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3 **BEFORE THE**
4 **MEDICAL BOARD OF CALIFORNIA**
5 **DEPARTMENT OF CONSUMER AFFAIRS**
6 **STATE OF CALIFORNIA**

7 In the Matter of the Accusation Against,

Case No. 16-2012-223352

8 **TAMER M. GABER, M.D.**

**DEFAULT DECISION
AND ORDER**

9 **PHYSICIAN'S AND SURGEON'S CERTIFICATE NO.**
10 **A114864**

[Gov. Code, §11520]

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RESPONDENT.

On June 29, 2012, an employee of the Medical Board of California (Board) sent by certified mail a copy of Accusation No. 16-2012-223352, Statement to Respondent, Notice of Defense in blank, copies of the relevant sections of the California Administrative Procedure Act as required by sections 11503 and 11505 of the Government Code, and a request for discovery, to Tamer M. Gaber, M.D. (Respondent) at his address of record with the Board, 245 Palisades Drive, Morgantown, WV 26508. The package was returned to the Board marked "Moved Left No Address Unable to Forward Return to Sender." On August 17, 2012, after receiving notification that Respondent had a new address, the Accusation was reserved at the address provided: 977 Vista Cerro Drive, Paso Robles, CA 93446. (Accusation package, proofs of service and return notifications, Exhibit Package, Exhibit 1¹.)

On September 5, 2012, an employee of the Board sent by certified mail a copy of First Amended Accusation No. 16-2012-223352 and a Supplemental Statement to Respondent, to Tamer M. Gaber at both his address of record in Morgantown, WV and the Paso Robles, California address. The certified mail receipt for the package sent to the Paso Robles address was signed and returned. (First Amended Accusation Package, proof of service, return receipt,

¹ The evidence in support of this Default Decision and Order is submitted herewith as the "Exhibit Package."

1 Exhibit Package, Exhibit 2.)

2 There was no response to the Accusation or the First Amended Accusation. On December
3 7, 2012, an employee of the Attorney General's Office sent by certified mail addressed to
4 Respondent at his address of record and at the Paso Robles address a Courtesy Notice of Default,
5 advising Respondent of the service of the First Amended Accusation, and providing him with an
6 opportunity to request relief from default. The green certified mail receipt for the package sent to
7 the Paso Robles address was signed and returned; the package addressed to Respondent's address
8 of record was returned marked "Attempted Not Known." (Exhibit Package, Exhibit 3, Notice of
9 Default, proof of service, return receipt, return envelope.)

10 Respondent has not responded to service of the First Amended Accusation or the Notice
11 of Default. He has not filed a Notice of Defense. As a result, Respondent has waived his right to
12 a hearing on the merits to contest the allegations contained in the Accusation.

13 FINDINGS OF FACT

14 I.

15 Linda K. Whitney is the Executive Director of the Board. The charges and allegations in
16 the Accusation were at all times brought and made solely in the official capacity of the Board's
17 Executive Director.

18 II.

19 On November 24, 2010, Physician's and Surgeon's Certificate No. A114864 was issued
20 by the Board to Tamer M. Gaber, M.D. The certificate is delinquent, having expired on March
21 31, 2012, and is SUSPENDED by virtue of an order issued on May 24, 2012 pursuant to Business
22 and Professions Code section 2310(a). (Exhibit Package, Exhibit 4, license certification.)

23 III.

24 On September 5, 2012, Respondent was served with a First Amended Accusation, alleging
25 causes for discipline against Respondent. The First Amended Accusation and accompanying
26 documents were duly served on Respondent. A courtesy Notice of Default was thereafter served
27 on Respondent. Respondent failed to file a Notice of Defense.

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1 IV.

2 The allegations of the First Amended Accusation are true as follows:

3 On April 20, 2012, the Maryland State Board of Physicians issued an Order for Summary
4 Suspension of License to Practice Medicine, regarding Respondent's license to practice medicine
5 in Maryland. The Order for Summary Suspension contained findings that Respondent was
6 terminated from a residency/fellowship program in child and adult psychiatry because of his
7 erratic and aberrant behavior, which included sudden absences, disorientation, agitation,
8 delusions and paranoia. An October 2011 "fitness for duty" evaluation diagnosed him with
9 several psychiatric conditions, and the psychologist who conducted the evaluation opined that
10 Respondent "has no insight into his mental illness...and is not open to interventions at this time."
11 The evaluator concluded that Respondent should not treat patients. The April 20, 2012 Order for
12 Summary Suspension provided Respondent with an opportunity to attend a show cause hearing
13 on April 25, 2012. Respondent did not attend the hearing on April 25, 2012, and on April 27,
14 2012, the Maryland Board issued a written determination that there existed a substantial risk of
15 serious harm to the public health, safety or welfare in Respondent's continued practice, and
16 ordered the continuation of the Order for Summary Suspension. Copies of the April 20, 2012 and
17 April 27, 2012 Orders issued by the Maryland State Board of Physicians are to the First Amended
18 Accusation, Exhibit Package Exhibit 2.)

19 On June 7, 2012, the West Virginia Board of Medicine issued an Order revoking
20 Respondent's license to practice medicine in West Virginia. The revocation took place following
21 a noticed hearing on June 2, 2012; Respondent did not appear at the hearing. The West Virginia
22 Order was based on findings that Respondent demonstrated sudden and unexplained absences
23 from work, missed deadlines, exhibited memory lapses, confusion, disorientation, agitation,
24 delusion and paranoia and demonstrated an inability to perform the essential duties of a physician.
25 Co-workers and family members reported that Respondent had behaved irrationally for
26 approximately one year and that when several family members tried to convince him to get
27 medical attention, Respondent accused them of working for CIA or FBI. In March, 2012,
28 Respondent wrote to the United States Assistant Secretary of Defense on Intelligence Oversight

1 and stated that he was a victim of “psychotronic torture” by a government military team which
2 used “psychotronic devices” located at his home and workplace. Respondent reported to family
3 and co-workers that he was being controlled or tortured through psychotronic means, and that he
4 built a “Farady Cage” at his home to block the mind-control waves. In October, 2011,
5 Respondent underwent an evaluation by a psychologist who diagnosed him with amphetamine
6 abuse or dependence, delusional disorder, persecutory type and narcissistic personality features.
7 Based on these findings, the West Virginia Board of Medicine concluded that Respondent was
8 impaired due to mental illness, and revoked his license. (A copy of the Order issued by the West
9 Virginia Board of Medicine is attached to the First Amended Accusation, Exhibit Package,
10 Exhibit 2.)

11 **DETERMINATION OF ISSUES**

12 Pursuant to the foregoing Findings of Fact, Respondent’s conduct and the actions of the
13 Maryland State Board of Physicians and the West Virginia Board of Medicine constitute cause
14 for discipline within the meaning of Business and Professions Code sections 2305 and 141(a).

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1 **DISCIPLINARY ORDER**

2 Physician's and Surgeon's certificate No. A114864 issued to Tamar M. Gaber M.D. is
3 hereby **REVOKED**.

4 Respondent shall not be deprived of making a request for relief from default as set forth in
5 Government Code section 11520(c) for good cause shown. However, such showing must be
6 made in writing by way of a motion to vacate the default decision and directed to the Medical
7 Board of California at 2005 Evergreen Street, Suite 1200, Sacramento, CA 95815 within seven
8 (7) days of the service of this Decision.

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10 This Decision shall become effective on March 7, 2013.

11 It is so ORDERED February 5, 2013

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15 MEDICAL BOARD OF CALIFORNIA
16 DEPARTMENT OF CONSUMER AFFAIRS
17 STATE OF CALIFORNIA
18 LINDA K. WHITNEY
19 EXECUTIVE DIRECTOR
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FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO Sept 5 2012
BY [Signature] ANALYST

7 *Attorneys for Complainant*
8 *Medical Board of California*

9 **BEFORE THE**
10 **MEDICAL BOARD OF CALIFORNIA**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
12 **STATE OF CALIFORNIA**

13 In the Matter of the Accusation Against:
14 **TAMER M. GABER, M.D.**
245 Palisades Drive
Morgantown, WV 26508
15
16 Physician's and Surgeon's
Certificate No. A114864
17
18 Respondent.

Case No. 16-2012-223352
FIRST AMENDED ACCUSATION

19 The Complainant alleges:

20 1. Complainant Linda K. Whitney is the Executive Director of the Medical Board of
21 California, Department of Consumer Affairs, and brings this First Amended Accusation
22 (Accusation) solely in her official capacity.

23 2. On November 24, 2010, Physician's and Surgeon's Certificate No. A114864 was
24 issued by the Medical Board of California (Board) to Tamer M. Gaber, M.D. (Respondent.) The
25 certificate is delinquent, having expired on March 31, 2012, and is SUSPENDED by virtue of an
26 order issued on May 24, 2012 pursuant to Business and Professions Code section 2310(a).

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1 JURISDICTION

2 3. This Accusation is brought before the Medical Board of California¹, under the
3 authority of the following sections of the California Business and Professions Code (“Code”)
4 and/or other relevant statutory enactment:

5 A. Section 2227 of the Code provides that the Board may revoke,
6 suspend for a period not to exceed one year, or place on probation, the license of any
7 licensee who has been found guilty under the Medical Practice Act, and may recover the
8 costs of probation monitoring.

9 B. Section 2305 of the Code provides that the revocation, suspension,
10 or other discipline, restriction or limitation imposed by another state upon a license to
11 practice medicine issued by that state, that would have been grounds for discipline in
12 California under the Medical Practice Act, constitutes grounds for discipline for
13 unprofessional conduct.

14 C. Section 141 of the Code provides:

15 “(a) For any licensee holding a license issued by a board under the
16 jurisdiction of a department, a disciplinary action taken by another state, by any
17 agency of the federal government, or by another country for any act substantially
18 related to the practice regulated by the California license, may be ground for
19 disciplinary action by the respective state licensing board. A certified copy of the
20 record of the disciplinary action taken against the licensee by another state, an
21 agency of the federal government, or by another country shall be conclusive
22 evidence of the events related therein.

23 “(b) Nothing in this section shall preclude a board from applying a
24 specific statutory provision in the licensing act administered by the board that
25 provides for discipline based upon a disciplinary action taken against the licensee
26 by another state, an agency of the federal government, or another country.”

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27 ¹. The term “Board” means the Medical Board of California; “Division of Medical
28 Quality” shall also be deemed to refer to the Board.

FIRST CAUSE FOR DISCIPLINE

(Discipline, Restriction, or Limitation Imposed by Other States)

4. On April 20, 2012, the Maryland State Board of Physicians issued an Order for Summary Suspension of License to Practice Medicine regarding Respondent's license to practice medicine in Maryland. The Order for Summary Suspension contained findings that Respondent was terminated from a residency/fellowship program in child and adult psychiatry because of his erratic and aberrant behavior, which included sudden absences, disorientation, agitation, delusions and paranoia. An October 2011 "fitness for duty" evaluation diagnosed him with several psychiatric conditions, and the psychologist who conducted the evaluation opined that Respondent "has no insight into his mental illness...and is not open to interventions at this time." The evaluator concluded that Respondent should not treat patients. The April 20, 2012 Order for Summary Suspension provided Respondent with an opportunity to attend a show cause hearing on April 25, 2012. Respondent did not attend the hearing on April 25, 2012, and on April 27, 2012, the Maryland Board issued a written determination that there existed a substantial risk of serious harm to the public health, safety or welfare in Respondent's continued practice, and ordered the continuation of the Order for Summary Suspension. Copies of the April 20, 2012 and April 27, 2012 Orders issued by the Maryland State Board of Physicians are attached as Exhibit A.

5. On June 7, 2012, the West Virginia Board of Medicine issued an Order revoking Respondent's license to practice medicine in West Virginia. The revocation took place following a noticed hearing on June 2, 2012; Respondent did not appear at the hearing. The West Virginia Order was based on findings that Respondent demonstrated sudden and unexplained absences from work, missed deadlines, exhibited memory lapses, confusion, disorientation, agitation, delusion and paranoia and demonstrated an inability to perform the essential duties of a physician. Co-workers and family members reported that Respondent had behaved irrationally for approximately one year and that when several family members tried to convince him to get medical attention, Respondent accused them of working for CIA or FBI. In March, 2012, Respondent wrote to the United States Assistant Secretary of Defense on Intelligence Oversight

1 and stated that he was a victim of “psychotronic torture” by a government military team which
2 used “psychotronic devices” located at his home and workplace. Respondent reported to family
3 and co-workers that he was being controlled or tortured through psychotronic means, and that he
4 built a “Farady Cage” at his home to block the mind-control waves. In October, 2011,
5 Respondent underwent an evaluation by a psychologist who diagnosed him with amphetamine
6 abuse or dependence, delusional disorder, persecutory type and narcissistic personality features.
7 Based on these findings, the West Virginia Board of Medicine concluded that Respondent was
8 impaired due to mental illness, and revoked his license. A copy of the Order issued by the West
9 Virginia Board of Medicine is attached as Exhibit B.

10 6. Respondent’s conduct and the actions of the Maryland State Board of Physicians
11 and the West Virginia Board of Medicine as set forth in paragraphs 4 and 5 above, constitute
12 unprofessional conduct within the meaning of section 2305 and conduct subject to discipline
13 within the meaning of section 141(a).

14 **PRAYER**

15 **WHEREFORE**, Complainant requests that a hearing be held on the matters
16 herein alleged, and that following the hearing, the Board issue a decision:

- 17 1. Revoking or suspending Physician’s and Surgeon’s Certificate Number
18 A114864 issued to respondent Tamer M. Gaber, M.D.;
- 19 2. Revoking, suspending or denying approval of Respondent’s authority to
20 supervise physician assistants;
- 21 3. Ordering Respondent, if placed on probation, to pay the costs probation
22 monitoring; and

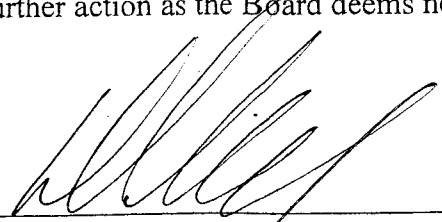
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4. Taking such other and further action as the Board deems necessary and

proper.

DATED: September 5, 2012



LINDA K. WHITNEY
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California

Complainant

EXHIBIT A

IN THE MATTER OF
TAMER M. GABER, M.D.
Respondent

* BEFORE THE
* MARYLAND STATE
* BOARD OF PHYSICIANS

License Number: D71138

Case Number: 2012-0425

* * * * *

**ORDER FOR SUMMARY SUSPENSION
OF LICENSE TO PRACTICE MEDICINE**

The Maryland State Board of Physicians (the "Board") hereby **SUMMARILY SUSPENDS** the license of Tamer M. Gaber, M.D., (the "Respondent") (D.O.B. 03/04/1975), license number D71138, to practice medicine in the State of Maryland. The Board takes such action pursuant to its authority under Md. State Govt Code Ann. § 10-226(c)(2009 Repl. Vol.) concluding that the public health, safety or welfare imperatively requires emergency action.

INVESTIGATIVE FINDINGS

Based on information received by, and made known to the Board, and the investigatory information obtained by, received by and made known to and available to the Board, including the instances described below, the Board has reason to believe that the following facts are true:¹

1. At all times relevant hereto, the Respondent was and is licensed to practice medicine in the State of Maryland. The Respondent was originally licensed to practice medicine in Maryland on July 8, 2010. The Respondent holds active licenses in California and West Virginia.

¹ The statements regarding the Respondent's conduct are intended to provide the Respondent with notice of the basis of the suspension. They are not intended as, and do not necessarily represent a complete description of the evidence, either documentary or testimonial, to be offered against the Respondent in connection with this matter.

2. As of December 2011, the Respondent was a third year resident in the Child and Adult Psychiatry program at Medical School A.²
3. On December 27, 2011, the Board received notification from Medical School A that, effective December 15, 2011, the Respondent had been terminated from the fellowship program because of his erratic and aberrant behavior including: sudden absences; disorientation; agitation; delusions and paranoia.
4. In furtherance of the Board's investigation of this matter, the Board subpoenaed from Medical School A the Respondent's Quality Assurance ("QA") file.
5. Included in the Respondent's QA file is the report of a psychologist ("Dr. 1") who, in October 2011, performed a "fitness for duty" evaluation of the Respondent at the request of Medical School A.
6. Dr. 1 diagnosed the Respondent with several psychiatric conditions.
7. Dr. 1 conducted an overall risk assessment of the Respondent. Dr. 1 opined in part that the Respondent "has no insight into his mental illness...and is not open to interventions at this time." Dr. 1 concluded that based on his evaluation, the Respondent presented as an "individual at heightened risk and therefore should not treat patients at this time."
8. By letter dated March 22, 2012, sent by certified mail to the Respondent's last known address of record, the Board notified the Respondent of the Board's investigation and asked the Respondent to submit a written response to the allegations and to sign release forms for medical, mental health and other records.

² Names of individuals and facilities are confidential. The Respondent may request the names from the Administrative Prosecutor.

9. The certified letter to the Respondent was returned to the Board because the Respondent had moved and had not left a forwarding address.³

CONCLUSION OF LAW

Based on the foregoing facts, the Board concludes that the public health, safety or welfare imperatively require emergency action in this case, pursuant to Md. State Gov't Code Ann. § 10-226 (c)(2)(i) (2009 Repl. Vol.).

ORDER

Based on the foregoing, it is this 20th day of April, 2012, by a majority of the quorum of the Board:

ORDERED that pursuant to the authority vested by Md. State Gov't Code Ann., § 10-226(c)(2), the Respondent's license to practice medicine in the State of Maryland be and is hereby **SUMMARILY SUSPENDED**; and be it further

ORDERED that a post-deprivation hearing in accordance with Code Md. Regs. tit. 10, § 32.02.05.B (7) and E on the Summary Suspension has been scheduled for **Wednesday, April 25, 2012, at 1:30 p.m.**, at the Maryland State Board of Physicians, 4201 Patterson Avenue, Baltimore, Maryland 21215-0095; and be it further

ORDERED that at the conclusion of the **SUMMARY SUSPENSION** hearing held before the Board, the Respondent, if dissatisfied with the result of the hearing, may request within ten (10) days an evidentiary hearing, such hearing to be held within thirty (30) days of the request, before an Administrative Law Judge at the Office of

³ H.O. § 14-316(f) requires a licensee to notify the Board in writing of any change in the licensee's name or address within 60 days after the change.

Administrative Hearings, Administrative Law Building, 11101 Gilroy Road, Hunt Valley, Maryland 21031-1301; and be it further

ORDERED that on presentation of this Order, the Respondent **SHALL SURRENDER** to the Board's Compliance Analyst, the following items:

- (1) the Respondent's original Maryland License D71138;
- (2) the Respondent's current renewal certificate;
- (3) the Respondent's Maryland Controlled Dangerous Substance Registration;
- (4) all controlled dangerous substances in the Respondent's possession and/or practice;
- (5) all Medical Assistance prescription forms;
- (6) all prescription forms and pads in the Respondent's possession and/or practice; and
- (7) Any and all prescription pads on which his name and DEA number are imprinted; and be it further

ORDERED that a copy of this Order of Summary Suspension shall be filed with the Board in accordance with Md. Health Occ. Code Ann. § 14-407 (2009 Repl. Vol.); and be it further

ORDERED that this is a Final Order of the Board and, as such, is a **PUBLIC DOCUMENT** pursuant to Md. State Gov't Code Ann. § 10-611 *et seq.*

4/20/2012
Date


John T. Papavasiliou
Deputy Director
Maryland State Board of Physicians

I HEREBY ATTEST AND CERTIFY UNDER PENALTY OF PERJURY ON 5/15/12 THAT THE FORGOING DOCUMENT IS A FULL, TRUE AND CORRECT COPY OF THE ORIGINAL ON FILE IN MY OFFICE AND IN MY LEGAL CUSTODY.


DEPUTY DIRECTOR



STATE OF MARYLAND

DHMH Board of Physicians

Maryland Department of Health and Mental Hygiene

4201 Patterson Avenue • Baltimore, Maryland 21215-2299

Martin O'Malley, Governor – Anthony G. Brown, Lt. Governor – Joshua M. Sharfstein, M.D., Secretary

April 27, 2012

Tamer M. Gaber, M.D.
245 Palisades Drive
Morgantown, West Virginia, 26508

Victoria Pepper, Assistant Attorney General
Office of the Attorney General
Department of Health and Mental Hygiene
300 West Preston Street, Suite 302
Baltimore, Maryland 21201

Re: Tamer M. Gaber, M.D.
Case No. 2012-0425
License No.: D71138

Dear Dr. Gaber and Ms. Pepper:

On April 20, 2012, the Board issued an **ORDER FOR SUMMARY SUSPENSION OF LICENSE TO PRACTICE MEDICINE** in this case. On April 25, 2012, Dr. Gaber was given an opportunity to attend a hearing to show cause why that suspension should not be continued. Dr. Gaber did not attend the hearing on that date. The State was represented by Victoria Pepper, Assistant Attorney General, Administrative Prosecutor.

After considering the investigative file and the presentation at the hearing, the Board determined that it would continue the summary suspension imposed on April 20, 2012. The Board thus will not lift the summary suspension order. The argument submitted, when considered in the light of the investigative findings in the file, persuade the Board that the Administrative Prosecutor has met her burden of showing there exists a substantial risk of serious harm to the public health, safety or welfare in Dr. Gaber's continued practice.

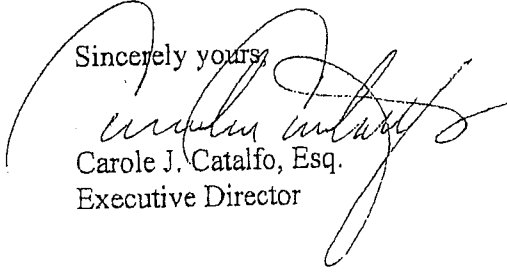
NOTICE OF RIGHT TO APPEAL

Under the Board regulations, Dr. Gaber has the right to request a full evidentiary hearing before an Administrative Law Judge. This request will be granted if the Board receives a written request for the hearing within ten days of the date of this letter. Any request for a hearing should be sent to Christine Farrelly, Supervisor, Compliance Administration, at the Board's address. If you request such a hearing, the regulations require that an Administrative Law Judge set the

hearing to begin within 30 days of your request, see COMAR 10.32.02.05 I, though you may waive that 30-day requirement.

This letter constitutes an order of the Board resulting from formal disciplinary action and is therefore a public document.

Sincerely yours,


Carole J. Catalfo, Esq.
Executive Director

I HEREBY ATTEST AND CERTIFY UNDER
PENALTY OF PERJURY ON 5/15/12
THAT THE FORGOING DOCUMENT IS A
FULL, TRUE AND CORRECT COPY OF THE
ORIGINAL ON FILE IN MY OFFICE AND
IN MY LEGAL CUSTODY.

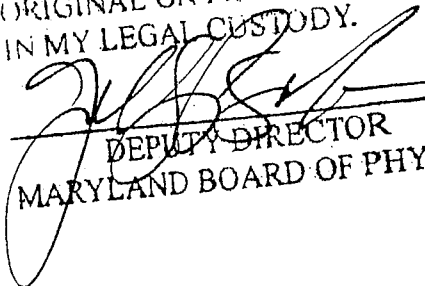

DEPUTY DIRECTOR
MARYLAND BOARD OF PHYSICIANS

EXHIBIT B

BEFORE THE WEST VIRGINIA BOARD OF MEDICINE

WEST VIRGINIA BOARD OF MEDICINE,
Petitioner,

v.

Complaint No. 12-02-W
SUMMARY PROCEEDING

TAMER MOHAMED GABER, M.D.,
Respondent.

ORDER

This proceeding arises under the West Virginia Medical Practice Act, West Virginia Code § 30-3-14, *et seq.* This is a disciplinary proceeding involving the status of the license to practice medicine and surgery in the State of West Virginia of Tamer Mohamed Gaber, M.D. (hereinafter "Dr. Gaber"). The West Virginia Board of Medicine (hereinafter "the Board") is the duly authorized State agency to oversee and conduct physician disciplinary hearings pursuant to the provisions of West Virginia Code § 30-3-14.

PROCEDURAL HISTORY

This matter came on for hearing upon the Petitioner's "Order of Summary Suspension of License to Practice Medicine and Surgery and Notice of Hearing" served upon Respondent on May 22, 2012, by hand delivery, U.S. Mail and FedEx Overnight delivery, to him at his address of record with the Board at 245 Palisades Drive, Morgantown, West Virginia 26508, and via email at tamergabermd@gmail.com.

The noticed hearing was convened on June 2, 2012, by Hearing Examiner Carole A. Bloom, in the Conference Room at the Board Offices at 101 Dee Drive, Charleston, West Virginia. Dr. Gaber was not present in person, by his counsel or other representative, and did not

appear or participate in the hearing. The Board was represented at the hearing by a quorum of the Board, by its Executive Director, Robert C. Knittle, and by its Disciplinary Counsel, Rebecca L. Stepto. The Board introduced twenty one (21) exhibits and called as its witnesses Robert C. Knittle and Leslie A. Inghram. A stenographic record of the hearing was prepared and Hearing Examiner Bloom filed her "Hearing Examiner's Recommended Findings of Fact, Conclusions of Law and Recommended Decision" (hereinafter "Recommended Decision") on June 5, 2012.

The stenographic record of the hearing and the hearing exhibits were provided to Board members on June 4, 2012, and the Hearing Examiner's Recommended Decision was provided to Board members for their individual consideration on June 5, 2012, prior to the Board's scheduled special meeting on June 6, 2012. At the June 6, 2012, meeting, at which a quorum of the Board was present and voting, the Board thoroughly considered all this information. Dr. Moreland was present in person. Drs. Cain, Faheem, Hasan, Jimenez, Nanners and Dr. Swinker, and Reverend Bowyer, Ms. Hays and Mr. Wright all participated by telephone. The Board members present by unanimous vote reached a decision. Drs. Arnold, Ferree, and Wazir, and Ms. Henderson did not participate or vote in this matter by virtue of their positions as members of the Complaint Committee during the period when the subject matter was before the Complaint Committee. Dr. Funk was absent.

The Board adopts the Recommended Decision of the Hearing Examiner, attached hereto and incorporated herein, as follows:

PROCEDURAL HISTORY

The Board adopts the Procedural History section set forth on page 1 of the Recommended Decision, with the exception that "Discipline Counsel" in the fifth line is stricken and inserted in lieu thereof for accuracy is "Disciplinary Counsel."

ISSUE

The Board adopts the Issue section set forth on pages 1 and 2 of the Recommended Decision.

MOTIONS

The Board adopts the Motions section set forth on page 2 of the Recommended Decision.

FINDINGS OF FACTS

The Board adopts the Findings of Facts section on pages two (2) through ten (10) of the Recommended Decision with the following modifications for clarity, accuracy, and to meet the requirements of West Virginia Code § 30-3-14(j):

In Finding of Fact 4., "January 9, 2012" in the fifth line is stricken and inserted in lieu thereof is "January 10, 2012." Also, in the final line after "*Transcript at 19-22.*" the period is stricken and inserted in lieu thereof is a comma and "*and 39.*"

In Finding of Fact 5., "*Transcript at 37, 42*" is stricken and inserted in lieu thereof is "*Transcript at 37, 41-42.*"

In Finding of Fact 9., "*Transcript at 45-46.*" is stricken and inserted in lieu thereof is "*Transcript at 42-47.*"

In Finding of Fact 10., "*Transcript at 45-46.*" is stricken and inserted in lieu thereof is "*Transcript at 52-60.*"

In Finding of Fact 14., "*Transcript at 25-27, 45-48*" is stricken and inserted in lieu thereof is "*Transcript at 25-27, 34.*"

In Finding of Fact 16., "*Transcript at 29-30, 62-63*" is stricken and inserted in lieu thereof is "*Transcript at 27-30, 62-65.*"

In Finding of Fact 17., "*Testimony of 64-65*" is stricken and inserted in lieu thereof is "*Transcript at 64-66.*"

In Finding of Fact 25., after "Dr. Gaber is impaired due to mental illness." the period is stricken and inserted in lieu thereof is a comma and "and is unqualified to practice medicine in West Virginia."

CONCLUSIONS OF LAW

The Board adopts the Conclusions of Law section on pages ten (10) through fourteen (14) of the Recommended Decision with the following modifications for clarity and accuracy:

All references to Board of Medicine Rule 11 C.S.R. 3 in the Recommended Decision at Conclusions of Law 3, 5, 10, and 15 are stricken as 11 C.S.R. 3 states that it does not apply to hearings held under the provisions of West Virginia Code § 30-3-14(k) where action is taken by the Board on a temporary basis prior to a hearing, which occurred in this case.

In Conclusion of Law 5, after "11 C.S.R. 3-11.5(c)." is stricken as noted above, inserted in lieu thereof is "West Virginia Code § 30-3-14(h)."

Conclusion of Law 12 is stricken because, though it is clear from the evidence that Dr. Gaber did fail to appear before the Complaint Committee on May 20, 2012, pursuant to a valid and properly served subpoena, Dr. Gaber was never charged by the Board with failing to appear before the Complaint Committee on May 20, 2012, pursuant to a valid and properly served subpoena, in violation of West Virginia Code § 30-3-14(c)(17).

In Conclusion of Law 13, "has engaged in professional incompetence or" is stricken in the second line and "(20) and" is stricken in the final line as Dr. Gaber was never charged by the Board with a violation of West Virginia Code § 30-3-14(c)(20): "professional incompetence."

In Conclusion of Law 14, "has engaged in professional incompetence or" is stricken in the second line and "(20) and" is stricken in the final line as Dr. Gaber was never charged by the Board with a violation of West Virginia Code § 30-3-14(c)(20): "professional incompetence."

In Conclusion of Law 15, "§ 30-3-14(c)(20)" is stricken in the second to last line as Dr. Gaber was never charged with a violation of West Virginia Code § 30-3-14(c)(20): "professional incompetence."

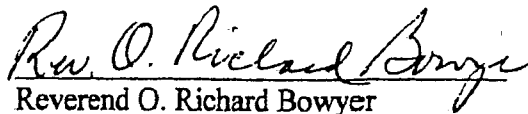
Conclusions of Law 13 through 15 are renumbered 12 through 14.

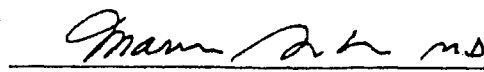
RECOMMENDED DECISION

The Board adopts the Recommended Decision and hereby **REVOKES** the license to practice medicine and surgery of Tamer Mohamed Gaber, M.D., License No. 24645, summarily suspended on May 22, 2012, at 9:00 a.m., which **REVOCATION** is effective June 10, 2012, at 12:01 a.m.

Date Entered: June 7, 2012

WEST VIRGINIA BOARD OF MEDICINE


Reverend O. Richard Bowyer
President


Marian Swinker, M.D., M.P.H.
Secretary

BEFORE THE WEST VIRGINIA BOARD OF MEDICINE HEARING EXAMINER

**WEST VIRGINIA BOARD OF MEDICINE,
Petitioner**

v.

COMP. No. 12-02-W

**TAMER MOHAMED GABER, M.D.,
Respondent**

**HEARING EXAMINER'S RECOMMENDED FINDINGS OF FACT,
CONCLUSIONS OF LAW AND RECOMMENDED DECISION**

PROCEDURAL HISTORY

This matter came on for hearing on June 2, 2012, in the Hearing Room of the Board of Medicine, 101 Dee Drive, Charleston, West Virginia, pursuant to the West Virginia Board of Medicine's Order of Summary Suspension of License to Practice Medicine and Surgery and Notice of Hearing dated May 21, 2012. At hearing, the West Virginia Board of Medicine [Board] was represented by Board Discipline Counsel, Rebecca L. Stepto, Esquire, and by Board Executive Director, Robert C. Knittle; appearing also were Board President, Rev. O. Richard Bowyer and Board Members, Dean Wright, P.A.C., M. Khalid Hasan, M.D., Rusty L. Cain, D.P.M., Beth Hays, G. Mark Moreland, M.D., Ahmed Faheem, M.D., and appearing telephonically, Marian Swinker, M.D., M.P.H. The Respondent, Dr. Tamer Gaber, neither appeared in person nor by counsel or other representative. See Transcript at 5-9.

ISSUE

Whether or not the West Virginia Board of Medicine should revoke, suspend or

otherwise limit the Respondent's medical license pursuant to the West Virginia Medical Practice Act and/or the Board of Medicine Legislative Rules because the Respondent's continued practice of medicine and surgery in West Virginia constitutes an imminent danger to the public safety, health or welfare as a result of Respondent's mental impairment.

MOTIONS

All decisions rendered at the hearing in this case on motions filed or otherwise made in this case are hereby affirmed and all other motions filed or otherwise made in this case by either of the parties which were not previously ruled upon by the hearing examiner are hereby denied and rejected. After a review of the record and the exhibits admitted into evidence, any stipulations entered into by the parties, any matter of which the hearing examiner took judicial notice during the proceedings, assessing the credibility of the witnesses, and weighing the evidence in consideration of the same, the hearing examiner makes the following findings of fact and conclusions of law.

FINDINGS OF FACTS

1. Tamer Mohamed Gaber, M.D., currently holds an active license, No. 24645, to practice medicine and surgery in West Virginia. Dr. Gaber was granted a temporary license by the Board on September 27, 2011, and a permanent license was issued on November 14, 2011. His address of record is 245 Palisades Drive, Morgantown, West Virginia, 26505. At the time of licensure, Dr. Gaber also held licenses to practice medicine in Maryland and California. *Petitioner's Exhibit No. 1; Transcript at 12-14.*
2. At the time of his licensure in West Virginia, Dr. Gaber worked for West Virginia

University Hospitals [WVUH] and West Virginia University [WVU] School of Medicine as a Fellow in Child and Adolescent Psychiatry in Morgantown, West Virginia. Additionally, Dr. Gaber worked as a sub-contracting Psychiatrist for Appalachian Behavioral Health Center in Cumberland, Maryland, from approximately August, 2010, to September, 2011. *Petitioner's Exhibits 1, 11, 20; Transcript at 16, 43-45, 78-79.*

3. By letter dated December 20, 2011, Niti Armistead, M.D., WVUH Vice President of Medical Staff Affairs and James M. Stevenson, M.D., WVU School of Medicine Chairman of Behavioral Medicine & Psychiatry, notified the Executive Director of the Board, Robert C. Knittle, that Dr. Gaber's employment at WVUH/WVU School of Medicine had been terminated on December 15, 2011, due to Dr. Gaber's aberrant behavior, including sudden absences, unexplained absences, missed deadlines, memory lapses, confusion, disorientation, agitation, delusions, paranoia and an inability to perform the essential duties of a physician, which behavior "had the potential to adversely affect patients." On November 11, 2011, Dr. Gaber had been suspended and advised by WVUH/WVU School of Medicine that due to his aberrant behavior, Dr. Gaber could not return to his duties unless and until he voluntarily admitted himself to an inpatient treatment program, enrolled in the West Virginia Medical Professionals Health Program, and completed repeat fitness for duty evaluations. Instead of voluntarily committing himself to an inpatient treatment program, Dr. Gaber went on vacation out of the country, causing WVUH/WVU School of Medicine to terminate Dr. Gaber's employment and to report to the Board Dr. Gaber's situation and condition. *Petitioner's Exhibit 2; Transcript at 14-18.*

4. The Complaint Committee of the Board of Medicine initiated a Complaint against Dr. Gaber on January 8, 2012, alleging that Dr. Gaber's behaviors, as described in the letter from Drs. Armistead and Stevenson, place Dr. Gaber's patients at harm and are in violation of West Virginia law. The Board mailed the Initiated Complaint to Dr. Gaber at his address of record with the Board via certified mail on January 9, 2012, and on January 27, 2012. Both mailings were returned by the U.S. Postal Service as "Not Deliverable as Addressed; Unable to Forward." *Petitioner's Exhibits 1, 3, 4; Transcript at 19-22.*
5. On January 26, 2012, the Board's Supervisor of Investigation and Complaints and Investigator, Leslie A. Inghram [Investigator Inghram], contacted Dr. Gaber by e-mail in an attempt to ascertain his current mailing address. Dr. Gaber replied by e-mail that the Board should address any concerns to his address on file. *Petitioner's Exhibit 10; Transcript at 37, 42.*
6. Dr. Gaber did not respond to the allegations set forth in the Initiated Complaint. *Transcript at 22.*
7. On March 21, 2012, the Board issued a Subpoena to Dr. Gaber which summoned and commanded him to appear for an informal meeting with the Board's Complaint Committee at the Board's offices on Sunday, May 20, 2012, at 1:30 p.m. On March 27, 2012, at 12:10 p.m., Investigator Inghram served Dr. Gaber at his home in Morgantown with the Initiated Complaint and the Subpoena to appear. *Petitioner's Exhibits 5, 12; Transcript at 22-24, 49-52.*
8. Dr. Gaber did not appear pursuant to Board Subpoena for the May 20, 2012, meeting with the Complaint Committee. *Petitioner's Exhibits 5, 12; Transcript at 24.*

9. Simultaneous to the issuance of the Initiated Complaint, the Board's Complaint Committee authorized the Board's staff to conduct an investigation into this matter. As part of that investigation, Investigator Inghram conducted interviews with certain of Dr. Gaber's former co-workers, friends and family members in March, 2012. Additionally, certain e-mails and letters written by Dr. Gaber to friends and family were forwarded to the Board. *Petitioner's Exhibits 11-14; Transcript at 45-46.*
10. Dr. Gaber's [REDACTED], report that Dr. Gaber has been acting oddly and irrationally for approximately one year and that several family members have attempted to convince Dr. Gaber to seek medical attention. Dr. Gaber accuses family members of working for the CIA or FBI. Dr. Gaber believes that [REDACTED] and former co-workers have "sold his brain" for experimentation. [REDACTED] have expressed to the Board their grave concerns for Dr. Gaber's safety due to his condition. *Petitioner's Exhibits 13, 14; Transcript at 45-46.*
11. [REDACTED], owner of [REDACTED] formerly had a professional and personal relationship with Dr. Gaber. [REDACTED] reports that during professional and personal meetings with Dr. Gaber, he has exhibited delusional behavior, paranoia, agitation, disorientation and confusion. [REDACTED] believes that Dr. Gaber is highly unstable and fears for his safety. *Petitioner's Exhibit 11; Transcript at 43-47.*
12. On March 8, 2012, Dr. Gaber wrote a letter to the Assistant Secretary of Defense on Intelligence Oversight. Dr. Gaber forwarded copies of that letter to [REDACTED] and to the FBI and CIA. Dr. Gaber's letter states that he has been "a victim of

psychotronic torture" by a government military team called "Phoenix" which uses "psychotronic devices" located at his home, at Appalachian Behavioral Health Center, at Chestnut Ridge Hospitals and at Ruby Memorial Hospital in Morgantown.

Petitioner's Exhibits 11 and 13; Transcript at 47-48.

13. Since approximately August, 2011, Dr. Gaber has reported to family members and to co-workers that he is being tortured or controlled though "psychotronic" means, that co-workers and family members are attempting to discredit him or "sell his brain" and that he has built a "Faraday Cage" at his residence in order to block the low frequency waves used in "psychotronic" mind-control. *Petitioner's Exhibits 10, 11, 12, 13, 14, 21; Transcript at 45-48, 52-61.*

14. The Board received notice on May 11, 2012, through a Board Action Disciplinary Alert Report, that the State of Maryland had suspended Dr. Gaber's license to practice medicine in Maryland on April 20, 2012, based upon an "immediate danger to the public health, safety or welfare." *Petitioner's Exhibit 6; Transcript at 25-27, 45-48.*

15. Subsequently, the West Virginia Board of Medicine obtained a copy of the Maryland Board's Order for Summary Suspension of License to Practice Medicine dated April 20, 2012, which suspended Dr. Gaber's license to practice medicine based upon a psychologist's evaluation and opinions regarding Dr. Gaber's fitness to practice medicine. The Order scheduled a post-deprivation hearing for April 25, 2012. Dr. Gaber did not attend the April 25, 2012, hearing to show cause why the summary suspension should not be continued. On April 27, 2012, Dr. Gaber was notified by the Maryland Board that he had a right to a subsequent full evidentiary hearing

before an Administrative Law Judge, upon timely request. Dr. Gaber did not file such request for hearing. Consequently, the Maryland Board reported Dr. Gaber's Suspension to the Federation of State Medical Boards in a Board Action Disciplinary Report on or about May 10, 2012. *Petitioner's Exhibits 6, 7 and 8; Transcript at 27-33.*

16. As a result of information contained in the Maryland Board's April 20, 2012, Order for Summary Suspension of License to Practice Medicine, the West Virginia Board, on May 11, 2012, issued Subpoenas Duces Tecum to WVUH and to the WVU School of Medicine requesting production of personnel and other documents relating to Dr. Gaber's employment and his suspension of clinical privileges with WVUH and/or WVU School of Medicine. *Petitioner's Exhibits 7, 15 and 16; Transcript at 29-30, 62-63.*

17. WVUH responded to the Subpoena Duces Tecum on May 16, 2012, and produced documents, including the quality assurance file, regarding Dr. Gaber. WVU School of Medicine, through counsel, responded to the Subpoena Duces Tecum on May 17, 2012, and produced documents regarding Dr. Gaber, including fitness for duty evaluations and correspondence regarding Dr. Gaber's fitness for duty and/or privileges. *Petitioner's Exhibits 17, 18, 19, 20 and 21; Testimony of 64-65.*

18. The documents produced by WVUH and by WVU School of Medicine pursuant to subpoena demonstrate that in August, 2011, Dr. Gaber's co-workers reported to WVUH and/or WVU Medical School officials that Dr. Gaber was displaying abnormal or aberrant behavior at work, causing co-workers to suspect that Dr. Gaber was abusing drugs. *Petitioner's Exhibit 18, 21; Transcript at 65-68.*

19. As a result of such reports, Dr. Stevenson referred Dr. Gaber to [REDACTED] [REDACTED] the WVU Faculty and Staff Assistance Program for a fitness for duty evaluation. Dr. Gaber was agitated and "significantly distracted" during an August 4, 2011, interview with [REDACTED]. Dr. Gaber admitted to using prescribed medication for Attention Deficit Hyperactivity Disorder [ADHD] but denied drug abuse. [REDACTED] reported concern regarding Dr. Gaber's ability to concentrate on his work, opined that Dr. Gaber's emotional state "may impair his judgment," and recommended that Dr. Gaber provide medical records substantiating his ADHD diagnosis and treatment history, that Dr. Gaber submit to random drug screening and that Dr. Gaber attend follow-up counseling. *Petitioner's Exhibit 18, 21; Transcript at 73-76.*

20. Dr. Gaber was subsequently referred by Dr. Stevenson for a formal fitness for duty evaluation to be conducted by [REDACTED], Licensed Psychologist. Such evaluation was performed on October 17-18, 2011. [REDACTED] October 31, 2011, report identifies Dr. Gaber's diagnoses as: Amphetamine Abuse or Dependence, Delusional Disorder, Persecutory Type and Narcissistic Personality Features. [REDACTED] report makes the following recommendations: (1) that Dr. Gaber be titrated off Vyvanse and other medications he is abusing in a detoxification unit or crisis center; (2) that organic origins of his illness such as drug use or tumors must be ruled out; (3) that a psychiatrist should evaluate whether or not anti-psychotic medication is necessary for his treatment; (4) that because Dr. Gaber has no insight into his mental illness, is well-defended psychologically and is not open to interventions, Dr. Gaber must continue in long-term therapy in order to assist him in

becoming more "reality based;" and (5) that Dr. Gaber should be considered for the impaired physician's program until he is medically cleared. [REDACTED] risk assessment states that Dr. Gaber is an "individual at heightened risk and therefore should not treat patients at this time." Although Dr. Gaber did not, at the time of interview, appear to be at imminent risk of violence, [REDACTED] found that due to the persecutory nature of his mental illness, Dr. Gaber is at risk to retaliate against those whom he believes have contributed to his current difficulties. Additionally, [REDACTED] opines that Dr. Gaber's narcissistic traits may negatively impact his ability to adapt to required treatment. *Petitioner's Exhibit 19; Transcript at 66-73.*

21. By letter on October 17, 2011, Dr. Stevenson notified Dr. Gaber of the following information: (1) that Dr. Gaber was suspended without pay from employment with West Virginia University; (2) that the Department of Behavioral Medicine at WVU had on-going serious concerns regarding Dr. Gaber's safety and the safety of others around him, as well as his behavior and work performance; and (3) that due to Dr. Gaber's failure to permit the agreed voluntary commitment following a mental hygiene hearing held on October 15, 2011, Dr. Stevenson was concurrently filing a "second petition for [Dr. Gaber's] involuntary commitment with the Mental Health Commissioner." *Petitioner's Exhibit 19; Transcript at 77-78.*

22. On October 19, 2011, Dr. Stevenson notified [REDACTED] at [REDACTED] [REDACTED] that Dr. Gaber's moonlighting privileges had been suspended. *Petitioner's Exhibit 20; Transcript at 78-79.*

23. On May 21, 2012, the Board found that probable cause exists to substantiate charges of disqualification due to unprofessional conduct and the inability to

practice medicine with reasonable skill and safety to patients by reason of any physical or mental abnormality; and that Dr. Gaber's continued practice or unrestricted practice of medicine and surgery in the State of West Virginia constitutes an immediate danger to the public; and issued an Order of Summary Suspension of License to Practice Medicine and Surgery and Notice of Hearing. Such Order and Notice were personally served by Investigator Inghram upon Dr. Gaber at his residence on May 22, 2012 at 10:45 a.m. *Petitioner's Exhibit 9; Transcript at 33-35.*

24. Dr. Gaber continues to live in West Virginia. *Transcript at 50-52.*

25. Dr. Gaber is impaired due to mental illness. *Petitioner's Exhibits 9, 10, 11, 12, 13, 14, 17, 18, 19, 21.*

CONCLUSIONS OF LAW

Based on the foregoing Findings of Facts, I conclude, as a matter of law:

1. West Virginia Code Section 30-3-1 *et seq.* provides the West Virginia Board with the authority to issue licenses to practice medicine and surgery in this state and with the authority to act as the regulatory and disciplinary body for the practice of medicine in this state. WEST VIRGINIA CODE § 30-3-5 (2010).
2. The West Virginia Board of Medicine is authorized to establish regulations necessary to carry out the purposes of the West Virginia Medical Practice Act. WEST VIRGINIA CODE § 30-3-7 (2009). See 11 C.S.R. 1A-1 *et seq.*
3. Pursuant to regulation, the Board may designate a hearing examiner to conduct hearings. The undersigned hearing examiner is a licensed attorney and was so designated in this case by the Board. Such hearing was conducted pursuant to

West Virginia Code and the West Virginia Board of Medicine Legislative Rules.

WEST VIRGINIA CODE § 29A-5-1 *et seq.*; 11 C.S.R. 1-1A-14; 11 C.S.R. 3-11 *et seq.*

4. The West Virginia Board of Medicine has jurisdiction over the matter of the medical licensure of the Respondent, Dr. Tamer Gaber, M.D. WEST VIRGINIA CODE § 30-3-7.
5. At hearing, the rules of evidence as applied in civil cases in the circuit courts of this State were followed. 11 C.S.R. 3-11.5 (c). All exhibits entered into evidence at hearing are authentic and valid and were admitted with the proper evidentiary foundation.
6. Clear and convincing proof is necessary for actions taken by the Board of Medicine concerning physician licensing. Webb v. West Virginia Board of Medicine, 569 S.E.2d 225, 231-2 (W.Va. 2002). The West Virginia Supreme Court defines clear and convincing proof as that measure or degree of proof which produces in the mind of the trier of fact a firm belief or conviction as to the allegations sought to be established. Webb v. West Virginia Board of Medicine, 569 S.E.2d at 232 (citing Wheeling Dollar Savings & Trust Co. v. Singer, 162 W.Va. 502, 510, 250 S.E.2d 369, 374 (1978) (quoting Cross v. Ledford, 161 Ohio St., 469, 477, 120 N.E. 2d 188, 123 (1954)); accord In re Carol B., 209 W.Va. 658, 667, 550 S.E.2d 636, 645 (2001).
7. Credibility is determined by the hearing examiner in administrative cases, based upon thorough evaluation of witness testimony. Webb v. West Virginia Board of Medicine, 569 S.E.2d at 232; Maxey v. McDowell Co. Bd. of Ed., 212 W.Va.

668, 575 S.E. 2d 278, Syl. Pt. 3 (2002). The hearing examiner is uniquely situated to make such determination and such determinations are binding unless such determinations are without basis in the record. Webb v. West Virginia Board of Medicine, 569 S.E.2d at 232; Martin v. Randolph County Bd. of Education, 195 W.Va. 297, 465 S.E. 2d 399, 406 (1995); Michael D.C. v. Wanda L.C., 201 W.Va. 381, 497 S.E.2d 531, 538 (1997). Credibility determinations may be based upon many factors, including the following: the general demeanor and comportment of the witness at hearing; the bias or interest of the witness; the consistency or inconsistency of the statements of the witness; the witness's ability and acuteness to observe; the memory of the witness; the reputation for honesty of the witness; and other factors which tend to cause the trier of fact to believe or disbelieve the testimony of the witness. Cleckley, Franklin D., Handbook on Evidence for West Virginia Lawyers, "Evaluation of Credibility" § 6-7(B); State v. Richie, 298 S.E.2d 879 (W.Va. 1982); State v. Rygh, 524 S.E.2d 447 (W.Va. 1999); State v. Brown, 179 S.E.2d 609 (W.Va. 1988); Cahill v. Mercer County Board of Education, 208 W.Va. 177, 539 S.E.2d 437, Syl. Pt. 1 (2000). The hearing examiner finds the testimony of the witnesses at hearing to be credible. Any inconsistency with the foregoing findings of fact or with the testimony of the other credible witnesses was not a result of any deliberate untruthfulness or bias. Rather, any inconsistency was a result of a difference of opinion, lack of knowledge, misperception or misrecollection.

8. It is the purpose of the West Virginia Medical Practice Act to provide for the

licensure and discipline of physicians and to provide a professional environment which encourages the delivery of quality medical services within this state. WEST VIRGINIA CODE § 30-3-2; Vest v. Cobb, 76 S.E.2d 885 (W.Va. 1953); See also State ex rel. Hoover v. Smith, 198 W. Va. 507, 482 S.E.2d 124 (1996).

9. The West Virginia Medical Practice Act and the Board of Medicine Legislative Rules mandate that the West Virginia Board of Medicine protect the public interest, safety, health and welfare. WEST VIRGINIA CODE §30-3-1 *et seq*; 11 C.S.R. 1A-1 *et seq.* (2007).
10. Where an imminent danger to the public safety, health or welfare exists, the Board may summarily suspend a physician's license. WEST VIRGINIA CODE § 30-3-14 (a), (c) (21) and (k). Pursuant to West Virginia Code and the Board's Legislative Rules, the West Virginia Board of Medicine, having found probable cause to determine that Respondent's continued practice of medicine in the state constitutes an imminent danger to the public safety, health or welfare, properly ordered a summary suspension of Respondent's license to practice medicine and surgery in West Virginia on May 21, 2012, and simultaneously properly notified Respondent of an evidentiary hearing to be held in this matter on June 2, 2012. WEST VIRGINIA CODE § 30-3-14 (a), (c) 21, (j), (k); 11 C.S.R. 3-10-16.
11. The West Virginia Board of Medicine may revoke, suspend or otherwise limit a medical license if a physician is unqualified as a result of violating a provision of the West Virginia Medical Practice Act or the Board's Legislative Rules or an Order of the West Virginia Board of Medicine or failure to comply with a

subpoena or subpoena duces tecum issued by the Board. WEST VIRGINIA CODE § 30-3-14 (c) (17).

12. The West Virginia Board of Medicine has proven by clear and convincing evidence that Respondent failed to appear before the Complaint Committee on May 20, 2012, pursuant to valid and properly served subpoena, in violation of West Virginia Code. WEST VIRGINIA CODE § 30-3-14 (c) (17).
13. The West Virginia Board of Medicine may revoke, suspend or otherwise limit a medical license if a physician has engaged in professional incompetence or has displayed the inability to practice medicine and surgery with reasonable skill and safety due to physical or mental impairment, including deterioration through the aging process, loss of motor skill or abuse of drugs or alcohol. WEST VIRGINIA CODE § 30-3-14 (c) (20) and (21); 11 C.S.R. 1A-12.1 (h), (i), (j).
14. The West Virginia Board of Medicine has proven by clear and convincing evidence that Respondent has engaged in professional incompetence or has displayed the inability to practice medicine and surgery with reasonable skill and safety for patients due to Respondent's mental impairment. WEST VIRGINIA CODE § 30-3-14 (c) (20) and (21); 11 C.S.R. 1A-12.1 (h), (i), (j).
15. The West Virginia Board of Medicine has proven by clear and convincing evidence that the continued licensing of Respondent to practice medicine and surgery in the State of West Virginia presents an immediate and continuing danger to the public due to Respondent's mental impairment. West Virginia Code § 30-3-1 et seq., § 30-3-14 (a); § 30-3-14 (c) (17); § 30-3-14(c) (20); § 30-3-14(c) (21); 11 CSR 1A-12.1 (h), (i), (j); 11 CSR 3-10.16.

RECOMMENDED DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the Hearing Examiner **RESPECTFULLY RECOMMENDS** that the West Virginia Board of Medicine find that Respondent violated West Virginia Code and the Board of Medicine Legislative Rules as set forth herein; and, **FURTHER**, that the Board find that it is proper and in the public interest, health, welfare and safety to **REVOKE** Respondent's license to practice medicine and surgery in West Virginia; and **FURTHER**, that the Board shall take such steps as may be necessary to properly redact information, if any, contained in the transcript and exhibits in this matter and/or in this Recommended Decision, pursuant to West Virginia Code, prior to publication of such information.

Entered: June 5, 2012



Carole A. Lewis Bloom,
Designated Hearing Examiner
West Virginia State Bar No. 6867
Post Office Box 1652
Charleston, West Virginia 25326

BEFORE THE WEST VIRGINIA BOARD OF MEDICINE

WEST VIRGINIA BOARD OF MEDICINE,
Petitioner

v.

COMP. No. 12-02-W

TAMER MOHAMED GABER, M.D.,
Respondent

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing Hearing Examiner's Recommended Findings of Fact, Conclusions of Law and Recommended Decision were served upon the following parties and in the matter designated on this the 5th day of June, 2012:

Robert C. Knittle, Executive Director
W.V. Board of Medicine
101 Dee Drive, Suite 103
Charleston, WV 25311

BY HAND-DELIVERY

Rebecca L. Stepto
Board Disciplinary Counsel
W.V. Board of Medicine
101 Dee Drive, Suite 103
Charleston, WV 25311

BY HAND-DELIVERY

Tamer Mohamed Gaber, M.D.
245 Palisades Drive
Morgantown, West Virginia 26508

BY CERTIFIED MAIL



Carole A. Lewis Bloom, W.V. Bar No. 6867
Hearing Officer
Post Office Box 1652
Charleston, West Virginia 25326

CERTIFICATE OF SERVICE

I, Deborah Lewis Rodecker, General Counsel and post-hearing legal advisor to the West Virginia Board of Medicine in this matter, do hereby certify that service of the foregoing ORDER has been made upon the parties and counsel of record herein by hand delivery, or by forwarding a true copy in an envelope deposited in the regular course of the United States mail with postage prepaid, and by depositing a true copy in an envelope deposited in the regular course of the United States mail, certified, return receipt requested, with postage prepaid, or by FEDEX Overnight Delivery, or by email, on this 7th day of June, 2012, addressed as follows:

HAND DELIVERY TO:

Rebecca L. Stepto, Esq.
West Virginia Board of Medicine
101 Dee Drive, Suite 103
Charleston, WV 25311

Robert C. Knittle, Executive Director
West Virginia Board of Medicine
101 Dee Drive, Suite 103
Charleston, WV 25311

CERTIFIED MAIL TO:

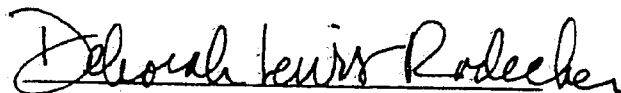
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