STATE OF MICHIGAN
DEPARTMENT OF CONSUMER & INDUSTRY SERVICES
BUREAU OF HEALTH SERVICES
BOARD OF MEDICINE
DISCIPLINARY SUBCOMMITTEE

In the Matter of

VINAY KUMAR MALVIYA, M.D.
_____/

Complaint No. 43-99-0566-00

ADMINISTRATIVE COMPLAINT

Attorney General Jennifer M. Granholm, through Assistant Attorney General Merry A. Rosenberg, on behalf of the Department of Consumer & Industry Services, Bureau of Health Services (Complainant), files this Complaint against Vinay Kumar Malviya, M.D., (Respondent), alleging upon information and belief as follows:

1. The Board of Medicine (Board), an administrative agency established by the Public Health Code, 1978 PA 368, as amended; MCL 333.1101 *et seq*; MSA 14.15(1101) *et seq*, is empowered to discipline licensees under the Code through its Disciplinary Subcommittee (DSC).

2. Respondent is currently licensed to practice medicine pursuant to the Public Health Code. At all times relevant to this Complaint, Respondent was board certified in obstetrics/ gynecology with a sub-specialty certificate in gynecologic oncology.

3. Section 16221(a) of the Public Health Code provides the DSC with authority to take disciplinary action against Respondent for a violation of general duty and/or any conduct,

practice, or condition which impairs, or may impair, his ability to safely and skillfully practice medicine.

4. Section 16221(b)(i) of the Public Health Code provides the DSC with authority to take disciplinary action against Respondent for incompetence, defined at section 16106(1) to mean "[A] departure from, or failure to conform to, minimal standards of acceptable and prevailing practice for the health profession, whether or not actual injury to an individual occurs."

5. Section 16226 of the Public Health Code authorizes the DSC to impose sanctions against persons licensed by the Board if, after opportunity for a hearing, the DSC determines that a licensee violated one or more of the subdivisions contained in section 16221 of the Public Health Code.

6. M.C. (initials will be used to protect patient confidentiality), a 33-year old pregnant female, was diagnosed with a molar pregnancy (hydatidiform mole) based on the results of an ultrasound and elevated beta HCG (human chorianic gonadotropin) of 68,000. This was M.C.'s first pregnancy and she had a prior history of a fibroid uterus. Based on these results, M.C.'s physician referred her to Respondent.

7. Respondent saw M.C. on February 16, 1993, at which time he noted the presence of a large pelvic abdominal mass he described as 24 weeks in size. He noted her uterus to be 22 weeks in size but, by history, she was only 14-weeks pregnant.

8. An ultrasound performed that day showed a viable intrauterine preganancy without evidence of hydatidiform mole. Her HCG level that day was 60,400.

9. As M.C. still desired a termination of the pregnancy, Respondent performed a dilatation and curettage (D&C) on February 17, 1993, but was unsuccessful in evacuating the fetus or placenta. The failure to evacuate the pregnancy was known when the pathology results returned on February 22, 1993, showed no unequivocal chorionic villi, implantation site, or fetal parts.

10. M.C."s first post-operative visit was on February 19, 1993, at which time she had stopped bleeding but continued to complain of right lower quadrant pain. A gynecologic examination was not performed that day.

11. M.C. returned to Respondent on March 3, 1993, at which time he noted her uterus to be 26 to 28-weeks size and "unchanged from before." She also reported abdominal discomfort. Respondent recommended Methotrexate injections to terminate the pregnancy. According to his records, Respondent believed that a second D&C would be unsuccessful due to the large and irregular size of M.C.'s uterus. M.C. was early in her second trimester of pregnancy at this visit.

12. Per Respondent's plan of treatment, M.C was administered 100mg of Methotrexate on March 2, March 15, and March 31, 1993. On April 2, 1993, Dr. Malviya noted her uterus to be approximately 26 weeks in size and he recommended that she consider a hysterectomy "if she

did not have any use for a uterus." Additional doses of Methotrexate, 200 mg, were administered on April 12, April 27, May 11, and June 3, 1993.

13. Ongoing serial beta HCG's were performed to determine the status of M.C.'s pregnancy as follows:

Date	Result *(mU/ml)*
February 23, 1993	53,600
February 24 1993	51,500
March 10, 1993	33,700
March 24, 1993	16,440
March 30, 1993	14,600
April 7, 1993	12,020
April 16, 1993	10,540
April 26, 1993	5,320
May 4, 1993	6,240
May 11, 1993	14,960
May 25, 1993	5,500
June 3, 1993	7,600
June 16, 1993	8,020

14. In the deposition taken in the underlying malpractice case, Respondent admitted that he was unfamiliar with the use of Methotrexate to induce an abortion in the second trimester and that his method of treatment was "unique...for [the] unusual problem" with which M.C. presented. He further conceded that .no physician examined M.C. prior to the Methotrexate injections of March 15, March 31, April 12, April 27, May 1, and June 3, 1993, which were administered by his nurse. Respondent also testified that he knew that the pregnancy was not completely terminated because the HCG levels, while showing relatively low titers, had not fallen down to zero, and that he never considered fetal viability in relation to the effect of the continued doses of Methotrexate. Finally, Respondent stated that he monitored fetal status by

performing HCG levels and uterine examinations as well as noting the lack of fetal activity, per patient history.

15. Respondent's medical record is devoid of any notation indicating whether M.C. had reported that the fetus had been expelled or that Respondent considered performing an ultrasound to confirm fetal demise.

16. The next reference to a hysterectomy in Respondent's medical chart after the visit of April 2, 1994, was on June 11, 1993, when M.C. presented with extreme discomfort in her lower abdomen. After noting the presence of a 22-24 cm mass in M.C.'s abdomen, Respondent planned to perform a hysterectomy. M.C. thought that the hysterectomy was for her abdominal pain; she did not know she was still pregnant.

17. The hysterectomy was scheduled for June 17, 1993. On June 15, 1993, M.C. began to leak clear fluid from her vagina. M.C. reported to Hutzel Hospital on June 16, 1993, for pre-operative testing for the hysterectomy. At that time, an ultrasound confirmed a 28 1/7 week fetus and she was admitted to labor and delivery.

18. Due to the development of fetal bradycardia, M.C. underwent a Cesarean section on June 19, 1993, resulting in the delivery of a viable 1160 gram premature male with Apgar scores of 1 and 5 at one and five minutes respectively. M.C. was noted to have a "massively enlarged fibroid uterus, at approximately 30 weeks in size, with fibroids obstructing the lower uterine segment". A hysterectomy was performed after an attempt to close the uterus was unsuccessful

due to the presence of the fibroids. The surgery was complicated by an estimated 3000 ccs of blood loss. M.C. received four units of packed red blood cells and two units of fresh frozen plasma intra-operatively.

19. The infant was transported to the neonatal intensive care unit where was treated for respiratory distress, bilateral pneumothorax, anemia, hypotension, hyponatremia, jaundice, apnea, and bradycardia. He was discharged from Hutzel on July 28, 1993, in stable condition.

COUNT I

20. The conduct described above constitutes negligence, in violation of section 16221(a) of the Public Health Code.

COUNT II

21. The conduct described above constitutes incompetence, in violation of section 16221(b)(i) of the Public Health Code.

THEREFORE, Complainant requests that this Complaint be served upon Respondent and that Respondent be offered an opportunity to show compliance with all lawful requirements for retention of the aforesaid license. If compliance is not shown, Complainant further requests that formal proceedings be commenced pursuant to the Public Health Code, rules promulgated pursuant to it, and the Administrative Procedures Act of 1969, 1969 PA 306, as amended; MCL 24.201 *et seq*; MSA 3.560(101) *et seq*.

RESPONDENT IS HEREBY NOTIFIED that, pursuant to section 16231(7) of the Public Health Code, Respondent has 30 days from receipt of this Complaint to submit a written response to the allegations contained in it. The written response shall be submitted to the Bureau of Health Services, Department of Consumer & Industry Services, P.O. Box 30670, Lansing, Michigan, 48909, with a copy to the undersigned assistant attorney general. Further, pursuant to section 16231(8), failure to submit a written response within 30 days shall be treated as an admission of the allegations contained in the Complaint and shall result in transmittal of the Complaint directly to the Board's Disciplinary Subcommittee for imposition of an appropriate sanction.

Respectfully submitted,

JENNIFER M. GRANHOLM
Attorney General

Merry A. Rosenberg (P32120)
Assistant Attorney General
Health Professionals Division
1st Floor One Michigan Building
120 North Washington Square
Lansing, Michigan 48933
Tel: (517) 373-1146
Fax: (517) 241-1997

Dated: June 25, 2001

tlk.mar01cases.malviya.P.AC.6-01