



STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Antonia C. Novello, M.D., M.P.H., Dr.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

December 27, 2000

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Daniel Gunenzburger, Esq.
NYS Department of Health
Office of Professional Medical Conduct
Hedley Park Place
433 River Street – 4th Floor
Troy, New York 12180

Sein Myint, M.D.
c/o Steven H. Jesser, Esq.
1 Northfield Plaza
Northfield, Illinois 60093

Steven H. Jesser, Esq.
1 Northfield Plaza, Suite 300
Northfield, Illinois 60093

RE: In the Matter of Sein Myint, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 00-361) 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 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,

A handwritten signature in black ink, appearing to read "Tyone T. Butler". The signature is written in a cursive style with a large initial "T" and "B".

Tyone T. Butler, Director
Bureau of Adjudication

TTB:cah
Enclosure

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

COPY

**IN THE MATTER
OF
SEIN MYINT, M.D.**

DETERMINATION

AND

ORDER

BPMC 00-361

BENJAMIN WAINFELD, M.D., Chairperson, **RAFAEL LOPEZ, M.D.** and **PETER S. KOENIG, Sr.**, duly designated members of the State Board for Professional Medical Conduct, appointed by the Commissioner of Health of the State of New York pursuant to Section 230(1) of the Public Health Law, served as the Hearing Committee in this matter pursuant to Section 230(10)(e) of the Public Health Law. **CHRISTINE C. TRASKOS, ESQ.**, served as Administrative Officer for the Hearing Committee. The Department of Health appeared by **DONALD P. BERENS, Jr.** General Counsel, **DANIEL GUENZBURGER, ESQ.**, Associate Counsel, of Counsel. The Respondent appeared by **STEVEN H. JESSER, ESQ.** Evidence was received and witnesses sworn and heard and transcripts of these proceedings were made.

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

STATEMENT OF CHARGES

The accompanying Statement of Charges alleged four (4) specifications of professional misconduct for practicing the profession of medicine fraudulently on 2 occasions, for willfully making or filing a false report and for engaging in conduct that evidences moral unfitness. The

charges are more specifically set forth in the Statement of Charges dated November 9, 2000, a copy of which is attached hereto as Appendix I and made a part of this Determination and Order.

WITNESSES

For the Petitioner: None
For the Respondent: Sein Myint, MD

FINDINGS OF FACT

1. Respondent was authorized to practice medicine in New York State by the issuance of license number 207017 on June 18, 1997, by the New York State Education Department. (Exh. 1)
2. Respondent submitted a letter of reference dated December 5, 1997 to the Western Queens Community Hospital, 25-10 30th Avenue, Long Island City New York, that purported to be from Thomas Santucci Jr., M.D., Director of the Department of Medicine at the Jamaica Hospital Medical Center. (Exh.5)
3. Respondent acknowledges that he alone wrote the letter dated December 5, 1997 that was submitted as a reference letter with the forged signature of Dr. Thomas Santucci to Western Queens Community Hospital . (Exh. A, T. 32)
4. Respondent appeared at a hearing on February 24, 2000 before the Board of Professional Medical Conduct without representation of counsel. Respondent was questioned if he had sent similar forged letters from Dr. Santucci to Western Queens or other facilities. Respondent answered "No." (Ex. 4, p. 29, p. 66, p.83) He was further asked if he was sure about the letter to Western Queens Hospital. Respondent answered "No." (Ex. 4, p. 83-84)

5. The Department did not become aware of the December 5, 1997 reference letter to Western Queens Community Hospital until after obtaining Respondent's credential file from that hospital on March 15, 2000. (Resp. A pp.4-5)

CONCLUSIONS OF LAW

The following conclusions were made pursuant to the Findings of Fact listed above. All conclusions resulted from a unanimous vote of the Hearing Committee unless noted otherwise.

The Hearing Committee concluded that the following Factual Allegations should be sustained. The citations in parenthesis refer to the Findings of Fact which support each Factual Allegation:

Paragraph A:	(2)
Paragraph A.1:	(3)
Paragraph B:	Not Sustained

CONCLUSIONS OF LAW

The following conclusions were made pursuant to the Findings of Fact listed above. All conclusions resulted from a unanimous vote of the Hearing Committee unless noted otherwise.

The Hearing Committee concluded that the two (2) of the four (4) Specifications of Professional Misconduct should be sustained.

PRACTICING THE PROFESSION OF MEDICINE FRAUDULENTLY

Paragraphs A and A.1

WILLFULLY MAKING OR FILING A FALSE REPORT

Paragraphs A and A.1

MORAL UNFITNESS

NOT SUSTAINED

DISCUSSION

Respondent is charged with four (4) specifications alleging professional misconduct within the meaning of Education Law § 6530. This statute sets forth numerous forms of conduct which constitute professional misconduct, but do not provide definitions of the various types of misconduct. During the course of its deliberations on these charges, the Hearing Committee consulted a memorandum prepared by 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 Hearing Committee during its deliberations:

Fraudulent practice is the intentional misrepresentation or concealment of a known fact, made in some connection with the practice of medicine. The Hearing Committee must find that (1) a false representation was made by the licensee, whether by words, conduct or concealment of that which should have been disclosed, (2) the licensee knew the representation was false, and (3) the

licensee intended to mislead through the false representation. The licensee's knowledge and intent may properly be inferred from facts found by the Hearing Committee, but the Committee must specifically state the inferences it is drawing regarding knowledge and intent.

Using the above-referenced definition as a framework for its deliberations, the Hearing Committee concluded, by a preponderance of the evidence, that two (2) of the four (4) specifications of professional misconduct should be sustained. The rationale for the Committee's conclusions regarding each specification of misconduct is set forth below.

PRACTICING THE PROFESSION OF MEDICINE FRAUDULENTLY

The First Specification alleges that Respondent knowingly and falsely represented that the letter he had provided to Western Queens Community Hospital was an authentic letter of reference from Dr. Santucci, when in fact he knew that it was a fabrication. Respondent has acknowledged that he prepared and submitted this letter.(Resp. A, T.32) The Hearing Committee finds that submission of the forged letter from Dr. Santucci constitutes fraudulent practice. As a result, the Hearing Committee sustains the First Specification.

The Second Specification alleges that Respondent, in sworn testimony in a prior proceeding held before the Board of Professional Medical Conduct on February 24, 2000, knowingly and falsely denied having submitted a fabricated letter of reference in connection with his application to Western Queens Community Hospital, when in fact, he knew that he had submitted a forged letter. The Hearing Committee finds that at the February 24,2000 hearing, when asked if he had forged a letter to Western Queens, Respondent answered that he had not. When pressed about whether he was sure about this, Respondent's answer was "No." The Hearing Committee finds that this answer was never followed up for further clarification. The Hearing Committee concludes that the unresolved confusion created by Respondent's answer does not support the elements of the charge that Respondent's answer was knowingly and falsely represented. Thus, the Hearing Committee does

not sustain the Second Specification.

WILLFULLY MAKING OR FILING A FALSE REPORT

Since Respondent has acknowledged that he alone wrote the letter that was submitted as a reference from Dr. Santucci, the Hearing Committee finds this to constitute willfully making a false report. Therefore, the Hearing Committee sustains the Third Specification.

MORAL UNFITNESS

The Hearing Committee finds that Respondent's submission of the December 5, 1997 letter does not rise to the level of moral unfitness. Therefore, the Hearing Committee does not sustain the Fourth Specification.

DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above determined by a unanimous vote that Respondent's license to practice medicine in New York State should be suspended for an additional four (4) months and then continue on probation as outlined in the Administrative Review Board Decision(ARB) Determination and Order No. 00-103. (Ex. 3) . 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 Hearing Committee notes that the December 5, 1997 letter is from the same time period that was the subject of the February 2000 hearing and was somehow overlooked in the original Department investigation. Thus, they find that this post-hearing evidence is not indicative of a prospective pattern of misconduct by Respondent that warrants a severe penalty. The Hearing Committee further finds that the Department accepted Respondent's answers at the February 2000 hearing without a challenge. They also note that English is Respondent's second language and that

he had some difficulty expressing himself at this hearing even with benefit of counsel.

The Hearing Committee finds that revocation would be an overly harsh penalty in this instance. They note that there is no evidence in the record of patient harm or Respondent's ability to practice medicine at the present time. Therefore, under the totality of the circumstances, the Hearing Committee finds that extending Respondent's suspension to an additional 4 months and keeping him on the 3 year probation as set forth in the prior ARB decision is commensurate with the nature of the misconduct in this instance.

ORDER

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

1. The First and Third Specifications of Professional Misconduct, as set forth in the Statement of Charges (Petitioner's Exhibit #1) are **SUSTAINED**; and
2. The Second and Fourth Specifications of Professional Misconduct are **NOT SUSTAINED**; and
3. Respondent's license to practice medicine in New York State is **SUSPENDED** for an additional four (4) months and he shall then continue on probation for three (3) years as set forth in ARB Determination and Order No. 00-1-3; and
4. This Order shall be effective upon service on the Respondent or the Respondent's attorney by personal service or by certified or registered mail.

DATED: New York, New York
12/25 2000



BENJAMIN WAINFELD, M.D.
(Chairperson)

RAFAEL LOPEZ, M.D.
PETER S. KOENIG, Sr.

TO: Daniel Gunenzburger, Esq.
Associate Counsel
Bureau of Professional Medical Conduct
5 Penn Plaza- 6th Floor
New York, NY 10001-1803

Steven H. Jesser, Esq.
1 Northfield Plaza, Suite 300
Northfield, Illinois 60093

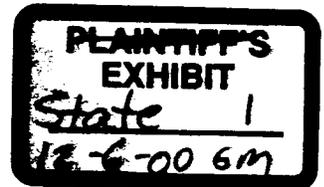
APPENDIX I

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

IN THE MATTER
OF
SEIN MYINT, M.D.

NOTICE
OF
HEARING

TO: SEIN MYINT, M.D.
c/o Steven H. Jesser, Esq.
1 Northfield Plaza
Northfield, Illinois 60093



PLEASE TAKE NOTICE:

A hearing will be held pursuant to the provisions of N.Y. Pub. Health Law §230 (McKinney 1990 and Supp. 2000) and N.Y. State Admin. Proc. Act §§301-307 and 401 (McKinney 1984 and Supp. 2000). The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on December 6, 2000 at 10:00 a.m., at the Offices of the New York State Department of Health, 5 Penn Plaza, Sixth Floor, New York, New York, 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 New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Hedley Park Place, 433 River Street, Fifth Floor South, Troy, NY 12180, ATTENTION: HON. TYRONE BUTLER, DIRECTOR, BUREAU OF

ADJUDICATION, (henceforth "Bureau of Adjudication"), (Telephone: (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 §230(10)(c), you shall file a written answer to each of the charges and allegations in the Statement of Charges not less than ten days prior to the date of the hearing. Any charge or 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 §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. Pursuant to the terms of N.Y. State Admin. Proc. Act §401 (McKinney Supp. 2000) and 10 N.Y.C.R.R. §51.8(b), the Petitioner hereby demands disclosure of the evidence that the Respondent intends to introduce at the hearing, including the names of witnesses, a list of and copies of documentary evidence and a description of physical or other evidence which cannot be photocopied.

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 OTHER SANCTIONS SET OUT IN NEW
YORK PUBLIC HEALTH LAW §§230-a (McKinney Supp.
2000). YOU ARE URGED TO OBTAIN AN ATTORNEY TO
REPRESENT YOU IN THIS MATTER.

DATED: New York, New York
November 9, 2000



ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct

Inquiries should be directed to: Daniel Guenzburger
Associate Counsel
Bureau of Professional
Medical Conduct
5 Penn Plaza, Suite 601
New York, New York 10001
(212) ~~643-2615~~
268-6806

SECURITY NOTICE TO THE LICENSEE

The proceeding will be held in a secure building with restricted access. Only individuals whose names are on a list of authorized visitors for the day will be admitted to the building

No individual's name will be placed on the list of authorized visitors unless written notice of that individual's name is provided by the licensee or the licensee's attorney to one of the Department offices listed below.

The written notice may be sent via facsimile transmission, or any form of mail, but must be received by the Department **no less than two days prior to the date** of the proceeding. The notice must be on the letterhead of the licensee or the licensee's attorney, must be signed by the licensee or the licensee's attorney, and must include the following information:

Licensee's Name _____ Date of Proceeding _____

Name of person to be admitted _____

Status of person to be admitted _____
(Licensee, Attorney, Member of Law Firm, Witness, etc.)

Signature (of licensee or licensee's attorney) _____

This written notice must be sent to either:

New York State Health Department
Bureau of Adjudication
Hedley Park Place
433 River Street, Fifth Floor South
Troy, NY 12180
Fax: 518-402-0751

New York State Health Department
Bureau of Professional Medical Conduct
5 Penn Plaza
New York, NY 10001
Fax: 212-613-2611

IN THE MATTER
OF
SEIN MYINT, M.D.

STATEMENT
OF
CHARGES

SEIN MYINT, M.D., the Respondent, was authorized to practice medicine in New York State on or about June 18, 1997, by the issuance of license number 207017 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. Respondent submitted a letter of reference dated December 5, 1997 to the Western Queens Community Hospital, 25-10 30th Avenue, Long Island City New York, that purported to be from Thomas Santucci Jr., M.D., Director of the Department of Medicine at the Jamaica Hospital Medical Center. By said submission, Respondent:
1. Knowingly and falsely represented that the letter he had provided to Western Queens Community Hospital was an authentic letter of reference from Thomas Santucci, Jr., M.D., when, in fact, he knew that the letter was a fabrication. Respondent intended to mislead.
- B. In sworn testimony in a prior proceeding held before the New York State Board of Professional Medical Conduct on or about February 6, 2000,

Respondent knowingly and falsely denied having submitted a fabricated letter of reference in connection with his application to Western Queens Community Hospital, when, in fact, he knew that he had submitted a forged letter as alleged in Paragraphs A and A1 of the Statement of Charges. Respondent intended to mislead.

SPECIFICATION OF CHARGES

FIRST AND SECOND SPECIFICATIONS

FRAUDULENT PRACTICE

Respondent is charged with committing professional misconduct as defined by N.Y. Educ. Law §6530(2)(McKinney Supp. 2000) by practicing the profession of medicine fraudulently as alleged in the facts of the following:

1. Paragraphs A and A1.
2. Paragraphs B.

THIRD SPECIFICATION

FALSE REPORTS

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(21)(McKinney Supp. 2000) by wilfully making or filing a false report, as alleged in the facts of:

3. Paragraphs A and A1.

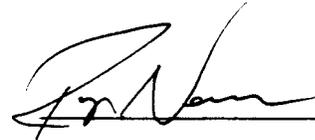
FOURTH SPECIFICATION

MORAL UNFITNESS

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(20)(McKinney Supp. 2000) by engaging in conduct in the practice of the profession of medicine that evidences moral unfitness to practice as alleged in the facts of the following:

4. Paragraphs A, A1 and/or B.

DATED: November 9, 2000
New York, New York



ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct