92-52

GIDEON M. KIOKO, M.D.
8301 Osage Terrace
Adelphi, Maryland 20783

Israel H. Weiner, M.D., Chair
Board of Physician Quality Assurance
Department of Health and Mental Hygiene
P.O. Box 2571
4201 Patterson Avenue
Baltimore, Maryland 21215-0002

Re: Surrender of License
License Number: D08283
Case Numbers: 91-0030 and
90-0253.1

Dear Dr. Weiner and Members of the Board:

Please be advised that I have decided to surrender my license to practice medicine in the State of Maryland, License Number D08283. I understand that I may not give medical advice or treatment to any individual, with or without compensation, cannot prescribe medications, or otherwise engage in the practice of medicine as it is defined in Md. Health Occ. Code Ann. §14-101 (1991 Replacement Volume). In other words, I understand that surrender of my license means that I am in the same position as an unlicensed individual. This decision to surrender my license to practice medicine in the State of Maryland is IRREVOCABLE and PUBLIC.

This Letter of Surrender shall become a public document and shall become effective immediately upon its acceptance by the Board of Physician Quality Assurance (the "Board"), that date being the date on which the Board accepts this Letter of Surrender.

My decision to surrender my license to practice medicine has been prompted by an investigation of my licensure by the Board. This investigation revealed the following:

1. That during the period April 1989 through October 1989, I performed abortions at the Hillview Women's Medical Center ("Hillview"), located in Suitland, Maryland;

2. That during said period, unqualified individuals administered general anesthesia, in the form of intravenous Methohexital ("IV Brevital"), to patients before and during the course of abortions which I performed;

3. That two (2) patients, on July 12, 1989 and September 9, 1989, respectively, suffered cardiac arrests as a result of anesthesia complications during abortion procedures which I

performed. As a result of the anesthesia complications described above, the patient who had suffered a cardiac arrest on July 12, 1989 was pronounced legally dead on July 15, 1989; and the patient who had suffered a cardiac arrest on September 9, 1989 sustained massive, permanent brain damage;

4. That during the period February 1990 through the present, I have performed abortions at the CYGMA Health Center ("CYGMA"), located in Kensington, Maryland. I became Medical Director at CYGMA in November 1990;

5. That during said period, I have performed abortions in conjunction with a Certified Registered Nurse Anesthetist, who administers general anesthesia to patients during said procedures;

6. That during said period when general anesthesia was administered, neither an anesthesiologist nor a qualified licensed physician is physically present who has knowledge and experience in resuscitation, anesthetic drugs, and their reactions.

The Board's investigation resulted in charges under the Maryland Medical Practice Act (the "Act"). Specifically, the Board charged me with the commission of prohibited acts under Maryland Health Occ. Code Ann. ("H.O.") §§14-404(a)(3), (18), and (22) (1991 Replacement Volume).[1] The pertinent provisions of the Act provide as follows:

> (a) Subject to the hearing provisions of §14-405 of this subtitle, the Board, on the affirmative vote of a majority of its full authorized membership, may reprimand any licensee, place any licensee on probation, or suspend or revoke a license if the licensee:
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> (3) Is guilty of ... unprofessional conduct in the practice of medicine;
>
> (18) Practices medicine with an unauthorized person or aids an unauthorized person in the practice of medicine; and
>
> (22) Fails to meet appropriate standards as determined

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[1]Section II, Chapter 6, Acts 1990, approved February 16, 1990, effective on or about January 1, 1991, renumbered former Health Occ. Code Ann. §§14-504(a)(3), 14-504(a)(18) and 14-504(a)(22) as Health Occ. Code Ann. §§14-404(a)(3), 14-404(a)(18), and 14-404(a)(22), respectively.

by appropriate peer review for the delivery of quality medical and surgical care performed in an outpatient surgical facility, office, hospital, or any other location in this State.

I received a copy of the Statement of Charges Under the Maryland Medical Practice Act, as described above, on October 18, 1991. A copy of the Statement of Charges is attached hereto and incorporated herein.

I have decided to surrender my license to practice medicine in the State of Maryland to avoid further prosecution on the aforementioned charges under the Act. The basis for the charges against me include the findings of the investigation described above.

Pursuant to H.O. §14-410, "except by the express stipulation and consent of all parties to a proceeding before the Board or any of its investigatory bodies, in a civil or criminal action: any order passed by the Board is not admissible in evidence."

I understand that the Board will advise the Federation of State Medical Boards and the National Practitioners Data Bank, as required by Senate Bill 99-660, through this Letter of Surrender, and any response to inquiry, that I have surrendered my license to practice medicine as resolution of the matters pending against me. I also understand that, in the event that I would apply for reinstatement of my license in Maryland, or apply for licensure in any other state or jurisdiction, that his Letter of Surrender, and all underlying documents, may be released or published by the Board to the same extent as a final order which would result from a disciplinary action, under the Public Information Act, State Gov't. Code Ann. §10-611 et seq.

I acknowledge that, on the date the Board accepts this Letter of Surrender, I must present to the Board: Maryland License D08283, including any renewal certificates and wallet-sized renewal cards; and Maryland Controlled Dangerous Substances Registration Certificate M34090, including any prescription pads bearing my name and any prescription ordering forms in my possession or under my control.

I agree to sign DEA Form 104, Voluntary Surrender of Controlled Dangerous Substances Privileges. I acknowledge that the Board will send my DEA Registration Certificate, DEA Form 104, and a copy of this Letter of Surrender to Kathryn P. Daniels, Diversion Group Supervisor, DEA, 400 6th Street, S.W., Washington, D.C. 20024.

I acknowledge that the Board will send my Maryland Controlled Dangerous Substances Registration Certificate and a

copy of this Letter of Surrender to Charles H. Tregoe, Chief, Division of Drug Control, 4201 Patterson Avenue, Baltimore, Maryland 21215.

I affirm that I have a medical license in the District of Columbia. I acknowledge that, on the date the Board accepts this Letter of Surrender, the Board will send a copy of this document to: John P. Hopkins, Executive Director of the District of Columbia Board of Medicine, 605 G Street, N.W., Room 202, Lower Level, Washington, D.C. 20001.

I affirm that I have a clinic-based practice, located at the CYGMA Health Center, located 3835 Farragut Avenue, Kensington, Maryland, 20985. I acknowledge that upon the acceptance of this Letter of Surrender by the Board, the Board shall notify this institution that I have surrendered my medical license. I affirm that I will terminate this and any other practice that I have in Maryland upon the acceptance of this Letter of Surrender by the Board. I acknowledge that I do not have privileges at any hospital, or any other outpatient surgical facility, office, or any other location in Maryland.

I affirm that I have a current Maryland Controlled Dangerous Substances Registration Certificate M34090, expiration date June 30, 1992, issued by the Maryland Division of Drug Control; and that I have a current United States Drug Enforcement Administration ("DEA") Certificate for the State of Maryland, Certificate BK2873277, expiration date December 31, 1994, issued by the DEA.

Finally, I wish to make clear that I have consulted with an attorney before signing this letter SURRENDERING my license to practice medicine in the State of Maryland. I understand both the nature of the Board's actions and this Letter of Surrender fully. I make this decision knowingly and voluntarily.

Very truly yours,

12/3/91
Date

Gideon M. Kioko
Gideon M. Kioko, M.D.

VERIFICATION

~~STATE OF~~ WASHINGTON
~~CITY/COUNTY~~ OF COLUMBIA
DISTRICT

I HEREBY CERTIFY that on this 3RD day of DECEMBER, 1991, before me, a Notary Public of the State and City/County aforesaid, personally appeared Gideon M. Kioko, M.D. and declared

and affirmed under the penalties of perjury that signing the foregoing Letter of Surrender was his voluntary act and deed.

AS WITNESSETH my hand and notarial seal.

Notary Public

My Commission Expires My Commission Expires June 14, 1994

On behalf of the Board of Physician Quality Assurance, on this 5TH day of DECEMBER, 1991, I accept Gideon M. Kioko, M.D.'s PUBLIC IRREVOCABLE surrender of his license to practice medicine in the State of Maryland.

Israel H. Weiner, M.D., Chair
Board of Physician Quality
Assurance

cc: J. Michael Compton, Acting Executive Director, BPQA
Margaret T. Anzalone, Deputy Director, BPQA
Brian J. Nash, Esquire
Carl F. Ameringer, AAG, Deputy Counsel
Robert J. Gilbert, AAG, Administrative Prosecutor
C. Frederick Ryland, AAG, Counsel to the Board
Steven J. Poliakoff, Staff Attorney
Sylvia J. Anderson, Paralegal

IN THE MATTER OF	*	BEFORE THE
GIDEON M. KIOKO, M.D.	*	STATE BOARD OF PHYSICIAN
Respondent	*	QUALITY ASSURANCE
License Number: D08283	*	Case Number: 90-0253.1, 91-0030

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CHARGES UNDER THE MARYLAND MEDICAL PRACTICE ACT

Based on information received by the State Board of Physician Quality Assurance (the "Board"), the Board hereby charges Gideon M. Kioko, M.D. (the "Respondent") (D.O.B. 11/21/39), License Number D08283, under the Maryland Medical Practice Act (the "Act"), Md. Health Occ. Code Ann. ("H.O.") §§14-404(a)(3), 14-404(a)(18) and 14-404(a)(22) (1991 Replacement Volume)[1] .

The pertinent provisions of the Act provide the following:

> (a) Subject to the hearing provisions of §14-405 of this subtitle, the Board, on the affirmative vote of a majority of its full authorized membership, may reprimand any licensee, place any licensee on probation, or suspend or revoke a license if the licensee:
>
> (3) Is guilty of ... unprofessional conduct in the practice of medicine;
>
> (18) Practices medicine with an unauthorized person or aids an unauthorized person in the practice of medicine; and
>
> (22) Fails to meet appropriate standards as determined

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[1]Section 11, Chapter 6, Acts 1990, approved February 16, 1990, effective on or about January 1, 1991, renumbered former Health Occ. Code Ann. §§14-504(a)(3), 14-504(a)(18) and 14-504(a)(22) as Health Occ. Code Ann. §§14-404(a)(3), 14-404(a)(18), and 14-404(a)(22), respectively.

by appropriate peer review for the delivery of quality medical and surgical care performed in an outpatient surgical facility, office, hospital, or any other location in this State;

ALLEGATIONS OF FACT

The Board bases its charges on the following facts that the Board has cause to believe are true:

1. At all times relevant to these charges, the Respondent was and is licensed to practice medicine in Maryland.

2. On or about April 1989, the Respondent entered into an agreement with Hillview Women's Medical Center ("Hillview"), located in Forestville, Maryland, wherein he would perform therapeutic abortions and related procedures at Hillview, and would be compensated for these services on a case-by-case basis.

3. During the period April 1989 to November 1989, during which time the Respondent performed abortions at Hillview, both local anesthesia and intravenous Brevital (methohexital) ("IV Brevital") were utilized at Hillview as types of anesthesia during abortion procedures. The type of anesthesia utilized during a given abortion procedure was selected in advance of the procedure by the patient.

4. On July 8, 1989, Patient A, a 34 year old female, sought to obtain a therapeutic abortion at Hillview. On this date, the patient received initial abortion counseling and laboratory tests at the clinic. On July 12, 1989, an ultrasound was performed, which determined the patient's fetal gestational age at sixteen

and-a-half weeks. The patient signed an undated consent form which authorized the Respondent (or his designee) to perform an abortion and to administer anesthesia.

On July 12, 1989, one or more health care providers or other individuals at Hillview made a decision to use IV Brevital during the course of the patient's abortion procedure. The medical record does not contain documentation of who administered the anesthesia, the dosage or concentration of the anesthesia administered, the patient's weight, or the amount of fluid given. The medical record further does not contain documentation that the Respondent performed a physical examination of the patient prior to the procedure, or evaluated or assessed the patient as a proper candidate for IV Brevital or other type of medication.

After the IV Brevital was administered, the Respondent started to perform the abortion. There is no documentation in the medical record of the level of anesthetic depth, the monitoring of the patient's vital signs, the adequacy of respiration, or that qualified medical personnel were present to administer or monitor the administration of the medication.

No other operative notes exist in the medical record. A code note, dated July 12, 1989, by Dr. Raymond Taylor, states that the patient was unresponsive and hypotensive, with a deteriorating blood pressure reading, and was bradycardic. After fifteen minutes of cardiopulmonary resuscitation and advanced cardiac life support, the patient was transported by ambulance to Malcolm Grow

USAF Medical Center ("MAC"). At MAC, the patient was noted to be in ventricular tachycardia, which deteriorated into ventricular fibrillation. Although the patient was successfully resuscitated, the patient did not regain neurologic function, and was pronounced legally dead on July 15, 1989. The MAC medical record narrative summary stated that the patient

> "was anesthetized with 250 mg. of Brevital IV and was noted to respond rather rapidly to the anesthesia. Three minutes into the procedure, the patient's blood was noted to be very dark. The assessment was noted that she was having some 'respiratory distress.' The procedure was finished within a total of five (5) minutes with full expulsion of the products of conception."

The final diagnosis in the MAC medical record narrative summary noted "brain death secondary to anoxia as a result of possible opiate drug interaction with anesthesia or possible idiosyncratic anesthetic reaction during a voluntary abortion performed three days prior to death."

5. On September 9, 1989, Patient B, a 26 year old female, sought to obtain a therapeutic abortion of a thirteen week pregnancy at Hillview. On or about this date, the patient signed a consent form authorizing that the abortion be performed. The consent form signed by the patient does not designate the name of a particular physician as responsible for the performance of the abortion and administration of anesthesia, although a blank space is specifically so designated on the consent form for this purpose.

On or about the above date, one or more health care providers or other individuals at Hillview made a decision to use IV Brevital during the course of the patient's abortion procedure. The Respondent did not conduct an examination of the patient to determine whether the patient was a proper candidate for IV Brevital, the anesthetic agent administered during the procedure.

At the time the Respondent and the attending nurse entered the operating room to perform the abortion procedure, the patient appeared to be unconscious on the operating room table. An intravenous line previously had been placed in the patient's arm. The Respondent measured the size of the patient's uterus and proceeded to perform the abortion procedure. During the entire course of time in which the Respondent and the nurse entered the operating room until the conclusion of the procedure, no other medical personnel were in the room either to administer or monitor the administration of the anesthesia, or to monitor the patient's vital signs. The operative record indicates that the patient received "50 cc of Brevital," although no concentration of the drug is listed. There is no documentation in the record that oxygen was administered prior to the deterioration of the patient's cardiorespiratory status.

During the course of the procedure, the attending nurse noticed that the patient's lips were turning blue. The operative note stated that "apparently patient went into respiratory depression-arrest." At that point, the Respondent continued the

procedure. The attending nurse called for Barbara Lofton. After Mrs. Lofton entered the operating room, Dr. Raymond Taylor, a physician in the employment of Hillview who provided aftercare services to abortion patients and who happened to be on the premises, was summoned, and initiated resuscitative efforts. The Respondent did not participate in the resuscitative efforts, other than attach an EKG line to one of the patient's arms.

The Prince George's County Fire and Rescue Squad was then called, arrived thereafter, and assumed control of the resuscitative efforts. The patient was then transported to Greater Southeast Community Hospital. The patient was successfully resuscitated, but suffered massive neurologic damage. The patient was subsequently transferred to a nursing facility, where she presently resides.

6. In a letter to the Board, dated March 29, 1990, the Respondent described his role at Hillview and in the care delivered to patients A and B above:

> I do not give, nor have I ever given, any general anesthetics. I only give local anesthetics (that is paracervical blocks).
>
> In the first two cases where Brevital was given, I did not give it, nor did I consent to it. I was not consulted or asked about it. I did not even start intravenous fluids. The decision to administer Brevital was made by the patient and the clinic, and during those [sic] time, I would be called in. I would be notified that "the patient is now asleep. Doctor. You may start the procedure". I would do the procedure, complete my part of the medical records, observe the patient for any signs of unusual bleeding for a reasonable time, and participate in the discharge procedures. I accept

responsibility for any cause regarding potential or perceived post operative complications.

I, therefore, had nothing to do with the Brevital administered to these two patients. Other contract physicians were also working under similar terms, and, like me, they had nothing to do with the administration of Brevital. I suppose that I was just unlucky at that time and happened to be there when this incident happened.

Regarding specific allegations: some of these allegations are just untrue. In the case of ... [Patient A] (July 12, 1989); the decision to administer Brevital was made by the patient and the Clinic. I, as the operating surgeon, was not consulted, nor did I consent to the administration of the agent.

I understand that it was given by Dr. Barbara Lofton-Clinical Practitioner. My initial contact with the patient was the initial sizing evaluation to determine the gestational age of the pregnancy. The next contact by me with the patient was when the patient was already asleep. As I was finishing the procedure, I called the attention to the administers [sic] of the anesthetic, that the patient's blood was getting unusually dark. At that time, in my view, adequate resuscitation efforts was immediately instituted with airway established and 911 was called. EKG and Oxygen were available and were used. Dr. Taylor, a Cardiology fellow headed the resuscitation effort. It is just not true that adequate resuscitation was not done and that the equipment was not available. Incidentally, this patient had recently used Opium, though the patient had denied this in her medical history.

The case of ... [Patient B] ... is similar. The patient was put to sleep, with Brevital. I was not in the Operating Room at the time. Once again I was called in to do the procedure once the patient was deemed asleep. I was not consulted, nor did I participate in the decision to give the agent, but once again, I know there was immediate and adequate resuscitation effort. (Please refer to the letter from Dr. Barbara Lofton). The only case I directly had complete responsibility for is that of ... [Patient C].

7. In a subsequent letter to the Board, dated April 18 1990, written by Mrs. Barbara Lofton, and jointly signed by Mrs. Lofton and the Respondent, it was stated as follows:

> He does not administer general anesthetics, however, he does on occassion [sic] administer I.V. sedations. He has never administered Sodium Brevital, but is aware of the drug being given by the nurse as many medications are given. Many policies existed by the clinic as they do in many circumstances, and without having a problem with the medication having been administered in the past. He made no recommendations to the clinic staff or the administration. Many dentist offices use the drug successfully without complications. We know that the drug is largely successful in providing a twilight sleep. When coming to the clinic, he was never asked about the drug, or confronted with the drug, and probably for good reason, there was never a prior complication with the medication. His role essentially was the following:
>
> - to monitor the patient
> - to complete the procedure
> - to complete the medical records
> - to write discharge orders or special orders
> - to observe the patient for any unusual signs and symptoms, including bleeding

8. The Respondent terminated his employment at Hillview in October 1990.

9. The appropriate standard of care requires that where an ambulatory surgical center utilizes anesthesia during surgical procedures, the anesthesia should be administered only under the direction of an anesthesiologist, qualified physician, or a certified registered nurse anesthetist ("CRNA") under the direct supervision of an anesthesiologist or licensed physician or dentist.

Where a physician performs surgical procedures, such as abortions, in an ambulatory surgical center, under circumstances where anesthesia has been administered to those patients, and where no qualified anesthesia care provider is present, and that physician is the only physician providing care to the patient during the surgical procedure, the appropriate standard of care requires that the physician shall:

a) be qualified in the administration of anesthesia and other sedative drugs or medications, including preoperative and post-operative assessment of patients;

b) be knowledgeable about the type, dosage and route of the administration of anesthesia;

c) ensure that the patient is an appropriate candidate for the anesthesia used during the procedure before the patient is administered the drug;

d) ensure that the patient's vital signs and respiration are appropriately monitored before, during, and after the procedure;

e) ensure that the patient is monitored for anesthetic depth;

f) be knowledgeable and experienced in resuscitation, and ensure that the proper medical equipment, resuscitative drugs, and qualified medical personnel are immediately available in the event of a medical emergency;

g) perform a physical examination of the patient, or ensure that a physical examination of the patient was performed by qualified medical personnel prior to the administration of the anesthesia and the performance of the surgical procedure; and

h) ensure that qualified medical personnel administered the anesthesia, in the event that the physician did not administer the anesthesia.

The appropriate standard of care requires that where a physician performs surgical procedures in an ambulatory surgical center under conditions in which the physician knew or should have known that failed to meet the appropriate standard of medical and surgical care, the physician performing the surgical procedures shall take action to correct said conditions, or, in the event that the physician is unable to correct said conditions, not perform any furthur procedures in the surgical center unless and until said conditions are altered, modified, or are otherwise changed to comply with appropriate standards required for the delivery of quality medical and surgical care.

10. Under the above circumstances, the Respondent failed to meet the appropriate standard of medical and surgical care, in whole or in part, for the following reasons:

a. The anesthesia was not administered by or under the direct supervision of qualified medical personnel. The anesthesia administered to the above patients, IV Brevital, was not administered by or under the direction of an anesthesiologist, qualified physician or dentist, or CRNA. The Respondent knew, or, under the circumstances, should have known that the medication that the patients had received had not been administered by qualified medical personnel, but nevertheless performed the surgical procedures in question in the absence of the qualified medical personnel. The Respondent should have been aware that Brevital is an intravenous anesthetic that requires appropriate monitoring of

both anesthetic depth and vital signs during its administration. The Respondent should have been aware that failure to monitor these signs could lead to a state of general anesthesia and to cardiorespiratory instability and arrest.

b. The Respondent was not qualified in the administration of IV Brevital. During the above procedures, the Respondent was the only physician present providing medical and surgical treatment during the operative procedures. Designated medical personnel were not present during the procedures who were qualified in the administration of the above described anesthetic drugs. The Physicians' Desk Reference (1989), in reference to Brevital Sodium, states, in a section entitled "Warning," that "[t]his drug should be administered by persons qualified in the use of intravenous anesthetics. Cardiac life support equipment must be immediately available during use of Methohexital." In the absence of other qualified personnel present at Hillview to participate in the administration of the anesthesia, the Respondent assumed the responsibility for the administration of anesthesia and the medical and surgical care delivered to these patients. In the case of Patient A, the patient signed a consent form in which it was specifically stated that the patient authorized the Respondent or his designee to, among other things, "administer an anesthetic of his or her choice in connection therewith."

c. The Respondent was not aware of and/or did not attempt to determine the type and dosage of administration of anesthesia

delivered to the above patients. The Respondent was unfamiliar with IV Brevital, the agent utilized in connection with the surgical procedures performed. The Hillview medical record chart does not appropriately indicate the dosage or concentration of the anesthesia administered to the above patients. The appropriate standard of care requires that the medical record document dosage and time frame of the anesthesia administered. The Respondent was unfamiliar with the effects and properties of the medication that had been administered, and took no action to determine the level and effect of the medication so that the medication could be administered at an appropriate rate.

d. The Respondent did not insure that the patients were appropriate candidates to receive the intravenous anesthetic, Brevital, prior to the administration of said anesthetic. The Respondent did not elicit a full and complete medical history, or conduct a physical examination of the patients, or insure that these preoperative procedures were performed to determine whether the patients were appropriate candidates for the anesthesia administered. An appropriate medical history should include, but is not limited to documentation of the following: present status; NPO status; allergies; medication usage; past conditions, diseases or illnesses; gynecologic, menstrual and pregnancy history; surgeries; review of systems; general information and family history; prior anesthesia complications; and contraindications to

anesthesia. Complete documentation of this data does not exist in the medical record.

e. The Respondent did not ensure that the patients were appropriately monitored before and during the surgical procedures. In the above cases, the first indication that the patients were in cardiorespiratory or respiratory distress consisted of the Respondent noting that the patient's blood was becoming "unusually dark" (Patient A) or the nurse pointing out that the patient was becoming cyanotic (Patient B). The Respondent did not ensure that the patient's vital signs were being appropriately monitored. The appropriate standard of care requires that where a patient is administered IV Brevital, qualified medical personnel must monitor the patient through frequent determinations of blood pressure (from the time preceding the induction of anesthesia, throughout its administration, and until the patient has recovered from anesthesia); respiratory function, including continuous monitoring of respiratory pattern, rate, and the absence of airway obstruction; and heart rate. In the event that the patient receives general anesthesia, the appropriate standard of care requires that qualified medical personnel perform all of the above, and also undertake continous EKG monitoring.

There is no documentation in either medical record that the patients in question were monitored for blood pressure, respiration function, or EKG.

f. The Respondent did not ensure that the proper medical equipment, resuscitative drugs, or qualified medical personnel were present during the operative procedures performed. In the above patients, the Respondent did not make adequate provisions for qualified medical personnel to be actually present to monitor the patients and participate in resuscitative efforts if so required. Although another physician, Dr. Raymond Taylor, participated in resuscitation efforts, this physician, who had been employed by Hillview primarily for aftercare services for abortion patients, had not been assigned to monitor these patients during the procedures or in the event of a medical emergency. In the case of Patient B, the appropriate resuscitative drugs and equipment were not present in case of a medical emergency.

g. The Respondent did not perform, or ensure that a complete physical examination was performed on the above patients prior to the administration of anesthesia and the performance of the surgical procedure. Under the above circumstances, when a patient is scheduled for surgery and administration of the intravenous anesthetic, Brevital, a physical examination should include, but is not limited to determination of temperature; blood pressure; heart and respiratory rate; and examination of the upper airway, heart and lungs. A baseline neurologic status should also be noted. There is no documentation in the Hillview medical record that these aspects of the physical examination were carried out prior

to the administration of anesthesia to the patients or the performance of the above surgical procedures.

h. In the above cases, the Respondent performed surgical procedures under conditions that failed to meet appropriate standards for the delivery of quality medical and surgical care. The Respondent knew or should have known that unqualified medical personnel had administered anesthesia to his patients. without proper patient evaluation or monitoring, or without proper precautions, including adequate resuscitative drugs and equipment in the event of a medical emergency. The Respondent himself was unqualified to assume these responsibilities. The Respondent failed to meet the appropriate standard of care in insuring that these inappropriate conditions were modified, altered or changed to comply with appropriate standards required for the delivery of quality medical and surgical care. In the event that the Respondent was unable to correct these conditions, the appropriate standard of care required that the Respondent not perform these procedures at this facility until these conditions were so corrected.

11. The Respondent practiced medicine with unauthorized person(s) at Hillview. During the time in which the Respondent performed abortions at Hillview, and in the two (2) patients referred to above, unauthorized personnel administered anesthesia to patients prior to abortion procedures performed by the Respondent. The practice of medicine includes the administration of

anesthesia. The Respondent knew, or, under the circumstances, should have known, that unauthorized person(s) were acting in this capacity, and continued to perform abortions under these circumstances.

12. During the period February 1990 through the present, the Respondent has been employed by CYGMA Health Center ("CYGMA"), located in Kensington, Maryland. CYGMA is a health care facility that performs elective pregnancy terminations and provides family planning services. The Respondent became the Medical Director at CYGMA in November 1990.

During this period, in which the Respondent performed abortions at CYGMA, both local and general anesthesia were and are utilized during abortion procedures. In abortion procedures in which general anesthesia is used, a CRNA is on staff to administer the anesthesia. The Respondent performs abortions on patients in conjunction with the CRNA, who administer general anesthesia to patients during the procedures. During these procedures, neither an anesthesiologist nor a licensed physician or dentist is physically present who has knowledge and experience in resuscitation, anesthetic drugs, and their reactions.

13. The practice of nurse anesthesia is defined as performing acts in collaboration with an anesthesiologist, licensed physician or dentist which require substantial specialized knowledge, judgment, and skill related to the administration of anesthesia, including preoperative and postoperative assessment of patients;

administering anesthetics; monitoring patients during anesthesia; management of fluid in intravenous therapy; and respiratory care. COMAR 10.27.06.01.A. An anesthesiologist is defined as a Maryland licensed physician who has had special training in the field of anesthesiology, who administers anesthesia on a regular basis, and who devotes a substantial portion of his medical practice to the practice of anesthesiology. COMAR 10.27.06.01.F. A licensed physician or dentist is defined as a physician or dentist who has knowledge and experience in resuscitation, anesthetic drugs, and their reactions. COMAR 10.27.06.01.G.

In the event that a CRNA is employed to engage in the practice of nurse anesthesia, COMAR 10.27.06.01.A., an anesthesiologist, licensed physician, or dentist shall be physically available to the CRNA for consultation at all times during the administration of and recovery from anesthesia. COMAR 10.27.06.02.B.(1).

Where a physician performs surgical procedures, such as abortions, in an ambulatory surgical center, under circumstances where anesthesia has been administered to those patients by a CRNA, and where no other qualified anesthesia care provider is present, and that physician is the only physician providing care to the patient during the surgical procedure, the appropriate standard of care requires that the physician ensure that an anesthesiologist, licensed physician or dentist (as defined in COMAR 10.27.06.01.G.) is physically available for consultation

with the CRNA at all times during the administration of and recovery from anesthesia.

The appropriate standard of care also requires that if a physician is acting in the capacity of Medical Director under the above circumstances, the physician shall ensure that the appropriate anesthesia care provider, as defined above, is physically available for consultation with the CRNA at all times during the administration of and recovery from anesthesia.

14. Under the above circumstances, the Respondent fails to meet the appropriate standard of medical and surgical care for the following reasons:

a. The Respondent, who performed abortions at CYGMA in conjunction with a CRNA who administered anesthesia during the procedure, did not ensure that an anesthesiologist or qualified licensed physician was physically available to the CRNA for consultation at all times during the administration of and recovery from anesthesia.

b. The Respondent, acting in his capacity as Medical Director at CYGMA, did not ensure that an anesthesiologist or qualified licensed physician was physical available to the CRNA for consultation at all times during the administration of and recovery from anesthesia.

15. Based on allegations of fact, paragraphs 1 through 14 above, in whole or in part, the Respondent engaged in unprofess-

ional conduct in the practice of medicine. It is unprofessional conduct in the practice of medicine for a physician to perform surgical procedures, under circumstances as described in the above allegations of fact.

NOTICE OF POSSIBLE SANCTIONS

If, after a hearing, the Board finds that there are grounds for action under Md. Health Occ. Code Ann. §§14-404(a)(3), 14-404(a)(18), and 14-404(a)(22), the Board may impose disciplinary sanctions against Respondent's license, including revocation, suspension, or reprimand, and may place the Respondent on probation.

NOTICE OF HEARING, SETTLEMENT CONFERENCE AND PREHEARING CONFERENCE

A hearing in this matter has been scheduled for Monday, December 16, 1991 at 9:00 a.m. in the Office of Administrative Hearings, Administrative Law Building, Greenspring Station, 10753 Falls Road, Lutherville, Maryland 21093.

In addition a settlement conference in this matter has been scheduled for Wednesday, November 13, 1991 at 1:30 p.m. in the Board's office, 4201 Patterson Avenue, Baltimore, Maryland 21215; and a prehearing conference in this matter has been scheduled for Tuesday, December 10, 1991 at 9:00 a.m. in the Office of Administrative Hearings, Administrative Law Building, Greenspring Station, 10753 Falls Road, Lutherville, Maryland 21093. The nature

and purpose of the settlement conference and prehearing conference is described in the attached letter to the Respondent.

10/17/91
Date

Israel H. Weiner, M.D., Chair
Board of Physician Quality
Assurance