

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

PUBLIC

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IN THE MATTER
OF
ATIF WAHBA, M.D.

: COMMISSIONER'S
: ORDER AND
: NOTICE OF HEARING
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TO: ATIF WAHBA, M.D.
6 Valley Meadow Drive
Spencerport, New York 14559

The undersigned, Dennis P. Whalen, Executive Deputy Commissioner of the New York State Department of Health, after an investigation, upon the recommendation of a committee on professional medical conduct of the State Board for Professional Medical Conduct, and upon the Statement of Charges attached hereto and made a part hereof, has determined that the continued practice of medicine in the State of New York by ATIF WAHBA, 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), that effective immediately ATIF WAHBA, 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).

PLEASE TAKE NOTICE that a hearing will be held pursuant to the provisions of N.Y. Pub. Health Law Section 230, and N.Y. State Admin. Proc. Act Sections 301-307 and 401. The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on the 11th day of March, 1999, at 10:00 a.m., at the offices of Alliance Court Reporting, The Alliance Building, 15th Floor, 183 East Main Street, Rochester, New York, 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. 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 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, Hedley Park Place, 433 River Street, 5th Floor, Troy, New York 12180 (518-402-0751), 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.

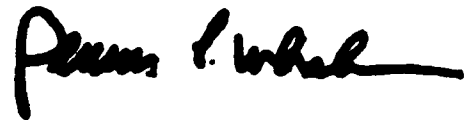
At the conclusion of the hearing, the committee shall make findings of fact, conclusions concerning the charges sustained or dismissed, and, in the event any of the charges are sustained, a determination of the penalty or sanction to be imposed or appropriate action to be taken. Such determination may be reviewed by the administrative review board for professional medical conduct.

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. YOU ARE
URGED TO OBTAIN AN ATTORNEY TO REPRESENT
YOU IN THIS MATTER.

DATED: Albany, New York

March 4, 1999



DENNIS P. WHALEN
Executive Deputy Commissioner

Inquiries should be directed to:

Kevin P. Donovan
Associate Counsel
NYS Department of Health
Division of Legal Affairs
Corning Tower Building
Room 2509
Empire State Plaza
Albany, New York 12237-0032
(518) 473-4282

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

-----X
IN THE MATTER : STATEMENT
OF : OF
ATIF WAHBA, M.D. : CHARGES
-----X

ATIF WAHBA, M.D., the Respondent, was authorized to practice medicine in New York State on or about July 16, 1984, by the issuance of license number 159233 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. The Respondent treated Patient A (patients are identified in Appendix A), born July 15, 1968, from around July 1992 through around October 1997. Following her care by Respondent, Patient A was diagnosed with breast cancer, stage IV. Respondent's care of Patient A did not meet acceptable standards of care in that:

1. Respondent failed to appropriately evaluate Patient A for her July 12, 1996, presenting complaint of "swollen right breast, leaking pus, blood times one month, getting worse," and/or failed to refer her to a surgeon for open biopsy.
2. Respondent failed to appropriately evaluate Patient A for her March 21, 1997, complaints concerning her right breast.
3. Respondent failed to appropriately evaluate Patient A for her June 30, 1997, complaints concerning her right breast.
4. Respondent failed to appropriately evaluate Patient A for her September 30, 1997, complaints concerning her right breast.
5. Respondent failed to appropriately evaluate Patient A when she presented at his office on October 29, 1997.

B. The Respondent provided care to Patient B during a pregnancy with an estimated date of confinement (EDC) of August 19, 1998. Respondent's care of Patient B did not meet acceptable standards of care in that:

1. On or around August 3, 1998, Respondent inappropriately left the delivery room and/or Lakeside Memorial Hospital after delivery of a fetal death in utero but before delivery of the placenta.
2. Respondent fraudulently or inappropriately made notations in the hospital record which give the impression that he was present at time of delivery of the placenta.

C. The Respondent treated Patient C during a pregnancy with an EDC of April 25, 1995. Respondent's care of Patient C on or around May 15, 1995, did not meet acceptable standards of care in that:

1. Respondent inappropriately left the delivery room after delivery of the patient's infant but before delivery of the placenta.
2. Respondent waited too long to begin removal of the placenta.
3. Respondent fraudulently or inappropriately reported in his delivery note that Patient C was escorted from the delivery room to the recovery room in satisfactory condition.
4. Respondent inappropriately left Patient C and Lakeside Memorial Hospital after delivery of the placenta despite the patient's bleeding and abnormal vital signs during removal of the placenta and information that the Patient's vital signs had not adequately stabilized.
5. Respondent inappropriately left Lakeside Memorial Hospital after being told by the anesthesiologist to be available as the anesthesiologist had to be present at another procedure.
6. Respondent inappropriately refused to return to Lakeside Memorial Hospital despite the nursing supervisor's request that he return and attend to the patient and the nurse's statements to him concerning bleeding, low hematocrit, and/or unstable vital signs of the patient.

D. The Respondent provided care to Patient D during a pregnancy with an EDC of November 27, 1998. Respondent's care of Patient D did not meet acceptable standards of care in that:

1. Respondent failed to appropriately discuss with Patient D the options of Caesarean section versus attempted vaginal birth after Caesarean section (VBAC).
2. Respondent fraudulently or inappropriately wrote in his record that he had discussed VBAC versus repeat c-section with Patient D when he had not done so.
3. Respondent failed to appropriately evaluate Patient D on or around September 18, 1998, after complaints of pre-term contractions.
4. Respondent failed to appropriately evaluate Patient D on or around October 3, 1998, after complaints of contractions following discharge from Children's Hospital of Buffalo for treatment of pre-term labor.

E. The Respondent treated Patient E from around 1984 through around August 1996. Respondent provided care to Patient E during a pregnancy with an EDC of August 22, 1993. Respondent's care of Patient E did not meet acceptable standards of care in that:

1. Respondent failed to appropriately respond to symptoms of pre-eclampsia, including reports of chest pain, edema, and elevated blood pressure toward the end of Patient E's pregnancy.
2. Respondent failed to appropriately treat Patient E for pre-eclampsia during her labor on or about August 3, 1996.
3. Respondent failed to appropriately evaluate Patient E for complaints of elevated blood pressure and/or chest pain post-partum, after discharge from the hospital.

F. The Respondent treated Patient F from around 1986 through around February 13, 1993. Respondent provided care to Patient F during a pregnancy with an EDC of February 22, 1993. Patient F's baby was born with a diagnosis of asphyxia and neurological damage. Respondent's care of Patient F did not meet acceptable standards of care in that Respondent failed to appropriately respond to reported vaginal bleeding during the early morning hours of February 13, 1993.

G. The Respondent treated Patient G from around September 1994 through at least January 1997. Respondent provided care to Patient G during a pregnancy with

an EDC of November 21, 1996. Respondent's care of Patient G did not meet acceptable standards of care in that Respondent performed an elective Caesarean section on November 6, 1996, without adequate assessment and/or proof of fetal maturity.

SPECIFICATIONS OF MISCONDUCT

FIRST SPECIFICATION

PRACTICING WITH NEGLIGENCE ON MORE THAN ONE OCCASION

The Respondent is charged with practicing the profession with negligence on more than one occasion within the meaning of N.Y. Educ. Law § 6530(3) in that Petitioner charges two or more of the following:

1. The facts in paragraphs A and A.1, A and A.2, A and A.3, A and A.4, A and A.5, B and B.1, B and B.2, C and C.1, C and C.2, C and C.3, C and C.4, C and C.5, C and C.6, D and D.1, D and D.2, D and D.3, D and D.4, E and E.1, E and E.2, E and E.3, F, and/or G.

SECOND SPECIFICATION

PRACTICING WITH INCOMPETENCE ON MORE THAN ONE OCCASION

The Respondent is charged with practicing the profession with incompetence on more than one occasion within the meaning of N.Y. Educ. Law § 6530(5) in that the Petitioner charges two or more of the following:

2. The facts in paragraphs A and A.1, A and A.2, A and A.3, A and A.4, A and A.5, B and B.1, B and B.2, C and C.1, C and C.2, C and C.3, C and C.4, C and C.5, C and C.6, D and D.1, D and D.2, D and D.3, D and D.4, E and E.1, E and E.2, E and E.3, F, and/or G.

THIRD THROUGH EIGHTH SPECIFICATIONS

PRACTICING WITH GROSS NEGLIGENCE

The Respondent is charged with practicing the profession with gross negligence on a particular occasion within the meaning of N.Y. Educ. Law § 6530(4) in that the Petitioner charges:

3. The facts in paragraphs A and A.1, A and A.2, A and A.3, A and A.4, and/or A and A.5.
4. The facts in paragraphs B and B.1 and/or B and B.2.
5. The facts in paragraphs C and C.1, C and C.2, C and C.3, C and C.4, C and C.5, and/or C and C.6.
6. The facts in paragraphs D and D.1, D and D.2, D and D.3, and/or D and D.4.
7. The facts in paragraphs E and E.1, E and E.2, and/or E and E.3.
8. The facts in paragraph F.

NINTH SPECIFICATION

PRACTICING WITH GROSS INCOMPETENCE

Respondent is charged with practicing the profession with gross incompetence within the meaning of N.Y. Educ. Law § 6530(6) in that Petitioner charges:

9. The facts in paragraphs A and A.1, A and A.2, A and A.3, A and A.4, A and A.5, B and B.1, B and B.2, C and C.1, C and C.2, C and C.3, C and C.4, C and C.5, C and C.6, D and D.1, D and D.2, D and D.3, D and D.4, E and E.1, E and E.2, E and E.3, and/or F.

TENTH THROUGH TWELFTH SPECIFICATIONS

PRACTICING FRAUDULENTLY

The Respondent is charged with practicing the profession fraudulently within the meaning of N.Y. Educ. Law § 6530(2) in that the Petitioner charges:

10. The facts in paragraphs B and B.2.
11. The facts in paragraphs C and C.3.
12. The facts in paragraphs D and D.2.

THIRTEENTH THROUGH FIFTEENTH SPECIFICATIONS

MORAL UNFITNESS

The Respondent is charged with conduct in the practice of medicine which evidences moral unfitness to practice medicine within the meaning of N.Y. Educ. Law § 6530(20) in that the Petitioner charges:

13. The facts in paragraphs B and B.2.
14. The facts in paragraphs C and C.3.
15. The facts in paragraphs D and D.2.

DATED: *March 4*, 1999

Albany, New York

Peter D. Van Buren by [signature]
PETER D. VAN BUREN
Deputy Counsel
Bureau of Professional
Medical Conduct