



# 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*

August 28, 2000

## CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Paul Robert Maher, Esq.  
NYS Department of Health  
433 River Street – 4<sup>th</sup> Floor  
Troy, New York 12180

Gamal Diab, M.D.  
72 Kitchell Road  
Denville, New Jersey 07834

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

Dear Parties:

Enclosed please find the Remand Order (No. 00-76) 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.

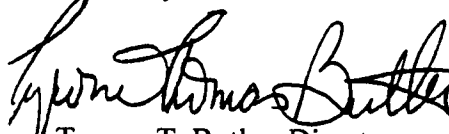
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified 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:nm  
Enclosure

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

**COPY**

**In the Matter of**

**Gamal M. Diab, M.D. (Respondent)**

**Administrative Review Board (ARB)**

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

**Remand Order No. 00-76**

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

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

**Paul Robert Maher, Esq.  
Pro Se**

After a hearing below, a BPMC Committee determined that the Respondent's professional misconduct in another state made the Respondent liable for disciplinary action against his license to practice medicine in New York (License). The Committee voted to revoke the Respondent's License, in large part due to the Respondent's failure to appear for the BPMC hearing. In this proceeding pursuant to N.Y. Pub. Health Law § 230-c (4)(a)(McKinney's Supp. 2000), the Respondent asks the ARB to remand this case to the Committee for further proceedings, to allow the Respondent to testify and present a case. The Respondent argues that he failed to appear at the hearing due to a mistake over the date rather than due to contempt for the process. After reviewing the hearing record and the briefs from the parties, we remand this case to the Committee for further proceedings.

**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)(b)&(9)(d) (McKinney Supp. 2000) by committing professional misconduct because:

- the duly authorized professional disciplinary agency from a sister state (New Jersey) found the Respondent guilty for improper professional practice [§6530(9)(b)], and/or took action against the Respondent's License in that state [§6530(9)(d)], for,
- conduct that would constitute professional misconduct, if the Respondent had committed such conduct in New York.

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

- willful or grossly negligent failure to comply with substantial provisions of federal, state or local laws, rules or regulations that pertain to medical practice, a violation under N. Y. Educ. Law § 6530(16) (McKinney Supp. 2000), and,
- engaging in conduct that evidences moral unfitness in practicing medicine, a violation under N. Y. Educ. Law § 6530(20) (McKinney Supp. 2000).

An expedited hearing (Direct Referral Proceeding) ensued pursuant to N.Y. Pub. Health Law §230(10)(p)(McKinney Supp. 2000), 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 Respondent failed to appear at the hearing.

The Committee's Administrative Officer ruled that the petitioner had established jurisdiction over the Respondent by appropriate service by certified mail. The Committee determined that the Respondent entered a Consent Order with the New Jersey Board, which established acts constituting sexual harassment of a "subordinate". The Committee found that the New Jersey Board reprimanded and fined the Respondent for such conduct. The Committee concluded that the conduct at issue in the New Jersey action would constitute failure to adhere to state and federal statutes and that sexually harassing an office worker constitutes conduct evidencing moral unfitness.

In assessing the penalty for the Respondent's conduct, the Committee concluded that the Respondent had shown contempt for the Committee by failing to appear. The Committee also concluded that the Respondent had committed a significant infraction in New Jersey because the New Jersey Board imposed a significant penalty, a \$2500.00 fine. The Committee stated that the Respondent was on notice concerning rules regarding conduct between the sexes and that the Respondent ignored the rules about appropriate conduct, the way he ignored the hearing notice. The Committee ruled that the Respondent received notice that his license could be revoked if he failed to appear to answer the charges and he defaulted in appearing. The Committee concluded that the default and the significant infraction established revocation as the only appropriate sanction.

### **Review History and Issues**

The Committee rendered their Determination on March 14, 2000. That notice had to be re-served on May 5, 2000. This proceeding commenced on May 11, 2000, 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 the Petitioner's brief and response brief. The record closed when the ARB received the response brief on June 30, 2000.

The Respondent requests that the ARB remand this case to the Committee so that the Respondent can present a defense to the charges. The Respondent argues that the Committee regarded his absence from the hearing as contemptuous and disrespectful behavior and that the Committee based their penalty on his absence. The Respondent concedes that he received notice about the proceeding by mail, but contends that he had requested and received an adjournment in the original date by telephone and had recorded the new date incorrectly. The Respondent argued that if he did not want to appear on the adjourned date, he would have called to request a further

adjournment. The Respondent argues further that the Committee imposed an overly harsh penalty for his New Jersey conduct and that neither New Jersey nor California took or restricted his license for that same conduct.

In a June 19, 2000 brief, the Petitioner asked that the ARB dismiss the Respondent's Notice of Review as untimely. In the June 30, 2000 response brief, the Petitioner argued that the Respondent received adequate notice about the adjourned hearing date and that the Committee imposed an appropriate penalty for the Respondent's conduct in New Jersey and his failure to meet his professional responsibility in New York. The Petitioner asks that the ARB refuse to grant the Respondent a re-hearing and that the ARB uphold the penalty the Committee imposed.

#### **Determination**

The ARB has considered the record and the parties' briefs. We 5-0 vote to remand this proceeding to the Committee, so that the Respondent may testify and present a defense to the charges.

The Respondent concedes that he received notice by mail concerning the proceeding. The Petitioner concedes that the Respondent contacted the Petitioner to change the location for the hearing from Troy to New York City on a different date. The Respondent indicated in his brief that he recorded the wrong date for the new hearing day and thus failed to appear due to a mistake. The Committee's Determination made clear that the Committee revoked the Respondent's License as much due to the Respondent's failure to appear at the hearing as due to the conduct underlying the charges at the hearing. Although we have no reason to doubt the Petitioner's counsel, as an officer of the court, concerning conversations with the Respondent over the new date, all contact about the new date occurred by telephone rather than mail, so the Respondent could have confused the dates legitimately. We question why the Respondent would have requested a new date at all if the Respondent really held the disciplinary process and the

Committee in such contempt as the Committee inferred when the Respondent failed to appear on the new hearing date.

Pursuant to our authority under N.Y. Pub. Health Law § 230-c(4)(b)(McKinney Supp. 2000), the ARB remands this case for the further proceedings that we mentioned above. If the Committee wishes to direct questions to the ARB concerning the proceeding on remand, the Committee may direct those questions by letter, on notice to each party, from their Administrative Officer to our Administrative Officer. Following the further proceeding, the Committee shall issue a Supplemental Determination in which they may make any new or revised findings, conclusions or determination or the Committee may reaffirm their earlier Determination. Through this Remand Order, the ARB rules on the remand request only. The Committee shall serve the Supplemental Determination on the parties by certified mail and each party shall have fourteen days from receiving that Supplemental Determination to request further review. Under N.Y. Pub. Health Law § 230-c(4)(a)(McKinney Supp. 2000) no stay applies against a revocation penalty pending ARB review. The Committee's revocation order against the Respondent will remain in effect, therefore, during the remand period.

### **ORDER**

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

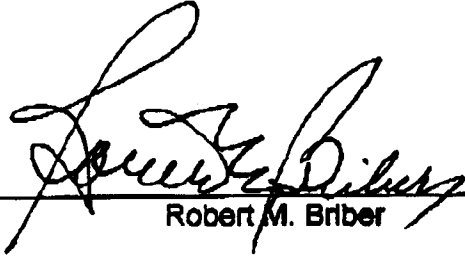
The ARB remands this case to the Committee for further proceedings, at which the Respondent will receive an opportunity to testify and present a defense to the charges.

**Robert M. Briber**  
**Thea Graves Pellman**  
**Winston S. Price, M.D.**  
**Stanley L. Grossman, M.D.**  
**Therese G. Lynch, M.D.**

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

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

Dated: August 9, 2000



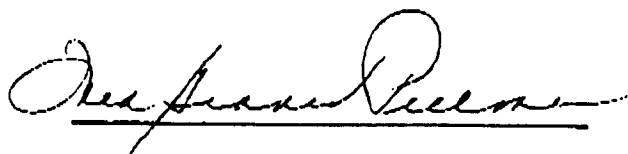
Robert M. Briber



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

**Thea Graves Pellman**, an ARB Member concurs in the Determination and Order in the Matter of Dr. Diab.

Dated: Aug 15, 2000

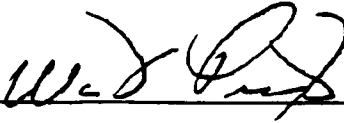


**Thea Graves Pellman**

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

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

Dated: 8/19/, 2000



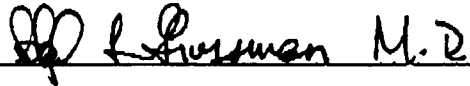
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Winston S. Price, M.D.

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

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

Dated: August 14, 2000

 M.D.

**Stanley L. Grossman, M.D.**

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

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

Dated: Aug 10, 2008

Therese G. Lynch M.D.

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