



STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Antonia C. Novello, M.D., M.P.H., Dr.P.H.
Commissioner

PUBLIC

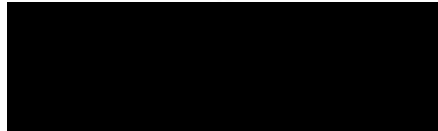
Dennis P. Whalen
Executive Deputy Commissioner

September 4, 2003

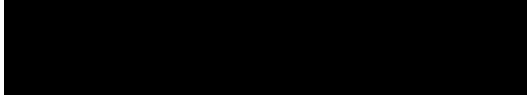
CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Robert Bogan, Esq.
NYS Department of Health
433 River Street – Suite 303
Troy, New York 12180

Shahab Atae, M.D.



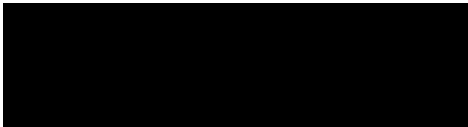
Shahab Atae, M.D.



Shahab Atae, M.D.



Shahab Atae, M.D.



RE: In the Matter of Shahab Atae, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 03-234) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), 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.

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.

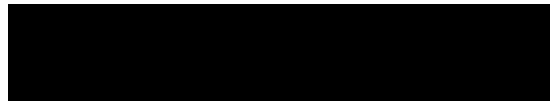
The notice of review served on the Administrative Review Board should be forwarded to:

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 solid black rectangular box redacting the signature of James F. Horan.

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
SHAHAB ATAEE, M.D.**

**DETERMINATION
AND
ORDER
BPMC #03-234**

COPY

A Notice of Referral Proceeding dated October 11, 2002 and Statement of Charges dated October 11, 2001 (this date may be a pleading preparation error), were served upon the Respondent, **SHAHAB ATAEE, M.D.**. **FRED S. LEVINSON, M.D.**, Chairperson, **ERNST A. KOPP, M.D.** and **MR. CHARLES AHLERS**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to Section 230(10)(e) of the Public Health Law. **STEPHEN L. FRY, ESQ.**, Administrative Law Judge, served as the Administrative Officer.

A hearing was held on August 20, 2003, at the Offices of the New York State Department of Health, Hedley Park Place, 433 River Street, Troy, New York. The Department appeared by **DONALD P. BERENS, JR., ESQ.**, General Counsel, by **ROBERT BOGAN, ESQ.**, of Counsel. The Respondent appeared pro se.

Evidence was received and transcripts of these proceedings were made.

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

STATEMENT OF CASE

This case was brought pursuant to Public Health Law Section 230(10)(p). The statute provides for an expedited hearing where a licensee is charged solely with a violation of Education Law Section 6530(9). In such cases, a licensee is charged with misconduct based upon a prior criminal conviction in New York or another jurisdiction, or upon a prior administrative adjudication regarding conduct which would amount to professional misconduct, if committed in New York. The scope of an expedited hearing is limited to a determination of the nature and severity of the penalty to be imposed upon the licensee.

In the instant case, the Respondent is charged with professional misconduct pursuant to Education Law Section 6530(9)(a)(i), based upon his conviction of a crime under New York State law. A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order as Appendix 1.

WITNESSES

For the Petitioner:	None
For the Respondent:	Shahab Ataee

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers below in parentheses refer to exhibits, denoted by the prefix "Ex.". These citations refer to evidence found persuasive by the Hearing Committee in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence. All Hearing Committee findings were unanimous.

1. **SHAHAB ATAEE, M.D.**, the Respondent, applied for a license to practice medicine in New York State on September 18, 2000. At the time of application, Respondent was a resident at Mt. Sinai Medical Center in New York City. As of the date of this hearing, no license to practice in New York has been granted to Respondent (Ex. 6).
2. On October 1, 2001, Respondent was convicted, after a trial in the Criminal Court of the City of New York, County of Queens, of sexual abuse in the third degree, a class B misdemeanor. The allegation that resulted in the conviction was that Respondent fondled a female patient at Elmhurst Hospital, Queens, New York, while listening to her heart and lungs with a stethoscope. Respondent's sentence for this conviction was a one-year conditional discharge, and he was required to pay a \$120 surcharge and comply with an order of protection issued in favor of the complainant (Ex. 7).

HEARING COMMITTEE CONCLUSIONS

The hearing Committee concludes that Respondent's conviction of sexual abuse third degree constitutes misconduct under the laws of New York State, pursuant to New York Education Law §6530(9)(a)(I), and that the appropriate penalty for this misconduct is the issuance of a censure and reprimand.

VOTE OF THE HEARING COMMITTEE

SPECIFICATION

Respondent violated New York Education Law §6530(9)(a)(i) by having been found guilty of a crime under the laws of New York State.

VOTE: SUSTAINED (3-0)

HEARING COMMITTEE DETERMINATION

It is noted at the outset that Respondent is not licensed in New York State. However, at the time the conduct at issue occurred, Respondent was a medical resident in New York State. Therefore, Respondent met the definition of "licensee" found at Public Health Law section 230(7), and he is subject to disciplinary action under Public Health Law section 230(10).

As to the merits of the case, the record establishes that Respondent was tried and convicted of the crime of sexual abuse in the third degree after he was accused of fondling a female hospital patient. Although Respondent at the hearing adamantly denied having committed the offense, the Hearing Committee is precluded from considering this claim by the statute governing this proceeding, Public Health Law section 230(10)(p), which provides that the only issue that can be considered at a hearing based solely upon a criminal conviction is the penalty that may be imposed. Respondent attempted unsuccessfully to appeal his conviction, and this hearing was held in abeyance during the pendency of the appeal. The conviction is binding on this tribunal as to the commission of misconduct.

As to the penalty to be imposed for Respondent's misconduct, the Hearing Committee is of the unanimous opinion that the issuance of a censure and reprimand is appropriate, as opposed to revocation or suspension of Respondent's license. The primary basis for this conclusion is that Respondent has already paid an extremely heavy price for the offense of which he was convicted, including loss of his medical employment, inability to obtain other medical positions, the suicide of his wife, the initiation of a lawsuit against

him by the complainant in the criminal case, the loss of his savings and incurring of considerable debt. The Hearing Committee does not believe that loss of his license is necessary to protect the residents of New York State from future acts of sexual abuse by Respondent, who now lives in California and engages in non-physician employment.

Respondent testified at the hearing that he is preparing to again attempt an appeal of his criminal conviction, and requested that this action again be held in abeyance. However, Respondent's first appeal attempt failed, and there is no appeal currently pending. Therefore, there is no basis to pend this matter further. However, the Department's attorney at the hearing represented that should the conviction be ultimately overturned, Respondent may apply to the Board for a lifting of the censure and reprimand.

ORDER

IT IS HEREBY ORDERED THAT:

1. A **CENSURE AND REPRIMAND** is issued against **SHAHAB ATAEE, M.D.**

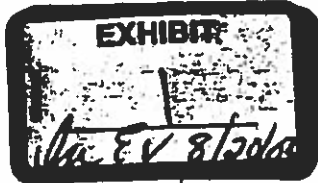
This **ORDER** shall be effective upon service on the Respondent pursuant to Public Health Law section 230(10)(h).

DATED: Middletown, New York
Sept. 4, 2003


FRED S. LEVINSON, M.D.
Chairperson

ERNST A. KOPP, M.D.
MR. CHARLES AHLERS

APPENDIX 1



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

IN THE MATTER

OF

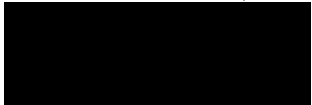
SHAHAB ATAEE, M.D.
NY-00-04-1722-A

NOTICE OF

REFERRAL

PROCEEDING

TO: SHAHAB ATAEE, M.D.



SHAHAB ATAEE, M.D.



PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law § 230(10)(p) and N.Y. State Admin. Proc. Act Sections 301-307 and 401. The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 20th day of November 2002, at 10:00 in the forenoon of that day at the Hedley Park Place, 5th Floor, 433 River Street, Troy, New York 12180.

At the proceeding, evidence will be received concerning the allegations set forth in the attached Statement of Charges. A stenographic record of the proceeding will be made and the witnesses at the proceeding will be sworn and examined.

You may appear in person at the proceeding and may be represented by counsel. You may produce evidence or sworn testimony on your behalf. Such evidence or sworn testimony shall be strictly limited to evidence and testimony relating to the nature and severity of the penalty to be imposed upon the licensee. Where the charges are based on the conviction of state law crimes in other jurisdictions, evidence may be offered that would show that the conviction would not be a crime in New York state. The Committee also may limit the number of witnesses whose testimony will be received, as well as the length of time any witness will be permitted to testify.

If you intend to present sworn testimony, the number of witnesses and an estimate of the time necessary for their direct examination must be submitted to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication,

Hedley Park Place, 5th Floor, 433 River Street, Troy, New York, ATTENTION: HON. TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION, (hereinafter "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before November 11, 2002.

Pursuant to the provisions of N.Y. Public Health Law §230(10)(p), you shall file a written answer to each of the Charges and Allegations in the Statement of Charges no later than ten days prior to the hearing. Any Charge of Allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such an answer. The answer shall be filed with the Bureau of Adjudication, at the address indicated above, and a copy shall be forwarded to the attorney for the Department of Health whose name appears below. You may file a brief and affidavits with the Committee. Six copies of all such papers you wish to submit must be filed with the Bureau of Adjudication at the address indicated above on or before November 11, 2002, and a copy of all papers must be served on the same date on the Department of Health attorney indicated below. Pursuant to Section 301(5) of the State Administrative Procedure Act, the Department, upon reasonable notice, will provide at no charge a qualified interpreter of the deaf to interpret the proceedings to, and the testimony of, any deaf person.

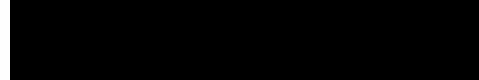
The proceeding may be held whether or not you appear. Please note that requests for adjournments must be made in writing to the Bureau of Adjudication, at the address indicated above, with a copy of the request to the attorney for the Department of Health, whose name appears below, at least five days prior to the scheduled date of the proceeding. Adjournment requests are not routinely granted. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation. Failure to obtain an attorney within a reasonable period of time prior to the proceeding will not be grounds for an adjournment.

The Committee will make a written report of its findings, conclusions as to guilt, and a determination. Such determination may be reviewed by the Administrative Review Board for Professional Medical Conduct.

SINCE THESE PROCEEDINGS MAY RESULT IN A DETERMINATION THAT SUSPENDS OR REVOKES YOUR LICENSE TO PRACTICE MEDICINE IN NEW YORK STATE AND/OR IMPOSES A FINE FOR

EACH OFFENSE CHARGED, YOU ARE URGED TO OBTAIN AN
ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: Albany, New York
October 11, 2002



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

Inquiries should be addressed to:

Robert Bogan
Associate Counsel
New York State Department of Health
Office of Professional Medical Conduct
433 River Street – Suite 303
Troy, New York 12180
(518) 402-0828

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

IN THE MATTER OF SHAHAB ATAEE, M.D. NY-00-04-1722-A	STATEMENT OF CHARGES
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SHAHAB ATAEE, M.D., the Respondent, was authorized to practice medicine as a Resident in New York state at Mount Sinai Medical Center. He was not and is not licensed to practice medicine in New York state by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about October 1, 2001, in the Criminal Court of the City of New York, County of Queens, State of New York, Respondent was found guilty of Sexual abuse in the third degree, in violation of New York Penal Law, Section 130.55, a Class B Misdemeanor, and sentenced to a one (1) year conditional discharge, a one (1) year order of protection, and a \$120.00 surcharge.

SPECIFICATION

Respondent violated New York Education Law §6530(9)(a)(i) by having been convicted of committing an act constituting a crime under New York state law, in that Petitioner charges:

1. The facts in paragraphs A.

DATED: *October 11*, 2001
Albany, New York



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