



ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

March 17, 2016

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Ramez Gharabawy, M.D.


Timothy J. Mahar, Esq.
NYS Department of Health
ESP-Corning Tower-Room 2512
Albany, New York 12237

RE: In the Matter of Ramez Gharabawy, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 16-092) 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 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
Office of Professional Medical Conduct
Riverview Center
150 Broadway - Suite 355
Albany, New York 12204

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), (McKinney Supp. 2015) and §230-c subdivisions 1 through 5, (McKinney Supp. 2015), "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., Chief Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Riverview Center
150 Broadway – Suite 510
Albany, New York 12204

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,


James F. Horan
Chief Administrative Law Judge
Bureau of Adjudication

JFH:cah
Enclosure

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

COPY

----- X
IN THE MATTER :
OF :
RAMEZ GHARABAWY, M.D. :
----- X

**DETERMINATION
AND
ORDER**

BPMC #16-092

A hearing was held on February 18, 2016, at the offices of the New York State Department of Health ("Department").¹ Pursuant to § 230(10)(e) of the Public Health Law ("PHL"), JAMES M. LEONARDO, M.D., Ph.D., Chairperson, DAVID F. IRVINE, DHSc, RPA-C, and ELAINE LOMBARDI WILK, D.O., FACOEP, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. DAWN MacKILLOP-SOLLER, ADMINISTRATIVE LAW JUDGE ("ALJ"), served as the Administrative Officer.

The Department appeared by Timothy J. Mahar, Esq. A Notice of Referral Proceeding and Statement of Charges dated November 6, 2015 were served upon Ramez Gharabawy, M.D. ("Respondent"), who did not appear at the hearing.² There were no witnesses at the hearing. The Hearing Committee received and examined documents from the Department and a stenographic reporter prepared a transcript of the proceeding. After consideration of the entire record, the Hearing Committee sustains the charges that Respondent committed professional misconduct, in violation of

¹ The location of the hearing was 150 Broadway, Suite 510, Menands, New York. The references in brackets refer to exhibits ["Ex."].

² The Notice of Referral Proceeding and Statement of Charges were personally served on the Respondent on November 17, 2015, at his New York residence, pursuant to PHL § 230(10)(d)(i). As such, the ALJ determined that jurisdiction was established. A copy of the Amended Statement of Charges dated December 23, 2015 is attached to this Determination and Order as Appendix I and was properly served on the Respondent via regular mail, pursuant to 10 NYCRR 51.6 and 51.7. [Ex. 2, 4].

Educ. Law §§ 6530(9)(a)(iii) and 6530(9)(d), and unanimously votes 3-0 to revoke the Respondent's license to practice medicine in the state of New York.

BACKGROUND

The Department brought the case pursuant to PHL § 230(10)(p), which provides for an expedited hearing when a licensee is charged solely with a violation of Educ. Law § 6530(9). The Respondent is charged with professional misconduct pursuant to Educ. Law § 6530(9)(a)(iii) by having been convicted of a crime under the laws of another jurisdiction, "and which, if committed within this state, would have constituted a crime..." under New York state law. The charges against Respondent are also pursuant to Educ. Law § 6530(9)(d) by having his "license to practice medicine revoked, suspended or having other disciplinary action taken..." where the conduct resulting in the disciplinary action would, if committed in the state of New York, constitute professional misconduct under New York state laws.

In the Court of Common Pleas of Cuyahoga County, in the state of Ohio, the Respondent pled guilty to two felony counts of sexual battery, in violation of Ohio Revised Code § 2907.03A(6), and one felony count of patient abuse or neglect, in violation of Ohio Revised Code § 2903.34A(1). The underlying conduct that is the subject of the criminal convictions resulted in the State Medical Board of the State of Ohio ("Ohio Board") issuing an agreement, which subjected the Respondent to disciplinary action and resulted in an order permanently revoking his certificate to practice medicine and surgery in the state of Ohio. Whether the criminal convictions in Ohio and the Ohio Board's disciplinary action constitute misconduct here hinges on whether the underlying conduct would constitute professional misconduct if committed in New York. [Ex. 1,4-8].

The Department charges that the Respondent's conduct in Ohio, which resulted in criminal convictions in that state, would have constituted a crime, had it occurred in New York, in violation of

New York Penal Law ("PL") §§ 130.55 and/or 130.05(3)(b). The Department also charges that had Respondent's conduct occurred in New York, it would have constituted willfully harassing, abusing, or intimidating a patient either physically or verbally, as defined in Educ. Law § 6530(31) and practicing the profession with gross negligence on a particular occasion, as defined in Educ. Law § 6530(4). [Ex. 1,4].

FINDINGS OF FACT

The Findings of Fact were made by the Hearing Committee after a review of the record in this matter. Under PHL § 230(10), the Department had the burden of proving its case by a preponderance of the evidence. The following findings and conclusions are the unanimous determinations of the Hearing Committee:

1. Ramez Gharabawy, M.D., the Respondent, was licensed to practice medicine in New York on June 16, 2009, by the issuance of license number 253585 by the Educ. Department. [Ex. 1, 3,4].

2. On or about May 14, 2014, in the Court of Common Pleas, Cuyahoga County, Ohio, the Respondent pled guilty to two felony counts of sexual battery and one felony count of patient abuse or neglect, in violation of Ohio Revised Code §§ 2907.03A(6) and 2903.34A(1), respectively. The Respondent was sentenced, on or about June 16, 2014, to 45 days in jail, with credit for time served, a fine in the amount of \$2,500.00, Tier 3 Sex Offender status and reporting requirements, and two years of probation with community control under the supervision of the probation department's sex offender unit, with conditions. [Ex. 1,4,6].

3. In an agreement with the Ohio Board signed by the Respondent on June 12, 2014 and effective on July 9, 2014, the Respondent agreed to the imposition of disciplinary action as part of a plea agreement to resolve the criminal and professional misconduct charges and to the permanent

surrender of his medical certificate. In an Entry of Order dated July 9, 2014, the Ohio Board ratified the surrender agreement and ordered the permanent revocation of the Respondent's medical certificate. The Ohio Board based its action on the Respondent's underlying conduct in the criminal case in Ohio, which involved his inappropriate sexual conduct with an patient under his care for anesthesia in a hospital setting by inserting his "finger into (her) rectum without her consent" and by verbalizing to her improper "sexualized statements." [Ex. 1,4,7].

VOTE OF THE HEARING COMMITTEE

FIRST SPECIFICATION

The Hearing Committee determined that the evidence supports sustaining the charge of having committed misconduct under Educ. Law § 6530(9)(a)(iii).

VOTE: Sustained (3-0)

SECOND SPECIFICATION

The Hearing Committee concluded that the evidence supports sustaining the charge of having committed misconduct as defined in Educ. Law § 6530(9)(d).

VOTE: Sustained (3-0)

APPLICABLE LAW

1. Sexual battery is defined in Ohio Revised Code § 2907.03(A)(6) as follows:

A. No person shall engage in sexual conduct with another, not the spouse of the offender, when...

[¶] . . . [¶]

(6) The other person is in custody of law or a patient in a hospital or other institution, and the offender has supervisory or disciplinary authority over the other person. [Ex. 10].

2. Sexual conduct is defined under Ohio Revised Code § 2907.01(A) as follows:

'Sexual conduct' means...without privilege to do so, the insertion, however slight, of any part of the body or an instrument, apparatus, or other object into the vaginal or anal opening of another. Penetration, however slight, is sufficient to complete vaginal or anal intercourse. [Ex. 9].

3. Patient abuse is defined in Ohio Revised Code § 2903.34(A)(1). It states:

A. No person who owns, operates, or administers, or who is an agent or employee of, a care facility shall do any of the following:

(1) Commit abuse against a resident or patient of the facility; [Ex. 11].

4. Under PL § 130.55, a person is guilty of sexual abuse in the third degree when "he or she subjects another person to sexual contact without the latter's consent..." [Ex. 12].

5. PL § 130.00(3) defines sexual contact. It states, in pertinent part:

'Sexual contact' means any touching of the sexual or other intimate parts of a person for the purpose of gratifying sexual desire of either party. It includes the touching of the actor by the victim, as well as the touching of the victim by the actor, whether directly or through clothing, ...[Ex. 13].

6. According to PL § 130.05(3)(h), a person is deemed incapable of consent when he or she is:

(A) client or patient and the actor is a health care provider or mental health care provider charged with...sexual abuse in the third degree as defined in section 130.55, and the act of sexual conduct occurs during a treatment session, consultation, interview, or examination. [Ex. 14].

CONCLUSIONS OF LAW

The Department presented the Hearing Committee with evidence to show that based on the Respondent's felony convictions of two counts of sexual battery and one count of patient abuse or neglect, contrary to Ohio Revised Codes §§ 2907.03A(6) and 2903.34A(1), respectively, the Respondent committed professional misconduct, as defined in Educ. Law § 6530(9)(a)(iii). The

Department's evidence demonstrated that the Respondent's conduct of violating a patient sexually while she was under his care for anesthesia, which constituted crimes under the laws of the state of Ohio, would have constituted a crime under New York state law, had it occurred here. Similar to Ohio, New York deems it a crime for a physician to subject a patient in a hospital and under his or her care to conduct of a sexual nature. Since the Ohio Revised Codes referable to sexual battery and the sections of the PL in the state of New York relevant to sexual abuse in the third degree are substantially the same, the Hearing Committee concludes that the Respondent's inappropriate sexual conduct involving a patient under his medical care in Ohio, would have constituted a crime under New York state law, had it been committed within New York state. [Ex. 9-14].

The Department's evidence also demonstrated that the Respondent's improper sexual conduct with the patient who is the subject of the Ohio Board's July 9, 2014 Order, constituted abuse of the patient and a serious deviation from acceptable medical standards, which placed the patient at risk for harm. Like Ohio, a physician in New York is strictly prohibited from engaging in sexual misconduct with a patient. The Hearing Committee considered the level of trust patients have in physicians when undergoing surgical procedures and how it was exploited here. The Respondent's egregious professional misconduct, which resulted in the revocation of his medical certificate in Ohio, had it occurred in New York, would have constituted gross negligence and willfully harassing, abusing, or intimidating a patient either physically or verbally, as defined in Educ. Law §§ 6530(4) and 6530(31), respectively.

The Hearing Committee considered the full spectrum of penalties available by statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties, and found that the sustained specifications indicate the Respondent's use of his medical license to violate a patient's trust and confidence while she was in a vulnerable state and

under his medical care to receive anesthesia. The Respondent's non-appearance at the hearing left the Hearing Committee without an opportunity to evaluate any defenses in mitigation of his conduct or to assess any efforts he has made toward rehabilitation. As such, the Hearing Committee unanimously concluded that the evidence supports the penalty of revocation of Respondent's New York medical license.

ORDER

IT IS HEREBY ORDERED THAT:

1. The specifications of professional misconduct, as set forth in the Statement of Charges, are **SUSTAINED**;
2. Respondent's license to practice medicine in the State of New York is hereby **REVOKED**;
3. This Determination and Order shall be effective upon service on the Respondent. Service shall be either by certified mail or upon the Respondent at her last known address and such service shall be effective upon receipt or seven days after mailing by certified mail, whichever is earlier, or by personal service and such service shall be effective upon receipt.

DATED: Albany, New York
March 17, 2016


James M. Leonardo, M.D., PhD.
Chairperson

David F. Irvine, DHEC, RPA-C
Elaine Lombardi Wilk, D.O., FACOEP

TO: Ramez Gharabawy, M.D.
29933 Greenview Parkway
Westlake, Oh 44145

Ramez Gharabawy, M.D. - Direct Referral

Ramez Gharabawy, M.D.



**Timothy J. Mahar, Esq.
Associate Counsel
New York State Department of Health
Bureau of Professional Medical Conduct
Corning Tower Building – Room 2512
Empire State Plaza
Albany, New York 12237**

APPENDIX I

**IN THE MATTER
OF
RAMEZ GHARABAWY, M.D.**

**NOTICE OF
REFERRAL
PROCEEDING**

TO: Ramez Gharabawy, M.D. Ramez Gharabawy, M.D.
 

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law §230(10)(p) and N.Y. State Admin. Proc. Act §§301-307 and 401. The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on January 13, 2016 at 10:30 a.m., at the offices of the New York State Department of Health, Riverview Center, 150 Broadway, Suite 510, Menands (Albany), NY 12204-2719.¹

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 who shall be an attorney admitted to practice in New York state. 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

¹ For GPS purposes, enter "Menands", not "Albany".



Department of Health, Division of Legal Affairs, Bureau of Adjudication, Riverview Center, 150 Broadway - Suite 510, Albany, NY 12204-2719, ATTENTION: HON. JAMES HORAN, DIRECTOR, BUREAU OF ADJUDICATION (Telephone: (518-402-0748), (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, no later than twenty days prior to the scheduled date of the Referral Proceeding, as indicated above.

Pursuant to the provisions of N.Y. Pub. Health Law §230(10)(p), you shall file a written answer to each of the charges and allegations in the Statement of Charges not later than ten days prior to the date of the hearing. Any charge or allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such answer. The answer shall be filed with the Bureau of Adjudication, at the address indicated above, and a copy shall be forwarded to the attorney for the Department of Health whose name appears below. You may file a written brief and affidavits with the Committee. Six copies of all papers you submit must be filed with the Bureau of Adjudication at the address indicated above, no later than fourteen days prior to the scheduled date of the Referral Proceeding, and a copy of all papers must be served on the same date on the Department of Health attorney indicated below.

Pursuant to §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. Pursuant to the terms of N.Y. State Admin. Proc. Act §401 and 10 N.Y.C.R.R. §51.8(b), the Petitioner hereby demands disclosure of the evidence that the Respondent intends to introduce at the hearing, including the names of witnesses, a list of and copies of documentary evidence and a description of physical or other evidence which cannot be photocopied.

YOU ARE HEREBY ADVISED THAT THE ATTACHED CHARGES WILL BE MADE PUBLIC FIVE BUSINESS DAYS AFTER THEY ARE SERVED.

Department attorney: Initial here 

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 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.

**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 OUT IN NEW
YORK PUBLIC HEALTH LAW §§230-a. YOU ARE URGED
TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN
THIS MATTER.**

DATED: Albany, New York
November 12, 2015



**MICHAEL A. HISER
Deputy Counsel
Bureau of Professional Medical Conduct**

Inquiries should be addressed to:

**Timothy J. Mahar
Associate Counsel
Bureau of Professional Medical Conduct
Corning Tower – Room 2512
Empire State Plaza
Albany, NY 12237
(518) 473-4282**

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

IN THE MATTER
OF
RAMEZ REDA GHARABAWY, M.D.

AMENDED
STATEMENT
OF
CHARGES

Ramez Reda Gharabawy, M.D., the Respondent, was authorized to practice medicine in New York State on or about June 16, 2009, by the issuance of license number 253585 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. On or about May 14, 2014, in the Court of Common Pleas, Cuyahoga County, Ohio, Respondent pled guilty to two felony counts of Sexual Battery in violation of Ohio Revised Code §2907.03A(6) and one felony count of Patient Abuse or Neglect; Spiritual Treatment; Defense in violation of Ohio Revised Code §2903.34A(1). Respondent was sentenced to 45 days in Cuyahoga County Jail (with credit for 16 days of jail time served); two years of probation ("Community Control") under the Probation Department's Adult Sex Offender Unit and pursuant to terms and conditions stated in the sentencing order; and imposition of Tier 3 Sex Offender status.
- B. On or about July 9, 2014, Respondent entered into an agreement with the State Medical Board of the State of Ohio (Ohio Board) in which Respondent, among other things, permanently surrendered his certificate to practice medicine and surgery in the



State of Ohio (Ohio License No. 35.093487) and further agreed not to reapply in the future for reinstatement or restoration of an Ohio certificate to practice medicine and surgery. The agreement to surrender Respondent's Ohio medical certificate was entered into to resolve a pending disciplinary proceeding in which it was alleged that Respondent had physical contact of a sexual nature with a patient in violation of the criminal laws of Ohio and in violation of the laws and rules governing professional medical conduct in Ohio. Further, it was alleged in the pending disciplinary proceeding that Respondent made inappropriate sexualized statements to a patient in violation of Ohio professional medical conduct laws and rules. On or about July 9, 2014, the Ohio Board ratified the agreement in which Respondent permanently surrendered his Ohio medical certificate and entered an order permanently revoking Respondent's Ohio medical certificate.

C. The conduct resulting in the July 9, 2014 disciplinary action against Respondent would constitute misconduct under the laws of New York State, pursuant to the following sections of New York State Law:

1. New York Education Law §6530(31) [willfully harassing, abusing, or intimidating a patient either physically or verbally]; and/or
2. New York Education Law §6530(4) [practicing the profession with gross negligence on a particular occasion].

SPECIFICATION OF CHARGES**FIRST SPECIFICATION****CRIMINAL CONVICTION (Other Jurisdiction)**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(9)(a)(iii) by having been convicted of committing an act constituting a crime under the law of another jurisdiction and which, if committed within this state, would have constituted a crime under New York state law (namely N.Y. Penal Law §§130.55 [Sexual Abuse in the third degree]; and/or Penal Law § 130.05[3][h]) as alleged in the facts of the following:

1. The facts in Paragraph A.

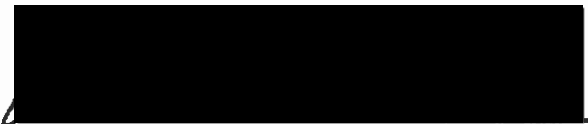
SECOND SPECIFICATION**SURRENDER OF OHIO MEDICAL LICENSE**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(9)(d) by having his or her license to practice medicine revoked, suspended or having other disciplinary action taken, or having his or her application for a license refused, revoked or suspended or having voluntarily or otherwise surrendered his or her license after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation,

suspension or other disciplinary action involving the license or refusal, revocation or suspension of an application for a license or the surrender of the license would, if committed in New York state, constitute professional misconduct under the laws of New York state as alleged in the facts of the following:

2. The facts in Paragraphs B and C.

DATE: December 23, 2015
Albany, New York



MICHAEL A. HISER
Deputy Counsel
Bureau of Professional Medical Conduct