



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.  
*Commissioner*

Dennis P. Whalen  
*Executive Deputy Commissioner*

March 14, 2000

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Robert Bogan, Esq.  
NYS Department of Health  
433 River Street – 4<sup>th</sup> Floor  
Troy, NY 12180

Gamal M. Diab, M.D.  
72 Kitchell Road  
Denville, NJ 07834

Gamal M. Diab, M.D.  
195 Route 46 West  
Suite 201  
Mine Hill, NJ 07801

**RE: In the Matter of Gamal M. Diab, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No.00-76) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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,

A handwritten signature in cursive script that reads "Tyrone T. Butler". The signature is written in black ink and is positioned above the typed name.

Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:nm  
Enclosure

COPY

**IN THE MATTER**

**OF**

**GAMAL M. DIAB, M.D.**

**DECISION  
AND  
ORDER  
OF THE  
HEARING  
COMMITTEE**

**ORDER NO.**  
**BPMC 00 -76**

This matter was commenced by a Notice of Hearing and Statement of Charges, both dated November 30, 1999 which were served upon **GAMAL M. DIAB M.D.**, (hereinafter referred to as "Respondent").

**GEORGE C. SIMMONS, Ed.D., Chairperson, FILIPPO DICARMINE, M.D., JAMES EISENKRAFT, 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.

**JONATHAN M. BRANDES, ESQ.**, Administrative Law Judge, served as the Administrative Officer.

A hearing was held on December 14, 1999 at 5 Penn Plaza, New York, New York. The State Board For Professional Medical Conduct (hereinafter referred to as "Petitioner" or "the Board") appeared by **HENRY M. GREENBERG, ESQ.**, General Counsel, by **ROBERT BOGAN, ESQ.**, Assistant Counsel, Bureau of Professional Medical Conduct. Respondent did not appear in person or by counsel. Evidence was received. A transcript of these proceedings was made.

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

## **STATEMENT OF CASE**

This case was brought pursuant to Public Health Law Section 230(10)(p). This statute provides for an expedited hearing where a licensee is charged solely with a violation of Section 6530 (9) of the Education Law. In such cases, a licensee is charged with misconduct based upon prior professional disciplinary action or criminal conviction. The scope of this expedited hearing is limited to a determination of the nature and severity of the penalty to be imposed by this state upon the licensee based solely upon the record of the previous conviction or discipline.

In the instant case, Respondent is charged with professional misconduct pursuant to the New York State Education Law, Section 6530 (9)(b) and (d) (having been found guilty of improper professional practice or misconduct in another jurisdiction where the acts sustained would constitute misconduct in New York; and having had disciplinary action taken against the license of Respondent in another jurisdiction where the acts sustained would constitute misconduct in New York). The acts established in the prior proceeding constitute sexual harassment of "a subordinate." The allegations in this proceeding and the underlying events are more particularly set forth in the Notice of Referral Proceeding and Statement of Charges, a copy of which is attached to this Decision and Order as Appendix One.

## **SIGNIFICANT LEGAL DECISIONS**

Respondent was served by certified mail upon the filing of an affidavit of failure to obtain personal service. Respondent requested, and was granted an adjournment of the original hearing date. Counsel for The Board stated, as an officer of the court, that he had had more than one conversation with Respondent regarding this proceeding.

Therefore, the Administrative Law Judge finds Petitioner established jurisdiction over Respondent by appropriate service by certified mail. Furthermore, Respondent had actual knowledge of this proceeding.

## **FINDINGS OF FACT**

The Committee adopts the factual statements set forth on pages one and two of the Statement of Charges (Appendix One) as its findings of fact and incorporates them herein.

## **CONCLUSIONS WITH REGARD TO FACTUAL ALLEGATIONS SPECIFICATIONS AND PENALTY**

Petitioner herein has proven by a preponderance of the evidence that Respondent was appropriately served with notice of this proceeding. Respondent has indicated that he had actual knowledge of this proceeding. The Administrative Law Judge ruled that Petitioner had established jurisdiction.

Petitioner has proven by a preponderance of the evidence that Respondent was found guilty of professional misconduct in New Jersey via a consent order. Respondent was reprimanded and fined two thousand five hundred dollars based upon a finding of sexual harassment of a subordinate. The basis of the New Jersey action would, if committed in New York, constitute failure to adhere to state and federal statutes and moral misconduct. That is, sexual harassment of a patient or an office worker is an offense in New York state law and constitutes conduct evidencing moral unfitness.

The Committee now turns its attention to what penalty to impose. Based upon all the above, it is the unanimous conclusion of this panel that this physician has shown contempt for this body by failing to appear notwithstanding appropriate notice and actual knowledge of the proceeding. With regard to the charge itself, the State of New Jersey found Respondent guilty of

sexual harassment of a subordinate. A civil penalty of \$2500 was imposed. This is a significant penalty. Therefore, the officials in New Jersey must have been convinced that Respondent was guilty of a significant infraction.

In present day society, and particularly in professional environments, sexual harassment will not be tolerated. Physicians, like all professionals, are on notice that the rules regarding conduct between the sexes will be strictly enforced. Apparently, Respondent ignored the notice he received about appropriate conduct with subordinates just like he ignored the notice he received of this proceeding.

As a matter of law, Respondent was on notice that his license could be revoked unless he appeared at this proceeding to answer the charges. He defaulted. Based upon this, as well as the significance of the infraction, it is the unanimous conclusion of this Committee that the only appropriate sanction is revocation.

**ORDER**

WHEREFORE, Based upon the preceding facts and conclusions,

It is hereby ORDERED that:

1. The Factual allegations in the Statement of Charges (Appendix One) are SUSTAINED;

Furthermore, it is hereby ORDERED that;

2. The Specifications of Misconduct contained within the Statement of Charges (Appendix One) are SUSTAINED;

Furthermore, it is hereby ORDERED that;

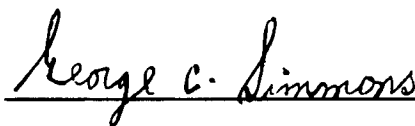
3. The license of Respondent to practice medicine in the state of New York is hereby REVOKED;

Furthermore, it is hereby ORDERED that;

4. This order shall take effect UPON RECEIPT by Respondent or her attorney or SEVEN (7) DAYS after mailing of this order by Certified Mail to Respondent or her attorney.

Dated:  
Rochester, New York

03-01- 2000



**GEORGE C. SIMMONS, Ed.D.,  
Chairperson  
FILIPPO DICARMINE, M.D.  
JAMES EISENKRAFT, M.D.**



TO:

**ROBERT BOGAN ESQ.**

Assistant Counsel

Bureau of Professional Medical Conduct

Corning Tower

Albany, N.Y. 12237

**GAMAL M. DIAB, M.D.**

72 Kitchell Road

Denville, NJ 07834

**GAMAL M. DIAB, M.D.**

195 Route 46 West Suite 201

Mine Hill, NJ 07801

**APPENDIX ONE**

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

**IN THE MATTER  
OF  
GAMAL M. DIAB, M.D.**

NOTICE  
OF  
REFERRAL  
PROCEEDING

TO: GAMAL M. DIAB, M.D.  
72 Kitchell Road  
Denville, NJ 07834

GAMAL M. DIAB, M.D.  
195 Rt. 46 West  
Suite 201  
Mine Hill, NJ 07801

**PLEASE TAKE NOTICE THAT:**

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law Section 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 15th day of December, 1999 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 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 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 12180, ATTENTION: HON. TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION, (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before December 6, 1999.

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 or 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 6, 1999 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 30*, 1999



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

Inquiries should be addressed to:

Robert Bogan  
Assistant Counsel  
Office of Professional Medical Conduct  
433 River Street  
Suite 303  
Troy, NY 12180  
(518)402-0820

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

**IN THE MATTER  
OF  
GAMAL M. DIAB, M.D.**

STATEMENT  
OF  
CHARGES

GAMAL M. DIAB, M.D., the Respondent, was authorized to practice medicine in New York State on July 16, 1986, by the issuance of license number 167011 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A. On or about April 15, 1999, the State of New Jersey, Department of Law & Public Safety, Division of Consumer Affairs, State Board of Medical Examiners, (hereinafter, "New Jersey Board") filed a Consent Order, (hereinafter "New Jersey Order"), that reprimanded the Respondent and ordered him to pay a \$2,500.00 fine, based on professional misconduct of sexual harrassment of a subordinate.

B. The conduct resulting in the New Jersey Board's disciplinary action against Respondent would constitute misconduct under the laws of New York State, pursuant to the following section of New York State law:

1. New York Education Law §6530(16) (failure to comply with federal, state, or local laws, rules or regulations governing the practice of medicine); and/or

2. New York Education Law §6530(20) (moral unfitness to practice medicine).

## **SPECIFICATIONS**

### **FIRST SPECIFICATION**

Respondent violated New York Education Law §6530(9)(b) by reason of 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 the following:

1. The facts in paragraphs A and/or B.

### **SECOND SPECIFICATION**

Respondent violated New York Education Law §6530(9)(d) by reason of his having had disciplinary action taken against him by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the disciplinary action would, if committed in New York State, constitute professional misconduct under the laws of New York State, in that Petitioner charges:

2. The facts in paragraphs A and/or B.

DATED: *Nov. 30*, 1999  
Albany, New York

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