



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

Dennis P. Whalen  
Executive Deputy Commissioner

*Public*

March 27, 2006

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Fikri Himmat Shabanah, M.D.  
495 Baltimore Way  
N. Miami Beach, Florida 33134

Robert Bogan, Esq.  
NYS Department of Health  
Office of Professional Medical Conduct  
433 River Street, Suite 303  
Troy, New York 12180-2299

**RE: In the Matter of Fikri Himmat Shabanah, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 06-060) 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 Respondent 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.

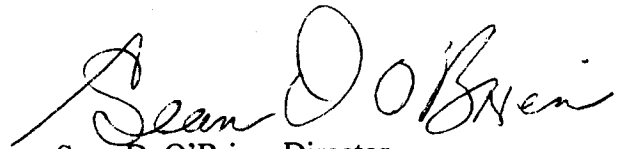
The notice of review served on the Administrative Review Board should be forwarded to:

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 handwritten signature in black ink that reads "Sean D. O'Brien". The signature is written in a cursive style with a large, looped "S" at the beginning and a long, sweeping "B" at the end.

Sean D. O'Brien, Director  
Bureau of Adjudication

SDO:djh

Enclosure

IN THE MATTER  
OF  
FIKRI HIMMAT SHABANAH, M.D.

DETERMINATION  
AND  
ORDER

BPMC NO. 06-060

A hearing was held on March 22, 2006, at the offices of the New York State Department of Health ("the Petitioner"). A Notice of Referral Proceeding and a Statement of Charges, both dated November 4, 2005, were served upon the Respondent, **Fikri Himmat Shabanah, M.D.** Pursuant to Section 230(10)(e) of the Public Health Law, **Charles J. Vacanti, M.D.**, Chairperson, **Jagdish M. Trivedi, M.D.**, and **Mr. Thomas W. King, Jr., M.P.A., P.E.**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. **John Wiley, Esq.**, Administrative Law Judge, served as the Administrative Officer.

The Petitioner appeared by **Donald P. Berens, Jr., Esq.**, General Counsel, by **Robert Bogan, Esq.**, of Counsel. The Respondent appeared in person and represented himself.

Evidence was received and transcripts of these proceedings were made.

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

**BACKGROUND**

This case was brought pursuant to Public Health Law Section 230(10)(p). The statute provides for an expedited hearing when 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 State or another jurisdiction, or upon a prior administrative adjudication regarding conduct that 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)(b) and (d). Copies of the Notice of Referral Proceeding and the Statement of Charges are attached to this Determination and Order as Appendix 1.

#### **WITNESSES**

For the Petitioner:

None

For the Respondent:

Fikri Himmat Shabanah, M.D.

#### **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 of fact were unanimous.

1. Fikri Himmat Shabanah, M.D., the Respondent, was authorized to practice medicine in New York State on July 8, 1969, by the issuance of license number 104039 by the New York State Education Department (Petitioner's Ex. 4).

2. On October 23, 2001, the Florida Board of Medicine ("Florida Board"), by a Final Order ("Florida Order 1"), fined the Respondent \$10,000.00, required him to pay \$3,282.42 costs, censured him, and required him to complete five hours of continuing

medical education in risk management, to perform 30 hours of community service, and to present a lecture on wrong site surgery, based on his placing a Central Venous Pressure ("CVP") line catheter in the wrong patient, failing to identify the patient, failing to obtain informed written consent, failing to verify the consultation request, and failing to verify the request for CVP line insertion (Petitioner's Ex. 5).

3. On February 17, 2005, the Florida Board, by a Final Order ("Florida Order 2"), reprimanded the Respondent, required him to pay \$540.20 administrative costs, required him to complete 100 hours of community service, and indefinitely suspended his license to practice medicine until he complies with Florida Order 1, based on his failure to pay the fine and costs imposed by Florida Order 1 (Petitioner's Ex. 6).

### **HEARING COMMITTEE CONCLUSIONS**

The Hearing Committee concludes that the conduct of the Respondent would constitute professional misconduct under the laws of New York State, had the conduct occurred in New York State, pursuant to:

- New York Education Law Section 6530(4) - "Practicing the profession with gross negligence on a particular occasion;"
- New York Education Law Section 6530(26) - "Performing professional services which have not been duly authorized by the patient or his or her legal representative;" and
- New York Education Law Section 6530(29) - "Violating any term of probation or condition or limitation imposed on the licensee pursuant to section two hundred thirty of the public health law..."

The Hearing Committee's conclusions regarding Education Law Section 6530(26) and (29) were unanimous. However, one Hearing Committee member dissented from the finding of gross negligence pursuant to Education Law Section 6530(4). That Hearing

Committee member believes that the Respondent's performing surgery on the wrong patient was, to a substantial degree, the result of system failure at the hospital where the surgery was performed. Therefore, he believes that the Respondent committed negligence, but not gross negligence.

### **VOTE OF THE HEARING COMMITTEE**

#### **FIRST SPECIFICATION**

"Respondent violated New York Education Law Section 6530(9)(b) by having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York state, constitute professional misconduct under the laws of New York state..."

VOTE: Sustained (3-0)

#### **SECOND SPECIFICATION**

"Respondent violated New York Education Law Section 6530(9)(d) by having his license to practice medicine suspended or having other disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the license suspension or other disciplinary action would, if committed in New York state, constitute professional misconduct under the laws of New York state..."

VOTE: Sustained (3-0)

### **HEARING COMMITTEE DETERMINATION**

The record in this case indicates that the Respondent performed surgery on the wrong patient. In August of 1999, the Respondent had been requested to insert a CVP line catheter in several patients at Broward General Medical Center, Fort Lauderdale, Florida. Patient J.E. was not one of those patients. However, a nurse mistakenly told the Respondent that J.E. was a patient for whom a CVP line catheter had been ordered. The

Respondent, relying on the nurse as his sole source of information, proceeded to insert surgically a CVP line catheter in J.E. At the hearing, the Respondent accepted some of the blame for the mistake, but sought to assign much of the blame to the nurse and to the hospital for having inadequate procedures to prevent this type of mistake. However, the Respondent's conduct is a substantial and central causative factor for the mistake. As stated in the Florida Administrative Complaint, which was incorporated by reference in Florida Order 1, the Respondent:

...did not verify the intended patient's identity, and failed to obtain or verify the chart for the intended patient. Respondent did not consult or verify the consultation order from the attending physician. Respondent also did not obtain or verify the operative and invasive procedures consent form for the intended patient. (Petitioner's Ex. 5).

Because the Respondent totally delegated to the nurse his responsibility to assure that he was operating on the correct patient, J.E. was subjected to unnecessary surgery. Furthermore, this mistake necessarily delayed the surgery on the patient who needed to have a CVP line catheter inserted. Performing surgery on the correct patient should be the most basic concern there is for any surgeon. The Respondent's failure to address this concern constitutes gross negligence.

Florida Order 1, among other things, required the Respondent to pay a fine and costs within one year of the filing of that Order, a date that was subsequently extended. Because the revised deadline was not met, a second disciplinary proceeding in Florida was commenced. Florida Order 2 imposed additional penalties for the failure to pay the fine and costs imposed by Florida Order 1. The Respondent subsequently has complied with all the terms of both Florida Orders (Respondent's Ex. A).

The Respondent testified to a number of things that he presented as factors against the imposition of a harsh penalty. Of these factors, the Hearing Committee was impressed with his volunteer work at Broward House, a facility for AIDS patients and

addicts. The Respondent had performed community service at Broward House as a requirement of the Florida Orders, but after fulfilling that requirement, the Respondent has continued to volunteer his services there.

The Hearing Committee has considered the range of penalties available pursuant to Public Health Law Section 230-a. The Petitioner made no specific recommendation on the penalty. The majority of the Hearing Committee, taking into consideration that the Florida Board has imposed sanctions on the Respondent for his professional misconduct, has concluded that a \$3000.00 fine and a censure and reprimand are sufficient penalties to protect the people of New York State. One Hearing Committee member believes that a more serious penalty is warranted by the facts of this case.

### **ORDER**

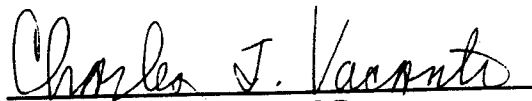
#### **IT IS HEREBY ORDERED THAT:**

1. The Respondent is censured and reprimanded for his acts of professional misconduct.
2. A fine of \$3000.00 is imposed on the Respondent. The fine must be paid within 90 days of the effective date of this Order. Payment shall be made to the New York State Department of Health, Bureau of Accounts Management, Corning Tower, Room 1258, Empire State Plaza, Albany, New York 12237.
3. Any fine not paid by the date prescribed herein shall be subject to all provisions of law relating to debt collection by the State of New York. This includes but is not limited to the imposition of interest, late payment charges and collection fees, referral to the New York State Department of Taxation and Finance for collection, and non-renewal of permits and licenses (Tax Law Section 171[27], State Finance Law Section 18, CPLR Section 5001, Executive Law Section 32).



4. This Order shall be effective upon service on the Respondent in accordance with the requirements of Public Health Law Section 230(10)(h).

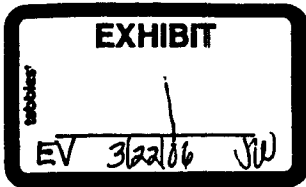
DATED: Pittsford, New York  
25 March, 2006



**Charles J. Vacanti, M.D.**  
**Chairperson**

**Jagdish M. Trivedi, M.D.**  
**Thomas W. King, Jr. M.P.A., P.E.**

# APPENDIX 1



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

IN THE MATTER  
OF  
FIKRI HIMMAT SHABANAH, M.D.  
CO-05-04-2058-A

NOTICE OF  
REFERRAL  
PROCEEDING

TO: FIKRI HIMMAT SHABANAH, M.D.  
22625 South West 102 Court  
Miami, FL 33193

FIKRI HIMMAT SHABANAH, M.D.  
495 Baltimore Way  
N. Miami Beach, FL 33134

FIKRI HIMMAT SHABANAH, M.D.  
17150 Collins Avenue  
Unit 104  
North Miami Beach, FL 33160

**PLEASE TAKE NOTICE THAT:**

An adjudicatory proceeding will be held pursuant to the provisions of New York Public Health Law § 230(10)(p) and New York State Administrative Procedure 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 20<sup>th</sup> day of December 2005, at 10:00 in the forenoon of that day at the Hedley Park Place, 5<sup>th</sup> 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, 5<sup>th</sup> Floor, 433 River Street, Troy, New York, ATTENTION: HON. SEAN O' BRIEN, DIRECTOR, BUREAU OF ADJUDICATION, (hereinafter "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before December 12, 2005.

Pursuant to the provisions of New York 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 December 12, 2005, 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

*November 4*, 2005



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  
FIKRI HIMMAT SHABANAH, M.D.  
CO-05-4-2058-A

STATEMENT  
OF  
CHARGES

FIKRI HIMMAT SHABANAH, M.D., the Respondent, was authorized to practice medicine in New York state on July 8, 1969, by the issuance of license number 104039 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A. On or about October 23, 2001, the State of Florida, Board of Medicine (hereinafter "Florida Board"), by a Final Order (hereinafter "Florida Order 1"), fined Respondent \$10,000.00, required him to pay \$3,282.42 costs, and to complete five (5) hours of CME in risk management and thirty (30) hours of community service, reprimanded him, and required him to present a one (1) hour lecture on wrong site surgery, based on placing a Central Venous Pressure line (catheter) in the wrong patient, failing to properly identify the patient, failing to obtain informal written consent, failing to verify the consultation request, and/or failing to verify the request for CVP line insertion.

B. On or about February 17, 2005, the Florida Board, by a Final Order (hereinafter "Florida Order 2"), reprimanded Respondent, required him to pay \$540.20 administrative costs, required him to complete 100 hours of community service, and indefinitely suspended his license to practice medicine until he appears before the Florida Board with proof of fulfillment of all the obligations imposed by Florida Order 1, set forth in Paragraph A, above, based on violating a lawful order of the Florida Board previously entered in a disciplinary hearing.

C. The conduct resulting in the Florida Board disciplinary action against Respondent would constitute misconduct under the laws of New York State, pursuant to the following sections of New York State law:

1. New York Education Law §6530(4) (gross negligence);
2. New York Education Law §6530(26) (performing professional services which have not been duly authorized by the patient); and/or
3. New York Education Law §6530(29) (violating any term of probation or condition or limitation imposed on the licensee pursuant to section two hundred thirty of the public health law).

**SPECIFICATIONS**

**FIRST SPECIFICATION**

Respondent violated New York Education Law §6530(9)(b) by having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York state, constitute professional misconduct under the laws of New York state, in that Petitioner charges:


1. The facts in Paragraphs A and/or C.

**SECOND AND THIRD SPECIFICATIONS**

Respondent violated New York Education Law §6530(9)(d) by having his license to practice medicine suspended or having other disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the license suspension or other disciplinary action would, if committed in New York State, constitute professional misconduct under the laws New York state, in that Petitioner charges:

2. The facts in Paragraphs A and/or C.
3. The facts in Paragraphs A, B, and/or C.

DATED: *Nov. 4*, 2005  
Albany, New York

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