



STATE OF NEW YORK  
DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

**PUBLIC**  
Dennis P. Whalen  
Executive Deputy Commissioner

January 25, 1999

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Anthony M. Benigno, Esq.  
Bureau of Professional Medical Conduct  
NYS Department of Health  
Corning Tower Building – Room 2509  
Empire State Plaza  
Albany, NY 12237

Musheer Hussain, M.D.  
4789 South Holley Road  
Holley, NY 14470

Michael Harren, Esq.  
Chamberlain, D'Amanda, Oppenheimer & Greenfield  
1600 Crossroads Building  
Two State Street  
Rochester, NY 14614

RE: In the Matter of Musheer Hussain, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 99-18) 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.

Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified mail or in person** to:

Office of Professional Medical Conduct  
New York State Department of Health  
Hedley Park Place  
433 River Street - Fourth Floor  
Troy, New York 12180

If your license or registration certificate is lost, misplaced or its whereabouts is otherwise unknown, you shall submit an affidavit to that effect. If subsequently you locate the requested items, they must then be delivered to the Office of Professional Medical Conduct in the manner noted above.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), and §230-c subdivisions 1 through 5, (McKinney Supp. 1992), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the licensee or the Department may seek a review of a committee determination.

Request for review of the Committee's determination by the Administrative Review Board stays penalties **other than suspension or revocation** until final determination by that Board. Summary orders are not stayed by Administrative Review Board reviews.

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.

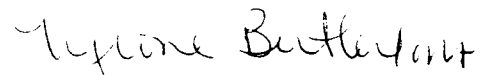
The notice of review served on the Administrative Review Board should be forwarded to:

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,

A handwritten signature in cursive script that reads "Tyrone T. Butler".

Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:mla  
Enclosure

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

**COPY**

**IN THE MATTER  
OF  
MUSHEER HUSSAIN, M.D.**

**DETERMINATION  
AND  
ORDER**

ORDER # 99-18

A Notice of Probation Violation Hearing and A Statement of Charges, both dated October 15, 1998, were served upon the Respondent, Musheer Hussain, M.D. **DAVID T. LYON, M.D. (Chair), MARGERY W. SMITH, M.D. and IRVING S. CAPLAN** duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee (hereinafter the Committee) in this matter pursuant to Section 230(10)(e) of the Public Health Law. **JEFFREY W. KIMMER, ESQ.**, ADMINISTRATIVE LAW JUDGE, served as the Administrative Officer. The Department of Health appeared by Henry M. Greenberg, General Counsel, Anthony M. Benigno, Esq., Assistant Counsel of Counsel. The Respondent appeared by Chamberlain, D'Amanda, Oppenheimer & Greenfield, Michael Harren, Esq. of Counsel. Evidence was received, testimony was taken and transcripts of these proceedings were made. After consideration of the entire record, the Committee issues this Determination and Order.

**STATEMENT OF CASE**

This case was brought pursuant to Public Health Law Section 230(19). This statute

provides for a hearing to determine whether the Respondent has violated probation. In such cases the Committee considers the alleged violation of probation and if a violation is found, the prior adjudication of misconduct in determining what penalty to impose. In the instant case, Respondent is charged with a violation of probation for practicing medicine without an onsite monitor at two locations, as required under the terms of his probation. The allegations in this proceeding are more particularly set forth in the Statement of Charges a copy of which is attached to this Determination and Order and made a part hereof as Appendix One.

### **FINDINGS OF FACT**

The following Findings of Fact were made after a review of the entire record in this matter.

Numbers in parentheses refer to exhibits or transcript pages. These citations represent evidence found persuasive by the Committee in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence.

1. MUSHEER HUSSAIN, M.D.(hereinafter, "Respondent"), was licensed to practice medicine in New York State on or about September 18, 1974, by the issuance of license number 121541 by the New York State Education Department. (Pet. Ex. 1)
2. On or about January 15, 1997, the New York State Board for Professional Medical Conduct issued a Consent Order wherein the Respondent admitted to committing negligence on more than one occasion and whose penalties included a 24 month probation, the terms of which required the Respondent to have an approved licensed physician monitor his practice at each of his practice locations. (Pet. Ex. 1)
3. The terms of the probation required the Respondent to submit the name of a proposed practice monitor and obtain approval from the Office of Professional Medical Conduct (hereinafter OPMC) by February 21, 1997, which was 30 days from the effective date of the Consent Order. The terms also permitted the Respondent to practice medicine only when monitored by a licensed physician and required the practice monitor to visit each of the Respondent's practice locations. (Pet. Ex. 1)
4. On or about February 19, 1997, the Respondent submitted a physician's name for approval as his monitor and this physician was approved by the OPMC on March 12, 1997. (T. 23; Res. Ex. C)
5. On or about February 6, 1997, the Respondent submitted to the OPMC a document entitled Data Sheet which informed the OPMC of the name and address of all his practice locations and hospital

and clinical affiliations. The Data Sheet included information about the Respondent's office practice location in Brockport, N.Y. and his affiliations with Lakeside-Beikirch Nursing Home, Orleans Correctional Facility and Holley Central School District. (Pet. Ex. 4)

6. Subsequent to March 12, 1997, the Respondent requested the New York State Dept. of Correctional Services to allow his approved practice monitor to perform on-site monitoring at the Orleans Correctional Facility. This request was denied. (Pet. Ex. 12; Res. Ex. D)
7. On or about May 20, 1997, the OPMC notified the Respondent that the continued practice of medicine at the Orleans Correctional Facility was a violation of the terms of probation. (Pet. Ex. 5)
8. On or about May 29, 1997, the Respondent requested a modification of the terms of his probation. (Res. Ex. D)
9. On or about January 6, 1998, the OPMC denied the Respondent's request for a modification of the terms of probation and notified the Respondent that the continued practice of medicine at the Orleans Correctional Facility without a practice monitor was a violation of the terms of probation. (Pet. Ex. 6)
10. On or after March 12, 1997, the Respondent requested the New York State, Department of Corrections (hereinafter DOCS) to allow his practice monitor access to his patient records at the Orleans Correctional Facility (hereinafter OCF). This request was denied. (Pet. Ex. 12)
11. Subsequent to March 12, 1997, the Respondent requested DOCS to allow the Medical Director of the OCF to serve as his practice monitor at the OCF. DOCS denied this request. (T. 47, 76; Res. Ex. D)
12. Subsequent to March 12, 1997, the Respondent actively pursued a union grievance procedure with DOCS regarding the denial of his request to allow his practice monitor access to his patient records at the OCF. (T. 48-49)
13. Subsequent to May 1997, the Respondent twice requested a leave of absence from his job at OCF but these requests were denied. (Res. Exs. E and F)

### **CONCLUSIONS OF LAW**

The following conclusions were made pursuant to the Findings of Fact listed above. All conclusions resulted from a unanimous vote of the Committee unless noted otherwise.

The facts in this case are largely undisputed. The terms of probation required the Respondent to secure a physician to act as a practice monitor at his practice sites. The choice of monitor was subject to the approval of the Office of Professional Medical Conduct. The Respondent practiced medicine at the OCF without a practice monitor from the beginning of the probationary period until he resigned from his employment at that facility in October 1998.

As mitigating factors the Committee found that the Respondent did make a good faith effort to have his practice at the OCF monitored by an approved physician. He presented for approval by the facility, the monitor of his other practice site but this was denied. He then attempted to modify the terms of his probation so that his facility performance evaluations could be used in lieu of an on-site monitor. This was also denied. He applied for a leave of absence from the OCF in an attempt to give him some time to resolve this problem but the OCF denied his request. However at that point the Respondent had unequivocal knowledge that he was in violation of probation yet he continued to practice at that facility.

The Committee found that with respect to the monitoring of the Respondent's practice at the Lakeside-Beikirch Nursing Home no violation of probation occurred. The nursing home was listed as one of the Respondent's clinical affiliations submitted to the Department in February 1997, yet the OPMC did not apprise the Respondent that he needed monitoring at the nursing home also until January 1998. Upon being told of that he came into compliance with respect to monitoring of his nursing home practice. The Committee concluded it was reasonable for the Respondent to assume that he did not need a monitor at the nursing home for the two patients he treated there, since he also listed the Holley Central School District as one of his clinical affiliations yet no practice monitor was required at that site. The reasonableness of this assumption was buttressed by the fact that the records of the nursing home patients were kept in his office while the students' records were kept at the school.

The Committee also concluded that the probation terms relating to monitoring were ambiguous in that they did not require the monitor to actually see any of the Respondent's patients. Finally, the Hearing Committee notes that Respondent appears to be in compliance with the other provisions of his probation and that there is no evidence of patient harm as a result of his non-compliance with this condition of his probation.

Under the totality of the circumstances, the Committee concluded that Respondent diligently

pursued his obligation to secure a practice monitor as required by the Consent Order but nevertheless is out of compliance with the conditions of his probation.

### DETERMINATION AS TO PENALTY

The Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determined that the Respondent's license to practice medicine should be placed on probation for Two (2) years, commencing from the effective date of this Order. The terms of the probation are set forth in Appendix II, which is attached to this Order and made a part thereof. This determination was reached upon due consideration of the full spectrum of penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties.

The Committee does not view the Respondent's violation of probation as egregious. His conduct in attempting to comply with the probation terms lead the Committee to conclude he was not contemptuous of the Board's authority.

### ORDER

Based upon the foregoing, IT IS HEREBY ORDERED THAT:

1. The **First Specification** of professional misconduct, as set forth in the Statement of Charges (Appendix I) is **SUSTAINED**;
2. Respondent's license to practice medicine in New York State be and hereby is placed on **PROBATION**, the terms of which are set forth in APPENDIX II attached hereto and made a part hereof.

DATED: Albany, New York

January 22 , 1999



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DAVID T. LYON, M.D. (Chair)

MARGERY W. SMITH, M.D.

IRVING S. CAPLAN



TO: Anthony M. Benigno, ESQ.  
Assistant Counsel  
Bureau of Professional Medical Conduct  
New York State Department of Health  
Corning Tower Building  
Empire State Plaza  
Albany, N.Y. 12237

Michael Harren, Esq.  
Chamberlain, D'Amada, Oppenheimer & Greenfield  
1600 Crossroads Building  
Two State Street  
Rochester, New York 14614

Musheer Hussain, M.D.  
4789 South Holley Rd.  
Holley, New York 14470

## **APPENDIX I**

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

-----X

IN THE MATTER : STATEMENT  
OF : OF  
MUSHEER HUSSAIN, M.D. : CHARGES

-----X

MUSHEER HUSSAIN, M.D., the Respondent, was authorized to practice medicine in New York State on or about September 18, 1974 by issuance of license number 121541 by the New York State Education Department. The Respondent is currently registered with the New York State Education Department to practice medicine.

#### FACTUAL ALLEGATIONS

A. On or about January 15, 1997, the New York State Board for Professional Medical Conduct issued Consent Order BPMC #97-23, hereto attached as Exhibit 1, wherein MUSHEER HUSSAIN, M.D., Respondent, admitted guilt to parts of the eleventh specification of professional misconduct, negligence on more than one occasion. The agreed penalties included a permanent restriction on his license prohibiting him from performing surgery other than minor surgical procedures, a two year suspension with suspension stayed conditioned on his full compliance with the terms of probation and a two year period of probation. The terms of probation imposed a condition requiring that,

"Respondent shall practice medicine only when monitored by a licensed physician, board certified in an appropriate specialty, ("practice monitor") proposed by Respondent and subject to the written approval of the Director of OPMC. The practice monitor shall be proposed by Respondent and approved by OPMC within thirty days of the effective date of the this Order".

B. BPMC Order No. 97-23 was issued on January 15, 1997 and became effective on January 22, 1997. Respondent should have had his practice monitor approved by the Director of the Office of Professional Medical Conduct (OPMC) on or before February 21, 1997.

C. Under the terms of probation, paragraph 9a,

"Respondent shall make available to the practice monitor any and all records or access to the practice requested by the practice monitor, including on-site observation. The practice monitor shall visit Respondent's medical practice at each and every location, on a random unannounced basis at least once per quarter and shall examine a selection, no less than 10 percent, of records maintained by Respondent, including patient records, prescribing information and office records".

Beginning on or after February 21, 1997 and continuing through approximately October 1, 1998, Respondent failed to make available to his practice monitor the patient records or access to his practice at the Orleans Correctional Facility.

D. OPMC through its Physician Monitoring Program (PMP) informed Respondent in writing on two occasions, May 20, 1997 and January 6, 1998, that his continued practice of medicine at the Orleans Correctional Facility without a monitor in place constituted a violation of probation.

E. Beginning on or about February 21, 1997 and continuing

through approximately December 31, 1997 Respondent failed to make available to his practice monitor the patient records and/or access to his practice at the Lakeside-Beikirch Nursing Home, located in Brockport, New York.

FIRST SPECIFICATION

HAVING VIOLATED A TERM OF PROBATION IMPOSED BY PHL SECTION 230

Respondent is charged with professional misconduct under N.Y. Education Law section 6530(29) by reason of his having violated a term of probation imposed upon him pursuant to Section 230 of the Public Health Law, by BPMC Order #97-23, in that Petitioner charges:

1. The facts in paragraph A, B, C, D and/or E.

DATED: *October 15*, 1998  
Albany, New York

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

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

-----X

IN THE MATTER :  
OF : ORDER  
MUSHEER HUSSAIN, M.D. :  
BPMC #97-23

-----X

Upon the Application of MUSHEER HUSSAIN, M.D. (Respondent) for Consent Order, which Application is made a part hereof, it is ORDERED, that the Application 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 Respondent, upon receipt by Respondent of this Order via certified mail, or seven days after mailing of this Order by certified mail, whichever is earliest.

SO ORDERED,

DATED: 15 - 11 - 1997

Charles J. Vacanti, M.D.  
Chairperson  
State Board for Professional  
Medical Conduct

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

-----X

IN THE MATTER : APPLICATION  
OF : FOR  
MUSHEER HUSSAIN, M.D. : CONSENT

: ORDER

-----X

STATE OF NEW YORK )  
COUNTY OF MONROE ) ss:

MUSHEER HUSSAIN, M.D., being duly sworn, deposes and says:  
That on or about September 18, 1974, I was licensed to practice  
as a physician in the State of New York, having been issued  
License No. 121541 by the New York State Education Department.

I am currently registered with the New York State Education  
Department to practice as a physician in the State of New York  
for the period January 1, 1995 through March 31, 1997.

I understand that the New York State Board for Professional  
Medical Conduct has charged me with thirteen (13) specifications  
of professional misconduct.

A copy of the Statement of Charges is annexed hereto, made a  
part hereof, and marked as Exhibit "A".

I admit guilt to the eleventh specification insofar as it applies to the following Factual Allegations in full satisfaction of the charges against me;

1. B and B.1, B.2 and B.3.
2. E and E.1, E.2 and E.4.

I hereby agree to the following penalties:

1. I shall permanently refrain from the practice of surgery and my license to practice medicine shall be limited to those medical activities not involving surgery. I shall submit proof to the Office of Professional Medical Conduct (OPMC), acceptable to OPMC, from my medical malpractice insurance carrier within thirty days of the effective date of this Order and thereafter on a bi-annual basis that the terms of my insurance are limited to exclude surgery. Notwithstanding all of the above, I shall be entitled to perform minor surgical procedures as part of my general and family based medical practice such as the suturing of lacerations, the biopsy and excision of superficial growths, incisions of boils and superficial abscesses, the closed reduction of fractures and the circumcision of other than new born patients. I shall not perform surgery in either a hospital or an ambulatory care facility/setting. I shall inform OPMC within thirty days of my obtaining privileges at any hospital.
2. My license to practice medicine in the State of New York shall be suspended for a period of twenty-four (24) months beginning on the effective date of the Order. The twenty-

*per 12-12,  
2 yrs →*



four month period of suspension shall be stayed and I shall be placed on probation during that twenty-four (24) month period. The twenty-four (24) month stay of suspension shall be subject to my compliance with the probation terms which are attached and annexed hereto as Exhibit "B". I shall fully comply with the probation terms.

I hereby make this Application to the State Board for Professional Medical Conduct (the Board) and request that it be granted.

I understand that, in the event that this Application is not granted by the Board, nothing contained herein shall be binding upon me or construed to be an admission of any act of misconduct alleged or charged against me, such Application shall not be used against me in any way and shall be kept in strict confidence during the pendency of the professional misconduct disciplinary proceeding; and such denial by the Board shall be made without prejudice to the continuance of any disciplinary proceeding and the final determination by the Board pursuant to the provisions of the Public Health Law.

I agree that, in the event the Board grants my Application, as set forth herein, an order of the Chairperson of the Board shall be issued in accordance with same.

I am making this Application of my own free will and accord and not under duress, compulsion or restraint of any kind or manner.

Musheer Hussain

MUSHEER HUSSAIN, M.D.  
RESPONDENT

Sworn to before me this  
<sup>6<sup>TH</sup></sup> day of ~~JANUARY~~ , 1997.

William P. Fletcher  
NOTARY PUBLIC

WILLIAM P. FLETCHER  
Notary Public, State of New York  
No. 4830429  
Qualified in Monroe County  
Commission Expires March 30, 1997

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

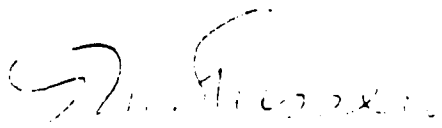
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IN THE MATTER : APPLICATION  
OF : FOR  
MUSHEER HUSSAIN, M.D. : CONSENT  
: ORDER

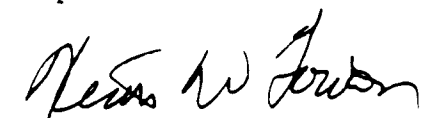
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The undersigned agree to the attached application of the Respondent and to the proposed penalty based on the terms and conditions thereof.

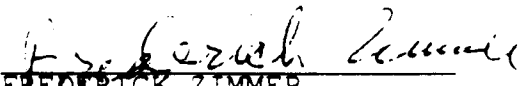
DATE: 1/6, 1997

  
MUSHEER HUSSAIN, M.D.  
Respondent

DATE: January 6, 1997

  
KENNETH GORDON, ESQ.  
Attorney for Respondent

DATE: January 7, 1997

  
FREDERICK ZIMMER  
ASSISTANT COUNSEL  
Bureau of Professional  
Medical Conduct

DATE:

Jan 13 1947

Anne F. Saile

ANNE F. SAILE  
DIRECTOR  
Office of Professional Medical  
Conduct

DATE:

Jan 13 1947

Charles J. Vacanti, M.D.

CHARLES J. VACANTI, M.D.  
CHAIRPERSON  
State Board for Professional  
Medical Conduct

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

-----X AMENDED  
IN THE MATTER : STATEMENT  
OF : OF  
MUSHEER HUSSAIN, M.D., : CHARGES  
Respondent

-----X  
MUSHEER HUSSAIN, M.D., the Respondent, was authorized to practice medicine in New York State on August 16, 1974, by the issuance of license number 121541 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

- A. On or about August 14, 1989, Respondent treated Patient A [all patients are identified in the attached Appendix] in the Lakeside Memorial Hospital Emergency Room for a laceration to his left hand. Respondent's care and treatment of Patient A failed to meet acceptable standards of medical care in that:
1. Respondent failed to elicit and/or record an adequate history for Patient A, including information as to how Patient A received this laceration.
  2. Respondent sutured the laceration, and instructed Patient A to return to Respondent's office some ten days later.
  3. Respondent failed to order appropriate antibiotics for Patient A.

EXHIBIT A

14

B. On or about May 14, 1989, Respondent treated Patient B in the Lakeside Memorial Hospital Emergency Room for complaints of shoulder and abdominal pain. Respondent's care and treatment of Patient B failed to meet acceptable standards of medical care, in that:

1. Respondent failed to perform and/or record a complete and/or adequate physical examination.
2. Respondent failed to adequately evaluate, appreciate and/or follow up on the results of Patient B's lab work, x-rays, physical examination and/or signs and symptoms.
3. Respondent failed to order appropriate tests and treatment for Patient B.

C. On or about May 29, 1991 through approximately June 18, 1991, Respondent treated Patient C at the Lakeside Memorial Hospital. Respondent's care and treatment of Patient C failed to meet acceptable standards of medical care, in that:

1. Respondent, on or about May 29, 1991, failed to order an x-ray prior to performing a thoracentesis on Patient C.
2. Respondent, following the thoracentesis procedure, failed to properly read Patient C's chest X-rays which indicated Patient C had a pneumothorax on her right side rather than her left.
3. Respondent placed a chest tube on Patient C's left side for treatment of a pneumothorax which was on the patient's right side.

D. On or about January 21, 1986 through approximately April 14, 1986, Respondent treated Patient D at the Lakeside Memorial Hospital. Respondent's care and treatment of Patient D failed to meet acceptable standards of medical care, in that:

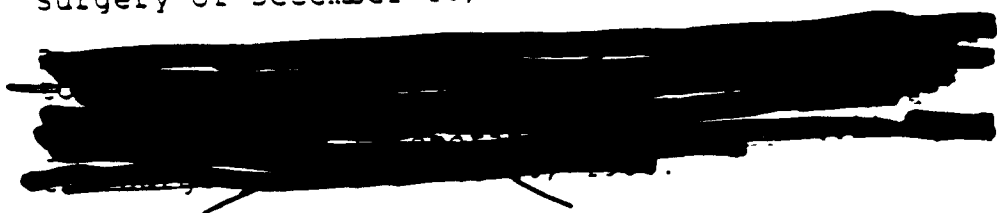
1. Respondent failed to appropriately evaluate the extent of the tumor and lines of resection at the time of surgery on January 22, 1986 (the proximal resection margin).
2. Respondent who was unqualified and unprepared to perform thoraco-abdominal surgery failed to appreciate the possible need for a thoraco-abdominal approach when he initiated surgery.
3. Respondent failed to recognize and/or adequately treat injury to the colon during the course of Patient D's surgery on January 22, 1986.
4. On or about April 3, 1986, Respondent failed to order appropriate preoperative gastrointestinal bowel prep for Patient D for his colon resection.

E. From on or about December 10, 1986 through approximately January 24, 1987, Respondent treated Patient E at the Lakeside Memorial Hospital. Respondent's care and treatment of Patient E failed to meet acceptable standards of medical care, in that:

1. Respondent, on or about December 10, 1986, failed to adequately diagnose and/or treat the source of Patient E's hemoperitoneum.
2. Respondent, on or about December 10, 1986, failed to recognize and/or adequately treat a perforation to the colon which occurred during or prior to the surgery of December 10, 1986.

*deleted  
F=*

3.



4. Respondent failed to adequately treat a small bowel perforation which occurred during the surgery of December 22, 1986.

#### SPECIFICATIONS OF CHARGES

##### FIRST THROUGH FIFTH SPECIFICATIONS

##### GROSS NEGLIGENCE

Respondent is charged with practicing the profession with gross negligence on a particular occasion in violation of N.Y. Educ. Law §6530(4) (McKinney Supp. 1996) in that, Petitioner charges:

1. The facts in paragraphs A and A.1, A.2 and or A.3.
2. The facts in paragraphs B and B.1, B.2 and or B.3.
3. The facts in paragraphs C and C.1, C.2 and or C.3.
4. The facts in paragraphs D and D.1, D.2, D.3 and or D.4.
5. The facts in paragraphs E and E.1, E.2, [REDACTED] and or E.4.

fz

##### SIXTH THROUGH TENTH SPECIFICATIONS

##### GROSS INCOMPETENCE

Respondent is charged with practicing the profession with gross incompetence in violation of N.Y. Educ. Law §6530(6) (McKinney Supp. 1996) in that, Petitioner charges:

6. The facts in paragraphs A and A.1, A.2 and or A.3.
7. The facts in paragraphs B and B.1, B.2 and or B.3.
8. The facts in paragraphs C and C.1, C.2 and or C.3.



9. The facts in paragraphs D and D.1, D.2, D.3 and D.4.
- FZ 10. The facts in paragraphs E and E.1, E.2, [REDACTED] and E.4.

**ELEVENTH SPECIFICATION**

**NEGLIGENCE ON MORE THAN ONE OCCASION**

Respondent is charged with practicing the profession with negligence on more than one occasion in violation of N.Y. Educ. Law §6530(3) (McKinney Supp. 1996) in that, Petitioner charges two or more of the following:

- FZ 11. The facts in paragraphs A and A.1, A and A.2, A and A.3, B and B.1, B and B.2, B and B.3, C and C.1, C and C.2, C and C.3, D and D.1, D and D.2, and D.3, D and D.4, E and E.1, E and E.2, [REDACTED] and/or E and E.4.

**TWELFTH SPECIFICATION**

**INCOMPETENCE ON MORE THAN ONE OCCASION**

Respondent is charged with practicing the profession with incompetence on more than one occasion in violation of N.Y. Educ. Law §6530(5) (McKinney Supp. 1996) in that, Petitioner charges two or more of the following:


- FZ 12. The facts in paragraphs A and A.1, A and A.2, A and A.3, B and B.1, B and B.2, B and B.3, C and C.1, C and C.2, C and C.3, D and D.1, D and D.2, and D.3, D and D.4, E and E.1, E and E.2, [REDACTED] and/or E and E.4.

THIRTEENTH SPECIFICATION  
FAILING TO MAINTAIN RECORDS

Respondent is charged with failing to maintain records which accurately reflect the evaluation and treatment of the patient in violation of N.Y. Educ. Law §6530(32) (McKinney Supp 1996) in that Petitioner charges:

13. The facts in Paragraphs A and A.1 and/or B and B.1.

DATED: *Sept 27*, 1996  
Albany, New York

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

## EXHIBIT B

### TERMS OF PROBATION

1. Musheer Hussain, M.D. (hereafter "Respondent"), during the period of probation shall conduct himself in all ways in a manner befitting his professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his profession.
2. Respondent shall submit written notification to the New York State Department of Health addressed to the Director, Office of Professional Medical Conduct (OPMC), Hedley Park Place, 4th Floor, 433 River Street, Troy, New York 12180; said notice is to include a full description of any employment and practice; professional and residential addresses and telephone numbers within or without the State of New York; and any and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty (30) days of each action.
3. Respondent shall submit written proof to the Director, OPMC, as aforesaid, that Respondent is currently registered with the New York State Education Department; said proof of the above to be submitted no later than sixty (60) days following the effective date of this Order.
4. 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 member of the OPMC staff at the discretion of the Director of the Office.
5. The period of probation shall be tolled during periods Respondent is not engaged in the active practice of medicine in the State of New York. Respondent shall notify the 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 OPMC again prior to any change in that status. The period of probation shall resume and any terms of probation which were not fulfilled while Respondent was not in New York State shall be fulfilled upon his return to practice in New York State.
6. Respondent's professional performance may be reviewed by the Director, OPMC. This review may include, but not be limited to, a review of office records, patient records and/or hospital charts, interviews with or periodic visits with Respondent and his staff at practice locations or OPMC offices.

7. Respondent shall make available for review by the Office of Professional Medical Conduct and/or in OPMC's discretion, by a physician proposed by Respondent and approved in writing by the Director of OPMC, complete copies of any and all medical and office records selected by the OPMC. Respondent shall fully cooperate in the review process.
8. Respondent shall maintain legible and complete medical records which accurately reflect the evaluation and treatment of patients. The medical records shall contain all information required by state rules and regulations regarding controlled substances.
9. Respondent shall practice medicine only when monitored by a licensed physician, board certified in an appropriate specialty, ("practice monitor") proposed by Respondent and subject to the written approval of the Director of OPMC. The practice monitor shall be proposed by Respondent and approved by OPMC within thirty days of the effective date of this Order.
  - a. Respondent shall make available to the practice monitor any and all records or access to the practice requested by the practice monitor, including on-site observation. The practice monitor shall visit Respondent's medical practice at each and every location, on a random unannounced basis at least once per quarter and shall examine a selection, no less than 10 percent, of records maintained by Respondent, including patient records, prescribing information and office records. The review will determine whether the Respondent's medical practice, including but not limited to his performance of minor surgical procedures as described in paragraph 1 of the Application for Consent Order, is conducted in accordance with the generally accepted standards of professional medical care and with the limitations placed on Respondent's practice of medicine by the terms of this Application for Consent Order. Any perceived deviation by Respondent from accepted standards of medical care, the terms of this Application for Consent Order or refusal by Respondent to cooperate with the practice monitor shall be reported within twenty-four (24) hours to the OPMC.
  - b. Respondent shall be solely responsible for all expenses associated with monitoring, including fees, if any, to the monitoring physician.
  - c. Respondent shall cause the practice monitor to report quarterly, in writing, to the Director, OPMC.
  - d. Respondent shall maintain medical malpractice insurance coverage with limits no less than \$2 million per occurrence and \$6 million per policy year, in accordance with Section 230 (18)(b) of the Public Health Law. Proof of coverage shall be submitted to

the Director, OPMC, prior to Respondent's practice after the effective date of this Order.

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

## **APPENDIX II**

## TERMS OF PROBATION

1. Musheer Hussain, M.D. (hereafter Respondent), during the period of probation shall conduct himself in all ways in a manner befitting his professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his profession.
2. Respondent shall submit written notification to the New York State Department of Health addressed to the Director, Office of Professional Conduct (OPMC), Hedley Park Place, 4th Floor, 433 River Street, Troy, New York 12180; said notice is to include a full description of any employment and practice; Professional and residential addresses and telephone numbers within or without the State of New York and any and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty (30) days of each action.
3. Respondent shall submit written proof to the Director, OPMC, as aforesaid, that Respondent is currently registered with the New York State Education Department; said proof of the above to be submitted no later than sixty (60) days following the effective date of this Order.
4. 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 member of the OPMC staff at the discretion of the Director of the OPMC.
5. The period of probation shall be tolled during periods Respondent is not engaged in the active practice of medicine in the State of New York. Respondent shall notify the 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 OPMC again prior to any change in that status. The period of probation shall resume and any terms of probation which were not fulfilled while Respondent was not in New York State shall be fulfilled upon his return to practice in New York State.
6. Respondent's professional performance may be reviewed by the Director, OPMC. This review may include, but not be limited to, a review of office records, patient records and/or hospital charts, interviews with or periodic visits with Respondent and his staff at practice locations or OPMC offices.

7. Respondent shall make available for review by the OPMC and/or in OPMC's discretion, by a physician proposed by Respondent and approved in writing by the Director of OPMC, complete copies of any and all medical and office records selected by the OPMC. Respondent shall fully cooperate in the review process.

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

9. Respondent shall practice medicine only when monitored by a licensed physician, board certified in an appropriate specialty, ("practice monitor") proposed by Respondent and subject to the written approval of the Director of OPMC. The practice monitor shall be proposed by Respondent and approved by OPMC within thirty days of the effective date of this Order.

a. Respondent shall make available to the practice monitor any and all records or access to the practice requested by the practice monitor, including on-site observation. The practice monitor shall visit Respondent's medical practice at each and every location, which shall include any site where medical care is rendered, except for a private residence, on a random unannounced basis at least once per quarter and shall examine a selection of no less than 10 percent or one record, whichever is greater, of the records maintained by the Respondent, including patient records, prescribing information and office records. The review will determine whether the Respondent's medical practice, including but not limited to his performance of minor surgical procedures as described in paragraph 1 of the Application for Consent Order, is conducted in accordance with the generally accepted standards of professional medical care and with the limitations placed on Respondent's practice of medicine by the terms of this Application for Consent Order. Any perceived deviation by Respondent from accepted standards of medical care, the terms of this Application for Consent Order or refusal by Respondent to cooperate with the practice monitor shall be reported within twenty-four (24) hours to the OPMC.

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

c. Respondent shall cause the practice monitor to report quarterly, in writing, to the Director, OPMC.

d.. Respondent shall maintain medical malpractice insurance coverage with limits no less than \$2 million per occurrence and \$6 million per policy year, in accordance with Section 230 (18)(b) of, the Public Health Law. Proof of coverage shall be submitted to



the Director, OPMC, prior to Respondent's practice after the effective date of this Order.

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