



STATE OF NEW YORK
DEPARTMENT OF HEALTH

Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12237

January 11, 1995

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Irene Koch, Esq.
Offices of NYS Dept. of Health
Metropolitan Regional Office
5 Penn Plaza-Sixth Floor
New York, New York 10001

Tharwat Hamamcy, M.D.
925 Santa Isabel
Laguna Vista, Texas 78578

RECEIVED
JAN 11 1995
OFFICE OF PROFESSIONAL
MEDICAL CONDUCT

RE: In the Matter of Tharwat Hamamcy, M.D.

Dear Ms. Koch and Dr. Hamamcy:

Enclosed please find the Determination and Order (No. 95-08) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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
Corning Tower - Fourth Floor (Room 438)
Empire State Plaza
Albany, New York 12237

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), "(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.

Request for review of the Committee's determination by the Administrative Review Board stays all action 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
Empire State Plaza
Corning Tower, Room 2503
Albany, New York 12237-0030

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, Director
Bureau of Adjudication

TTB:nm

Enclosure

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

-----X
IN THE MATTER : DETERMINATION
OF :
THARWAT HAMAMCY, M.D. : ORDER
-----X
BPMC-95-08

A Notice of Referral Proceeding, dated September 8, 1994, and Statement of Charges, dated July 19, 1994, were served upon the Respondent, Tharwat Hamamcy, M.D. **ADEL ABADIR, M.D. (Chair), JOHN L.S. HOLLOMAN, JR., M.D., and OLIVE M. JACOB,** 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. **LARRY G. STORCH, ESQ., ADMINISTRATIVE LAW JUDGE,** served as the Administrative Officer. The Department of Health appeared by Irene Koch, Esq., Assistant Counsel. The Respondent failed to appear in person and was not represented by counsel. A hearing was held on October 26, 1994. Evidence was received and witnesses sworn and heard 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 §6530(9). In such cases, 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, Respondent is charged with professional misconduct pursuant to Education Law §6530(9)(a)(ii), §6530(9)(b) and §6530(9)(d). A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order in 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 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.

1. Tharwat Hamacy, M.D. (hereinafter, "Respondent"), was authorized to practice medicine in New York State on

September 6, 1973 by the issuance of license number 117908 by the New York State Education Department. Respondent is not currently registered with the New York State Education Department to practice medicine. Respondent's registration expired on or before January 1, 1983. (Pet. Ex. #2).

2. On or about June 25, 1993, the Texas State Board of Medical Examiners (hereinafter "Texas Board"), issued an Order, effective January 21, 1994, revoking Respondent's medical license upon finding Respondent guilty of professional misconduct in connection with his treatment of nine patients from on or about April 28, 1986 to on or about June 14, 1989. The Texas Board found Respondent guilty of unprofessional conduct under Texas law, as follows: having engaged in conduct which constitutes a professional failure to practice medicine in an acceptable manner consistent with public health and welfare [Tex. Rev. Civ. Stat. Ann., Art. 4495b Section 3.08(18)]; having engaged in unprofessional conduct which is likely to injure the public [Tex. Rev. Civ. Stat. Ann., Art 4495b Section 3.08(4)]; and having engaged in unprofessional conduct which is likely to injure the public by prescribing a drug and treatment which in non-therapeutic in nature [Tex. Rev. Civ. Stat. Ann., Art. 4495b Section 3.08(4)(E)]. (Pet. Ex. #3; Pet. Ex. #4).

3. On or about November 19, 1993, Respondent was convicted after a trial by jury in the United States District Court, Southern District of Texas, on bribery of a bank official, a class D felony under Federal law [18 U.S.C. §215(a)(1)]. The jury found that on or about December 12, 1987, Respondent did

corruptly give, offer, and promise a thing of value, i.e., an assignment of forty percent interest in the net profits of Gibson Memorial Medical Center, which Respondent owned and at which Respondent practiced medicine, for the ten year period beginning December 31, 1987 and ending December 30, 1997, which assignment had a value exceeding \$100.00, to the President of Merchants Marine Bank of Port Isabel, Texas, a federally insured financial institution, with the intent to influence and regard said person as an officer, director, employee and agent of said bank, in connection with the business and transactions of the bank, i.e., loans made by the bank to Respondent individually and for Gibson Memorial Medical Center on December 7, 1987, January 20, 1988, and May 26, 1988. (Pet. Ex. #5; Pet. Ex. #6).

4. On or about December 17, 1993, Respondent was sentenced as follows: five years probation, with special conditions of probation that he not commit another federal, state. or local crime, that he not illegally possess a controlled substance, and that he not possess a firearm or destructive device; a fine of \$20,000.00, payable within sixty months; and a special assessment of \$50.00. (Pet. Ex. #6).

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 Hearing Committee unless noted otherwise.

The Hearing Committee concluded that the Department has sustained its burden of proof in this matter. The preponderance

of the evidence demonstrates that the Texas Board found Respondent guilty of unprofessional conduct and issued an Order revoking Respondent's license to practice medicine in that state. Moreover, a review of the decision issued by the Texas Board (Petitioner's Exhibit #3) indicates that Respondent's conduct, if committed in New York State, would constitute professional misconduct under New York Education Law §6530(3) [negligence on more than one occasion], and §6530(32) [failing to maintain accurate records]. As a result, the Hearing Committee voted to sustain the First Specification [having his license to practice medicine revoked in another state] of professional misconduct. The Committee further concluded that the Second Specification of professional misconduct [having been found guilty of misconduct in another state] should also be sustained.

The record also established that Respondent was convicted of bribery of a bank official, a class D felony, in violation of 18 U.S.C. §215(a)(1). This constitutes a conviction of a crime under Federal law. As a result, the Hearing Committee also voted to sustain the Third Specification of professional misconduct set forth in the Statement of Charges.

DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determined that Respondent's license to practice medicine in New York State should be revoked. This determination was reached 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.

There were two separate grounds upon which this proceeding was brought against Respondent. He was found guilty of professional misconduct involving his medical care and treatment of multiple patients in Texas, as well as of bribing a bank official in violation of Federal law. Either charge considered separately would support a sanction of revocation. Taken together, they present a compelling reason to impose such a sanction. Respondent, who has not been registered to practice medicine in New York State since before January 1, 1983, has demonstrated that he is not fit to be licensed as a physician in this state. Respondent failed to appear at this proceeding and presented no evidence which might mitigate the sanction to be imposed. Under the totality of the circumstances, the Hearing Committee unanimously determined that revocation was the only appropriate sanction.

ORDER

Based upon the foregoing, IT IS HEREBY ORDERED THAT:

1. The First through Third Specifications of professional misconduct, as set forth in the Statement of Charges (Petitioner's Exhibit # 1) are SUSTAINED;

2. Respondent's license to practice medicine in New York State be and hereby is REVOKED.

DATED: Albany, New York

January 10, 1995

Adel R. Abadir

ADEL ABADIR, M.D. (CHAIR)

JOHN L.S. HOLLOMAN, JR., M.D.
OLIVE M. JACOB

TO: Irene Koch, Esq.
Assistant Counsel
New York State Department of Health
5 Penn Plaza - 6th Floor
New York, New York 10001

Tharwat Hamamcy, M.D.
925 Santa Isabel
Laguna Vista, Texas 78578

APPENDIX I

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

-----X
: IN THE MATTER : NOTICE OF
: OF : REFERRAL
: THARWAT HAMAMCY, M.D. : PROCEEDING
: :
-----X

TO: THARWAT HAMAMCY, M.D.
925 Santa Isabel
Laguna Vista, TX 78578

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law Section 230(10)(p) (McKinney Supp. 1994) and N.Y. State Admin. Proc. Act Sections 301-307 and 401 (McKinney 1984 and Supp. 1994). The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 26th day of October, 1994 at 10 o'clock in the forenoon of that day at 5 Penn Plaza, 6th Floor, New York, New York 10001.

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, Corning Tower Building, 25th Floor, Empire State Plaza, Albany, New York 12237, 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 October 16, 1994.

You may file a written answer, brief, and affidavits with the Committee. Six copies of all papers you wish to submit must be filed with the Bureau of Adjudication at the address indicated above on or before October 16, 1994 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 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: New York, New York

September 8, 1994



CHRIS STERN HYMAN
Counsel
Bureau of Professional
Medical Conduct

Inquiries should be addressed to:

Irene Koch
Assistant Counsel
212-613-2603

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

-----X
IN THE MATTER : STATEMENT
OF : OF
THARWAT HAMAMCY, M.D. : CHARGES
-----X

THARWAT HAMAMCY, M.D., the Respondent, was authorized to practice medicine in New York State on September 6, 1973 by the issuance of license number 117908 by the New York State Education Department. The Respondent is not currently registered with the New York State Education Department to practice medicine. His registration expired on or before January 1, 1983.

FACTUAL ALLEGATIONS

- A. On or about June 25, 1993, the Texas State Board of Medical Examiners (the Texas Board) issued an Order, effective January 21, 1994, revoking Respondent's license upon finding the Respondent guilty of professional misconduct in connection with Respondent's treatment of nine patients from on or about April 28, 1986 to on or about June 14, 1989. The Texas Board found Respondent guilty of unprofessional conduct under Texas law, as follows: having engaged in conduct which constitutes a professional failure to practice medicine in an

acceptable manner consistent with public health and welfare (Tex. Rev. Civ. Stat. Ann., Art. 4495b Section 3.08(18)); having engaged in unprofessional conduct which is likely to injure the public (Tex. Rev. Civ. Stat. Ann., Art. 4495b Section 3.08(4)); and having engaged in unprofessional conduct which is likely to injure the public by prescribing a drug and treatment which is non-therapeutic in nature (Tex. Rev. Civ. Stat Ann., Art. 4495b Section 3.08(4)(E)).

These acts, if committed within New York State, would constitute professional misconduct under N.Y. Educ. Law Sections 6530(3) (practicing the profession with negligence on more than one occasion); 6530(32) (failing to maintain a record of each patient which accurately reflects the evaluation and treatment of each patient).

- B. On or about November 19, 1993, the Respondent was convicted after a trial by jury in the United States District Court, Southern District of Texas, United States Courthouse, Brownsville, Texas, of Bribery of a Bank Official, a class D felony, in violation of 18 U.S.C. 215(a)(1), in that on or about December 12, 1987, Respondent did corruptly give, offer, and promise a thing of value, i.e. an assignment of forty percent (40%) interest in the net profits of Gibson Memorial Medical Center, which Respondent owned and at which Respondent practiced medicine, for the ten (10) year period

beginning December 31, 1987, and ending December 30, 1997, which assignment had a value exceeding one hundred dollars (\$100) to the President of Merchants Marine Bank of Port Isabel, Texas, a federally insured financial institution, with the intent to influence and reward said person as an officer, director, employee and agent of said bank, in connection with the business and transactions of said bank, i.e. loans made by said bank to Respondent individually and for Gibson Memorial Medical Center on December 7, 1987, January 20, 1988, and May 26, 1988. On or about December 17, 1993, Respondent was sentenced as follows: five years probation, with special conditions of probation that he not commit another federal, state, or local crime, that he not illegally possess a controlled substance, and that he not possess a firearm or destructive device; a fine of \$20,000.00, payable within 60 months; and a special assessment of \$50. The Respondent is appealing the District Court's decision to the United States Circuit Court, Fifth Circuit, in New Orleans, Louisiana.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

HAVING HIS LICENSE TO PRACTICE
MEDICINE REVOKED IN ANOTHER STATE

Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law Section 6530(9)(d) (McKinney Supp. 1994), in that his license to practice medicine was revoked after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation would, if committed in New York State, constitute professional misconduct under the laws of New York State. Petitioner charges:

1. The facts in Paragraph A.

SECOND SPECIFICATION

HAVING BEEN FOUND GUILTY OF MISCONDUCT
IN ANOTHER STATE

Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law Section 6530(9)(b) (McKinney Supp. 1994), in that he has been found guilty of 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.

2. The facts in Paragraph A.

THIRD SPECIFICATION

HAVING BEEN CONVICTED OF AN ACT
CONSTITUTING A CRIME UNDER FEDERAL LAW

Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law Section 6530(9)(a)(ii) (McKinney Supp. 1994), in that he has been convicted of committing an act constituting a crime under federal law. Petitioner charges:

3. The facts in Paragraph B.

DATED: New York, New York
July 19, 1994



CHRIS STERN HYMAN
Counsel
Bureau of Professional
Medical Conduct