



STATE OF NEW YORK DEPARTMENT OF HEALTH

435 River Street, Suite 303 Troy, New York 12180-2295

Richard E. Daines, M.D.
Commissioner

Wendy E. Saunders
Chief of Staff

May 12, 2008

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

John B. Halkias, M.D.



Donald W. Henderson, Esq.
Ryan & Henderson, P.C.
One Old Country Road - Suite 428
Carle Place, New York 11514

Nancy Strohmeyer, Esq.
NYS Department of Health
Bureau of Professional Medical Conduct
90 Church Street - 4th Floor
New York, New York 10007

RE: In the Matter of John B. Halkias, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 08-73) 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:nm

Enclosure

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

IN THE MATTER
OF
JOHN B. HALKIAS, M.D.

COPY

DETERMINATION

AND

ORDER

BPMC-08-73

A Notice of Hearing, and Statement of Charges dated November 14, 2007 and November 29, 2007 respectively were served upon the Respondent **JOHN B. HALKIAS M.D.**

Chairperson **WALTER M. FARKAS M.D., THOMAS A. SCANDALIS D.O.,** and **JOAN MARTINEZ-MCNICHOLAS** duly designated members of the State Board of Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to Section 230(10)(e) of the Public Health Law. Administrative Law Judge **KIMBERLY A. O'BRIEN ESQ.** served as the Administrative Officer.

The Department of Health appeared by **THOMAS CONWAY ESQ.,** General Counsel, by **NANCY STROHMEYER,** of Counsel. The Respondent **JOHN B. HALKIAS M.D.** appeared in person and by Counsel **DONALD W. HENDERSON ESQ.**

Evidence was received and argument heard, and transcripts of these proceedings were made.

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

PROCEDURAL HISTORY

Notice of Hearing & Statement of Charges	November 29, 2007
Respondent's Answer	December 5, 2007
Hearing Dates	December 17, 2007 and January 29, 2008
Witnesses for Petitioner	[REDACTED]
Witnesses for Respondent	John B. Halkias M.D.
Final Hearing Transcript Received	February 8, 2008
Parties' Briefs	March 3, 2008
Deliberations Date	March 18, 2008

STATEMENT OF THE CASE

The State Board of Professional Medical Conduct is a duly authorized professional disciplinary agency of the State of New York pursuant to Section 230 et seq. of the Public Health Law of New York. This case was brought by the New York State Department of Health, Office of Professional Medical Conduct (hereinafter "Petitioner" or "Department") pursuant to Section 230 of the Public Health Law. John B. Halkias, M.D. (hereinafter "Respondent") is charged with seven specifications of misconduct as set forth in Section 6530 of the Education Law of the State of New York (hereinafter Education Law) [REDACTED]. The Respondent is charged with: [REDACTED]

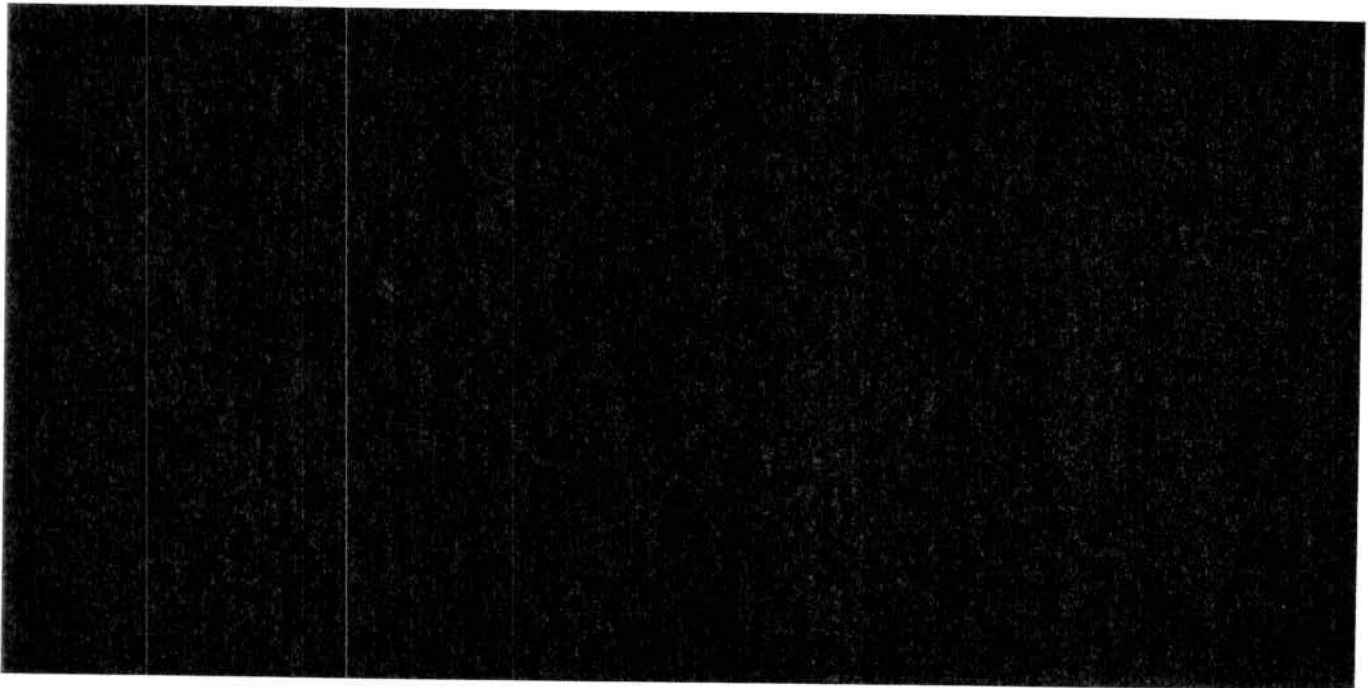
[REDACTED], fraudulent practice, and willfully making or filing a false report. The Respondent denied all the factual allegations and seven specifications of misconduct set forth in the Notice of Hearing and Statement of Charges attached hereto and made part of this Decision and Order, and marked as Appendix 1.

FINDING OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Unless otherwise noted, all findings and conclusions set forth below are the unanimous determinations of the Hearing Committee. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence. Numbers below in parentheses refer to exhibits (denoted by the prefix "Ex.") or transcript page numbers ("Tr."). These citations refer to evidence found persuasive by the Hearing Committee in arriving at a particular finding.

Having heard argument and considered the documentary evidence presented, the Hearing Committee hereby makes the following finding of fact:

1. John B. Halkias M.D., the Respondent, was authorized to practice medicine in New York State on or about May 2, 1989, by the issuance of license number 178120 by the New York State Education Department (Ex. 2).



3. On or about March 29, 1990 - July 19, 1990, Westchester County Medical Center restricted the Respondent from providing any direct patient care (Ex. 5 p.181-183).

4. On or about September 27, 1995, the Respondent in his application to Children's Village for privileges as a staff physician falsely reported that he had "never relinquished, nor have had my privileges at any hospital reduced or terminated" (Ex. 6 p.15).

DISCUSSION AND CONCLUSIONS

The Respondent is charged with

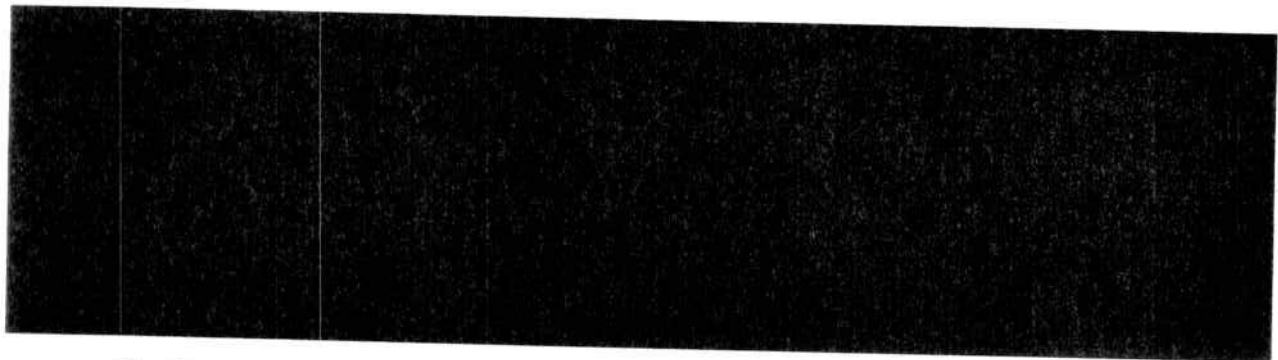
[REDACTED] fraudulent practice, and willfully making or filing a false report.

The Hearing Committee did not sustain the factual allegations in Paragraph A and Sub Paragraph A1, and six of the seven specifications of misconduct set forth in the Statement of Charges including:

[REDACTED] (Ex.

[REDACTED]

[REDACTED]



The Hearing Committee has unanimously sustained the factual allegations set forth in paragraph B and subparagraph B1 and the Fourth Specification of misconduct in that on or about September 27, 1995, in his application to Children's Village for privileges as a staff physician, Respondent answered affirmatively "I have never relinquished, nor have I had my privileges at any hospital reduced or terminated" (Ex.1). The conduct constitutes willfully making and filing a false report pursuant to Education Law Section 6530(21) (Ex 1).

In order to make a finding that the Respondent perpetrated a fraud the Hearing Committee was required to find that the Respondent knowingly provided false information on his Children's Village Employment Application, and articulate the basis for drawing the inference that the Respondent intended to mislead and perpetrate a fraud (Ex. ALJ 1A "Definitions of Professional Misconduct -Greenberg Memorandum"). The Hearing Committee based its conclusion that the Respondent filed a false report on the documentary evidence admitted into the record and the Respondent's own testimony. The Respondent initially testified that his privileges were "changed" and characterized the change in privileges as measures taken by his superiors to "protect" him from further [REDACTED] (Tr. 134- 135, 160-61). The Respondent testified that he did not believe he had been suspended because he continued to work and get paid during the suspension, and after the investigation was concluded he went back to treating patients. The Respondent recalled being "frightened" about

the investigation but felt that his superiors had his interests in mind and they were trying to protect him from Patient A (Tr. 204-205). At the hearing, when the Respondent was shown letters addressed to him from Westchester County Medical Center explicitly stating that his clinical care privileges were suspended and that he was restricted from any direct patient care, he testified that he did not remember receiving the documents (Tr. 192). Finally, the Respondent testified that he was not represented by counsel when the Westchester County Medical Center investigation took place or when he completed and filed the 1995 Children's Village Employment Application.

The Hearing Committee found the Respondent's testimony about his suspension of direct patient care privileges at Westchester County Medical Center and Children's Village Employment Application was self-serving, inconsistent and simply not credible. The Hearing Committee determined that the Respondent or any other physician would remember that their clinical privileges were suspended for more than two and one half months and they were restricted from providing direct patient care while an investigation of a patient complaint of inappropriate conduct was underway, whether or not the allegations were sustained. The Respondent was notified in writing that he was restricted from providing direct patient care. The Hearing Committee determined that the Respondent had full knowledge that his privileges had been suspended and he was restricted from providing direct patient care, and he did not need an attorney to interpret the language contained in the suspension notice and/ or how to truthfully answer the questions on the Children's Village Employment Application. For the foregoing reasons the Hearing Committee found from a preponderance of the evidence that the Respondent willfully and with the intention to deceive falsely reported to Children's Village that he never had his privileges suspended, restricted, and /or reduced.

DETERMINATION AS TO PENALTY

Upon concluding that the Respondent is guilty of willfully making a false report, the Hearing Committee found that the Respondent does not appreciate his responsibility to be truthful to employers about his professional status. After due and careful consideration of the penalties available pursuant to Public Health Law Section 230-a, the Hearing Committee has determined that the Respondent: shall pay a Ten Thousand Dollar (\$10,000) civil penalty within thirty (30) days of the effective date of this Determination and Order, and shall successfully complete twelve (12) hours of Continuing Medical Education in the area of Ethics within one (1) year of the effective date of this Determination and Order.

ORDER

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

1. The factual allegations in paragraph A and subparagraph A1, and the First, Second, Third, Fifth, Sixth, and Seventh Specifications set forth in the Statement of Charges (Ex.1) are **NOT SUSTAINED;**
2. The factual allegations in paragraph B subparagraph B1 and the Fourth Specification set forth in the Statement of Charges (Ex. 1) are **SUSTAINED;**
3. The Respondent shall pay a civil penalty of Ten Thousand Dollars (\$10,000) within thirty (30) days of the effective date of this Determination and Order;
4. The Respondent shall successfully complete twelve (12) hours of Continuing Medical Education in the area of Ethics within one (1) year of the effective date of this order and said continuing education shall be subject to the prior written approval of the Director of OPMC;

This **ORDER** shall be effective upon service on the Respondent pursuant to Public Health Law Section 230(10)(h).

DATED: May 9, New York, 2008

BY: Redacted Signature
WALTER M. FARKAS M.D., Chairperson
THOMAS A. SCANDALIS D.O.
JOAN MARTINEZ MCNICHOLAS

To: John B. Halkias, M.D.



Donald W. Henderson, Esq.
RYAN & HENDERSON, P.C..
One Old Country Road - Suite 428
Carle Place, NY 11514

Nancy Strohmeyer, Esq.
NYSDOH -Bureau of Professional Medical Conduct
90 Church Street- 4th Fl.
New York, NY 10007

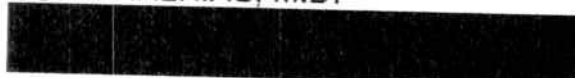
Appendix 1

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

IN THE MATTER
OF
JOHN HALKIAS, M.D.

NOTICE
OF
HEARING

TO: JOHN HALKIAS, M.D.



MS
12/17/07

PLEASE TAKE NOTICE:

A hearing will be held pursuant to the provisions of N.Y. Pub. Health Law §230 and N.Y. State Admin. 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 December 17, 2007, at 10:00 a.m., at the Offices of the New York State Department of Health, 90 Church Street, 4th Floor, New York, New York 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. You have the right to produce witnesses and evidence on your behalf, to issue or have subpoenas issued on your behalf in order to require the production of witnesses and documents, and you may cross-examine witnesses and examine evidence produced against you. A summary of the Department of Health Hearing Rules is enclosed.

The hearing will proceed whether or not you appear at the hearing. Please note that requests for adjournments must be made in writing and by telephone to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Hedley Park Place, 433 River Street, Fifth Floor South, Troy, NY 12180, ATTENTION: HON. SEAN D. O'BRIEN, 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.

DATED: New York, New York
November 14, 2007

Redacted Signature


Roy Nemerson
Deputy Counsel
Bureau of Professional
Medical Conduct

Inquiries should be directed to: Nancy Strohmeyer
Assistant Counsel
Bureau of Professional Medical Conduct
90 Church Street, 4th Floor
New York, New York 10007
(212) 417-4109

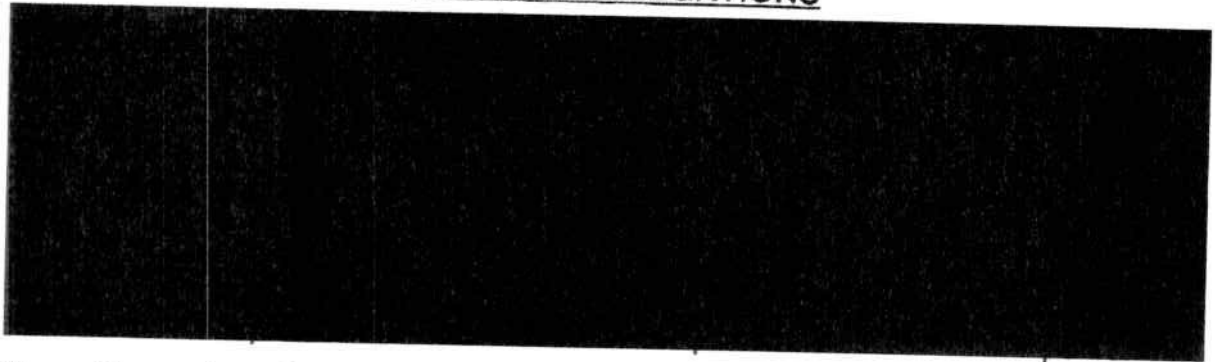
NEW YORK STATE DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER
OF
JOHN HALKIAS, M.D.

STATEMENT
OF
CHARGES

JOHN HALKIAS, M.D., the Respondent, was authorized to practice medicine in New York State on or about May 2, 1989, by the issuance of license number 178120 by the New York State Education Department.

FACTUAL ALLEGATIONS

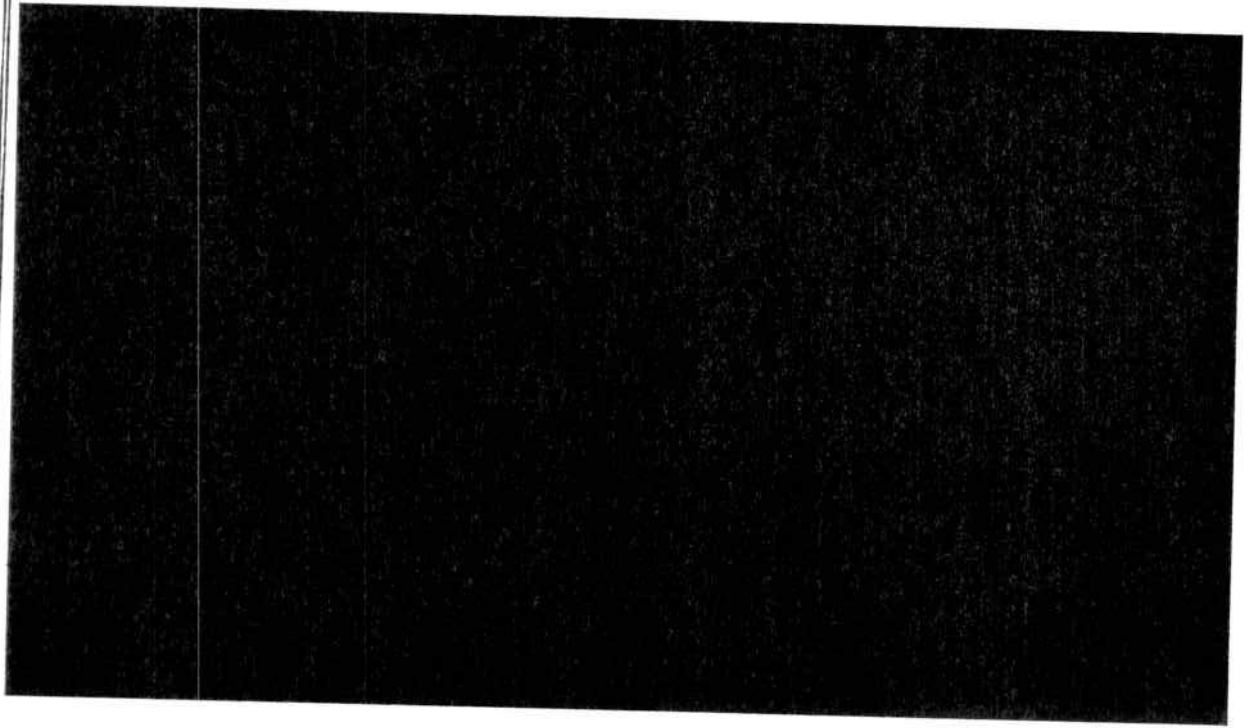


B. On or about September 27, 1995, in his application to Children's Village for privileges as a staff physician, Respondent knowingly, falsely and with intent to mislead, answered in the affirmative to the following statement:

1. "I have never relinquished, nor have had my privileges at any hospital reduced or terminated."

SPECIFICATION OF CHARGES





THIRD SPECIFICATION
FRAUDULENT PRACTICE

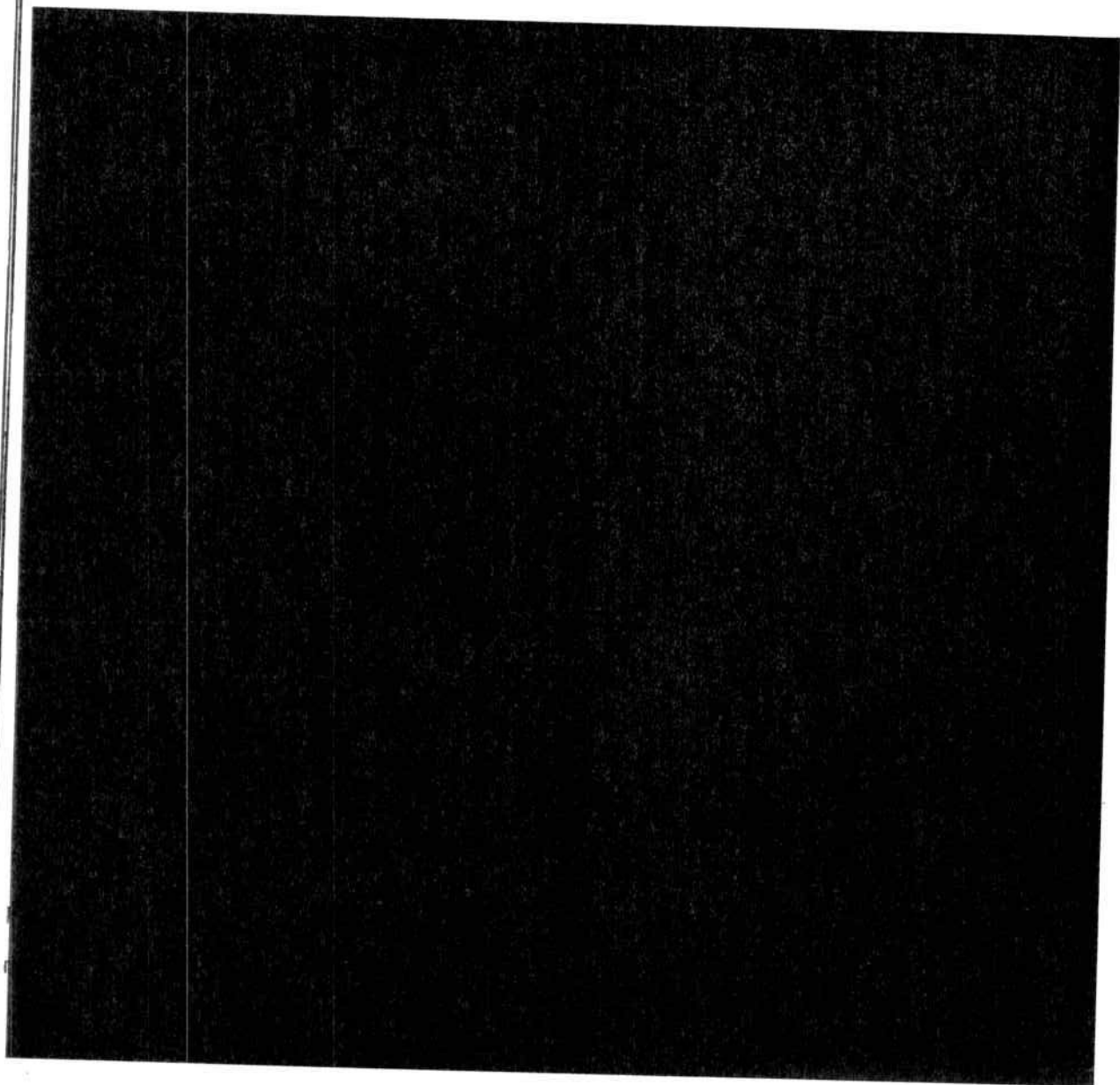
Respondent is charged with committing professional misconduct as defined by N.Y. Educ. Law § 6530(2) by practicing the profession of medicine fraudulently as alleged in the facts of the following:

3. Paragraph B and its subparagraph B1.

FOURTH SPECIFICATION
FALSE REPORT

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

4. Paragraph B and its subparagraph B1.



DATE: November 27, 2007
New York, New York

Redacted Signature

Roy Nemerson
Deputy Counsel
Bureau of Professional Medical Conduct