



# STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower

The Governor Nelson A. Rockefeller Empire State Plaza

Albany, New York 12237

Lorna McBarnette

Executive Deputy Commissioner

May 1, 1992

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Silvia Finkelstein, Esq.  
NYS Department of Health  
Division of Legal Affairs  
Bureau of Professional  
Medical Conduct  
5 Penn Plaza, Sixth Floor  
New York, New York 10001-1803

Ahmed H. Gaber, M.D.  
8 Table Lane  
Hicksville, New York 11801

Melvyn Roth, Esq.  
114 Old Country Road  
Suite 652  
Mineola, New York 11501

**RE: In the Matter of Ahmed H. Gaber, M.D.**

Dear Ms. Finkelstein, Mr. Roth and Dr. Gaber:

Enclosed please find the Determination and Order of the Hearing Committee 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.

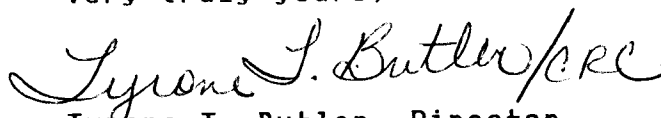
As prescribed by the New York State Public Health Law, §230, subdivision 10, paragraph (i), and §230-c subdivisions 1 through 5, (McKinney Supp. 1992), "(t)he determination of a committee on professional medical conduct may be reviewed by the administrative review board for professional medical conduct." 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 of the Hearing Committee's Determination and Order.

The notice of review served on the Administrative Review Board should be forwarded to the New York State Department of Health, Bureau of Adjudication, Corning Tower - Room 2503, Empire State Plaza, Albany, New York 12237-0030, **Attention: James F. Horan, Esq., Administrative Law Judge.** 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.

Very truly yours,



Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:crc  
Enclosure

bcc: P. Millock  
K. Tanner  
A. Bohenek  
J. Horan  
SAPA File  
ALJ

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

-----X  
IN THE MATTER : DETERMINATION  
OF : AND ORDER  
AHMED H. GABER, M.D. : OF THE  
: HEARING  
: COMMITTEE  
-----X  
ORDER NO. BPMC 92-37

David T. Lyon, M.D. Chairperson, Priscilla R. Leslie, R.N., CNP, Albert L. Bartoletti, M.D. duly designated members of the State Board for Professional Medical Conduct, appointed by the Commissioner of Health of the State of New York pursuant to Section 230(1) of the Public Health Law, served as the Hearing Committee in this matter pursuant to Section 230(12) of the Public Health Law. Maureen J.M. Ely, Esq., Administrative Law Judge, served as Administrative Officer for the Hearing Committee for all scheduled hearings except those hearings held on January 7 and 28, 1992 when Harry Shechtman, Esq. served as Administrative Officer.

After consideration of the entire record, the Hearing Committee submits this report.

**SUMMARY OF THE PROCEEDINGS**

Commissioner's Summary Order and Notice of Hearing Dated:	November 14, 1991
Statement of Charges Dated:	November 12, 1991
Hearing Dates:	November 26, 1991 December 18, 1991 January 7, 1992 January 13, 1992 January 28, 1992 February 4, 1992 February 10, 1992

Place of Hearing:

NYS Department of Health  
5 Penn Plaza  
New York, New York

Petitioner Appeared By:

Peter J. Millock, Esq.  
General Counsel  
NYS Department of Health  
By: Sylvia Finkelstein, Esq.  
Associate Counsel

Respondent Appeared By:

Melvyn Roth, Esq.  
114 Old Country Road  
Suite 652  
Mineola, NY 11501

Deliberations:

March 24, 1992

Summary Order Decision by  
Hearing Committee:

January 13, 1992  
(on the record)

**WITNESSES**

For the Petitioner:

Patient A  
Patient A's Mother  
Patient B  
Patient C  
Patient C and F's Mother  
Patient D  
Patient D's Mother  
Patient E  
Patient E's Mother  
Patient F  
Patient F's Father  
Detective Meyers

For the Respondent:

Respondent  
Dr. Burdge  
Dr. Greensher  
Dr. Joseph  
Mrs. Gaber

### STATEMENT OF CHARGES

The Statement of Charges contains allegations that Respondent engaged in conduct which evidences moral unfitness to practice medicine, in that in the course of examining Patients A through F, he had inappropriate sexual contact with them.

The Charges are more specifically set forth in the Statement of Charges, a copy of which is attached hereto and made a part hereof.

### FINDINGS OF FACT

Numbers in parentheses refer to pages of the transcript

#### Patient A

1. Patient A began seeing Dr. Gaber in 1988 and had been to his office approximately 9 times before the visit of August 5, 1989 (321, 801, 861 and Exhibit A).
2. Patient A was 13 years old at the time of the August 5 examination (162 and Exhibit A).
3. The purpose of Patient A's office visit on August 5, 1989 was to get forms filled out for a school physical (801 and Exhibit A).
4. Patient A was escorted to an examining room by Respondent's receptionist and accompanied into the room by her mother (37).
5. Patient A was given a hospital gown and instructed to take everything off except her underwear and put on the

gown with the opening in the front (38, 102, 103).

6. With Patient A's mother in the room, Respondent performed a physical examination which included a breast examination (39, 806-809, 820, 125).

7. Respondent finished the examination and Patient A's mother left the examination room after Respondent left (40, 125-126).

8. After Patient A's mother left the examination room and while Patient A was still in the hospital gown, Respondent came back into the room (41-42).

9. Respondent began talking to Patient A and telling her how pretty she was (42, 108) and then moved Patient A's hospital gown down to her waist (43, 109) and began caressing her breasts with both hands (44 and 114).

10. While caressing Patient A's breasts, Respondent leaned into Patient A for a kiss (45, 109).

11. After Patient A kissed him, Respondent asked if she had enjoyed it and stated that maybe some day it would be more (45).

12. Respondent remained in the examining room and watched Patient A get dressed (46).

#### **Patient B**

13. Patient B was fourteen on May 9, 1990 (171 and exhibit B).

14. Patient B had been a patient of Respondent since 1988 and had visited him approximately 5 times prior to the

May 9, 1990 visit (172, 902 and Exhibit F).

15. The May 9 appointment with Respondent was made because Patient B complained of an earache (178, 903).

16. Respondent took a throat culture (175) and checked Patient B's chest with a stethoscope by putting the stethoscope under the shirt she was wearing (176).

17. Patient B's mother was in the room while Respondent took the throat culture and checked Patient B's chest (175) but left when Respondent told her to fill out insurance forms in the waiting room (175, 207-208).

18. After Patient B's mother left the examination room, Respondent told Patient B to remove her shirt and bra and lie down on her back on the examination room table (176).

19. Respondent placed a cloth over Patient B's face (176) and fondled Patient B's breasts (177).

20. Respondent removed one hand from Patient B's breast, unzipped his pants, and began "playing with himself" (177-179).

21. Respondent was breathing heavily and moaning while he rubbed his genitals (179-180).

### Patient C

22. Respondent became Patient C's pediatrician in 1989 (273 and Exhibit C).

23. Patient C was diagnosed with asthma in 1989 by allergists and Respondent began giving her injections for

her asthma in 1989 on a once a week basis (274, 1754 and Exhibit C).

24. Patient F, Patient C's sister, was also being given weekly injections for asthma by Respondent and Patients C and F went together for their weekly allergy shots (275-276).

25. When Patient F and Patient C first began going to Respondent for their weekly allergy shots, he placed them in the same examining room and injected them in the arm without having them disrobe. Respondent placed them in separate examining rooms about a month after they began to get the injections (277-279 318, 343-344).

26. After Patient C and Patient F began to be seen separately by Respondent in September of 1990, Respondent began rubbing Patient C's breast after giving Patient C her weekly allergy shot (280-284, 309). Patient C was thirteen years old in September of 1990 (Exhibit C).

27. While Respondent was rubbing Patient C's breasts he would tell her that she was pretty (281).

28. Respondent felt Patient C's breast almost every week that she went for her allergy shot (284). Respondent played with her nipples and felt around her breast with his whole hand (310, 313).

#### **Patient D**

29. Patient D began seeing Respondent in 1989 (439, 1119, Exhibit D).

30. Patient D went to Respondent's office in November of 1989 for a school physical (440, Exhibits D and J, 503). She was fourteen years old at the time of the November 1989 visit (Exhibit D).

31. Mrs. D started to accompany her daughter into the examining room during the November 1989 visit but Respondent asked her to wait outside (441-442, 455, 503).

32. Patient D put on a cloth gown for the examination and had her bra and underpants on underneath the gown (444). Respondent asked Patient D to remove her gown and unbutton her bra (445). While she was sitting on the examining table, Respondent pushed her breasts up using his hand and told her that she was very pretty (444, 476, 481).

33. While Patient D was naked from the waist up, Respondent told Patient D to walk back and forth about three times (446-447). While Patient D was walking back and forth, Respondent told her that she was very beautiful (477, 481).

34. Respondent left Patient D in the examining room to get dressed and then returned, put his hand on her cheeks and kissed her on the lips (448, 468, 482, 540-541).

#### **Patient E**

35. Patient E began seeing Respondent in 1989. Patient E was thirteen years old at the time (393-394, 1141, Exhibit E).

36. In October of 1990, Patient E was brought to

Respondent's office by her mother for treatment of mononucleosis (395-396, 420, 1142-1143, Exhibit E).

37. Mrs. E was present during Respondent's examination of Patient E (396, 420) but Respondent asked her to wait in his office after the examination, Respondent left the room with Patient E's mother (397, 420, 408).

38. Patient E was "halfway" dressed (398) when Respondent re-entered the examining room and told Patient E to take her clothes off because he was going to check for breast cancer (397-398).

39. Respondent had Patient E lie down on the examining table and Respondent removed her gown and told Patient E to take off her bra (398). Respondent told her that he was going to check for breast cancer and proceeded to "poke" her breasts using his fingers and hand (399).

40. Respondent then told Patient E to sit up and he caressed both breasts with his hand for several minutes (399-400, 411-412, 415-417, 427).

41. Patient E's mother waited in Respondent's office for approximately 10 minutes after leaving the examining room before Respondent entered the office (421).

**Patient F**

42. Patient F began seeing Respondent in 1988 after he took over the practice of Patient F's first pediatrician, Dr. Burdge (547, 1244, Exhibit F).

43. In late 1988, Patient F was diagnosed as having

bronchial asthma and allergic rhinitis (Exhibit F, 548).

44. Patient F began getting weekly allergy shots from Respondent in February of 1989 (Exhibit F). Patient F and Patient C were sisters. Patient C and F went together to Respondent's office for their weekly allergy shots (549-550). Patient F was thirteen years old in February of 1989 (Exhibit F).

45. Initially, Patients C and F and their mother would go into the same examination room where Respondent would administer the shot without asking them to disrobe (551).

46. During one of their weekly visits, while Patients C and F and their mother were on their way into one of the examining rooms, Respondent stated that Patients C and F were old enough to go in by themselves and started seeing them separately without their mother in the room (552).

47. After he began seeing Patients C and F separately, Respondent told Patient F to take off her bra and shirt before he would give her an allergy shot (553).

48. Every week that Patient F was sent to Respondent for allergy shots, he would take both hands and put them on her breasts while she was sitting and squeeze and rub her breasts for several minutes and squeeze her nipples until they hurt (553, 555).

49. On each of these occasions, Respondent had Patient F roll over on her stomach on the examining table and would cup her breast with his hand and rub his genital area while

moaning and breathing heavily (554-560, 579, 621-623).

50. On April 11, 1991, Patient F was seen by Respondent because she had hit her head the day before and felt dizzy (Exhibit F and 561, 1250-1251).

51. Respondent felt her head and then told her to take off her bra and shirt (562). Respondent grabbed her breasts, told her to remove all of her clothes (562) and asked her to walk across the room. While Patient F was walking across the room, Respondent came up behind her and pressed his groin against her buttocks (563). While walking with his groin pressed against Patient F's buttocks, he brought his hands up to her breasts and cupped them (564). Respondent also pressed his groin against Patient F's buttocks after he asked her to bend over and touch her toes (565).

52. Patient F saw Respondent again on April 22, 1991 for a possible strep throat (Exhibit F, 566, 1256-1257).

53. Respondent told Patient F to take off her bra and shirt (567) and then fondled her breasts (576) and masturbated (567) while she lay face down on the examining table. Patient F heard heavy breathing while this was occurring (568).

54. Respondent reentered the examination room while Patient F was getting dressed (568) and told her to remove her clothes again so that he could check her for mononucleosis (569).

55. Respondent had Patient F lie on her back on the examining table, pressed her stomach and then slid his hand underneath her skirt into her underpants (569).

56. Patient F unzipped her skirt and pulled it down and lowered her underpants to her knees (569, 574). Respondent pulled her underpants to her ankles, spread her legs apart, and rubbed her vagina and clitoris for five to ten minutes (569-571). Respondent was not wearing gloves (570, 574, 1290).

57. Respondent had previously performed a vaginal examination on Patient F while her mother was in the room with her and during which Respondent had worn gloves (575-576).

## **CONCLUSIONS**

### **General Conclusions**

The main issue in this hearing was credibility. Only two people were present when most of the allegations in the statement of charges occurred, Dr. Gaber and the individual patient. Dr. Gaber's version of events is that what he did was misinterpreted by the patients who testified. Dr. Gaber maintained that inconsistencies between some of the statements given to the police and the testimony heard by the hearing committee deprived the Patients testifying of credibility. An example of differences between police accounts and testimony was that Patient D told the Nassau County Police that Doctor Gaber had kissed her on the cheek

and then retracted that in her testimony before the hearing committee because she had thought about it and remembered it as a kiss on the lips. Another example was that the April 11 incident alleged in the Statement of Charges paragraph F(1) was not reported to Detective Meyers. However, Detective Nancy Meyers testified that the statements were not verbatim accounts of what occurred (675) and were taken in response to questions asked (675). Detective Meyers also admitted that she had summarized and paraphrased some of the accounts (Patients A, C, and F, 741, 748). The hearing committee concluded that the inconsistencies were not significant enough to detract from or undermine the credibility of the testimony given by Patients A through F. In addition, the hearing committee did not take inferences from events that occurred after the alleged incidents. The reporting of the incident or confiding in a friend, parent, or no one at all varied according to the individual. Similarly, the time differential between the incident and the reporting of it was attributed to the individual response to the event. There was no pattern to the reporting to authorities or friends from which credibility or the lack of credibility could be inferred.

Dr. Gaber testified that as a general matter he conducted breast examinations during annual physicals (795) and did a chest exam every time he saw a patient and that during the chest examination it was necessary at times to

remove the patient's bra (797-798). Dr. Gaber stated that he told his adolescent female patients that they were pretty because he was "overfriendly" (811) and this is his attempt to "bolster their image" (812). This perception of overfriendliness on Dr. Gaber's part was at odds with the testimony given by Dr. Joseph, one of Dr. Gaber's witnesses. Dr. Joseph stated that patients perceived Dr. Gaber as "abrupt, as insensitive, as not being warm" (1216-18).

Overall, the hearing committee found Dr. Gaber evasive, overly general and inconsistent in his testimony. In addition, a pattern emerged after the independent testimony of Patients A through F and the mothers of these patients (Patient B's mother did not testify). The pattern was one where Dr. Gaber created opportunities for inappropriate physical contact with these young female patients by excluding the parent who accompanied the girls on their visits to him from the examination room. The hearing committee found much of Dr. Gaber's testimony contrived in that he fashioned explanations to fit events testified to that stretched credulity.

#### **Patient A**

Dr. Gaber and Patient A's testimony are in conflict over whether Dr. Gaber reentered the examination room after Patient A's mother and Dr. Gaber left. Patient A was able to describe the difference between the breast examination Dr. Gaber had given her while her mother was in the room and

the "caressing" that occurred after Dr. Gaber reentered the room. Dr. Gaber recast the allegations in terms of dealing with a hysterical reaction Patient A had upon learning that she had to get an injection. However, Dr. Gaber admitted that he may have gone back into the examination room while Patient A was dressing in the mistaken belief that the next patient was in the room (806). He admitted that he knew "(I) was patting her a lot on the shoulder and her back" (806) and maintained that the remark about having a better time next time referred to the shot he had given her. Later in his testimony, Dr. Gaber denied the allegations in the Statement of Charges (806-809). The hearing committee found that Patient A's testimony was straightforward and unequivocal while Dr. Gaber's was not. The hearing committee voted 3-0 to sustain all of the charges in paragraph A (1) of the Statement of Charges.

#### **Patient B**

Again, the conflict in testimony presented occurred at the point where Patient B's mother left the examination room. According to Dr. Gaber, he was never alone in the examination room with Patient B (956). Dr. Gaber admitted pulling up Patient B's breasts but maintained that it was done during an examination for chicken pox. He also maintained that he used a white cloth during the examination but that the white cloth was placed over Patient B's chest in order to avoid embarrassment on her part (906-908).

During his testimony, Dr. Gaber also offered an explanation for Patient B's testimony that she saw him rubbing his genitals. Dr. Gaber maintained that he suffers periodically from tinea and was scratching himself (909). The hearing committee believed the testimony of Patient B. Her testimony was believable in that while it was difficult for her to relate what had happened, she did so candidly and directly. Dr. Gaber seemed to take elements of the charges and recast them in a version of events that if taken at face value would have the hearing committee accept that Patient B did not know whether a cloth was placed over her face or her chest and could not distinguish between breathing heavily and moaning while rubbing his genitals and brief scratching. The hearing committee voted 3-0 to sustain the charges in paragraph B (1) of the Statement of Charges.

#### **Patient C**

Patient C testified that when she and her sister, Patient F, began going to see Dr. Gaber for their weekly allergy shot, they would all go into the examination room together. This arrangement changed about a month after Patient C had begun getting the allergy shots. According to her testimony, Dr. Gaber told her mother to wait outside. Patient C's mother also testified that this was the case, that she stopped going into the examination room with her daughters, Patients C and F, because Dr. Gaber told her he thought it best that the girls go into separate examination

rooms while she waited outside. This account was also corroborated by Patient F. Dr. Gaber testified that Patient C said that she wanted to be seen by herself and "would kick her sister out or the mother out" (1049-1051). The hearing committee believed Patient C. Her account of what occurred after the time when she was seen alone by Dr. Gaber was straight forward. In addition, her testimony regarding separation from her sister and mother while getting allergy shots was corroborated by her mother who gave independent testimony. Patient C also stated that she could differentiate between a breast examination and Dr. Gaber's rubbing of her breasts since she had had a breast exam (326). The fact that Patient C used the word "bullshit" does not lessen her credibility as Dr. Gaber would have the hearing committee maintain. The hearing committee voted 3-0 to sustain the charges in paragraph C (1) of the Statement of Charges.

#### **Patient D**

Patient D's testimony was consistent with the pattern seen by the hearing committee previously i.e. excluding the patient's parent from the examining room. Patient D came to Dr. Gaber's office for a school physical. She testified that her mother started to accompany her into the examining room but Dr. Gaber asked her to wait outside. Dr. Gaber testified that Patient D's mother told him that her daughter was "at the age that she likes to be by herself" (1124).

Patient D's mother, in independent testimony, corroborated her daughter's account of being asked by Dr. Gaber to not go into the examining room with Patient D (503). Dr. Gaber testified that he did a breast examination of Patient D as was his custom to do a breast examination on all adolescent females as part of the annual physical exam. However, Patient D testified that he pushed her breasts up while she was sitting on the examining table and at the same time told her how pretty she was. The hearing committee believed Patient D's account of what happened rather than Dr. Gaber's in part because Dr. Gaber could not remember whether Patient D was sitting up or lying down during this occurrence and Dr. Gaber only remembered doing a breast examination because it was his routine to do so (1125). Dr. Gaber also testified that he might have told Patient D she was pretty to bolster her image (1126) but he denied that he had kissed her. Later in his testimony, during cross-examination, Dr. Gaber admitted that he did not remember exactly what happened with Patient D (1134). The hearing committee found Patient D more credible than Dr. Gaber and voted to sustain all of the charges except those in paragraph D (1)(B) by a vote of 3-0. The charges regarding watching Patient D walk back and forth were not sustained since it was not proven by a preponderance of the evidence that the examination was for a purpose other than detection of scoliosis as maintained by Dr. Gaber.

### **Patient E**

Dr. Gaber testified that Patient E's mother was present at all times during the examination of Patient E in October of 1990 (1146) and that he did not do a breast examination during the October visit but rather during a later visit in November of 1990 (1144). Both Patient E and her mother testified that while Mrs. E was in the room during the examination, she was asked to leave at the conclusion of the exam and wait in Dr. Gaber's office. Patient E's mother testified that she waited ten minutes after she left her daughter in the examination room before Dr. Gaber entered his office. The hearing committee found Patient E's testimony credible and voted 3-0 to sustain the charge in paragraph E (1) of the Statement of Charges.

### **Patient F**

Patient F and Patient C began seeing Dr. Gaber for weekly allergy shots in 1989. Again the testimony of Dr. Gaber and that of Patients C and F and their mother is directly at odds concerning who requested that Patients C and F go into separate examining rooms without their mother present. This credibility issue was resolved by the hearing committee in favor of Patients C and F since they corroborated each other's accounts independently and since the independent testimony of their mother was consistent with the version of events that made it Dr. Gaber's direction that he see them alone. In addition, Patient F's

testimony was consistent with the overall pattern that emerged in this case in which Dr. Gaber performed routine physical exams while the patient was accompanied by her parent and the acts alleged occurred only after the parent had been excluded from the examination room. Dr. Gaber denied that he examined Patient F's breasts when he gave her weekly allergy shots (1249). Similarly, Dr. Gaber denied that he had examined Patient F's vaginal area or put his fingers around Patient F's clitoris (1258-1259). The hearing committee found Patient F's testimony credible. The fact that she used the word clitoris in her statement to the Nassau County Police did not undermine her credibility. The hearing committee voted 3-0 to sustain all of the charges in paragraph G (1) of the Statement of Charges.

#### **DETERMINATION OF THE HEARING COMMITTEE AS TO PENALTY**

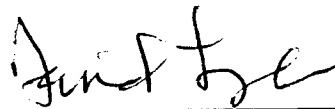
The Hearing Committee unanimously determined that the Respondent's license to practice medicine in the State of New York should be revoked. The committee felt that Respondent breached his patients' trust in the physician-patient relationships and took advantage of individuals who were vulnerable in part because of their age.

**ORDER**

Based upon the foregoing, **IT IS HEREBY ORDERED THAT**  
Respondent's license to practice medicine in the State of  
New York is **REVOKED.**

**DATED:** Albany, New York  
APRIL 28, 1992

BY:



**DAVID T. LYON, M.D.**  
(Chairperson)

**PRISCILLA R. LESLIE, R.N., CNP**  
**ALBERT L. BARTOLETTI, M.D.**

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

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IN THE MATTER	:	COMMISSIONER'S
OF	:	ORDER AND
AHMED H. GABER, M.D.	:	NOTICE OF HEARING

-----:

TO: AHMED H. GABER, M.D.  
8 Table Lane  
Hicksville, New York 11801

The undersigned, Harvey Bernard, M.D. acting for the Commissioner of Health upon the delegation of the Executive Deputy Commissioner of Health of the State of New York, after an investigation and upon the recommendation of a committee on professional medical conduct of the State Board for Professional Medical Conduct, has determined that the continued practice of medicine in the State of New York by AHMED H. GABER, M.D., the Respondent, constitutes an imminent danger to the health of the people of this state.

It is therefore:

ORDERED, pursuant to N.Y. Pub. Health Law Section 230(12), as amended by ch. 606, Laws of 1991, that effective immediately AHMED H. GABER, M.D., Respondent, shall not practice medicine in the State of New York. This Order shall remain in effect unless modified or vacated by the Commissioner of Health

pursuant to N.Y. Pub. Health Law Section 230(12), as amended by ch. 606, Laws of 1991.

PLEASE TAKE NOTICE that a hearing will be held pursuant to the provisions of N.Y. Pub. Health Law Section 230, as amended by ch. 606, Laws of 1991, and N.Y. State Admin. Proc. Act Sections 301-307 and 401 (McKinney 1984 and Supp. 1991). The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on the 26th day of November, 1991 at 10:00 a.m., at 5 Penn Plaza, Sixth Floor, New York, New York 10001, and at such other adjourned dates, times and places as the committee may direct. The Respondent may file an answer to the Statement of Charges with the below-named attorney for the Department of Health.

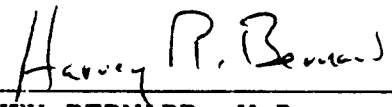
At the hearing, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the hearing will be made and the witnesses at the hearing will be sworn and examined. The Respondent shall appear in person at the hearing and may be represented by counsel. The Respondent has the right to produce witnesses and evidence on his behalf, to issue or have subpoenas issued on his behalf for the production of witnesses and documents and to cross-examine witnesses and examine evidence produced against him. A summary of the Department of Health Hearing Rules is enclosed.

The hearing will proceed whether or not the Respondent appears at the hearing. Scheduled hearing dates are considered dates certain and, therefore, adjournment requests are not routinely granted. Requests for adjournments must be made in writing to the Administrative Law Judge's Office, Empire State Plaza, Corning Tower Building, 25th Floor, Albany, New York 12237-0026 and by telephone (518-473-1385), upon notice to the attorney for the Department of Health whose name appears below, and at least five days prior to the scheduled hearing date. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation.

At the conclusion of the hearing, the committee shall make findings of fact, conclusions concerning the charges sustained or dismissed, and, in the event any of the charges are sustained, a determination of the penalty or sanction to be imposed or appropriate action to be taken.

THESE PROCEEDINGS MAY RESULT IN A  
DETERMINATION THAT YOUR LICENSE TO PRACTICE  
MEDICINE IN NEW YORK STATE BE REVOKED OR  
SUSPENDED, AND/OR THAT YOU BE FINED OR  
SUBJECT TO OTHER SANCTIONS SET FORTH IN NEW  
YORK PUBLIC HEALTH LAW SECTION 230-a, AS  
ADDED BY CH. 606, LAWS OF 1991. YOU ARE  
URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU  
IN THIS MATTER.

DATED: Albany, New York  
November 14, 1991

  
\_\_\_\_\_  
HARVEY BERNARD, M.D.  
as Designee of:  
LORNA MC BARNETTE,  
Executive Deputy Commissioner  
of Health

Inquiries should be directed to:

- Silvia P. Finkelstein  
Associate Counsel  
Bureau of Professional Medical Conduct  
New York State Department of Health  
5 Penn Plaza, Sixth Floor  
New York, New York 10001  
(212) 613-2615

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

-----X

IN THE MATTER	:	STATEMENT
OF	:	OF
AHMED H. GABER, M.D.	:	CHARGES

-----X

AHMED H. GABER, M.D., the Respondent, was authorized to practice medicine in New York State on October 22, 1985 by the issuance of license number 164506 by the New York State Education Department. The Respondent is currently registered with the New York State Education Department to practice medicine for the period January 1, 1991 through December 31, 1992.

FACTUAL ALLEGATIONS

A. Respondent treated Patient A, a thirteen year old female, at his office located at 8 Table Lane, Hicksville, New York 11801, where he maintains a private practice in pediatrics. On or about August 7, 1989, Patient A was brought to Respondent's office for a school physical examination by her mother, who will be referred to hereinafter as Mrs. A, and her father. (The identities of Patient A and her mother, Mrs. A, are disclosed in the attached Appendix). Respondent examined Patient A in Mrs. A's

presence. When the examination was over Respondent told Patient A to get dressed and left the room with Mrs. A. Immediately thereafter Respondent returned to the examining room where Patient A was alone.

1. Respondent engaged in conduct as follows:

(A) Respondent opened Patient A's gown, which was opened in front, put his hands on her breasts and caressed them.

(B) Respondent, while holding her breasts, leaned his body into Patient A.

(C) Respondent sat on the examining table and watched Patient A get dressed.

(D) Respondent made inappropriate sexually suggestive comments to Patient A.

B. Respondent treated Patient B, a 14 year old female, at his office, located at 8 Table Lane, Hicksville, New York 11801, where he maintains a private practice in pediatrics. On or about May 9, 1990, Patient B was brought to Respondent's office by her mother, who will be referred to hereinafter as Mrs. B. (The identities of Patient B and her mother, Mrs. B, are disclosed in

the attached Appendix). Patient B's chief complaints were a cough, sore throat, and an ear ache. Respondent told Mrs. B to wait in the waiting room while he examined Patient B.

1. Respondent engaged in conduct as follows:

(A) Respondent told Patient B to take off her shirt and her bra and to lay down on the examining table. Respondent put a small cloth over Patient B's face and told her to close her eyes.

(B) Patient B felt Respondent's hands squeezing both her breasts;

(C) Respondent continued caressing Patient B's right breast while rubbing his genital area with his left hand; Respondent was moaning and breathing heavily.

C. Respondent treated Patient C, a 13 year old female, at his office, located at 8 Table Lane, Hicksville, New York 11801, where he maintains a private practice in pediatrics. Patient C suffered from allergic rhinitis and asthma. Respondent had been treating Patient C for this conditions and administering weekly allergy shots. Patient C was brought to Respondent's office by her mother, Mrs. C. (The identities of Patient C and her mother, Mrs. C, are disclosed in the attached Appendix).

1. Respondent engaged in conduct as follows:

(A) Commencing in or about September 1990 and continuing through April, 1991, on numerous occasions, in the course of administering weekly shots to Patient C, Respondent asked Patient C to lift her shirt and bra and rubbed her breasts and nipples with his hands.

(B) On or about April 15, 1991, Patient C went to Respondent's office to receive her weekly allergy shot. Respondent asked Patient C to lift her shirt and bra. While listening to Patient C's chest with a stethoscope with one hand, Respondent rubbed her breasts and nipples with his other hand.

(C). Between in or about September 1991 through April 1991, Respondent told Patient C that she was pretty.

D. Respondent treated Patient D, a 14 year old female, at his office located at 8 Table Lane, Hicksville, New York 11801, where he maintains a private practice in pediatrics. In or about November, 1989, Patient D was brought to Respondent's office by her mother, who will be referred to hereinafter as Mrs. D, to undergo a school physical examination. (The identities of Patient D and her mother, Mrs. D, are disclosed in the attached Appendix).

Mrs. D, asked Respondent if she could be present during the physical examination; Respondent told her no and asked Mrs. D to go to the waiting room.

1. Respondent engaged in conduct as follows:

(A) Respondent told Patient D to take off the paper gown, her bra, and asked her to lay down on her back and touched her breasts.

(B) Respondent asked Patient D to walk back and forth, naked from the waist up, while Respondent watched her and told her she was a very pretty girl.

(C) While Patient D was undressed, Respondent held Patient D's face in his hands, pulled her toward him and kissed her on the cheek.

E. Respondent treated Patient E, a 14 year old female, at his office located at 8 Table Lane, Hicksville, New York 11801, where he maintains a private practice in pediatrics. In or about October, 1990, Patient A was brought to Respondent's office by her mother, who will be referred to hereinafter as Mrs. E, for treatment of mononucleosis. (The identities of Patient E and her mother, Mrs. E, are disclosed in the attached Appendix). Respondent examined Patient E in Mrs. E's presence. When the examination was over Respondent told Mrs. E she could leave and

wait outside. Immediately thereafter Respondent returned to the examining room where Patient E was alone.

1. Respondent engaged in conduct as follows:

(A) While Patient E was sitting on the examining table, Respondent told her to take the gown and her bra off; Respondent while standing, facing Patient E, rubbed her breasts for approximately five minutes.

F. Respondent treated Patient F, a 15 year old female, at his office located at 8 Table Lane, Hicksville, New York 11801, where he maintains a private practice in pediatrics. Patient F suffered from bronchial asthma and allergic rhinitis. Respondent had been treating Patient F for these conditions and administering weekly allergy shots. Patient F was regularly brought to Respondent's office by her mother, who will be referred to hereinafter as Mrs. F. (The identities of Patient F and her mother, Mrs. F, are disclosed in the attached Appendix).

1. Respondent engaged in conduct as follows:

(A) Commencing on or about September 1990 and continuing through April 1991, each time Patient F went to Respondent's office to receive her weekly allergy shot, Respondent asked Patient F to remove her shirt and bra and he fondled her breasts. On each of these occasions, Respondent would ask Patient F to

lay on her stomach, then, while cupping Patient F's left breast with his left hand, Respondent would rub his genital area with his right hand while moaning and breathing heavily.

(B) On or about April 11, 1991, Patient F was brought to Respondent's office by Mrs. F, after having hit her head the day before. Respondent asked Mrs. F to wait outside. Patient F's chief complaint was headaches. Respondent asked Patient F to take off her shirt and bra and asked her to walk back and forth while he watched her. Respondent stood behind Patient F and walked with her while pressing his groin against Patient F's buttocks and holding her breasts with his hands. Thereafter, Respondent asked Patient F to bend over to touch her toes; Respondent pressed his groin against Patient F's buttocks while she was in this position.

(C) On or about April 22, 1991, Patient F was taken to Respondent's office by Mrs. F for a post-strep throat culture. Respondent told Patient F to take off her shirt and bra and told her she had a beautiful neck. Respondent

fondled both her breasts, squeezing and pulling on the nipples. Respondent told Patient F to lay on her stomach and placed his left hand on her left breast while rubbing his genital area with his right hand. Respondent was moaning and breathing heavily. He then told Patient F the exam was done, Respondent left the room and she got dressed. Thereafter Respondent returned to the examining room and told Patient F she needed a test for mononucleosis. Respondent asked Patient F to take off her shirt and bra again. Respondent stuck his hand down Patient F's skirt and underpants and rubbed her vaginal area and clitoris. Respondent told Patient F to take off her skirt and pantyhose. Respondent pulled Patient F's underpants down to her ankle area and pushed her legs apart. Respondent rubbed Patient F's entire vaginal area and her clitoris using both hands.

## SPECIFICATION OF CHARGES

### FIRST THROUGH SIXTH SPECIFICATIONS

#### ENGAGING IN CONDUCT IN THE PRACTICE OF MEDICINE WHICH EVIDENCES MORAL UNFITNESS TO PRACTICE THE PROFESSION

Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law section 6530(20), as added by ch. 606, laws of 1991, by engaging in conduct in the practice of medicine which evidences moral unfitness to practice the profession, in that Petitioner charges:

1. The facts in paragraph A, A.1(a), A.1(b), A.1(c), and/or A.1(d).
2. The facts in paragraph B, B.1, B.1(a), B.1(b), and/or B.1(c).
3. The facts in paragraph C, C.1, C.1(a), C.1(b), and/or C.1(c)..
4. The facts in paragraph D, D.1, D.1(a), D.1(b), and/or D.1(c)
5. The facts in paragraph E, E.1, and/or E.1(a).
6. The facts in paragraph F, F.1, F.1(a), F.1(b) and/or F.1(c).

SEVENTH THROUGH TWELFTH SPECIFICATIONS

WILLFULLY HARASSING, ABUSING OR INTIMIDATING A  
PATIENT EITHER PHYSICALLY OR VERBALLY

Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law section 6530(31), as added by ch. 606, laws of 1991, by willfully harassing, abusing or intimidating a patient either physically or verbally, in that Petitioner charges:

7. The facts in paragraph A, A.1(a), A.1(b), A.1(c), and/or A.1(d).
8. The facts in paragraph B, B.1, B.1(a), B.1(b), and/or B.1(c).
9. The facts in paragraph C, C.1, C.1(a), C.1(b), and/or C.1(c).
10. The facts in paragraph D, D.1, D.1(a), D.1(b), and/or D.1(c)
11. The facts in paragraph E, E.1, and/or E.1(a).
12. The facts in paragraph F, F.1, F.1(a), F.1(b) and/or F.1(c).

DATED: New York, New York  
November 12, 1991

A handwritten signature in black ink, appearing to read "CL. O2 y", is written over a horizontal line.

CHRIS STERN HYMAN  
Counsel  
Bureau of Professional  
Medical Conduct