

December 27, 2013

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Anna R. Lewis, Esq.
NYS Department of Health
90 Church Street – 4th Floor
New York, New York 10007

Ifeoma Ezekwo, M.D.
REDACTED

Kevin D. Porter, Esq.
Bartlett, McDonough & Monaghan, LLP
81 Main Street – Suite 400
White Plains, New York 10601

RE: In the Matter of Ifeoma Ezekwo, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 13-429) 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. 2013) and §230-c subdivisions 1 through 5, (McKinney Supp. 2013), "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., Chief Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Riverview Center
150 Broadway – Suite 510
Albany, New York 12204

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

James F. Horan
Chief Administrative Law Judge
Bureau of Adjudication

JFH:cah

Enclosure

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

COPY

IN THE MATTER
OF
IFEOMA EZEKWO, M.D.

DETERMINATION
AND
ORDER

BPMC #13-429

This case was brought by the New York State Department of Health, Bureau of Professional Medical Conduct ("the Department"). A Notice of Hearing ("NOH") and Statement of Charges ("SOC") both dated March 13, 2013 were served on Ifeoma Ezekwo, M.D. ("Respondent"), and hearings were held pursuant to N.Y. Public Health Law ("PHL") §230 and New York State Admin. Proc. Act §§ 301-307 and 401 on June 13, 2013 at the Department's offices at 90 Church Street, New York, New York. A copy of the NOH and SOC is attached to this Determination and Order as Appendix 1. Michael R. Golding, M.D., Ralph W. Liebling, M.D., and Deborah Whitfield, MA, Ph.D., duly designated members of the State Board for Professional Medical Conduct ("Board"), served as the Hearing Committee ("Hearing Committee" "Committee" or "Panel") in this matter. Ann H. Gayle, Administrative Law Judge ("ALJ"), served as the Administrative Officer. The Department appeared by James E. Dering, Esq., General Counsel, by Anna Lewis, Associate Counsel. The Respondent did not appear but was represented by counsel, Kevin D. Porter, Esq. of Bartlett, McDonough & Monaghan, LLP. Evidence was received, including witnesses who were sworn or affirmed, and a transcript of this proceeding was made.

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

PROCEDURAL HISTORY

Date of Service of Notice of Hearing and Statement of Charges:	March 27, 2013
Answer Filed:	May 30, 2013
Pre-Hearing Conference:	May 30, 2013
Hearing Date:	June 13, 2013
Witnesses for Petitioner:	Keith Wolf, Esq. David Cohen
Witness(es) for Respondent:	none
Deliberations Dates:	August 12, 2013 September 16, 2013 October 28, 2013

STATEMENT OF THE CASE

The Department charged Respondent with three specifications of professional misconduct under N.Y. Educ. Law §6530 by: violating section twenty-eight hundred five-k of the PHL in violation of Educ. Law § 6530(14) (First Specification), willfully making or filing a false report, or failing to file a report required by law or by the department of health or the education department in violation of Educ. Law § 6530(21) (Second Specification), and practicing medicine fraudulently in violation of Educ. Law §6530(2) (Third Specification).

Respondent filed an answer to the SOC denying each of the allegations and specifications¹.

¹ In addition, Respondent asserted one affirmative defense but she did not appear at the hearing to pursue this.

FINDINGS OF FACT

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

1. Respondent was authorized to practice medicine in New York State on or about November 7, 1983, by the issuance of license number 156622 by the New York State Education Department; Respondent is not currently registered. In her signed and dated 2/16/2013 Registration Renewal Document for the period 11/01/12 – 12/31/14 [Ex 2 p 29-30] Respondent answered "no" to the question "Do you wish to register for the period indicated?" [Ex 1 and 2]
2. Respondent did not personally appear or testify at the hearing held before the Hearing Committee on June 13, 2013 and did not supply a sufficient explanation for her non-appearance.
3. Prior to September 24, 1993, Respondent applied for privileges at Montefiore Medical Center ("Montefiore"). [Ex 3; T 78]
4. By letter dated September 24, 1993, Montefiore informed Respondent that the Medical Staff Executive Committee unanimously voted to recommend to the Board of Trustees that her applications for privileges in internal medicine and ophthalmology be denied. [Ex 3 p 9-11]

5. By letter dated June 19, 1995, Montefiore Informed Respondent that the Medical Staff Executive Committee considered the Report and Recommendations of the Ad Hoc Medical Staff Hearing Committee and voted unanimously to confirm its original recommendation that her application for membership on the medical staff with privileges in Internal Medicine and Ophthalmology be denied. [Ex 3 p 2-3; T 79]
6. By letter dated October 12, 1995, Montefiore informed Respondent that the Board of Trustees made its final decision on Respondent's appeal regarding her applications for membership on the medical staff with clinical privileges in Internal medicine and ophthalmology. That final decision of the Board of Trustees was to accept the recommendations of the Medical Staff Executive Committee and the Medical Committee of the Board to deny her applications, and in so doing, the Board of Trustees denied her applications. [Ex 3 p 4; T 79]
7. From on or about October 12, 1995, Respondent was aware of Montefiore's final decision which denied her applications for privileges in internal medicine and ophthalmology. [FOF # 6]
8. On or about August 20, 2010, Respondent submitted an Application for Staff Privileges ("application" or "St. Barnabas application") to Saint Barnabas Hospital ("St. Barnabas"), Bronx, New York. [Ex 4 p 41-62; Ex 5 p 64-77]
9. In a letter dated September 29, 2010, St. Barnabas afforded Respondent the opportunity to submit a written explanation for "inconsistencies and omissions" that were discovered in the course of processing her application, and Respondent subsequently provided St. Barnabas with additional documentation and explanations ("subsequent submission"). [Ex 4 p 25, 26-28, 38; Ex 5 p 2, 3, 4-5, 10]

10. On or about August 20, 2010, in her St. Barnabas application, Respondent answered "no" to the question which read in part "Has your medical staff membership or employment status at any other hospital ever been ... denied...?" [Ex 4 p 51; Ex 5 p 71]
11. On or about August 20, 2010, in her St. Barnabas application, Respondent answered "no" to the question which read in part "Has your ... appointment status at any health care institution ... ever been ... denied...?" [Ex 4 p 51; Ex 5 p 71]
12. On or about August 20, 2010, in her St. Barnabas application, Respondent omitted a prior denial of privileges at Montefiore. [FOF # 4-11]
13. On the first page of the application, in the section marked "Field of Specialization: ___ Board Certification: Yes [] No [] Date ___" Respondent answered as follows: "Field of Specialization: OPHTHALMOLOGY Board Certification: Yes [x] No [] Date 1994". [Ex 4 p 41; Ex 5 p 64]
14. On the first page of the two-page Clinical Privilege Delineation Form for the Department of Surgery – Division of Ophthalmological Surgery, signed and dated 8/20/2010 by Respondent on page 2, in the section marked "Specialty Board ___ Certified ___ Date ___" Respondent answered as follows: "Specialty Board OPHTHALMOLOGY Certified YES Date 1994
x 2004" i.e., Respondent wrote "1994" on the line near the word "Date" and she wrote "x 2004" below the line near the word "Date." [Ex 4 p 88-89; Ex 5 p 20-21]

15. With her application or subsequent submission, Respondent provided a copy of her ~~board certification in the American Board of Ophthalmology~~ which reads in part "Issued May 15, 1994 This time-limited certificate is valid for ten years from the date of issue and subject to renewal thereafter." [Ex 4 p 99; Ex 5 p 12; T 27]
16. On the first page of the application, in the section marked "Field of Specialization: _____ Board Certification: Yes No Date _____" Respondent answered as follows: "Field of Specialization: INTERNAL MEDICINE Board Certification: Yes No Date 1997". [Ex 4 p 41; Ex 5 p 64]
17. With her application or subsequent submission, Respondent provided a copy of her board certification in the American Board of Internal Medicine which reads in part "[Respondent] has met the requirements of this Board and is hereby certified for the period 1997 through 2007." [Ex 4 p 99; Ex 5 p 11; T 27]
18. At the time of her application on or about August 20, 2010 and her subsequent submission, Respondent was not then currently board certified in Internal Medicine or Ophthalmology. [Ex 4 p 105-106; Ex 5 p 62-63]
19. In the totality of the answers given to the questions asked on the first page of the application, the first page of the clinical privilege delineation form, and the copies of the actual certificates, Respondent supplied St. Barnabas with sufficient information regarding the actual current status of her board certification in Internal Medicine and Ophthalmology, i.e., that she was board certified in Internal Medicine for a ten-year period from 1997 to 2007 and board certified in Ophthalmology for a ten-year period from 1994 to 2004. [FOF # 13-17]

20. Respondent was affiliated with Harlem Hospital in various capacities from 1981 to 1988. [Ex 4 p 38, 44; Ex 5 p 10, 67]
21. On or about August 20, 2010, in her St. Barnabas application, Respondent reported her Residency in Internal Medicine at Harlem Hospital from 1981 to 1983 and her Residency in Ophthalmology at Harlem Hospital from 1985 to 1988, but she did not report any Fellowships on page 5 of the application. [Ex 4 p 44-45; Ex 5 p 67-68]
22. In her subsequent submission, Respondent provided an "Explanation of Gaps (Gapless)" in which she indicated that from November 1983 to June 1985 she worked as an attending in Internal Medicine for the Department of Psychiatry at Harlem Hospital and that she did a Research Fellowship in the Department of Ophthalmology at Harlem Hospital. [Ex 4 p 38; Ex 5 p 10]
23. In the totality of the information Respondent provided St. Barnabas of her Residencies at Harlem Hospital on the fourth page of the application and the "Explanation of Gaps (Gapless)" given in her subsequent submission, Respondent supplied St. Barnabas with the full details of her prior affiliation with Harlem Hospital. [FOF # 20-22]
24. In the early 1990s Respondent was denied participation in Bronx Health Plan, a managed care network. [Ex 4 p 26; Ex 5 p 4; Ex 6 p 2; Ex B p 6]
25. On or about August 20, 2010, in her St. Barnabas application, Respondent answered "no" to the question which read in part "Have you ever been denied participation in the network of a managed care organization ...?" [Ex 4 p 51; Ex 5 p 71]

26. On or about August 20, 2010, in her St. Barnabas application, Respondent failed to disclose that she had been denied participation in Bronx Health Plan, a managed care network. [FOF # 24-25]
27. In the early 1990s upon Respondent's action in response to a denial by Blue Cross/Blue Shield ("BCBS") of her application for admission as a medical provider in its network, BCBS allowed her on the ophthalmology panel. In the early 1990s Respondent had instructed her then attorneys to initiate a debt collection action against BCBS and she was still participating as a provider in BCBS, a managed care organization, at the time of her application to St. Barnabas on or about August 20, 2010 and subsequent submission. [Ex 4 p 26; Ex 5 p 4; Ex 6 p 2]
28. On or about August 20, 2010, in her St. Barnabas application, Respondent answered "no" to the question which read in part "Have you ever been denied participation in the network of a managed care organization ...?" [Ex 4, p 51; Ex 5, p 71]
29. Because BCBS allowed Respondent on its panel as a result of Respondent's challenge to BCBS' initial denial, she was not ultimately denied participation in the network of that managed care organization, therefore "no" was an honest answer. [FOF # 27-28]

CONCLUSIONS OF LAW

Respondent is charged with three Specifications of Charges of professional misconduct under Educ. Law §6530. The Committee unanimously concludes that the First and Third Specifications were not sustained, and concludes by a 2-to-1 vote that the Second Specification was sustained.

Violating PHL §2805-k

The first specification charged Respondent with committing professional misconduct as defined in N.Y. Educ. Law §6530(14) by violating section twenty-eight hundred five-k of the PHL with respect to answers she gave in her St. Barnabas application.

PHL § 2805-k reads in pertinent part,

Investigations prior to granting or renewing privileges

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

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

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

The only factual allegation to which this specification relates is the allegation that Respondent omitted a prior affiliation with Harlem Hospital. This specification cannot be applied to that allegation because the allegation regarding Harlem Hospital was not sustained. The sustained factual allegations that Respondent omitted a prior denial of privileges at Montefiore and that she failed to disclose that she was denied participation in Bronx Health Plan do not relate to this specification. Respondent's failure to disclose the denial of privileges at Montefiore is not covered by PHL §2805-k because Respondent did not have any association, employment, privileges or practice at Montefiore, therefore PHL §2805-k does not apply to this factual allegation.

Respondent's failure to disclose the denial of participation in Bronx Health Plan is not covered by PHL §2805-k because Bronx Health Plan is not a hospital or facility, therefore PHL §2805-k does not apply to this factual allegation either.

Accordingly, the first specification is unanimously not sustained.

Making False Reports

The second specification charged Respondent with committing professional misconduct as defined in N.Y. Educ. Law § 6530(21) by willfully making or filing a false report, or failing to file a report required by law or by the department of health or the education department with respect to answers she gave in her St. Bamabas application. The Committee concludes by a 2-1 vote that the second specification of willfully making or filing a false report is sustained.

To make a finding of a Respondent willfully making or filing a false report, a committee must establish that a licensee made or filed a false statement willfully, which requires a knowing, intentional or deliberate act, Matter of Brestin v. Commissioner of Education, 116 A.D.2d 357, 501 N.Y.S.2d 923 (Third Dept. 1986). Merely making or filing a false report, without intent or knowledge about the falsity fails to constitute professional misconduct, Brestin (supra). The law provides, however, that a committee may reject a licensee's explanation for erroneous reports (such as errors resulting from inadvertence or carelessness) and draw the inference that the licensee intended or was aware of the misrepresentation with other evidence as the basis. (See Brestin).

The Committee determined that the 6th, 8th, 9th, and 13th questions on page 8 of the application [Ex 4 p 51; Ex 5 p 71] relate to the Department's allegations that the

Committee sustained² and found that Respondent did not answer questions 6, 9, and 13³ honestly⁴. The Committee further finds that answers to questions 6, 9, and 13 were given knowingly and deliberately because those 3 questions asked if her membership, appointment, or participation was "ever" denied. Respondent who received letters at three separate stages of Montefiore's credentialing process, at least one of which was in response to her appeal of Montefiore's denial, absolutely knew she was denied privileges at Montefiore. The Committee finds that Respondent's own statements likewise show that she knew she was denied participation in Bronx Health Plan. Those statements are in her subsequent submission to St. Barnabas wherein she did not deny that Bronx Health Plan denied her participation [Ex 4 p 26; Ex 5 p 4] and in her statement to the Committee [Ex B p 6] wherein she stated that her application for participation in Bronx Health Plan was denied. Even if Respondent might have had an explanation for the denial by Bronx Health Plan (*i.e.*, that the Plan was closed and that it no longer exists) it does not exonerate her answering "no" to that question on the St. Barnabas application; she could and should have truthfully answered "yes" and then (after answering the next three questions on that form) given her explanation for Bronx Health Plan's denial as required by the instructions on page 8.

² not the question Mr. Wolf was asked (Transcript page 23, line 24 to page 25, line 3)

³ question 13 as it relates to Bronx Health Plan

⁴ Because page 6 of the St. Barnabas application asked for information for the past ten years, and because some questions on page 8 asked "have you ever" "has your ... ever" and other questions did not use the word "ever" the Panel believed that Respondent could have answered questions without the word "ever" for the past ten years, and as such believed that Respondent answered the 8th question honestly.

The Committee finds that Respondent's answers were a knowing, deliberate, intentional act because she intended to answer "no" to the questions. She did not merely make or file a false report without knowledge about the falsity, and her answers were not errors of inadvertence or carelessness. With the word "ever" in those 3 questions Respondent knew what she was being asked and she intended to answer questions 6, 9 and 13 as she did.

Accordingly, the second specification was sustained by a 2-to-1 vote.

Fraudulent Practice

The third specification charged Respondent with committing professional misconduct as defined in N.Y. Educ. Law § 6530(2) by practicing the profession of medicine fraudulently with respect to answers she gave in her St. Barnabas application.

The intentional misrepresentation or concealment of a known fact, made in some connection with the practice of medicine, constitutes the fraudulent practice of medicine. Matter of Choudhry v. Sobol, 170 A.D.2d 893, 894, 566 N.Y.S.2d 723, 725 (3d Dept. 1991), citing Matter of Brestin v. Commissioner of Education, 116 A.D.2d 357, 359, 501 N.Y.S.2d 923, 925 (3d Dept. 1986). In order to sustain a charge that a licensee was engaged in the fraudulent practice of medicine, the hearing committee must find that (1) a false representation was made by the licensee, whether by words, conduct or concealment of that which should have been disclosed, (2) the licensee knew the representation was false, and (3) the licensee intended to mislead through the false representation. Sherman v. Board of Regents, 24 A.D.2d 315, 266 N.Y.S.2d 39 (3d Dept. 1966), aff'd 19 N.Y.2d 679, 278 N.Y.S.2d 870 (1967). The licensee's knowledge and intent may properly be inferred from facts found by the hearing committee, but the

committee must specifically state the inferences it is drawing regarding knowledge and intent. Choudhry, at 894, citing Brestin. See also, Adler v. Bureau of Professional Medical Conduct, 211 A.D.2d 990, 622 N.Y.S.2d 609 (3d Dept. 1995); Berger v. Board of Regents, 178 A.D.2d 748; 577 N.Y.S.2d 500 (3d Dept. 1991).

The Committee found that in Respondent's answers to questions 6, 9, and 13 on page 8 of the St. Barnabas application (1) a false representation was made and (2) Respondent knew the representation was false when answering "ever" (as the questions asked) and not just for the past 10 years, but the Committee was not convinced that (3) the licensee *intended to mislead* through the false representation had been established. With 1) at least another section on page 6 of the application that sought information for the past ten years, 2) the notation "PAST 10 years" on pages 4 and 5 of the application, and 3) uncertainty about whether there was an instruction sheet that addressed if information should be given for the past 10 years⁵, the Committee unanimously did not believe there was sufficient evidence from which it could infer that Respondent *intended to mislead* St. Barnabas when she answered those three questions as she did.

Accordingly, the third specification, unanimously, was not sustained.

DISCUSSION

Credibility and Weight

The Department presented two witnesses, Keith Wolf, Senior Vice President and General Counsel at St. Barnabas, and David Cohen, Senior Investigator with the Department's Office of Professional Medical Conduct. Respondent did not appear at

⁵ Mr. Wolf did not know who wrote "PAST 10 years" and he was unsure if an instruction sheet was included with the application [T51-52, 54]

the hearing and did not call any witnesses but her attorney appeared at the hearing and upon Respondent's authorization presented Respondent's case on Respondent's behalf by offering Respondent's self-serving, uncorroborated written statement into evidence, cross examining the Department's witnesses, and addressing the Department's exhibits. The Committee evaluated the testimony presented, the written statement provided by Respondent in her absence, and the other documents in evidence to determine credibility and the weight to be accorded the testimony and exhibits.

The Committee found David Cohen to be credible.

The Committee gave Mr. Wolf's explanations and analysis of the content of the documents very little weight because they found his answers to be evasive and they believed that he came to the hearing with an agenda to present the case he wanted to present and answer the questions how he wanted to answer them.

Respondent submitted to the Hearing Committee of the Board a written statement [Ex B] in lieu of appearing before the Board. The statement was not notarized and there was no confirmation from Respondent's treating physician of Respondent's representation that she is medically disabled.⁶ The Committee believed that a treating physician could have confirmed Respondent's representations about her illness without identifying the nature of her illness thereby respecting Respondent's privacy and confidentiality while simultaneously assisting this Board in the discharge of its duties in the Professional Medical Conduct role. The Committee deemed the admissions or

⁶ Respondent chose not to reveal the nature of her disability for reasons of confidentiality and privacy.

statements in Respondent's written statement that confirmed the Department's charges to be statements against her interest, and gave those statements full weight. However, the Committee gave the defenses in Respondent's written statement no weight.

For the above reasons, the Committee relied not on the testimony of Mr. Wolf or on Respondent's submission in Exhibit B⁷, but instead based its FOF and Conclusions of Law on the Department's documents in evidence. While there is no question that Respondent did not fully fill out the St. Barnabas application on August 20, 2010, the panel determined that the application process did not end there. The panel, looking at the August 20 application and subsequent submission as the application as a whole, gave the document full weight and determined that Respondent

1. provided St. Barnabas with all the dates of her affiliation with Harlem Hospital [Ex 4 p 38, 44; Ex 5 p 10, 67],
2. gave St. Barnabas the true status of her board certification in ophthalmology and internal medicine by providing exactly the information page 1 of the application and the first page of the two-page Clinical Privilege Delineation Form required, and providing copies of the internal medicine and ophthalmology certificates [Ex 4, p 41, 88-89, 98-99; Ex 5, p 10-12, 20-21, 67], and
3. did not misrepresent her participation in BCBS; the initial denial was preliminary because BCBS allowed her on its panel [Ex. 4 p 26; Ex 5 p 4; Ex 6 p 2] therefore Respondent was not denied participation in that managed care plan.

⁷ *except for Respondent's admissions as previously explained*

The panel found and inferred from the facts and testimony in this case that Respondent's untruthful answers regarding Montefiore's and Bronx Health Plan's denials were not given with an intent to mislead.

Negative Inference

While it is well-settled law that it is appropriate for the fact-finder in civil matters including those conducted by the State Board for Professional Medical Conduct to draw a negative inference if the Respondent fails to take the stand and testify in her/his own behalf, the Committee chose not to draw a negative inference in this case. The Committee determined that it had sufficient evidence in the documents the Department offered into evidence to reach the conclusions it did.

First, for the FOF and Specifications of Charges it sustained, the Committee did not need to draw a negative inference to arrive at its conclusion that the Department proved those charges by a preponderance of the evidence.

Second, the Committee believed there was insufficient evidence in the Department's documents and the testimony they credited to infer that Respondent intended to mislead St. Barnabas. The Committee believed the Department's evidence itself showed no intent to mislead. Accordingly, the Committee unanimously dismissed the fraud specification and unanimously concluded that taking a negative inference would not have changed their firm conclusion that there was no intent to mislead St. Barnabas.

Third, the Committee found sufficient proof in the application and subsequent submission to conclude that Respondent provided St. Barnabas with sufficient, accurate, truthful information about the status of her Board Certification in Ophthalmology and Internal Medicine as the application sought, her prior affiliation with Harlem Hospital, and her participation in BCBS. Because the Committee found that the Department's documents alone sufficiently established that the Department did not meet its burden of proving those charges, the Committee dismissed those charges. Once dismissed, no defense to those charges was needed therefore invoking a negative inference for those charges would have been improper.

HEARING COMMITTEE DETERMINATION AS TO PENALTY

Respondent's attorney argued that the factual allegations and specifications in the SOC should all be dismissed. The Department argued that all the factual allegations and specifications of charges should be sustained and Respondent's license to practice medicine in New York State should be revoked. After reviewing the entire record, it was abundantly clear to the Committee that neither of the extremes proffered by the parties should be adopted. Some charges and specifications have been dismissed and the allegations and specification that were sustained do not warrant a revocation of Respondent's license.

The Hearing Committee has considered the full range of sanctions available pursuant to PHL § 230-a, including: (1) censure and reprimand; (2) suspension of the license, wholly or partially; (3) limitation on practice; (4) revocation of the license; (5) annulment of the license or registration; (6) limitation on registration or further licensure; (7) monetary penalties; (8) a course of education or training; (9) performance of public

service; and, (10) probation. Pursuant to the Findings of Fact and Conclusions of Law set forth above, and after due deliberation, the Committee unanimously determined that a Suspension of the License for two years fully stayed, and Probation for two years⁸ is the appropriate penalty.

The Committee in its responsibility to protect the patients of this State must choose a penalty that offers the best protection to the public while affording licensees their due process rights. The Committee carefully scrutinized the St. Barnabas application for any and all of Respondent's input to afford Respondent her due process rights and to attempt to understand her intent and her side of the story. The Committee, in weighing the seriousness of a physician's misrepresentations and falsities on credentialing applications, determined that although revocation would be too extreme in these circumstances wherein they did not believe Respondent intended to deceive St. Barnabas, a censure and reprimand would be too lenient. The Committee ascertained that a fully stayed two-year suspension and probation for two years addresses the seriousness of willfully making or filing a false report in a credentialing application by admonishing this behavior which will not be tolerated by this Board.

The Committee concluded that this penalty ensures the safety of the public and admonishes this licensee.

⁸ tolled while Respondent is not registered and not practicing medicine in NYS

To: Anna R. Lewis
~~Associate Counsel~~
New York State Department of Health
Bureau of Professional Medical Conduct
90 Church Street, 4th Floor
New York, New York 10007

Kevin D. Porter, Esq.
Bartlett, McDonough & Monaghan, LLP
81 Main Street, Suite 400
White Plains, New York 10601

Ifeoma Ezekwo, M.D.
REDACTED

APPENDIX 1

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

IN THE MATTER
OF
IFEOMA EZEKWO, M.D.

NOTICE
OF
HEARING

TO: Ifeoma Ezekwo, M.D.
3013 Grand Concourse
Bronx, NY 10458



PLEASE TAKE NOTICE:

A hearing will be held pursuant to the provisions of N.Y. Pub. Health Law §230 and N.Y. State Admn. Proc. Act §§301-307 and 401. The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on April 11, 2013, at 10:00 a.m., at the Offices of the New York State Department of Health, 90 Church Street, 4th Floor, New York, NY 10007, and at such other adjourned dates, times and places as the committee may direct.

At the hearing, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the hearing will be made and the witnesses at the hearing will be sworn and examined. You shall appear in person at the hearing and may be represented by counsel who shall be an attorney admitted to practice in New York state. You have the right to produce witnesses and evidence on your behalf, to issue or have subpoenas issued on your behalf in order to require the production of witnesses and documents, and you may cross-examine witnesses

~~and examine evidence produced against you.~~ A summary of the Department of Health Hearing Rules is enclosed.

YOU ARE HEREBY ADVISED THAT THE ATTACHED CHARGES WILL BE MADE PUBLIC FIVE BUSINESS DAYS AFTER THEY ARE SERVED.

Department attorney: initial here ARL

The hearing will proceed whether or not you appear at the hearing. Please note that requests for adjournments must be made in writing and by telephone to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Riverview Center, 150 Broadway - Suite 510, Albany, NY 12204-2719, ATTENTION: HON. JAMES HORAN, ACTING DIRECTOR, BUREAU OF ADJUDICATION, (henceforth "Bureau of Adjudication"), (Telephone: (518-402-0748), upon notice to the attorney for the Department of Health whose name appears below, and at least five days prior to the scheduled hearing date. Adjournment requests are not routinely granted as scheduled dates are considered dates certain. Claims of court engagement will require detailed Affidavits of Actual Engagement. Claims of illness will require medical documentation.

Pursuant to the provisions of N.Y. Pub. Health Law §230(10)(c), you shall file a written answer to each of the charges and allegations in the Statement of Charges not less than ten days prior to the date of the hearing. Any charge or allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such answer. The answer shall be filed with the Bureau of Adjudication, at the address indicated above, and a copy shall be forwarded to the attorney for the Department of Health whose name appears below. Pursuant to §301(5) of the State Administrative Procedure Act, the Department, upon reasonable notice, will provide at no charge a qualified interpreter of the

~~deaf to interpret the proceedings to, and the testimony of, any deaf person.~~ Pursuant to the terms of N.Y. State Admin. Proc. Act §401 and 10 N.Y.C.R.R. §51.8(b), the Petitioner hereby demands disclosure of the evidence that the Respondent intends to introduce at the hearing, including the names of witnesses, a list of and copies of documentary evidence and a description of physical or other evidence which cannot be photocopied.

At the conclusion of the hearing, the committee shall make findings of fact, conclusions concerning the charges sustained or dismissed, and in the event any of the charges are sustained, a determination of the penalty to be imposed or appropriate action to be taken. Such determination may be reviewed by the Administrative Review Board for Professional Medical Conduct.

THESE PROCEEDINGS MAY RESULT IN A DETERMINATION THAT YOUR LICENSE TO PRACTICE MEDICINE IN NEW YORK STATE BE REVOKED OR SUSPENDED, AND/OR THAT YOU BE FINED OR SUBJECT TO OTHER SANCTIONS SET OUT IN NEW YORK PUBLIC HEALTH LAW §§230-a. YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATE: March 13, 2013
New York, NY

REDACTED ✓

Roy Nemerson
Deputy Counsel
Bureau of Professional Medical Conduct

Inquiries should be directed to:
Anna R. Lewis
Associate Counsel
Bureau of Professional Medical Conduct
(212) 417-4450

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

IN THE MATTER

OF

IFEOMA EZEKWO, M. D.

STATEMENT

OF

CHARGES

IFEOMA EZEKWO, M.D., the Respondent, was authorized to practice medicine in New York State on or about November 7, 1983, by the issuance of license number 158622 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about August 20, 2010, in her application to Saint Barnabas Hospital, Bronx, NY, for privileges as a staff physician, Respondent stated that she was Board Certified in Internal Medicine and Ophthalmology when in fact she was not certified, omitted a prior denial of privileges at Montefiore Medical Center, omitted a prior affiliation with Harlem Hospital, and failed to disclose that she was denied participation in two managed care networks which included Bronx Health Plan and Blue Cross/ Blue Shield.

1. Respondent did so knowingly.
2. Respondent did so with intent to deceive.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

VIOLATION OF TWENTY-EIGHT HUNDRED FIVE-K

OF THE PUBLIC HEALTH LAW

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

1. Paragraph A.

SECOND SPECIFICATION

FALSE REPORT

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

2. Paragraph A. and A.1.

THIRD SPECIFICATION

FRAUDULENT PRACTICE

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

3. Paragraph A. and A.1. and A.2.

DATE: March 13, 2013
New York, New York

REDACTED

ROY NEMERSON
Deputy Counsel
Bureau of Professional Medical Conduct

APPENDIX 2

Terms of Probation

1. Respondent shall conduct herself in all ways in a manner befitting her professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by her 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), 150 Broadway, Suite 355, Menands, New York 12204-2719. 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. 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.
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 her staff at practice locations or OPMC offices.
6. Respondent shall provide the Director of OPMC with 90 day's notice prior to her return to practice medicine in New York State.
7. Respondent shall comply with all terms, conditions, restrictions, limitations and penalties to which she 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 law.