

FORTY-THIRD SPECIFICATIONS relating to Patient J should not be sustained because the underlying factual allegations were not sustained.

REGARDING PATIENT K - TWENTY-THIRD, FORTIETH AND FORTY-THIRD SPECIFICATIONS

Findings of Fact 60 through 65 herein relate to Patient K. The hearing committee reached the following conclusions regarding the factual allegations in the Statement of Charges:

Factual Allegations

Conclusions as to Factual Allegations

paragraphs M, M(1) and M(2)

sustained in part (Findings of Fact 60-64)

paragraph M(3)

sustained in part (Finding of Fact 65)

Conclusions Regarding the Commission of Professional Misconduct

The change of practicing the profession fraudulently in the TWENTY-THIRD SPECIFICATION should be sustained because Respondent's actions (Findings of Fact 60-65) constituted an intent to deceive related to his practice of medicine. The charges of unprofessional conduct in the FORTIETH and FORTY-THIRD SPECIFICATIONS should be sustained because Respondent's actions (Findings of Fact 60-65) constituted willfully making or filing false reports and conduct in the practice of medicine which evidences moral unfitness to practice medicine, respectively.

REGARDING PATIENT L - TWENTY-FOURTH, FORTY-FIRST AND FORTY-THIRD SPECIFICATIONS

Findings of Fact 66 and 67 herein relate to Patient L.

The hearing committee reached the following conclusions regarding the factual allegations in the Statement of Charges:

Factual Allegations

Conclusions as to Factual Allegations

paragraph N

sustained (Finding of Fact 66)

paragraph N(1)

sustained (Finding of Fact 67)

Conclusions Regarding the Commission of Professional Misconduct

The charge of practicing the profession fraudulently in the TWENTY-FOURTH SPECIFICATION should be sustained because Respondent's actions (Finding of Fact 67) constituted an intent to deceive related to his practice of medicine. The charges of unprofessional conduct in the FORTY-FIRST and FORTY-THIRD SPECIFICATIONS should be sustained because Respondent's actions (Findings of Fact 66 and 67) constituted willfully making or filing false reports and conduct in the practice of medicine which evidences moral unfitness to practice medicine, respectively.

TWENTY-FIFTH, FORTY-THIRD AND FORTY-NINTH SPECIFICATIONS - PARAGRAPH O OF THE STATEMENT OF CHARGES

Findings of Fact 68 through 71 herein relate to these charges. The hearing committee reached the following conclusions regarding the factual allegations in the Statement of Charges:

Factual Allegations

Conclusions as to Factual Allegations

paragraph O

not sustained (Findings of Fact 68-71)

Conclusions Regarding the Commission of Professional Misconduct

The charges of fraudulent practice in the TWENTY-FIFTH

SPECIFICATION and unprofessional conduct in the FORTY-THIRD AND FORTY-NINTH SPECIFICATIONS relating to paragraph O of the Statement of Charges should not be sustained because the underlying factual allegations were not sustained.

FORTY-THIRD SPECIFICATION - PARAGRAPH P OF THE STATEMENT OF CHARGES

Findings of Fact 72 through 74 herein relate to this charge. The hearing committee reached the following conclusions regarding the factual allegations in the Statement of Charges:

Factual Allegations

Conclusions as to Factual Allegations

paragraph P

not sustained (Finding of Fact 72)

paragraphs P(1) and P(3)

not sustained (Finding of Fact 73)

paragraphs P(2) and P(3)

not sustained (Finding of Fact 74)

Conclusions Regarding the Commission of Professional Misconduct

The charge of unprofessional conduct in the FORTY-THIRD SPECIFICATION relating to paragraph P of the Statement of Charges should not be sustained because the underlying factual allegations were not sustained.

TWENTY-SIXTH AND FORTY-THIRD SPECIFICATIONS-PARAGRAPH Q OF THE STATEMENT OF CHARGES

Findings of Fact 75 through 82 herein relate to this charge. The hearing committee reached the following conclusions regarding the factual allegations in the Statement of Charges:

Factual Allegations

Conclusions as to Factual Allegations

paragraph Q

not sustained (Findings of Fact 75-82)

Conclusions Regarding the Commission of Professional Misconduct

The charges of practicing the profession fraudulently in the TWENTY-SIXTH SPECIFICATION and unprofessional conduct in the FORTY-THIRD SPECIFICATION relating to paragraph Q of the Statement of Charges should not be sustained because the underlying factual allegations were not sustained.

FORTY-SECOND SPECIFICATION - PARAGRAPH R OF THE STATEMENT OF CHARGES

Findings of Fact 83 through 86 herein relate to this charge. The hearing committee reached the following conclusions regarding the factual allegations in the Statement of Charges:

Factual Allegations

Conclusions as to Factual Allegations

paragraphs R and R(1)

sustained (Finding of Fact 83)

paragraph R(2)

sustained in part (Finding of Fact 84)

paragraph R(3)

sustained in part (Finding of Fact 85)

paragraph R(4)

not sustained (Finding of Fact 86)

Conclusions Regarding the Commission of Professional Misconduct

The charge of unprofessional conduct in the FORTY-SECOND SPECIFICATION should be sustained because Respondent's conduct (Findings of Fact 83-85) constitute willfully making or filing

false reports.

RECOMMENDATIONS

Pursuant to its findings of fact and conclusions herein, the hearing committee unanimously recommends that the following charges of professional misconduct be sustained:

1. HAVING HAD DISCIPLINARY ACTION TAKEN IN ANOTHER STATE BASED ON CONDUCT WHICH, IF COMMITTED IN NEW YORK STATE, WOULD HAVE CONSTITUTED PROFESSIONAL MISCONDUCT IN NEW YORK:

**FIRST SPECIFICATION
SECOND SPECIFICATION**

2. PRACTICING WITH NEGLIGENCE ON MORE THAN ONE OCCASION REGARDING PATIENTS A, B, C AND D:

THIRTEENTH SPECIFICATION

3. PRACTICING THE PROFESSION FRAUDULENTLY:

**FIFTEENTH SPECIFICATION
SIXTEENTH SPECIFICATION
TWENTY-THIRD SPECIFICATION
TWENTY-FOURTH SPECIFICATION**

4. COMMITTING UNPROFESSIONAL CONDUCT FOR PERFORMING PROFESSIONAL SERVICES WHICH HAD NOT BEEN DULY AUTHORIZED:

**TWENTY-NINTH SPECIFICATION
THIRTIETH SPECIFICATION**

5. COMMITTING UNPROFESSIONAL CONDUCT FOR WILLFULLY MAKING OR FILING FALSE REPORTS:

**THIRTY-SECOND SPECIFICATION
THIRTY-THIRD SPECIFICATION
FORTIETH SPECIFICATION
FORTY-FIRST SPECIFICATION
FORTY-SECOND SPECIFICATION**

6. COMMITTING UNPROFESSIONAL CONDUCT BY ENGAGING IN CONDUCT IN THE PRACTICE OF MEDICINE WHICH EVIDENCES MORAL UNFITNESS TO PRACTICE MEDICINE REGARDING PATIENTS B, C, K AND L:

FORTY-THIRD SPECIFICATION

7. COMMITTING UNPROFESSIONAL CONDUCT FOR FAILING TO MAINTAIN A RECORD WHICH ACCURATELY REFLECTS THE EVALUATION AND TREATMENT OF THE PATIENT:

**FORTY-FOURTH SPECIFICATION
FORTY-FIFTH SPECIFICATION
FORTY-SIXTH SPECIFICATION
FORTY-SEVENTH SPECIFICATION**

Pursuant to its findings of fact and conclusions herein, the hearing committee unanimously recommends that the following charges of professional misconduct not be sustained:

1. PRACTICING WITH GROSS NEGLIGENCE:

**THIRD SPECIFICATION
FOURTH SPECIFICATION
FIFTH SPECIFICATION
SIXTH SPECIFICATION
SEVENTH SPECIFICATION**

2. PRACTICING WITH GROSS INCOMPETENCE:

**EIGHTH SPECIFICATION
NINTH SPECIFICATION
TENTH SPECIFICATION
ELEVENTH SPECIFICATION
TWELFTH SPECIFICATION**

3. PRACTICING WITH INCOMPETENCE ON MORE THAN ONE OCCASION:

FOURTEENTH SPECIFICATION

- 4. PRACTICING THE PROFESSION FRAUDULENTLY:
 - SEVENTEENTH SPECIFICATION
 - EIGHTEENTH SPECIFICATION
 - NINETEENTH SPECIFICATION
 - TWENTIETH SPECIFICATION
 - TWENTY-FIRST SPECIFICATION
 - TWENTY-SECOND SPECIFICATION
 - TWENTY-FIFTH SPECIFICATION
 - TWENTY-SIXTH SPECIFICATION

- 5. COMMITTING UNPROFESSIONAL CONDUCT FOR PERFORMING SERVICES WHICH HAD NOT BEEN DULY AUTHORIZED:
 - TWENTY-SEVENTH SPECIFICATION
 - TWENTY-EIGHTH SPECIFICATION
 - THIRTY-FIRST SPECIFICATION

- 6. COMMITTING UNPROFESSIONAL CONDUCT FOR WILLFULLY MAKING OR FILING FALSE REPORTS:
 - THIRTY-FOURTH SPECIFICATION
 - THIRTY-FIFTH SPECIFICATION
 - THIRTY-SIXTH SPECIFICATION
 - THIRTY-SEVENTH SPECIFICATION
 - THIRTY-EIGHTH SPECIFICATION
 - THIRTY-NINTH SPECIFICATION

- 7. COMMITTING UNPROFESSIONAL CONDUCT FOR FAILING TO MAINTAIN A RECORD WHICH ACCURATELY REFLECTS THE EVALUATION AND TREATMENT OF THE PATIENT:
 - FORTY-EIGHTH SPECIFICATION

- 8. COMMITTING UNPROFESSIONAL CONDUCT BY CREATING AND/OR APPROVING AND CAUSING TO BE DISSEMINATED ADVERTISING THAT IS FALSE, FRAUDULENT, DECEPTIVE OR MISLEADING:
 - FORTY-NINTH SPECIFICATION

The hearing committee unanimously recommends that Respondent be fined \$10,000 for each of the four sustained charges of practicing the profession fraudulently for a total fine of \$40,000. It is also unanimously recommended that Respondent's license to practice medicine in the State of New York be revoked as a result of his numerous and serious acts of professional misconduct.

DATED: MARCH 30, 1993
West Hempstead, New York

Respectfully submitted,



THEA GRAVES PELLMAN
Chairperson

PHILLIP I. LEVITAN, M.D.
JAMES W. PHILLIPS, M.D.

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

-----X
IN THE MATTER : STATEMENT
OF : OF
JEFFREY E. LAVIGNE, M.D. : CHARGES
-----X

JEFFREY E. LAVIGNE, M.D., the Respondent, was authorized to practice medicine in New York State on December 13, 1972 by the issuance of license number 114611 by the New York State Education Department. The Respondent is currently registered with the New York State Education Department to practice medicine for the period January 1, 1989 to December 31, 1991 from 7 East 68th Street, New York New York.

FACTUAL ALLEGATIONS

- A. On June 17, 1988, Respondent entered into a Stipulation and Agreed Order with the Washington State Medical Disciplinary Board in which the Washington Board found that Respondent had:
1. Performed surgery on a patient, on or about March 5, 1984, without obtaining the patient's informed consent.

2. Performed, on or about March 5, 1984, a left subclavian carotid transposition without first performing a complete evaluation of the patient's cerebral circulation to determine whether the procedure was indicated.

3. Treated, on or about February 24, 1984, a patient who had suffered traumatic amputations of the second, third and fourth fingers of the left hand and a fracture of the right thumb, as follows:
 - i. Respondent overrode this patient's request to be transferred to a medical center which offered specialized services in hand surgery and finger-reattachment.

 - ii. Respondent's initial reduction of the right thumb fracture was inadequate.

 - iii. Respondent did not attempt to repair or to perform a nerve graft of a severed digital nerve in the patient's thumb.

Based on these findings, the Washington Board revoked Respondent's medical license, stayed the revocation and prohibited Respondent from performing surgery other than

4

minor in-office procedures. Respondent was required to obtain the Board's approval of the particular minor procedures he desired to perform. In addition, the Board ordered Respondent to cooperate with a "practice review" to be conducted by the Board.

- B. On or about August 25, 1989, the New Jersey Board of Medical Examiners took disciplinary action against Respondent. This action was based on the Washington State disciplinary proceeding discussed in paragraph A. The New Jersey Board Order provides that Respondent may perform no surgery in New Jersey other than minor procedures which may be performed in an office setting. The Order also requires Respondent to obtain the New Jersey Board's approval of the particular minor procedures he desires to perform.

- C. Between on or about July 26, 1988 and on or about September 30, 1988, Respondent treated Patient A for hemorrhoids and other conditions at Respondent's office, 7 East 68th Street, New York, New York.

1. On July 26, 1988, Respondent performed a hemorrhoidectomy. During this procedure, Respondent employed an infra red coagulator which was not indicated.
2. On July 26, 1988, Respondent failed to diagnosis Patient A's rectal cancer or obtain a biopsy.
3. On August 4, 1988, Respondent examined Patient A but failed to diagnose Patient A's rectal cancer or obtain a biopsy.
4. On August 23, 1988, Respondent ordered ^{an} ~~a barium enema,~~ upper G.I. series and a gallbladder series for Patient A. These tests were not indicated.
5. On August 23, 1988, Respondent performed a sigmoidoscopy on Patient A. If properly performed, the sigmoidoscopy should have clearly revealed the cancerous mass in the patient's rectum. Yet Respondent failed to diagnose the cancer or obtain a biopsy on this visit.

Partial withdrawal
of charge by
Dept. of Health.
objection by Resp.
BHL
9-11-90

6. On September 17, 1988, Respondent examined Patient A but failed to diagnose Patient A's cancer or obtain a biopsy.
7. On September 17, 1988, Respondent incorrectly diagnosed Patient A's condition as cryphitis.
8. On September 17, 1988, Respondent prescribed Flagyl which was not indicated.
9. On September 27, 1988, Respondent performed an incision and drainage of the cancerous mass in Patient A's rectum. This procedure was not indicated and unnecessarily risked spreading the cancer. On this date, Respondent obtained a biopsy. The pathology report contained a diagnosis of anaplastic carcinoma.
10. Respondent performed the procedures discussed in paragraphs C(1), C(5) and C(9), without obtaining Patient A's informed consent.

11. On March 6, 1989, Patient A saw Bruce Gingold, M.D. At that time the cancerous mass was approximately seven centimeters in diameter. After a trial of chemotherapy and radiation and an unsuccessful operation by Dr. Gingold to remove the cancer, Patient A was diagnosed as having inoperable rectal cancer.

 12. Respondent failed to maintain a medical record for Patient A, which accurately reflects his examination, treatment, diagnoses, tests, consents for surgery and operative notes.
- D. Between on or about October 31, 1989 and on or about December 10, 1989, Respondent treated Patient B for hemorrhoids at Respondent's office.
1. Despite a complaint of bleeding and a past history of anemia, Respondent failed to order a blood count for Patient B prior to surgery.

 2. On or about November 9, 1989, Respondent performed an endoscopy, a hemorrhoidectomy and a sphincterotomy. These

procedures were performed without⁴ obtaining the Patient's informed consent.

3. The endoscopy performed by Respondent on November 9, 1989 was not indicated.
4. On or about November 10, 1989, Respondent billed Patient B's insurance carrier \$2,500 for performing a sphincteroplasty, which service Respondent did not provide.
5. On or about November 10, 1989, Respondent billed Patient B's insurance carrier \$1000 for 45 minutes of anesthesia provided to Patient B on November 8, 1989 and on November 9, 1989. In fact, no such service was provided.
6. Respondent knew when he billed Patient B's insurance carrier for the services listed in paragraphs (D)(4) and (D)(5), that he had not provided the stated service and was not entitled to any payment for such service.

7. After operating on Patient B on November 9, 1989, Respondent failed to provide adequate professional coverage for post-surgical complications. In fact, Patient B experienced significant bleeding in the days after her operation, and was unable to obtain effective medical assistance from Respondent's office. As a result, on November 12, 1989 Patient B had to be admitted to Elmhurst Hospital, Elmhurst, N.Y. for rectal bleeding.

8. Respondent failed to maintain a medical record for Patient B which accurately reflects his examination, treatment, diagnoses, tests, consents for surgery and operative notes.

- E. Between on or about April 29, 1989 and on or about May, 4, 1989, Respondent treated Patient C for hemorrhoids and other conditions at Respondent's office.
 1. Despite a complaint of bleeding, Respondent failed to order a complete blood count for Patient C.

2. A hemorrhoidectomy and a modified DeLorme anoplasty were performed on April 29, 1989, the date of Patient C's initial visit to Respondent. These procedures were performed without obtaining Patient C's informed consent.
3. Patient C received I.V. sedation during these procedures. By scheduling the procedures for the same day Patient C first visited Respondent, Respondent was unable to give the Patient pre-operative eating instructions. Respondent thereby unnecessarily subjected the patient to the risk of vomiting while under sedation.
4. Respondent advised Patient C to have a modified DeLorme anoplasty performed. During this procedure, Respondent acted as the surgeon and/or as the anesthesiologist. This procedure was not indicated.
5. Several days after the procedures Patient C experienced bleeding. On or about May 4, 1989, the Patient returned to Respondent. Respondent determined that the sutures had separated. Respondent restitched along the previous suture. This procedure was not indicated.

6. Respondent performed the procedure discussed in paragraph E(5), without obtaining Patient C informed consent.

7. On or about November 22, 1989, Patient C underwent surgery by Bruce Gingold, M.D., to correct the anal stenosis caused by the procedures performed by Respondent.

8. Respondent failed to maintain a medical record for Patient C which accurately reflects his examination, treatment, diagnoses, tests, consents for surgery and operative reports.

9. In or about Spring, 1990, Respondent sent a letter to Patient C in which Respondent knowingly made false statements or claims. These statements were designed to cause the Patient to obtain additional unwarranted medical services from Respondent and his employees. The false statements include the following:

. . .There are further reasons why we would like to see you. These fall under the broad category of cancer prevention. There is a statistical

association between hemorrhoids and polyps and tumors. . . .The general rule of thumb that those of us engaged in this sort of practice like to follow is this: once somebody has had anorectal disease or surgery, they should have colonoscopy and fiberoptic sigmoidoscopy (shorter scope) on an alternating annual basis. This is the best way to prevent colon cancer, since you are now in a somewhat higher risk group, having had anorectal disease. . . (emphasis in original)

F. Between on or about May 13, 1989, and or about September 9, 1989, Respondent treated Patient D for hemorrhoids and other conditions at Respondent's office.

1. On or about May 13, 1989, Respondent performed a hemorrhoidectomy. On or about September 9, 1989, Respondent performed a anoplasty, which was not indicated. As a result of this operation, Patient D became incontinent.

2. Respondent performed the procedures discussed in paragraph F(1), without obtaining Patient D's informed consent.

3. Respondent failed to maintain a medical record for Patient D which accurately reflects his examination, treatment, diagnoses, tests, consents for surgery and operative notes.
- G. On or about May 5, 1982, Respondent treated Patient E, an 80 year old man, for a blister on his right forefinger, at Vista Medical Center, 529 Beach 20th Street, Far Rockaway, New York.
1. During the course of a visit to his podiatrist, Dr. Martin Rudolph, Patient E complained of a blister on his right forefinger. Dr. Rudolph explained he could not treat a finger and referred Patient E to Respondent. Respondent agreed to accept an assignment of the patient's Medicare benefits. In a thirty-second procedure, Respondent lanced the blister on the patient's finger. Shortly thereafter, Respondent, instead of billing Medicare, directly billed Patient E for \$650. When the patient did not pay, Respondent filed suit against Patient E for \$815. Respondent obtained a default judgment against Patient E for \$1,154. Respondent's agents then attempted to satisfy the judgment by attaching the patient's

monthly social security retirement benefits,
the patient's only source of income.

2. Respondent knew, at the time he directly billed Patient E and at the time he filed suit against the Patient, that the patient had not agreed to pay Respondent for services provided by Respondent.

*withdrawing by
insurance by
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3-15-92
H.L.* → (H.) ~~Between on or about November 30, 1989 and on or about December 2, 1989, Respondent treated Patient F for hemorrhoids at Respondent's office.~~

- ~~1. On or about December 2, 1989, Respondent performed a hemorrhoidectomy. Despite a complaint of bleeding, Respondent failed to obtain a complete blood count for Patient F.~~

- ~~2. On or about December 12, 1989, Respondent billed Patient F's insurance carrier \$125 for an anoscopy, which service Respondent did not provide.~~

3. Respondent knew when he billed the Patient's insurance carrier for the service listed in paragraphs (2), that he had not provided the stated service and was not entitled to any payment for such service.

4. Respondent failed to maintain a medical record for Patient F which accurately reflects his examination, treatment, diagnoses, tests, consents for surgery and operative reports.

I. On or about June 14, 1988, Respondent treated Patient G for hemorrhoids at Respondent's office.

1. On or about June 14, 1988 Respondent performed a hemorrhoidectomy on Patient G. Respondent failed to obtain Patient G's informed consent prior to surgery.

2. Respondent knowingly falsely represented to Patient G that Respondent would use a laser to treat Patient G.

3. Respondent knowingly falsely represented to Patient G that Respondent would only bill the Patient's insurance carrier for services rendered to Patient G. In or about July, 1988, Respondent billed Patient G \$500.00 for anesthesia.
4. On or about June 14, 1988, Respondent billed G.H.I. \$500 for 45 minutes of anesthesia provided to Patient G. In fact, no such service was provided.
5. Respondent knew when he billed the patient and the patient's insurance carrier for the service listed in paragraphs I(3) and (4), that he had not provided the stated service and was not entitled to any payment for such service.

Handwritten notes:
 Haddock
 R. Haddock
 see Exhibit 38
 in EN 1040-1
 GH

J.) Between on or about April 18, 1987 and on or about December 1, 1987, Respondent treated Patient H for hemorrhoids and other conditions at Respondent's office.

1. Respondent billed Patient H's insurance carrier for the following services which Respondent, in fact, did not provide:

Date of Service	Service	Amount
6/26/87	Excision of condylomata	\$ 375
7/21/87	Hemorrhoidectomy	375
7/21/87	Excision of condylomata	375
8/18/87	Excision of condylomata	375
9/19/87	Extended office visit	225
10/09/87	Anoscopy	125
10/19/87	Office visit, EKG and anoscopy	285
10/20/87	Excision of condylomata	1590
12/01/87	Excision of warts	590

2. Respondent knew when he billed Patient H's insurance carrier for the services listed in paragraph J(1), that he had not provided these services and was not entitled to any payment for such services.

*Medicare 5/1-
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(K.) Between on or about May 19, 1987 and on or about August 26, 1987, Respondent treated Patient I for abscesses and other conditions at his office.

1. Respondent billed Patient I's insurance carrier for the following services which Respondent, in fact, did not provide:

Date of Service	Service	Amount
5/19/87	Stress test	\$ 50
5/19/87	Spirometry	40
5/26/87	Sigmoidoscopy	600
6/02/87	EKG	40
6/04/87	EKG	40
6/17/87	EKG	50
6/17/87	Spirometry	40
6/23/87	Gastric analysis	100
6/29/87	EKG	50

2. Respondent knew when he billed Patient I's insurance carrier for the services listed in paragraph K(1), that he had not provided these services and was not entitled to any payment for such services.

- L. On or about February 18, 1988 and March 1, 1988, Respondent treated Patient J for hemorrhoids at Respondent's office.

1. On or about March 1, 1988, Respondent performed a hemorrhoidectomy. Prior to the surgery, Patient J refused anesthesia. As a result, no anesthesia was administered. After the surgery, Respondent billed Patient D and his insurance carrier \$500.00 for anesthesia. Patient J refused to pay the bill, and Respondent turned the account over to a collection agency.
 2. Respondent knew when he billed Patient J and his insurance carrier for anesthesia and at the time he referred the matter to a collection agency, that he had not provided this service and was not entitled to any payment for such service.
- M. On or about April 20, 1988, Respondent claimed to have treated Patient K for warts at Respondent's office.
1. Respondent billed Patient K's insurance carrier for the following services which Respondent, in fact, did not provide:

Date of Service	Services	Amount
4/20/88	Excision of condylomata	\$ 1590
4/20/88	EKG	90
4/20/88	Anesthesia	500

2. On or about April 20, 1988, Respondent submitted to Patient K's insurance carrier two bills and one insurance form, each of which contained the forged signature of Patient K.

3. Respondent knew when he billed Patient K's insurance carrier for the services listed in paragraph M(1), and when Respondent submitted the bills referred to in paragraph M(2), that he had not provided these services and was not entitled to any payment for such services and that the documents bore forged signatures of Patient K.

N. Between on or about October 16, 1986 and on or about January 20, 1988, Respondent treated Patient L for weight control at Respondent's office.

1. During this period Respondent submitted approximately 32 bills to the patient's insurance carrier. Each of these bills contained false diagnoses of hiatal hernia, reflux esophagitis, chronic bronchitis, menorrhagia and/or PMS. Respondent knew these diagnoses to be false.
- O. Between in or about June, 1986 and in or about December 1988, Respondent advertised his use of laser technology in the treatment of various medical conditions. These advertisements were knowingly false. During this period, Respondent did not own or lease any such equipment, nor did he employ laser technology in the treatment of his patients.
- P. In or about the fall of 1987, Neil Sedick, M.D., was a subtenant at 7 East 68th Street, New York, New York. At that time, Respondent also leased space in the same suite of offices.
1. In or about the fall of 1987, Dr. Sedick had on his desk in his office, 12 biopsies ready to be forwarded to a laboratory for pathological examination. Dr. Sedick left his office for about 30 minutes. When he returned, the

specimens were gone. The Respondent had taken them. As a result, Dr. Sedick had to obtain additional biopsies from each of the patients involved.

2. In or about the summer and fall of 1987, Respondent placed nude and offensive pictures on the walls of the patient waiting room used by Dr. Sedick at 7 East 68th Street, New York, New York.
 3. Respondent's actions, as described in paragraphs P(1) and P(2), were intended to force Dr. Sedick to give up his subtenancy at 7 East 68th Street in order that Respondent could use the entire suite for his own practice. As a result of Respondent's actions, Dr. Sedick was forced to leave 7 East 68th Street and find other quarters in or about the winter of 1987.
- Q. On or about October 18, 1989, Respondent gave a sworn deposition as a plaintiff's expert witness in a malpractice case entitled Virgina Woods and John Woods v. Albert L. Rosenthal, M.D., Superior Court, State of New Jersey. During the course of his deposition, Respondent falsely swore that there "was not a sanction per se" imposed on his medical license by the State of Washington, and that it was "purely

administrative"; that, as of October 18, 1989 there was "no" restriction on his New Jersey medical license; that the New Jersey license restriction was "a trivial thing" with "no change in functional result" and that the restriction on his New Jersey license "will be in effect for another few months".

R. In or about 1980, Respondent obtained a disability policy from Provident Life and Casualty Insurance Company (Provident). In connection with this policy, Respondent knowingly submitted to Provident documents which he knew contained materially false information.

1. On or about January 17, 1986 Respondent suffered a myocardial infarction. On or about February 14, 1986, Respondent submitted a disability claim in which he falsely claimed that, at the time he suffered this heart attack, he practiced general and vascular surgery. In fact, Respondent, at that time, was engaged in a diet and nutrition practice which he had purchased from another physician in or about October, 1985.

2. Between on or about March 20, 1986 and on or about December 16, 1987, Respondent submitted to Provident twenty-one monthly claim statements in each of which Respondent falsely stated that he was totally disabled; that he was unable to engage in surgery and that he was not then performing surgery. In fact, during this period Respondent was not totally disabled. He was actively engaged in a surgical practice at 7 East 68th Street, New York, New York in which he operated on a large number of patients.
3. On or about January 15, 1988, Provident learned from a third party that Respondent had been performing surgery at 7 East 68th Street. Provident then stopped further payments on the policy.
4. As a result of the misrepresentations made to Provident by Respondent, Respondent received a total of approximately \$98,000 in disability payments.

SPECIFICATION OF CHARGES

FIRST AND SECOND SPECIFICATIONS

Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law Section 6509(5)(d) (McKinney Supp. 1990) in that Respondent had disciplinary action taken against him after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, when the conduct resulting in the disciplinary action involving the license would, if committed in New York State, constitute professional misconduct under the N.Y. Educ. Law Section 6509(2) (McKinney 1985). Specifically, Petitioner charges:

1. The facts in paragraphs A and A.1-A.3.
2. The facts in paragraph B.

THIRD THROUGH SEVENTH SPECIFICATIONS

PRACTICING WITH GROSS NEGLIGENCE

Respondent is charged with practicing with gross negligence under N.Y. Educ. Law Section 6509(2) (McKinney 1985), in that Petitioner charges:

3. The facts in paragraphs C and C.2.
4. The facts in paragraphs C and C.3.
5. The facts in paragraphs C and C.5.

6. The facts in paragraphs C and C.6.
7. The facts in paragraphs C, C.9, and C.11.

EIGHTH THROUGH TWELFTH SPECIFICATIONS

PRACTICING WITH GROSS INCOMPETENCE

Respondent is charged with practicing with gross incompetence under N.Y. Educ. Law Section 6509(2) (McKinney 1985) in that Petitioner charges:

8. The facts in paragraphs C and C.2.
9. The facts in paragraphs C and C.3.
10. The facts in paragraphs C and C.5.
11. The facts in paragraphs C and C.6.
12. The facts in paragraphs C, C.9, and C.11.

THIRTEENTH SPECIFICATION

PRACTICING WITH NEGLIGENCE ON MORE THAN
ONE OCCASION

Respondent is charged with practicing the profession with negligence on more than one occasion under N.Y. Educ. Law Section

6509(2) (McKinney 1985), in that Petitioner charges that Respondent committed at least two of the following:

13. The facts in paragraphs C and C.1-C.11, D and D.1-3, D.7, E and E.1-E.7, F and F.1, F.2, ~~H and H.1~~ and/or I and I.1.

*Withdrawn
by petitioner
SAB*

FOURTEENTH SPECIFICATION

PRACTICING WITH INCOMPETENCE ON MORE THAN ONE OCCASION

Respondent is charged with practicing the profession with incompetence on more than one occasion under N.Y. Educ. Law Section 6509(2) (McKinney 1985), in that Petitioner charges that Respondent committed at least two of the following:

14. The facts in paragraphs C and C.1-C.11, D and D.1-3, D.7, E and E.1-E.7, F and F.1, F.2, ~~H and H.1~~ and/or I and I.1.

*Withdrawn
by
Petitioner
SAB*

FIFTEENTH THROUGH TWENTY-SIXTH SPECIFICATIONS

PRACTICING FRAUDULENTLY

Respondent is charged with practicing the profession fraudulently under N.Y. Educ. Law Section 6509(2) (McKinney 1985), in that Petitioner charges:

15. The facts in paragraphs D and D.4-D.6.
16. The facts in paragraphs E and E.9.
17. The facts in paragraphs G and G.1 and G.2.
- ~~18. The facts in paragraphs H and H.2 and H.3.~~
19. The facts in paragraphs I and I.2-I.5.
- ~~20. The facts in paragraphs J and J.1 and J.2.~~
- ~~21. The facts in paragraphs K and K.1 and K.2.~~
22. The facts in paragraphs L and L.1 and L.2.
23. The facts in paragraphs M and M.1-M.3.
24. The facts in paragraphs N and N.1.
25. The facts in paragraph O.
26. The facts in Paragraph Q.

TWENTY-SEVENTH THROUGH THIRTY-FIRST SPECIFICATIONS
COMMITTING UNPROFESSIONAL CONDUCT AS DEFINED
BY THE BOARD OF REGENTS

Respondent is charged with unprofessional conduct under N.Y. Educ. Law Section 6509(9) (McKinney 1985), in that he performed professional services which had not been duly authorized by the patient or client or his or her legal

representative within the meaning of 8 NYCRR 29.1(b)(11) (1987),
in that Petitioner charges:

- 27. The facts in paragraphs C and C.10.
- 28. The facts in paragraphs D and D.2.
- 29. The facts in paragraphs E and E.2 and E.6.
- 30. The facts in paragraphs F and F.2.
- 31. The facts in paragraphs I and I.1.

THIRTY-SECOND THROUGH FORTY-SECOND SPECIFICATIONS

UNPROFESSIONAL CONDUCT

Respondent is charged with unprofessional conduct under
N.Y. Educ. Law Section 6509(9) (McKinney 1985), in that he
willfully made or filed false reports within the meaning of 8
NYCRR 29.1(b)(6) (1987) in that Petitioner charges:

- 32. The facts in paragraphs D and D.4-D.6.
- 33. The facts in paragraphs E and E.9.
- 34. The facts in paragraphs G and G.1 and G.2.
- ~~35. The facts in paragraphs H and H.2 and H.3.~~
- 36. The facts in paragraphs I and I.2-I.5.
- ~~37. The facts in paragraphs J and J.1 and J.2.~~
- ~~38. The facts in paragraphs K and K.1 and K.2.~~
- 38. The facts in paragraphs L and L.1 and L.2.
- 40. The facts in paragraphs M and M.1-M.3.

withdrawn by
petitioner by letter
dated 10-5-92 EML

withdrawn by
petitioner
see EXHIBIT 33
IN EVIDENCE
EML

44. The facts in paragraph C.12.
45. The facts in paragraph D.8.
46. The facts in paragraph E.8.
47. The facts in paragraph F.3.
~~48. The facts in paragraph H.4.~~

Withdrawn by
petitioner
letter
dated
5-15-90
SIAL

FORTY-NINTH SPECIFICATION
UNPROFESSIONAL CONDUCT

Respondent is charged with unprofessional conduct under N.Y. Educ. Law Section 6509(9) (McKinney 1985), in that Respondent created and/or approved and caused to be disseminated advertising that was false, fraudulent, deceptive or misleading within the meaning of 8 NYCRR 29.1(b)(12)(i)(a) (1987), in that Petitioner charges:

38. The facts in paragraph O.

DATED: New York, New York
July 26, 1990


CHRIS STERN HYMAN
Counsel
Bureau of Professional
Medical Conduct

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

IN THE MATTER

OF

ANSWER

JEFFREY LAVIGNE, M.D.

Respondent, JEFFREY LAVIGNE, M.D., by his attorneys, FISHER & FISHER, as and for his answer to the STATEMENT OF CHARGES and SPECIFICATION OF CHARGES dated July 26, 1990 respectfully alleges as follows:

AS TO "FACTUAL ALLEGATION" A

1) Denies each and every allegation contained in "FACTUAL ALLEGATION" A and its subparagraphs except admits that on or about June 17, 1988, respondent entered into a "STIPULATION AND AGREED ORDER" with the Washington State Medical Disciplinary Board and begs leave to refer to the said Agreed Order for its terms and further begs leave to refer to the statutes and caselaw of the State of Washington for the interpretation and effect, of said agreement and the restrictions, liabilities and obligations, if any, created thereby.

AS TO "FACTUAL ALLEGATION" B

2) Denies each and every allegation contained in "FACTUAL ALLEGATION B" except admits that, on or about August 25, 1989, respondent entered into an "ADMINISTRATIVE ACTION CONSENT ORDER" and begs leave to refer to the same for its terms and conditions.



AS TO "FACTUAL ALLEGATION" C

3) Denies the allegations contained in C and in subparagraph 1 except admits that on or about July 26, 1988 respondent performed a hemorrhoidectomy on said patient.

4) Denies the allegations contained in subparagraphs 2, 3, 6, 7, 8, 10 and 12.

5) Denies the allegations contained in subparagraph 4 except respondent admits that he ordered various medical tests to be performed.

6) Denies the allegations contained in subparagraph 5 except admits that, on or about August 23, 1988, respondent performed a sigmoidoscopy on said patient.

7) Denies the allegations contained in subparagraph 9 except respondent admits that, on or about September 27, 1988 he obtained a biopsy and begs leave to refer to the pathology report for its findings and contents.

8) Denies knowledge or information sufficient to form a basis for an admission or denial concerning the allegations contained in subparagraph 11 and affirmatively alleges that the date referred to in the said subparagraph is six (6) months after the last date when respondent treated said patient.

AS TO "FACTUAL ALLEGATION" D

9) Denies the allegations contained in subparagraphs 1, 2, 3, 4, 5, 6, 7, and 8, except that respondent admits treating the patient for a hemorrhoidectomy and sphincterotomy and denies knowledge or information sufficient to form the basis of an admission or denial with respect to the allegations concerning the admission of the referred to patient to Elmhurst Hospital except respondent affirmatively alleges that when post-operative bleeding occurred, outside of normal office hours, in accordance with his standard practice, he advised said patient to either immediately meet him at his office for

further treatment or to present herself at a hospital emergency room and that said patient voluntarily chose the hospital option.

AS TO "FACTUAL ALLEGATION" E

10) Denies the allegations contained in subparagraphs 1, 2, 3, 4, 5, 6, 8 and 9, except respondent denies knowledge or information sufficient to form the basis of an admission or denial with respect to the allegations contained in subparagraph 7 and further except that respondent admits that on or about April 29, 1989 respondent treated said patient; respondent affirmatively alleges that respondent provided such post-operative treatment as was indicated and appropriate.

AS TO "FACTUAL ALLEGATION" F

11) Denies the allegations contained in subparagraphs 1, 2, and 3 except admits that on or about May 13, 1989 respondent treated said patient.

AS TO "FACTUAL ALLEGATION" G

12) Denies the allegations contained in subparagraphs 1 and 2 except admits that respondent treated said patient, that a billing dispute ensued and affirmatively alleges that, upon information and belief,.

AS TO "FACTUAL ALLEGATION" H

13) Denies the allegations contained in subparagraphs 1, 2, 3, and 4, except that respondent admits that, on or about December 2, 1989 respondent performed a hemorrhoidectomy on said patient.

AS TO "FACTUAL ALLEGATION" I

14) Denies the allegations contained in subparagraphs 1, 2, 3, 4 and 5, except respondent admits performing a hemorrhoidectomy on said patient.

AS TO "FACTUAL ALLEGATION" J

- 15) Denies the allegations contained in subparagraphs 1 and 2.

AS TO "FACTUAL ALLEGATION" K

- 16) Denies the allegations contained in subparagraphs 1 and 2 and affirmatively represents that the said patient is a substance abuser acting out of personal animus and has made numerous threats against the person and fortunes of respondent.

AS TO "FACTUAL ALLEGATION" L

- 17) Denies the allegations contained in subparagraphs 1 and 2.

AS TO "FACTUAL ALLEGATION" M

- 18) Denies the allegations contained in subparagraphs 1, 2 and 3.

AS TO "FACTUAL ALLEGATION" N

- 19) Denies the allegations contained in subparagraph 1.

AS TO "FACTUAL ALLEGATION" O

- 20) Denies the allegations.

AS TO "FACTUAL ALLEGATION" P

- 21) Denies the allegations contained in subparagraphs 1, 2 and 3 except admits that a landlord/tenant dispute arose between respondent and Neil Sedick, M.D. which resulted in Dr. Sedick's relocating his practice.

AS TO "FACTUAL ALLEGATION" Q

- 22) Denies the allegations, except respondent admits that on or about October 18, 1989 he gave a sworn statement in the referred to action and begs leave to refer to his testimony in full as to the context and content thereof.

AS TO "FACTUAL ALLEGATION" R

23) Denies the allegations contained in subparagraphs 1, 2, 3 and 4 except respondent admits having suffered a myocardial infarction, having submitted claims to his insurance provider, and having claimed a degree of disability.

AS TO THE SPECIFICATIONS OF CHARGES

24) Denies professional misconduct and specifically denies the charges contained in the "FIRST AND SECOND SPECIFICATIONS".

25) Denies practising with gross negligence and specifically denies the charges contained in the "THIRD THROUGH SEVENTH SPECIFICATIONS".

26) Denies practising with gross incompetence and specifically denies the charges contained in the "EIGHTH THROUGH TWELFTH SPECIFICATIONS".

27) Denies practising with negligence on more than one occasion and specifically denies the charges contained in the "THIRTEENTH SPECIFICATION".

28) Denies practising with incompetence on more than one occasion and specifically denies the charges contained in the "FOURTEENTH SPECIFICATION".

29) Denies practising fraudulently and specifically denies the charges contained in the "FIFTEENTH THROUGH TWENTY-SIXTH SPECIFICATIONS".

30) Denies unprofessional conduct or having performing professional services which had not been duly authorized and specifically denies the charges contained in the "TWENTY-SEVENTH THROUGH THIRTY-FIRST SPECIFICATIONS".

31) Denies having made or filed false reports and specifically denies the charges contained in the "THIRTY-SECOND THROUGH FORTY-SECOND SPECIFICATIONS".

32) Denies having engaged in conduct which evidences moral unfitness to practice medicine and specifically denies the charges contained in the "FORTY-THIRD SPECIFICATION".

33) Denies that he failed to maintain a record for each patient which accurately reflects evaluation and treatment and specifically denies the charges contained in the "FORTY-FOURTH THROUGH FORTY-EIGHTH SPECIFICATIONS".

34) Denies that he created and/or approved, or caused to be disseminated, advertising that was false, fraudulent, deceptive or misleading and specifically denies the charges contained in the "FORTY-NINTH SPECIFICATION".

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

35) The Washington State Medical Disciplinary Board made no findings against the respondent; the allegation of "findings" is legally and factually incorrect.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

36) No formal disciplinary proceedings took place in the State of New Jersey; no admissions were made by the respondent and no findings resulted.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

37) The charges allegedly predicated upon the "FACTUAL ALLEGATIONS" P, Q, and R and the subparagraphs of each are outside and beyond the jurisdiction of the Board and no statutory authority to hear said charges, nor power to discipline under such circumstances, has been provided by the legislature.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

38) The STATEMENT OF CHARGES and SPECIFICATION OF CHARGES are insufficient as a matter of law to result in any disciplinary rulings, sanctions or penalties and must be dismissed.

DATED: Brooklyn, New York
August 24, 1990

Yours, etc.

FISHER & FISHER
Attorneys for Respondent
Jeffrey Lavigne, M.D.
189 Montague Street
Brooklyn, New York 11201
(718) 624-0608

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

-----X

IN THE MATTER :

OF :

JEFFREY LAVIGNE, M.D. :

-----X

COMMISSIONER'S
RECOMMENDATION

TO: Board of Regents
New York State Education Department
State Education Building
Albany, New York

A hearing in the above-entitled proceeding was held
on:

<u>1990</u>	<u>1991</u>	<u>1992</u>
August 28	January 8	January 2
September 11	January 15	January 9
October 1	February 6	May 28
October 25	March 19	June 19
November 14	April 2	July 17
December 20	April 8	August 7
	May 2	
	July 9	
	July 11	
	July 23	
	August 12	
	September 6	
	October 3	
	October 24	
	October 29	
	November 15	
	December 16	

Respondent, Jeffrey Lavigne, M.D., appeared by Andrew S. Fisher, Esq. and Pattie E. Evans, Esq. The evidence in support of the charges against the Respondent was presented by Terrence Sheehan, Esq.

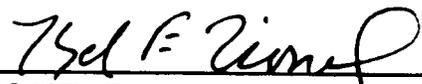
NOW, on reading and filing the transcript of the hearing, the exhibits and other evidence, and the findings, conclusions and recommendation of the Committee,

I hereby make the following recommendation to the Board of Regents:

- A. The Findings of Fact and Conclusions of the Committee should be accepted in full;
- B. The Recommendation of the Committee should be accepted; and
- C. The Board of Regents should issue an order adopting and incorporating the Findings of Fact and Conclusions and further adopting as its determination the Recommendation described above.

The entire record of the within proceeding is transmitted with this Recommendation.

DATED: Albany, New York
June 23, 1993



LLOYD F. NOVICK, M.D., DIRECTOR
OFFICE OF PUBLIC HEALTH

VOTE AND ORDER

JEFFREY E. LAVIGNE

CALENDAR NO. 14391



The University of the State of New York

IN THE MATTER

OF

JEFFREY E. LAVIGNE
(Physician)

DUPLICATE
ORIGINAL
VOTE AND ORDER
NO. 14391

Upon the report of the Regents Review Committee, a copy of which is made a part hereof, the record herein, under Calendar No. 14391, and in accordance with the provisions of Title VIII of the Education Law, it was

VOTED (September 23, 1994): That, in the matter of JEFFREY E. LAVIGNE, respondent, the recommendation of the Regents Review Committee be accepted as follows:

1. The hearing committee's findings of fact, conclusions and recommendation, as well as the recommendation of the Commissioner of Health as to those findings of fact, conclusions and recommendation be accepted;
2. Respondent is guilty, by a preponderance of the evidence, of the first and second specifications (having had disciplinary action taken in another state based on conduct which would, if committed in New York State, constitute professional misconduct); the thirteenth specification (practicing the profession with negligence on more than one occasion); the fifteenth, sixteenth, twenty-third and twenty-fourth specifications (practicing the profession fraudulently); and the twenty-ninth, thirtieth, thirty-second, thirty-third, fortieth, forty-first, forty-second, forty-third, forty-fourth, forty-fifth, forty-sixth and forty-seventh specifications

(unprofessional conduct); all of the aforesaid guilt being to the extent set forth in the hearing committee report; and not guilty of all remaining specifications and charges; and

3. Respondent's license to practice as a physician in the State of New York be revoked upon each specification of the charges on which respondent has been found guilty and respondent be fined \$10,000 upon each of the fifteenth, sixteenth, twenty-third and twenty-fourth specifications, said fines to total \$40,000 and to be paid no later than one year from the date of the service of the order in this matter, by certified or bank cashier's check, payable to the order of the New York State Education Department, to be delivered to the Executive Director, Office of Professional Discipline, New York State Education Department, One Park Avenue - Sixth Floor; New York, New York 10016-5802;

and that the Deputy Commissioner for the Professions be empowered to execute, for and on behalf of the Board of Regents, all orders necessary to carry out the terms of this vote;

and it is

ORDERED: That, pursuant to the above vote of the Board of Regents, said vote and the provisions thereof are hereby adopted and **SO ORDERED**, and it is further

ORDERED that this order shall take effect as of the date of the personal service of this order upon the respondent or five days after mailing by certified mail.

IN WITNESS WHEREOF, I, Daniel W. Szetela, Deputy Commissioner for the Professions, for and on behalf of the State Education Department and the Board of Regents, do hereunto set my hand, at the City of Albany, this 23rd day of September, 1994.



DANIEL W. SZETELA
DEPUTY COMMISSIONER
FOR THE PROFESSIONS