross negligence, negligence on more than one occasion should be sustained. The rationale for the Committee's conclusions is set forth below.

The Petitioner presented Choon S. Shin, M.D., as its sole expert witness. Dr. Shin is a board certified thorasic surgeon with special qualifications in vascular surgery and is a clinical professor of surgery at Cornell University Medical College. There was no evidence of any bias on the part of Dr. Shin or his unsuitability as an expert witness. The Committee wishes to note that because of Dr. Shin's linguistic background he often adopted a literal understanding of the

questions posed to him which resulted in responses which could be interpreted as mitigating the charges against the Respondent.

The Respondent presented Fabio Giron, M.D. who is a board certified vascular surgeon, and Avraham D. Merav, M.D. who is a board certified thorasic surgeon, as his expert witnesses.

The Committee found the experts to be credible in part and not in part.

PATENT A

The Committee found the testimony of Dr. Merav regarding this patient to be persuasive. His testimony was credible and was supported by the documentary evidence. His testimony with respect to this patient was clear and convincing. The testimony of the Petitioner's expert regarding this patient, was equivocal and on some points did not support the charges. However, with respect to the allegation regarding the removal of the patient's lung after the patient expired, both experts were in agreement that this was a deviation from the acceptable standard of care.

PATIENT B

The Committee concluded that with respect to this patient charge paragraph B.2 was proven by the Petitoner. That paragraph related to the completion right pneumonectomy performed on the patient.The Committee's finding was based on the Petitioner's expert's testimony as to the location of the tumor and his definitive statement about the inappropriateness of the procedure after the Respondent obtained information about the metastatic tumor during the course of the operation.

This conclusion was reached notwithstanding the determination of the hospital's Tumor Board to approve the initial surgery.

The Committee concluded that the charge relating to the Respondent's failure to appropriately evaluate the size of the tumor was not supported by the evidence, in particular the hospital record. However the Committee wishes to note that had the Petitioner charged a failure to evaluate the size *and/or location* of the tumor it would have been confirmed.

Additionally, with respect to the charge of lacerating the pulmonary vein and being unable to repair the tear, the Committee found the testimony of the Respondent's expert to be persuasive. He testified that such an occurrence was a not an uncommon risk in this type of surgery. The Petitioner's witness did not refute this. Therefore this charge was not proven.

PATIENT C

The Committee found the Petitioner had proven the charges relating to the care of this patient. The Committee concluded that the Respondent left the hospital too soon without any formal transfer of care of the patient to another qualified physician. The patient was still in the operating room when the problems developed. At that point in the surgical procedure the Respondent was not available nor had he made arrangements for such a contingency. The Committee concurred with the Petitioner's witness that the Respondent should not have left when he did.

The Committee also agreed with the Petitioner's expert that the Respondent should have personally explained the risks of the surgery in light of the patient refusing blood transfusions. Since it was not emergency surgery it could have been postponed at no detriment to the patient. Because of the special circumstances, the Committee rejected the viewpoint of the Respondent's expert that the Respondent could rely on house staff to inform the patient of the risks.

PATIENT D

A majority of the Committee found that charge D.1. was not proven. There were indications that the patient did have pain when at rest. The testimony of the Respondent's expert was clear that rest pain alone was a sufficient indicator for arterial reconstruction, while the testimony of the Petitioner's expert was not definitive in stating that performing this surgery was a deviation from accepted medical standards. The minority on the Committee concluded that since there was no evidence of a threat of tissue loss and the evidence of pain while resting was not consistent throughout the patient record, surgery was not justified.

With respect to the charge regarding attending to the patient pre-operatively and post-operatively, the Committee determined that the Petitioner did not prove the charge as to pre-operative care but did establish a failure to attend to the patient post-operatively or to document such activity. The Committee based that determination on the lack of any notes in the patient's hospital record subsequent to the surgery, which indicated they were generated by the Respondent.

HOSPITAL APPLICATION FORMS

The Committee found the Respondent's explanation of why he did not consider his privileges at Queens Hospital to have been reduced or changed credible. The Respondent had received a letter stating that the hospital may require his surgeries be supervised if they deem it necessary. Subsequently he met with the Chief of Surgery at Queens Hospital about this letter and was told that his privileges had not been changed. As evidence of that his surgeries after the receipt of the letter were never supervised and the Respondent even covered for the chief of his particular surgical unit when he went on vacation.

terminated. The Committee felt that the actions of the Respondent warranted a minimal suspension of his license during which time the chief of the surgical service where he is working would have to give prior approval to all elective surgeries.

ORDER

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

1. The First through Fifth, the Eleventh and Twelfth Specifications of professional misconduct, as set forth in the Statement of Charges (Appendix I, attached hereto and made a part of this Determination and Order) are **SUSTAINED**;

2. Respondent's license to practice medicine in New York State be and hereby is **SUSPENDED** , the terms of the suspension are contained in Appendix II, attached hereto and made a part of this Determination and Order.

3. Respondent is placed on **PROBATION FOR 22 MONTHS**, the terms of the probation are contained in Appendix II, attached hereto and made a part of this Determination and Order.

DATED: New York, New York
April 21 , 1999

MICHAEL R. GOLDING, M.D.
NORTON SPRITZ, M.D.
DIANE C. BONANNO

TO: Dianne Abeloff, Esq.
Associate Counsel
New York State Department of Health
5 Penn Plaza - 6th Floor
New York, New York 10001

Neil H. Greenberg, Esq.
900 Merchants Concourse
Suite 214
Westbury, New York 11590

Lateef O. Giwa, M.D.
29 West Shore Dr.
Port Washington, New York 11050

APPENDIX I

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

IN THE MATTER OF LATEEF OLAKUNLE GIWA, M.D.	STATEMENT OF CHARGES

LATEEF OLAKUNLE GIWA, M.D., the Respondent, was authorized to practice medicine in New York State on or about June 30, 1974, by the issuance of license number 119661 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about April 18, 1996, Patient A (the identity of the patients is contained in the appendix) was admitted to Queens Hospital, Queens, N.Y. On or about May 6, 1996, Respondent performed a bronchoscopy, mediastinoscopy median sternotomy and a right lateral thoracotomy. Patient A was pronounced dead on the operating room table. Respondent's care deviated from accepted medical standards, in that:

1. Respondent failed to identify the iatrogenic laceration of the superior vena cava he created during the median sternotomy exploration.

2. Respondent failed to control the hemorrhage secondary to the cervical mediastinoscopy he had just performed.

3. Given the location of the enlarged lymph nodes in the prevascular

space, Respondent inappropriately performed a mediastinoscopy.

4. Respondent inappropriately completely closed the superior vena cava.

5. At the end of the May 6th operation, Respondent inappropriately removed the entire right lung in a patient who had expired on the operating table.

B. On or about January 2, 1996, Patient B was admitted to Queens Hospital. On or about February 5, 1996, Respondent performed a bronchoscopy, mediastinoscopy and right thoracotomy with an attempted completion of right pneumonectomy. Patient B was pronounced dead on the operating room table. Respondent's conduct deviated from accepted medical standards, in that:

1. Respondent failed to appropriately evaluate the size of Patient B's tumor prior to attempted resection.

2. The completion right pneumonectomy was contraindicated since Patient B had carcinoma of the right lower lobe which had already metastasized to the carinal/subcarinal lymph nodes.

3. During the course of the February 5th procedure Respondent lacerated the pulmonary vein and then was unable to control the hemorrhage.

C. On or about January 5, 1995, Patient C, a Jehovah's Witness, was admitted to Queens Hospital. On or about January 19, 1995, Respondent performed a left thoracotomy and decortication of the left lung. Respondent's conduct deviated from accepted medical standards, in that:

1. Respondent left the hospital premise before the patient was completely stable and was unavailable to return to the operating room to manage the post-operative hemorrhage.

2. Respondent inappropriately performed a bloody elective procedure on a patient who had refused to receive a blood transfusion.

D. On or about November 17, 1994, Patient D was admitted to Queens Hospital. On or about November 28, 1994, Respondent performed an aortobifemoral bypass on Patient D. Respondent's care deviated from accepted medical standards, in that:

1. Arterial reconstruction was not indicated for this patient who did not evidence either threat of tissue loss or rest pain.

2. Respondent failed to attend Patient D pre-operative and post-operatively, and/or document such treatment in Patient D's chart.

E. Respondent, in his 1997 appointment form to Mercy Hospital, failed to disclose that his privileges had been limited at Queens Hospital in August

1996, in response to the question, "Have your privileges at any hospital been suspended, diminished, revoked or not been renewed."

1. Respondent knowingly and with the intent to deceive the hospital, failed to disclose that his privileges had been limited.

F. Respondent, in his 1996 appointment form to Jamaica Hospital, failed to disclose his affiliation with Queens Hospital Center in response to a request t list all institutional affiliations since completion of post-graduate education.

1. Respondent knowingly and with the intent to deceive the hospital, failed to disclose that his privileges had been limited.

G. Respondent, in his 1997 reappointment form to Long Island Jewish Hospital, failed to disclose that his privileges had been limited at Queens Hospital in August 1996, in response to the question, "Have your medical staff appointment or clinical privileges been revoked, suspended, refused, reducec or not renewed in any other hospital or health related facility since your last reappointment?"

1. Respondent knowingly and with the intent to deceive the hospital, failed to disclose that his privileges had been limited.

H. Respondent, in his 1997 reappointment form to North Shore University Hospital at Glen Cove, failed to disclose that his privileges had been limited a Queens Hospital in August 1996, in response to the question, "Have your medical staff appointment or clinical privileges been revoked, suspended,

refused, reduced, or not renewed in any other hospital or health related facilit since your last reappointment?"

1. Respondent knowingly and with the intent to deceive the hospital, failed to disclose that his privileges had been limited.

SPECIFICATION OF CHARGES

FIRST THROUGH FOURTH SPECIFICATIONS
GROSS NEGLIGENCE

Respondent is charged with committing professional misconduct as defined i N.Y. Educ. Law §6530(4)(McKinney Supp. 1998) by practicing the profession of medicine with gross negligence as alleged in the facts of the following:

1. Paragraph A, A1 through A5
2. Paragraph B, B1 through B3
3. Paragraph C, C1 and C2
4. Paragraph D, D1 and D2

FIFTH SPECIFICATION
NEGLIGENCE ON MORE THAN ONE OCCASION

Respondent is charged with committing professional misconduct as defined i N.Y. Educ. Law §6530(3)(McKinney Supp. 1998) by practicing the profession of medicine with negligence on more than one occasion as alleged in the facts of two or more of the following:

5. Paragraphs A, A through A5; B, B1 through B3; C, C1 and C2;

and/or D, D1 and D2.

SIXTH THROUGH NINTH SPECIFICATIONS

GROSS INCOMPETENCE

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(6)(McKinney Supp. 1998) by practicing the profession of medicine with gross incompetence as alleged in the facts of the following:

6. Paragraph A, A1 through A5
7. Paragraph B, B1 through B3
8. Paragraph C, C1 and C2
9. Paragraph D, D1 and D2

TENTH SPECIFICATION

INCOMPETENCE ON MORE THAN ONE OCCASION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(5)(McKinney Supp. 1998) by practicing the profession of medicine with incompetence on more than one occasion as alleged in the facts of two or more of the following:

10. Paragraphs A, A through A5; B, B1 through B3; C, C1 and C2; and/or D, D1 and D2.

ELEVENTH AND TWELFTH SPECIFICATIONS

PATIENT ABANDONMENT

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(30)(McKinney Supp. 1998) by abandoning or neglecting a patient under and in need of immediate professional care without making reasonable arrangements for the continuation of such care, as alleged in the facts of:

11. Paragraphs C, C1
12. Paragraphs D, D2

THIRTEENTH THROUGH SIXTEENTH SPECIFICATION

VIOLATION OF § 2805-k OF THE PUBLIC HEALTH LAW

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(14)(McKinney Supp. 1998) by violating Section 2805-k of the Public Health Law, as alleged in the facts of:

13. Paragraph E
14. Paragraph F
15. Paragraph G
16. Paragraph H

THIRTEENTH THROUGH SIXTEENTH SPECIFICATIONS

FRAUDULENT PRACTICE

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

17. Paragraph E, E1
18. Paragraph F, F1
19. Paragraph G, G1
20. Paragraph H, H1

DATED: November 2, 1998
New York, New York

ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct

APPENDIX II

TERMS OF SUSPENSION

Dr. Giwa's license to practice medicine in the State of New York shall be suspended for a period of one (1) year, with ten (10) months of said suspension stayed. The terms of probation shall be in effect upon completion of the period of suspension which is not stayed. This period will be in addition to the probationary period of one (1) year.

TERMS AND CONDITIONS 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 imposed by law and by his profession.

2. Respondent shall comply with all federal, state and local laws, rules and regulations governing the practice of medicine in New York State.

3. Respondent shall submit prompt (within 20 days) written notification to the Board, addressed to the Director, Office of Professional Medical Conduct (OPMC), 433 River St., 4th Floor, Troy, New York 12180, regarding any change in employment, practice, residence or telephone number, within or without New York State.

4. In the event that Respondent leaves New York to reside or practice outside the State, Respondent shall notify the Director of the OPMC in writing at the address indicated above, by registered or certified mail, return receipt requested, of the dates of his departure and return. Periods of residency or practice outside New York State shall toll the probationary period, which shall be extended by the length of residency or practice outside New York State.

5. Respondent shall submit quarterly declarations, under penalty of perjury, stating whether or not there has been compliance with all terms and conditions of probation and, if not, the specifics of such non-compliance. These shall be sent to the Director of the OPMC at the address indicated above.

6. Respondent shall submit written proof to the Director of the OPMC at the address indicated above that he has paid all registration fees due and is currently registered to practice medicine as a physician with the New York State Education Department. If Respondent elects not to practice medicine as a physician in New York State, then

he shall submit written proof that he has notified the New York State Education Department of that fact.

7. At least 15 days before the end of the period of suspension which is not stayed, respondent shall submit to the OPMC for its prior approval a list of all hospitals wherein the Respondent has surgical privileges and for each such hospital a written agreement that for all elective surgery performed by the Respondent the Respondent will get prior written approval of the performance of such surgery from the chief of the surgical service wherein the surgery is to be performed, unless obtaining this approval would result in a delay which may be harmful to the patient. If the Respondent obtains surgical privileges at any additional hospitals during the period of probation he shall be required to comply with the same terms noted above in this paragraph, prior to performing surgery in said hospital. Respondent's period of probation and his ability to resume the practice of medicine in this state shall not commence until he receives written approval from the Director of OPMC that he is in compliance with the terms of probation.

8. If there is full compliance with every term and condition set forth herein, Respondent may practice as a physician in New York State in accordance with these terms of probation the Determination and Order of the Board for professional Medical Conduct; provided, however, that on receipt of evidence of non-compliance or any other violation of the term(s) and condition(s) of probation, a violation of probation proceeding and/or such other proceeding as may be warranted, may be initiated against Respondent pursuant to New York Public Health Law §230 or §230(19) or any other applicable laws.

EXHIBIT 2

TERMS AND CONDITIONS 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 imposed by law and by his profession.

2. Respondent shall comply with all federal, state and local laws, rules and regulations governing the practice of medicine in New York State.

3. Respondent shall submit prompt (within 20 days) written notification to the Board, addressed to the Director, Office of Professional Medical Conduct (OPMC), 433 River Street, 4th Floor, Troy, New York 12180, regarding any change in employment, practice, residence or telephone number, within or without New York State.

4. In the event that Respondent leaves New York to reside or practice outside the State, Respondent shall notify the Director of the OPMC in writing at the address indicated above, by registered or certified mail, return receipt requested, of the dates of his departure and return. Periods of residency or practice outside New York State shall toll the probationary period, which shall be extended by the length of residency or practice outside New York State.

5. Respondent shall submit quarterly declarations, under penalty of perjury, stating whether or not there has been compliance with all terms and conditions of probation and, if not, the specifics of such non-compliance. These shall be sent to the Director of OPMC at the address indicated above.

6. Respondent shall submit written proof to the Director of the OPMC at the address indicated above that he has paid all registration fees due and is currently registered to practice medicine as a physician with the New YORK State Education Department. If RESPONDENT elects not to practice medicine as a physician in New York State, then he shall submit written proof that he has notified the New York State Education Department of that fact.

7. At least 15 days before the end of the period of suspension which is not stayed, Respondent shall submit to the OPMC for its prior approval a list of all hospitals wherein the Respondent has surgical privileges and for each such hospital a written agreement that for all elective surgery performed by the Respondent the Respondent will get prior written approval of the performance of such surgery from the chief of the surgical service wherein the surgery is to be performed, unless obtaining this approval would result in a delay which may be harmful to the patient. If the Respondent obtains surgical privileges at any additional hospitals during he period of probation he shall be required to comply with the same terms noted above in this paragraph, prior to performing surgery in said hospital. Respondent's period of probation and his ability to resume the practice of medicine in this state shall commence until he receives written approval from the Director of OPMC that he is in compliance with the terms of probation.

8. If there is full compliance with every term and condition set forth herein, Respondent may practice as a physician in New York State in accordance with these terms of probation the Determination and Order of the Board for Professional Medical Conduct; provided, however, that on receipt of evidence of non-compliance or any other violation of the term(s) and condition(s) of probation, a violation of probation proceeding and/or such other proceeding as may be warranted, may be initiated against Respondent pursuant to New YORK Public Health Law §230 or §230(19) or any other applicable laws.

Additionally the Committee concluded the Respondent's failure to disclose his affiliation with Queens Hospital on his 1996 Jamaica Hospital form was not with the intent to deceive. The form was submitted 2 months prior to the Respondent's receipt of the letter from Queens Hospital about his surgical privileges, therefore no intent to deceive could be implied.

DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions set forth above, unanimously determined that Respondent's license to practice medicine in New York State should **be suspended** for a period of 1 year with 10 months of said suspension stayed. Subsequent to the actual suspension his license shall be on probation for a period of 22 months. The terms of the probation are more specifically set forth in. Appendix II. This determination was reached upon due consideration of the full spectrum of penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties.

The Committee unanimously agreed that the Respondent's license should not be revoked. The record in this case established Respondent had a good knowledge of the surgery he was performing, however in certain cases there was a question of whether or not the surgery should have been performed and at what stage in the surgery the procedure should have been