



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

December 4, 2000

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

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

Robert Bogan, Esq.
& Paul Robert Maher, Esq.
NYS Department of Health
Hedley Building-4th Floor
433 River Street
Troy, New York 12180

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

Dear Parties:

Enclosed please find the Determination and Order (No. 00-338) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), and §230-c subdivisions 1 through 5, (McKinney Supp. 1992), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the licensee or the Department may seek a review of a committee determination.

All notices of review must be served, by certified mail, upon the Administrative Review Board and the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

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

James F. Horan, Esq., Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Hedley Park Place
433 River Street, Fifth Floor
Troy, New York 12180

The parties shall have 30 days from the notice of appeal in which to file their briefs to the Administrative Review Board. Six copies of all papers must also be sent to the attention of Mr. Horan at the above address and one copy to the other party. The stipulated record in this matter shall consist of the official hearing transcript(s) and all documents in evidence.

Parties will be notified by mail of the Administrative Review Board's Determination and Order.

Sincerely,

A handwritten signature in black ink, appearing to read "Tyrone T. Butler". The signature is written in a cursive style with a large initial "T".

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:cah
Enclosure

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

DETERMINATION
AND
ORDER
BPMC 00-338

A Notice of Referral Proceeding and Statement of Charges, both dated November 30, 1999, were served upon the Respondent, **GAMAL M. DIAB, M.D.**

ARSENIO G. AGOPOVICH, M.D., Chairperson, **MOHAMMED GHAZI-MOGHADAM, M.D.** and **SR. MARY THERESA MURPHY**, 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. **MICHAEL P. MCDERMOTT, ESQ.**, Administrative Law Judge, served as the Administrative Officer.

A hearing was held on November 16, 2000, at the Offices of the New York State Department of Health, Hedley Park Place, 433 River Street, Troy, New York. The Department appeared by **DONALD P. BERENS, JR., ESQ.**, General Counsel, by **ROBERT BOGAN, ESQ.**, and **PAUL ROBERT MAHER, ESQ.**, of Counsel. The Respondent appeared in person on his own behalf.

Evidence was received and transcripts of these proceedings were made.

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

STATEMENT OF CASE

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

In the instant case, the Respondent is charged with professional misconduct pursuant to Education Law Section 6530(9)(b) and (d). A copy of the Notice of Referral Proceeding and Statement of Charges are attached to this Determination and Order as Appendix 1.

WITNESSES

For the Petitioner:

NONE

For Respondent:

Gamal M. Diab, M.D., the Respondent

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. All Hearing Committee findings were unanimous unless otherwise specified.

1. 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. (Pet's Ex. 4).

2. On 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 harassment of a subordinate. (Pet's Ex. 5).

HEARING COMMITTEE CONCLUSIONS

The Hearing Committee concludes that 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:

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

VOTE OF THE HEARING COMMITTEE

SPECIFICATIONS

FIRST SPECIFICATION

Respondent violated New York State 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.

VOTE: SUSTAINED (3-0)

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.

VOTE: SUSTAINED (3-0)

HEARING COMMITTEE DETERMINATION

The record in this case indicates the "New Jersey Board" commenced an investigation upon receipt of information that the Respondent had resigned from the medical staff at Union Hospital on September 1, 1997, while he was the subject of a hospital investigation involving allegations that he was guilty of inappropriate conduct toward a female Operating Room secretary.

The Respondent denied the allegations but he did enter into a CONSENT ORDER which ORDERED that he be reprimanded based on his having engaged in professional misconduct; that he be assessed a fine of \$2,500.00 and that he be required, at his own expense, to enroll in and successfully complete, the PROBE course in ethics within one (1) year of the date of entry of the ORDER.

The Respondent testified at the instant hearing in an open, honest and forthright manner. He was a very credible witness. He still denies the allegations of professional misconduct and claims that he entered the consent agreement to settle the matter without any admission of wrongdoing or liability.

The Respondent, formerly an anesthesiologist, has started a new career in pain management and has privileges in New Jersey hospitals.

The alleged incident happened three years ago, and with the exception of this single instance, the Respondent's medical career has been without blemish.

The Respondent has complied with the terms of the "New Jersey Order" and the Hearing Committee determines that further punishment would serve no useful purpose.

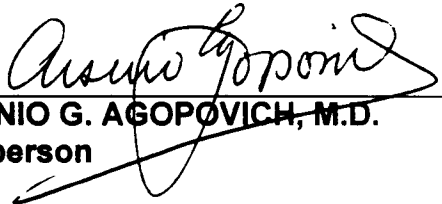
ORDER

IT IS HEREBY ORDERED:

1. No action should be taken against the Respondent's New York State medical license.

2. This **ORDER** shall be effective upon service on the Respondent or the Respondent's attorney by personal service or certified or registered mail.

DATED: Troy, New York
November 30, 2000



ARSENIO G. AGOPOVICH, M.D.
Chairperson

MOHAMMED GHAZI-MOGHADAM, M.D.
SR. MARY THERESA MURPHY

APPENDIX I

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