



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

Dennis P. Whalen
Executive Deputy Commissioner

June 17, 1998

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

William J. Lynch, Esq.
Bureau of Professional Medical Conduct
NYS Department of Health
Empire State Plaza
Corning Tower - Room 2503
Albany, New York 12237

Hosney Nagib Fahmy, M.D.
3411 West 8th Street
Los Angeles, California 90005

RE: In the Matter of Hosney Nagib Fahmy, M.D.

Dear Mr. Lynch and Dr. Fahmy:

Enclosed please find the Determination and Order (No. BPMC-98-116) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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.

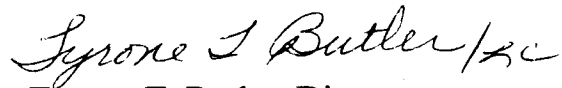
The notice of review served on the Administrative Review Board should be forwarded to:

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,

A handwritten signature in cursive script that reads "Tyrone T. Butler".

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:crc

Enclosure

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

COPY

DECISION

AND

ORDER

OF THE

HEARING

COMMITTEE

BPMC ORDER

NO. 98-116

IN THE MATTER

-OF-

HOSNEY NAGIB FAHMY, M.D.

This matter was commenced by a Notice of Hearing and Statement of Charges, both dated April 14, 1998 which were served upon **HOSNEY NAGIB FAHMY, M.D.**, (hereinafter referred to as "Respondent"). **ELEANOR KANE, M.D.**, Chairperson, **HONG CHUL YOON, M.D.**, and **MICHAEL WALKER**, 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. **JONATHAN M. BRANDES, ESQ.**, Administrative Law Judge, served as the Administrative Officer. A hearing was held on May 20, 1998 at Hedley Park Place, Troy, New York. The State Board For Professional Medical Conduct (hereinafter referred to as "Petitioner") appeared by **HENRY M. GREENBERG, ESQ.**, General Counsel, by **WILLIAM J. LYNCH, ESQ.**, Senior Attorney, Bureau of Professional Medical Conduct. Respondent did not appear in person. However, a written statement by Respondent was received in evidence as Administrative Law Judge Exhibit 101. Other evidence was received. A transcript of these proceedings was made.

After consideration of the entire record, the Hearing Committee issues this Decision and Order.

STATEMENT OF CASE

This case was brought pursuant to Public Health Law Section 230(10)(p). This statute provides for an expedited hearing where a licensee is charged solely with a violation of Section 6530 (9) of the Education Law. In such cases, a licensee is charged with misconduct based upon prior professional disciplinary action or criminal conviction. The scope of this expedited hearing is limited to a determination of the nature and severity of the penalty to be imposed by this state upon the licensee based solely upon the record of the previous conviction or discipline.

In the instant case, Respondent is charged with professional misconduct pursuant to the New York State Education Law, Section 6530 (9)(b) and (d) (having been found guilty of professional misconduct in another jurisdiction and having had disciplinary action taken against the license of Respondent in another jurisdiction). The allegations in this proceeding and the underlying events are more particularly set forth in the Notice of Referral Proceeding and Statement of Charges, a copy of which is attached to this Decision and Order as Appendix One.

FINDINGS OF FACT

The Committee adopts the factual statements set forth on pages one and two of the Statement of Charges (Appendix One) as its findings of fact and incorporates them herein.

CONCLUSIONS
WITH REGARD TO
FACTUAL ALLEGATIONS
SPECIFICATIONS
AND
PENALTY

Petitioner herein has proven by a preponderance of the evidence that Respondent was appropriately served with notice of this proceeding. Respondent has indicated that he had actual knowledge of this proceeding. The Administrative Law Judge ruled that Petitioner had established jurisdiction.

Petitioner has proven by a preponderance of the evidence that Respondent was found guilty of professional misconduct in California. Petitioner has also established by a preponderance of the evidence that California took action against the license of Respondent. Therefore, the Factual Allegations and Specifications in this proceeding are sustained. The Committee now turns its attention to what penalty to impose.

Respondent has been found guilty of gross negligence in his home state. It appears he has completed at least some of the sanctions placed upon him in California. When establishing a penalty in a Direct Referral proceeding, great deference is accorded to the originating state. This is because the state of origin usually has more information than the Board For Professional Medical Conduct and because the originating state has the added element that it must protect its citizens from the actual practice of medicine in that state. Here, the actual practice of medicine is not taking place in this state.

The primary purpose of a sanction in a matter presenting a fact paradigm such as the one presented herein is to protect the people of the state from substandard practice. With that in mind, and giving appropriate deference to the findings and penalty imposed by California, the Committee has decided to impose the same basic sentence imposed by California. As Respondent is not

presently practicing in this state, the penalty is designed to engage only if Respondent chooses to practice in this state.

ORDER

WHEREFORE, Based upon the preceding facts and conclusions,

It is hereby ORDERED that:

1. The Factual allegations in the Statement of Charges (Appendix One) are **SUSTAINED**;

Furthermore, it is hereby **ORDERED** that;

2. The Specifications of Misconduct contained within the Statement of Charges (Appendix One) are **SUSTAINED**;

Furthermore, it is hereby **ORDERED** that;

3. The license of Respondent to practice medicine in the state of New York is hereby **SUSPENDED**;

Furthermore, it is hereby **ORDERED** that;

4. Should Respondent wish to practice in New York State, the said suspension shall be lifted during completion of the following conditions:

- a. Respondent must establish that he has fulfilled any obligations imposed upon him by California or any other jurisdiction now or in the time prior to his intended practice in New York State.
- b. Respondent shall have imposed upon him a term of probation of not less than two years.
- c. Respondent shall practice medicine in strict adherence to accepted standards of medicine.
- d. The said probation shall include a practice monitor.

- e. The said practice monitor shall periodically review Respondent's case records such that the said practice monitor shall be familiar with Respondent's care and treatment of his patients.
- f. The said practice monitor shall report not less than quarterly to The Director of the Office For Professional Medical Conduct or his or her designee that Respondent is meeting accepted standards of practice. Any deviation from accepted standards shall be reported immediately to the said Director.
- g. The Director of the Office For Professional Medical Conduct or his or her designee shall have the discretion to impose any other conditions he or she deems necessary and appropriate to fulfill the intent of this order.
- h. Upon notice to The Director of the Office For Professional Medical Conduct or his or her designee that Respondent has been found to be in violation of his probation, the suspension shall be immediately re-imposed prior to any due process proceeding Respondent may be entitled to.

5. Upon successful completion of the above described probation, the said

SUSPENSION shall be PERMANENTLY LIFTED.

6. This order shall take effect **UPON RECEIPT or SEVEN (7) DAYS** after mailing of this order by Certified Mail.

Dated:
Troy, New York

13 June 1998

Eleanor O. Kane, M.D.
ELEANOR KANE, M.D., Chairperson,

HONG CHUL YOON, M.D.,
MICHAEL WALKER,

PR

TO:

WILLIAM J. LYNCH ESQ.
Senior Attorney
Bureau of Professional Medical Conduct
Corning Tower
Albany, N.Y. 12237

HOSNEY NAGIB FAHMY, M.D.
3411 West 8th Street
Los Angeles, CA 90005

APPENDIX ONE

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

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IN THE MATTER : STATEMENT
OF : OF
HOSNI NAGIB FAHMY, M.D. : CHARGES

-----X

HOSNI NAGIB FAHMY, M.D., the Respondent, was authorized to practice medicine in New York State on April 25, 1974 by the issuance of license number 119865 by the New York State Education Department. The Respondent is not currently registered with the New York State Education Department to practice medicine.

FACTUAL ALLEGATIONS

1. Respondent's license to practice medicine in the State of California became subject to disciplinary action by the issuance of an Accusation of the Medical Board of California dated October 20, 1992.

2. By Decision so ordered on September 17, 1993, the Medical Board of the State of California adopted a proposed decision which found that grounds existed to discipline Respondent's license in that Respondent practiced the profession with gross negligence. The Board imposed a five year stayed revocation of Respondent's license to practice medicine, and

Respondent was required to take fifty hours of continuing medical education and an oral exam in obstetrics/gynecology.

3. The discipline imposed upon Respondent by the Medical Board of the State of California was based on Respondent's failure to administer a test essential to detect a patient's blood loss and the performance of curettage surgery which was not indicated considering the entire syndrome of impending cardiovascular failure of that patient.

4. The conduct resulting in the revocation and disciplinary action involving Respondent's license would constitute professional misconduct if committed in New York State under New York Education Law §6530(4) practicing the profession with gross negligence on a particular occasion.

FIRST SPECIFICATION

Respondent is charged with professional misconduct under New York Education Law § 6530(9)(b) (McKinney Supp. 1997) in that Respondent was found guilty of professional misconduct by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the disciplinary action would, if committed in New York State, constitute professional misconduct under New York Education Law §6530(4) practicing the profession with gross negligence on a particular occasion, in that Petitioner charges the facts of paragraphs 1, 2, 3 and/or 4.

SECOND SPECIFICATION

Respondent is charged with professional misconduct under New York Education Law § 6530(9)(d) (McKinney Supp. 1997) in that disciplinary action has been taken against Respondent's license by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the disciplinary action would, if committed in New York State, constitute professional misconduct under New York Education Law §6530(4) practicing the profession with gross negligence on a particular occasion, in that Petitioner charges the facts of paragraphs 1, 2, 3 and/or 4.

DATED: *April 14*, 1998
Albany, New York

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