



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.  
*Commissioner*

Dennis P. Whalen  
*Executive Deputy Commissioner*

February 16, 2000

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Terrence Sheehan, Esq.  
NYS Department of Health  
5 Penn Plaza – 6<sup>th</sup> Floor  
New York, New York 10001

Nicolette Francey, M.D.  
28 Home Place  
Greenwich, Connecticut 06830

Nicolette Francey, M.D.  
c/o AAA Immediate Care  
120 East 56<sup>th</sup> Street  
New York, New York 10022

**RE: In the Matter of Nicolette Francey, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 00-46) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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:

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,



Tyrone T. Butler, Director  
Bureau of Adjudication

TTB: mla

Enclosure

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

X

COPY

IN THE MATTER : HEARING COMMITTEE  
OF : DETERMINATION  
NICOLETTE FRANCEY, M.D. : AND ORDER

ORDER #00-46

X

Gerald M. Brody, M.D., Chairperson, Ralph Levy, D.O., and Charles Ahlers, duly designated members of the State Board of 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:

September 15, 1999

Statement of Charges dated:

September 15, 1999

Hearing Dates: October 6 and November 16, 1999  
Deliberation Date: January 12, 2000  
Place of Hearing: NYS Department of Health  
5 Penn Plaza  
New York, New York  
Petitioner Appeared By: Terrence Sheehan, Esq.,  
Associate Counsel  
Bureau of Professional Medical Conduct  
NYS Department of Health

### **STATEMENT OF CHARGES**

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

### **CREDIBILITY OF WITNESSES**

The Committee found Dr. Elliot Howard, the Petitioner's expert witness, to be only partially credible because of his conflicting testimony given in response to questions from the Committee. This conflicting testimony related to the Negligence and Failure to Maintain Records specifications.

The Committee found Dr. M. David Price, Dr. Milka C. Torbarina, Patient B and Patient C to be fully credible witnesses.

### **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. All Findings are unanimous except as specifically indicated.

1. Although properly served in the manner set forth in N.Y. Public Health Law, Sec 230 (10) (d), Respondent did not appear in person or by counsel in this hearing.

2. During the investigation of this matter, prior to the hearing, Respondent did cooperate by forwarding certain records and was represented by counsel. At that time Respondent was communicated with at an address in Greenwich, Connecticut. It appears that Respondent has moved from that address and has failed to notify the Department of Health of her new address.

#### PATIENT C

3. In May of 1996, Patient C visited the Respondent for a check up. Before an examination would be performed, the Patient was told she had to fill out a credit card form. The patient was reluctant to do so, but gave Dr. Francey the credit card information after she was assured that the credit card would only be used if the patient's insurance refused to pay. (T. 168-70).

4. During the patient's visit, Respondent's employees attempted to charge \$600 on Patient C's credit card. This action was unauthorized by Patient C. (T. 171-2).

5. Patient C confirmed that the diagnoses and complaints the Respondent recorded on the Patient's reimbursement form including UTI, allergies, ear infection, spotty vision, dizziness, syncope and headaches, were never complained of by Patient C and were never discussed by Respondent with her. (T. 172-4).

6. Many diagnoses were listed for Patient C which were not substantiated by physical findings or patient complaints. Unsubstantiated diagnoses include cystitis, vaginitis, chest pain and allergies. (T. 35-6; Petitioner's Exhibit 3).

7. The Respondent fraudulently billed for a pulmonary function test on Patient C. (T.36). Patient C confirmed that no such test was done. The incomplete pulmonary function test report that is in the chart insofar as it purports to claim that such a test was done is a false document. (T. 39-40, 173-4; Petitioner's Exhibit 3 p. 10).

8. Respondent's chart contains a letter she sent to a medical appeals officer regarding Patient C. In this letter the Respondent falsely states that Patient C had the following symptoms and complaints: frequent ear infections, spotted vision, allergies, hay fever, dizziness, syncope and headaches. These statements by Respondent were knowingly false, since nowhere in the transcript does Patient C discuss such symptoms. (T. 40-1; Petitioner's Exhibit 3, p.2).

9. Respondent submitted claim forms containing many of the diagnoses listed, supra. Those entries made by the Respondent were knowingly false and designed to increase her reimbursement. (T. 36).

10. According to Respondent's billing record, Patient C's carrier was billed three times for hemocult tests. In fact, no hemocult test was ever performed. These charges were fraudulent. (T.56: T. 177; Department's Exhibit 3, p. 15).

#### **PATIENT D**

11. Respondent billed Patient D for a surgical debridement. There was nothing in the medical record to substantiate that that procedure was performed nor indicated based on an acceptable history and physical examination. The Committee finds this billing to be fraudulent. (T. 54; Petitioner's Exhibit 4, p. 12, 14-18, 24).

12. The Respondent fraudulently billed for a pulmonary function test on Patient D. No results of the test were recorded in the chart. Furthermore, there are specific references in the chart that the test was not recorded and therefore should not have been billed. (T.54-5: Petitioner's Exhibit 4, p. 17,22).

#### **PATIENT E**

13. The Respondent fraudulently billed for a pulmonary function test on Patient E. No results of the test were recorded in the chart. However, no test was actually done. (T. 27; Exhibit 5, p. 18).

14. M. David Price, is a podiatrist practicing in New York City since 1970. In 1997 Dr. Price entered into an agreement with the Respondent whereby she would refer patients to him and the Respondent would bill the respective insurance carriers for Dr. Price. Dr. Price entered into this agreement because he understood that the Respondent would be able to obtain reimbursement quicker than Dr. Price could. The Respondent was supposed to use the billing codes and insurance forms forwarded to her by Dr. Price for each patient he saw. (T. 81-86, 90-92).

15. One of the patients Dr. Price saw pursuant to this arrangement was Patient A. Dr. Price, after seeing Patient A, forwarded billing forms to the Respondent totaling \$320.00. According to the agreement, Respondent was supposed to submit that bill to Patient A's insurance carrier. Instead Respondent charged Patient A's credit card for \$540.00, \$220 more than Dr. Price billed for. The extra \$220 billed to Patient A's credit card constitutes a fraud committed by the Respondent. (T. 84-5; Petitioner's Exhibit 9).

16. When Dr. Price learned of the Respondent's improper charge to the patient's credit card, he complained to the Respondent about the improper use of the patient's credit card and about the overcharge. As a result, Respondent refunded \$220 to Patient A. (T. 84-5).

17. Dr. Price also saw Patient B pursuant to his arrangement with the Respondent. Dr. Price forwarded to the Respondent an insurance form totaling \$320. (T. 83-4; Petitioner's Exhibit 9).

18. After receiving the insurance form from Dr. Price, the Respondent prepared another insurance form, changed one of the billing codes used by Dr. Price and increased the reimbursement from \$320 to \$540. She then submitted this form to the insurance carrier. The committee finds that these actions by the Respondent constitute fraud. (T. 83-4; Petitioner's Exhibit 9).

19. Between approximately September 1997, and February 1998, Milka Torbarina, M.D. saw approximately twenty patients referred to Dr. Torbarina by Respondent for gynecological consultations. According to the arrangement Dr. Torbarina had with the Respondent, the Respondent would do the billing and Dr. Torbarina would receive a set fee for each service she provided. The Respondent would retain the difference between the reimbursement received and the set fee Dr. Torbarina received. (T. 99-101, 115-116).

20. On or about June 27, 1997, Patient B was referred by Respondent to a Dr. Rozbruch for an orthopedic problem. Dr. Rozbruch was one of the doctors Respondent referred patients to. Dr. Rozbruch submitted a bill to Respondent for an orthopedic consultation in the amount of \$275. (T. 138-42; Petitioner's Exhibit 12).

21. On the same day, Respondent submitted a bill to patient B's insurance carrier for a consultation in the total amount of \$440. We find that Respondent's submission to the insurance carrier was knowingly fraudulent. Respondent never provided orthopedic consultation, as falsely stated in the claim form. (T. 140-42, 160-1; Petitioner's Exhibit 14).

22. There was no credible evidence that Respondent ordered excessive tests or treatment. The evidence supported the conclusion that Respondent fraudulently billed for tests and treatment that were not ordered or necessary.

23. There was no credible evidence that Respondent was negligent in her medical practice. The evidence supported the conclusion that her deviations from good medical practice were fraudulent, not negligent.

24. There was no credible evidence that Respondent failed to maintain patient records that accurately reflected patient care and treatment. The inaccuracies in her records related to insurance bills, not to patient care and treatment.

## CONCLUSIONS OF LAW

FIRST: Respondent is found to have engaged in professional misconduct by reason of practicing the profession of medicine fraudulently within the meaning of N.Y. Education Law Sec. 6530 (2) (McKinney Supp. 1999), as set forth in Findings of Fact 1 through 21, supra.

SECOND: Respondent is found to have engaged in professional misconduct by reason of willfully making or filing a false report, or failing to file a report required by law or by the Department of Health or the Education Department, within the meaning of N.Y. Education Law Sec. 6530 (21) (McKinney Supp. 1999), as set forth in Findings of Fact 8, 9, 10, 11, 12, 13, 18 and 21.

THIRD: Respondent is found to have engaged in professional misconduct by reason of permitting a person or persons to share in the fees for professional services within the meaning of N.Y. Education Law Sec. 6530 (19) (McKinney Supp. 1999), as set forth in Findings of Fact 15, 16, 19, 20 and 21.

FOURTH: Respondent is not found to have engaged in professional misconduct by reason of ordering excessive tests or treatment within the meaning of N.Y. Education Law Sec. 6530 (35) (McKinney Supp. 1999), as set forth in Finding of Fact 22.

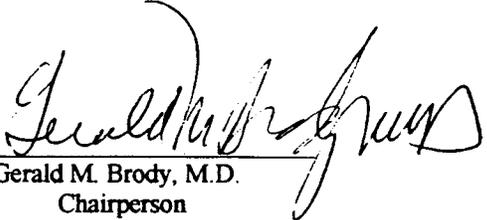
FIFTH: Respondent is not found to have practiced medicine with negligence on more than one occasion within the meaning of N.Y. Education Law Sec. 6530 (3) (McKinney Supp. 1999), as set forth in Finding of Fact 23, supra.

SIXTH: Respondent is not found to have failed to maintain patient records which accurately reflect the care and treatment of the patients within the meaning of N.Y. Education Law Sec. 6530 (32) (McKinney Supp. 1999), as set forth in Finding of Fact 24, supra.

**ORDER**

The Hearing Committee determines and orders that the Respondent's license to practice medicine be revoked. The Committee further orders that Respondent pay a penalty of \$5,000 for each of the seven Fraudulent Practice Specifications, a total of \$35,000.

Dated: New York, N.Y.  
February 4, 2000

  
Gerald M. Brody, M.D.  
Chairperson

Ralph Levy, D.O.  
Charles Ahlers

## APPENDIX I

EXHIBIT  
Dep't's 1  
11/16/99  
MCH

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

IN THE MATTER  
OF  
NICOLETTE FRANCEY, M.D.

NOTICE  
OF  
HEARING

TO: Nicolette Francey, M.D.  
c/o AAA Immediate Care  
120 E. 56th Street  
New York, N.Y. 10022

Nicolette Francey, M.D.  
28 Home Place  
Greenwich, CT. 06830

PLEASE TAKE NOTICE:

A hearing will be held pursuant to the provisions of N.Y. Pub. Health Law §230 (McKinney 1990 and Supp. 1999) and N.Y. State Admin. Proc. Act §§301-307 and 401 (McKinney 1984 and Supp. 1999). The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on November 16, 1999, 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 date 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

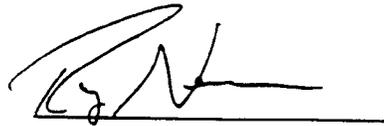
The answer shall be filed with the Bureau of Adjudication, at the address indicated above, and a copy shall be forwarded to the attorney for the Department of Health whose name appears below. Pursuant to §301(5) of the State Administrative Procedure Act, the Department, upon reasonable notice, will provide 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. 1999) 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. 1999). YOU ARE  
URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU  
IN THIS MATTER.

DATED: New York, New York  
September 15, 1999



ROY NEMERSON  
Deputy Counsel  
Bureau of Professional  
Medical Conduct

Inquiries should be directed to: **TERRENCE SHEEHAN**  
Associate Counsel  
Bureau of Professional  
Medical Conduct  
5 Penn Plaza, Suite 601  
New York, New York 10001  
(212) 613-2615

**SECURITY NOTICE TO THE LICENSEE**

The proceeding will be held in a secure building with restricted access. Only individuals whose name 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 the individual's name is provided by the licensee or the licensee's attorney to one of the Department office 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:

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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)

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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  
NICOLETTE FRANCEY, M.D.**

STATEMENT  
OF  
CHARGES

NICOLETTE FRANCEY, M.D., the Respondent, was authorized to practice medicine in New York State on or about March 18, 1985, by the issuance of license number 10022 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

- A. Between on or about 1996 and or on or about April 1998, Respondent owned a business called "the Doctor's Consultants" at 120 E. 56th Street, New York, N.Y. Respondent, through "The Doctor's Consultants", had contractual agreements with, at various times, 15 to 30 physicians. According to the contracts, Respondent would refer patients to the various physicians and Respondent would do all the billing of insurance carriers on behalf of the physicians. Respondent would retain a portion of all fees received from the insurance carriers.
- B. In July and/or August 1997, Respondent, acting under the name "The Doctor's Consultants", referred Patient A to M. David Price, D.P.M., for treatment of foot ailments. Respondent agreed to do the billing for Dr. Price. Dr. Price supplied Respondent with the proper diagnostic codes, treatment codes and fees to be submitted to Patient A's insurance carrier. Respondent, with intent to deceive, submitted to Patient A's insurance carrier knowingly incorrect diagnostic codes, treatment codes and fees. As a result of these inflated costs and fees, Respondent received reimbursement amounts to which she was not entitled.

- C. In July and/or August 1997, Respondent, acting under the name "The Doctor's Consultants", referred Patient B to M. David Price, D.P.M., for treatment of foot ailments. Respondent agreed to do the billing for Dr. Price. Dr. Price supplied Respondent with the proper diagnostic codes, treatment codes and fees to be submitted to Patient B's insurance carrier. Respondent, with intent to deceive, submitted to Patient B's insurance carrier, knowingly incorrect diagnostic codes, treatment codes and fees. As a result of these inflated costs and fees, Respondent received reimbursement amounts to which she was not entitled.
- D. In June 1997, Respondent, acting under the name "The Doctor's Consultants", referred Patient B to Dr. Rozbùch of E. 72 St. Orthopaedist Spec. P.C., for treatment of foot ailments. Respondent agreed to do the billing for Dr. Rozbùch. Dr. Rozbùch supplied Respondent with the proper diagnostic codes, treatment codes and fees to be submitted to Patient B's insurance carrier. Respondent, with intent to deceive, submitted to Patient B's insurance carrier, knowingly incorrect diagnostic codes, treatment codes and fees. As a result of these inflated costs and fees, Respondent received reimbursement amounts to which she was not entitled.
- E. Between or on about October 1997 and on or about February 1998, Respondent, acting under the name "The Doctor's Consultants" referred numerous patients to Milka C. Torbarina, M.D. Respondent billed the patient's insurance carriers and fraudulently retained all of the payments. Respondent made no payments to Dr. Torbarina.
- F. On or about May 5, 1996, Patient C visited Respondent at "The Doctor's Consultants", for a check up.

1. Respondent failed to obtain and note an adequate history and to perform and note an adequate physical examination.
2. Respondent made the following diagnoses which were not medically justified:
- a. cystitis
  - b. UTI
  - c. vaginitis
  - d. chest pain
  - e. allergies
  - f. syncope
  - g. ear infection
3. Respondent, with intent to deceive, submitted claim forms to Patient C's insurance carrier which contained the knowingly false diagnoses listed in paragraph 2, supra. Respondent did so in order to receive reimbursement at a rate higher than she was entitled to.
4. On or about May 5, 1996, Respondent attempted to charge Patient C's credit card for \$600 without Patient C's authorization.
5. Respondent inappropriately and without legitimate medical purpose ordered a pulmonary function tests.
6. Respondent failed to maintain a record for Patient C which accurately reflects the evaluation and treatment she provided, including patient

complaints, history, physical examinations, diagnoses, treatment plans, insurance bills and analysis of lab test result.

G. In or about October, November and December, 1994, Respondent saw Patient D at "The Doctor's Consultants".

1. Respondent failed to obtain and note an adequate history and to perform and note an adequate physical examination.
2. Respondent made the following diagnoses which were not medically justified:
  - a. right bundle branch block
  - b. peripheral vascular disease
  - c. chest pain
  - d. gastritis
  - e. hyperlipidemia
3. Respondent, with intent to deceive, submitted claim forms to Patient D's insurance carrier which contained the knowingly false diagnosis listed in paragraph 2, supra. Respondent did so in order to receive reimbursements at a rate higher than she was entitled to.
4. Respondent fraudulently billed Patient D's carrier for performing a debridement, when, in fact, Respondent knew no such service had been performed.

5. Respondent failed to maintain a record for Patient D which accurately reflects the evaluation and treatment she provided, including patient complaints, history, physical examinations, diagnoses, treatment plans, insurance bills and analysis of lab test result.

H. On or about July 25, 1996 Patient E visited Respondent at The Doctor's Consultants.

1. Respondent failed to obtain and note an adequate history and to perform and note an adequate physical examination.
2. Respondent made the following diagnoses which were not medically justified:
  - a. vaginitis
  - b. ureaplasma urolytica infection
  - c. hypoglycemia
3. Respondent, with intent to deceive, submitted claim forms to Patient E's insurance carrier which contained the knowingly false diagnoses listed in paragraph 2, supra. Respondent did so in order to receive reimbursements at a rate higher than she was entitled to.
4. Respondent failed to maintain a record for Patient E which accurately reflects the evaluation and treatment she provided, including patient complaints, history, physical examinations, diagnoses, treatment plans, insurance bills and analysis of lab test results.

## SPECIFICATION OF CHARGES

### FIRST THROUGH SEVENTH SPECIFICATIONS

#### FRAUDULENT PRACTICE

Respondent is charged with committing professional misconduct as defined by N. Y. Educ. Law §6530(2)(McKinney Supp. 1999) by practicing the profession of medicine fraudulently as alleged in the following paragraphs:

1. B.
2. C.
3. D.
4. E.
5. F and F(3), F(4), and F(5).
6. G and G(3) and G(4).
7. H and H(3).

### EIGHTH THROUGH THIRTEENTH SPECIFICATIONS

#### FALSE REPORT

Respondent is charged with committing professional misconduct as defined in N. Y. Educ. Law §6530(21)(McKinney Supp. 1999) by wilfully making or filing a false report, or failing to file a report required by law or by the department of health or the education department, as alleged in the following paragraphs:

8. B.
9. C.
10. D.

11. F and F(3).
12. G and G(3).
13. H and H(3).

#### **FOURTEENTH THROUGH SEVENTEENTH SPECIFICATIONS**

##### **FEE SPLITTING**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(19)(McKinney Supp. 1998) by permitting any person to share in the fees for professional services in the following paragraphs:

14. A.
15. B.
16. C.
17. D.

#### **EIGHTEENTH SPECIFICATION**

##### **UNNECESSARY TESTS OR TREATMENT**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(35)(McKinney Supp. 1998) by ordering excessive tests or treatment as alleged in the following paragraphs:

18. F and F(5).

**NINETEENTH SPECIFICATION**

**NEGLIGENCE ON MORE THAN ONE OCCASION**

Respondent is charged with committing professional misconduct as defined in N. Y. Educ. Law §6530(3)(McKinney Supp. 1999) by practicing the profession of medicine with negligence on more than one occasion as alleged in two or more of the following paragraphs:

19. F and F(1), F(2), G and G(1), G(2), H and H(1) and H(2).

**TWENTIETH THROUGH TWENTY-SECOND SPECIFICATIONS**

**FAILURE TO MAINTAIN RECORDS**

Respondent is charged with committing professional misconduct as defined in N. Y. Educ. Law §6530(32)(McKinney Supp. 1998) by failing to maintain a record for each patient which accurately reflects the care and treatment of the patient as alleged in the following paragraphs:

*hand  
written  
notes*

20. F and F(6).  
21. G and G(5).  
22. H and H(4).

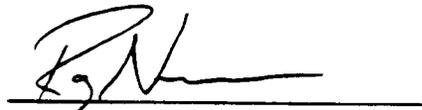
**TWENTY-THIRD SPECIFICATION**

**MORAL UNFITNESS**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(20)(McKinney Supp. 1999) by engaging in conduct in the practice of the profession of medicine that evidences moral unfitness to practice as alleged in the following paragraphs:

23. B, C, D, E and F and F(3), F(4), F(5), G and G(3), G(4) and H and H(3).

DATED: September 15, 1999  
New York, New York



ROY NEMERSON  
Deputy Counsel  
Bureau of Professional  
Medical Conduct