



STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

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

Dennis P. Whalen
Executive Deputy Commissioner

April 9, 1997

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Timothy J. Mahar, Esq.
New York State Department of Health
Division of Legal Affairs
Empire State Plaza
Corning Tower - Room 2438
Albany, New York 12237

William Hayling, M.D.
4314 Marina City Dr. #830S
Marina Del Rey, CA 90292

RE: In the Matter of William Hayling, M.D.

Dear Mr. Mahar and Dr. Hayling:

Enclosed please find the Determination and Order (No. BPMC-97-80) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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
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.

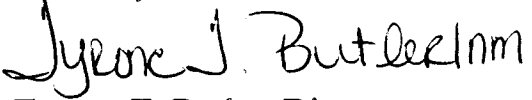
The notice of review served on the Administrative Review Board should be forwarded to:

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,

A handwritten signature in black ink that reads "Tyrone T. Butler". The signature is written in a cursive style with a large initial "T" and a long horizontal stroke at the end.

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-
WILLIAM HAYLING, M.D.

Respondent

DETERMINATION

AND

ORDER

BPMC-97-80

A Notice of Referral Proceeding and Statement of Charges, both dated January 27, 1997, were served upon the Respondent, William Hayling, M.D. **PAUL J. WEINBAUM, M.D. (Chair), JOSEPH G. CHANATRY, M.D. and MARYCLAIRE SHERWIN** 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, ESQ., ADMINISTRATIVE LAW JUDGE**, served as the Administrative Officer. The Department of Health appeared by Timothy J. Mahar, Esq., Assistant Counsel. The Respondent did not appear in person or by his attorney. Evidence was received, statements were heard and transcripts of these proceedings were made.

After consideration of the entire record, the 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 entering into a Stipulated Settlement and Disciplinary Order whereby his license to practice medicine in California was revoked, the revocation was stayed and his license was placed on probation. The Stipulation incorporated by reference the Accusation filed by California. That Accusation enumerated numerous acts of unprofessional conduct attributed to the Respondent in relation to a midwifery practice. The acts included falsely representing that he owned the midwifery practice when the practice was owned by a person unlicensed to practice midwifery, allowing advertisements for the practice to represent that he was the medical director when he was not and aiding and abetting unlicensed persons to practice midwifery under the color of his license. The allegations in this proceeding are set forth in the Statement of Charges, a copy of which is attached to and made a part of 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 Committee in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence.

1. William Hayling, M.D.(hereinafter, "Respondent"), was licensed to practice medicine in New York State on March 3, 1953 by the issuance of license number 073459 by the New York State Education Department. (Ex. 2)

2. On or about June 27, 1996, the Medical Board of California adopted the Stipulation and Waiver Agreement executed by the Respondent and the State of California. (Ex. 3)

3. The Respondent was charged by the Medical Board of California with committing acts which constituted unprofessional conduct and he admitted this to be true. (Ex. 3)

4. Respondent's actions which were found by the Medical Board of California to constitute unprofessional conduct included aiding an abetting an unlicensed person or persons to practice midwifery under the color of his medical license, falsely representing to the public that he was the sole owner of a midwifery enterprise when he was not, falsely representing to the public that he was the Medical Director of this midwifery enterprise when he was not and practicing under circumstances which create a risk of great bodily harm or death. (Ex. 3)

5. To practice nurse-midwifery in California and New York a person must be issued a certificate. (Exs. 3 & 4)

6. The Medical Board of California revoked the Respondent's license, stayed

the revocation and placed the Respondent on probation for five years. (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 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 Physician and Surgeon's Certificate by a professional disciplinary agency of another state. The underlying conduct which was the basis for the Decision and Order of California would constitute professional misconduct in New York. Specifically, the Committee found the Respondent's actions would fall within the definitions of misconduct set forth at N.Y. Education Law §6530(2) (Practicing the profession fraudulently), N.Y. Education Law §6530(11) (Permitting, aiding or abetting an unlicensed person to perform activities requiring a license), N.Y. Education Law §6530(20) (Conduct which evidences moral unfitness), N.Y. Education Law §6530(21) (Willfully making or filing a false report), N.Y. Education Law §6530(25) (Delegating professional responsibilities to a person not qualified by licensure to perform them) and N.Y. Education Law §6530(27)(a)(i) (Advertising or soliciting for patronage that is not in the public interest and is false).

DETERMINATION AS TO PENALTY

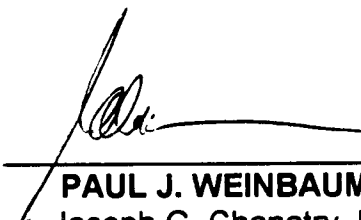
The Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determined that Respondent's license to practice medicine in New York State should be **revoked**. This determination was reached upon due consideration of the full spectrum of penalties available pursuant to statute. The Committee concluded that the Department has sustained its burden of proof in this matter. The Committee based its determination on the seriousness of the stipulated misconduct committed in California. Such conduct represents a serious violation of the ethical standards of the medical profession. Additionally the Respondent did not present any mitigating evidence for the Committee's consideration. Respondent did not appear nor was he represented by counsel. The record contains no evidence about any mitigating factors which may have resulted in the imposition of a lesser penalty. It is the Committee's duty to protect the consumers of medical services of this state. The practice of medicine is a privilege to be bestowed on those who warrant it. The Respondent has not presented any evidence that he should be allowed to exercise this privilege. The Committee unanimously determined that the Respondent should not be afforded the privilege of practicing medicine in New York and that revocation is the only appropriate sanction under the circumstances.

ORDER

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

1. The Specification of professional misconduct, as set forth in the Statement of Charges (Appendix I) is **SUSTAINED**;
2. Respondent's license to practice medicine in New York State be and hereby is **REVOKED**.

DATED: Albany, New York
4/4, 1997



PAUL J. WEINBAUM, M.D. (CHAIR)
Joseph G. Chanatry, M.D.
Maryclaire Sherwin

To:

Timothy J. Mahar, Esq.
Assistant Counsel
NYS Dept. of Health
Division of Legal Affairs
Corning Tower - R. 2503
Albany, New York 12237-0032

William Hayling, M.D.
4314 Marina City Dr. #830S
Marina Del Rey. CA 90292



APPENDIX I

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

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IN THE MATTER : STATEMENT
OF : OF
WILLIAM HAYLING, M.D. : CHARGES

-----X

WILLIAM HAYLING, M.D., the Respondent, was authorized to practice medicine in New York State on March 3, 1953 by the issuance of license number 073459 by the New York State Education Department.

FACTUAL ALLEGATIONS

- 1) On or about June 27, 1996, the Medical Board of California (California Board) issued a Decision and Order based upon a Stipulated Settlement and Disciplinary Order entered into with the Respondent (stipulated settlement). The stipulated settlement provided for a stayed revocation of Respondent's California medical license and a five year probation under the following terms, among others:
 - a) required Respondent to provide 240 hours of free medical services during the first two years of probation;
 - b) required Respondent to complete a course in ethics;
 - c) required Respondent to complete an additional 40 hours of continuing medical education during each year of

probation in addition to the continuing medical education requirements for re-licensure; and

d) required Respondent to pay \$10,000.00 in investigation and prosecution costs and \$2,588.00 each and every year of probation as costs associated with probation monitoring.

2) The conduct upon which the California Board imposed discipline upon Respondent's medical license consisted of the following as set forth in an Accusation dated July 2, 1993, and in a First Supplemental Accusation dated August 5, 1993:

a) On or about February 26, 1988 Respondent, a practicing obstetrician, filed an application for a permit to work under a fictitious name under the California Business and Professions Code on which he falsely represented that he wholly owned and controlled a midwifery practice ("Gentle Birth Center Medical Group"), when in fact the midwifery practice was at all times owned by a person who was unlicensed to practice midwifery. Respondent acted only as a paid, and sometimes unpaid, consultant to the midwifery practice which was operated by unlicensed persons.

b) Respondent permitted his name and license to be used in public advertising for the midwifery practice which described his position in the practice as "Medical Director", when in fact Respondent was only a paid, and

sometimes unpaid, consultant to the practice and the practice was controlled by unlicensed individuals.

- c) Respondent aided and abetted unlicensed persons to practice midwifery under the color of his physician's license in circumstances which created the risk of great bodily harm, serious physical or mental illness or death.
 - d) During the period from approximately February 26, 1988 to January, 1993, Respondent permitted unlicensed individuals to practice midwifery under the color of his medical license.
- 3) The conduct upon which the California Board disciplined Respondent would, if committed in New York State, constitute professional misconduct under N.Y. Educ. Law § 6530(2) [practicing the profession fraudulently]; and/or N.Y. Educ. Law § 6530(11) [permitting, aiding or abetting an unlicensed person to perform activities requiring a license] in conjunction with Public Health Law § 2560 [license and registration requirements for midwifing] and N.Y. Educ. Law § 6951 [requirement of consultation, collaboration and referral with an obstetrician for the practice of midwifery]; and/or N.Y. Educ. Law § 6530(20) [conduct in the practice of medicine which evidences moral unfitness to practice medicine]; and/or N.Y. Educ. Law § 6530(21) [willfully making or filing a false report]; and/or N.Y. Educ. Law § 6530(25) [delegating professional responsibilities to a person not qualified by training,

experience or licensure]; and/or N.Y. Educ. Law § 6530(27)(a)(i) [advertising in the manner which is false]; and/or N.Y. Educ. Law § 6530(33) [failing to exercise appropriate supervision over persons who are authorized to practice only under the supervision of the licensee].

SPECIFICATION OF CHARGES

DISCIPLINE BY OTHER STATE

Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law § 6530(9)(d) [McKinney Supp. 1997] by reason of having disciplinary action taken against his license to practice medicine by a duly authorized professional disciplinary agency of another state, where the conduct resulting in disciplinary action, would if committed in New York State, constitute professional misconduct under the laws of New York State in that Petitioner charges:

- 1) The facts in paragraphs 1 and/or 2, and/or 3.

DATED: *January 27*, 1997
Albany, New York

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