



STATE OF NEW YORK  
DEPARTMENT OF HEALTH

Corning Tower

The Governor Nelson E. Rockefeller Empire State Plaza

Albany, New York 12237

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

May 2, 1995

RECEIVED  
MAY 02 1995  
OFFICE OF  
MEDICAL CONDUCT

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Michael A Hiser, Esq.  
Associate Counsel  
NYS Department of Health  
Corning Tower-Room 2429  
Empire State Plaza  
Albany, NY 12237

Waleed Saleh, M.D.  
2223 West Main Street  
Olean, NY 14760

RE: In the Matter of Waleed Saleh, M.D.

EFFECTIVE DATE: 05/09/95

Dear Mr. Hiser and Dr. Saleh:

Enclosed please find the Determination and Order (No. 95-97) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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), "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 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.

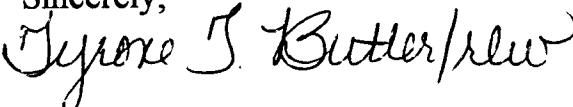
The notice of review served on the Administrative Review Board should be forwarded to:

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,

A handwritten signature in cursive script that reads "Tyrone T. Butler/rlw". The signature is written in black ink and is positioned to the right of the word "Sincerely,".

Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:rlw  
Enclosure

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

IN THE MATTER : DETERMINATION  
OF : AND  
WALEED SALEH, M.D. : ORDER  
: BPMC-95-97  
-----X

A Notice of Violation of Probation, dated January 19, 1995, was served upon the Respondent, **WALEED SALEH, M.D.** **JOHN H. MORTON, M.D.**, Chairperson, **THOMAS I. GIFT, M.D.**, and **IRVING S. CAPLAN** duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to Sections 230(10)(e) of the Public Health Law. **CHRISTINE C. TRASKOS, ESQ.**, **ADMINISTRATIVE LAW JUDGE**, served as Administrative Officer for the Hearing Committee. The Department of Health appeared by **MICHAEL A. HISER, ESQ.**, Associate Counsel. The Respondent appeared pro se. 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.

**PROCEDURAL HISTORY**

Date of Notice of Violation of Probation:	January 19, 1995
Date of Request for Hearing:	October 5, 1994
Date of Hearing:	February 22, 1995

Witness for Department  
of Health:

Sheila J. Bradwell

Witness for Respondent:

Waleed Saleh, M.D.

### **STATEMENT OF CASE**

This case was brought pursuant to Public Health Law Section 230(19). The statute provides for a hearing where a licensee is charged with a violation of probation.

In the instant case, Respondent entered into a Consent Order with the Office of Professional Medical Conduct in which he admitted to charges of ordering excessive tests, treatment, or use of treatment facilities not warranted by the condition of several patients. Respondent's license to practice medicine was suspended for two years, with said suspension stayed and Respondent placed on probation. The terms of probation included the monitoring of Respondent's practice by a physician which had to be approved by the Director of the Office of Professional Medical Conduct.

By letter dated September 20, 1994, the Director of the Office of Professional Medical Conduct determined that Respondent was in violation of the terms of probation in that it was alleged that Respondent was continuing to practice medicine without a monitor.

A copy of the Notice of Violation of Probation 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 parenthesis 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. By Order # BPMC 94-03 dated December 31, 1993, Respondent admitted to ordering excessive tests, treatment, or use of treatment facilities not warranted by the condition of five patients. His license to practice medicine was suspended for two (2) years, with said suspension stayed. Respondent was placed on probation under the terms and conditions set forth in Exhibit "B" of the Order. This Order became effective on January 21, 1994.  
(Pet. Ex. 3)
  
2. Paragraph 5 of the terms of probation required that Respondent shall have his practice monitored during the period of probation. The monitoring is to be done by a physician selected by Respondent and approved in writing by the Director of the Office of Professional Medical Conduct (OPMC). Respondent is to be subject to random review by the monitor of patient records, office records and hospital charts. The monitor is further to review all records and charts involving dilation and curettage, cervical biopsies, or colposcopies, i.e., the gynecological surgery reflected in the Statement of Charges. The monitor is to submit a report, once every three months, to indicate whether the aforementioned part of Respondent's practice reviewed by the monitor, has been conducted in accordance with generally accepted standards of medical care. (Pet. Ex. 3)
  
3. After repeated written correspondence and telephone conversations with Respondent, OPMC, by letter dated September 20, 1994, advised Respondent that he was in violation of the terms and conditions of his probation for failure to secure a monitoring physician.  
(Pet. Ex. 1, and 5 through 10)

## 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 facts in this case are largely undisputed. The terms of probation imposed upon Respondent require that his medical practice be monitored by a physician who has been approved by the Office of Professional Medical Conduct. It is generally agreed that Respondent made initial, good faith attempts to obtain a monitoring physician. However, Respondent limited his search to two physicians in his immediate locality. One physician reneged on his initial commitment because he advised Respondent that he did not have the time to devote to the record review. (T. 34) A second physician was rejected by OPMC because he was the subject of an on going disciplinary proceeding by OPMC. (T. 47)

At the hearing Respondent testified that Dr. Wu, his first choice as monitor, reneged on his commitment to serve as monitor only because on August 17, 1994, Cheryl Ratner, a Department representative advised Dr. Wu that all of Respondent's records would be subject to review. Dr. Wu then told Respondent that he would not have the time to review all of Respondent's records. (T. 40, 47) Respondent also testified that he had signed the Consent Order solely on his lawyer's advice and that he did not specifically review each provision. (T. 42) However, on cross examination, Respondent admitted that the terms in the Consent Order and the Department's letter to him dated September 20, 1994 (Pet. Ex. 10) contained identical terms. (T. 43)

The Hearing Committee finds that the terms of the Consent Order are clear and concise and that all follow-up correspondence by OPMC discussed terms and conditions that were consistent with the original Order. No convincing proof was presented regarding the telephone conversation between Dr. Wu and Ms. Ratner because neither appeared at the hearing. The Hearing Committee concluded that it was incumbent upon Respondent to pursue other physicians outside his locality, when his initial candidates were not approved. A physician under a disciplinary order to select a

monitoring physician does not have the option to abandon his search for a monitor when his initial candidates either withdraw or are disqualified by OPMC.

Under the totality of the circumstances, the Hearing Committee concluded that Respondent failed to diligently pursue his obligation to secure a monitoring physician as required by the Consent Order.

### **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 as a physician in New York State should be suspended, pending approval of a monitoring physician by OPMC.

The Hearing Committee further expects that OPMC will act in an expeditious manner in approving or disapproving Respondent's choice of a monitor. Once in compliance with the monitoring requirement, Respondent's suspension will be stayed and he will be placed on probation for two (2) years. The Hearing Committee re-adopts the original terms and conditions of probation as contained in Exhibit B of the BPMC Order No. 94-03. The complete terms of the original probation are contained in Appendix II which is attached to this Determination and Order and incorporated herein. 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.




**ORDER**

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

1. The determination by the Director of the Office of Professional Medical Conduct that Respondent is in violation of the terms of probation imposed by BPMC Order No. 94-03 as set forth in Department's Exhibit #1 is **SUSTAINED**;
2. Respondent's license to practice medicine as a physician in New York State be and hereby shall be **SUSPENDED** commencing on the effective date of this Determination and Order.
3. Upon timely approval by OPMC of a monitoring physician, the suspension shall be **STAYED** and Respondent shall be placed on probation for a period of two (2) years. The complete terms of probation are re-adopted from Exhibit B of BPMC Order No. 94-03 and contained in Appendix II, which is attached to this Determination and Order and incorporated herein.

**DATED: Albany, New York**

May 1 1995

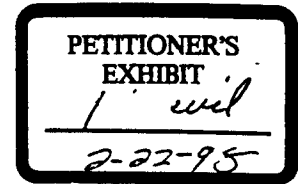
  
**JOHN H. MORTON, M.D., Chairperson**  
**THOMAS I. GIFT, M.D.**  
**IRVING S. CAPLAN**

**TO:** Michael A. Hiser, Esq.  
Associate Counsel  
NYS Department of Health  
Corning Tower-Room 2429  
Empire State Plaza  
Albany, New York 12237

Waleed Saleh, M.D.  
2223 West Main Street  
Olean, New York 14760

**APPENDIX I**

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



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IN THE MATTER : NOTICE OF  
OF : VIOLATION OF  
WALEED SALEH, M.D. : PROBATION  
: PROCEEDING

-----x

TO: Waleed Saleh, M.D.  
2223 West Main Street  
Olean, New York 14760

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law Section 230(19) (McKinney Supp. 1995) and N.Y. State Admin. Proc. Act Sections 301-307 and 401 (McKinney 1984 and Supp. 1995). The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 22nd day of February, 1995 at 10:00 o'clock in the forenoon of that day at New York State Cultural Education Building, Conference Room E, Concourse Level, Empire State Plaza, Albany, New York 12230.

At the proceeding, evidence will be received concerning whether you have violated probation, as summarized in the Violation of Probation letter, dated September 20, 1994, 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. The Committee 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 February 10, 1995.

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 February 10, 1995 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 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, after providing you with an opportunity to be heard, shall determine whether you have violated probation and shall impose an appropriate penalty as defined in section two hundred thirty-a of the Public Health Law. In determining the appropriate penalty, the committee shall consider both the violation of probation and the prior adjudication of misconduct. The chairperson of the committee shall issue an order adopting the decision of the committee on professional conduct. Such order 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  
*January 19, 1995*

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

Inquiries should be addressed to:

Michael A. Hiser  
Associate Counsel  
NYS Department of Health  
Division of Legal Affairs  
Corning Tower Building  
Room 2429  
Empire State Plaza  
Albany, New York 12237  
(518) 473-4282

APPENDIX II

TERMS OF PROBATION

WALEED SALEH, M.D.

EXHIBIT B

1. Respondent, during the period of probation, shall conduct himself in all ways in a manner befitting his professional status, and shall conform fully to the moral and professional standards of conduct imposed by law and by his profession;
2. Respondent shall submit written notification to the New York State Department of Health (NYSDOH), addressed to the Director, Office of Professional Medical Conduct, New York State Health Department, Empire State Plaza, Tower Building, Albany, New York 12237 of any employment and practice, of Respondent's residence and telephone number, of any change in respondent's employment, practice, residence, or telephone number within or without the State of New York;
3. Respondent shall submit written proof from the Division of Professional Licensing Services (DPLS), New York State Education Department (NYSED), that respondent has paid all registration fees due and owing to the NYSED and Respondent shall cooperate with and submit whatever papers are requested by DPLS in regard to said registration fees, said proof from DPLS to be submitted by Respondent to the New York State Department of Health, addressed to the Director, Office of Professional Medical Conduct, as aforesaid, no later than the first three months of the period of probation;
4. Respondent shall submit written proof to the NYSDOH, addressed to the Director, Office of Professional Medical Conduct, as aforesaid, that (1) Respondent is currently registered with the NYSED, unless Respondent submits written proof that Respondent has advised DPLS, NYSED, that Respondent is not engaging in the practice of Respondent's profession in the State of New York and does not desire to register; and (2) that Respondent has paid any fines which may have previously been imposed upon respondent by the New York State Board of Regents or Office of Professional Medical Conduct; said proof of the above to be submitted no later than the first two months of the period of probation;



WALEED SALEH, M.D.

5. During the period of probation, Respondent shall have Respondent's practice monitored, at Respondent's expense, as follows:
- a. That said monitoring shall be by a physician selected by the Respondent and previously approved, in writing, by the Director of the Office of Professional Medical Conduct;
  - b. That Respondent shall be subject to random selections and reviews by said monitor of Respondent's patient records, office records, and hospital charts in regard to Respondent's practice, and Respondent shall also be required to make such records available to said monitor at any time requested by said monitor;
  - c. That said monitor shall review all patient records, office records, and hospital charts involving dilatation and curettage, cervical biopsies, or colposcopies, i.e. the gynecological surgery reflected in Exhibit "A", (the Statement of Charges) as to the medical indications for such surgeries.
  - d. That said monitor shall submit a report, once every three months, regarding the above-mentioned monitoring of Respondent's practice to the Director of the Office of Professional Medical Conduct. The report shall indicate whether that part of the Respondent's practice reviewed by the monitor under paragraph "c", above, has been conducted in accordance with generally accepted standards of professional medical care. Any perceived deviation from accepted standards of medical care, or refusal to cooperate with the monitor, shall immediately be reported to the Office of Professional Medical Conduct.
  - e. It is the responsibility of the Respondent to insure that the reports of the practice monitor are submitted in a timely manner. A failure of the practice monitor to submit required reports on a timely basis will be considered a possible violation of the terms of probation.
  - f. Respondent must maintain medical malpractice insurance coverage with limits no less than two million dollars

per occurrence and six million per policy year, in accordance with §230(18)(b) of the Public Health Law. Proof of coverage shall be submitted to the Director or her designee prior to the placement of a practice monitor.

- g. During the period of probation, the Respondent and the monitor shall meet with the Director, Office of Professional Medical Conduct (or her designee) to discuss the status of Respondent's probation. These meetings will occur on at least a semi-annual basis.
6. In his documentation of colposcopies that he performs, Respondent shall use a standardized form that will include description of positive and negative findings, including but not limited to, description of the extent of visualization of the entire squamo-columnar junction of the cervix; description of the visualization of the entire lesion (or area of abnormality); and description of the lesion sufficient to determine the degree of abnormality and to determine where biopsies should be taken. Description of the lesion usually will include the degree of whiteness, whether the edges are sharp vs. unclear, the intercapillary distances or changes (i.e. punctation and/or mosaicism), contour/thickness, and abnormal vessels.
7. Respondent affirms that he attended a continuing medical education course on August 12-14, 1993 on Basic Colposcopy and Loop Electrosurgical Excision procedures.
8. So long as there is full compliance with every term herein set forth, Respondent may continue to practice his aforementioned profession in accordance with the terms of probation; provided, however, that upon receipt of evidence of noncompliance with or violation of these terms, the Director of the Office of Professional Medical Conduct and/or the Board may initiate a violation of probation proceeding and/or such other proceeding against Respondent as may be authorized pursuant to the Public Health Law.