

Public



STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303 Troy, New York 12180-2299

Richard F. Daines, M.D.
Commissioner

James W. Clyne, Jr.
Executive Deputy Commissioner

September 9, 2009

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Faten Anwar, M.D.

Redacted Address

Joel E. Abelove, Esq.

NYS Department of Health

ESP-Corning Tower-Room 2512

Albany, New York 12237-0037

RE: In the Matter of Faten Anwar, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 09-169) 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 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), (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 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,

Redacted Signature

James F. Horan, Acting Director
Bureau of Adjudication

JFH:cah

Enclosure

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

IN THE MATTER
OF
FATEN ANWAR, M.D.

DETERMINATION
AND
ORDER

BPMC #09-169

COPY

A Notice of Hearing and a Statement of Charges, dated June 15, 2009, were served upon the Respondent, Faten Anwar, M.D. DENISE M. BOLAN, R.P.A.-C., (Chair), MOHAMMAD-REZA GHAZI-MOGHADAM, M.D. and JOSE M. DAVID, M.D., duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee (herinafter the Committee) in this matter pursuant to §230(10) of the Public Health Law ("P.H.L.").

JEFFREY W. KIMMER, ESQ., ADMINISTRATIVE LAW JUDGE, served as the Administrative Officer ("ALJ").

The Department of Health ("Department") appeared by JOEL E. ABELOVE, ESQ., Associate Counsel.

FATEN ANWAR, M.D., ("Respondent") did not appear in person or by counsel.

Evidence was received and examined, including witnesses who were sworn or affirmed. Transcripts of the proceeding were made. After consideration of the record,

the Committee issues this Determination and Order in accordance with the Public Health Law and the Education Law of the State of New York.

PROCEDURAL HISTORY

Date of Notice of Hearing:	June 15, 2009
Date of Statement of Charges:	June 15, 2009
Pre-Hearing Conference Held:	July 14, 2009
Date of Hearing:	July 23, 2009
Deliberations Held:	July 23, 2009

A prehearing conference for this matter was scheduled and held on July 14, 2009. On July 3, 2009, the ALJ sent a letter the parties confirming that the prehearing conference was scheduled for July 14, 2009. This letter was sent both certified mail and regular mail to the Respondent's address noted on the Statement of Charges and the letter mailed via regular mail was not returned undeliverable.

On July 14, 2009, the Respondent failed to appear at the prehearing conference. On the July 23, 2009, hearing day the Respondent failed to appear. The Respondent has not made any effort to contact either the Department's attorney or the ALJ.

The ALJ ruled that Respondent had received ample notice and opportunity to submit an answer. The Notice of Hearing (Ex. 1) at page 2 states:

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 and allegation not so answered shall be deemed admitted. (Underline in original)

The Public Health Law of which Respondent was made aware of clearly indicates that the failure to file a written answer will result in the charges and allegations being deemed admitted. The ALJ ruled that the factual allegations and charges of misconduct contained in the Statement of Charges (a copy of which is attached and made a part hereof as Appendix I), were deemed admitted by Respondent.

STATEMENT OF CASE

The Respondent is charged with one (1) specification of professional misconduct within the meaning of §§6530 (5), Incompetence on more than one occasion. The Charges involve Respondent's review of surgical pathology slides for a period of time between 2005 and 2006.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. These findings are based the application of Public Health Law §230 (10)(c) to the Statement of Charges.

1. Respondent was licensed to practice medicine in New York State on September 27, 2000 by the issuance of license number 219373 by the New York State Education Department (Exs. 1 & 2).
2. The State Board for Professional Medical Conduct has obtained personal jurisdiction over Respondent (Ex. 1)
3. From on or about September 2005 through February 2007, the Respondent was a practicing clinical pathologist in the US Army at the Brooke Army Medical Center (hereinafter Medical Center), Fort Sam Houston, Texas. (Dept. Exs. 1 and 3)
4. On or about November 2, 2006, the Respondent's clinical privileges to practice at the Medical Center were placed in abeyance based on concerns about her surgical pathology skills. (Dept. Ex. 3)
5. On or about December 1, 2006, a Clinical Quality Management Investigation, conducted by the Assistant Chief of the Department of Pathology, Walter Reed Army Medical Center, Washington, D.C., found significant concerns regarding the Respondent's competency in surgical pathology and found a lack of ability on the part of the Respondent to recognize her own limitations in this area. (Dept. Ex.3)
6. On or about January 2, 2007, the Commander of the Medical Center notified the Respondent of his decision to permanently restrict the Respondent's surgical pathology clinical privileges/practice at the Medical Center and advised her of her right to request a hearing to review this decision (Dept. Ex. 3).

7. On or about January 19, 2007, the Respondent initially requested a hearing on February 14, 2007. Subsequently she waived her right to a hearing and then reinstated her request for a hearing three (3) separate times and finally waived her right to a hearing. (Dept. Ex.3)

8. On or about February 14, 2007, the Respondent's surgical pathology privileges at the Medical Center were permanently restricted which is also the permanent revocation of her surgical pathology privileges. (Dept. Ex. 3)

CONCLUSIONS OF LAW

The Committee makes the following conclusions, pursuant to the Findings of Fact listed above. All conclusions as to the allegations contained in the Statement of Charges were by a unanimous vote of the Hearing Committee.

The Committee concludes that all of the following Factual Allegations, in the June 15, 2009, Statement of Charges are **SUSTAINED**.

Based on the entire record, the Findings of Fact, and the Discussion that follows, the Committee unanimously concludes that the Specification of Charges of misconduct contained in the Statement of Charges is **SUSTAINED**.

The rationale for the Committee's conclusions is set forth below.

DISCUSSION

Respondent, by virtue of P.H.L. §230(10)(c), admitted the allegations and specifications filed against her by the Department. The Committee only heard evidence from the Department regarding the appropriate penalty, if any, which should be assessed on Respondent's license to practice medicine in the State of New York. The Committee did review documentary evidence authored by the Respondent.

The Committee's sole responsibility was to determine the appropriate penalty, if any, to assess.

With the above understanding, the Committee concludes that the Respondent acts constitute significant professional misconduct under the laws of New York State.

Respondent is guilty of: committing professional misconduct by practicing the profession of medicine with incompetence on more than one occasion in the care and treatment of patients.

The Committee noted it was significant that the Respondent did not file an Answer to the charges nor did she appear in person or by a representative at the hearing. The Committee would have preferred to hear from witnesses for both sides; however the Committee was bound by the application of Public Health Law §230(10)(c), and the ALJ's ruling. There was no mitigating evidence presented. The Committee accepted the conclusions of the Medical Center.

The Committee's role is to protect the citizens of this State. The Respondent displayed cognitive deficiencies in her delivery of medical care. The Committee felt that in carrying out its duty to protect those citizens, revocation of the Respondent's license to practice medicine in the State of New York is appropriate.

DETERMINATION AS TO PENALTY

The Committee unanimously determines that Respondent's license to practice medicine in New York State should be REVOKED.

This determination is reached after due and careful consideration of the full spectrum of penalties available pursuant to Public Health Law.. §230-a, including:

(1) Censure and reprimand; (2) Suspension of the license, wholly or partially; (3) Limitation of the license; (4) Revocation of license; (5) Annulment of license or registration; (6) Limitation on registration or issuance of any further license; (7) the imposition of monetary penalties; (8) a course of education or training; (9) performance of public service; and (10) probation.

The Committee was disappointed that the Respondent failed to submit an Answer as required by the Public Health Law.

Once the allegations and specifications were deemed admitted by the ALJ in accordance with the Public Health Law, the Committee's function became one of determining the appropriate penalty, if any, to be assessed against Respondent.

The Committee concluded that the Respondent's competency is severely in question and her tendency to not confer with colleagues would not be remedied with the imposition of a requirement that she complete relevant CME courses. Also of significance was the evidence admitted that the Respondent is not cognizant of her shortcomings.

Each licensed New York State physician must meet certain minimum standards. A physician who undertakes the care and treatment of an individual must provide safe treatment in compliance with minimally accepted standards of medical practice. These minimum standards must be followed regardless of the licensed physician's specialty or calling. Respondent's representation that she is a medical doctor, licensed and registered in New York State, obligates her to practice

medicine within the appropriate medical standard of care which apply to all physicians. The Respondent has not met those standards.

ORDER

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

The **FIRST** Specification of professional misconduct from the Statement of Charges is **SUSTAINED**, and;

Respondent's license to practice medicine in the State of New York is hereby **REVOKED**; and

This Order shall be effective upon personal service on the Respondent or 7 days after the date of mailing of a copy to Respondent by certified mail or as provided by P.H.L. §230(10)(h).

DATED: Newcomb, New York
August 19, 2009

Redacted Signature

**DENISE M. BOLAN, R.P.A.-C. (Chair),
JOSE M. DAVID, M.D.
MOHAMMAD-REZA GAHZI-MOGHADAM,
M.D.**

Faten Anwar, M.D.

Redacted Address

Joel E. Ablove, Esq.

NYS Department of Health

Div of Legal Affairs

Empire State Plaza

Corning Tower - Room 2512

Albany, New York 12237-0037

APPENDIX I

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

IN THE MATTER
OF
FATEN ANWAR, M.D.

**STATEMENT
OF
CHARGES**

FATEN ANWAR, M.D., Respondent, a board certified clinical pathologist, was authorized to practice medicine in New York State on September 27, 2000, by the issuance of license number 219373 by the New York State Education Department, with a current registration address of
Redacted Address

FACTUAL ALLEGATIONS

- A. Respondent, a Major in the United States Army, served as a staff pathologist at Brooke Army Medical Center, Fort Sam Houston, Texas. Respondent was a direct accession into the Army, and began her first duty assignment in September 2005, following her completion of the AMEDD Officer Basic Course. Respondent's actions failed to meet accepted standards of medical care in that:
1. On November 2, 2006, Respondent's privileges at Brooke Army Medical Center, were placed in abeyance pending a Clinical Quality Management external peer review.
 2. On December 1, 2006, a Clinical Quality Management Investigation/Peer Review, conducted by the Assistant Chief, Department of Pathology, Walter Reed Army Medical Center, found that ten of eleven surgical pathology cases showed major discrepancies and weaknesses in

Respondent's skills in surgical pathology. The review also found that Respondent does not recognize her own limitations in surgical pathology and does not seek consultation in cases where her skills are weak.

3. On January 2, 2007, the Commander, Brooke Army Medical Center, notified Respondent of his intention to permanently restrict the pathology privileges/practice of Respondent. This restriction is the permanent revocation of Respondent's surgical pathology privileges.
4. On January 19, 2007, Respondent requested a hearing, and selected a date of February 14, 2007. Respondent subsequently waived her right to a hearing, on February 1, 2007. On February 2, 2007, Respondent voluntarily relinquished her clinical privileges in Cytopathology and Autopsy Pathology. On February 6, 2007, Respondent again requested a hearing on February 14, 2007, but then waived her right again on February 9, 2007. On February 12, 2007, Respondent again requested the hearing on February 14, 2007, but later the same day waived her right to the hearing. On February 14, 2007, the Medical Staff Executive Committee (MSEC) met and determined that Respondent had been afforded her rights and had waived them.
5. Respondent's surgical pathology privileges were permanently restricted by the MSEC on February 14, 2007.

SPECIFICATIONS

FIRST SPECIFICATION

PRACTICING THE PROFESSION WITH 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. Education Law § 6530(5), in that Petitioner charges the following:

1. The facts in Paragraphs A and A.1, A and A.2, A and A.3, A and A.4, A and A.5.

DATED:

June 15, 2009
Albany, New York

Redacted Signature

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