

SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION : THIRD DEPARTMENT

-----X  
In the Matter of MUHAMMAD  
AZAM KHAN,

Petitioner,

V

NEW YORK STATE DEPARTMENT  
OF HEALTH et al.,

Respondents.  
-----X

:  
:  
: Case #: 85924

:  
: NOTICE OF ENTRY  
: OF JUDGMENT

PLEASE TAKE NOTICE that the annexed is a true copy of a  
Judgment duly filed and entered in the office of the Clerk of the  
Supreme Court of the State of New York, Appellate Division, Third  
Department, on the 30<sup>th</sup> day of August, 2001.

Dated: New York, New York  
September 4, 2001

Yours, etc.,

Eliot Spitzer  
Attorney General of the  
State of New York  
Attorney for State Respondents

By:

Kristin White  
KRISTIN WHITE  
Assistant Attorney General  
120 Broadway - 24th Floor  
New York, New York 10271  
(212) 416-6381

To: Katherine Herr Solomon, Esq.  
Mauro, Goldberg, Lilling, LLP  
50 Cutter Mill Road, Suite 415  
Great Neck, NY 11021

RECEIVED

SEP 06 2001

NYS DEPT. OF HEALTH  
DIVISION OF LEGAL AFFAIRS

**State of New York**  
**Supreme Court - Appellate Division**  
**Third Judicial Department**

Decided and Entered: August 30, 2001

85924

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In the Matter of MUHAMMAD  
AZAM KHAN,  
Petitioner,

v

MEMORANDUM AND JUDGMENT

NEW YORK STATE DEPARTMENT  
OF HEALTH et al.,  
Respondents.

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Calendar Date: June 1, 2000

Before: Mercure, J.P., Crew III, Mugglin, Rose and Lahtinen, JJ.

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Mauro & Goldberg (Katherine Herr Solomon of counsel), Great Neck, for petitioner.

Eliot Spitzer, Attorney-General (Samuel S. Chin of counsel), New York City, for respondents.

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Crew III, J.

Proceeding pursuant to CPLR article 78 (initiated in this Court pursuant to Public Health Law § 230-c [5]) to review a determination of respondent Administrative Review Board for Professional Medical Conduct which revoked petitioner's license to practice medicine in New York.

When this matter was last before us, we held that a 1997 Arizona consent agreement should not have been given collateral estoppel effect and, accordingly, modified the determination of respondent Administrative Review Board for Professional Medical

Conduct (hereinafter the ARB) and remitted the matter for a redetermination of the penalty imposed (274 AD2d 784). Upon appeal, the Court of Appeals reversed and remitted the matter to this Court for determination of the remaining issues not reached upon our prior review (\_\_\_ NY2d \_\_\_ [July 2, 2001]).

Initially, with regard to petitioner's contention that the findings of the Hearing Committee should be annulled because they are not supported by substantial evidence, we need note only that our review of the Hearing Committee's decision is precluded inasmuch as petitioner sought review of such decision from the ARB. This Court's power to review the Hearing Committee's decision extends only to those situations where review thereof is not sought from the ARB (see, Matter of Weg v De Buono, 269 AD2d-683, 685-686, lv denied 94 NY2d 764).

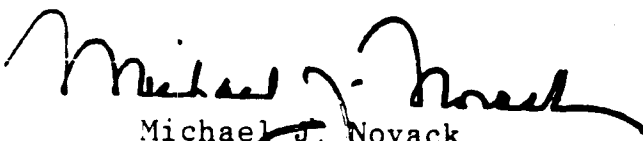
Next, contrary to petitioner's contention, review of the ARB's determination is limited to whether the decision is "arbitrary and capricious, affected by an error of law or an abuse of discretion" (Matter of Pisnanont v New York State Bd. for Professional Med. Conduct, 266 AD2d 592, 593, quoting Matter of Spartalis v State Bd. for Professional Med. Conduct, 205 AD2d 940, 942, lv denied 84 NY2d 807). Accordingly, our inquiry distills to whether the ARB's determination has a rational basis and is factually supported (see, Matter of Moss v Chassin, 209 AD2d 889, 891, lv denied 85 NY2d 805, cert denied 516 US 861).

Here, the ARB's determination that petitioner's conduct in Arizona would constitute misconduct in New York under Education Law § 6530 (3), (18), (29) and (32) has a rational basis and is factually supported by petitioner's stipulation to the facts contained in the 1995 and 1997 Arizona consent agreements. Finally, we reject petitioner's contention that revocation of his license was so disproportionate to the offenses as to be shockingly unfair.

Mercure, J.P., Mugglin, Rose and Lahtinen, JJ., concur.

ADJUDGED that the determination is confirmed, without costs, and petition dismissed.

ENTER:



Michael J. Novack  
Clerk of the Court

Supreme Court - Appellate Division  
Third Department

Decided and Entered: July 20, 2000

85924

PUBLIC

In the Matter of MUHAMMAD  
AZAM KHAN,  
Petitioner,  
v

MEMORANDUM AND JUDGMENT

NEW YORK STATE DEPARTMENT  
OF HEALTH et al.,  
Respondents.

Calendar Date: June 1, 2000

Before: Mercure, J.P., Crew III, Mugglin, Rose and Lahtinen, JJ.

Mauro & Goldberg (Katherine Herr Solomon of counsel), Great Neck, for petitioner.

Eliot Spitzer, Attorney-General (Samuel S. Chin of counsel), New York City, for respondents.

Crew III, J.

Proceeding pursuant to CPLR article 78 (initiated in this court pursuant to Public Health Law § 230-c [5]) to review a determination of respondent Administrative Review Board for Professional Medical Conduct which revoked petitioner's license to practice medicine in New York.

Petitioner, a licensed physician in Arizona and New York, was charged by respondent State Board for Professional Medical Conduct for having disciplinary action taken against him by the Arizona Board of Medical Examiners (see, Education Law § 6530 [9])

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[d)). Following a hearing, at which the Hearing Committee received in evidence two consent agreements entered into in Arizona, each of which contained findings of fact concerning incidents that would, if committed in New York, constitute professional misconduct under the laws of this State, petitioner's medical license was revoked.

Petitioner thereafter sought review of the Hearing Committee's decision before respondent Administrative Review Board for Professional Medical Conduct (hereinafter ARB) contending, inter alia, that revocation of his license was shockingly unfair. The ARB sustained the findings and penalty of the Hearing Committee, prompting petitioner to commence this CPLR article 78 proceeding to review the ARB's determination.

Contrary to petitioner's contention, we are of the view that collateral estoppel effect was properly given to the 1995 Arizona consent agreement as petitioner was afforded a full and fair opportunity to litigate the charges involved, agreed to forego continuation of the disciplinary proceedings and stipulated to the extensive factual findings contained therein (see, Matter of Ikramuddin v De Buono, 256 AD2d 1039, 1041). We are of a different view, however, with regard to the 1997 consent agreement, which reflects that petitioner entered into such agreement "for the sole purpose of terminating the dispute" and, further, provides that "nothing contained [therein] constitutes an admission by [petitioner]". Under such circumstances, invocation of the doctrine of collateral estoppel seems patently unfair (see, Matter of Becker v De Buono, 239 AD2d 664, 665). While it is true that petitioner did not raise this issue before the ARB, we deem this issue to be sufficiently fundamental as to justify our review in the interest of justice (see, Matter of Woodin v Lane, 119 AD2d 969).

As the 1997 consent agreement formed the sole basis for finding that petitioner engaged in conduct violative of Education Law § 6530 (18) and (29), and in view of our conclusion that such agreement is not entitled to preclusive effect, that portion of the ARB's determination relating to the charges under Education Law § 6530 (18) and (29) must be annulled and this matter

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85924

remitted to the ARB for a redetermination of the penalty imposed. We have examined petitioner's remaining contentions and find them to be lacking in merit.

Mercure, J.P., Mugglin, Rose and Lahtinen, JJ., concur.

ADJUDGED that the determination is modified, on the law, without costs, by annulling so much thereof as found petitioner guilty of violating Education Law § 6530 (18) and (29); petition granted to said extent and matter remitted to respondent Administrative Review Board for Professional Medical Conduct for a redetermination of the penalty imposed; and, as so modified, confirmed.

ENTER:

*/s/ Michael J. Novack*

Michael J. Novack  
Clerk of the Court



STATE OF NEW YORK  
DEPARTMENT OF HEALTH

433 River Street, Suite 301

Troy, New York 12180-2299

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

**PUBLIC**

Dennis P. Whalen  
Executive Deputy Commissioner

October 18, 1999

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Ann Gayle, Esq.  
NYS Department of Health  
Metropolitan Office  
5 Penn Plaza – Suite 601  
New York, New York 10001

Muhammed Azam Khan, M.D.  
Arizona Institute of Medicine and Surgery  
3636 Stockton Hill Road  
Kingman, Arizona 86401-3006

Daniel Shapiro, Esq.  
Shapiro, Uchman & Myers, P.C.  
220 Old Country Road  
Mineola, New York 11501

**RE: In the Matter of Muhammad Azam Khan, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 99-147) of the Professional Medical Conduct Administrative Review Board in the above referenced matter. This Determination and Order shall be deemed effective upon 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 if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified mail or in person** to:

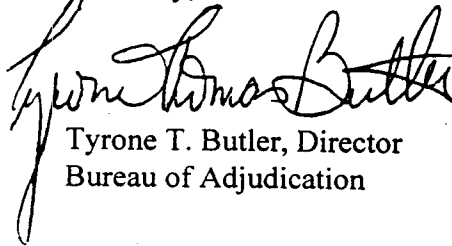
Office of Professional Medical Conduct  
New York State Department of Health  
Hedley Park Place  
433 River Street-Fourth Floor  
Troy, New York 12180



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.

This exhausts all administrative remedies in this matter [PHL §230-c(5)].

Sincerely,



Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:mla  
Enclosure

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

In the Matter of

**Muhammad Azam Khan, MD. (Respondent)**

A proceeding to review a Determination by a  
Committee (Committee) from the Board for  
Professional Medical Conduct (BPMC)

**COPY**

**Administrative Review Board (ARB)**

**Determination and Order No. 99-147**

**Before ARB Members Grossman, Lynch, Shapiro, Price and Briber  
Administrative Law Judge James F. Horan drafted the Determination**

**For the Department of Health (Petitioner):  
For the Respondent:**

**Anne Gayle, Esq.**

**Timothy K. Gibbons, Esq.**

After a hearing below, a BPMC Committee determined that another jurisdiction (Arizona) disciplined the Respondent for conduct that would constitute professional misconduct in New York. The Committee then voted to revoke the Respondent's New York medical license. In this proceeding pursuant to N.Y. Pub. Health Law § 230-c (4)(a)(McKinney's Supp. 1999), the Respondent 1.) alleges that the Committee erred by imposing a more severe penalty than Arizona imposed for conduct in that state, and, 2.) asks the ARB to nullify or modify the Determination revoking his license. The ARB votes unanimously to affirm the Committee, because we agree with the Committee that the Respondent provided repeated sub-standard care to patients in Arizona and that the Respondent has failed to correct the problems with his practice despite prior disciplinary actions against him.

### Committee Determination on the Charges

The Petitioner commenced the proceeding by filing charges with BPMC alleging that the Respondent violated N. Y. Educ. Law § 6530(9)(d) (McKinney Supp. 1999) by committing professional misconduct, because:

- the duly authorized professional disciplinary agency from Arizona took action against the Respondent's License in that state, for,
- conduct that would constitute professional misconduct, if the Respondent had committed such conduct in New York.

The Arizona action resulted from Consent Agreements that the Respondent entered into with the Board of Medical Examiners of the State of Arizona (Arizona Board). The Petitioner's Statement of Charges [Petitioner Exhibit 1] alleged that the Respondent's misconduct in Arizona would constitute misconduct if committed in New York, under the following categories:

- practicing medicine with negligence on more than one occasion, a violation under N. Y. Educ. Law § 6530(3) (McKinney Supp. 1999),
- engaging in illegal fee-splitting, a violation under N. Y. Educ. Law § 6530(18) (McKinney Supp. 1999),
- violating a condition or limitation on a License, a violation under N. Y. Educ. Law § 6530(29) (McKinney Supp. 1999), and,
- failing to maintain accurate patient records, a violation under N. Y. Educ. Law § 6530(32) (McKinney Supp. 1999).

An expedited hearing (Direct Referral Proceeding) ensued pursuant to N.Y. Pub. Health Law §230(10)(p)(McKinney Supp. 1998), before a BPMC Committee, who rendered the Determination which the ARB now reviews. In such a Direct Referral Proceeding, the statute limits the Committee to determining the nature and severity for the penalty to impose against the licensee, see In the Matter of Wolkoff v. Chassin, 89 N.Y.2d 250 (1996).

The record demonstrates that the Respondent entered into a Consent Agreement with the Arizona Board in 1995 (1995 Agreement), through which the Respondent admitted that he had

- 1.) engaged in conduct which is or might be harmful to the health of a patient or the public and
- 2.) engaged in conduct that the Arizona Board determined as gross negligence, repeated negligence or negligence resulting in harm to or the death of a patient. The 1995 Agreement involved substandard care to seven patients. Under the 1995 Agreement, the Respondent consented to submit monthly surgical reports, from which the Health Services Agency Group (HSAG) would select five cases for comprehensive review. The Respondent agreed further to commit no unprofessional conduct and to obey the law. The HSAG comprehensive reviews revealed further sub-standard care.

In 1997, the Respondent entered another Consent Agreement with the Arizona Board (1997 Agreement), through which the Respondent admitted to:

- failing to maintain adequate patient records,
- engaging in conduct which is or might be harmful or dangerous to the health of a patient or the public,
- violating probation, and,
- charging or dividing a fee illegally.

The 1997 Agreement involved the care that the Respondent provided to twelve patients. Under the 1997 Agreement's terms, the Respondent agreed to enroll in and complete a three month mini-residency in general surgery, with nine months additional training to follow, and to take and pass the re-certification exam in general surgery in one sitting. The 1997 Agreement provided for license cancellation or suspension if the Respondent failed to complete the mini-residency or to pass the re-certification exam.

In the 1997 Agreement, the Arizona Board listed several other disciplinary actions the Board took against the Respondent, including a 1995 Stipulation to pay a civil penalty for providing sub-standard care to a patient and nine Letters of Concern from the Board over the period 1981-1995.

The New York BPMC Committee voted to sustain the misconduct charges against the Respondent. The Committee found that the Arizona Board disciplined the Respondent, on multiple occasions, for conduct in that state. The Committee concluded that if the Respondent had committed the same conduct in New York, the conduct would have constituted misconduct under the following categories:

- practicing with negligence on more than one occasion,
- violating probation,
- fee-splitting, and,
- failing to maintain accurate records.

The Committee voted to revoke the Respondent's New York License, due to the Respondent's long history of sub-standard care and his repeatedly demonstrated unwillingness and/or inability to conform to the standards of the profession. The Committee noted that Arizona had chosen probation and retraining as the sanction for the Respondent's conduct, but concluded that they bore an obligation to render an independent determination on the appropriate penalty for the Respondent's conduct. The Committee concluded that the Respondent's conduct, if committed in New York, would warrant revocation.

### Review History and Issues

The Committee rendered their Determination on July 2, 1999. This proceeding commenced on July 12, 1999, when the ARB received the Respondent's Notice requesting a Review. The record for review contained the Committee's Determination, the hearing record, the Respondent's brief and response brief and the Petitioner's brief. The record closed when the ARB received the Respondent's response brief on August 23, 1999.

The Respondent argues that New York holds only a slight interest in punishing the Respondent, compared to Arizona's interest and the Respondent contends that, if anything, New York should impose a less severe sanction, because the Respondent's conduct involved no New York patients. The Respondent faults the Committee for failing to consider any penalty other than revocation and for considering Letters of Concern in determining penalty. The Respondent contends that the Committee's Determination will damage Arizona's attempt to rehabilitate the Respondent, because the revocation penalty's reporting to the National Data Bank will result in problems with his insurance relationships and professional privileges. The Respondent argues that he has complied with all the requirements from the 1997 Agreement, that he now serves on probation in Arizona and that New York could establish a program to monitor the Respondent's progress under probation in Arizona. The Respondent indicates that he has no interest in returning to practice in New York and faults New York for maintaining no mechanism that would have allowed him to surrender his New York License.

In response, the Petitioner contends that New York holds an interest in protecting our citizens no less important than any other state's interest in protecting their citizens. The Petitioner contends that a mechanism does exist for the Respondent to surrender his New York License and that the Committee acted properly in considering the Letters of Concern.

### Determination

All ARB members have considered the record and the parties' briefs. We affirm the Committee's Determination that the Respondent committed misconduct under N. Y. Educ. Law § 6530(9)(d)(McKinney Supp. 1999). The Respondent made no challenge to the Committee's Determination on the charges. We vote unanimously to affirm the Committee's Determination to revoke the Respondent's medical license in New York, because we agree with the reasoning the Committee used in making their Determination to revoke the Respondent's License.

The Respondent demonstrated a continuing pattern of sub-standard care and a refusal or inability to correct the deficiencies in his practice. We see nothing in this record to convince us that the Respondent has finally seen the need to correct that pattern, after the Respondent learned nothing from the 1995 Agreement, the 1995 Stipulation and the 1997 Agreement with the Arizona Board. The Respondent has completed the mini-residency and passed the re-certification exam that the 1997 Agreement mandated. To us, this indicates only that the Respondent knew acceptable medical practice and standards all along. The Respondent's disciplinary history demonstrates that the Respondent's deficiencies arose rather from an unwillingness or inability to comply with those standards.

The ARB agrees with the Committee that, if the Respondent had committed his conduct in New York, such conduct would have warranted revocation. We see no reason to impose a less severe sanction because the Respondent committed the misconduct in another state. Although the Arizona Board's findings bind us as to the facts, the Committee and the ARB must make an independent judgement as to a sanction to protect our citizens. Arizona has determined in separate actions, involving treatment for twenty patients and conduct over several years, that the Respondent engaged in conduct that placed patients or the public health at risk. The Respondent failed to correct that conduct after initial disciplinary action. We conclude that the Respondent

poses a continuing risk to patients and that revocation constitutes the appropriate sanction to protect patients in New York State.

**ORDER**

**NOW**, with this Determination as our basis, the ARB renders the following **ORDER**:

1. The ARB **AFFIRMS** the Committee's Determination that the Respondent committed professional misconduct.
  
2. The ARB **AFFIRMS** the Committee's Determination to revoke the Respondent's License to practice medicine in New York State.

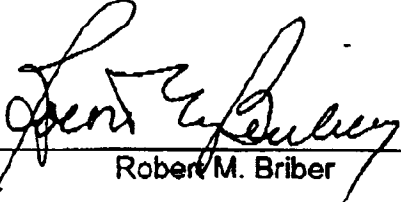
**Robert M. Briber  
Sumner Shapiro  
Winston S. Price, M.D.  
Stanley L. Grossman, M.D.  
Therese G. Lynch, M.D.**



In the Matter of **Muhammad Azam Khan, M.D.**

Robert M. Briber, an ARB Member, concurs in the Determination and Order in the Matter of Dr. Khan.

Dated: September 30, 1999

  
\_\_\_\_\_  
Robert M. Briber

**In the Matter of Muhammad Azam Khan, M.D.**

Sumner Shapiro, an ARB Member concurs in the  
Determination and Order in the Matter of Dr. Khan.

**Dated:** October 5, 1999

  
\_\_\_\_\_  
Sumner Shapiro

**In the Matter of Muhammad Azam Khan, M.D.**

Winston S. Price, M.D., an ARB Member concurs in the Determination and Order in the Matter of Dr. Khan.

Dated: \_\_\_\_\_, 1999

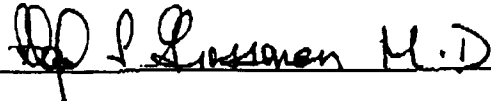
A handwritten signature in cursive script, appearing to read "Winston S. Price, M.D.", is written over a horizontal line.

**Winston S. Price, M.D.**

**In the Matter of Muhammad Azam Khan, M.D.**

Stanley L. Grossman, an ARB Member concurs in the Determination and Order in the Matter of Dr. Khan.

Dated: October 4, 1999

 Stanley L. Grossman M.D.

Stanley L. Grossman, M.D.

**In the Matter of Muhammad Azam Khan, M.D.**

Therese G. Lynch, M.D., an ARB Member concurs in the Determination and Order in the Matter of Dr. Khan.

Dated: Oct 2, 1999



**Therese G. Lynch, M.D.**



STATE OF NEW YORK  
DEPARTMENT OF HEALTH

433 River Street, Suite 300 Troy, New York 12180-2299

**PUBLIC**

Dennis P. Whalen  
*Executive Deputy Commissioner*

July 2, 1999

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Ann Gayle, Esq.  
NYS Department of Health  
Metropolitan Office  
5 Penn Plaza – Suite 601  
New York, New York 10001

Muhammed Azam Khan, M.D.  
Arizona Institute of Medicine and Surgery  
3636 Stockton Hill Road  
Kingman, Arizona 86401-3006

Daniel Shapiro, Esq.  
Shapiro, Uchman & Myers, P.C.  
220 Old Country Road  
Mineola, New York 11501

**RE: In the Matter of Muhammed Azam Khan, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No.99-147) 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 if said license has been revoked, annulled, suspended or surrendered, 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), 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.

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.

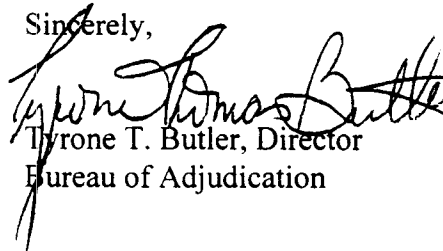
The notice of review served on the Administrative Review Board should be forwarded to:

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,



Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:mla  
Enclosure

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

COPY

-----X  
IN THE MATTER : DETERMINATION  
: :  
OF : AND  
: :  
MUHAMMAD AZAM KHAN, M.D. : ORDER  
-----X

ORDER# 99-147

A Notice of Referral Proceeding and Statement of Charges, both dated February 16, 1999, were served upon the Respondent, Muhammad Azam Khan, M.D. **EUGENIA HERBST (Chair), HRUSIKESH PARIDA, M.D., and JACK SCHNEE, M.D.**, 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. **LARRY G. STORCH, ESQ., ADMINISTRATIVE LAW JUDGE**, served as the Administrative Officer. The Department of Health appeared by Ann Gayle, Esq., Associate Counsel. The Respondent appeared by Shapiro, Uchman & Myers, P.C., Daniel Shapiro, Esq., of Counsel. A hearing was held on June 7, 1999. Evidence was received and witnesses sworn and heard 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 §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, Respondent is charged with professional misconduct pursuant to Education Law §6530(9)(d) [having had disciplinary action taken against him by the authorized professional disciplinary agency of another state]. A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order in Appendix I.

### FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers in parentheses refer to transcript page numbers or exhibits. These citations

represent 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.

1. Muhammad Azam Khan, M.D. (hereinafter, "Respondent"), was authorized to practice medicine in New York State on June 17, 1974 by the issuance of license number 120211 by the New York State Education Department. (Pet. Ex. #2).
2. On or about January 30, 1995, Respondent, in a Consent Agreement for Probation with the Board of Medical Examiners of the State of Arizona (hereinafter "Arizona Board"), agreed that he had committed acts of unprofessional conduct in violation of the Medical Practice Act, A.R.S. § 1401(24)(q) [now A.R.S. § 32-1401(25)(q)] and A.R.S. § 1401(24)(ll) [now A.R.S. § 32-1401(25)(ll)] based on his substandard care and treatment of patients J.L., W.M., M.L., I.W., A.E., K.H., and E.W. As part of the Consent, Respondent was to submit monthly reports of all his surgical cases; the Board was to cause a comprehensive review of at least five of those cases to be conducted, and any deficiencies were to be reported back to the Board; not to commit any act of unprofessional conduct, and obey all

- federal, state and local laws. (Pet. Ex. #3).
3. While Respondent was on probation pursuant to the aforesaid Consent, the Arizona Board, on or about May 8, 1997, in a First Amended Findings of Fact, Conclusions of Law and Consent Agreement for Order of Probation, ordered that Respondent's license to practice medicine be placed on probation for five years with the following conditions: Respondent was to *inter alia* enroll in and successfully complete a three month mini-residency in general surgery; upon completion of said mini-residency, complete additional didactic training one day per week for nine months, take and pass the board recertification examination in general surgery in one sitting prior to November 1, 1998; submit to periodic office and practice surveys, and pay \$7,500.00 to the Board within ninety days of the date of the Arizona Board's Order. (Pet. Ex. #3).
  4. This Order was made pursuant to the Board's and Respondent's compromise of a disputed matter between them and based on the Board's findings that pursuant to the case review mandate: 1) Respondent's care and treatment of Patients E.J., M.H., V.M., M.G., L.S., A.H., E.L.D., K.D., J.M.#2, H.C., B.C., and J.A. was

found to be deficient, 2) Respondent violated hospital policy, and 3) the Arizona Board had previously disciplined Respondent and/or expressed its concern over certain aspects of his practice, all in violation of the Medical Practice Act, A.R.S. § 32-1401(25)(e), (q), (r), and (u). (Pet. Ex. #3).

5. On or about April 4, 1995, the Arizona Board, in its Findings of Fact, Conclusions of Law and Order to pay Civil Penalty, ordered that Respondent pay a \$1,000.00 civil penalty based on his treatment of Patient Z.D. which the Board found fell below the accepted standard of care, in violation of A.R.S. § 32-1401 (21)(q) [then A.R.S. § 1401(24)(q)]. (Pet. Ex. #3).

#### CONCLUSIONS OF LAW

The following conclusions were made pursuant to the Findings of Fact listed above. All conclusions resulted from a unanimous vote of the Hearing Committee unless noted otherwise.

The Committee concluded that Petitioner has sustained its burden of proof in this matter. The preponderance of the evidence demonstrates that Respondent was disciplined by the Arizona Board, on multiple occasions, through the issuance of Consent Agreements. Respondent was placed on probation by the

Arizona Board on January 30, 1995 based upon his substandard care and treatment of seven patients. Respondent was subsequently found to be in violation of the terms of his probation because of substandard treatment of twelve additional patients. The Arizona Board, in a May 8, 1997 Consent Agreement, extended Respondent's probation and imposed additional retraining requirements upon him. The facts and circumstances regarding Respondent's medical care and treatment of the various patients are set forth more fully in the Findings of Fact of the Arizona Board which are contained within Petitioner's Exhibit #3.

The Hearing Committee unanimously concluded that Respondent's conduct, if committed within New York State, would constitute professional misconduct in violation of Education Law § 6530(3) [negligence on more than one occasion]; §6530(18) [fee-splitting]; §6530(29) [violation of probation]; and §6530(32) [failure to maintain accurate records]. As a result, the Committee voted to sustain the First Specification of professional misconduct set forth in the Statement of Charges.

#### **DETERMINATION AS TO PENALTY**

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determined that Respondent's license to practice medicine in New York State should be revoked. This determination was reached upon due

consideration of the full spectrum of penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties.

Respondent has demonstrated a long history of substandard practice. As early as 1981, Respondent was reprimanded by the Arizona Board (see, Pet. Ex. #3). He has repeatedly demonstrated an unwillingness and/or inability to conform to the standards of the profession.

The Hearing Committee took notice of the fact that the Arizona Board has placed Respondent on probation and that he has thus far fulfilled the mandates of that Board. However, this Committee has an obligation to render an independent determination as to the appropriate penalty to be imposed for Respondent's misconduct. The conduct for which Respondent was disciplined by the Arizona Board would, if committed in New York State, warrant revocation of his license. Respondent is not currently registered to practice in New York, nor has he done so for over twenty years. Accordingly, there is no way for the State Board for Professional Medical Conduct to independently assess whether or not Respondent is conforming to the standards of the profession. Under the totality of the circumstances, the Hearing Committee unanimously determined that revocation is the appropriate sanction.

ORDER

Based upon the foregoing, IT IS HEREBY ORDERED THAT:

1. The First Specification of professional misconduct, as set forth in the Statement of Charges (Petitioner's Exhibit #1) is SUSTAINED;

2. Respondent's license to practice medicine in New York State be and hereby is REVOKED;

3. This Determination and Order shall be effective upon service. Service shall be either by certified mail upon Respondent at Respondent's last known address and such service shall be effective upon receipt or seven days after mailing by certified mail, whichever is earlier, or by personal service and such service shall be effective upon receipt.

DATED: Troy, New York  
June 29, 1999

  
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EUGENIA HERBST (CHAIR)

HRUSIKESH PARIDA, M.D.  
JACK SCHNEE, M.D.

TO: Ann Gayle, Esq.  
Associate Counsel  
New York State Department of Health  
5 Penn Plaza - Suite 601  
New York, New York 10001

Muhammad Azam Khan, M.D.  
Arizona Institute of Medicine and Surgery  
3636 Stockton Hill Road  
Kingman, AZ 86401-3006

Daniel Shapiro, Esq.  
Shapiro, Uchman & Myers, P.C.  
220 Old Country Road  
Mineola, New York 11501



APPENDIX I

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

IN THE MATTER  
OF  
MUHAMMAD AZAM KHAN, M.D.

NOTICE OF  
REFERRAL  
PROCEEDING

TO: Muhammad Azam Khan, M.D.  
Arizona Institute of Medicine and Surgery  
3636 Stockton Hill Road  
Kingman, AZ 86401-3006

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law §§230(10)(p) (McKinney Supp. 1999) and N.Y. State Admin. Proc. Act §§301-307 and 401 (McKinney 1984 and Supp. 1999). The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on April 13, 1999, at 10:00 a.m., at the offices of the New York State Department of Health, 5 Penn Plaza, Sixth Floor, New York, New York 10001.

At the proceeding, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. 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 which 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

PETITIONER'S  
EXHIBIT

1-ev.

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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, 433 River Street, Fifth Floor South, Troy, NY 12180, ATTENTION: HON. TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION (Telephone: (518-402-0748), (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, no later than twenty days prior to the scheduled date of the Referral Proceeding, as indicated above.

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 or allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such 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 written brief and affidavits with the Committee. Six copies of all papers you submit must be filed with the Bureau of Adjudication at the address indicated above, no later than fourteen days prior to the scheduled date of the Referral Proceeding, and a copy of all papers must be served on the same date on the Department of Health attorney indicated below. Pursuant to §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. Pursuant to the terms of N.Y. State Admin. Proc. Act §401 (McKinney Supp. 1999) and 10 N.Y.C.R.R. §51.8(b), the Petitioner hereby demands disclosure of the evidence that the Respondent intends to introduce at the hearing, including the names of witnesses, a list of and copies of documentary evidence and a description of physical or other evidence which cannot be

photocopied.

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: New York, New York  
February 16, 1999



ROY NEMERSON  
Deputy Counsel  
Bureau of Professional  
Medical Conduct

Inquiries should be addressed to:

Ann Gayle  
Associate Counsel  
NYS Department of Health  
Division of Legal Affairs  
5 Penn Plaza, Suite 601  
New York, New York 10001  
(212) 613-2615

IN THE MATTER  
OF  
MUHAMMAD AZAM KHAN, M.D.

STATEMENT  
OF  
CHARGES

MUHAMMAD AZAM KHAN, M.D., the Respondent, was authorized to practice medicine in New York State on or about June 17, 1974, by the issuance of license number 120211, by the New York State Education Department.

**FACTUAL ALLEGATIONS**

- A. On or about January 30, 1995, Respondent, in a Consent Agreement for Probation with the Board (of Medical Examiners of the State of Arizona) ("Consent"), agreed that he had committed acts of unprofessional conduct in violation of the Medical Practice Act, A.R.S. §1401(24)(q) (now A.R.S. §32-1401(25)(q) and A.R.S. §1401(24)(II) (now A.R.S. §32-1401(25)(II) based on his substandard care and treatment of patients J.L., W.M., M.L., I.W., A.E., K.H., and E.W.; as part of the Consent, Respondent was to: submit monthly reports of all his surgical cases, the Board was to cause a comprehensive review of at least 5 of those cases to be conducted, and any deficiencies were to be reported back to the Board; not commit any act of unprofessional conduct; and obey all federal, state and local laws.

While Respondent was on probation pursuant to the aforesaid Consent, the Board of Medical Examiners of the State of Arizona ("Board"), on or about May 8, 1997, in a First Amended Findings of Fact, Conclusions of Law and

Consent Agreement for Order of Probation, ordered that Respondent's license to practice medicine be placed on probation for five years with the following conditions: Respondent was to, *inter alia*, enroll in and successfully complete a three month mini-residency in general surgery, upon completion of said mini-residency, complete additional didactic training one day per week for nine months, take and pass the board recertification examination in general surgery in one sitting prior to November 1, 1998, after the first year of his probation, submit to periodic office and practice surveys, and pay \$7,500 to the Board within ninety days of the date of the Board's Order. Said Order was made pursuant to the Board's and Respondent's compromise of a disputed matter between them and based on the Board's findings that pursuant to the aforesaid case review mandate, (1) Respondent's care and treatment of Patients E.J., M.H., V.M., M.G., L.S., A.H., E.L.D., K.D., J.M.#2, H.C., B.C., and J.A. was found to be deficient, (2) Respondent violated hospital policy, and (3) the Board had been previously disciplined Respondent and/or expressed its concern over certain aspects of his practice, all in violation of the Medical Practice Act, A.R.S. §32-1401(25)(e), (q), (r), and (u).

- B. On or about April 4, 1995, the Board, in its Findings of Fact, Conclusions of Law and Order to pay Civil Penalty, ordered that Respondent pay a \$1,000 civil penalty based on his treatment of Patient Z.D. which the Board found fell below the accepted standard of care, in violation of A.R.S. §32-1401(21)(q) (then A.R.S. §32-1401(24)(q)).

### **SPECIFICATION OF CHARGES**

#### **FIRST SPECIFICATION**

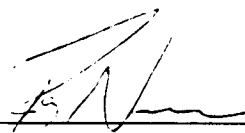
#### **HAVING HAD DISCIPLINARY ACTION TAKEN**

Respondent is charged with committing professional misconduct as defined in

N.Y. Educ. Law §6530(9)(d)(McKinney Supp. 1999) by having his or her license to practice medicine revoked, suspended or having other disciplinary action taken, or having his or her application for a license refused, revoked or suspended or having voluntarily or otherwise surrendered his or her license after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation, suspension or other disciplinary action involving the license or refusal, revocation or suspension of an application for a license or the surrender of the license would, if committed in New York state, constitute professional misconduct under the laws of New York state (namely N.Y. Educ. Law §6530(3), (18), (29), and (32)) as alleged in the facts of the following:

1. Paragraphs A and B.

DATED: February 16, 1999  
New York, New York



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ROY NEMERSON  
Deputy Counsel  
Bureau of Professional  
Medical Conduct