



THE STATE EDUCATION DEPARTMENT THE UNIVERSITY OF THE STATE OF NEW YORK ALBANY, N.Y. 12224

OFFICE OF PROFESSIONAL DISCIPLINE
ONE PARK AVENUE, NEW YORK, NEW YORK 10016-5802

July 6, 1990

David Asley, Physician
a/k/a ~~Saeed Salamasi~~
197 Fen Way
Syosset, N.Y. 11791

Saeed SALMASIAN

Re: License No. 175496

Dear Dr. Asley:

Enclosed please find Commissioner's Order No. 10337. This Order and any penalty contained therein goes into effect five (5) days after the date of this letter.

If the penalty imposed by the Order is a surrender, revocation or suspension of your license, you must deliver your license and registration to this Department within ten (10) days after the date of this letter. In such a case your penalty goes into effect five (5) days after the date of this letter even if you fail to meet the time requirement of delivering your license and registration to this Department.

Very truly yours,

DANIEL J. KELLEHER
Director of Investigations

By:

Moira A. Doran

MOIRA A. DORAN
Supervisor

DJK/MAH/er
Enclosures

CERTIFIED MAIL- RRR

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

**REPORT OF THE
REGENTS REVIEW COMMITTEE**

**DAVID ASLEY
a/k/a SAEED SALMASIAN**

CALENDAR NO. 10337



The University of the State of New York

IN THE MATTER
of the
Disciplinary Proceeding
against

DAVID ASLEY
a/k/a SAEED SALMASIAN

No. 10337

who is currently licensed to practice
as a physician in the State of New York.

REPORT OF THE REGENTS REVIEW COMMITTEE

DAVID ASLEY a/k/a SAEED SALMASIAN, hereinafter referred to as respondent, was given due notice of this proceeding and informed that he could appear and be represented by an attorney.

On December 20, 1989 and March 28, 1990, respondent appeared before us in person and was represented by his attorney, Robert Asher, Esq. Daniel Guentzburger, Esq., represented the Department of Health. Both parties consented to our proceeding with only two members of this Committee, including the Regent chairperson, and to this report and recommendation being issued by the two members present.

Petitioner's recommendation as to the penalty to be imposed, should respondent be found guilty, was that respondent's license to practice as a physician in the State of New York be revoked.

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a/k/a SAIED SALMASIAN

Respondent's recommendation was that the case be dismissed or, in the event it is not dismissed, respondent's license be revoked, said revocation be stayed, and respondent be placed on probation with terms of supervision.

The record in this proceeding includes the documents submitted by petitioner at both meeting dates. We have relied on the certified copies of the documents admitted into evidence as Petitioner's Exhibits 9, 10, and 11 and have disregarded the uncertified copies of these documents.

Petitioner's motion to amend charges was granted at our March 28, 1990 meeting and is hereby received in evidence as Petitioner's Exhibit 12. The original statement of charges referred to the date of the determination by the California Board of Medical Quality Assurance as being June 28, 1988. The record shows that the true date for such determination was September 29, 1988. June 28, 1988 was the date of the "proposed decision" of the hearing panel which was fully adopted on September 29, 1988 by the California Board of Medical Quality Assurance.

We reject the contention of respondent's attorney that this matter "had to be dismissed" in light of respondent's not being licensed in New York until July 26, 1988. Respondent was duly licensed in New York before the final decision of the California Board of Quality Assurance was rendered. The statement of charges, at all times, has referred to the findings of that agency without

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explicitly mentioning the earlier proposed decision. Even though respondent received the final determination by December 20, 1989, and was therefore on notice of the true date of such final determination, this matter was adjourned for petitioner to make a motion on notice to respondent. When this matter was continued, respondent had received the January 24, 1990 written motion to amend clarifying the date of the final determination in California.

The amendment by petitioner was of a technical rather than a substantive nature. No new facts or grounds were added by this amendment to the statement of charges. Under the amended charges, an expedited proceeding continues to be brought pursuant to the same specification in regard to the final determination of the California Board of Medical Quality Assurance.

Respondent's attorney has shown no prejudice by this amendment. Contrary to his assertion, no remand occurred in this matter. During the adjourned period of the proceeding, respondent had a further opportunity to confirm the date of the California determination.

Furthermore, a concurrence of the majority of the Committee on Professional Conduct was not required before these charges could be amended. First, contrary to the assertion of respondent's attorney, these charges were not brought under the procedures of Public Health Law §230(10)(a). In this direct referral, the Commissioner of Health directed that charges be prepared and

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referred them directly to our Committee pursuant to Public Health Law §230 (10)(m)(iv). A concurrence of the Committee on Professional Conduct was not required before the referral or before the amendment. Even if this had been a hearing committee proceeding which required compliance with Public Health Law §230(10)(a), charges may be amended after the commencement of the hearing "without the necessity for further investigation, referral and consultation", Matter of John H. Park, Cal. No. 8493, as long as respondent is afforded with sufficient notice of the charge against him and is not prejudiced or deprived of any substantial right. In our unanimous opinion, respondent was afforded with ample notice of the charge against him, both by the original charge and by the written amendment on notice before the adjourned date, and was not prejudiced or deprived of any substantial right by this amendment conforming the charges to the proof.

FINDINGS OF FACT

1. Respondent was licensed to practice as a physician in this State by the New York State Education Department.
2. An Accusation and First Supplemental Accusation were made and filed against respondent by the Director of the California Board of Medical Quality Assurance.
3. A hearing was held before a Panel of the Fourteenth District Review Committee and an Administrative Law Judge.

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4. After the hearing, a proposed decision was issued on June 28, 1988 by the acting chairperson of the hearing panel.
5. On September 29, 1988, the State of California Board of Medical Quality Assurance adopted the proposed decision of the hearing panel. The final determination became effective on October 31, 1988.
6. The State of California Board of Medical Quality Assurance found respondent guilty of violating the California Business and Professions Code for each of the four issues, shown on page 7 of the proposed decision and imposed a measure of discipline upon each of these four violations.
7. Respondent has been found guilty, after an administrative hearing in the State of California, of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the findings were based would, if committed in New York State, constitute professional misconduct under Education Law §6509(9) and 8 N.Y.C.R.R. §29.2(a)(2) - willfully abusing a patient - and under Education Law §6509(2) - gross negligence.

DETERMINATION AS TO GUILT

The charge contained in the statement of charges and motion to amend charges, a copy of which are annexed hereto, made a part hereof, and marked as Exhibit "A", has been proven, by a

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preponderance of the evidence and respondent is guilty thereof to the extent that the conduct determined by the duly authorized professional disciplinary agency of Florida would, if committed in New York State, constitute professional misconduct under Education Law §6509(9) and 8 N.Y.C.R.R. §29.2(a)(2) and Education Law §6509(2) - gross negligence.

On January 21, 1986, respondent, at his weight loss clinic, told a female patient that she had to have a breast examination and then touched the patient's breasts. Respondent's conduct startled, shocked, and frightened this patient. On February 7, 1986, respondent told another female patient that he was going to examine her breasts and then grabbed and squeezed the patient's breasts. Respondent's conduct caused this patient to be in tears. This sexual misconduct, determined in California, is equivalent to and meets all the elements of unprofessional conduct based upon willful physical abuse of a patient in New York.

Additionally, gross negligence, by reason of respondent's failure to perform proper physical examinations on six patients and his performance of cursory examinations of the patients' breasts for which there was no medical reason, equates with the elements of gross negligence in New York.

With respect to the New York analogue of false advertising alleged by petitioner, respondent claims that this basis for professional misconduct may not be sustained because there is no

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New York crime equivalent to the crime for which respondent was convicted in California. Petitioner did not charge that respondent violated CAL. [Business and Professions] CODE §490 by reason of his having been convicted of a crime and does not cite that section of law. Instead, petitioner merely alleged, without amendment, that respondent was convicted under CAL. [Business and Professions] CODE §17500. The only specification in this proceeding is predicated upon the administrative determination in California. Inasmuch as the charge as drafted relies on the provision of California law reflecting the underlying conviction, respondent asserts correctly that petitioner has not established that the administrative determination in California under CAL. [Business and Professions] CODE §490 may be equated with unprofessional conduct based upon false advertising in New York. We note that petitioner has not furnished us with a copy of CAL [Business and Professions] CODE §17500 and that the conviction in the Municipal Court of California was separately admitted into the record herein.

**RECOMMENDATION AS TO THE
PENALTY TO BE IMPOSED**

Respondent's license to practice as a physician in the State of New York be suspended for five years upon the specification of the charges of which we recommend respondent be found guilty, execution of the last four years of said suspension be stayed during which time respondent be placed on probation for four years under the terms set forth in the exhibit annexed hereto, made a

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part hereof, and marked as Exhibit "B". In arriving at our recommendation as to the measure of discipline to be imposed, we have considered the record, and the circumstances herein, including the determination rendered in the State of California and the orders entered thereon, the fact that respondent's conduct last occurred in April 1986, the respondent's current practice is not in a weight loss clinic, which gave rise to the misconduct upon which we recommend respondent be found guilty, respondent's practice does not involve obstetrics/gynecology, the absence of any proof that respondent's examinations in California resulted in any failure to diagnose or treat, and the terms of probation we are recommending. Accordingly, in our unanimous opinion, a one year actual suspension along with four additional years of probation is warranted under these circumstances.

Respectfully submitted,

EMLYN I. GRIFFITH

JANE M. BOLIN


Chairperson

Dated: 5/31/90

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

-----X
IN THE MATTER : STATEMENT
OF : OF
DAVID ASLEY, M.D. : CHARGES
a/k/a :
SAEED SALMASIAN, M.D. :
-----X

DAVID ASLEY, M.D., the Respondent, was authorized to practice medicine in New York State on July 26, 1988 by the issuance of license number 175496 by the New York State Education Department. The Respondent is currently registered with the New York State Education Department to practice medicine for the period January 1, 1989 through December 31, 1991 at 405 Tarrytown Road, White Plains, New York 10607.

FIRST SPECIFICATION

1. Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law Section 6509(5)(b) (McKinney 1985) in that he has been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct resulting in the disciplinary action would, if committed

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~~CONFIDENTIAL~~

in New York State constitute professional misconduct under the laws of New York State, specifically:

On or about June 28, 1988, the California Board of Medical Quality Assurance ("BMQA") found, after a hearing, that the Respondent was guilty of professional misconduct for violations of three separate provisions of the California Business and Professions Code. As set forth in paragraphs a, b, and c below, the BMQA imposed different sentences to run concurrently for each violation.

a. The BMQA found that the Respondent had been convicted of a crime that substantially relates to the qualifications, functions and duties of a physician in that on or about May 19, 1986, in the Municipal Court of California, San Diego, the Respondent was convicted on his plea of nolo contendere of two counts of violating California Business and Professions Code Section 17500, to wit: the Respondent represented on two separate occasions that he charged seven dollars (\$7.00) per visit, when in fact he charged more than seven dollars (\$7.00). These acts, if committed within New York State, would constitute professional misconduct under 8 N.Y.C.R.R. 29.1(b)(12)(1987) (false advertising). The BMQA imposed ~~five~~ years stayed revocation with probation.

b. The BMQA found the Respondent guilty of sexual misconduct, pursuant to California Business and Professions Code Sections 2200 and 726, in that he performed a medically unnecessary breast examination on a 12 year old girl and touched another patient's breast while standing behind her. These acts, if committed within New York State, would constitute professional misconduct under N.Y. Educ. Law Section 6509(2) (McKinney 1985) (practicing the profession fraudulently) and 8 N.Y.C.R.R. 29.2(a)(2)(1987) (willfully abusing a patient). The BMQA imposed seven years stayed revocation with probation.

c. The BMQA found the Respondent guilty of gross negligence, pursuant to California Business and Professions Code Sections 2220 and 2234(b), in that the Respondent failed to perform proper physical examinations and performed improper breast examinations. This conduct, if committed in New York State, would constitute professional misconduct under N.Y. Educ. Law Section 6509(2) (McKinney 1985) (practicing the profession with gross negligence on a particular occasion). The BMQA imposed revocation.

DATED: New York, New York
September 28, 1989


CHRIS STERN HYMAN
Counsel
Bureau of Professional
Medical Conduct

REGENTS REVIEW COMMITTEE : BOARD OF REGENTS
NEW YORK STATE DEPARTMENT OF EDUCATION

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IN THE MATTER : MOTION TO
OF : AMEND
DAVID ASLEY, M.D. : CHARGES
A/K/A :
SAEED SALMASIAN, M.D. :

-----X

To: Honorable Regent Emlyn Griffith

Upon the annexed affirmation of Daniel Guenzburger, Esq. sworn to on the 17th day of January, 1990, the Petitioner moves to amend the second paragraph of the First Specification, to read as follows:

"On or about September 29, 1988, the California Board of Medical Quality Assurance ("BMQA") found, after a hearing, that the Respondent was guilty of professional misconduct for violation of three separate provisions of the California Business and Professions Code."

EXHIBIT

Dated: January 27, 1990
New York, New York

Daniel Guenzburger
Daniel Guenzburger
Assistant Counsel
Bureau of Professional
Medical Conduct
8 E. 40th Street
New York, NY 10016

EXHIBIT "B"

TERMS OF PROBATION
OF THE REGENTS REVIEW COMMITTEE

DAVID ASLEY
a/k/a SAEED SALMASIAN

CALENDAR NO. 10337

1. That, during the period of probation, respondent shall have respondent's practice monitored, at respondent's expense, as follows:
 - a. That said monitoring shall be by a physician selected by respondent and previously approved, in writing, by the Director of the Office of Professional Medical Conduct;
 - b. That the above requirement under paragraph 1a shall also include the monitoring of respondent's selection, at his own expense, of a person previously approved, in writing, by the New York State Department of Health to be physically present with respondent at all times when respondent is rendering services to any female patient as well as the monitoring of respondent's recording of the name, address, and telephone number of that person in the record kept for that patient which records shall be made available to the New York State Department of Health upon written request therefor;
 - c. That respondent shall be subject to random selections and reviews by said monitor of respondent's patient records, office records, and hospital charts in regard to respondent's practice, and respondent shall also be required to make such records available to said monitor at any time requested by said monitor; and
 - d. That said monitor shall submit a report, once every three months, regarding the above-mentioned monitoring of respondent's practice to the Director of the Office of Professional Medical Conduct;
2. If the Director of the Office of Professional Medical Conduct determines that respondent may have violated probation, the Department of Health may initiate a violation of probation proceeding and/or such other proceedings pursuant to the Public Health Law, Education Law, and/or Rules of the Board of Regents.

**ORDER OF THE COMMISSIONER OF
EDUCATION OF THE STATE OF NEW YORK**

**DAVID ASLEY
a/k/a SAEED SALMASIAN**

CALENDAR NO. 10337



The University of the State of New York

IN THE MATTER

OF

DAVID ASLEY
a/k/a SAEED SALMASIAN
(Physician)

DUPLICATE
ORIGINAL
VOTE AND ORDER
NO. 10337

Upon the report of the Regents Review Committee, a copy of which is made a part hereof, the record herein, under Calendar No. 10337, and in accordance with the provisions of Title VIII of the Education Law, it was

VOTED (June 22, 1990): That the record herein be accepted; that the findings of fact, determination as to guilt, and recommendation as to the penalty to be imposed rendered by the Regents Review Committee in the matter of DAVID ASLEY a/k/a SAEED SALMASIAN, respondent, be accepted; that respondent is guilty of the charge, to the extent indicated by the Regents Review Committee, by a preponderance of the evidence; that respondent's license and registration to practice as a physician in the State of New York be suspended for five years upon the specification of the charges of which respondent was found guilty; that execution of the last four years of said suspension be stayed during which time respondent be placed on probation for four years under the terms prescribed by the Regents Review Committee; and that the Commissioner of Education be empowered to execute, for and on behalf of the Board of Regents, all orders necessary to carry out the terms of this vote;

and it is

ORDERED: That, pursuant to the above vote of the Board of

DAVID ASLEY (10337)
a/k/a SAEBD SALMASIAN

Regents, said vote and the provisions thereof are hereby adopted
and SO ORDERED, and it is further

ORDERED that this order shall take effect as of the date of
the personal service of this order upon the respondent or five days
after mailing by certified mail.

IN WITNESS WHEREOF, I, Thomas Sobol,
Commissioner of Education of the State of
New York, for and on behalf of the State
Education Department and the Board of
Regents, do hereunto set my hand and affix
the seal of the State Education Department,
at the City of Albany, this 2nd day of

July 1990.
Thomas Sobol

Commissioner of Education