



STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Antonia C. Novello, M.D., M.P.H., Dr.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

PUBLIC

November 6, 2002

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Robert Bogan, Esq.
NYS Department of Health
433 River Street
Troy, New York 12180

F. Stanton Ackerman, Esq.
Ackerman, Wachs & Finton
90 State Street – Suite 911
Albany, New York 12207

Waqar Ali Farooqi
Standart Woods Apartments
A-1
Auburn, New York 13021

RE: In the Matter of Waqar Ali Farooqi, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 02-343) 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
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,



Tyrone T. Butler, Director
Bureau of Adjudication

TTB:cah
Enclosure

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

IN THE MATTER

OF

WAQAR ALI FAROOQI, M.D.,
Respondent

COPY

DETERMINATION

AND

ORDER

BPMC #02-343

A Notice of Hearing and a Statement of Charges, dated March 13, 2002, were served upon the Respondent, Waqar Ali Farooqi, M.D. MICHAEL R. GOLDING, M.D. (Chair), JOHN W. CHOATE, M.D. and FRANCES TARLTON duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee (hereinafter the Committee) in this matter pursuant to Section 230(10)(e) of the Public Health Law. JEFFREY W. KIMMER, ADMINISTRATIVE LAW JUDGE, served as the Administrative Officer. The Department of Health appeared by Robert Bogan, Esq. and Paul R. Maher, Esq. The Respondent appeared by Ackerman, Wachs & Finton, F. Stanton Ackerman, Esq. and Stacey L. Gorman, Esq. of counsel. Evidence was received and witnesses sworn and heard and transcripts of these proceedings were made.

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

PROCEDURAL HISTORY

Dates of Hearing:

April 29, 2002

April 30, 2002

June 3, 2002

June 4, 2002
June 5, 2002

Date of Deliberations:

September 9, 2002

STATEMENT OF CASE

The Statement of Charges alleged the Respondent violated eight categories of professional misconduct, namely, gross negligence, fraudulent practice of medicine, exercising undue influence over a patient, moral unfitness in the practice of medicine, abusing a patient, failure to maintain accurate records, failure to use accepted infection control practices and having been convicted of a crime.

A copy of the Statement of Charges is attached to this Determination and Order and made a part thereof as Appendix I.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the evidence presented in this matter. All Findings and Conclusions herein are the unanimous determination of the Committee. Conflicting evidence, if any, was considered and rejected in favor of the evidence cited. Numbers in parentheses

refer to transcript page numbers or exhibits. These citations represent evidence found persuasive by the Committee in arriving at a particular finding. All Findings of Fact made by the Committee were established by at least a preponderance of the evidence. Having heard testimony and considered evidence presented by the Department of Health and the Respondent respectively, the Committee hereby makes the following findings of fact.

1. Waqar Ali Farooqi, M.D., (hereinafter " Respondent"), was authorized to practice medicine in New York State on or about October 29, 1996, by the issuance of a three year limited license number 001041 by the New York State Education Department. (Exs.1& 4)
2. During the period of October, 1998 through and including February 15, 1999, the Respondent was practicing medicine at the Bare Hill Correctional Facility, Malone, New York. (Exs. 5A & 12)
3. During the period of October, 1998 through and including February 15, 1999, the Respondent provided medical treatment to Patient I, an inmate at the Bare Hill Correctional Facility, Malone, New York. (T. 571-572, 577, 585-586; Ex. 12)
4. On or about October, 1998, the Respondent did not have inappropriate

and/or unprotected sexual contact with Patient I. (Ex. 12)

5. On or about November, 1998, the Respondent did not have inappropriate and/or unprotected sexual contact with Patient I. (Ex. 12)

6. On or about February 15, 1999, the Respondent did have inappropriate and/or unprotected sexual contact with Patient I. (T. 36, 281-290,322-323, 326, 365-376, 585; Exs. 12, 13)

7. On or about March 15, 2001, the Respondent in the case of People v. Waqar Ali Farooqi (Malone Town Court, Franklin County) plead guilty and was convicted of tampering with public records in the second degree, a class A misdemeanor. Respondent was sentenced to 3 years probation and had a number of conditions imposed on his medical license. (Ex. 3b)

Conclusions

The following conclusions were made pursuant to the Findings of Fact listed above. The Committee concluded that the following Factual Allegation was proven by a preponderance of the evidence (the paragraphs noted refer to those set forth in the Statement of Charges, Factual Allegations). The citations in parentheses refer to the Findings of Fact (supra), which support the

Committee's conclusion:

Paragraph A.3: (2, 3 & 6);

Paragraph B: (7).

The Committee concluded that the following Factual Allegations were not proven by a preponderance of the evidence (the paragraphs noted refer to those set forth in the Statement of Charges, Factual Allegations). The citations in parentheses refer to the Findings of Fact (supra), which support the Committee's conclusions:

Paragraph A.1: (4);

Paragraph A.2: (5).

The Committee further concluded that the following Specifications should **be sustained:**

CONDUCT WHICH EVIDENCES MORAL UNFITNESS

Twelfth Specification: (Paragraph A.3.);

**WILLFULLY HARASSING, ABUSING OR INTIMIDATING A
PATIENT EITHER PHYSICALLY OR VERBALLY**

Fifteenth Specification: (Paragraphs A.3.);

CONVICTION OF A CRIME

Twenty-second Specification: (Paragraph B.).

The Committee also concluded that the following Specifications should **not be sustained:** the **First through the Eleventh, the Thirteenth, Fourteenth and the Sixteenth through Twenty-first Specifications.**

DISCUSSION

Respondent was charged with five specifications alleging professional misconduct within the meaning of Education Law §6530. This statute sets forth numerous forms of conduct which constitute professional misconduct, but does not provide definitions of the various types of misconduct. During the course of its deliberations on these charges, the Committee consulted a memorandum prepared by General Counsel for the Department of Health. This document, entitled "Definitions of Professional Misconduct Under the New York Education

Law" sets forth suggested definitions for certain specified misconduct, including negligence, gross negligence, incompetence, gross incompetence and fraud in the practice of medicine.

The following definition was utilized by the Committee during its deliberations:

Fraud is an intentional misrepresentation or concealment of a known fact. An individual's knowledge that he/she is making a misrepresentation or concealing a known fact with the intention to mislead may properly be inferred from certain facts.

The Department presented as one of its key witnesses to support the allegations, Patient I, a former inmate at the Bare Hill Correctional facility. This witness testified that the Respondent had inappropriate contact with him of a sexual nature on three occasions. Patient I testified that the three incidents occurred in October 1998, November 1998 and February 1999. Patient I testified that during the incident of February 15, 1999, he had been forced to perform oral sex on the Respondent during a treatment visit at the infirmary of the correctional facility. Patient I stated the Respondent ejaculated on his face and clothing. In the course of cleaning up he then recovered some of the Respondent's

semen on a paper towel, which he secreted out of the infirmary and mailed it to his sister.

It is the Department's burden to prove the elements of the allegations by a preponderance of evidence. In this case, with respect to charges A.1. and A.2. they did not meet that burden. This conclusion was based on the medical record of Patient I (Ex. 12), which did not indicate that the Respondent had treated the patient on or about the alleged dates indicated.

However, with respect to allegation A.3. the patient's medical record did corroborate that the Respondent had treated Patient I on or about February 15, 1999, at the infirmary at the Bare Hill Correctional Facility. Additionally, the Petitioner presented physical evidence (Ex.13) and expert testimony which confirmed conclusively that the semen on the paper towel was the Respondent's. The Respondent's explanation of this fact was that he suffered from a condition which caused him to sometimes have a discharge of semen when urinating, that he had such a discharge just prior to treating Patient I on February 15, 1999, that he had wiped the discharge off with a paper towel in the staff bathroom which he threw into the garbage in that bathroom. The Respondent told all this to Patient I during that visit because the patient complained of having the same condition. The Respondent then offered the presumption that Patient I went into the staff

bathroom after his medical consultation with the Respondent and retrieved the paper towel containing the Respondent's semen from the garbage. The Committee found the Respondent's explanation implausible and therefore sustained this charge.

The Committee concluded that the Respondent's actions did not fall within the definition of fraud as noted above and therefore they did not sustain that specification. Nor did the Committee conclude that the specifications of failure to comply with a law governing the practice of medicine, failure to use scientifically accepted barrier precautions or failure to maintain accurate records were sustainable in this case.

The Respondent plead guilty to Tampering with a Public Document in the second degree, which is a class A misdemeanor. The New York Penal Law defines crime as a misdemeanor or felony. The Committee found the evidence conclusive that the Respondent had been convicted of a crime under New York Law, therefore the specification of having been convicted of a crime was sustained.

ORDER

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

1. The **Twelfth, Fifteenth and Twenty-second Specifications** of professional misconduct, as set forth in the Statement of Charges (Appendix I, attached hereto and made a part of this Determination and Order) is **SUSTAINED**;
2. The Respondent's license to practice medicine is **Revoked**.

DATED: New York, New York

30 OCT, 2002


MICHAEL R. GOLDING, M.D. (Chair),
JOHN W. CHOATE, M.D.
FRANCES TARLTON

Robert Bogan, Esq.
Associate Counsel
New York State
Department of Health
433 River St.
Troy, New York 12180

F. Stanton Ackerman, Esq.
Ackerman, Wachs & Finton
90 State St.
Suite 911
Albany, New York 12207

Waqar Ali Farooqi
Standart Woods Apts.
A-1
Auburn, New York 13021

APPENDIX I

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

IN THE MATTER
OF
WAQAR ALI FAROOQI, M.D.

STATEMENT
OF
CHARGES

WAQAR ALI FAROOQI, M.D., the Respondent, was authorized to practice medicine in New York state on October 29, 1996, by the issuance of a three-year limited license number 000457 and again on November 1, 1999, by the issuance of a three-year limited license number 001041 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. Respondent treated Patient I, a confinee at Bare Hill Correctional Facility, Malone, New York, from on or about July 1998 to on or about February 1999, at that facility. Respondent's care and treatment failed to meet acceptable standards of medical care in that:

1. On or about October 1998, at Bare Hill Correctional Facility, Malone, New York, Respondent did have inappropriate and/or unprotected sexual contact with Patient I; and/or
2. On or about November 1998, at Bare Hill Correctional Facility, Malone, New York, Respondent did have inappropriate and/or unprotected sexual contact with Patient I; and/or
3. On or about February 1999, at Bare Hill Correctional Facility, Malone, New York, Respondent did have inappropriate and/or unprotected sexual contact with Patient I.

B. On or about March 15, 2001, in the Malone Town Court, Criminal Part, Franklin County, New York, the Respondent was, on a plea of guilty, found guilty of New York Penal Law, Section 175.20, Tampering with public records in the second degree, a class A misdemeanor, and sentenced to probation, a \$125.00 surcharge, and conditions that prohibit him from obtaining a permanent license to practice medicine for three (3) years unless the

8. The facts in Paragraph A(2); and/or
9. The facts in Paragraph A(3).

TENTH THROUGH TWELFTH SPECIFICATIONS

Respondent violated New York Education Law §6530(20) by committing conduct in the practice of medicine which evidence moral unfitness to practice medicine, in that Petitioner charges:

10. The facts in Paragraph A(1);
11. The facts in Paragraph A(2); and/or
12. The facts in Paragraph A(3).

THIRTEENTH THROUGH FOURTEENTH SPECIFICATIONS

Respondent violated New York Education Law §6530(31) by willfully harassing, abusing, or intimidating a patient either physically or verbally, in that Petitioner charges:

13. The facts in Paragraph A(1);
14. The facts in Paragraph A(2); and/or
15. The facts in Paragraph A(3).

SIXTEENTH THROUGH EIGHTEENTH SPECIFICATIONS

The Respondent violated New York Education Law §6530(32) by failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient, in that Petitioner charges:

16. The facts in Paragraph A(1);
17. The facts in Paragraph A(2); and/or
18. The facts in Paragraph A(3).

NINETEENTH THROUGH TWENTY FIRST SPECIFICATIONS

Respondent violated New York Education Law §6530(47) by failure to use scientifically accepted barrier precautions and infection control practices as established by the department of health, in that Petitioner charges:

19. The facts in Paragraph A(1);
20. The facts in Paragraph A(2); and/or
21. The facts in Paragraph A(3).

TWENTY SECOND SPECIFICATION

Respondent violated New York Education Law §6530(9)(a)(i) by having been convicted of committing an act constituting a crime under New York state law, in that Petitioner charges:

22. The facts in Paragraph B.

DATED: *March 13*, 2002
Albany, New York


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