



STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower

The Governor Nelson A. Rockefeller Empire State Plaza

Albany, New York 12237

Barbara A. DeBuono, M.D., M.P.H.
Commissioner

September 30, 1996

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Paul Stein, Esq.
Associate Counsel
Bureau of Professional Medical Conduct
New York State Department of Health
5 Penn Plaza - Suite 601
New York, New York 10001

Gerald Haas, M.D.
8780 S.W. 92nd Street, #204
Miami, Florida 33176-2456

EFFECTIVE DATE OCTOBER 7, 1996

RE: In the Matter of Gerald Haas, M.D.

Dear Mr. Stein and Dr. Haas:

Enclosed please find the Determination and Order (No. BPMC-96-229) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified mail or in person** to:

Office of Professional Medical Conduct
New York State Department of Health
Corning Tower - Fourth Floor (Room 438)
Empire State Plaza
Albany, New York 12237

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.

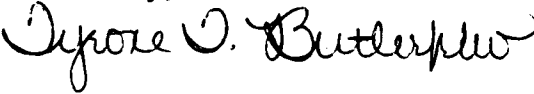
The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Empire State Plaza
Corning Tower, Room 2503
Albany, New York 12237-0030

The parties shall have 30 days from the notice of appeal in which to file their briefs to the Administrative Review Board. Six copies of all papers must also be sent to the attention of Mr. Horan at the above address and one copy to the other party. The stipulated record in this matter shall consist of the official hearing transcript(s) and all documents in evidence.

Parties will be notified by mail of the Administrative Review Board's
Determination and Order.

Sincerely,

A handwritten signature in black ink, reading "Tyrone T. Butler". The signature is written in a cursive style with a large, stylized "T" and "B".

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:crc
Enclosure

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

COPY

IN THE MATTER
-OF-
GERALD HAAS, M.D.

Respondent

DETERMINATION

AND

ORDER

BPMC-96-229

A Notice of Referral Proceeding and Statement of Charges, both dated June 14, 1996, were served upon the Respondent, Gerald Haas, M.D. **KENNETH KOWALD (Chair), ANDREW CONTI, M.D. and JAMES B. EISENKRAFT, M.D.**, 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. **JEFFREY W. KIMMER, ESQ., ADMINISTRATIVE LAW JUDGE**, served as the Administrative Officer. The Department of Health appeared by Dianne Abeloff, Esq., Associate Attorney. The Respondent did not appear either in person or by counsel. Evidence was received, statements were heard and transcripts of these proceedings were made.

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

STATEMENT OF CASE

This case was brought pursuant to Public Health Law Section 230(10)(p). This statute provides for an expedited proceeding where a licensee is charged solely with a violation of Education Law Section 6530(9). In such cases, a licensee is charged with misconduct based upon prior professional disciplinary action or criminal conviction. The scope of this expedited proceeding 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)(d) (disciplinary action taken against the license by another state). The charges herein arise from Respondent having action taken against his license by the Florida Board of Medicine. The Respondent and the Florida board of Medicine entered into a Consent Agreement based on an Administrative Complaint, which levied a fine of \$1,000.00 on the Respondent and required him to complete a continuing medical education course in keeping quality medical records. The Administrative Complaint charged the Respondent with testing a patient's blood for AIDS without the consent of the patient and conducting a pelvic/vaginal examination of this same patient without keeping medical records which justified such an examination. The allegations in this proceeding are set forth in the Statement of Charges, a copy of which is attached to this Determination and Order as Appendix One.

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 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. Gerald Haas, M.D. (hereinafter, "Respondent"), was licensed to practice medicine in New York State on July 14, 1970, by the issuance of license number 106540 by the New York State Education Department. (Pet. Ex. #2).

2. On or about December 5, 1995, the State of Florida, Agency for Health Care Administration, Board of Medicine in a proceeding against the Respondent's medical license, issued a Final Order which imposed a fine of \$1,000.00 on the Respondent and ordered him to complete a continuing medical education course in "Quality Medical Records Keeping." (Pet. Ex. #3)

3. The Final Order incorporated by reference a Consent Agreement entered into between the Respondent and the Florida Agency for Health Care Administration. (Pet. Ex. #3)

4. The Consent Agreement included as its Exhibit A, a copy of the Administrative Complaint filed by the Florida Agency for Health Care Administration. (Pet. Ex. #3)

5. The Administrative Complaint contained 2 counts . The first count charged the Respondent with testing a patient's blood for AIDS without the consent of the patient. The second count charged him with conducting a pelvic/vaginal examination of this same patient without keeping medical records which justified such an examination. (Pet. Ex. # 3)

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 Hearing Committee concluded that the Department has sustained its burden of proof in this matter. The preponderance of the evidence demonstrates that Respondent had disciplinary action taken against his license by a duly authorized professional disciplinary agency of another state. The conduct which was the underlying basis of the disciplinary action against the Respondent would, if committed in this state constitute professional misconduct. Specifically, the Hearing Committee found the Respondent's conduct would fall within the definitions of misconduct set forth at N. Y. Education Law § 6530(26) (Performing professional services which have not been duly authorized) and N.Y. Education Law § 6530(32) (Failing to maintain records which accurately reflect the treatment and evaluation of the patient).

DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determined that Respondent's license should be **Censured and Reprimanded**. This determination was reached upon due consideration of the full spectrum of penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties .

The Hearing Committee based its determination on the fact that the conduct upon

which the Florida action was based involved only one patient and the Respondent has exhibited a recognition of his mistake by the full compliance of the conditions imposed by Florida. Therefore the Hearing Committee did not feel that revocation or suspension was warranted. It is the Hearing Committee's duty to protect the consumers of medical services of this state. The committee believes the penalty imposed will fulfill that duty.

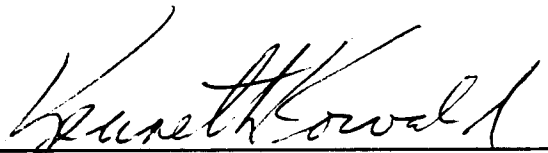
ORDER

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

1. The First Specification of professional misconduct, as set forth in the Statement of Charges (Appendix I) is **SUSTAINED**;
2. Respondent is hereby **CENSURED AND REPRIMANDED.**

DATED: Brooklyn, New York

September 26, 1996



**KENNETH KOWALD (Chair)
ANDREW CONTI, M.D.
JAMES B. EISENKRAFT, M.D.**

TO: **PAUL STEIN, ESQ.**

Associate Counsel

Bureau of Professional Medical Conduct

New York State Department of Health

5 Penn Plaza - Suite 601

New York, New York 10001

GERALD HAAS, M.D.

8780 S.W. 92nd Street, #204

Miami, FL 33176-2456

APPENDIX ONE

IN THE MATTER
OF
GERALD HAAS, M.D.

STATEMENT
OF
CHARGES

GERALD HAAS, M.D., the Respondent, was authorized to practice medicine in New York State on July 14, 1970 by the issuance of license number 106540 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. 1. On or about December 13, 1995, the State of Florida, Agency for Health Care Administration, Board of Medicine issued a Final Order approving, adopting, and incorporating by reference a Consent Agreement executed on November 1, 1995, following an Administrative Complaint (case no. 93-10387) filed December 19, 1994 and an Amended Administrative Complaint filed September 25, 1995. The Amended Administrative Complaint alleged that Respondent performed an HIV test on Patient K.F. without obtaining the patient's consent, and that Respondent failed to document justification for performing a pelvic/vaginal examination and HIV test on Patient K.F, in violation of Florida Statutes sections 381.004(3), 458.331(1)(g), and 458.331(1)(m).
2. The Final Order, inter alia (Consent Agreement at p. 2):
- imposed "an administrative fine in the amount of one thousand dollars (\$1,000.00) against the Respondent"; and
- ..
- required that Respondent "complete the course 'Quality Medical Records Keeping for Health Care Professionals,'

sponsored by the Florida Medical Association, or a Board-approved equivalent, within one (1) year of the date of the Final Order in this case."

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

HAVING HAD DISCIPLINARY ACTION TAKEN BY A DULY AUTHORIZED
PROFESSIONAL DISCIPLINARY AGENCY OF ANOTHER STATE


Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law sec. 6530(9)(d) (McKinney Supp. 1996), in that he had his license to practice medicine revoked, suspended or had other disciplinary action taken 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 would, if committed in New York state, constitute professional misconduct under the laws of New York state, namely:

- a. Performing professional services which have not been duly authorized by the patient or his or her legal representative (N.Y. Educ. Law sec. 6530 (26) (McKinney Supp. 1996)); and/or
- b. Failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient (N.Y. Educ. Law sec. 6530 (32) (McKinney Supp. 1996)).

as Petitioner specifically alleges:

1. The facts in Paragraph A1 and A2.

Dated: New York, New York
June 14, 1996


ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct