STATE OF NEW YORK
DEPARTMENT OF HEALTH

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

Richard F. Daines, M.D.
*Commissioner*

Public

June 25, 2007

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

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**RE: In the Matter of L. Mario DiBlasio, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 07-128) 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), 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 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,

Sean D. O'Brien/nm

Sean D. O'Brien, Director
Bureau of Adjudication

SDO:nm

Enclosure

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

COPY

**IN THE MATTER**

**OF**

**L. MARIO DiBLASIO, M.D.**

**DETERMINATION**
**AND**
**ORDER**
**BPMC 07 - 128**

Milton O.C. Haynes, M.D. (Chairperson), Elisa J. Wu, M.D., and Constance Diamond, D.A., duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to §230(10) of the Public Health Law.

The Department of Health appeared by Richard J. Zahnleuter, Esq., Associate Counsel and Ihor B. Evanick, Esq., Associate Counsel.

Respondent, L. Mario DiBlasio, M.D. appeared personally and was represented by Harrington, Ocko & Monk, LLP, Kevin J. Harrington, Esq. of Counsel and Einiger & Associates, P.L.L.C. , Scott I. Einiger, Esq. of Counsel.

Evidence was received and examined, including witnesses who were sworn or affirmed. Transcripts of the proceeding were made. After consideration of the record, the Hearing Committee issues this Determination and Order.

## PROCEDURAL HISTORY

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|---|---|
| Date of Notice of Hearing and Statement of Charges: | June 25, 2003 |
| Date of Answer to Charges: | July 27, 2003 |
| Pre-Hearing Conferences Held:<br>August 7, 2003; and September 22, 2003 and<br>(labeled as Intra-Hearings: September 25, 2003;<br>December 23, 2003; January 8, 2004; May 25, 2006;<br>and July 12, 2006) | July 30, 2003; |
| Hearings Held: - (First Hearing day):<br>September 21, 2006; October 24, 2006; October 25, 2006; November 13, 2006;<br>November 14, 2006; November 29, 2006; December 7, 2006; December 8, 2006;<br>December 13, 2006; and February 5, 2007 | July 27, 2006; |
| Intra-Hearing Conferences Held:<br>September 21, 2006; October 24, 2006; October 25, 2006; November 14, 2006;<br>November 29, 2006; December 7, 2006; December 8, 2006; December 13, 2006;<br>and February 5, 2007 | July 27, 2006; |
| Location of Hearings: | Offices of New York State<br>Department of Health<br>90 Church St., 4th Floor<br>New York, NY 10007 |
| Witnesses called by the Petitioner, Department of Health:<br>(in the order they testified) | John C. Wandtke, M.D.<br>Wilma Rivera<br>Audrey Schwartz<br>Patient B[1]<br>Edward Alan Sickles, M.D.<br>Arthur Kay, M.D. |
| Witnesses called by the Respondent, L. Mario DiBlasio, M.D.:<br>(in the order they testified) | I. Akiva Wulkan, M.D.<br>Rachael Pesce<br>L. Mario DiBlasio. M.D.<br>Robert Albert Schmidt, M.D. |

[1] In order to maintain patient confidentiality the patient is referenced by letter. Her full name is contained in an appendix to the Statement of Charges.

| | |
|---|---|
| Department of Health's Post-Hearing Submission: | Dated April 11, 2007 |
| Respondent's Brief in Support of His Application to Dismiss All Charges: | Dated April 16, 2007 |
| Deliberations Held: (last day of Hearing) | Monday, April 30, 2007 |

## STATEMENT OF CASE

The State Board for Professional Medical Conduct is a duly authorized professional disciplinary agency of the State of New York (§230 *et seq.* of the Public Health Law of the State of New York ["**P.H.L.**"]). This case was brought by the New York State Department of Health, Bureau of Professional Medical Conduct ("**Petitioner**" or "**Department**") pursuant to §230 of the P.H.L. L. Mario DiBlasio, M.D. ("**Respondent**") is charged with one hundred and eighteen (118) specifications of professional misconduct as set forth in §6530 of the Education Law of the State of New York ("**Education Law**").

In the Department's Statement of Charges (Department's Exhibit # 2), Respondent is charged with professional misconduct by reason of: (1) practicing the profession of medicine with gross negligence on a particular occasion[2]; (2) practicing the profession of medicine with gross incompetence[3]; (3) practicing the profession of medicine with negligence on more than one occasion[4]; (4) practicing the profession of medicine with incompetence on more than one occasion[5]; (5) accepting and performing professional responsibilities which Respondent knew or had reason

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[2] Education Law §6530(4) - (First through Eighth Specifications in the Statement of Charges).

[3] Education Law §6530(6) - (Ninth through Sixteenth Specifications in the Statement of Charges).

[4] Education Law §6530(3) - (Seventeenth Specification in the Statement of Charges).

[5] Education Law §6530(5) - (Eighteenth Specification in the Statement of Charges).

to know that he was not competent to perform[6]; (6) practicing the profession of medicine fraudulently[7]; (7) making or filing a false report[8]; and (8) engaging in conduct in the practice of the profession of medicine that evidences moral unfitness to practice[9].

These Charges and Specifications of professional misconduct result from Respondent's alleged acts and conduct between 1995 and 2002, involve seven (7) specific patients[10] and various employment applications and reapplications.

Respondent admits that he interpreted mammograms for Patients A through E and made sonographic interpretations for Patients C and E. Respondent admits that he provided medical care to Patients F and G in the form of interpreting diagnostic x-rays. Respondent neither admits nor denies certain other factual allegations and denies knowledge or information sufficient to form a belief as to certain other factual allegations contained in the Statement of Charges. Respondent denies all other factual allegations and all of the Specifications of misconduct contained in the Statement of Charges. Respondent sets forth seven (7) affirmative defenses in the Statement of Charges. A copy of the Statement of Charges is attached to this Determination and Order as Appendix 1. A copy of Respondent's Answer is attached to this Determination and Order as Appendix 2.

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[6] Education Law §6530(24) - (Nineteenth Specification in the Statement of Charges).

[7] Education Law §6530(2) - (Twentieth through Fifty-Second Specifications in the Statement of Charges).

[8] Education Law §6530(21) - (Fifty-Third through Eighty-Fifth Specifications in the Statement of Charges).

[9] Education Law §6530(20) - (Eighty-Sixth through One Hundred Eighteenth Specifications in the Statement of Charges)

[10] The Statement of Charges includes allegations involving seven (7) patients who are identified by letters (Patient A, B, C, etc.) and whose full names are contained in an appendix to maintain patient confidentiality.

## FINDINGS OF FACT

The following Findings of Fact ("**Findings**") were made after a review of the entire record available to the Hearing Committee in this matter. These facts represent documentary evidence and testimony found persuasive by the Hearing Committee in arriving at a particular finding. Where there was conflicting evidence the Hearing Committee considered all of the evidence presented and rejected what was not relevant, believable or credible in favor of the cited evidence. The Department, which has the burden of proof, was required to prove its case by a preponderance of the evidence. The Hearing Committee unanimously agreed on all Findings of Fact. All Findings of Fact made by the Hearing Committee were established by at least a preponderance of the evidence.

1. Respondent was licensed to practice medicine in New York State on October 7, 1977 by the issuance of license number 132740 by the New York State Education Department (Department's Exhibit # 4)[11].

2. The State Board for Professional Medical Conduct has obtained personal jurisdiction over Respondent and has jurisdiction over Respondent's license and this disciplinary proceeding (determination made by the ALJ; Respondent had no objection regarding service effected on him); (P.H.L. §230[10][d]); (Department's Exhibit # 3); [P.H.T-145-146][12].

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[11] Refers to exhibits in evidence submitted by the New York State Department of Health (Department's Exhibit #) or by Dr. L. Mario DiBlasio (Respondent's Exhibit #).

[12] Numbers in brackets refer to Hearing transcript page numbers [T- ], or to Pre-Hearing transcript page numbers [P.H.T-], or to Intra-Hearing transcript page numbers [I.H.T- ]. The Hearing Committee was not present at, and did not review, the Pre-Hearing transcripts or the Intra-Hearing transcripts but, when necessary, was advised of the relevant legal decisions or rulings made by the Administrative Officer.

**Patient A**

3. Respondent provided medical care to Patient A in the form of interpreting screening mammograms at the offices of Steven Bier, M.D., P.C., on or about March 12, 1999 and again on or about April 10, 2000. On each occasion, Respondent interpreted Patient A's mammograms of her right breast, and reported, among other things: "... No evidence of malignancy. Follow-up is suggested in one year. ..." (Department's Exhibits # 10, # 11, and #16 through # 23).

**Respondent's March 12, 1999 Mammographic Interpretations** (Department's Exhibits # 10, and #16 through # 19).

4. Respondent issued a report which showed that he failed to understand the significance of the number, distribution, shape, and recency of the approximately 30 micro-calcifications that were apparent on the mammograms of Patient A's right breast [T-870-872 (Sickles)]; [T-2107, 2109, 2236 (Schmidt)].

5. Respondent failed to identify the group of approximately 30 micro-calcifications that were apparent on the mammograms of Patient A's right breast as being highly suggestive of malignancy [T-872 (Sickles)]; [T-2234-2236 (Schmidt)].

6. Respondent caused a report to be issued that erroneously notified Patient A and Patient A's referring physician that: "... Bilaterally, no malignant calcifications are noted. ..." and an impression that states: "... No evidence of malignancy. Follow-up is suggested in one year. ..." (Department's Exhibit # 10); [T-872-873, 858 (Sickles)]; [T-2236 (Schmidt)].

7. Respondent failed to recommend a prompt surgical biopsy of Patient A's right breast for the purpose of diagnosing breast cancer [T-873-874 (Sickles)]; [T-2236-2237 (Schmidt)].

8. Respondent delayed the detection, diagnosis, and treatment of the cancerous lesion in Patient A's right breast, thereby subjecting Patient A to an increased risk of morbidity and mortality [T-898-899 (Sickles)]; [T-2237 (Schmidt)].

**Respondent's April 10, 2000 Mammographic Interpretations** (Department's Exhibits # 11, and #20 through # 23).

9. Respondent failed to understand the significance of the number, distribution, shape, and recency of the now approximately 100 micro-calcifications that were now even more apparent on the mammograms of Patient A's right breast [T-888-889 (Sickles)]; [T-2237 (Schmidt)].

10. Respondent failed to identify the group of now approximately 100 micro-calcifications that were apparent on the mammograms of Patient A's right breast as being highly suggestive of malignancy [T-890-891 (Sickles)]; [T-2237-2238 (Schmidt)].

11. Respondent caused a report to be issued that erroneously notified Patient A and Patient A's referring physician that: "... The amount of calcifications on the right have increased since the previous exam, but they are still benign. ..." and an impression that states: "... No evidence of malignancy. Follow-up is suggested in one year. ..." (Department's Exhibit # 11); [T-891-892 (Sickles)]; [T-2238 (Schmidt)].

12. Respondent failed to recommend a prompt surgical biopsy of Patient A's right breast for the purpose of diagnosing breast cancer [T-892 (Sickles)]; [T-2238 (Schmidt)].

13. Respondent delayed the detection, diagnosis, and treatment of the cancerous lesion in Patient A's right breast, thereby subjecting Patient A to an increased risk of morbidity and mortality [T-898 899 (Sickles)]; [T-2238 (Schmidt)].

**Patient B**

14. Respondent provided medical care to Patient B in the form of interpreting screening mammograms at the offices of Steven Bier, M.D., P.C., on or about March 30, 1999. On that occasion, Respondent interpreted Patient B's mammograms of her left breast, and reported, in Spanish, among other things: "... *Su reciente **Mamografia** en nuestra oficina no demostro **NINGUN CANCER**. Nuestra computadora automaticamente le dara una cita para su proxima mamografia.*"

(Emphasis as in original - Department's Exhibit # 63) which in English means: "... Your recent **Mammogram** at our office shows **NO CANCER**. Our computer will now automatically schedule you for your next mammogram. ..." (Department's Exhibits # 62, # 63, # 65 through # 69, and # 65A through # 69A).

15. Respondent issued a report which showed that he failed to understand that a palpable spiculated mass, or lesion, that was apparent on mammograms of Patient B's left breast was an abnormal mammographic feature [T-1009-1011 (Sickles)]; [T-2238-2239 (Schmidt)]

16. Respondent failed to identify the lesion that was apparent on the mammograms of Patient B's left breast as being highly suggestive of malignancy [T-1011-1012 (Sickles)]; [T-2239 (Schmidt)].

17. Respondent failed to recommend completion of the mammographic evaluation of the lesion that was apparent on the mammograms of Patient B's left breast so as to further characterize the lesion in terms of precise three-dimensional location, size, and proximity to other potential abnormal mammographic features [T-1012-1013 (Sickles)]; [T-2239-2240 (Schmidt)].

18. Respondent caused a report to be issued that erroneously notified Patient B that: "... Bilaterally, no malignant-appearing masses are noted. ..." and, as translated into English: "... Normal Mammogram ..." (Department's Exhibit # 63); [T-1013 (Sickles)]; [T-2240 (Schmidt)].

19. Respondent failed to recommend a prompt surgical biopsy of Patient B's left breast for the purpose of diagnosing breast cancer [T-1013-1014 (Sickles)]; [T-2240 (Schmidt)].

20. Respondent delayed the detection, diagnosis, and treatment of the cancerous lesion in Patient B's left breast, thereby subjecting Patient B to an increased risk of morbidity and mortality [T-1027-1028 (Sickles)]; [T-2240 (Schmidt)].

**Patient C**

21. Respondent provided medical care to Patient C in the form of mammographic and sonographic interpretations at the offices of Steven Bier, M.D., P.C., on or about May 10, 1999. On that occasion, Respondent interpreted Patient C's mammograms and sonograms of her left breast, and reported, in Spanish, among other things: "... *Su reciente **Mamografia** en nuestra oficina no demostro **NINGUN CANCER**. Nuestra computadora automaticamente le dara una cita para su proxima mamografia ...*" which in English means: "Your recent **Mammogram** at our office shows **NO CANCER**. Our computer will now automatically schedule you for your next mammogram." (Emphasis as in original - Department's Exhibit # 107); (Department's Exhibits # 106 through 113, and # 108A through # 112A).

22. There was a difference of opinion by the experts (Dr. Sickles and Dr. Schmidt) as to whether there was a large solid mass present on the mammograms and sonograms of Patient C's left breast [T-1054-1055 (Sickles)]; [T-2240 (Schmidt)].

23. There was a difference of opinion by the experts (Dr. Sickles and Dr. Schmidt) as to whether there were features that were highly suggestive of malignancy on the mammograms of Patient C's left breast [T-1055-1056 (Sickles)]; [T-2240 (Schmidt)].

24. There was a difference of opinion by the experts (Dr. Sickles and Dr. Schmidt) as to whether there was a large solid mass and the significance of its view on the sonographic equipment [T-1056-1058 (Sickles)]; [T-2240-2241 (Schmidt)].

25. There was a substantial difference of opinion by the experts (Dr. Sickles and Dr. Schmidt) as to Factual Allegations C.4., C.5., C.6., C.7., and C.8. from the The Statement of Charges (see Appendix 1) [T-1058-1061, 1067-1068 (Sickles)]; [T-2241-2243 (Schmidt)].

**Patient D**

26. Respondent provided medical care to Patient D in the form of mammographic interpretations at the offices of Steven Bier, M.D., P.C., on or about November 14 or 16, 1998 (Patient D was at the office on November 14; the letter is dated November 16). On that occasion, Respondent interpreted Patient D's mammograms of her left breast, and reported, among other things: "Your recent Mammogram at our office **SHOWS NO CANCER**. Our computer will now automatically schedule you for your next Mammogram. ..." (Emphasis as in original - Department's Exhibit # 133); (Hearing Committee Ex. 1); (Department's Exhibits # 132 through # 138); (Respondent's Exhibit A).

27. There was a difference of opinion as to whether there was a spiculated mass present or apparent on the mammograms of Patient D's left breast [T-1098-1099 (Sickles)]; [T-2244-2244 (Schmidt)].

28. Respondent did not identify the lesion that was on the mammograms of Patient D's left breast as being suggestive or suspicious of malignancy [T-1099-1100 (Sickles)]; [T-2245-2248].

29. Respondent did not address the significance of the inability of the available mammographic views to accurately determine the three-dimensional location of the lesion [T-1100-1102 (Sickles)]; [T-2248-2251 (Schmidt)].

30. Respondent failed to recommend completion of the mammographic evaluation of the lesion that was apparent on the mammograms of Patient D's left breast so as to further characterize the lesion in terms of precise three-dimensional location, size, and proximity to other potential abnormal mammographic features [T-1102 (Sickles)]; [T-2251-2252 (Schmidt)].

31. A report was issued that erroneously notified Patient D that: "Your recent Mammogram at our office **SHOWS NO CANCER**. Our computer will now automatically schedule you for your next Mammogram. ..." (Emphasis as in original - Department's Exhibit # 133); [T-1102-1103 (Sickles)].

32. Respondent failed to recommend a prompt surgical biopsy of Patient D's left breast for the purpose of diagnosing breast cancer [T-1103 (Sickles)]; [T-2253: (Schmidt)].

33. Respondent delayed the detection, diagnosis, and treatment of the cancerous lesion in Patient D's left breast, thereby subjecting Patient D to an increased risk of morbidity and mortality [T-1108-1109 (Sickles)]; [T-2253 (Schmidt)].

**Patient E**

34. Respondent provided medical care to Patient E in the form of mammographic and sonographic interpretations at the offices of Steven Bier, M.D., P.C., on or about March 16, 1999 and March 29, 1999. On March 29, 1999, Respondent interpreted Patient E's mammograms and sonograms of her right breast, and reported, among other things: "... Mammographically and sonographically benign nodule on the right as described. No evidence of malignancy. Follow-up suggested in one year with mammography." (Hearing Committee Ex. 1); (Department's Exhibits # 150, # 156, # 157, and # 158); (Respondent's Exhibit A).

35. There was a substantial differences of opinion by the experts (Dr. Sickles and Dr. Schmidt) as to Factual Allegations E.1., E.2., E.3., E.4., E.5., E.6., E.7., E.8., E.9., and E.10. from the Statement of Charges (see Appendix 1) [T-1194-1200, 1204 (Sickles)]; [T-2267-2285, 2310 (Schmidt)].

**Patient F**

36. Respondent provided medical care to Patient F in the form of interpreting diagnostic x-rays as an Associate Radiologist on the medical staff of Brookdale University Hospital and Medical Center, on or about March 27, 2002. On that occasion, Respondent interpreted Patient F's x-rays of her right hip, and reported, among other things: "... There is no fracture or dislocation. ..." (Department's Exhibits # 185 {page136}, # 185A {page12}, # 187, and # 188).

37. Respondent failed to perceive the significance of the abnormalities that were apparent on the x-rays of Patient F's right hip [T-132-135 (Wandtke)].

38. Respondent failed to identify the abnormalities that were apparent on the x-rays of Patient F's right hip as being consistent with a fracture [T-133-135 (Wandtke)].

39. Respondent caused a report to be issued that erroneously notified Patient F's referring physician that, among other things, there was "no fracture." [T-133-135 (Wandtke)].

40. Respondent delayed the detection, diagnosis, and treatment of the fracture in Patient F's right hip, thereby subjecting Patient F to an increased risk of morbidity and mortality [T-134-135 (Wandtke)].

**Patient G**

41. Respondent provided medical care to Patient G in the form of interpreting diagnostic x-rays as an Assistant Radiologist on the medical staff of Brookdale University Hospital and Medical Center, on or about December 24, 2001. On that occasion, Respondent interpreted Patient G's x-rays of her chest, and reported, among other things: "... There is almost total opacification of the right hemithorax suggesting the presence of a large effusion on the right side. ..." (Department's Exhibits # 186 {page148}, # 189, # 189-A, # 190, and # 190-A).

42. Respondent failed to determine correctly the right/left sidedness of an abnormality that was apparent in Patient G's left chest [T-170-171, 177-178 (Wandtke)].

43. Respondent failed to understand the significance of right/left anatomic and other considerations that were apparent on the x-rays of Patient G's chest [T-171-172, 177-178 (Wandtke)].

44. Respondent failed to insist that the x-ray technologist resolve a right/left labeling inconsistency on the x-rays by taking another x-ray [T-172, 177-178 (Wandtke)].

45. Respondent caused a report to be issued that erroneously notified the hospital staff caring for Patient G that there was "almost total opacification of the right hemithorax." [T-172-173, 177-178 (Wandtke)].

46. Respondent caused a report to be issued that erroneously notified the hospital staff caring for Patient G that there was "a large effusion on the right side" of Patient G's chest [T-173-174, 177-178 (Wandtke)].

47. Patient G had a chest tube insertion in the side of the chest (right) that did not have almost total opacification and did not have a large effusion thereby subjecting Patient G to an increased risk of morbidity and mortality [T-174-178 (Wandtke)]. Respondent contributed to, but did not solely cause, this error (Respondent's Exhibit # H); [Testimony of DiBlasio].

## Applications

### History of Criminal Convictions

48. On March 8, 1989, Respondent was convicted in New Jersey of the crime of "Possession, Controlled Dangerous Substance with Intent to Distribute," "a Crime of the Third Degree" under New Jersey Statutes Section 24:21-19(a)(1), and sentenced to 8 years imprisonment (Department's Exhibit # 162).

49. On March 12, 1992, Respondent was convicted in New York of the crime of "Criminal Possession of a Controlled Substance in the Fourth Degree," a "Class C Felony," under New York Penal Law Section 220.09 and sentenced to a conditional discharge (Department's Exhibit # 197).

**Brookdale University Hospital & Medical Center** (Factual Allegations F.1. through F.5.).

50. On August 11, 2001 Respondent submitted an application to Brookdale University Hospital & Medical Center ("**Brookdale**") for medical staff reappointment in 2002-2003 and an upgrade in rank from Assistant Radiologist to Associate Radiologist. In response to question 1,

"Have you been convicted of a crime, including crimes against children, or have any criminal charges been brought against you in the State of New York or another jurisdiction," Respondent answered, "No." (Department's Exhibit # 174-B).

51. On June 18, 1999, Respondent submitted an application to Brookdale for medical staff reappointment in 2000-2001. In response to question 1, "Have you been convicted of a crime or have any criminal charges been brought against you in the State of New York or another jurisdiction," Respondent answered, "No." (Department's Exhibit # 174-B).

52. On August 7, 1997, Respondent submitted an application to Brookdale for medical staff reappointment in 1998-1999. In response to question 1, "Have you been convicted of a crime or have any criminal charges been brought against you in the State of New York or another jurisdiction," Respondent answered, "No." (Department's Exhibit # 174-B).

53. On October 12, 1995, as part of an application to Brookdale for appointment to the medical staff, Respondent submitted an "Application for Employment." In response to the question at the bottom of the third page, "Have you ever been convicted of a crime," Respondent answered, "No." (Department's Exhibit # 175-B).

54. On June 26, 1995, as part of an application to Brookdale for initial appointment to the medical staff, Respondent submitted an "Application for Appointment to the Medical Staff or Affiliate Staff." In response to question 2 in the "Professional Conduct History" section, "Any criminal convictions (other than motor vehicle and juvenile violations) brought against you in this state or any other state," Respondent answered, "No." (Department's Exhibit # 174-B).

**Kingsbrook Jewish Medical Center** (Factual Allegation F.6.)

55. On October 5, 1999, Respondent submitted an application to Kingsbrook Jewish Medical Center ("**Kingsbrook**") for initial appointment to the medical staff. In response to the last question at the bottom of page 2, "Have you ever been convicted of a crime," Respondent answered, "No." (Department's Exhibit # 178).

**History of Professional Discipline and Employment**

56. On March 12, 1986, Respondent was found guilty of professional misconduct in New York and Respondent's New York medical license was revoked, but stayed indefinitely with five years probation (Department's Exhibit # 198).

57. On October 24, 1987, Respondent was found guilty of professional misconduct and Respondent's New York medical license was revoked, with no qualifications (Department's Exhibit # 198).

58. On March 3, 1995, as a result of the Respondent's New York license restoration petition, the 1987 New York revocation of Respondent's license was stayed indefinitely with two years probation (Department's Exhibit # 198).

59. On October 23, 1989, Respondent was found guilty of professional misconduct in New Jersey and Respondent's New Jersey medical license was revoked, with no qualifications (Department's Exhibit # 198).

60. On December 5, 1996, as a result of the Respondent's New Jersey license restoration petition, Respondent's New Jersey license was reinstated, with monitoring (Department's Exhibit # 198).

61. Between 1986 and 1991, Respondent was incarcerated in the New York State prison system, mostly Sing Sing (Ossining) Correctional Facility (Department's Exhibit # 198).

**Brookdale** (Factual Allegations G.1. through G.10.)

62. On August 11, 2001, as part of an application to Brookdale for medical staff reappointment in 2002-2003 and an upgrade in rank from Assistant Radiologist to Associate Radiologist, Respondent submitted a Curriculum Vitae. For the time period "1987-1991," Respondent wrote "Various Locum Tenens, General Diagnosis," under "Practical Experience." (Department's Exhibit # 174-B).

63. On August 11, 2001, in the same application to Brookdale referred to in the paragraph above, in response to question 2, "... [H]ave you been found guilty of professional misconduct as defined by the laws of the State of New York or another jurisdiction ...," Respondent answered, "No." (Department's Exhibit # 174-B).

64. On June 18, 1999, Respondent submitted an application to Brookdale for medical staff reappointment in 2000-2001. In response to question 2, "... [H]ave you been found guilty of professional misconduct as defined by the laws of the State of New York or another jurisdiction ...," Respondent answered, "No." (Department's Exhibit # 174-B).

65. On August 7, 1997, as part of an application to Brookdale for medical staff reappointment in 1998-1999, Respondent submitted a Curriculum Vitae. For the time period "1987-91," Respondent wrote "Various Locum Tenens, General Diagnosis," under "Practice Experience." (Department's Exhibit # 174-B).

66. On August 7, 1997, in the same application to Brookdale referred to in the paragraph above, in response to question 2, "... [H]ave you been found guilty of professional misconduct as defined by the laws of the State of New York or another jurisdiction ...," the Respondent answered, "No." (Department's Exhibit # 174-B).

67. On October 12, 1995, as part of an application to Brookdale for appointment to the medical staff, Respondent submitted an "Application for Employment," including an "Employment History." For the time period "from 7/86 to 9/91," in response to the query "Name and Address of Employer," Respondent wrote "Various Rad. Offices," and in response to the query "Kind of Business," Respondent wrote "Radiology Practice," and in response to the query "Describe Work Performed," Respondent wrote "Locum Tenens," and in response to the query "Reason for Leaving," Respondent wrote "FT [full time] Work at Montefiore." (Department's Exhibit # 175-B).

68. On October 12, 1995, as part of the same application to Brookdale referred to in the paragraph above, Respondent submitted an "Application for Employment." In response to the question at the bottom of the first page, "Has your license ever been revoked or suspended," Respondent answered, "No." (Department's Exhibit # 175-B).

69. On October 12, 1995, as part of the same application to Brookdale referred to in the paragraph above, Respondent submitted an "Application for Employment." In response to the question at the bottom of the first page, "Are you currently on probation with the State Department of Education or any other state agency," Respondent answered, "No." (Department's Exhibit # 175-B).

70. On June 26, 1995, as part of an application to Brookdale for initial appointment to the medical staff, Respondent submitted an "Application for Appointment to the Medical Staff or Affiliate Staff", including a Curriculum Vitae. For the time period "1987-1991," Respondent wrote "Various Locum Tenens, general diagnosis," under "Work Experience." (Department's Exhibit # 174-B).

71. On June 26, 1995, as part of the same application to Brookdale referred to in the paragraph above, under the heading "Licensure, Registrations, Board Certifications," in response to the instruction,"Licensure and Registrations: List all New York State certificates first. List all current and past and specify the type ...," Respondent listed just his New York licensure history (Department's Exhibit # 174-B).

**Kingsbrook** (Factual Allegations G.11. through G.16.)

72. On October 5, 1999, as part of an application to Kingsbrook for initial appointment to the medical staff, Respondent submitted a Curriculum Vitae. For the time period "1987-91," Respondent wrote "Various Locum Tenens, General Diagnosis," under "Practice Experience." (Department's Exhibit # 178).

73. On October 5, 1999, as part of the same initial application to Kingsbrook referred to in the paragraph above, Respondent submitted an "Addendum to the Application for Appointment to the Medical Staff." In response to the directive "Please list any gaps in training and/or employment for more than six (6) months and state reasons for the gaps (use separate sheet if necessary)," Respondent answered "No Gaps." (Department's Exhibit # 178).

74. On October 5, 1999, in the same initial application to Kingsbrook referred to in the paragraph above, under the heading "Professional Membership/Licensure/Certifications," Respondent listed just his New York licensure history and listed nothing in response to "License in Other States." (Department's Exhibit # 178).

75. On October 5, 1999, in the same initial application to Kingsbrook referred to in the paragraph above, in response to the question in the middle of page 2, "Have there been any past or currently pending challenges to your licensure ...," Respondent answered "No." (Department's Exhibit # 178).

76. On October 5, 1999, in the same initial application to Kingsbrook referred to in the paragraph above, in response to the question at the bottom of page 2, "Have you been involved in any past or currently pending professional misconduct proceedings in any state," Respondent answered "No." (Department's Exhibit # 178).

77. On October 5, 1999, in the same initial application to Kingsbrook referred to in the paragraph above, in response to question 1 at the top of page 3, "Has your license to practice medicine or Drug Enforcement Administration in any jurisdiction ever been limited, suspended or revoked, or action pending," Respondent answered "No." (Department's Exhibit # 178).

**Steven Bier, M.D., P.C.** (Factual Allegation G.17.)

78. In June 1998, as part of an application to Steven Bier, M.D., P.C., for the position of Radiologist, Respondent submitted a Curriculum Vitae. For the time period "1987-91," Respondent wrote "Various Locum Tenens, General Diagnosis," under "Practice Experience." (Department's Exhibit # 180).

**History of Hospital Discharge**

79. When faced with possible disciplinary action by Brooklyn Hospital, Respondent opted to "quit" effective November 15, 1984 as requested by the hospital (Department's Exhibit # 173); [T-2384 (Wulkan)]; [T-1774-1776, 1803 (DiBlasio)].

**Brookdale** (Factual Allegations H.1. through H.8.)

80. On August 11, 2001, Respondent submitted an application to Brookdale for medical staff reappointment in 2002-2003 and an upgrade in rank from Assistant Radiologist to Associate Radiologist. In response to question 5, "Has your medical staff appointment/employment status or clinical privileges in any hospital, healthcare facility or managed care organization been voluntarily or involuntarily denied, revoked, suspended, restricted, reduced, limited, placed on probation, not renewed, relinquished, discontinued, or otherwise changed," Respondent answered, "No." (Department's Exhibit # 174-B).

81. On June 18, 1999, Respondent submitted an application to Brookdale for medical staff reappointment in 2000-2001. In response to question 5, "Has your medical staff appointment/employment status or clinical privileges in any hospital, healthcare facility or managed care organization been voluntarily or involuntarily denied, revoked, suspended, restricted, reduced, limited, placed on probation, not renewed, relinquished, discontinued, or otherwise changed," Respondent answered, "No." (Department's Exhibit # 174-B).

82. On August 7, 1997, Respondent submitted an application to Brookdale for medical staff reappointment in 1998-1999. In response to question 5, "Has your medical staff appointment/employment status or clinical privileges in any hospital, healthcare facility or managed

care organization been voluntarily or involuntarily denied, revoked, suspended, restricted, reduced, limited, placed on probation, not renewed, relinquished, discontinued, or otherwise changed," Respondent answered, "No." (Department's Exhibit # 174-B).

83. On October 12, 1995, as part of an application to Brookdale for appointment to the medical staff, Respondent submitted an "Application for Employment," including an employment history form. For the time period "from 6/81 to 7/86," concerning employment at Brooklyn Hospital, in response to the query "Reason for Leaving," Respondent wrote "Continued Education." (Department's Exhibit # 175-B).

84. On June 26, 1995, as part of an application to Brookdale for initial appointment to the medical staff, Respondent submitted an "Application for Appointment to the Medical Staff or Affiliate Staff." Under "Work Experience/Professional History," for the time period "7/81 to 6/85," concerning employment at Brooklyn Hospital, in response to the query "Reason for Leaving," Respondent wrote "Accepted St. Vincent's Offer." (Department's Exhibit # 174-B).

85. On June 26, 1995, as part of the same initial application to Brookdale referred to in the paragraph above," in response to question 1, "Have you had any of the following items (A-H) involuntarily denied, revoked, suspended, not renewed, placed under probation or otherwise limited or curtailed ... E. Membership on any hospital medical staff," Respondent answered, "No." (Department's Exhibit # 174-B).

86. On June 26, 1995, as part of the same initial application to Brookdale referred to in the paragraph above, in response to question 1 in the "Professional Conduct History" section, "Have you had any of the following items (A-H) involuntarily denied, revoked, suspended, not renewed, placed under probation or otherwise limited or curtailed ... F. Clinical privileges at any medical facility," Respondent answered, "No." (Department's Exhibit # 174-B).

87. On June 26, 1995, as part of the same initial application to Brookdale referred to in the paragraph above, in response to question 5 in the "Professional Conduct History" section, "Have you ever voluntarily or involuntarily resigned from any health care facility in order to avoid the imposition of disciplinary measures or curtailment in any way of clinical privileges," Respondent answered, "No." (Department's Exhibit # 174-B).

**Kingsbrook** (Factual Allegations H.9. and H.10.)

88. On October 5, 1999, as part of an application to Kingsbrook for initial appointment to the medical staff, in response to question 3 at the top of page 3, "Have your privileges at any hospital ever been suspended, diminished, revoked or not renewed, or is any such action pending," Respondent answered, "No." (Department's Exhibit # 178).

89. On October 5, 1999, as part of the same application to Kingsbrook referred to in the paragraph above, Respondent submitted an "Addendum to the Application for Appointment to the Medical Staff." In response to the question in the middle of the page, "Have you ever voluntarily or involuntarily terminated medical staff membership or voluntarily or involuntarily had limitation, reduction or loss of clinical privileges at another Hospital or Health Facility," Respondent answered, "No." (Department's Exhibit # 178).

## CONCLUSIONS OF LAW

The Hearing Committee makes the conclusions that the following Factual Allegations contained in the June 25, 2003 Statement of Charges are **SUSTAINED**:

Factual Allegations A., and A.1. through A.10.
Factual Allegations B., and B.1. through B.6.
Factual Allegations D.3., D.4., D.6., and D.7.
Factual Allegations F.1. through F.6.
Factual Allegations G.1. through G.17.
Factual Allegations H.1. through H.10.
Factual Allegations I., and I.1. through I.4.
Factual Allegations J., and J.1. through J.5.

Factual Allegation J.6. in part

The Hearing Committee makes the conclusions that the following Factual Allegations contained in the June 25, 2003 Statement of Charges are **NOT SUSTAINED**:

Factual Allegations C., and C.1. through C.8.
Factual Allegations D., and D.1, D.2., D.5.
Factual Allegations E., and E.1. through E.10.
Factual Allegation F.
Factual Allegation G.
Factual Allegation H.

Based on the above, the complete Findings of Fact and the discussion below, the Hearing Committee concludes:

1. The FIRST (1st) Specification of GROSS NEGLIGENCE ON A PARTICULAR OCCASION contained in the Statement of Charges is **SUSTAINED**. (Vote 2 to 1)

2. The SECOND (2nd) Specification of GROSS NEGLIGENCE ON A PARTICULAR OCCASION contained in the Statement of Charges is **SUSTAINED**. (Vote 3 to 0)

3. The THIRD (3rd) through SEVENTH (7th) Specifications of GROSS NEGLIGENCE ON A PARTICULAR OCCASION contained in the Statement of Charges are **NOT SUSTAINED**. (Vote 3 to 0)

4. The EIGHTH (8th) Specification of GROSS NEGLIGENCE ON A PARTICULAR OCCASION contained in the Statement of Charges is **SUSTAINED**. (Vote 3 to 0)

5. The NINTH (9th) Specification of GROSS INCOMPETENCE ON A PARTICULAR OCCASION contained in the Statement of Charges is **SUSTAINED**. (Vote 2 to 1)

6. The TENTH (10th) Specification of GROSS INCOMPETENCE ON A PARTICULAR OCCASION contained in the Statement of Charges is **SUSTAINED.**

(Vote 3 to 0)

7. The ELEVENTH (11th) through SIXTEENTH (16th) Specifications of GROSS INCOMPETENCE ON A PARTICULAR OCCASION contained in the Statement of Charges are **NOT SUSTAINED.** (Vote 3 to 0)

8. The SEVENTEENTH (17th) Specification of NEGLIGENCE ON MORE THAN ONE OCCASION contained in the Statement of Charges is **SUSTAINED** as to Patient A (care provided in 1999 Vote of 2 to 1 and care provided in 2000 Vote of 3 to 0).

9. The SEVENTEENTH (17th) Specification of NEGLIGENCE ON MORE THAN ONE OCCASION contained in the Statement of Charges is **SUSTAINED** as to Patients B, F, and G. (Vote 3 to 0)

10. The SEVENTEENTH (17th) Specification of NEGLIGENCE ON MORE THAN ONE OCCASION contained in the Statement of Charges is **NOT SUSTAINED** as to Patients C, D, and E. (Vote 3 to 0)

11. The EIGHTEENTH (18th) Specification of INCOMPETENCE ON MORE THAN ONE OCCASION contained in the Statement of Charges is **SUSTAINED** as to Patient A (care provided in 1999 Vote of 2 to 1 and care provided in 2000 Vote of 3 to 0), and Patient B.

(Vote 3 to 0)

12. The EIGHTEENTH (18th) Specification of INCOMPETENCE ON MORE THAN ONE OCCASION contained in the Statement of Charges is **NOT SUSTAINED** as to Patients C, D, E, F, and G. (Vote 3 to 0)

13. The NINETEENTH (19th) Specification of ACCEPTING AND PERFORMING PROFESSIONAL RESPONSIBILITIES BEYOND COMPETENCE LEVEL contained in the Statement of Charges is **NOT SUSTAINED.** (Vote 3 to 0)

14. The TWENTIETH (20th) through FIFTY-SECOND (52nd) Specifications of FRAUDULENT PRACTICE contained in the Statement of Charges are **NOT SUSTAINED.** (Vote 3 to 0)

15. The FIFTY-THIRD (53rd) through EIGHTY-FIFTH (85th) Specifications of MAKING OR FILING A FALSE REPORT contained in the Statement of Charges are **SUSTAINED.** (Vote 3 to 0)

16. The EIGHTY-SIXTH (86th) through ONE HUNDRED EIGHTEENTH (118th) Specifications of CONDUCT EVIDENCING MORAL UNFITNESS contained in the Statement of Charges are **NOT SUSTAINED.** (Vote 3 to 0)

The rationale for the Hearing Committee's conclusions is set forth below.

## DISCUSSION

Respondent is charged with 118 specifications alleging professional misconduct within the meaning of §6530 of the Education Law. §6530 of the Education Law sets forth a number and variety of forms or types of conduct which constitute professional misconduct. However §6530 of the Education Law does not provide definitions or explanations of some of the misconduct charged in this matter.

The Administrative Officer provided to the Hearing Committee certain verbal instructions and verbal definitions of medical misconduct as alleged in this proceeding. These verbal instructions and definitions were obtained from a memoranda entitled Definitions of Professional Misconduct under the New York Education Law[13] (ALJ's Exhibit # 4) and a one page document encompassing an interpretation and understanding of moral unfitness as used by previous Hearing Committees (ALJ's Exhibit # 5). During the course of its deliberations on these charges, the Hearing Committee considered the following instructions from the Administrative Officer:

1. The Committee's determination is limited to the Charges set forth in the Statement of Charges.

**Preponderance of the Evidence**

2. The burden of proof in this proceeding rests on the Department. The Department must establish by a fair preponderance of the credible 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 allegation presented is 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. The Specifications of misconduct must be supported by the sustained or believed allegations by a 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.

[13] Copies of ALJ Exhibits # 4 and # 5 were provided to both parties at the Pre-Hearing conference [P.H.T-435-437]; [T-4-5].

**Intent**

3. For those charges that require a finding of intent, the Committee must determine the state of mind with which the act was done. If a person acts voluntarily with a desire to bring about a result, he is said to have intended that result. Further, although he has no desire to bring about the result, if he does the act knowing, with substantial certainty, that the result will follow, he is also said to have intended that result.

**Witness Testimony**

4. The Committee must determine the credibility of witnesses in weighing their testimony. When the evidence is conflicting and presents a clear-cut issue as to the veracity of the opposing witnesses, it is for the Hearing Committee to pass on the credibility of the witnesses and base its inference on what it accepts as the truth. Where a witness's credibility is at issue, the Committee may properly credit one portion of the witness's testimony and, at the same time, reject another.

**Practicing the Profession Fraudulently**

5. Fraudulent practice of medicine is an intentional misrepresentation or concealment of a known fact in connection with the practice of medicine. An individual's knowledge that he is making a misrepresentation or concealing a known fact with the intention to mislead may properly be inferred from certain facts. In order to support the charge that medicine has been practiced fraudulently, the Department must prove by a preponderance of the evidence that (1) Dr. DiBlasio made a false representation, whether by words, conduct, or concealment of that which should have been disclosed; (2) Dr. DiBlasio knew that the representation was false; and (3) Dr. DiBlasio intended to mislead through the false representation. The Hearing Committee is the sole arbiter of whether fraud occurred and must base its determination on the credible facts and not on whether others believe that fraud occurred or did not occur.

There need not be either actual reliance on or actual injury caused by the misrepresentation to constitute the fraudulent practice of medicine. The focus is on the licensee's conduct in attempting to induce reliance, and not on whether the physician succeeds in causing reliance or whether any gain to the physician occurs to the detriment of the patient. There is no requirement that someone actually be misled, as long as the intent of the "misrepresentation or concealment of fact" is present. Fraud can also be established from evidence that a person made a statement or representation with reckless disregard as to its truth.

**Gross Negligence**

6. Gross Negligence is the failure to exercise the care that would be exercised by a reasonably prudent physician under the circumstances, and which failure is manifested by conduct that is egregious or conspicuously bad. Gross Negligence may consist of a single act of negligence of egregious proportions. Gross Negligence may also consist of multiple acts of negligence that cumulatively amount to egregious conduct. Gross Negligence does not require a showing that a physician was conscious of impending dangerous consequences of his conduct.

**Gross Incompetence**

7. Gross Incompetence is an unmitigated lack of the skill or knowledge necessary to perform an act undertaken by the licensee in the practice of medicine. Gross Incompetence may consist of a single act of incompetence of egregious proportions or multiple acts of incompetence that cumulatively amount to egregious conduct.

The Hearing Committee was told that the term "egregious" means a conspicuously bad act or an extreme, dramatic or flagrant deviation from standards.

**Negligence**

8. Negligence is the failure to exercise the care that would be exercised by a reasonably prudent licensee under the circumstances (ie: practicing below the minimum standard of care). Negligence involves deviation from acceptable medical standards in the treatment of a patient. The Department must prove that negligence occurred on more than one occasion to sustain a charge of professional misconduct under the Education Law.

**Incompetence**

9. Incompetence is a lack of the requisite skill or knowledge to practice medicine safely. The Department must prove that incompetence occurred on more than one occasion to sustain a charge of professional misconduct under the Education Law.

**Moral Unfitness**

10. To sustain a specification of moral unfitness, the Department must show that Respondent committed an act or acts which "evidences moral unfitness". The act or acts must be "conduct in the practice of the profession of medicine".

Moral unfitness in the practice of medicine constitutes either a violation of the public trust bestowed by virtue of the Doctor's licensure as a physician or a violation of the moral standards of the medical community. A doctor's poor judgment or mere "foolish" behavior will not sustain a charge of moral unfitness.

The Hearing Committee used ordinary English usage and understanding 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.

We considered whether the testimony was supported or contradicted by other independent objective evidence The Hearing Committee understood that as the trier of fact we may accept so much of a witness's testimony as is deemed true and disregard what we find and determine to be false.

**Credibility Determination**

The Hearing Committee found the two expert witnesses presented by the Department, Dr. John C. Wandtke and Dr. Edward Alan Sickles, and Respondent's expert witness, Dr. Robert Albert Schmidt, to be highly qualified and experienced Radiologists. In addition to expressing opinions regarding their interpretations of the radiological studies in this proceeding, the expert witnesses also testified on other issues, such as physician competency, standard of care and error rates. The Hearing Committee noted that in some areas the testimony of the Department's experts was contradictory, particularly under cross-examination, and we took this into consideration in our evaluation of the experts' testimony.

There were numerous aspects of the mammograms and the sonograms of Patients A through E in which both, Dr. Sickles and Dr. Schmidt, were in agreement. The Hearing Committee decided that the areas (factual allegation as to each patient) where Dr. Sickles and Dr. Schmidt disagreed where obviously grey areas. If two highly qualified and experienced experts could not agree on an interpretation of a specific radiological finding, the burden of proof rests with the Department to establish that Respondent did not meet the minimum standard of care in his interpretation of the same finding. If this burden was not met, the Hearing Committee gave the benefit of doubt to the Respondent.

Respondent is a Board Certified Radiologist with an incredible history, both personal and professional. The Hearing Committee found Respondent to be credible, forthright, sincere, and remorseful. To Respondent's additional credit, his conduct and demeanor during eleven difficult

Hearing days was impeccable. The Hearing Committee also heard testimony from witnesses that Respondent was held in high esteem by his professional colleagues.

## SUMMARY

**Patients**

Dr. Sickles and Dr. Schmidt were in agreement regarding the Department's Statement of Charges for Patients A and B. As to Patient A, the minimal standard of care would have been to report on March 12, 1999 that there are new grouped micro-calcifications requiring additional imaging or biopsy. This interpretation of the March 12, 1999 images should have been easy because the micro-calcifications were considered to be obvious findings by both experts. A Board certified radiologist, should have gotten this interpretation correct. The Respondent's care of Patient A did not meet minimum acceptable medical standards. The Hearing Committee determines by a vote of 2 to 1 that Respondent is guilty of negligence and gross negligence in the care he provided to Patient A for the March 12, 1999 mammographic interpretations. The Hearing Committee determines by a vote of 2 to 1 that Respondent is guilty of incompetence and gross incompetence in the care he provided to Patient A for the March 12, 1999 mammographic interpretations.

As to Patient A, the minimal standard of care would have been for the Respondent to report on April 10, 2000 that there were increasing micro-calcifications, highly suggestive of malignancy occupying a larger area of the breast which required additional imaging or biopsy. The Respondent's care of Patient A did not meet minimum acceptable medical standards. The Hearing Committee determines by a vote of 3 to 0 that Respondent is guilty of negligence and gross negligence in the care he provided to Patient A for the April 10, 2000 mammographic interpretations. The Hearing Committee determines by a vote of 3 to 0 that Respondent is guilty

of incompetence and gross incompetence in the care he provided to Patient A for the April 10, 2000 mammographic interpretations.

The 19th Specification in the Statement of Charges is not sustained because the Respondent met the training requirements of the Federal standard known as the Mammogram Quality Standards Act ("**MQSA**") and had reason to know or believe that he was qualified or competent to read and interpret mammograms and sonograms. Based on the evidence presented we do not sustain this specification as to any of the mammograms of the five patients (A, B, C, D, and E).

As to Patient B, the minimal standard of care would have been to report on March 30, 1999 that there was a spiculated mass requiring additional imaging or biopsy. The Respondent's care of Patient B did not meet minimum acceptable medical standards. The Hearing Committee determines by a vote of 3 to 0 that Respondent is guilty of negligence in the care he provided to Patient B for the March 30, 1999 mammographic interpretations. The Hearing Committee determines by a vote of 3 to 0 that Respondent is guilty of incompetence in the care he provided to Patient B for the March 30, 1999 mammographic interpretations. As to Patient B, the Hearing Committee does not believe that Respondent's error was egregious or rose to the level of gross negligence or gross incompetence.

As we indicated, we found both, Dr. Sickles and Dr. Schmidt, to be highly qualified and experienced experts. However, given the fact that they disagreed on the proper interpretations to be given to the mammographic and sonographic studies regarding Patients C, D, and E, the Hearing Committee could not conclude that the Department had proven its Charges and Specifications of misconduct as to those three patients. This is true even given our conclusions regarding the factual allegations on Patient D (factual allegations D.3., D.4., D.6., and D.7. were found to be true but the Hearing Committee does not believe that negligence followed from these facts).

Where two experts disagreed, it is difficult for us to agree with the Department and to expect Respondent to satisfy both experts. It is also impossible to conclude, by a preponderance of the evidence, that Respondent practiced below the minimum standard of care as to Patients C, D, and E. Dr. Sickles, the Department's expert, while disagreeing with Respondent's expert, Dr. Schmidt, conceded that the interpretations for patient D were harder and those for patient E were not as bad as those for the other patients.

As to Patient D, Dr. Schmidt opined that the mass was not a spiculated mass and the lesion was not highly suspicious or highly suggestive of malignancy. Although the report sent out by Dr. Bier's office indicated no cancer and that the patient would be rescheduled for her next mammogram automatically (one year), there is evidence that Respondent suggested a 6 month follow-up (which suggests that Respondent had some suspicion).

As to Patient E, Dr. Schmidt opined that Respondent's interpretation was reasonable and acceptable.

The Hearing Committee determines by a vote of 3 to 0 that Respondent is not guilty of negligence or gross negligence in the care he provided to Patient C for the May 10, 1999 mammographic and sonographic interpretations. The Hearing Committee determines by a vote of 3 to 0 that Respondent is not guilty of incompetence or gross incompetence in the care he provided to Patient C for the May 10, 1999 mammographic and sonographic interpretations.

The Hearing Committee determines by a vote of 3 to 0 that Respondent is not guilty of negligence or gross negligence in the care he provided to Patient D for the November 1998 mammographic interpretations. The Hearing Committee determines by a vote of 3 to 0 that Respondent is not guilty of incompetence or gross incompetence in the care he provided to Patient D for the November 1998 mammographic interpretations.

The Hearing Committee determines by a vote of 3 to 0 that Respondent is not guilty of negligence or gross negligence in the care he provided to Patient E for the March 29, 1999 mammographic and sonographic interpretations. The Hearing Committee determines by a vote of 3 to 0 that Respondent is not guilty of incompetence or gross incompetence in the care he provided to Patient E for the March 29, 1999 mammographic and sonographic interpretations.

As to Patient F, the minimal standard of care would have been for the Respondent to report on March 27, 2002 that there was a fracture of the right hip. This interpretation of the March 27, 2002 images was an obvious finding. Dr. Wandtke indicated that the failure to diagnose the fracture was a serious deviation. Respondent admitted to his supervisor at Brookdale, Dr. Wulkan, that he (Dr. DiBlasio) missed the diagnosis and that the fracture was obvious. A Board certified radiologist should have gotten this interpretation correct. The Hearing Committee does not find that the magnitude of the deviation was egregious or grossly below the standard of care. The Respondent's care of Patient F did not meet minimum acceptable medical standards. The Hearing Committee determines by a vote of 3 to 0 that Respondent is guilty of negligence in the care he provided to Patient F for the March 27, 2002 diagnostic interpretations. The Hearing Committee does not conclude that Respondent lacks the requisite skill or knowledge to diagnose a fracture on an x-ray. The Hearing Committee determines by a vote of 3 to 0 that Respondent is not guilty of gross negligence, incompetence or gross incompetence in the care he provided to Patient F for the March 27, 2002 diagnostic interpretations.

As to Patient G, the minimal standard of care would have been for the Respondent to report on December 24, 2001 that there was almost total opacification of the left hemithorax suggesting the presence of a large effusion on the left side. The report of the effusion to be on the right was incorrect and was a very serious deviation. This interpretation of the December 24, 2001 images was easy and very basic. Respondent asserts that the improper care and treatment this patient

received was due to a series of errors by several staff and physicians. The Hearing Committee agrees with Dr. Wandtke that the determining of right/left sidedness in a chest x-ray is the job of the radiologist who is ultimately responsible for the radiological interpretation and report and that such an error constitutes a very serious deviation. The Hearing Committee finds that the magnitude of the deviation was egregious and grossly below the standard of care. The Respondent's care of Patient G did not meet minimum acceptable medical standards. The Hearing Committee determines by a vote of 3 to 0 that Respondent is guilty of negligence and gross negligence in the care he provided to Patient G for the December 24, 2001 diagnostic interpretations. The Hearing Committee does not conclude that Respondent lacks the requisite skill or knowledge to know the right side from the left side on a chest x-ray. The Hearing Committee determines by a vote of 3 to 0 that Respondent is not guilty of incompetence or gross incompetence in the care he provided to Patient G for the December 24, 2001 diagnostic interpretations.

**Applications**

The Hearing Committee accepts the reasons given by Respondent for his answers on the applications for medical staff appointment and reappointments at Brookdale, at Kingsbrook, and at Steven Bier, M.D., P.C. The Hearing Committee believes that Respondent provided full disclosure of all the relevant information regarding his past to Dr. Wulkan (whose testimony we found to be very credible) and that Respondent or Dr. Wulkan provided the relevant information to the appropriate credentialing individuals. The Hearing Committee believes that the individuals in charge of deciding whether to appoint or reappoint Respondent had all relevant information.

The Hearing Committee agrees with, and understands Respondent's need for privacy and desire not to have all of his very personal information publicly available to anyone within the hospital who might run across his application on someone's desk. The Hearing Committee believes it was never Dr. DiBlasio's intention to deceive the hospital's decision makers or members of the

Brookdale credentialing committee about his prior substance abuse issues or convictions. The Hearing Committee believes Respondent when he indicated that it was his understanding Dr. Wulkan would ensure that all the principals and decision makers at the hospital, and on the credentialing committee reviewing his application for employment at Brookdale Hospital would be informed of the issues regarding his prior drug dependency, incarceration, loss of his medical license, and recent probation before he was hired.

The Hearing Committee concludes that the Department did not prove by a preponderance of the evidence that Dr. DiBlasio intended to mislead or deceive anyone through the incorrect answers that he gave on his applications and reapplications. The Hearing Committee does not believe that Respondent had the requisite intent to deceive the credentialing committee or the decision makers when he provided incorrect or incomplete responses on the actual applications or reapplications.

Because the Hearing Committee finds no intent to deceive, we unanimously conclude that we cannot and do not sustain the application fraud charges (20th through 52nd) or the moral unfitness charges (86th through 118th).

Respondent acknowledged that his responses to factual allegations F.1. through F. 6. and G.1. through G.17. and H.1. through H.10. were incorrect responses. The Hearing Committee recognizes that Respondent did attach a written letter to his applications stating that they were incomplete and offering further disclosure of information regarding his past verbally, in a "face to face" meeting. We also accepted as credible the testimony of Dr. Wulkan, Respondent's supervisor at Brookdale, that Respondent did indeed verbally provide him with all of the relevant information regarding his history. The Hearing Committee has given compassionate consideration to the extenuating circumstances that motivated Respondent to provide false answers to some questions on his applications and we have also considered his desire to give full and complete information to

the Credentialing Committee as outlined in his letter. However, we cannot escape the fact that some of the information on the applications was false and Respondent knew that they were false. Unlike fraud, there is no requirement in Education Law §6530(21) that the Department show an intention by Respondent to deceive. Therefore, the Hearing Committee concludes that Respondent is guilty of making and/or filing false reports. Specifications 53rd through 85th are sustained.

**Respondent's other Arguments**

The Hearing Committee considered the arguments raised by Respondent, particularly those related to the past actions of the Department and the previous Commissioner of Health in their dealings with him. However, while they provided the Hearing Committee with some background and context, they were not relevant to the specific charges of professional misconduct as set forth in §6530 of the Education Law being considered by the Hearing Committee at this time. The Hearing Committee also considered the arguments and published articles submitted as exhibits which discussed error rates by radiologists. Although there has been no statistical analysis of Respondent's practice and error rates, the available evidence before the Hearing Committee of the extensive review of Respondents records by the Department prior to initiating disciplinary proceedings, the review by Dr. Wulkan of Respondent's work at Brookdale Hospital, and Dr. Bier's internal audit of Respondent's mammographic interpretations suggest that the Hearing Committee can reasonably infer that Respondent's error rate would be within the acceptable range for practicing radiologists and may even be better. However, this is not relevant to whether or not the minimum standard was met in a particular case and, therefore, was not considered by the Hearing Committee.

Whether any other physician has been prosecuted by the Department is an unknown and in any event is not relevant to whether Respondent committed professional medical misconduct. The "root cause" analysis was not used by the Department to prosecute Respondent but was introduced by Respondent. The actions of the (now former) Commissioner of Health are not relevant to and

had no weight in this professional medical conduct proceeding. The Commissioner of Health or any Department employee or investigator has no impact on whether Respondent has committed professional misconduct in the practice of medicine.

When a radiologist requires additional information, such as prior films, in order to issue a proper diagnosis, it is the responsibility of the radiologist to request prior films or information from the other radiologist, or request the patient to obtain any prior films and/or reports. If the information or the films are unavailable then the report of the radiologist should so state.

At no time did the Department request that the Hearing Committee support a zero tolerance standard of care. All the credible testimony provided by the experts was directed to the minimum standard of care under the circumstances presented. This is especially significant in Patients F and G where Respondent admitted that he missed the obvious fracture in Patient F's x-rays and missed the right/left determination in Patient G's x-rays. These "misses" are errors that should not occur and are below the minimum standard of care in the practice of medicine.

## DETERMINATION AS TO PENALTY

After a full and complete review of all of the evidence presented and pursuant to the Findings of Fact, Conclusions of Law, Discussion, and Summary set forth above, the Hearing Committee determines that Respondent's license to practice medicine in New York State should be suspended for three (3) years with the suspension stayed. Respondent's license should be limited to the general practice of radiology. That in the event Respondent desires to interpret mammograms then Respondent must have a practice supervisor in place for his mammography practice.

This determination is reached after due and careful consideration of the full spectrum of penalties available pursuant to P.H.L. §230-a, including: (1) Censure and reprimand; (2) Suspension of the license, wholly or partially; (3) Limitations of the license; (4) Revocation of license; (5)

Annulment of license or registration; (6) Limitations; (7) the imposition of monetary penalties; (8) a course of education or training; (9) performance of public service; and (10) probation.

The Hearing Committee was more persuaded by the Respondent's presentation then by the Department's. The Hearing Committee observed a Respondent who has had a very difficult life history, both personally and professionally. The Hearing Committee observed remorse from the Respondent and a willingness and strength to persevere after most would have given up. The Hearing Committee also saw an individual willing to bend over backwards to reverse his downward trend. We found no evidence that would indicate that Respondent poses a threat to New York patients. To the contrary, the Hearing Committee sees Respondent as an apparent caring individual who was contrite, sincere, and affable. The Hearing Committee was also impressed by the testimony and sincerity of Dr. Wulkan and Ms. Pesce. Despite Respondent's personal "history", he appears to be well respected by his colleagues. Even some of the witnesses presented by the Department had positive views of Respondent.

Respondent has been the subject of intense review both from the Department and from his supervisor, Dr. Wulkan, the department chair at Brookdale. The internal review conducted by Dr. Wulkan of Respondent's interpretations proved to be more than satisfactory to Dr. Wulkan and exceeded the performance of most radiologists. During Dr. Bier's audit of Respondent's mammography interpretations there was only one instance of disagreement.

The Hearing Committee recognized the flaws in the Bier practice regarding their record keeping and form letter. These flaws cannot be attributed solely to Respondent. The Hearing Committee also recognized the system flaws at Brookdale University Hospital and Medical Center. The Hearing Committee agrees that Respondent is responsible for determining left/right side but Respondent does not bear sole responsibility for the patient's receipt of less than optimum level of care.

The Department alleged 33 acts of application fraud, 33 acts of making or filing false reports, and 33 acts of acts evidencing moral unfitness against Respondent. Given these types of Charges the Hearing Committee expected that the Department's presentations (prosecution) and representations would be accurate, complete and without deception. Instead the Department provided the Hearing Committee with a number of partially accurate representations, and partial facts or statements which subsequently proved to be less than the complete story. The Department appeared to be hiding relevant facts rather then revealing them. These kinds of "tactics" are not appreciated by the Hearing Committee.

In sum and substance the Hearing Committee found the Department's case to be less than convincing in many respects.

The Hearing Committee believes that Respondent has gone through numerous hurdles to redeem himself and we find it refreshing and amazing that Respondent is still fighting, with dignity, after all of his negative experiences. The Hearing Committee understands that many of Respondent's negative experiences were by his own acts, however we also believe that many were unfairly thrust on him.

The Hearing Committee understands Respondent's incorrect answers and by finding him not guilty of fraud we certainly do not condone them. The Hearing Committee expects Respondent to properly address these types of applications and questions in the future. Respondent is expected to clearly and forthrightly disclose his entire prior criminal, hospital, employment, and disciplinary history on any and all applicable forms.

In determining an appropriate penalty for the acts which Respondent was actually found guilty of, the Hearing Committee considered the Respondent's past disciplinary history, including the fact that Respondent was summarily suspended from the practice of medicine, for approximately eight (8) months, even though Respondent was eventually found not guilty of all charges brought

against him. The Hearing Committee discussed the possibility of dismissing the current charges in the interest of justice. We determined that possibility to be inappropriate given the charges that we sustained herein. We also discussed Respondent's suggestions of remediation and additional training and find this option to be insufficient given the misconduct proved.

The Hearing Committee believes that a three (3) year suspension which is stayed and a three (3) year period of active probation (terms of probation are attached as Appendix 3) will appropriately address Respondent practice needs. The Hearing Committee believes that this penalty is suitable to protect the public and punish the Respondent for the sustained acts of misconduct. The Hearing Committee also believes that Respondent's medical practice should be limited to the practice of general radiology but that in the event Respondent desires to interpret mammograms or breast sonograms that he be supervised in those specific activities with a practice supervisor (see Appendix 3).

The Hearing Committee believes that the penalty imposed should protect the public, curb future unprofessional practice by Respondent, and is in the interest of justice.

Taking all of the facts, details, circumstances, and particulars in this matter into consideration, the Hearing Committee determines that the above is the appropriate action under the circumstances. All other issues raised by both parties have been duly considered by the Hearing Committee and would not justify a change in the Findings, Conclusions or Determination contained herein.

By execution of this Determination and Order, all members of the Hearing Committee certify that they have read and considered the complete record of this proceeding.

## ORDER

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

1. The FIRST, SECOND, EIGHTH, NINTH, TENTH, SEVENTEENTH, EIGHTEENTH, AND FIFTY-THIRD through EIGHTY-FIFTH SPECIFICATIONS contained in the Statement of Charges (Department's Exhibit # 2) are **SUSTAINED** (3 occasions of Gross Negligence, 2 occasions of Gross Incompetence, 5 occasions of Negligence, 3 occasions of Incompetence, and 33 instances of making or filing a false report); and

2. The THIRD through SEVENTH, ELEVENTH through SIXTEENTH, NINETEENTH, TWENTIETH through FIFTY-SECOND, and EIGHTY-SIXTH through ONE HUNDRED EIGHTEENTH SPECIFICATIONS contained in the Statement of Charges (Department's Exhibit # 2) are **NOT SUSTAINED**; and

3. Respondent's license to practice medicine in the State of New York is hereby **SUSPENDED for THREE (3) YEARS**; and

4. The **THREE (3) YEAR SUSPENSION is STAYED**; and

5. Respondent shall be on **PROBATION for THREE (3) YEARS**; and

6. Respondent's practice of medicine is **LIMITED** to the General Practice of Radiology; and

7. In the event Respondent practices Mammography, including interpreting mammograms and/or breast sonograms then Respondent shall have a Practice Supervisor to observe, assess and review Respondent's medical records as indicated in the annexed terms of probation (Appendix 3) which terms are fully incorporated in this Determination and Order; and

8. The period of probation shall begin when this Determination and Order becomes effective; and

9. This Order shall be effective on personal service on the Respondent or seven (7) days after the date of mailing of a copy to Respondent by certified mail or as provided by P.H.L. §230(10)(h).

**DATED:** **New York**
**June, 22, 2007**

**MILTON O.C. HAYNES, M.D. (CHAIR)**
**ELISA J. WU, M.D.**
**CONSTANCE DIAMOND, D.A.**

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# APPENDIX 1

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

IN THE MATTER

OF

L. MARIO DIBLASIO, M.D.

STATEMENT

OF

CHARGES

L. Mario DiBlasio, M.D., the Respondent, was authorized to practice medicine in New York State on or about October 7, 1977, by the issuance of license number 132740 by the New York State Education Department. Dr. DiBlasio's current address, upon information and belief, is 385 McLean Avenue, Suite 12-G, Yonkers, NY 10705.

## FACTUAL ALLEGATIONS - INTERPRETATIONS/DIAGNOSES

A. The Respondent provided medical care to Patient A[1] in the form of interpreting screening mammograms at the offices of Steven Bier, M.D., P.C., on or about March 12, 1999 and again on or about April 10, 2000. On each occasion, the Respondent interpreted Patient A's mammograms of her right breast, and reported, among other things, "No evidence of malignancy. Follow-up is suggested in one year." The Respondent's care of

[1]To preserve privacy throughout this document, patients are referred to by letter designation. An Appendix is attached hereto for appropriate recipients.

ORIGINAL

EXHIBIT 2

Patient A did not meet acceptable standards of medical care in that:

The Respondent's March 12, 1999 Mammographic Interpretations

1. The Respondent failed to understand the significance of the number, distribution, shape, and recency of the approximately 30 micro-calcifications that were apparent on the mammograms of Patient A's right breast.

2. The Respondent failed to identify the group of approximately 30 micro-calcifications that were apparent on the mammograms of Patient A's right breast as being highly suggestive of malignancy.

3. The Respondent caused a report to be issued that erroneously notified Patient A and Patient A's referring physician that there were "[N]o malignant calcifications," there was "No evidence of malignancy," and "Follow-up is suggested in one year."

4. The Respondent failed to recommend a prompt surgical biopsy of Patient A's right breast for the purpose of diagnosing breast cancer.

5. The Respondent delayed the detection, diagnosis, and treatment of the cancerous lesion in Patient A's right breast, thereby subjecting Patient A to an increased risk of morbidity and mortality.

The Respondent's April 10, 2000 Mammographic Interpretations

6. The Respondent failed to understand the significance of the number, distribution, shape, and recency of the now approximately 100 micro-calcifications that were now even more apparent on the mammograms of Patient A's right breast.

7. The Respondent failed to identify the group of now approximately 100 micro-calcifications that were apparent on the mammograms of Patient A's right breast as being highly suggestive of malignancy.

8. The Respondent caused a report to be issued that erroneously notified Patient A and Patient A's referring physician that "[T]he amount of calcifications on the right have increased since the previous exam, but they are still benign," there was "No evidence of malignancy," and "Follow-up is suggested in one year."

9. The Respondent failed to recommend a prompt surgical biopsy of Patient A's right breast for the purpose of diagnosing breast cancer.

10. The Respondent delayed the detection, diagnosis, and treatment of the cancerous lesion in Patient A's right breast, thereby subjecting Patient A to an increased risk of morbidity and mortality.

B. The Respondent provided medical care to Patient B in the form of interpreting screening mammograms at the offices of Steven Bier, M.D., P.C., on or about March 30, 1999. On that occasion, the Respondent interpreted Patient B's mammograms of her left breast, and reported, in Spanish, among other things, "Su reciente **Mammografia** en nuestra oficina no demostro **NINGUN CANCER**. Nuestra computadora automaticamente le dara una cita para su proxima mamografia," which in English means, "Your recent **Mammogram** at our office shows **NO CANCER**. Our computer will now automatically schedule you for your next mammogram." (Emphasis as in original.) The Respondent's care of Patient B did not meet acceptable standards of medical care in that:

1. The Respondent failed to understand that a palpable spiculated mass, or lesion, that was apparent on mammograms of Patient B's left breast was an abnormal mammographic feature.

2. The Respondent failed to identify the lesion that was apparent on the mammograms of Patient B's left breast as being highly suggestive of malignancy.

3. The Respondent failed to recommend completion of the mammographic evaluation of the lesion that was apparent on the mammograms of Patient B's left breast so as to further characterize the lesion in terms of precise three-dimensional location, size, and proximity to other potential abnormal mammographic features.

4. The Respondent caused a report to be issued that erroneously notified Patient B that there were "[N]o malignant-appearing masses," and, as translated into English, "Normal Mammogram," and "Your recent **Mammogram** at our office shows **NO CANCER**. Our computer will now automatically schedule you for your next mammogram." (Emphasis as in original.)

5. The Respondent failed to recommend a prompt surgical biopsy of Patient B's left breast for the purpose of diagnosing breast cancer.

6. The Respondent delayed the detection, diagnosis, and treatment of the cancerous lesion in Patient B's left breast, thereby subjecting Patient B to an increased risk of morbidity and mortality.

C. The Respondent provided medical care to Patient C in the form of mammographic and sonographic interpretations at the offices of Steven Bier, M.D., P.C., on or about May 10, 1999. On that occasion, the Respondent interpreted Patient C's mammograms and sonograms of her left breast, and reported, in Spanish, among other things, "Su reciente **Mammografia** en nuestra oficina no demostro **NINGUN CANCER**. Nuestra computadora automaticamente le dara una cita para su proxima mamografia," which in English means, "Your recent **Mammogram** at our office shows **NO CANCER**. Our computer will now automatically schedule you for your next mammogram." (Emphasis as in original.) The Respondent's care of Patient C did not meet acceptable standards of

medical care in that:

1. The Respondent failed to understand that a large solid mass with indistinct margins, or lesion, that was apparent on mammograms and sonograms of Patient C's left breast was an abnormal mammographic feature.

2. The Respondent failed to identify the lesion that was apparent on the mammograms of Patient C's left breast as being highly suggestive of malignancy.

3. The Respondent failed to understand the significance of the inability of the small field-of-view of the sonographic equipment to depict so large a mass.

4. The Respondent caused a report to be issued that erroneously notified Patient C and Patient C's referring physician that "Further examination with sonography shows no evidence of cystic or solid nodule on the left."

5. The Respondent failed to recommend completion of the mammographic and sonographic evaluation of the lesion that was apparent on the mammograms and sonograms of Patient C's left breast so as to further characterize the lesion in terms of precise three-dimensional location, size, and proximity to other potential abnormal mammographic features.

6. The Respondent caused a report to be issued that erroneously notified Patient C and Patient C's referring physician that there was "[N]o evidence of malignancy," and "Follow-up is suggested in one year," as well as there were "[N]o malignant-appearing masses," and, as translated into English, "Normal

Mammogram," and "Your recent **Mammogram** at our office shows **NO CANCER**. Our computer will now automatically schedule you for your next mammogram." (Emphasis as in original.)

7. The Respondent failed to recommend a prompt surgical biopsy of Patient C's left breast for the purpose of diagnosing breast cancer.

8. The Respondent delayed the detection, diagnosis, and treatment of the cancerous lesion in Patient C's left breast, thereby subjecting Patient C to an increased risk of morbidity and mortality.

D. The Respondent provided medical care to Patient D in the form of mammographic interpretations at the offices of Steven Bier, M.D., P.C., on or about November 16, 1998. On that occasion, the Respondent interpreted Patient D's mammograms of her left breast, and reported, among other things, "Your recent Mammogram at our office **SHOWS NO CANCER**. Our computer will now automatically schedule you for your next Mammogram." (Emphasis as in original.) The Respondent's care of Patient D did not meet acceptable standards of medical care in that:

1. The Respondent failed to understand that a palpable spiculated mass, or lesion, that was apparent on mammograms of Patient D's left breast was an abnormal mammographic feature.

2. The Respondent failed to identify the lesion that was apparent on the mammograms of Patient D's left breast as being highly suggestive of malignancy.

3. The Respondent failed to understand the significance of the inability of the available mammographic views to accurately determine the three-dimensional location of the lesion.

4. The Respondent failed to recommend completion of the mammographic evaluation of the lesion that was apparent on the mammograms of Patient D's left breast so as to further characterize the lesion in terms of precise three-dimensional location, size, and proximity to other potential abnormal mammographic features.

5. The Respondent caused a report to be issued that erroneously notified Patient D that "Your recent Mammogram at our office **SHOWS NO CANCER**. Our computer will now automatically schedule you for your next Mammogram." (Emphasis as in original.)

6. The Respondent failed to recommend a prompt surgical biopsy of Patient D's left breast for the purpose of diagnosing breast cancer.

7. The Respondent delayed the detection, diagnosis, and treatment of the cancerous lesion in Patient D's left breast, thereby subjecting Patient D to an increased risk of morbidity and mortality.

E. The Respondent provided medical care to Patient E in the form of mammographic and sonographic interpretations at the offices of Steven Bier, M.D., P.C., on or about March 16, 1999 and March 29, 1999. On March 29, 1999, the Respondent interpreted Patient E's mammograms and sonograms of her right breast, and reported, among other things, "Mammographically and sonographically benign nodule on the right as described. No evidence of malignancy. Follow-up suggested in one year with mammography." The Respondent's care of Patient E did not meet acceptable standards of medical care in that:

The Respondent's March 29, 1999 Mammographic and Sonographic Interpretations

1. The Respondent failed to understand that a palpable solid mass with indistinct margins, or lesion, that was apparent on mammograms and sonograms of Patient E's right breast was an abnormal mammographic feature.

2. The Respondent caused a report to be issued that failed to state whether the lesion that was palpable was the same lesion as the lesion that was apparent on the mammograms and sonograms of Patient E's right breast.

3. The Respondent caused a report to be issued that erroneously stated that the lesion had "well defined" margins.

4. The Respondent failed to identify the lesion that was apparent on the mammograms of Patient E's right breast as being highly suggestive of malignancy.

5. The Respondent failed to understand the significance of the inability of the available mammographic views to accurately determine the three-dimensional location of the lesion.

6. The Respondent caused a report to be issued that stated without adequate basis that the lesion apparent on the sonograms of Patient E's right breast was in the same three-dimensional location as the lesion apparent on the mammograms of Patient E's right breast.

7. The Respondent failed to recommend completion of the mammographic evaluation of the lesion that was apparent on the mammograms of Patient E's right breast so as to further characterize the lesion in terms of precise three-dimensional location, size, and proximity to other potential abnormal mammographic features.

8. The Respondent caused a report to be issued that erroneously notified Patient E and Patient E's referring physician that the lesion was most likely a "[F]ibroadenoma" that was "Mammographically and sonographically benign," and that there was "No evidence of malignancy," and "Follow-up suggested in one year with mammography."

9. The Respondent failed to recommend a prompt surgical biopsy of Patient E's right breast for the purpose of diagnosing breast cancer.

10. The Respondent delayed the detection, diagnosis, and treatment of the cancerous lesion in Patient E's right breast, thereby subjecting Patient E to an increased risk of morbidity and mortality.

## FACTUAL ALLEGATIONS - APPLICATION FRAUD

History of Criminal Convictions

F. On March 8, 1989, the Respondent was convicted in New Jersey of the crime of "Possession, Controlled Dangerous Substance with Intent to Distribute," "a Crime of the Third Degree" under New Jersey Statutes Section 24:21-19(a)(1), and sentenced to 8 years imprisonment. On March 12, 1992, the Respondent was convicted in New York of the crime of "Criminal Possession of a Controlled Substance in the Fourth Degree," a "Class C Felony," under New York Penal Law Section 220.09 and sentenced to a conditional discharge. With respect to these two criminal convictions, the Respondent subsequently submitted fraudulent applications in that:

Brookdale University Hospital & Medical Center

1. On or about August 11, 2001, the Respondent submitted an application to Brookdale University Hospital & Medical Center for medical staff reappointment in 2002-2003 and an upgrade in rank from ~~Associate~~ ASSISTANT Radiologist to ~~Assistant~~ ASSOCIATE Radiologist. In response to question 1, "Have you been convicted of a crime, including crimes against children, or have any criminal charges been brought against you in the State of New York or another jurisdiction," the Respondent

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answered, "No."

2. On or about June 18, 1999, the Respondent submitted an application to Brookdale University Hospital & Medical Center for medical staff reappointment in 2000-2001. In response to question 1, "Have you been convicted of a crime or have any criminal charges been brought against you in the State of New York or another jurisdiction," the Respondent answered, "No."

3. On or about August 7, 1997, the Respondent submitted an application to Brookdale University Hospital & Medical Center for medical staff reappointment in 1998-1999. In response to question 1, "Have you been convicted of a crime or have any criminal charges been brought against you in the State of New York or another jurisdiction," the Respondent answered, "No."

4. On or about October 12, 1995, as part of an application to Brookdale University Hospital & Medical Center for appointment to the medical staff, the Respondent submitted an "Application for Employment." In response to the question at the bottom of the third page, "Have you ever been convicted of a crime," the Respondent answered, "No."

5. On or about June 26, 1995,as part of an application to Brookdale University Hospital & Medical Center for initial appointment to the medical staff, the Respondent submitted an "Application for Appointment to the Medical Staff or Affiliate Staff." In response to question 2 in the "Professional Conduct History" section, "Any criminal convictions (other than motor vehicle and juvenile violations) brought against you in this state or any other state," the Respondent answered, "No."

Kingsbrook Jewish Medical Center

6. On or about October 5, 1999, the Respondent submitted an application to Kingsbrook Jewish Medical Center for initial appointment to the medical staff. In response to the last question at the bottom of page 2, "Have you ever been convicted of a crime," the Respondent answered, "No."

History of Professional Discipline and Employment

G. On or about March 12, 1986, the Respondent was found guilty of professional misconduct in New York and the Respondent's New York medical license was revoked, but stayed indefinitely with five years probation. On or about October 24, 1987, the Respondent was found guilty of professional misconduct and the Respondent's New York medical license was revoked, with no qualifications. The Respondent's New York medical license remained revoked until on or about March 3, 1995, when, as the result of the Respondent's license restoration petition, the revocation was stayed indefinitely with two years probation. On or about October 23, 1989, the Respondent was found guilty of professional misconduct in New Jersey and the Respondent's New Jersey medical license was revoked, with no qualifications. The Respondent's New Jersey medical license remained revoked until on or about December 5, 1996, when it was reinstated, with monitoring, as the result of a reinstatement petition. Further, between 1986 and 1991, the Respondent was incarcerated in New

York in "state prison, mostly Sing Sing." With respect to this time period, the Respondent subsequently submitted fraudulent applications in that:

Brookdale University Hospital & Medical Center

1. On or about August 11, 2001, as part of an application to Brookdale University Hospital & Medical Center for medical staff reappointment in 2002-2003 and an upgrade in rank from ~~Associate~~ ASSISTANT Radiologist to ~~Assistant~~ ASSOCIATE Radiologist, the Respondent submitted a Curriculum Vitae. For the time period "1987-1991," the Respondent wrote "Various Locum Tenens, General Diagnosis," under "Practical Experience."

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2. On or about August 11, 2001, in the same application to Brookdale University Hospital & Medical Center referred to in subparagraph 1 just above, in response to question 2, "... [H]ave you been found guilty of professional misconduct as defined by the laws of the State of New York or another jurisdiction ...," the Respondent answered, "No."

3. On or about June 18, 1999, the Respondent submitted an application to Brookdale University Hospital & Medical Center for medical staff reappointment in 2000-2001. In response to question 2, "... [H]ave you been found guilty of professional misconduct as defined by the laws of the State of New York or another jurisdiction ...," the Respondent answered, "No."

4. On or about August 7, 1997, as part of an application to Brookdale University Hospital & Medical Center for medical staff reappointment in 1998-1999, the Respondent submitted a Curriculum Vitae. For the time period "1987-91," the Respondent wrote "Various Locum Tenens, General Diagnosis," under "Practice

Experience."

5. On or about August 7, 1997, in the same application to Brookdale University Hospital & Medical Center referred to in subparagraph 4 just above, in response to question 2, "... [H]ave you been found guilty of professional misconduct as defined by the laws of the State of New York or another jurisdiction ...," the Respondent answered, "No."

6. On or about October 12, 1995, as part of an application to Brookdale University Hospital & Medical Center for appointment to the medical staff, the Respondent submitted an "Application for Employment," including an "Employment History." For the time period "from 7/86 to 9/91," in response to the query "Name and Address of Employer," the Respondent wrote "Various Rad. Offices," and in response to the query "Kind of Business," the Respondent wrote "Radiology Practice," and in response to the query "Describe Work Performed," the Respondent wrote "Locum Tenens," and in response to the query "Reason for Leaving," the Respondent wrote "FT [full time] Work at Montefiore."

7. On or about October 12, 1995, as part of the same application to Brookdale University Hospital & Medical Center referred to in subparagraph 6 just above, the Respondent submitted an "Application for Employment." In response to the question at the bottom of the first page, "Has your license ever been revoked or suspended," the Respondent answered, "No."

8. On or about October 12, 1995, as part of the same application to Brookdale University Hospital & Medical Center referred to in subparagraph 6 above, the Respondent submitted an "Application for Employment." In response to the question at the bottom

of the first page, "Are you currently on probation with the State Department of Education or any other state agency," the Respondent answered, "No."

9. On or about June 26, 1995, as part of an application to Brookdale University Hospital & Medical Center for initial appointment to the medical staff, the Respondent submitted an "Application for Appointment to the Medical Staff or Affiliate Staff", including a Curriculum Vitae. For the time period "1987-1991," the Respondent wrote "Various Locum Tenens, general diagnosis," under "Work Experience."

10. On or about June 26, 1995,as part of the same application to Brookdale University Hospital & Medical Center referred to in subparagraph 9 just above, under the heading "Licensure, Registrations, Board Certifications," in response to the instruction,"Licensure and Registrations: List all New York State certificates first. List all current and past and specify the type ...," the Respondent listed just his New York licensure history.

Kingsbrook Jewish Medical Center

11. On or about October 5, 1999, as part of an application to Kingsbrook Jewish Medical Center for initial appointment to the medical staff, the Respondent submitted a Curriculum Vitae. For the time period "1987-91," the Respondent wrote "Various Locum Tenens, General Diagnosis," under "Practice Experience."

12. On or about October 5, 1999, as part of the same initial application to Kingsbrook Jewish Medical Center referred to in subparagraph 11 just above, the Respondent submitted an "Addendum to the Application for Appointment to the Medical Staff." In

response to the directive "Please list any gaps in training and/or employment for more than six (6) months and state reasons for the gaps (use separate sheet if necessary)," the Respondent answered "No Gaps."

13. On or about October 5, 1999, in the same initial application to Kingsbrook Jewish Medical Center referred to in subparagraph 11 above, under the heading "Professional Membership/Licensure/Certifications," the Respondent listed just his New York licensure history and listed nothing in response to "License in Other States."

14. On or about October 5, 1999, in the same initial application to Kingsbrook Jewish Medical Center referred to in subparagraph 11 above, in response to the question in the middle of page 2, "Have there been any past or currently pending challenges to your licensure ...," the Respondent answered "No."

15. On or about October 5, 1999, in the same initial application to Kingsbrook Jewish Medical Center referred to in subparagraph 11 above, in response to the question at the bottom of page 2, "Have you been involved in any past or currently pending professional misconduct proceedings in any state," the Respondent answered "No."

16. On or about October 5, 1999, in the same initial application to Kingsbrook Jewish Medical Center referred to in subparagraph 11 above, in response to question 1 at the top of page 3, "Has your license to practice medicine or Drug Enforcement Administration in any jurisdiction ever been limited, suspended or revoked, or action pending," the Respondent answered "No."

Steven Bier, M.D., P.C.

17. In or about June 1998, as part of an application to Steven Bier, M.D., P.C., for the position of Radiologist, the Respondent submitted a Curriculum Vitae. For the time period "1987-91," the Respondent wrote "Various Locum Tenens, General Diagnosis," under "Practice Experience."

History of Hospital Discharge

H. Effective on or about November 15, 1984, the Respondent was discharged from his position as Staff Radiologist at Brooklyn Hospital for "Unsatisfactory Performance" and "Refused to Follow Instructions." With respect to this discharge, the Respondent subsequently submitted fraudulent applications in that:

Brookdale University Hospital & Medical Center

1. On or about August 11, 2001, the Respondent submitted an application to Brookdale University Hospital & Medical Center for medical staff reappointment in 2002-2003 and an upgrade in rank from ~~Associate~~ Radiologist to ~~Assistant~~ Radiologist. In response to question 5, "Has your medical staff appointment/employment status or clinical privileges in any hospital, healthcare facility or managed care organization been voluntarily or involuntarily denied, revoked, suspended, restricted, reduced, limited, placed on probation, not renewed, relinquished, discontinued, or otherwise changed," the Respondent answered, "No."

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2. On or about June 18, 1999, the Respondent submitted an application to Brookdale University Hospital & Medical Center for medical staff reappointment in

2000-2001. In response to question 5, "Has your medical staff appointment/employment status or clinical privileges in any hospital, healthcare facility or managed care organization been voluntarily or involuntarily denied, revoked, suspended, restricted, reduced, limited, placed on probation, not renewed, relinquished, discontinued, or otherwise changed," the Respondent answered, "No."

3. On or about August 7, 1997, the Respondent submitted an application to Brookdale University Hospital & Medical Center for medical staff reappointment in 1998-1999. In response to question 5, "Has your medical staff appointment/employment status or clinical privileges in any hospital, healthcare facility or managed care organization been voluntarily or involuntarily denied, revoked, suspended, restricted, reduced, limited, placed on probation, not renewed, relinquished, discontinued, or otherwise changed," the Respondent answered, "No."

4. On or about October 12, 1995, as part of an application to Brookdale University Hospital & Medical Center for appointment to the medical staff, the Respondent submitted an "Application for Employment," including an employment history form. For the time period "from 6/81 to 7/86," concerning employment at Brooklyn Hospital, in response to the query "Reason for Leaving," the Respondent wrote "Continued Education."

5. On or about June 26, 1995, as part of an application to Brookdale University Hospital & Medical Center for initial appointment to the medical staff, the Respondent submitted an "Application for Appointment to the Medical Staff or Affiliate Staff." Under "Work Experience/Professional History," for the time period "7/81 to 6/85," concerning employment at Brooklyn

Hospital, in response to the query "Reason for Leaving," the Respondent wrote "Accepted St. Vincent's Offer."

6. On or about June 26, 1995, as part of the same initial application to Brookdale University Hospital & Medical Center referred to in subparagraph 5 just above," in response to question 1, "Have you had any of the following items (A-H) involuntarily denied, revoked, suspended, not renewed, placed under probation or otherwise limited or curtailed ... E. Membership on any hospital medical staff," the Respondent answered, "No."

7. On or about June 26, 1995, as part of the same initial application to Brookdale University Hospital & Medical Center referred to in subparagraph 5 above, in response to question 1 in the "Professional Conduct History" section, "Have you had any of the following items (A-H) involuntarily denied, revoked, suspended, not renewed, placed under probation or otherwise limited or curtailed ... F. Clinical privileges at any medical facility," the Respondent answered, "No."

8. On or about June 26, 1995, as part of the same initial application to Brookdale University Hospital & Medical Center referred to in subparagraph 5 above, in response to question 5 in the "Professional Conduct History" section, "Have you ever voluntarily or involuntarily resigned from any health care facility in order to avoid the imposition of disciplinary measures or curtailment in any way of clinical privileges," the Respondent answered, "No."

Kingsbrook Jewish Medical Center

9. On or about October 5, 1999, as part of an application to Kingsbrook Jewish Medical Center for initial appointment to the medical staff, in response to question 3 at the top of page 3, "Have your privileges at any hospital ever been suspended, diminished, revoked or not renewed, or is any such action pending," the Respondent answered, "No."

10. On or about October 5, 1999, as part of the same application to Kingsbrook Jewish Medical Center referred to in subparagraph 9 just above, the Respondent submitted an "Addendum to the Application for Appointment to the Medical Staff." In response to the question in the middle of the page, "Have you ever voluntarily or involuntarily terminated medical staff membership or voluntarily or involuntarily had limitation, reduction or loss of clinical privileges at another Hospital or Health Facility," the Respondent answered, "No."

## FACTUAL ALLEGATIONS - INTERPRETATIONS/DIAGNOSES

I. The Respondent provided medical care to Patient F in the form of interpreting diagnostic x-rays as an ~~Assistant~~ ASSOCIATE Radiologist on the medical staff of Brookdale University Hospital and Medical Center, on or about March 27, 2002. On that occasion, the Respondent interpreted Patient F's x-rays of her pelvis and right hip, and reported, among other things, "There is no fracture or dislocation." The Respondent's care of Patient F did not meet acceptable standards of medical care in that:

9-22-03 MPE

1. The Respondent failed to perceive the significance of the abnormalities that were apparent on the x-rays of Patient F's right hip.

2. The Respondent failed to identify the abnormalities that were apparent on the x-rays of Patient F's right hip as being consistent with a fracture.

3. The Respondent caused a report to be issued that erroneously notified Patient F's referring physician that, among other things, there was "no fracture."

4. The Respondent delayed the detection, diagnosis, and treatment of the fracture in Patient F's right hip, thereby subjecting Patient F to an increased risk of morbidity and mortality.

J. The Respondent provided medical care to Patient G in the form of interpreting diagnostic x-rays as an ~~Assistant~~ Associate Radiologist on the medical staff of Brookdale University Hospital and Medical Center, on or about December 24, 2001. On that occasion, the Respondent interpreted Patient G's x-rays of her chest, and reported, among other things, "There is almost total opacification of the right hemithorax suggesting the presence of a large effusion on the right side." The Respondent's care of Patient G did not meet acceptable standards of medical care in that:

1. The Respondent failed to determine correctly the right/left sidedness of an abnormality that was apparent in Patient G's left chest.

2. The Respondent failed to understand the significance of right/left anatomic and other considerations that were apparent on the x-rays of Patient G's chest.

3. The Respondent failed to insist that the x-ray technologist resolve a right/left labeling inconsistency on the x-rays by taking another x-ray.

4. The Respondent caused a report to be issued that erroneously notified the hospital staff caring for Patient G that there was "almost total opacification of the right hemithorax."

5. The Respondent caused a report to be issued that erroneously notified the hospital staff caring for Patient G that there was "a large effusion on the right side" of Patient G's chest.

6. The Respondent caused Patient G to undergo a chest tube insertion in the side of the chest (right) that did not have "almost total opacification," and did not have "a large effusion," thereby subjecting Patient G to an increased risk of morbidity and mortality.

## SPECIFICATIONS OF MISCONDUCT

### FIRST THROUGH EIGHTH SPECIFICATIONS

### GROSS NEGLIGENCE

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(4) by practicing the profession of medicine with gross negligence on a particular occasion as alleged in the following:

1. The facts set forth in paragraphs A and A.1, A.2, A.3, A.4, and/or A.5.
2. The facts set forth in paragraphs A and A.6, A.7, A.8, A.9, and/or A.10.
3. The facts set forth in paragraphs B and B.1, B.2, B.3, B.4, B.5, and/or B.6.
4. The facts set forth in paragraphs C and C.1, C.2, C.3, C.4, C.5, C.6, C.7, and/or C.8.
5. The facts set forth in paragraphs D and D.1, D.2, D.3, D.4, D.5, D.6, and/or D.7.
6. The facts set forth in paragraphs E and E.1, E.2, E.3, E.4, E.5, E.6, E.7, E.8, E.9, and/or E.10.
7. The facts set forth in paragraphs I and I.1, I.2, I.3, and/or I.4.
8. The facts set forth in paragraphs J and J.1, J.2, J.3,

J.4, J.5, and/or J.6.

**NINTH THROUGH SIXTEENTH SPECIFICATIONS**

**GROSS INCOMPETENCE**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(6) by practicing the profession of medicine with gross incompetence as alleged in the following:

9. The facts set forth in paragraphs A and A.1, A.2, A.3, A.4, and/or A.5.

10. The facts set forth in paragraphs A and A.6, A.7, A.8, A.9, and/or A.10.

11. The facts set forth in paragraphs B and B.1, B.2, B.3, B.4, B.5, and/or B.6.

12. The facts set forth in paragraphs C and C.1, C.2, C.3, C.4, C.5, C.6, C.7, and/or C.8.

13. The facts set forth in paragraphs D and D.1, D.2, D.3, D.4, D.5, D.6, and/or D.7.

14. The facts set forth in paragraphs E and E.1, E.2, E.3, E.4, E.5, E.6, E.7, E.8, E.9, and/or E.10.

15. The facts set forth in paragraphs I and I.1, I.2, I.3, and/or I.4.

16. The facts set forth in paragraphs J and J.1, J.2, J.3,

J.4, J.5, and/or J.6.

**SEVENTEENTH SPECIFICATION**

**NEGLIGENCE ON MORE THAN ONE OCCASION**

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

17. The facts set forth in paragraphs A and A.1, A.2, A.3, A.4, A.5, A.6, A.7, A.8, A.9, A.10, B and B.1, B.2, B.3, B.4, B.5, B.6, C and C.1, C.2, C.3, C.4, C.5, C.6, C.7, C.8, D and D.1, D.2, D.3, D.4, D.5, D.6, D.7, E and E.1, E.2, E.3, E.4, E.5, E.6, E.7, E.8, E.9, E.10, I and I.1, I.2, I.3, I.4, J and J.1, J.2, J.3, J.4, J.5, J.6, in any combination.

**EIGHTEENTH SPECIFICATION**

**INCOMPETENCE ON MORE THAN ONE OCCASION**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(5) by practicing the profession of medicine with incompetence on more than one occasion as alleged in two or more of the following:

18. The facts set forth in paragraphs A and A.1, A.2, A.3, A.4, A.5, A.6, A.7, A.8, A.9, A.10, B and B.1, B.2, B.3, B.4, B.5, B.6, C and C.1, C.2, C.3, C.4, C.5, C.6, C.7, C.8, D and D.1, D.2, D.3, D.4, D.5, D.6, D.7, E and E.1, E.2, E.3, E.4, E.5, E.6, E.7, E.8, E.9, E.10, I

and I.1, I.2, I.3, I.4, J and J.1, J.2, J.3, J.4, J.5, J.6, in any combination.

**NINETEENTH SPECIFICATION**

**ACCEPTING AND PERFORMING PROFESSIONAL RESPONSIBILITIES BEYOND COMPETENCE LEVEL**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(24) by accepting and performing professional responsibilities which the Respondent knew or had reason to know that he was not competent to perform:

19. The facts set forth in paragraphs A and A.1, A.2, A.3, A.4, A.5, A.6, A.7, A.8, A.9, A.10, B and B.1, B.2, B.3, B.4, B.5, B.6, C and C.1, C.2, C.3, C.4, C.5, C.6, C.7, C.8, D and D.1, D.2, D.3, D.4, D.5, D.6, D.7, E and E.1, E.2, E.3, E.4, E.5, E.6, E.7, E.8, E.9, and/or E.10.

**TWENTIETH THROUGH FIFTY-SECOND SPECIFICATIONS**

**APPLICATION FRAUD**

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

20. The facts set forth in paragraphs F and F.1.

21. The facts set forth in paragraphs F and F.2.

22. The facts set forth in paragraphs F and F.3.

23. The facts set forth in paragraphs F and F.4.

24. The facts set forth in paragraphs F and F.5.

25. The facts set forth in paragraphs F and F.6.

26. The facts set forth in paragraphs G and G.1.

27. The facts set forth in paragraphs G and G.2.

28. The facts set forth in paragraphs G and G.3.

29. The facts set forth in paragraphs G and G.4.

30. The facts set forth in paragraphs G and G.5.

31. The facts set forth in paragraphs G and G.6.

32. The facts set forth in paragraphs G and G.7.

33. The facts set forth in paragraphs G and G.8.

34. The facts set forth in paragraphs G and G.9.

35. The facts set forth in paragraphs G and G.10.

36. The facts set forth in paragraphs G and G.11.

37. The facts set forth in paragraphs G and G.12.

38. The facts set forth in paragraphs G and G.13.

39. The facts set forth in paragraphs G and G.14.

40. The facts set forth in paragraphs G and G.15.

41. The facts set forth in paragraphs G and G.16.

42. The facts set forth in paragraphs G and G.17.

43. The facts set forth in paragraphs H and H.1.

44. The facts set forth in paragraphs H and H.2.

45. The facts set forth in paragraphs H and H.3.

46. The facts set forth in paragraphs H and H.4.

47. The facts set forth in paragraphs H and H.5.

48. The facts set forth in paragraphs H and H.6.

49. The facts set forth in paragraphs H and H.7.

50. The facts set forth in paragraphs H and H.8.

51. The facts set forth in paragraphs H and H.9.

52. The facts set forth in paragraphs H and H.10.

**FIFTY-THIRD THROUGH EIGHTY-FIFTH SPECIFICATIONS**

**MAKING OR FILING FALSE REPORT**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(21) by making or filing a false report as alleged in the following:

53. The facts set forth in paragraphs F and F.1.

54. The facts set forth in paragraphs F and F.2.

55. The facts set forth in paragraphs F and F.3.

56. The facts set forth in paragraphs F and F.4.

57. The facts set forth in paragraphs F and F.5.

58. The facts set forth in paragraphs F and F.6.

59. The facts set forth in paragraphs G and G.1.

60. The facts set forth in paragraphs G and G.2.

61. The facts set forth in paragraphs G and G.3.

62. The facts set forth in paragraphs G and G.4.

63. The facts set forth in paragraphs G and G.5.

64. The facts set forth in paragraphs G and G.6.

65. The facts set forth in paragraphs G and G.7.

66. The facts set forth in paragraphs G and G.8.

67. The facts set forth in paragraphs G and G.9.

68. The facts set forth in paragraphs G and G.10.

69. The facts set forth in paragraphs G and G.11.

70. The facts set forth in paragraphs G and G.12.

71. The facts set forth in paragraphs G and G.13.

72. The facts set forth in paragraphs G and G.14.

73. The facts set forth in paragraphs G and G.15.

74. The facts set forth in paragraphs G and G.16.

75. The facts set forth in paragraphs G and G.17.

76. The facts set forth in paragraphs H and H.1.

77. The facts set forth in paragraphs H and H.2.

78. The facts set forth in paragraphs H and H.3.

79. The facts set forth in paragraphs H and H.4.

80. The facts set forth in paragraphs H and H.5.

81. The facts set forth in paragraphs H and H.6.

82. The facts set forth in paragraphs H and H.7.

83. The facts set forth in paragraphs H and H.8.

84. The facts set forth in paragraphs H and H.9.

85. The facts set forth in paragraphs H and H.10.

**EIGHTY-SIXTH THROUGH ONE HUNDRED EIGHTEENTH SPECIFICATIONS**

**CONDUCT EVIDENCING MORAL UNFITNESS**

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

86. The facts set forth in paragraphs F and F.1.

87. The facts set forth in paragraphs F and F.2.

88. The facts set forth in paragraphs F and F.3.

89. The facts set forth in paragraphs F and F.4.

90. The facts set forth in paragraphs F and F.5.

91. The facts set forth in paragraphs F and F.6.

92. The facts set forth in paragraphs G and G.1.

93. The facts set forth in paragraphs G and G.2.

94. The facts set forth in paragraphs G and G.3.

95. The facts set forth in paragraphs G and G.4.

96. The facts set forth in paragraphs G and G.5.

97. The facts set forth in paragraphs G and G.6.

98. The facts set forth in paragraphs G and G.7.

99. The facts set forth in paragraphs G and G.8.

100. The facts set forth in paragraphs G and G.9.

101. The facts set forth in paragraphs G and G.10.

102. The facts set forth in paragraphs G and G.11.

103. The facts set forth in paragraphs G and G.12.

104. The facts set forth in paragraphs G and G.13.

105. The facts set forth in paragraphs G and G.14.

106. The facts set forth in paragraphs G and G.15.

107. The facts set forth in paragraphs G and G.16.

108. The facts set forth in paragraphs G and G.17.

109. The facts set forth in paragraphs H and H.1.

110. The facts set forth in paragraphs H and H.2.

111. The facts set forth in paragraphs H and H.3.

112. The facts set forth in paragraphs H and H.4.

113. The facts set forth in paragraphs H and H.5.

114. The facts set forth in paragraphs H and H.6.

115. The facts set forth in paragraphs H and H.7.

116. The facts set forth in paragraphs H and H.8.

117. The facts set forth in paragraphs H and H.9.

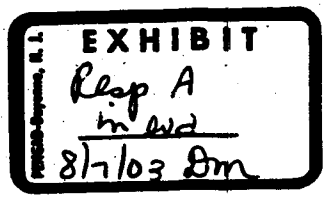
118. The facts set forth in paragraphs H and H.10.

DATED: June 25, 2003
Albany, New York

Peter D. Van Buren
PETER D. VAN BUREN
Deputy Counsel
Bureau of Professional Medical Conduct

# APPENDIX 2

ORIGINAL




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

IN THE MATTER

OF

L. MARIO DiBLASIO, M.D.

**RESPONDENT'S ANSWER TO STATEMENT OF CHARGES**

Respondent L. Mario DiBlasio, M.D. by his attorneys Hoffman Einiger & Polland, PLLC, hereby responds to the Petitioner's factual allegations and specifications as follows:

## FACTUAL ALLEGATIONS

1. With respect to the factual allegations contained in paragraph A, Respondent admits that he interpreted screening mammograms at the office of Steven Bier, M.D., P.C. for patient A. Respondent neither admits nor denies the allegations as to the interpretation of the screening mammogram but refers to the reports of such interpretations. Respondent denies knowledge or information sufficient to form a belief with respect to the allegations as to the truth or falsity of the allegations concerning the dates of treatment. Deny that Respondent's care of Patient A did not meet acceptable standards. Deny each and every allegation contained in Paragraphs A1, A2, A3, A4, A5, A6, A7, A8, A9, A10. Respondent further alleges, upon information and belief, that there was no detectable evidence of cancer within the standard of care for cancer detection at the time of his treatment.

2. With respect to the factual allegations contained in paragraph B, Respondent admits that he interpreted screening mammogram at the office of Steven Bier, M.D., P.C. for patient B. Respondent neither admits nor denies the allegations as to the interpretation of the screening mammogram but refers to the report of such interpretations. Respondent denies knowledge or information sufficient to form a belief with regard to the date of treatment. Deny that Respondent's care of Patient B did not meet acceptable standards. Deny each and every allegation contained in Paragraphs B1, B2, B3, B4, B5, B6. Respondent further alleges, upon information and belief, that there was no detectable evidence of cancer within the standard of care for cancer detection at the time of his treatment.

3. With respect to the factual allegations contained in paragraph C, Respondent admits that he provided mammographic and sonographic interpretations at the office of Steven Bier, M.D., P.C. for patient C. Respondent neither admits nor denies the allegations as to the interpretation of the mammograms and sonograms of Patient C but refers to the reports of such interpretations. Respondent denies knowledge or information sufficient to form a belief with respect to the allegations concerning the dates of treatment. Deny that Respondent's care of Patient C did not meet acceptable standards. Deny each and every allegation contained in Paragraphs C1, C2, C3, C4, C5, C6, C7 and C8. Respondent further alleges, upon information and belief, that there was no detectable evidence of cancer within the standard of care for cancer detection at the time of his treatment.

4. With respect to the factual allegations contained in paragraph D, Respondent admits that he provided mammographic interpretations to Patient D at the offices of

Steven Bier, M.D., P.C. Respondent neither admits nor denies the allegations as to the interpretation of the mammograms of Patient D but refers to the reports of such interpretations. Respondent denies knowledge or information sufficient to form a belief with respect to the allegations concerning the dates of treatment of Patient D. Deny that Respondent's care of Patient D did not meet acceptable standards. Deny each and every allegation contained in Paragraphs D1, D2, D3, D4, D5, D6 and D7. Respondent further alleges, upon information and belief, that there was no detectable evidence of cancer within the standard of care for cancer detection at the time of his treatment.

5. With respect to the factual allegations contained in paragraph E, Respondent admits that he provided mammographic and sonographic interpretations at the office of Steven Bier, M.D., P.C. for patient E. Respondent neither admits nor denies the allegations as to the interpretation of the mammograms of Patient D but refers to the reports of such interpretations. Respondent denies knowledge or information sufficient to form a belief with respect to the allegations concerning the dates of treatment of Patient E. Deny that Respondent's care of Patient E did not meet aeceptable standards. Deny each and every allegation contained in Paragraphs E1, E2, E3, E4, E5, E6, E7, E8, E9 and E10. Respondent further alleges, upon information and belief, that there was no detectable evidence of cancer within the standard of care for cancer detection at the time of his treatment.

FIRST AFFIRMATIVE DEFENSE

6. As and for a first affirmative defense Respondent alleges that the issues regarding Dr. DiBlasio's interpretation of mammograms and related studies relative to the examination of patients A through E of the Stephen J. Bier Medical Facility were

expressly raised and presented in the prior proceeding against Dr. DiBlasio culminating in BPMC Order 01-22 in which all charges relating thereto were dismissed by the hearing Committee.

SECOND AFFIRMATIVE DEFENSE

7. As and for a second affirmative defense Respondent alleges that the issues regarding Dr. DiBlasio's interpretation of mammograms and related studies relative to the examination of patients A through E of the Stephen J. Bier Medical Facility, which were known at the time and could have been raised and presented in the prior proceeding against Dr. DiBlasio culminating in BPMC Order 01-22 in which all charges relating thereto were dismissed by the hearing Committee.

8. With respect to the factual allegations contained in Paragraph F, neither admits nor denies the allegations concerning the criminal convictions and sentence but refers to the respective court documents. Denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations as to the dates of the applications indicated in paragraphs F1, F2, F3, F4, F5 and F6. Deny that the Respondent submitted fraudulent applications as alleged in Paragraphs F1, F2, F3, F4, F5 and F6. Respondent further alleges that he submitted with his applications a document addressed to the "Medical Staff Credentialing Committee" in which he stated that his application was incomplete due to the omission of very sensitive personal information. (A copy of which is annexed hereto as Exhibit "A") Respondent on or before the time of submission of said letter, among other things, verbally advised the chairman of the Radiology Department of these matters and, upon information and belief, this matter was properly

presented to the Credentialing Committee in the regular course of business with full knowledge of Respondent's history.

9. With respect to the factual allegations contained in Paragraph G, neither admit nor deny the allegations concerning the licensure actions in New York and New Jersey and the period of incarceration in New York but refer to the records of the appropriate governmental authorities. Denies information or knowledge sufficient to form a belief with regard to the dates of the applications alleged in Paragraphs G1, G2, G3, G4, G5, G6, G7, G8, G9, G10, G11, G12, G13, G14, G15 and G16. Deny that Respondent submitted fraudulent applications as alleged in Paragraphs G1, G2, G3, G4, G5, G6, G7, G8, G9, G10, G11, G12, G13, G14, G15 and G16. Respondent further alleges that he submitted with his applications a document addressed to the "Medical Staff Credentialing Committee" in which he stated that his application was incomplete due to the omission of very sensitive personal information. (A copy of which is annexed hereto as Exhibit "A") Respondent on or before the time of submission of said letter, among other things, verbally advised the Chairman of the Radiology Department of these matters and, upon information and belief, this matter was properly presented to the Credentialing Committee in the regular course of business with full knowledge of Respondent's history. Respondent neither admits nor denies the allegations contained in Paragraph G17 but refers to the document described therein and further alleges that the complete details of Respondent's history were made available to Dr. Bier.

10. With regard to the factual allegations contained in Paragraph H of the Statement of Charges, neither admit nor deny the allegation with regard to his discharge from a position as Staff Radiologist at Brooklyn Hospital but refer to the documents

maintained by Brooklyn Hospital. Deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations concerning the dates of applications contained in Paragraphs H1, H2, H3, H4, H5, H6, H7, H8, H9 and H10. Deny he submitted fraudulent applications as alleged in Paragraphs H1, H2, H3, H4, H5, H6, H7, H8, H9 and H10. Respondent further alleges that he submitted with his applications a document addressed to the "Medical Staff Credentialing Committee" in which he stated that his application was incomplete due to the omission of very sensitive personal information. (A copy of which is annexed hereto as Exhibit "A".) Respondent on or before the time of submission of said letter, among other things, verbally advised the Chairman of the Radiology Department of these matters and, upon information and belief, this matter was properly presented to the Credentialing Committee in the regular course of business with full knowledge of Respondent's history.

11. With respect to the factual allegations contained in paragraph I, Respondent admits that he provided medical care to Patient F in the form of interpreting diagnostic x-rays as an Assistant Radiologist on the medical staff of Brookdale University Hospital and Medical Center. Neither admits nor denies the allegations as to the interpretation of the diagnostic x-rays of Patient F but refers to the reports of such interpretations. Deny knowledge or information sufficient to form a belief as to the truth or falsity as to the allegation concerning the date of treatment of Patient F. Deny that Respondent's care of Patient F did not meet acceptable standards. Deny each and every allegation contained in Paragraphs I-1, I-2, I-3 and I-4.

12. With respect to the factual allegations contained in paragraph J, Respondent admits that he provided medical care to Patient G in the form of interpreting diagnostic x-

rays as an Assistant Radiologist on the medical staff of Brookdale University Hospital and Medical Center. Neither admits nor denies the allegations as to the interpretation of the diagnostic x-rays of Patient G but refers to the reports of such interpretations. Deny knowledge or information sufficient to form a belief as to the truth or falsity of allegation as to the date that Respondent interpreted diagnostic x-rays of Patient G. Deny that Respondent's care of Patient G did not meet acceptable standards. Deny each and every allegation contained in Paragraphs J1, J2, J3, J4, J5 and J6.

13. Deny specifications one through One Hundred Eighteen.

THIRD AFFIRMATIVE DEFENSE

14. As and for a third affirmative defense, Respondent alleges that the Petitioner's claims relating to Patients A through E are barred by the doctrine of Res Judicata and Collateral Estoppel in that the issues regarding Dr. DiBlasio's interpretation of mammograms and related studies relative to the examination of these patients of the Stephen J. Bier Medical Facility were or could have been expressly raised and presented in the prior proceeding against Dr. DiBlasio culminating in BPMC Order 01-22 in which all charges relating thereto were dismissed by the hearing Committee.

FOURTH AFFIRMATIVE DEFENSE

15. As and for a fourth affirmative defense, the Respondent alleges that the Petitioner has repeatedly failed to comply with the express provisions of Section 230 of the Public Health Law in that, among other things,:

(a) Petitioner failed to provide the Respondent with an interview in violation of the provisions of Section 230 (10)(a)(iii);

(b) Petitioner has treated Respondent disparately from other licensees in conducting its investigation of him in violation of Public Health Law Section 230;

(c) Petitioner failed to provide a written delineation of the issues under review subsequent to the interview in violation of the provisions of Section 230 (10)(a)(iii);

(d) Petitioner submitted the matter to an Investigation Committee surreptitiously without affording the Respondent an interview and/or a written delineation of issues under review in violation of the provisions of Public Health Law Section 230 (10)(a)(iii);

(e) Petitioner failed to prepare charges within 15 days after a determination that charges were warranted pursuant to the provisions of Section 230 (10)(a)(iv); and

(f) Petitioner, specifically Commissioner of the New York State Department of Health, Antonia C. Novello, improperly disclosed the investigation of Dr. DiBlasio in violation of the confidentiality provisions of Section 230 (9).

FIFTH AFFIRMATIVE DEFENSE

16. As and for a fifth affirmative defense Respondent alleges:

(a) that Commissioner Antonia C. Novello has so displayed personal bias against the Respondent by her public statements in violation of Section 230 of the Public Health Law that she has fatally poisoned the administrative process rendering it impossible for Dr. DiBlasio to receive a fair and unbiased hearing; and

(b) Petitioner, at the direction of Commissioner of the Department of Health, Antonia C. Novello, has conducted its investigation in retaliation against Dr. DiBlasio for initiating a civil lawsuit filed against her personally and in her capacity as Commissioner of Health.

SIXTH AFFIRMATIVE DEFENSE

17. As and for a sixth affirmative defense, Respondent alleges that Petitioner's action, in whole or in part, is barred by the doctrine of laches.

SEVENTH AFFIRMATIVE DEFENSE

18. As and for a seventh affirmative defense the Respondent alleges that the Commissioner exceeded the scope of her authority in violation of Public Health Law Section 230.

WHEREFORE, Respondent respectfully requests that the Statement of Charges be dismissed in its entirety.

Dated: July 27, 2003
New York, New York

Ralph A. Erbaio, Jr.
Hoffman Einiger & Polland PLLC
*Attorneys for Respondent*
220 East 42nd Street
New York, NY 10017
(212) 338-0700

# MEDICAL STAFF
# CREDENTIALLING COMMITTEE

Distinguished doctors:

Please, be aware that the included application for appointment to the staff is incomplete. This is because of very sensitive personal information which I believe I should not include at this early stage since it is my understanding that anyone at your institution would have potential access to it at this time. This information is missing to protect my privacy.

However, be also aware that as soon as you grant me the interview that preceeds your final decision, I will give you full and complete disclosure and will answer any and all questions that will arise as a result of disclosure.

I guarantee that your decision will be based on complete information. I can also tell you that the chairman of the department I wish to join has already received full disclosure from me, although he is the only one who has this information at this time.

I hope that you will grant me the opportunity to offer this sensitive material verbally, face to face, and not in writing, as it could be misinterpreted.

Sincerely,

Mario DiBlasio, MD

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

IN THE MATTER

OF

L. MARIO DIBLASIO, M.D.

**RESPONDENT'S ANSWER TO STATEMENT OF CHARGES**

**HOFFMAN EINIGER & POLLAND PLLC**
*Attorneys for Respondent Mario DiBlasio*
220 East 42nd Street, New York, NY 10017
(212) 338-0700

**TO:** **Richard J. Zahnleuter, Esq.**
*Attorney for Petitioner*
NYS Department of Health
Division of Legal Affairs
ESP, Corning Tower, Room 2512
Albany, NY 12237-0032

Signature (Rule 130-1.1-a)

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Ralph A. Erbaio, Jr.

# APPENDIX 3

**Terms of Probation for L. Mario DiBlasio, M.D.**

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 Determination and Order. Respondent shall personally meet with a person designated by the Director of OPMC as requested by the Director.

4. 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 on Respondent's return to practice in New York State.

5. 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 staff at practice locations or OPMC offices.

6. Respondent shall maintain legible and complete medical records which accurately reflect the evaluation and treatment of patients. The medical records shall contain all information required by State rules and regulations regarding controlled substances.

7. Respondent shall practice the interpretation of mammography and breast sonography only when supervised in his medical practice by a licensed physician, Board certified in Radiology ("Practice Supervisor"). The Practice Supervisor shall be on-site at all locations, unless determined otherwise by the Director of OPMC. The Practice Supervisor shall be proposed by Respondent and subject to the written approval of the Director. The Practice Supervisor shall not be a family member or personal friend, or be in a professional relationship which could pose a conflict with supervisory responsibilities.

8. Respondent shall ensure that the Practice Supervisor is familiar with this Determination and Order and these terms of probation, and shall be willing to report to OPMC. Respondent shall ensure that the Practice Supervisor is in a position to regularly observe and assess Respondent's interpretation of mammograms and breast sonograms. Respondent shall cause the Practice Supervisor to report within 24 hours any suspected impairment, inappropriate behavior, questionable medical practice or possible misconduct to OPMC.

9. Respondent shall authorize the Practice Supervisor to have access to his patient records and to submit quarterly written reports, to the Director of OPMC, regarding Respondent's practice. These narrative reports shall address all aspects of Respondent's clinical mammography and breast sonography practice including, but not limited to, the evaluation and treatment of patients, general demeanor, time and attendance, the supervisor's assessment of patient records selected for review and other such on-duty conduct as the Practice Supervisor deems appropriate to report.

10. Respondent shall be solely responsible for all expenses associated with monitoring, including fees, if any, to the Practice Supervisor physician.

11. Respondent shall cause the Practice Supervisor to report quarterly, in writing, to the Director of OPMC.

12. Respondent shall maintain or be covered by medical malpractice insurance coverage with limits no less than $2 million per occurrence and $6 million per policy year, in accordance with Section 230(18)(b) of the Public Health Law. Proof of coverage shall be submitted to the Director of OPMC prior to Respondent's practice after the effective date of this Order

13. Respondent shall comply with all terms, conditions, restrictions, limitations and penalties to which he is subject pursuant to the Order and shall assume and bear all costs related to compliance. On receipt of evidence of noncompliance with, or any violation of these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding and/or any such other proceeding against Respondent as may be authorized pursuant to the law.