



David Axelrod, M.D.
Commissioner

Board for Professional Medical Conduct

Corning Tower • Empire State Plaza • Albany, NY 12237 • (518) 474-8357

C. Maynard Guest, M.D.
Executive Secretary

April 15, 1992

Mr. Robert Bentley
Director
Division of Professional Licensing Services
New York State Education Department
Empire State Plaza-Cultural Education Center
Albany, New York 12230

RE: License No. 118031
Effective Date: 4/17/92

Dear Mr. Bentley:

Enclosed please find Order #BPMC 92-31 of the New York State Board for Professional Medical Conduct concerning Mahmoud Elshahawy, M.D.

Sincerely,

C. Maynard Guest, M.D.
Executive Secretary
Board for Professional Medical Conduct

Enclosure

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

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IN THE MATTER :

OF : ORDER

MAHMOUD ELSHAHAWY, M.D. :

-----X

A Notice of Hearing and Statement of Charges, dated February 4, 1992 were issued by the State Board for Professional Medical conduct concerning the Respondent, Mahmoud Elshahawy, M.D.

A hearing was held on March 5, 1992 at the Office of the New York State Department of Health, 5 Penn Plaza, New York, New York. **ARTHUR T. RISBROOK, M.D. (Chair), EDWARD C. ZAINO, M.D., and SHEILA M. ROTHMAN**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. **LARRY G. STORCH, ADMINISTRATIVE LAW JUDGE**, served as the Administrative Officer. The Respondent did not appear at the hearing in person, and no attorney appeared on behalf of Respondent. The Department of Health appeared by Jean Bresler, Esq., Associate Counsel. Evidence was received and witnesses sworn and heard and transcripts of these proceedings were made. The Hearing Committee issued a Determination dated March , 1992.

IT IS HEREBY ORDERED BY THE COMMITTEE THAT;

1. The First Specification of professional misconduct contained within the Statement of Charges (Dept. Ex. #1) is **SUSTAINED**; and

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

-----X
IN THE MATTER : DETERMINATION
OF : OF THE
MAHMOUD ELSHAHAWY, M.D. : HEARING COMMITTEE
-----X

A Notice of Hearing and Statement of Charges, both dated February 4, 1992, were served upon the Respondent, Mahmoud Elshahawy, M.D. **ARTHUR T. RISBROOK, M.D (Chair), EDWARD C. ZAINO, M.D.,** and **SHEILA M. ROTHMAN,** 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. **LARRY G. STORCH, ADMINISTRATIVE LAW JUDGE,** served as the Administrative Officer. A hearing was held on March 5, 1992. The Department of Health appeared by Jean Bresler, Esq., Associate Counsel. The Respondent did not appear at the hearing in person, and no attorney appeared on behalf of Respondent. 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.

STATEMENT OF CASE

This case was brought pursuant to Public Health Law § 230(10)(p). The statute provides for an expedited hearing where a licensee is charged solely with a violation of Education Law § 6530(9). In such cases, a licensee is charged with misconduct based upon a prior criminal conviction in New York or another jurisdiction, or upon a prior administrative adjudication

regarding conduct which would amount to professional misconduct, if committed in New York. The scope of an expedited hearing is limited to a determination of the nature and severity of the penalty to be imposed upon the licensee.

In the instant case, Respondent is charged with professional misconduct pursuant to Education Law §6530(9)(b).

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers in parentheses 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. Mahmoud Elshahawy, M.D. (hereinafter "Respondent") was authorized to practice medicine in New York State on September 10, 1973 by the issuance of license # 118031 by the New York State Education Department. Respondent is not currently registered with the New York State Education Department but was last registered to practice medicine for the period January 1, 1983 through December 31, 1988 at the Bradford Apartments, 187 East Bradford Avenue, #B-2, Cedar Grove, New Jersey. (Dept. Ex. #4).

2. On January 16, 1990 a hearing was held before the New Jersey State Board of Medical Examiners. Respondent did not appear. At the conclusion of the hearing, the New Jersey Board sustained charges of misrepresentation and deception under N.J. Stat. Section 45:1-21(b) in that on several occasions Respondent

billed Blue Cross/Blue Shield for medical services which he did not in fact perform. (Dept. Ex. #3).

3. The New Jersey State Board of Medical Examiners further sustained charges of gross negligence and/or repeated negligence/incompetence pursuant to N.J. Stat. 45:1-21(c) and (d) in that on more than one occasion Respondent failed to take or document vital signs pre-operatively and intra-operatively, and failed to document the quantity and route of administration of anesthesia used. (Dept. Ex. #3).

4. The New Jersey State Board of Medical Examiners further found that reasonable efforts had been made to serve Respondent with notice of the complaint as well as a motion for summary judgment. (Dept. Ex. #3).

5. On May 25, 1990 the New Jersey State Board of Medical Examiners ordered that Respondent's New Jersey medical license be revoked, that he pay a penalty of \$10,000, calculated on the basis of \$2,500 for each patient whose treatment was considered by the Board, that Respondent reimburse Blue Cross/Blue Shield \$202.40 and pay costs in the administrative proceeding. (Dept. Ex. #3).

6. Reasonable efforts were made by the Office of Professional Medical Conduct to serve Respondent with the Notice of Referral Proceeding and Statement of Charges in the instant proceeding. (Dept. Ex. #2 and #5).

7. At all times relevant to these proceedings, N.J. Statutes §45:1-21 provided that the New Jersey State Board of Medical Examiners may suspend or revoke a medical license upon

proof that a licensee, inter alia:

- b. Has engaged in the use or employment of dishonesty, fraud, deception, or misrepresentation, false promise or false pretense;
- c. Has engaged in gross negligence, gross malpractice or gross incompetence;
- d. Has engaged in repeated acts of negligence, malpractice or incompetence.

(Official Notice Taken).

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 Committee concluded that the Department has met its burden of proof. The preponderance of the evidence demonstrates that Respondent was disciplined by the New Jersey State Board of Medical Examiners for conduct in violation of N.J. Stat. §45:1-21.

The New Jersey Board found that Respondent billed Blue Cross/Blue Shield for medical services which he did not perform. The Hearing Committee concluded that this conduct would constitute practicing the profession fraudulently, as set forth in Education Law §6530(2), as added by ch. 606 laws of 1991.

The New Jersey Board also found that Respondent failed to take or document vital signs pre-operatively and intra-operatively, and failed to document the quantity and route of administration of anesthesia used. The Hearing Committee concluded that this conduct would constitute negligence on more than one occasion and gross negligence on a particular occasion.

as set forth in Education Law §6530(3) and (4), respectively. The Hearing Committee found insufficient evidence in the record to support a finding of incompetence on more than one occasion. As a result, the Committee did not find a violation of Education Law §6530(5).

Based upon the adjudication of Respondent's conduct by the New Jersey State Board of Medical Examiners, the Hearing Committee concluded that Respondent committed professional misconduct within the meaning of Education Law §6530(9)(b). He has been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state, where the conduct upon which the finding was based would, if committed in New York State, constitute professional misconduct under the laws of New York State. As a result, the Hearing Committee sustained the specification of misconduct alleged in the Statement of Charges. (Dept. Ex. #1).

DETERMINATION AS TO PENALTY

The Hearing Committee unanimously concluded that Respondent's license to practice medicine in New York State should be revoked. A mere suspension of Respondent's license, with terms of probation would be unworkable, as the Respondent does not currently live or practice within New York State, and his compliance with the terms of probation could not be monitored by the Office of Professional Medical Conduct. Imposition of a monetary penalty would be futile, as it could not be successfully collected. In the event that Respondent ever decides that he

wishes to regain his New York medical license, he may petition the Board of Regents for reinstatement. At such time, he will have an opportunity to demonstrate whether he has been rehabilitated to the extent that a restoration of his license would be appropriate.

DATED: Albany, New York
, 1992



ARTHUR T. RISBROOK, M.D.

Edward C. Zaino, M.D.
Sheila M. Rothman