



STATE OF NEW YORK
DEPARTMENT OF HEALTH

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

Richard F. Daines, M.D.
Commissioner

August 11, 2008

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Eskandar J. Simhaee, M.D.
1201 Northern Boulevard
Suite 300
Manhasset, New York 11030

Paul Stein, Esq.
NYS Department of Health
Division of Legal Affairs
90 Church Street – 4th Floor
New York, New York 10007-2919

Martin Schaum, Esq.
Schaum Law Offices
600 Old Country Road
Suite 320
Garden City, New York 11530

RE: In the Matter of Eskandar J. Simhaee, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 08-149) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), (McKinney Supp. 2007) and §230-c subdivisions 1 through 5, (McKinney Supp. 2007), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the Respondent or the Department may seek a review of a committee determination.

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

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

James F. Horan, Esq., Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Hedley Park Place
433 River Street, Fifth Floor
Troy, New York 12180

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

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

Sincerely,
Redacted Signature

James F. Horan, Acting Director
Bureau of Adjudication

JFH:djh

Enclosure

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

COPY

-----X
IN THE MATTER : DETERMINATION
OF :
ESKANDAR J. SIMHAE, M.D. : ORDER
-----X

BPMC NO. 08-149

A Notice of Hearing and Statement of Charges, both dated June 20, 2008, were served upon the Respondent, Eskandar J. Simhaee, M.D. LINDA D. LEWIS, M.D. (CHAIR), STEVEN SHERMAN, D.O., AND IRVING S. CAPLAN, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to Section 230(10) (Executive) of the Public Health Law. LARRY G. STORCH, ADMINISTRATIVE LAW JUDGE, served as the Administrative Officer. The Department of Health appeared by Paul Stein, Esq., Associate Counsel. The Respondent appeared by Schaum Law Offices, Martin Schaum, Esq., of Counsel. Evidence was received and witnesses sworn and heard and transcripts of these proceedings were made.

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

STATEMENT OF CASE

Petitioner has charged Respondent with fourteen specifications of professional misconduct. The charges relate to the administration of flu shots by unauthorized personnel to Respondent's patients during the period September, 2007 through December, 2007. The charges include allegations of negligence on more than one occasion in violation of N.Y. Educ. Law §6530(3), incompetence on more than one occasion, in violation of N.Y. Educ. Law §6530(5) improper delegation of professional responsibilities in violation of N.Y. Educ. Law §6530(25), and failure to maintain records which accurately reflect the care and treatment of the patient, in violation of N.Y. Educ. Law §6530(32). In a Stipulation dated July 17, 2008, the Respondent admitted the factual allegations and all specifications of misconduct except incompetence. Respondent denied the allegation of incompetence and the Department produced no evidence nor argument related to this charge.

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

PROCEDURAL HISTORY

Date of Service:	June 27, 2008
Answer Filed:	July 17, 2008
Pre-Hearing Conference:	July 17, 2008

Hearing Date: July 22, 2008
Witnesses for Petitioner: None
Witnesses for Respondent: Eskandar J. Simhaee, M.D.
Deliberations Held: July 22, 2008

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Particular attention was paid to a Stipulation entered into by the parties, and received into evidence as ALJ Exhibit #1. In this Stipulation, the Respondent admitted all of the factual allegations and Specifications with the exception of the Second Specification (incompetence on more than one occasion).

1. Eskandar J. Simhaee, M.D. (hereinafter "Respondent") was authorized to practice medicine on or about August 6, 1984 by the New York State Education Department.

2. From on or about February 10, 2005 through on or about January 22, 2008, Respondent treated Patient A in his office at 1201 Northern Boulevard, Suite 300, Manhasset, New York. On or about October 9, 2007, Patient A was administered a flu shot in Respondent's office.

3. Respondent directed, caused, or permitted an unqualified employee, a medical assistant lacking the

appropriate license, who Respondent know or had reason to know was unqualified, to administer the flu shot to Patient A.

4. Respondent failed to keep an adequate record for Patient A by not recording that the flu vaccine had been administered, who administered the flu vaccine, in which arm the vaccine was given, and the lot number of the flu vaccine administered.

5. From on or about June 29, 2000 through on or about October 31, 2007, Respondent treated Patient B in his office at 1201 Northern Boulevard, Suite 300, Manhasset, New York. On or about October 16, 2007, Patient B was administered a flu shot in Respondent's office.

6. Respondent directed, caused, or permitted an unqualified employee, a medical assistant lacking the appropriate license, who Respondent know or had reason to know was unqualified, to administer the flu shot to Patient B.

7. Respondent failed to keep an adequate record for Patient B by not recording that the flu vaccine had been administered, who administered the flu vaccine, in which arm the vaccine was given, and the lot number of the flu vaccine administered.

8. From on or about December 31, 1999 through on or about December 20, 2007, Respondent treated Patient C in his office at 1201 Northern Boulevard, Suite 300, Manhasset, New York. On or about September 25, 2007, Patient C was administered a flu shot in Respondent's office.

9. Respondent directed, caused, or permitted an unqualified employee, a medical assistant lacking the appropriate license, who Respondent knew or had reason to know was unqualified, to administer the flu shot to Patient C.

10. Respondent failed to keep an adequate record for Patient C by not recording that the flu vaccine had been administered, who administered the flu vaccine, in which arm the vaccine was given, and the lot number of the flu vaccine administered.

11. From on or about December 13, 2004 through on or about January 17, 2008, Respondent treated Patient D in his office at 1201 Northern Boulevard, Suite 300, Manhasset, New York. On or about October 30, 2007, Patient D was administered a flu shot in Respondent's office.

12. Respondent directed, caused, or permitted an unqualified employee, a medical assistant lacking the appropriate license, who Respondent knew or had reason to

know was unqualified, to administer the flu shot to Patient D.

13. Respondent failed to keep an adequate record for Patient D by not recording that the flu vaccine had been administered, who administered the flu vaccine, in which arm the vaccine was given, and the lot number of the flu vaccine administered.

14. From on or about March 1, 2005 through on or about January 17, 2008, Respondent treated Patient E in his office at 1201 Northern Boulevard, Suite 300, Manhasset, New York. On or about October 18, 2007, Patient E was administered a flu shot in Respondent's office.

15. Respondent directed, caused, or permitted an unqualified employee, a medical assistant lacking the appropriate license, who Respondent knew or had reason to know was unqualified, to administer the flu shot to Patient E.

16. Respondent failed to keep an adequate record for Patient E by not recording that the flu vaccine had been administered, who administered the flu vaccine, in which arm the vaccine was given, and the lot number of the flu vaccine administered.

17. In or about September, 2007 through in or about December, 2007, flu shots were administered to approximately 36 patients of Respondent in Respondent's office at 1201 Northern Boulevard, Suite 300, Manhasset, New York.

18. Respondent and his employees failed to follow proper infection control practices regarding the administration of the flu shots to Respondent's approximately 36 patients. Respondent's employee medical assistants drew up flu vaccine into a 3 cc. Syringe and used the same syringe to administer 0.5 cc. Of flu vaccine to several patients, using a new sterile needle for each patient, until the syringe was empty. This technique of flu vaccine administration is a moderate deviation from the minimally accepted standard of care and posed a minimal degree of risk to each patient receiving flu vaccine from a syringe after the first administration of flu vaccine from that syringe of transmission of a communicable disease such as HIV or hepatitis. We have no evidence that any such transmission took place. The standard of care requires that a separate sterile syringe and needle be used for each patient, as is indicated in the package insert for the flu vaccine.

19. Respondent directed, caused, or permitted unqualified employees, medical assistants lacking the

appropriate license, who Respondent knew or had reason to know were unqualified, to administer the flu shots to Respondent's approximately 36 patients, including, but not limited to, Patients A through E. In New York State only licensed persons may administer intramuscular injections (of which the flu vaccination is one), and medical assistants are not licensed in New York State.

20. Respondent failed to keep adequate records for Respondent's approximately 36 patients, including, but not limited to, Patient A through E, by not recording who administered the flu vaccine, in which arm the vaccine was given, and the lot number of the flu vaccine administered to each patient. Failure to record the lot number put each patient at risk of not being appropriately treated if a vaccine lot were recalled for improper formulation, inadequate potency, or contamination.

CONCLUSIONS OF LAW

Respondent is charged with fourteen specifications alleging professional misconduct within the meaning of Education Law §6530. In the Stipulation received into evidence as ALJ Exhibit #1, the Respondent admitted all specifications of professional misconduct set forth in the Statement of Charges, with the exception of the Second Specification (incompetence on

more than one occasion). Accordingly, the Hearing Committee concluded that the First Specification (negligence on more than one occasion), Third through Eighth Specifications (improper delegation of professional responsibilities), and Ninth through Fourteenth Specifications (failure to maintain accurate records) should be sustained. Insofar as the Respondent denied the specification of incompetence, and the Department produced no evidence on that charge, the Hearing Committee concluded that the Second Specification should be dismissed.

DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determined that Respondent's license to practice medicine should be suspended for a period of one year. In addition, the suspension shall be stayed and the Respondent placed on probation for a period of one year following the effective date of this determination and order. During the period of probation, Respondent's medical practice shall be monitored for compliance with infection control standards. This determination was reached upon due consideration of the full spectrum of penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties. The complete terms of

probation are set forth in Appendix II which is attached to this Determination and Order and incorporated herein.

Respondent has admitted that he directed his medical assistants to administer flu vaccine injections to approximately 36 patients. Under New York State law, only licensed personnel (physicians, nurses, physician assistants) may administer injections. Respondent knew, or at the very least, should have known about this requirement. The Committee is also concerned about the fact that Respondent apparently neither trained his staff in the proper injection techniques, nor did he supervise the injections. (T. 42-47).

Even more troubling is the fact that Respondent allowed his medical assistants to use the same 3ml. syringes for multiple patients, albeit with a fresh needle for each patient. This violates basic infection control practices, and exposed Respondent's patients to the risk of infectious diseases such as hepatitis and HIV. Moreover, the package insert for the flu vaccine clearly directs the practitioner to use a separate, sterile syringe and needle for each patient. (Ex. #3).

The Hearing Committee does not doubt that the Respondent is a caring and competent physician. Nevertheless, his breach of his professional responsibilities warrants a significant sanction. In mitigation, the Committee takes note

of the fact that Respondent cooperated fully with the Department in identifying and contacting his at-risk patients once his errors were identified. (See, Ex. C). The Committee also takes notice of the fact that Respondent, on his own, has entered into an agreement with Webeh Webeh, M.D., an infectious disease specialist. Dr. Webeh was retained to conduct infection control education for the Respondent's staff and to review the office infection control practices. (Ex. B). We also note, however, that the agreement presented does not specify a length of time for the monitoring to take place.

To merely reprimand Respondent for his misconduct (as suggested by counsel) is an inadequate sanction. The Committee strongly believes that a one year stayed suspension, with probation and monitoring of Respondent's infection control practices, will both provide an appropriate sanction, and verification of his continued compliance with standards of practice.

ORDER

Based upon the foregoing, IT IS HEREBY ORDERED THAT:

1. The First, Third through Eighth and Ninth through Fourteenth Specifications of professional misconduct, as set forth in the Statement of Charges, (Department's Exhibit #1) are SUSTAINED;

2. The Second Specification of professional misconduct is DISMISSED;

3. Respondent's license to practice medicine as a physician in New York State be and hereby is SUSPENDED for a period of one (1) year. The suspension shall be STAYED and Respondent placed on PROBATION for a term of one (1) year from the effective date of this Determination and Order. The complete terms of probation are set forth in Appendix II which is attached to this Determination and Order and incorporated herein;

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

DATED: Troy, New York
8-8, 2008

Redacted Signature

LINDA D. LEWIS, M.D. (CHAIR)

STEVEN SHERMAN, D.O.

IRVING S. CAPLAN

TO: Paul Stein, Esq.
Associate Counsel
New York State Department of Health
90 Church Street - 4th Floor
New York, New York 10007-2919

Eskandar J. Simhaee, M.D.
1201 Northern Boulevard, Suite 300
Manhasset, New York 11030

Martin Schaum, Esq.
Schaum Law Offices
600 Old Country Road, Suite 320
Garden City, New York 11530

APPENDIX I

IN THE MATTER
OF
ESKANDAR J. SIMHAEE, M.D.

STATEMENT
OF
CHARGES

ESKANDAR J. SIMHAEE, M.D., the Respondent, was authorized to practice medicine in New York State on or about August 6, 1984, by the issuance of license number 159574 by the New York State Education Department.

ALLEGATIONS

- A. From on or about February 10, 2005 through on or about January 22, 2008, Respondent treated Patient A in his office at 1201 Northern Boulevard, Suite 300, Manhasset, New York 11030. On or about October 9, 2007, Patient A was administered a flu shot in Respondent's office.
1. Respondent directed, caused, or permitted an unqualified employee, who Respondent knew or had reason to know was unqualified, to administer the flu shot to Patient A.
 2. Respondent failed to keep an adequate record for Patient A.
- B. From on or about June 29, 2000 through on or about October 31, 2007, Respondent treated Patient B in his office at 1201 Northern Boulevard, Suite 300, Manhasset, New York 11030. On or about October 16, 2007, Patient B was administered a flu shot in Respondent's office.
1. Respondent directed, caused, or permitted an unqualified employee, who Respondent knew or had reason to know was unqualified, to administer the flu shot to Patient B.
 2. Respondent failed to keep an adequate record for Patient B.

- C. From on or about December 31, 1999 through on or about December 20, 2007, Respondent treated Patient C in his office at 1201 Northern Boulevard, Suite 300, Manhasset, New York 11030. On or about September 25, 2007, Patient C was administered a flu shot in Respondent's office.
1. Respondent directed, caused, or permitted an unqualified employee, who Respondent knew or had reason to know was unqualified, to administer the flu shot to Patient C.
 2. Respondent failed to keep an adequate record for Patient C.
- D. From on or about December 13, 2004 through on or about January 17, 2008, Respondent treated Patient D in his office at 1201 Northern Boulevard, Suite 300, Manhasset, New York 11030. On or about October 30, 2007, Patient D was administered a flu shot in Respondent's office.
1. Respondent directed, caused, or permitted an unqualified employee of Respondent, who Respondent knew or had reason to know was unqualified, to administer the flu shot to Patient D.
 2. Respondent failed to keep an adequate record for Patient D.
- E. From on or about March 1, 2005 through on or about January 17, 2008 Respondent treated Patient E, in his office at 1201 Northern Boulevard, Suite 300, Manhasset, New York 11030. On or about October 18, 2007, Patient E was administered a flu shot in Respondent's office.
1. Respondent directed, caused, or permitted an unqualified employee, who Respondent knew or had reason to know was unqualified, to administer the flu shot to Patient E.
 2. Respondent failed to keep an adequate record for Patient E.

F In or about September, 2007 through in or about December, 2007, flu shots were administered to various patients of Respondent in Respondent's office at 1201 Northern Boulevard, Suite 300, Manhasset, New York 11030.

1. Respondent and his employees failed to follow proper infection control practices regarding the administration of the flu shots to Respondent's patients.
2. Respondent directed, caused, or permitted unqualified employees, who Respondent knew or had reason to know were unqualified, to administer the flu shots to Respondent's patients, including, but not limited to, Patients A through E.
3. Respondent failed to keep adequate records for Respondent's patients, including, but not limited to, Patients A through E.

SPECIFICATIONS

FIRST 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 the facts of two or more of the following:

1. Paragraphs A and A2; B and B2; C and C2; D and D2; E and E2; and/or F and F1 and 3.

SECOND 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 the facts of two or more of the following:

2. Paragraphs A and A2; B and B2; C and C2; D and D2; E and E2; and/or F and F1 and 3.

THIRD THROUGH EIGHTH SPECIFICATIONS

DELEGATING PROFESSIONAL RESPONSIBILITIES

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530 (25) by delegating professional responsibilities to a person when the licensee delegating such responsibilities knows or has reason to

know that such person is not qualified, by training, by experience, or by licensure, to perform them as alleged in the facts of:

3. Paragraphs A and A1;
4. Paragraphs B and B1;
5. Paragraphs C and C1;
6. Paragraphs D and D1;
7. Paragraphs E and E1;
8. Paragraphs F and F2.

NINTH THROUGH FOURTEENTH SPECIFICATIONS

FAILURE TO MAINTAIN RECORDS

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

9. Paragraphs A and A2;
10. Paragraphs B and B2;
11. Paragraphs C and C2;
12. Paragraphs D and D2;
13. Paragraphs E and E2;
14. Paragraphs F and F3.

DATE: New York, New York
June 20, 2008

Redacted Signature

ROY NEMERSON
Deputy Counsel
Bureau of Professional Medical Conduct

APPENDIX II

Terms of Probation

- 1) Respondent shall conduct himself in all ways in a manner befitting his professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his profession.
- 2) Respondent shall submit written notification to the New York State Department of Health addressed to the Director, Office of Professional Medical Conduct (OPMC), Hedley Park Place, 433 River Street Suite 303, Troy, New York 12180-2299; said notice is to include a full description of any employment and practice, professional and residential addresses and telephone numbers within or without New York State, and any and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty days of each action.
- 3) Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of Respondent's compliance with the terms of this Order. Respondent shall personally meet with a person designated by the Director of OPMC as requested by the Director.
- 4) Any civil penalty not paid by the date prescribed herein shall be subject to all provisions of law relating to debt collection by New York State. This includes but is not limited to the imposition of interest, late payment charges and collection fees; referral to the New York State Department of Taxation and Finance for collection; and non-renewal of permits or licenses [Tax Law section 171(27)]; State Finance Law section 18; CPLR section 5001; Executive Law section 32].
- 5) The period of probation shall be tolled during periods in which Respondent is not engaged in the active practice of medicine in New York State. Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in or intends to leave the active practice of medicine in New York State for a period of thirty (30) consecutive days or more. Respondent shall then notify the Director again prior to any change in that status. The period of probation shall resume and any terms of probation which were not fulfilled shall be fulfilled upon Respondent's return to practice in New York State.
- 6) 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.
- 7) 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.
- 8) Within thirty (30) days of the effective date of the Order, Respondent shall practice medicine only when his infection control practices are monitored by Webeh Webeh, M.D., or another licensed physician certified in infectious disease, proposed by Respondent and subject to the written approval of the Director of OPMC.

- a) Respondent shall make available to the monitor any and all records or access to the practice requested by the monitor, including on-site observation. The practice monitor shall visit Respondent's medical practice at each and every location, on a random unannounced basis at least monthly and shall examine a selection of records maintained by Respondent, including patient records, prescribing information and office records. The review will determine whether Respondent's medical practice is conducted in accordance with the generally accepted infection control standards. Any perceived deviation from accepted standards or refusal to cooperate with the monitor shall be reported within 24 hours to OPMC.
 - b) Respondent shall be solely responsible for all expenses associated with monitoring, including fees, if any, to the monitoring physician.
 - c) Respondent shall cause the practice monitor to report quarterly, in writing, to the Director of OPMC.
 - d) Respondent shall maintain medical malpractice 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.
- 9) 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. Upon 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.