



STATE OF NEW YORK DEPARTMENT OF HEALTH

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

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

Paula Wilson
Executive Deputy Commissioner

October 26, 1993

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Daniel Shapiro, Esq.
Shapiro & Byrne, P.C.
220 Old Country Road
Mineola, New York 11501

Stacey Barrie Mondschein, Esq.
New York State Department
of Health
Bureau of Adjudication
5 Penn Plaza - Sixth Floor
New York, New York 10001-1810

Robert J. Nicoletti, M.D.
Frost Mill Road
Mill Neck, New York 11756

EFFECTIVE DATE 11/02/93

RE: In the Matter of ROBERT J. NICOLETTI, M.D.

Dear Mr. Shapiro, Dr. Nicoletti and Ms. Mondschein:

Enclosed please find the Determination and Order (No. BPMC-93-171) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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

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

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

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

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

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

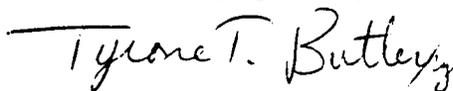
The notice of review served on the Administrative Review Board should be forwarded to:

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

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

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

Very truly yours,

A handwritten signature in cursive script that reads "Tyrone T. Butler". The signature is written in dark ink and is positioned above the typed name.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:
Enclosure

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

-----X
IN THE MATTER

: HEARING COMMITTEE

OF

: DETERMINATION

ROBERT J. NICOLETTI, M.D.

: AND ORDER

-----X
NO. BPMC-93-171

Peter D. Kuemmel, R.P.A., Chairperson, Florence Kavalier, M.D., and Rufus A. Nichols, M.D., 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 Sections 230(10)(e) and 230(12) of the Public Health Law. Stephen Bermas, Esq., Administrative Law Judge, served as Administrative Officer for the Hearing Committee.

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

SUMMARY OF THE PROCEEDINGS

Notice of Hearing dated:	June 9, 1993
Statement of Charges dated:	June 9, 1993 as amended August 11, 1993
Hearing Dates:	August 12 and September 2, 1993
Deliberation Date:	September 27, 1993

Place of Hearing: NYS Department of Health
5 Penn Plaza
New York, New York

Petitioner Appeared By: Peter J. Millock, Esq.
General Counsel
NYS Department of Health
BY: Stacey Barrie Mondschein, Esq.

Respondent Appeared By: Daniel Shapiro, Esq.

STATEMENT OF CHARGES

The Amended Statement of Charges has been marked as Petitioner's Exhibit 1A and hereto attached as Appendix A.

FINDINGS OF FACT

Numbers in parentheses refer to transcript page numbers or exhibits. These citations represent evidence found persuasive by the Hearing Committee in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of cited evidence.

1. Robert J. Nicolleti, M.D., Respondent, was authorized to engage in the practice of medicine in the State of New York on September 5, 1980 by the issuance of license number 143530 by the New York State Education Department. (Ex. 2)
2. Respondent is registered with the New York State Education Department to practice medicine for the period of January 1, 1993 through December 31, 1994 from Frost Mill Road, Mill Neck, New York 11765. (Ex. 2)

3. On or about November 20, 1990, Respondent signed and filed with the New York State Education Department a Registration Application for the period January 1, 1991 through December 31, 1992, which he knew contained information which was false and misleading. In the Application he falsely denied, in answer to question 1(a), that since he last registered, any state other than New York had accepted surrender of a professional license by him. (Ex. 2, p. 9-10; Ex. 3; Ex. E; T. 60)
4. In his testimony, Respondent admitted that he had in fact read and signed the Stipulation and Order in which he agreed to surrender his Colorado medical license. (Ex. 3; T. 83-84, 100)
5. Respondent made the false statement on his registration form for the purpose of deceiving the reader. (Ex. 2, T. 78, 84-85)
6. On or about September 18, 1989, Respondent submitted an application for employment as a physician with St. Vincent's Medical Center of Richmond, in Staten Island, New York ("St. Vincent's") which he knew contained information which was false and misleading in that he denied he had voluntarily relinquished a medical license in any state. (Ex. 3, Ex. 4, Ex. E)

7. Respondent made the false statement on his application to St. Vincent's for the purpose of deceiving the reader. (Ex. 4, T. 88)
8. Respondent testified that he had withdrawn the St. Vincent's application upon gaining employment at North Shore University Hospital at Glen Cove ("North Shore"). (T. 76, 95-97)
9. On or about December 10, 1990, Respondent submitted an application for privileges with North Shore, which he knew contained false and misleading information, in that he denied having relinquished a medical license in another jurisdiction. (Ex. 3; Ex. 5, p. 143; Ex.E)
10. Respondent testified to having read and signed the Stipulation and Order in which he agreed to relinquish his Colorado medical license, and he testified to having read the North Shore application and answering "no" to the question. (Ex. 3; Ex. 5, p. 143; T. 82-84, 93-94)
11. In his North Shore application, Respondent denied that there had been any medical/dental malpractice actions against him in the last ten years. (Ex. 5, p. 143)

12. Respondent admitted that there had been such actions against him, but he stated he believed that he did not have to report the three settlements on his December, 1990 application because Colorado does not require the reporting of such matters after five years. (T. 77-78)
13. In fact, the three malpractice cases brought against Respondent were settled in 1987 and 1989, less than five years before the North Shore application date. (Ex. 5, pp. 48 and 51; T. 77-78, 94-95)
14. However, Dr. Arnold Fenton, Chairman of the Ob/Gyn Department of North Shore was informed of the malpractice cases and the surrender of the Colorado medical license. (Ex. 5, T. 60-66)
15. The Committee finds credible the testimony of Dr. George Dunn, that he and Respondent attended medical school together, that he discussed with him Respondent's malpractice cases and his surrender of his Colorado license and recommended Respondent for a position on the staff at North Shore, but the Committee finds that Dr. Dunn did not carefully review Respondent's application to North Shore. (T. 60-63.66)

CONCLUSIONS

Respondent is found to have engaged in professional misconduct by reason of practicing medicine fraudulently within the meaning of N.Y. Education Law Section 6530(2) (McKinney Suppl. 1993) in that:

- a. On or about November 20, 1990, Respondent signed and filed with the New York State Education Department a Registration Application for the period January 1, 1991 through December 31, 1992, which he knew contained information which was false and misleading. In the application he falsely denied that since he last registered, any state other than New York had instituted charges against him for professional misconduct or unprofessional conduct or had accepted surrender of a professional license held by him.

- b. On or about September 18, 1989, Respondent submitted an application for employment as a physician with St. Vincent's Medical Center of Richmond, in Staten Island, New York, which he knew contained information that was false and misleading in that he denied that he had ever not renewed or voluntarily relinquished a medical license in any state.

ORDER

The Committee finds the Respondent intentionally misanswered certain questions on various applications.

It is clear that Respondent knew he had surrendered his license in Colorado when he denied any such surrender on the applications. At page 75 of the transcript, the Respondent testified that he discussed the Colorado situation with his attorney. At page 66 of the transcript, Dr. Dunn testified that the Respondent told him about surrendering his license. All of this occurred before the applications were answered. The conclusion is inescapable that his misanswering had to have been intentional.

It appears that Respondent felt he was in a desperate situation and was prepared to do whatever was needed to start again. (T. 73, l. 4-6; T. 78, l. 19-15)

Respondent's filing of applications containing false statements on more than one occasion must be condemned. While Respondent denied doing this to deceive anyone, he must realize that false statements do deceive people. His failure to truthfully answer the questions on the applications perpetrated a fraud.

The Hearing Committee understands the Respondent's personal difficulties may have diminished his accuracy in dealing with these administrative matters. The Committee recognizes that there are no allegations of any harm by Respondent to any patients or of any

professional incompetence. Nonetheless, he must be held responsible for his acts.

Accordingly, the Committee of the Board of Professional Medical Conduct censures and reprimands Respondent for his actions and orders that Respondent shall pay a fine of \$10,000.

Dated: New York, N.Y.
October 21, 1993



Peter D. Kueimmel, R.P.A.,
Chairperson

Florence Kavalier, M.D.
Rufus A. Nichols, M.D.

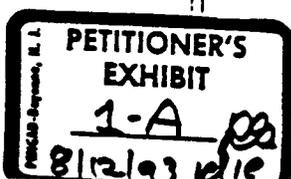
STATE OF NEW YORK : DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

-----X
IN THE MATTER : AMENDED
OF : STATEMENT
ROBERT J. NICOLETTI, M.D. : OF CHARGES
-----X

ROBERT J. NICOLETTI, M.D., the Respondent, was authorized to practice medicine in New York State on September 5, 1980 by the issuance of license number 143530 by the New York State Education Department. The Respondent is currently registered with the New York State Education Department to practice medicine for the period January 1, 1993 through December 31, 1994.

FACTUAL ALLEGATIONS

- A. On or about October 8, 1988, and on or about November 20, 1990, Respondent signed and filed with the New York State Education Department Registration applications ("the Applications") for the period January 1, 1989 through December 31, 1991 and January 1, 1991 through December 31, 1992, respectively, which he knew contained information which was false and misleading. In the Applications he falsely denied, in answer to questions 1 and 1(a), respectively, that since he last registered, any state other than New York had



instituted charges against him for professional misconduct or unprofessional conduct or had accepted surrender of a professional license held by him. In fact, and as Respondent knew, on or about November 7, 1988, the Colorado Board of Medical Examiners had accepted the surrender of Respondent's medical license after Parkview Medical Center of Pueblo, Colorado had instituted disciplinary proceedings against him and St. Mary-Corwin Regional Center of Pueblo, Colorado had recommended that his obstetrical privileges be revoked.

B. On or about September 18, 1989, Respondent submitted an application for employment as a physician with St. Vincent's Medical Center of Richmond, in Staten Island, New York, which he knew contained information that was false and misleading in that he denied that he had ever not renewed or voluntarily relinquished a medical license in any state. In fact, and as Respondent knew, he had surrendered his license to practice medicine in the State of Colorado on or about November 7, 1988.

C. On or about December 10, 1990, Respondent submitted an application for employment with North Shore University Hospital at Glen Cove in Glen Cove, New York, which he knew contained false information. Respondent falsely denied that his medical license had not been renewed or had been voluntarily relinquished in another jurisdiction. In fact,

and as Respondent knew, he had surrendered his license to practice medicine in the State of Colorado on or about November 7, 1988.

- D. On or about December 10, 1990, Respondent submitted an application for employment with North Shore University Hospital at Glen Cove, Glen Cove, New York. In this application, Respondent falsely denied that there had been any medical/dental malpractice actions against him in New York or another state, when in fact, and as Respondent knew, there had been at least three medical malpractice cases instituted against him during his tenure as a physician in Colorado and against which Respondent had retained counsel to defend him.

FIRST THROUGH FOURTH SPECIFICATIONS

PRACTICING FRAUDULENTLY

Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law Sec. 6530(2) (McKinney Supp. 1993), in that he has practiced the profession fraudulently, in that, Petitioner charges:

1. The facts alleged in Paragraph A.

2. The facts alleged in Paragraph B.
3. The facts alleged in Paragraph C.
4. The facts alleged in Paragraph D.

DATED: New York, New York

Aug 11, 1993

Chris Stern Hyman for:

CHRIS STERN HYMAN
Counsel
Bureau of Professional
Medical Conduct