



STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Barbara A. DeBuono, M.D., M.P.H.
Commissioner

March 19, 1998

Dennis P. Whalen
Executive Deputy Commissioner

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Nasser Victor Ghaed, M.D.
4605 South Chelsea Lane
Bethesda, MD 20814

William Lynch, Esq.
NYS Department of Health
Corning Tower Room 2509
Empire State Plaza
Albany, New York 12237

James M. Conboy, Esq.
Eugene Daniel Napierski, Esq.
Carter, Conboy, Case, Blackmore,
Napierski & Maloney, P.C.
20 Corporate Woods Boulevard
Albany, New York 12211-2350

RE: In the Matter of Nasser Ghaed, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 98-52) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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/nm

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nm
Enclosure

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

COPY

IN THE MATTER
-OF-
NASSER GHAED, M.D.

Respondent

DETERMINATION

AND

ORDER

BPMC-98-52

A Notice of Referral Proceeding, dated December 19, 1997, and Commissioner's Summary Order dated October 10, 1997 and Statement of Charges, dated October 9, 1997, were served upon the Respondent, **NASSER GHAED, M.D. JOSEPH G. CHANATRY, M.D. (Chairperson), PAUL J. WEINBAUM, M.D. and ANN SHAMBERGER**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee (hereinafter the Committee) in this matter pursuant to Section 230(10)(e) of the Public Health Law. Attorney **SUSAN F. WEBER**, Administrative Law Judge, served as the Administrative Officer. The Department of Health appeared by **WILLIAM J. LYNCH, ESQ.**, Assistant Counsel. The Respondent appeared in person and was represented by **JAMES M. CONBOY, ESQ. and EUGENE DANIEL NAPIERSKI, ESQ.**, of Carter, Conboy, Case, Blackmore, Napierski & Maloney, P.C. A Hearing was held on January 22, 1998. Evidence was received, testimony was given, and transcripts were made.

After considering the entire record, the Committee unanimously issues this Determination and Order.

STATEMENT OF CASE

This case was brought pursuant to Public Health Law Section 230(10)(p) which provides for an expedited proceeding where a licensee is charged solely with a violation of Education Law Section 6530(9), under which the charge of misconduct is based upon a professional disciplinary action in another jurisdiction or a criminal conviction. The scope of an expedited proceeding 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)(a)(iii) (conviction of a crime under the law of another jurisdiction). The charge herein arises from Respondent's conviction, after a guilty plea, of a violation of Maryland law. The allegations in this proceeding are more particularly set forth in the Statement of Charges a copy of which is attached to and made a part of this Determination and Order as 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 pages and/or exhibits. These citations represent evidence found persuasive by the Committee in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence.

1. Nasser Ghaed, M.D. (hereinafter, "Respondent"), was licensed to practice medicine in New York State on November 3, 1993 by the issuance of license number 194140 by the New York State Education Department. (Department's Ex. 3).

2. On March 26, 1997, Respondent was convicted after a plea of guilty in the Criminal Circuit Court of Maryland, Montgomery County, of assaulting his spouse with intent to murder, a felony. (Department's Ex. 5)

3. N.Y. Penal Law § 120.25 makes it a crime to recklessly engage in conduct which creates a grave risk of death to another person under circumstances evincing a depraved indifference to human life. Violation of § 120.25 is a class D felony (ALJ Ex. 2).

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 Committee unless noted otherwise.

The Committee concluded that the Department has sustained its burden of proof in this matter. The preponderance of the evidence demonstrates that Respondent was convicted, upon a plea of guilty, of assault with intent to kill, a crime under Maryland law. Furthermore, the conduct which the Respondent was found guilty of committing constitutes a crime under New York State law. Consequently, the Committee voted to sustain the Specification.

DETERMINATION AS TO PENALTY

Pursuant to the Findings of Fact and Conclusions of Law set forth above, the Committee unanimously determined that Respondent's license to practice medicine in New York State should be suspended for a period of three (3) years, but that such suspension be stayed so long as the Respondent complies with certain conditions the Committee imposes by Order, set forth in Appendix II. This determination was reached after carefully reviewing all the evidence and 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.

Because the penalty upon its face may appear inappropriate, considering the seriousness of the crime to which Respondent pleaded guilty, the Committee wishes to set forth the facts it found so persuasive in arriving at its penalty determination, which was well-considered, strongly felt, and unanimous.

Prior to licensing by the State of New York, from 1969 until his retirement in 1993, Dr. Ghaed served with distinction in the United States Military in various staff positions, including Chief of Radiology, from 1969 to 1970, and Director of Nuclear Medicine, from 1973 to 1978, at Ireland Army Hospital, Ft. Knox, Kentucky; Chief of Radiology, Fitzsimons Army Medical Center, Aurora, Colorado from 1978 to 1987; and Chief of Radiology, Walter Reed Army Medical Center, Washington, D.C. from 1987 to 1993. Respondent earned a Bronze Star in Operation Desert Storm, Bahrain, Kuwait, in 1991. (Resp. Ex. A)

Respondent has received many awards and held numerous academic positions during his Army medical career, including Director of Medical Education, Department of Radiology, Fitzsimons Army Medical Center, 1975 to 1987; Radiological Consultant to the Sixth U.S. Army from 1978 to 1987; and Clinical Preceptor for the Academy of Health Sciences Faculty, San Antonio, Texas, from 1978 to 1993. From 1976 to 1990, Respondent held various clinical professorships in Radiology at George Washington University and at the University of Colorado Health Sciences Center. From 1987 to 1993, Respondent served as Director of Diagnostic Radiology in the Residency Training Program at Walter Reed Army Medical Center, Washington, D.C. (Resp. Ex. A)

During his years in the service, the record shows Respondent was a dedicated husband and father, and assisted several family members to emigrate from Iran to the U.S. His two daughters,

(T. pg. 50). The record is

replete with evidence of Respondent's devotion to his family and of the importance Respondent placed upon his family life.

Respondent retired from the U.S. Army in 1994 as a full colonel (T. pg. 46), and accepted a position as Professor of Radiology and Nuclear Medicine at the University of Rochester, Strong Memorial Hospital, Rochester, New York. That year, he received the Shu Lin Award as Outstanding Teacher of the Year at the University of Rochester Medical School.

(Resp. Ex. A)

Respondent's wife of 25 years, _____ did not accompany him to Rochester, but the two commuted on weekends. Respondent became increasingly depressed following his service in the Gulf War, after which he was treated for Desert Storm Syndrome (T. pg. 51), and his retirement from the Army in 1994. (Resp. Ex. C, pg. A) Despite Respondent's urging, Mrs. Ghaed did not move to Rochester; by the summer of 1996, the two had separated and were living apart. (T. pg. 54) Also in 1996, while he was living alone in Rochester, several members of Respondent's family in Iran died within three months of each other. Respondent was unable to be with them, and this exacerbated his depression. (T. pg. 53-54)

In June of 1996, credible evidence establishes that Respondent became distraught and suicidal. His brother, _____ took him in for a week, and strongly advised him to seek psychiatric help immediately. (Resp. Ex. C, pg. A)

On August 21 and 22, 1996, Respondent consulted Frank Soultz, M.D., Clinical Associate Professor of Psychiatry and Medical Director of University of Rochester Medical Center. Dr. Soultz found Respondent "severely depressed,...distraught, frequently moved to tears and reported suicidal ideation without intent. He further reported severe insomnia and weight loss in the range of 25 to 30 pounds over the previous months." (Resp. Ex. D)

On August 23, 1996, Respondent performed several acts of note in this proceeding. He executed a handwritten will, purporting to dispose of his assets and arrange for his remains. (Resp. Ex. C, pg. R) He wrote to his brother saying goodbye, asking forgiveness, and directing him to divide Respondent's assets between (Resp. Ex. C, pg. S) Then he traveled to his home in Bethesda, Maryland, he testified, so he could die in his own house. (T. pg. 65)

No one was home when he arrived there. He entered the master bathroom with a gun. His wife and daughter apparently then returned home. entered the bathroom, and a struggle over the gun ensued. In the struggle, received a large scratch on her face, a welt over her eye, and several cuts to her leg. (Resp. Ex. B) Daughter called the police, whereupon Respondent fled from the house. Police apprehended him shortly thereafter, and charged him with assault with intent to kill. Upon his release on bond, he was voluntarily hospitalized for major depression with psychotic features from August 25 to September 22, 1996. (Resp. Ex. C, pg. Q)

To spare his family the agony of a trial, at which the daughters would be forced to take sides between their parents, Respondent pleaded guilty. He received a sentence of five years' probation; a jail sentence of ten years was entirely suspended. The Hon. J. James McKenna stated that he was convinced that the event, although terrible, was an isolated event and "not at all likely to be repeated." He found that, under all of the circumstances, a period of jail time would not be appropriate. (Department's Ex. 6, pg. 77) The Committee found it most powerful that the criminal prosecutor and the Probation Department's pre-sentencing investigation had both recommended that Respondent not serve jail time. (Department's Ex. 6, pg. 69)

From his release on bond pending trial, in February of 1997, until his employment in Rochester was terminated because of the criminal case in Maryland, in June, 1997, Respondent continued practicing medicine and teaching in Rochester. (T. pg .66) During this period, Respondent performed his duties without incident. (Resp. Ex. D, pg. 2)

CONCLUSION

Although the crime to which Respondent pled guilty in Maryland was a serious offense, Respondent made the plea in order to spare his family the agony of testifying at a public trial. The assault was entirely unrelated to the practice of medicine. Clearly, Respondent suffered a mental breakdown over the many losses he was experiencing at that time in his life. While there is no question that the assault was inexcusable, it was perhaps understandable. The Committee believes that it is not likely to be repeated, especially if Respondent obeys the terms of his probation and Respondent's wife obeys Judge McKenna's plea in the sentencing proceeding that she "let it go" and stop "hounding" him. (Department's Ex. 6, pg.81)

No evidence was presented to challenge Respondent's current moral, physical and mental capacity to practice medicine. The Committee agrees with the Maryland criminal court that Respondent does not constitute a danger to others. His successful medical practice and teaching following his conviction, together with his exemplary medical career and distinguished service to the United States and the medical profession, strongly argue for leniency here.

The Committee is persuaded that the mitigating factors established by Respondent require the Committee to moderate the penalty considerably in the best interests of all concerned.

At all times before and since his conviction, uncontroverted evidence establishes that Respondent has competently taught and practiced medicine. Therefore, revocation of his license to practice in New York would serve no legitimate State interest, but could only serve as

additional punishment for the August 23, 1997 incident. The Maryland criminal court felt such additional punishment would serve no purpose under the circumstances, and the Committee agrees. The Committee would not wish to further burden Respondent or to deprive New Yorkers of such an obviously fine physician when the interests of this State's citizens and the medical profession clearly do not require it.

ORDER

Based upon the foregoing, **IT IS HEREBY ORDERED THAT:**

1. The Specification of professional misconduct, as set forth in the Statement of Charges is **SUSTAINED**;

2. The Respondent's license to practice medicine in New York State be and hereby is **SUSPENDED** for a period of three (3) years from the date of this Determination and Order. The **SUSPENSION** is **STAYED** and Respondent is placed on probation for three (3) years from the date of this Order, subject to the terms and conditions set forth in Appendix 2.

3. Respondent shall comply with all terms, conditions, restrictions limitations and penalties to which he is subject pursuant to the Order and shall assume and bear all costs related to compliance. Upon receipt of evidence of noncompliance with the terms of his probation, or the terms of this Order, the Director of OPMC and/or the Board may lift the **STAY** and the Respondent's license to practice medicine in the State of New York shall be automatically **SUSPENDED**.

DATED: Albany, New York
3/17, 1998

Joseph G. Chanatry M.D.
JOSEPH G. CHANATRY, M.D.
Chairperson

PAUL J. WEINBAUM, M.D.
ANN SHAMBERGER

TO: Nasser Victor Ghaed, M.D.
4605 South Chelsea Lane
Bethesda, MD 20814

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ARRETRATI

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

-----X

IN THE MATTER : STATEMENT
OF : OF
NASSER GHAED, M.D. : CHARGES

-----X

Nasser Ghaed, M.D., the Respondent, was authorized to practice medicine in New York State on November 3, 1993, by the issuance of license number 194140 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, 1995, through October 31, 1997, with a registration address of Department of Radiology, Box 648, University of Rochester Medical Center, 601 Elmwood Avenue, Rochester, New York 14642-8648.

FACTUAL ALLEGATIONS

1. On March 26, 1997, Respondent pleaded guilty and the Criminal Circuit Court of Maryland, Montgomery County entered a finding of guilt to Count #1 of an indictment charging that on about August 23, 1996, Respondent assaulted his spouse Geneviev Ghaed, with intent to murder, a felony.

2. The act to which Respondent pleaded guilty and for which a finding of guilt was entered would have constituted a felony under New York state law if committed within this state.

SPECIFICATION

CONVICTED OF AN ACT CONSTITUTING A CRIME
UNDER THE LAW OF ANOTHER JURISDICTION

Respondent is charged with professional misconduct under N.Y. Educ. Law §6530(9)(a)(iii) (McKinney Supp. 1997) by reason of his having been convicted of committing an act constituting a felony under Maryland Law which would have constituted a felony under New York state law if committed within this state in that, Petitioner charges the facts contained in paragraphs one and two

DATED: *October 9*, 1997
Albany, New York

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

APPENDIX II

**Terms and Conditions
of Probation**

1. **The Respondent shall comply with all terms and conditions of probation imposed upon him under the criminal justice system of the State of Maryland.**

2. **The Respondent shall remain under psychiatric or psychological treatment and shall fully comply with the treatment plan, including taking any medications prescribed, until such time as he has been discharged from such treatment by his psychiatrist or psychologist. The treating psychologist or psychiatrist shall not be a family member, personal friend, or enjoy a professional relationship with Respondent which would pose a conflict with responsibilities under this Order.**

3. **The Respondent's treating psychiatrist or psychologist shall furnish quarterly reports to the Office of Professional Medical Conduct (OPMC) certifying the Respondent's compliance with the terms of this Order. These reports shall address the Respondent's emotional condition, whether medication has been prescribed for Respondent, and whether Respondent is taking his medication.**