



STATE OF NEW YORK
DEPARTMENT OF HEALTH

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

Richard F. Daines, M.D.
Commissioner

Wendy E. Saunders
Chief of Staff

January 15, 2009

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Miklos Toth, M.D.
1070 Park Avenue
Suite 1A
New York, New York 10128

Ralph A. Erbaio, Jr., Esq.
Kern, Augustine, Conroy & Schoppmann, P.C.
420 Lakeville Road
Lake Success, New York 11042

Ann Gayle, Esq.
NYS Department of Health
90 Church Street - 4th Floor
New York, New York 10007

RE: In the Matter of Miklos Toth, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 09-10) 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), (McKinney Supp. 2007) and §230-c subdivisions 1 through 5, (McKinney Supp. 2007), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the Respondent 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.

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,


James F. Horan, Acting Director
Bureau of Adjudication

JFH:cah

Enclosure

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

COPY

IN THE MATTER
OF
MIKLOS TOTH M.D.

DETERMINATION
AND
ORDER
BPMC #09-10

A Notice of Hearing and Statement of Charges was served on MIKLOS TOTH, M.D., on September 9, 2008, and hearings were held pursuant to N.Y. Public Health Law §230 and New York State Admin. Proc. Act §§ 301-307 and 401 on October 2 and November 7, 2008 at the Offices of the New York State Department of Health, 90 Church Street, New York, New York ("the Petitioner"). **Alan Kopman, FACHE, CHAIR, Jill Rabin, M.D., and Krishna Gujavarty, M.D.**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. **David A. Lenihan, Esq.**, Administrative Law Judge, served as the Administrative Officer. The Petitioner appeared by **Thomas Conway, Esq.**, General Counsel, by Ann **Gayle, Esq.** Associate Counsel, New York State Department of Health, of Counsel. The Respondent appeared with counsel, **Ralph A. Erbaio, Esq.** Evidence was received, including witnesses who were sworn or affirmed, and transcripts of these proceedings were made.

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

PROCEDURAL HISTORY

Date of Service of Notice
Of Hearing and Statement of Charges: September 9, 2008

Answer Filed: September 22, 2008

Pre-Hearing Conference: September 16, 2008

Hearing Dates: October 2, 2008
November 7, 2008

Witnesses for Petitioner: 

Witnesses for Respondent: Miklos Toth, M.D.
Michael Divon, M.D.
Lawrence Matlin
Elena Toth
Lenny Luciano

Deliberations Date: December 17, 2008

STATEMENT OF THE CASE

Petitioner charged Respondent, a physician practicing Obstetrics and Gynecology, with nine specifications of professional misconduct. The first two charges



The third through ninth charges relate to the intentional misrepresentation or concealment of a known fact, namely the loss of his privileges at a hospital. This

representation was made in connection with the practice of medicine and it constitutes the fraudulent practice of medicine. Respondent denied all nine allegations.

A copy of the Statement of Charges is attached to this Determination and Order in Appendix II.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers below in parentheses refer to transcript page numbers or exhibits, denoted by the prefixes "T." or "Ex." These citations refer to evidence found persuasive by the Hearing Committee in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence. All Hearing Committee findings were unanimous.

1. MIKLOS TOTH, M.D., the Respondent, was authorized to practice medicine in New York State on or about October 24, 1980, by the issuance of license number 144210, by the New York State Education Department. (Dept's Ex. 2)
2. Respondent graduated from medical school in Budapest, Hungary, in 1965. (T. 111)
3. Respondent has been engaged in the private practice of medicine, specializing in Obstetrics and Gynecology, becoming board certified in 1983. (T.114)

4.



5.

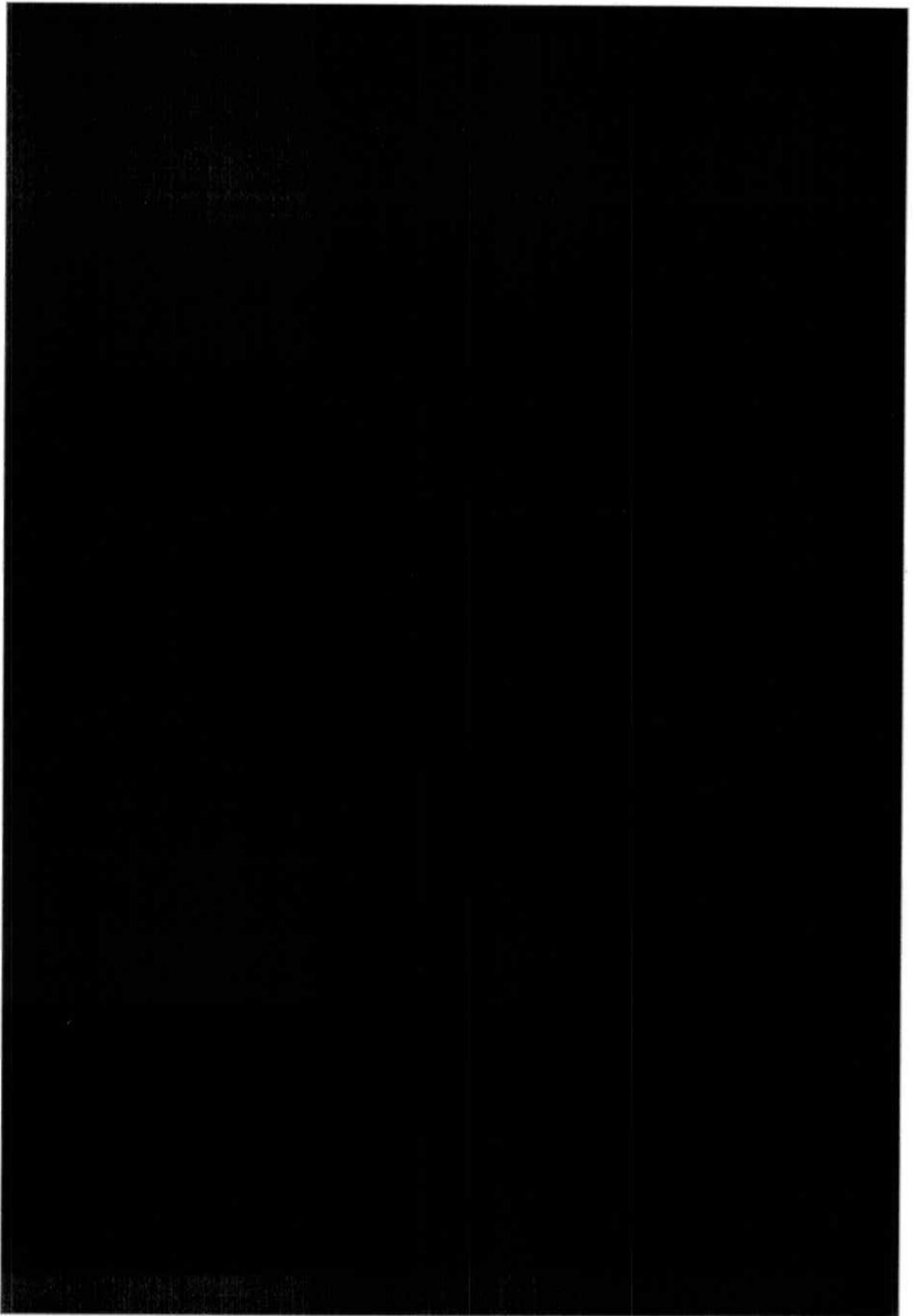
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19. Respondent did not obtain written consent from patients at New York Hospital prior to 2002 when he was summarily suspended from that institution, in part, for removing specimens from several patients during surgery without their written informed consent, he did not obtain written consent from patients in his private practice until recently, and he did not obtain written consent from Patient A for the hysterosalpingogram he performed on her on January 6, 2006. (Dept's Ex. 3, p. 11) (T178-179, 277, 291-292, 295)
20. On February 1, 2002, Respondent was notified by telephone that his medical staff privileges at New York-Presbyterian Hospital ("New York Hospital") were summarily suspended. (Dept's Ex. 4)
21. On February 5, 2002, New York Hospital sent Respondent a letter informing him that his medical staff privileges were summarily suspended based on evidence that he "removed specimens from several patients during surgery without their written

informed consent, failed to send the specimens to pathology in accordance with Hospital policy and New York State Regulations, and failed to document the specimen removal in the patients' medical records." Since the letter was sent to Respondent at his previous address, it was undelivered; it was then re-sent to Respondent at his current address and received and signed for on 2/9/02. On February 25, 2002, Respondent's then attorneys sent New York Hospital a letter requesting a hearing on Respondent's behalf. (Dept's Ex. 4) (T145-146, 153-154)

22. In April 2003, Respondent knew he was suspended from New York Hospital. (Dept's Ex. 4)
23. On April 4, 2003, Respondent completed an application for reappointment to the medical staff of Lenox Hill Hospital for 2004-2005. Respondent answered "no" to question #7 which read, "Has your medical staff appointment/employment status or clinical privileges in any hospital or health care facility or managed care organization (e.g., HMO, PPO, IPA, etc.) ever been denied, revoked, suspended, restricted, reduced, limited, placed on probation, not renewed, voluntarily relinquished, discontinued or otherwise changed?". (Dept's Ex. 5) (T131-134)
24. In May 2005, Respondent knew he was suspended from New York Hospital. (Dept's Ex. 4)
25. On May 19, 2005, in his 2006/2007 application, Respondent also answered "no" to question #7, which read, "Has your medical staff appointment/employment status or clinical privileges in any hospital or health care facility, or managed care organization (e.g. HMO, PPO, IPA, etc.) ever been denied, revoked, suspended, restricted reduced, limited, placed on probation, not renewed, voluntarily relinquished, discontinued or otherwise changed?", just as he did on his 2004/2005 application. (Dept's Ex. 6) (T135-137)

26. On May 19, 2005, in his 2006/2007 application, when Respondent answered "no" to the same question as he did in April 2003, the same Conditions were listed on this application, and again, since Respondent answered no to question number 7 and all the other questions, he did not provide the full details of his summary suspension from New York Hospital to Lenox Hill Hospital. Respondent did not discuss his summary suspension from New York Hospital with Dr. Divon when he completed his 2006/2007 application on May 19, 2005. (Dept's Ex. 6) (T162-165)
27. On May 19, 2005, in his Application for Reappointment to the Medical Staff of Lenox Hill Hospital, Respondent, failed to list New York Hospital as a current or prior affiliation in the section which read, "other hospital/teaching/ residency appointments and affiliations (please list all affiliations within the past ten (10) years". (Dept's Ex. 6)
28. When asked why he left the section for the listing of current and prior hospital affiliations blank instead of listing New York Hospital, Respondent claimed that he forgot. (Dept's Ex. 6) (T136-137)
29. Respondent never contacted New York Hospital to inquire about the status of his summary suspension; he just left the institution after 23 years of being affiliated with them without looking back and asking them. (T151)
30. Michael Divon, M.D., chairman of the OB-GYN department at Lenox Hill Hospital since 1997, testified on Respondent's behalf. He was Respondent's chairman when Respondent was summarily suspended from New York Hospital in 2002. (T.205)
31. Dr. Divon testified that Respondent informed him that there were some issues Respondent was having with Cornell regarding suspension for lack of informed consent. When Respondent informed Dr. Divon that the suspension was not final, Dr. Divon advised Respondent that there was no need to mention anything on

Respondent's recredentialing application to Lenox Hill Hospital, and that he could answer no to the question about whether Respondent's privileges were ever suspended. Dr. Divon could not recall whether Respondent discussed this with him around the time it occurred in February 2002 or around the time he was preparing his recredentialing application in or before April 2003, and he testified that the discussion about whether Respondent ever received a final determination about his summary suspension "never came up again" (T207) and they discussed what happened at New York Hospital "just that one time" (T208) (T205-208, 210-211, 217-218)

32. Respondent minimized the nature of his summary suspension from New York Hospital when he "reported" it to Dr. Divon, and Dr. Divon minimized it as well in his testimony. (T205-208, 210-211, 217-218)

CONCLUSIONS OF LAW

The Hearing Committee, by unanimous vote on each of the specifications, makes the following conclusions. The rationale for the Hearing Committee's conclusions is set forth in the Discussion below.

FIRST SPECIFICATION



DISMISSED.

Vote: NOT SUSTAINED (3-0)

SECOND SPECIFICATION

The Committee therefore concludes, unanimously, that the Second Specification is NOT SUSTAINED and this Specification of professional misconduct, as set forth in the Statement of Charges, is DISMISSED.

Vote: NOT SUSTAINED (3-0)

THIRD THROUGH SIXTH SPECIFICATIONS

FRAUDULENT PRACTICE

Based on a preponderance of the evidence, the Hearing Committee concludes, unanimously, that the Respondent did engage in Fraudulent Practice as defined under N.Y. Educ. Law §6530(2).

The Committee therefore concludes, unanimously, that the Third through Sixth Specifications are SUSTAINED.

Vote: SUSTAINED (3-0)

SEVENTH THROUGH NINTH SPECIFICATIONS

VIOLATION OF § 2805-K OF THE PUBLIC HEALTH LAW

Based on a preponderance of the evidence, the Hearing Committee concludes, unanimously, that the Respondent committed professional misconduct by violating § 6530 (14) of the N.Y. Educ. Law through a violation of §2805-k of the Public Health Law by failing to provide the Respondent had an association.

The Committee therefore concludes, unanimously, that the Seventh through Ninth Specifications are **SUSTAINED**.

Vote: SUSTAINED (3-0)

DISCUSSION

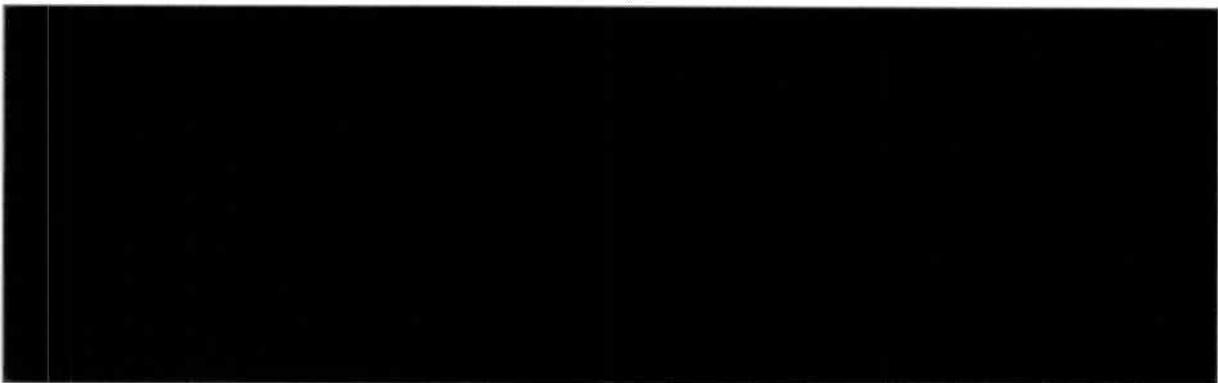
The Hearing Committee carefully reviewed the Exhibits admitted into evidence, the transcripts of the two (2) Hearing days, the Department's Proposed Findings of Fact, Conclusions of Law, and Sanction as well as the Respondent's Proposed Findings of Fact and Conclusions of Law. During the course of its deliberations on these charges, the Hearing Committee considered the following instructions from the ALJ:

1. The Committee's determination is limited to the Allegations and Charge set forth in the Statement of Charges.
2. The burden of proof in this proceeding rests on the Department. The Department must establish by a fair preponderance of the evidence that the allegations made are true. Credible evidence means the testimony or exhibits found worthy to be believed. Preponderance of the evidence means that the allegations presented are more

likely than not to have occurred (more likely true than not true). The evidence that supports the claim must appeal to the Hearing Committee as more nearly representing what took place than the evidence opposed to its claim.

3. The specifications of misconduct must be supported by the sustained or believed allegations by preponderance of the evidence. The Hearing Committee understands that the Department must establish each and every element of the charges by a preponderance of the evidence and as to the veracity of the opposing witnesses, it is for the Hearing Committee to pass on the credibility of the witnesses and to base its inference on what it accepts as the truth.

4. Where a witness's credibility is at issue, the Committee may properly credit one portion of the witness' testimony and, at the same time, reject another. The Hearing Committee understands that as the trier of fact they may accept so much of a witness' testimony as is deemed true and disregard what they find and determine to be false. In the alternative, the Hearing Committee may determine that if the testimony of a witness on a material issue is willfully false and given with an intention to deceive, then the Hearing Committee may disregard all of the witness' testimony.



6. The Hearing Committee followed ordinary English usage and vernacular for all other terms and allegations. The Hearing Committee was aware of its duty to keep an

open mind regarding the allegations and testimony. With regard to the testimony presented, the Hearing Committee evaluated all the witnesses for possible bias or motive. The witnesses were also assessed according to their training, experience, credentials, demeanor, and credibility. The Hearing Committee considered whether the testimony presented by each witness was supported or contradicted by other independent objective evidence.

7. To prove fraud, the Department must show intent. To prove a violation of §2805-k of the Public Health Law, intent is not an element of the misconduct charge, and need not be present or shown. Failure to comply with the requirements of the statute is all that is necessary to prove a violation of that statute.

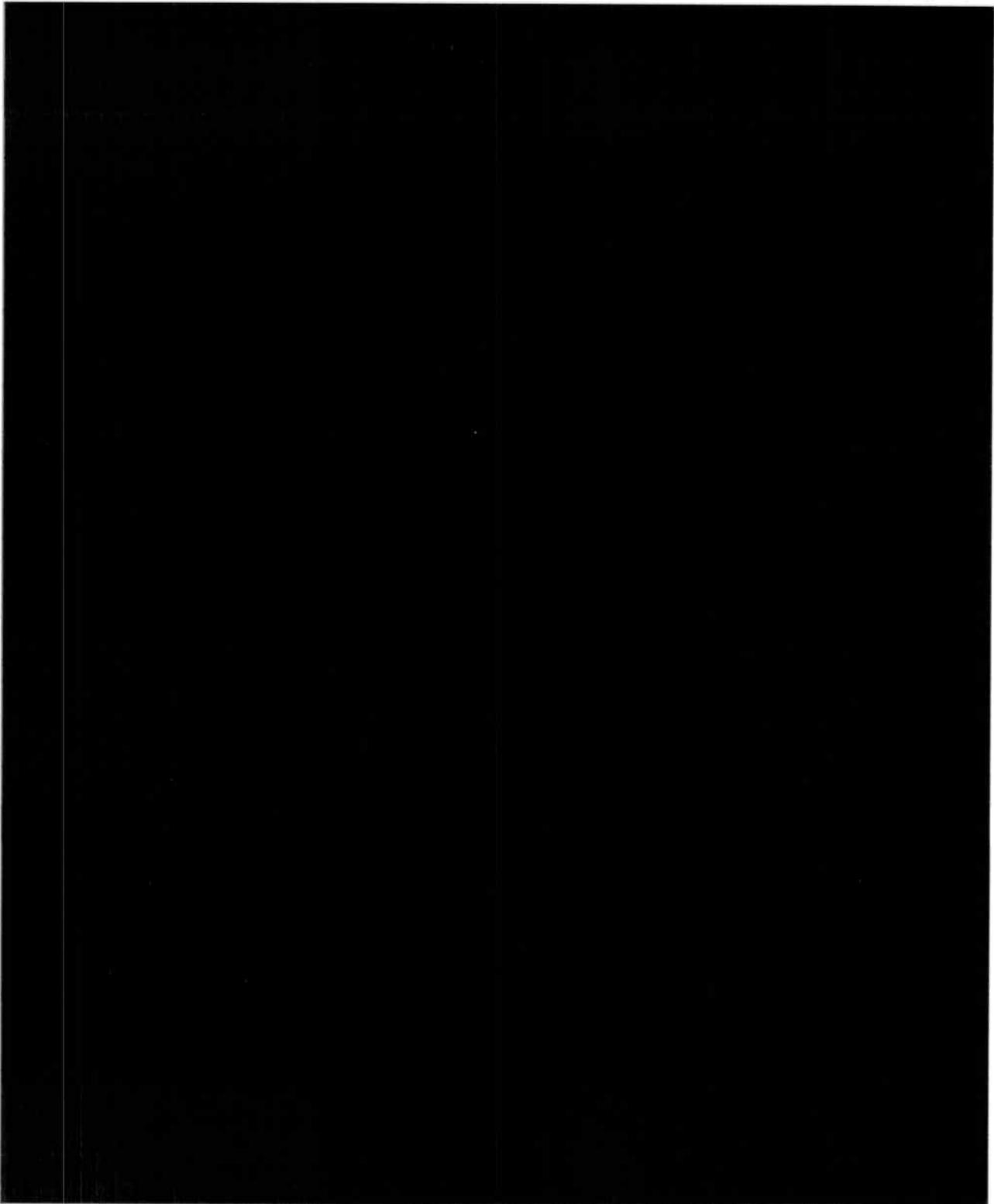
§2805-k of the Public Health Law reads, in part,

1. Prior to granting or renewing professional privileges or association of any physician, dentist or podiatrist or hiring a physician, dentist or podiatrist, a hospital or facility approved pursuant to this article shall request from the physician, dentist or podiatrist and the physician, dentist or podiatrist shall be required to provide the following information:

(a) The name of any hospital or facility with or at which the physician, dentist or podiatrist had or has any association, employment, privileges or practice;

(b) Where such association, employment, privilege or practice was discontinued, the reasons for its discontinuation.





FRAUDULENT PRACTICE

The intentional misrepresentation or concealment of a known fact, made in connection with the practice of medicine, constitutes the fraudulent practice of medicine. Fraudulent practice of medicine is present when (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.

The testimony and documentation in this case, establishes, with clear and preponderant evidence, that Respondent knew that he was summarily suspended at New York Hospital and yet answered in the negative to subsequent inquiries about this fact. It appears that the Respondent did receive written communication from New York Hospital and that this confirmation by letter of the summary suspension was made crystal clear when he was notified by telephone a few days prior. Respondent knew that a summary suspension meant that he could not practice at New York Hospital unless and until the suspension was lifted. The record is clear that Respondent did not receive any communication from New York Hospital that the suspension was lifted or overturned. Therefore, each time Respondent filled out an application to Lenox Hill Hospital and to the State Education Department, he knew he was suspended and he purposely did not report it. This, the Committee believes, amounted to fraudulent practice.

Furthermore, even if Respondent accepted what he claims his then attorney told him as they were leaving the hearing wherein he challenged the summary suspension (*i.e.* that his privileges were "okay" - (T147)), Respondent's explanations to this Board that he just

did not seek to renew his privileges after 23 years of affiliation, do not make sense. If Respondent's then attorney told him that his privileges were okay and if Respondent believed that his privileges were okay, he could have submitted an application to renew his privileges at New York Hospital the next time that was required. However, Respondent did not re-apply. Since his decision not to reapply occurred following his summary suspension, it can be inferred that he did not re-apply to New York Hospital because he knew he was still suspended, and when he did not report the suspension on his applications to Lenox Hill Hospital and the State Education Department, his intent was to deceive those two entities.

In his testimony, Respondent claimed that he answered "no" not to deceive Lenox Hill Hospital but because he didn't think his privileges were suspended at New York Hospital because he never received a final decision from the medical board. He also discussed it with the chairman whose opinion was that as long as there was no written evidence, it was not really a suspension. (Dept's Ex. 5) (T131-134)

However, the record establishes that the Respondent did not call anyone at New York Hospital in and around April 2003 when he was filling out his application for reappointment to Lenox Hill to inquire about the status of his summary suspension at New York Hospital. (T146-147)

The Committee recognizes that a summary suspension occurs when a physician is informed that his or her privileges are suspended immediately. From the time the privileges are summarily suspended until the issue is resolved, the privileges are suspended and they are not reinstated until there is a decision to reinstate them, therefore until there is a decision, the doctor's privileges are suspended. (T212-213)

A review of the documents in evidence in this case shows that the conditions at the top of page 68 of Exhibit 5 read, in part, that the applicant is verifying that the information provided in the application is complete, true, and accurate to the best of the applicant's

knowledge and belief. Respondent testified that when he answered no to question number 7, which asked whether his clinical privileges at any hospital were ever suspended, he thought the answer he gave was complete, true, and accurate to the best of his knowledge and belief, and that testifying before this Board on November 7, 2008, retrospectively, he still thought that answer was complete, true, and accurate. The heading above the 12 questions, which included question number 7, reads PROFESSIONAL CONDUCT HISTORY. Just next to that heading is a sentence, which reads in bold print, "if you answer 'yes', submit full details on separate sheet". Since Respondent answered no to question number 7 and all the other questions, he did not provide the full details of his summary suspension from New York Hospital to Lenox Hill Hospital. (Dept's Ex. 5) (T155-157)

The Committee found that the Respondent was less than candid when he testified that he does not know when he saw the February 5, 2002 letter from New York Hospital for the first time. He also testified that he provided the full details of his summary suspension at New York Hospital to Dr. Divon, his chairman at Lenox Hill Hospital, in 2002 when it happened, and that he discussed it with Dr. Divon again when he filled out, signed and dated this application on April 25, 2003, and that question appeared. Dr. Divon told Respondent not to report it because Respondent told Dr. Divon that he had not received a final decision from New York Hospital. Respondent does not know who reviews his applications, he did not ask Dr. Divon if he reviews it or if anybody else reviews it. Respondent believes that his affiliation with New York Hospital ended the same day the chairman called him to inform him that there was a proceeding against him and there would be a hearing. When asked what summarily suspended means to him, Respondent replied, "You are not supposed to work there until you cleared yourself and get a permanent decision by the hospital and medical board" (T162). (T157-162)

The Committee finds Respondent's testimony before this panel to be untruthful, self-serving and evasive. Respondent claimed that he did not know that institutions such as Lenox Hill Hospital make determinations about whether to grant or continue a physician's affiliation with that institution based on the information that the physician provides in credentialing applications, or that the State Education Department might not renew his registration to practice medicine in New York State depending on the answers he gave on the application every two years when he re-registered.

The Committee gives very little weight to the testimony of Respondent's character witness, Michael Divon, M.D., chairman of the OB-GYN department at Lenox Hill Hospital since 1997. It should be noted that even if Dr. Divon's testimony is true that Respondent did not report his summary suspension from New York Hospital on his Lenox Hill Hospital application in April 2003 based on Dr. Divon's statement, it remains that the Respondent discussed summary suspension with Dr. Divon only around the time he was summarily suspended in February 2002. He did not discuss it when he filled out his 2004/2005 application to Lenox Hill Hospital in April 2003, he did not discuss it with Dr. Divon when he was filling out his Registration Renewal application to The State Education Department in May 2003, and he did not discuss it with Dr. Divon in May 2005 when he filled out his 2006/2007 application to Lenox Hill Hospital.

It is clear that Respondent was not candid when he stated on these applications that he had not been suspended. Just because Respondent had a discussion with Dr. Divon, it still remains a fact he was suspended and Respondent should have so indicated in applications submitted to Lenox Hill Hospital and the State Education Department.

It should also be noted that Dr. Divon is not the only person at Lenox Hill Hospital who reviews Respondent's and other candidates' applications. After Respondent told Dr. Divon that his privileges were summarily suspended, Dr. Divon did not tell anyone else at

Lenox Hill about that, and he did not think it was important to tell anybody else because it eventually would have been available on a database. When asked if his advice as chairman of the department to any physician who asks this question is to not put it on the application until it's final, and would it be okay if years pass and it's not final, Dr. Divon testified that he probably forgot about it. After Dr. Divon explained that the committee reviews 150 applications in two and a half hours, Dr. Divon was asked whether it was advisable that physicians should put information on their applications rather than leave it off because he as the chairman might know about it but could forget about it until sometime later; Dr. Divon replied that it didn't bother him at the time. (T215, 218-219).

The testimony in this case shows that Dr. Divon admitted that, despite the fact that he has a responsibility/duty as chairman of the department for signing off for each attending physician's privileges, he minimized the significance of Respondent's summary suspension from an institution with which he was affiliated for more than 20 years because, based on Respondent's representations, it was not final and in Dr. Divon's mind it was research based and not clinical. When Dr. Divon was shown the letter from New York Hospital to Respondent, which read in part, "You were also informed that this action is being taken based on evidence that you removed specimens from several of your patients during surgery without their written informed consent. You failed to send the specimens to pathology in accordance with hospital policy and New York State regulation and you failed to document the specimen removal in the patient's medical records", he stated that he wasn't sure if Respondent was summarily suspended for actions that were research or clinically based (T232). (Dept's Ex. 4) (T220-224, 227-229, 231-232, 234-238)

The Department has charged Respondent with both fraud and a violation of §2805-k of the Public Health Law for not reporting his summary suspension at New York Hospital to Lenox Hill Hospital. Respondent testified that he did not intend to deceive Lenox Hill

Hospital about the situation at New York Hospital (T134, 140), and that he did not attempt to conceal his prior affiliation with New York Hospital from Lenox Hill Hospital. (T137)

The preponderant evidence in this case establishes that Respondent violated §2805-k of the Public Health Law by answering "no" to question #7 on his 2004/2005 and 2006/2007 applications to Lenox Hill Hospital, by not listing New York Hospital as a prior affiliation on his 2006/2007 application, and by not giving the reasons for the discontinuance of his association with New York Hospital on either the 2004/2005 or 2006/2007 applications.

The preponderant evidence also established that Respondent committed fraud in answering "no" to question #7 and not listing New York Hospital as a prior affiliation on the Lenox Hill applications, and in answering "no" to question 2.e. on his Department of Education application dated 5/12/03. His intent can be inferred from his actions as described in the findings of fact above and below, and in the discussion of Fraudulent Practice in the "Proposed Conclusions of Law" "Third through Sixth Specifications" below at pages 30 to 31. Respondent did not discuss with Dr. Divon whether or not he should disclose or mention in any way his summary suspension from New York Hospital on his registration renewal application to the State Education Department that he submitted in May 2003. (T 219-220)

The Hearing Committee was also concerned that appropriate consents for procedures were not part of the Respondent's routine practice and office procedure. It was clear to the Committee that the Respondent's medical assistant's testimony about written consents was fabricated. Respondent and his wife admitted Respondent's failure to obtain informed written consent, a practice which resulted in a summary suspension from New York Hospital in 2002, and which was not corrected in his private office until recently. (T 277, 291-292)

HEARING COMMITTEE DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, after due deliberation, unanimously determined that the first and second charges and specifications raised against Respondent were not sustained and should be dismissed. The third through ninth charges were sustained.

Although the Committee found the Respondent was dishonest in his reporting of his suspension from New York Hospital, they recognized that he was still a good physician and has done good work and was not a danger to the public and, so, they determined that revocation was not appropriate. The committee was concerned about his office practice, including proper consents and chaperones, and, to insure good practice, the Committee has determined that he should have a practice monitor for a period of one year and that the Respondent should be on probation for four years.

Accordingly, the Committee has determined that the Respondent should be placed on probation for a period of four years .

ORDER

IT IS HEREBY ORDERED THAT:

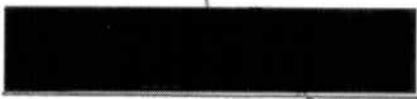
1. The First through Second Specifications of professional misconduct, as set forth in the Statement of Charges, are **DISMISSED;**
2. The Third through Ninth Specifications of professional misconduct, as set forth in the Statement of Charges, are **SUSTAINED;**

3. Respondent is placed on probation for four years. The terms of probation are attached hereto.

4. This Determination and Order shall be effective upon service on the Respondent. Service shall be either by certified mail upon Respondent at Respondent's last known address and such service shall be effective upon receipt or seven days after mailing by certified mail, whichever is earlier, or by personal service and such service shall be effective upon receipt.

DATED: New York, New York

January 14th, 2009


Alan Kopman, FACHE, CHAIR,

Jill Rabin, M.D.,

Krishna Gujavarty, M.D.

TO:

Ann Gayle
Associate Counsel
New York State Department of Health
Office of Professional Medical Conduct
90 Church Street
New York, N.Y. 10007

Ralph A. Erbaio, Jr.
Kern, Augustine, Conroy & Schoppmann, P.C.
Attorney for Dr. Toth
420 Lakeville Road
Lake Success, New York, N.Y. 11042

APPENDIX I

Terms 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 and obligations imposed by law and by his profession.
2. Respondent shall submit written notification to the New York State Department of Health addressed to the Director, Office of Professional Medical Conduct (OPMC), Hedley Park Place, 433 River Street Suite 303, Troy, New York 12180-2299; said notice is to include a full description of any employment and practice, professional and residential addresses and telephone numbers within or without New York State, and any and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty days of each action.
3. Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of Respondent's compliance with the terms of this Order. Respondent shall personally meet with a person designated by the Director of OPMC as requested by the Director.
4. For a period of one year, Respondent shall practice medicine only when a practice monitor shall be present in his office. The practice monitor shall be on-site during office hours, unless determined otherwise by the Director of OPMC. The practice monitor shall be proposed by the Respondent and subject to the written approval of the Director of OPMC. The practice monitor shall not be a family member or personal friend, or be in a professional relationship, which could pose a conflict with supervision responsibilities.
5. Respondent shall ensure that the practice monitor is familiar with the Order and terms of probation, and be willing to report to OPMC. Respondent shall ensure that the practice monitor is in a position to regularly observe and assess Respondent's medical practice. Respondent shall cause the practice monitor to report within 24 hours any suspected impairment, inappropriate behavior, questionable medical practice or possible misconduct to OPMC.
6. Respondent shall authorize the practice monitor to have access to patient records and to submit quarterly written reports to the Director of OPMC, regarding Respondent's practice, including, but not limited to procedures for obtaining written consent to procedures and appropriate chaperoning of patients. These narrative reports shall address all aspects of Respondent's clinical practice including, but not

limited to, the evaluation and treatment of patients, general demeanor, and other such on-duty conduct as the practice monitor deems appropriate to report

7. The period of probation shall be tolled during periods in which Respondent is not engaged in the active practice of medicine in New York State, Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in or intends to leave the active practice of medicine in New York State for a period of thirty (30) consecutive days or more, Respondent shall then notify the Director again prior to any change in that status. The period of probation shall resume and any terms of probation which were not fulfilled shall be fulfilled upon Respondent's return to practice in New York State.

8. Respondent's professional performance may be reviewed by the Director of OPMC. This review may include, but shall not be limited to, a review of office records, patient records and/or hospital charts, interviews with or periodic visits with Respondent and his/her staff at practice locations or OPMC offices,

9. Respondent shall maintain legible and complete medical records, which accurately reflect the evaluation and treatment of patients.

APPENDIX II

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

IN THE MATTER
OF
MIKLOS TOTTH, M.D.

NOTICE
OF
HEARING

TO: Miklos Toth, M.D.


PLEASE TAKE NOTICE:

A hearing will be held pursuant to the provisions of N.Y. Pub. Health Law §230 and N.Y. State Admin. Proc. Act §§301-307 and 401. The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on October 2, 2008, at 10:00 a.m., at the Offices of the New York State Department of Health, 90 Church Street, 4th Floor, New York, New York 10007, 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. SEAN D. O'BRIEN, 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 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. YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: New York, New York
September 9, 2008



Roy Nemerson
Deputy Counsel
Bureau of Professional
Medical Conduct

Inquiries should be directed to: Ann Gayle
Associate Counsel
Bureau of Professional Medical Conduct
90 Church Street, 4th Floor
New York, New York 10007
212-417-4450

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

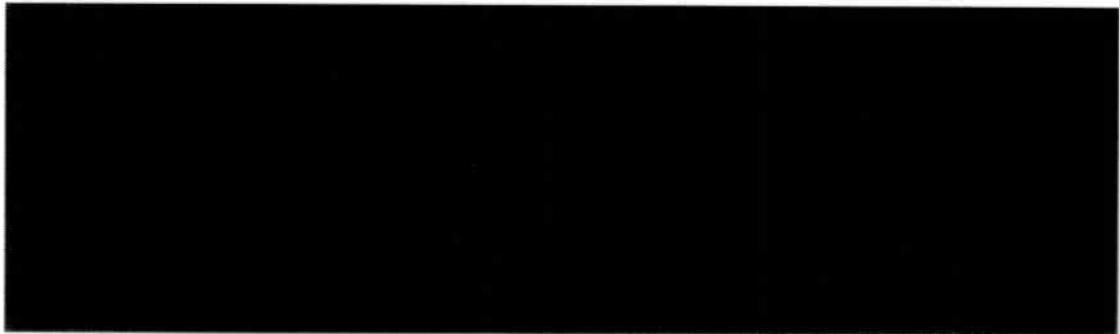
IN THE MATTER
OF
MIKLOS TOTH, M.D.

STATEMENT
OF
CHARGES

MIKLOS TOTH, M.D., the Respondent, was authorized to practice medicine in New York State on or about October 24, 1980, by the issuance of license number 144210, by the New York State Education Department.

FACTUAL ALLEGATIONS

A.



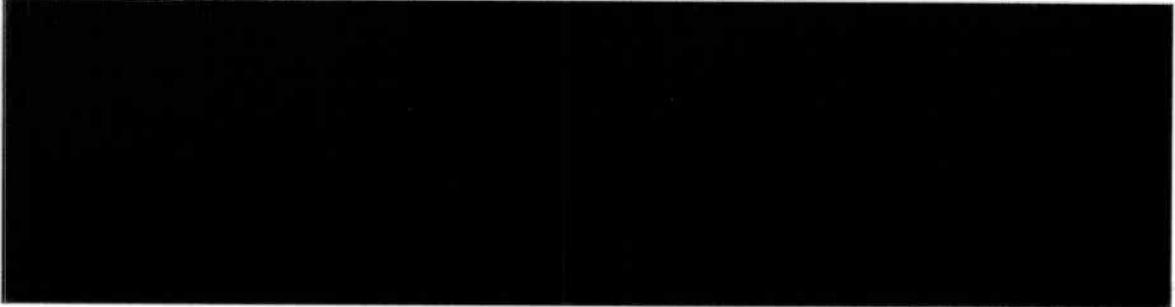
B. On or about May 12, 2003, Respondent, in his Registration Renewal application to The State Education Department, The University of the State of New York, Division of Professional Licensing Services, falsely answered "No" to the question, "Since your last registration application, Has any hospital or licensed facility restricted or terminated your professional training, employment, or privileges, or have you voluntarily or involuntarily resigned or withdrawn from such association to avoid the imposition of such action due to professional misconduct, unprofessional conduct, incompetency, or negligence?". Respondent intended to deceive the New York State

Education Department.

- C. On or about April 25, 2003, Respondent, in his Application for Reappointment to the Medical Staff of Lenox Hill Hospital, falsely answered "No" to the question, "Has your medical staff appointment/employment status or clinical privileges in any hospital or health care facility, or managed care organization (e.g. HMO, PPO, IPA, etc.) ever been denied, revoked, suspended, restricted reduced, limited, placed on probation, not renewed, voluntarily relinquished, discontinued or otherwise changed?".
1. Respondent intended to deceive Lenox Hill Hospital.
- D. On or about May 19, 2005, Respondent, in his Application for Reappointment to the Medical Staff of Lenox Hill Hospital, falsely answered "No" to the question, "Has your medical staff appointment/employment status or clinical privileges in any hospital or health care facility, or managed care organization (e.g. HMO, PPO, IPA, etc.) ever been denied, revoked, suspended, restricted reduced, limited, placed on probation, not renewed, voluntarily relinquished, discontinued or otherwise changed?".
1. Respondent intended to deceive Lenox Hill Hospital.
- E. On or about May 19, 2005, Respondent, in his Application for Reappointment to the Medical Staff of Lenox Hill Hospital, failed to list New York Hospital as a current or prior affiliation in the section which read, "other hospital/teaching/residency appointments and affiliations (please list all affiliations within the past ten (10) years)".
1. Respondent intended to deceive Lenox Hill Hospital.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION



SECOND SPECIFICATION



THIRD THROUGH SIXTH SPECIFICATIONS

FRAUDULENT PRACTICE

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

3. Paragraph B.
4. Paragraphs C and C1.
5. Paragraphs D and D1.
6. Paragraphs E and E1.

SEVENTH THROUGH NINTH SPECIFICATIONS

VIOLATION OF SECTION 2805-k OF THE PUBLIC HEALTH LAW

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

7. Paragraph C.
8. Paragraph D.
9. Paragraph E.

DATE: September 9, 2008
New York, New York


Roy Nemerson
Deputy Counsel
Bureau of Professional Medical Conduct