



STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

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

Dennis P. Whalen
Executive Deputy Commissioner

July 30, 1999

REVISED COVER LETTER

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr. Barry Kaufman, Esq.
New York State Department of Health
Division of Legal Affairs
5 Penn Plaza – Sixth Floor
New York, New York 10001

Graciano Evans Clause, R.P.A.
164 East 42nd Street, Apt. 2
Brooklyn, New York

Robert Harris, Esq.
Schneider, Harris & Harris
1015 Broadway
Woodmere, New York 11598

RE: In the Matter of Graciano Evans Clause, R.P.A.

Dear Parties:

Enclosed please find the Determination and Order (No. 99-176) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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:

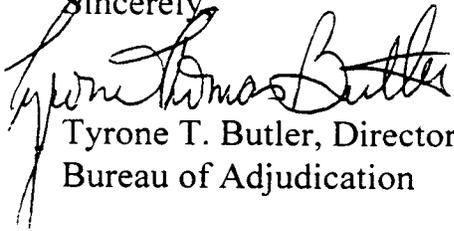
James F. Horan, Esq., Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Hedley Park Place
433 River Street, Fifth Floor
Troy, New York 12180

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,



Tyrone T. Butler, Director
Bureau of Adjudication

TTB:mla

Enclosure

FILE NO: S-4800-S

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

COPY

-----x
: IN THE MATTER OF
: GRACIANO EVANS CLAUSE, R.P.A.
: -----x

**DETERMINATION
AND ORDER**

ORDER # 99-176

A Notice of Hearing and Statement of Charges, both dated February 16, 1999, were served upon the Respondent, Graciano Evans Clause, R.P.A. David Harris, M.D. (Chair), Edward C. Sinnott, M.D. and Diane C. Bonanno, 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. Edwin L. Smith, Administrative Law Judge, served as the Administrative Officer. The Department of Health appeared by Barry Kaufman, Esq., Associate Counsel. Respondent appeared by Robert H. Harris, Esq. 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 and Order.

PROCEDURAL HISTORY

Date of Service of Notice
of Hearing and Statement
of Charges:

March 5, 1999

Date of Service of Amended
Statement of Charges:

May 17, 1999

Answer to Statement of Charges:	April 15, 1999
Pre-hearing Conference:	April 15, 1999
Dates of Hearings:	April 23, 1999 May 10, 1999 May 17, 1999
Received Petitioner's Proposed Findings of Fact, Conclusions of Law and Recommendation:	June 7, 1999
Respondent's Proposed Findings of Fact, Conclusions of Law and Recommendation were presented in Oral Closing Statement on Record in lieu of Written Proposed Findings:	May 17, 1999
Witnesses for Department of Health:	Michael Bartalos, M.D. Orville Scott, M.D. Yang Lee, M.D. Jason Torchio John Lee, P.A. Tranice Jackson, M.D. Hilda Brewer, M.D. Morton Axelrod, M.D. Graciano Evans Clause, R.P.A. Lawrence Matlin
Witnesses for Respondent:	Graciano Evans Clause, R.P.A. Glenda Shearn, P.A.
Deliberations Held:	June 16, 1999

STATEMENT OF CASE

The Petitioner has charged Respondent, Graciano Evans Clause, R.P.A., with ten specifications of professional misconduct. The allegations concern Respondent improperly and

fraudulently writing drug prescriptions for patients at Council Health Center in New York City; misrepresenting his employment in making applications and submitting *curriculum vitae* to St. Barnabas Hospital Correctional Health Services, Bronx Lebanon Hospital, Brooklyn Hospital Center; removing medical supplies without authorization at Bronx Lebanon Hospital Center Methadone Clinic; improperly requesting samples of Paxil at Bronx Lebanon Hospital Center Methadone Clinic; and, making false statements during the course of being interviewed by the Office of Professional Medical Conduct. In particular, the Respondent is charged with four specifications of fraudulent practice, one specification of practicing beyond the scope and without proper supervision, one specification of failure to comply with law and four specifications of moral unfitness.

A copy of the Notice of Hearing and Statement of Charges is attached to this Determination and Order in Appendix I and a copy of the Amended Statement of Charges is annexed hereto as Appendix II.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. The 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. Graciano Evans Cla se, R.P.A. (herein "Respondent") was authorized to practice medicine as a physician's assistant in New York State by the issuance of license number RPA004907 by the New York State Education Department. (Not contested)

2. Respondent did not have permission from Dr. Samuel DeLeon, Council Health Center, or any employee of Council Health Center to use the name or stamp of Dr. DeLeon on any drug prescriptions for any patients of Council Health Center. (Not contested, Exhibit 16)

A. ISSUANCE OF PRESCRIPTIONS AT COUNCIL HEALTH CENTER

A(1) During the period July 1997 through October 31, 1997, Respondent while employed at Council Health Center as an R.P.A. improperly wrote 79 prescriptions for 36 patients falsely indicating that his supervising physician was Samuel DeLeon, M.D.

3. Respondent was employed by Council Health Center as a physician's assistant during the period July through October 1997. (Exhibit 3; 57 and 27)

4. During the period, Respondent wrote 79 prescriptions for 36 patients of Council Health Center falsely indicating on the prescription by means of an ink stamp that Samuel DeLeon, M.D. was his supervising physician for these patients. (Exhibits 4, 5 and 16; 16, 22 and 336-341)

5. Respondent's assigned supervising physician at Council Health Center was Morton Axelrod, M.D. and when he was not available, Orville Scott, M.D. was to provide supervision of Respondent's work. (16 and 17)

6. Relations between Respondent and Dr. Scott were strained. (40 and 56)

7. Respondent inappropriately utilized the stamp of Dr. DeLeon on 24 prescriptions even though Dr. Axelrod was recorded as being present at Council Health Center. (Exhibits 5 and 18; 262 and 263)

8. Respondent did not write the name of his actual supervising physician on any of the 79 prescriptions at issue. (Exhibit 5)

9. As a Registered Physician Assistant, Respondent was required to have his prescriptions countersigned by a supervising doctor. The Hearing Committee takes administrative notice of the regulations of the Department of Health, 10 NYCRR § 94.2.

A(1) (a) Misrepresentation

10. The Respondent's conduct in issuing the noted prescriptions was done with knowledge that he was making a misrepresentation of fact. (339)

A(1) (b) Intent to deceive

11. Respondent's conduct in issuing the aforesaid prescriptions was done with intent to deceive. (339)

A(2) Failing to identify supervising physician on prescriptions

12. Respondent failed to name his actual supervising physician(s) on any of the 79 prescriptions at issue. (Exhibit 5)

A(3) Lack of permission to use Dr. DeLeon's name or stamp

13. Respondent did not have permission from Dr. DeLeon, the Council Health Center, or any employee of Council Health Center to use the name or stamp of Dr. DeLeon for any patients of Council Health Center. (Exhibit 16; 22-23 and 260)

A(4) Department of Health regulations

14. As a Registered Physician Assistant, Respondent could only write prescriptions as authorized by regulations of the Department of Health. The Hearing Committee takes administrative notice of the regulations of the Department of Health found at 10 NYCRR § 94.2.

15. The conduct of Respondent in writing the 79 prescriptions in issue was in violation of the requirements of the aforesaid regulations of the Department of Health. (10 NYCRR § 94.2.)

B. MISREPRESENTATION OF FACTS ON EMPLOYMENT APPLICATION AND CURRICULUM VITAE

B(1) Application for employment at St. Barnabas Hospital Correctional Health Services

16. Respondent filed an application for employment with St. Barnabas Hospital Correctional Health Services, dated on or about December 15, 1997. (Exhibit 6)

B(1)(a) Failure to disclose employment at Council Health Center

17. Respondent's application for employment at St. Barnabas Hospital Correctional Health Services did not disclose that he had been employed at Council Health Center as a physician assistant and terminated from said employment. (Exhibit 6, page 5; Exhibit 3, page 27; 363 and 379)

B(1)(b) Failure to disclose employment at Bronx Lebanon Methadone Clinic

18. Respondent's application for employment at St. Barnabas Hospital did not disclose that Respondent had been employed by Bronx Lebanon Hospital Center Methadone Clinic as a physician assistant and terminated from that employment. (Exhibit 6, page 5; Exhibit 12; 363 and 541)

B(1)(c) Misrepresentation of employment at Long Island College Hospital

19. Respondent's application for employment at St. Barnabas Hospital Correctional Services misrepresented the duration of his employment at Long Island College Hospital. (Exhibit 3, pages 50 and 51; Exhibit 14; 476)

B(1) (d) Misrepresentation of employment at Staten Island University Hospital

20. On Respondent's application for employment at St. Barnabas Correctional Health Services, he misrepresented the duration of his employment at Staten Island University Hospital. (Exhibit 6, page 5; Exhibit 10, page 5) “

B(2) Application process at Council Health Center

21. Respondent filed an application for employment with Council Health Center in or about July 1997. (Exhibit 3)

B(2) (a) Failure to disclose employment at Bronx Lebanon Methadone Clinic

22. Respondent's *curriculum vitae* filed with his application for employment with Council Health Center failed to disclose employment at Bronx Lebanon Hospital Center Methadone Clinic as a physician assistant and termination of said employment. (Exhibit 3, pages 50-51; Exhibit 12; 474-477)

B(2) (b) Misrepresentation of employment at Long Island College Hospital

23. Respondent's application for employment with Council Health Center misrepresented the duration of his employment at Long Island College Hospital. (Exhibit 3, pages 50-51; Exhibit 10; Exhibit 14)

B(2) (c) Misrepresentation of employment at Staten Island University Hospital

24. Respondent's application for employment at Council Health Center misrepresented the duration of his employment at Staten Island University Hospital. (Exhibit 3, pages 50-51; 383)

B(3) Application for employment at Bronx Lebanon

25. Respondent filed an application for employment with Bronx Lebanon Hospital Center in or about February 1997. (Exhibit 6)

B(3) (a) Misrepresentation of employment at Long Island College Hospital

26. Respondent's application for employment at Bronx Lebanon Hospital Center misrepresented the duration of his employment at Long Island College Hospital. (Exhibit 6, page 5; Exhibit 14)

B(3) (b) Misrepresentation of employment at Staten Island University Hospital

27. Respondent's application for employment at Bronx Lebanon Hospital Center misrepresented the duration of his employment at Staten Island University Hospital. (Exhibit 6, page 5; Exhibit 10, page 5)

B(4) Application for employment at The Brooklyn Hospital Center

28. Respondent filed an application for employment at The Brooklyn Hospital Center in or about September 1998. (Exhibit 22)

B(4) (a) Failure to disclose employment at Council Health Center

29. Respondent's application for employment at The Brooklyn Hospital and the accompanying *curriculum vitae* did not disclose that he had been employed by Council Health Center as a physician assistant and terminated from that employment.

(Exhibit 22, pages 4, 5, 13 and 14; 361-363 and 366-369) “

B(4) (b) Failure to disclose employment at Bronx Lebanon

30. Respondent's application for employment at The Brooklyn Hospital Center failed to disclose on the application and accompanying *curriculum vitae* that he had been employed by Bronx Lebanon Hospital Methadone Clinic as a physician assistant and terminated from that employment. (Exhibit 22, pages 4, 5, 13 and 14)

B(4) (c) Misrepresentation of employment at Long Island College Hospital

31. Respondent's application to The Brooklyn Hospital Center did not disclose the duration of his employment at Long Island College Hospital. (Exhibit 22, pages 4, 5, 13 and 14; Exhibit 14)

B(4) (d) Misrepresentation of employment at Staten Island University Hospital

32. Respondent's application to The Brooklyn Hospital Center misrepresented the duration of his employment at Staten Island University Hospital. (Exhibit 22, pages 4, 5, 13 and 14; Exhibit 10, page 5)

C. MISAPPROPRIATION OF SUPPLIES AND INAPPROPRIATE REQUESTS FOR DRUG SAMPLES WHILE EMPLOYED AT BRONX LEBANON METHADONE CLINIC

33. Petitioner withdrew allegations that Respondent removed from the Bronx Lebanon Methadone Clinic medical supplies, including tuberculin syringes, other than tetanus serum.

(Petitioner's Proposed Findings of Fact and Conclusions of Law, page 8, paragraph 28, footnote 6)

C(1) Removal of supplies

34. The Hearing Committee does not find adequate evidence to support the allegations regarding the removal of tetanus serum.

C(2) Drug samples

35. The Hearing Committee does not find adequate evidence to support the allegation regarding the inappropriate request for samples of Paxil.

D. INTERVIEW AT OPMC

36. Respondent was interviewed at the Office of Professional Medical Conduct on August 20, 1998. (434-536)

37. The Hearing Committee does not find adequate evidence to support the allegations.

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 following Factual Allegations should be sustained. The citations in parentheses refer to the Findings of Fact which support each Factual Allegation.

A (3);
A(1) (2-9);
A(1) (a) (2-10);
A(1) (b) (2-11);
A(2) (12);
A(3) (13);
A(4) (14, 15);
B (N/A);
B(1) (a) (17);
B(1) (b) (18);
B(1) (c) (19);
B(1) (d) (20);
B(2) (21);
B(2) (a) (22);
B(2) (b) (23);

• Introductory material - no conclusion necessary.

- B (2) (c) (24);
- B (3) (25);
- B (3) (a) (26);
- B (3) (b) (27);
- B (4) (28);
- B (4) (a) (29);
- B (4) (b) (30);
- B (4) (c) (31);
- B (4) (d) (32);
- C (not sustained);
- C (1) (not sustained);
- C (2) (not sustained);
- D (not sustained).

The Hearing Committee further concluded that the following Specifications should be sustained. The citations in parentheses refer to the Factual Allegations which support each Specification:

First through Fourth Specifications - Fraudulent practice by reason of practicing the profession of medicine fraudulently or beyond its authorized scope as alleged in the Facts on the following:

1. In paragraphs A and A(1), A(1) (a) and A(1) (b), A(2) through A(4);
2. In paragraphs B(1) through B(4), including all subparagraphs;

3. C, C(1) and C(2) - not sustained;
4. D - not sustained.

Fifth Specification - Practicing beyond the scope permitted by law and/or performing without adequate supervision professional services which Respondent is authorized to perform only under the supervision of a licensed professional, as alleged in the Facts of:

5. In A, A(1), A(2) through A(4).

Sixth Specification - Failure to comply with law by reason of Respondent's willful or grossly negligent failure to comply with substantial provisions of the regulations of the Department of Health regarding the practice of medicine by physician assistants, as alleged in the Facts of:

6. In A, A(1), A(1)(a), A(2) through A(4).

Sixth through Tenth Specifications - Moral unfitness by engaging in conduct in the practice of the profession of medicine that evidences moral unfitness to practice as alleged in the Facts of the following:

7. A, A(1), A(1)(a), A(1)(b), A(2) through A(4);
8. B(1) through B(4), including all subparagraphs;
9. C, C(1) and C(2) - not sustained; and
10. D - not sustained.

DISCUSSION

Respondent is charged with ten Specifications alleging professional misconduct within the meaning of Education Law § 6530. This statute sets forth numerous forms of conduct which constitute professional misconduct but does not provide definitions of the various types of misconduct. During the course of its deliberations on these charges, the Hearing Committee consulted a memorandum prepared by Henry M. Greenberg, Esq., General Counsel for the Department of Health, dated January 9, 1996. This document, entitled "Definitions of Professional Misconduct under the New York Education Law", sets forth suggested definitions for negligence, gross negligence, incompetence and gross incompetence.

The following definitions were utilized by the Hearing Committee during its deliberations:

Negligence: Is the failure to exercise the care that would be exercised by a reasonably prudent licensee under the circumstances.

Gross Negligence: Is the failure to exercise the care that would be exercised by a reasonably prudent licensee under the circumstances, and which failure is manifested by conduct that is egregious or conspicuously bad.

Incompetence: Is a lack of the skill or knowledge necessary to practice a profession.

Gross Incompetence: Is an unmitigated lack of the skill or knowledge necessary to perform an act undertaken by the licensee in the practice of a profession.

Unwarranted Treatment: Is the ordering of excessive tests, treatment or use of treatment facilities not warranted by the condition of the patient. (Education Law § 6530(35)).

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

Moral Unfitness: Conduct in the practice of a Registered Physician Assistant which evidences moral unfitness to practice the profession as determined by standards which are commonly accepted by the practicing professionals in the community.

Using the above-referenced definitions as a framework for its deliberations, the Hearing Committee unanimously concluded, by a preponderance of the evidence, that the Petitioner has sustained, in part, its burden of proof regarding serious charges brought against Respondent. The rationale for the Hearing Committee's conclusions is set forth below.

At the outset, the Hearing Committee made a determination as to the credibility of the various witnesses

presented by the parties. Of significant importance to the Hearing Committee was a pattern of knowing deceptions of self-interest on the part of the Respondent which spanned a number of years and, indeed, to the very eve of the hearings.

With respect to the applications for employment and the accompanying *curriculum vitae* to Bronx Lebanon Hospital Center, Council Health Center, St. Barnabas Hospital Correctional Health Services and The Brooklyn Hospital Center, the Respondent consistently misstated and misrepresented the facts of his prior employment, their duration and the circumstances of his terminations. His proffered excuse that he was compelled to make these misstatements and/or deliberate omissions because he feared he would not be able to obtain employment if the facts were revealed, were totally unacceptable. To hold otherwise, would give justification to every applicant for employment to knowingly misstate and/or omit material facts in applications and *curriculum vitae* for the justification of getting a job under circumstances which from the very inception of the application taint that employment. The Hearing Committee is of the unanimous concern that to countenance such misconduct would undermine the application process for persons who are to be entrusted in medical care of the public at large.

This concern was heightened by Respondent's conceded fraud in preparing prescriptions which bore the stamp of Dr.

Samuel DeLeon. Respondent stipulated to the fact that Dr. DeLeon did not give his consent for the use of his stamp or signature, and neither did the Council Health Center authorize the Respondent to use Dr. DeLeon's stamp on those prescriptions. Indeed, the Hearing Committee is suspect as to the circumstances under which Respondent had and maintained in his possession the stamp that was used on those prescriptions. Respondent's excuse that he did not at first know he had the stamp when he left a prior employment where Dr. DeLeon was his supervising physician does not explain why that stamp was not returned to Dr. DeLeon once the Respondent became aware of that fact. That he kept the stamp and then used it during the course of his tenure at Council Health Center over many months, lent credence to many of the Specifications of professional misconduct.

The Hearing Committee notes that there is no evidence presented by the Respondent that Dr. Orville Scott ever refused to countersign a prescription. If anything, Mr. Clause testified that he ran a test by having one of the nurses at Council Health Center bring to Dr. Scott a patient's chart and prescription which he had prepared in order to have Dr. Scott countersign it. The evidence presented by the Respondent was that Dr. Scott, in fact, did countersign those prescriptions. Moreover, there was evidence presented by the Petitioner that Respondent used Dr. DeLeon's stamp even on those days when his immediate supervising physician, Dr. Axelrod, was present at Council Health Center.

With that background, it struck the Hearing Committee as simply incredible that even after the Respondent was interviewed by OPMC in August of 1998, by Lawrence Matlin, and advised of the investigation which, in part, concerned itself with misstatements and omissions on applications and *curriculum vitae*, the Respondent thereafter continued his pattern of misstatements and omissions in making application for employment at The Brooklyn Hospital Center.

While the Hearing Committee did not find adequate evidence to support the charges leading to the misstatements at the interview of August 20, 1998, it found especially helpful in making its determination with respect to the penalty phase of this hearing, the information developed and acknowledged by the Respondent during the course of that interview and the subsequent events. The Respondent acknowledged at this interview of being warned of this pattern of professional misconduct and, notwithstanding, he disregarded this advice in submitting his application and *curriculum vitae* to The Brooklyn Hospital. It is for that reason that the Hearing Committee considered and rejected the lesser penalties of suspension and rehabilitation because it would be inappropriate under these circumstances and would not serve any purpose.

DETERMINATION AS TO PENALTY

With respect to the First and Second Specifications of practicing the profession of medicine fraudulently or beyond its authorized scope, the Fifth Specification of practicing beyond the scope permitted by law and/or performing without adequate supervision professional services which Respondent is authorized to perform only under the supervision of a licensed professional, the Sixth Specification of willful or gross negligent failure to comply with substantial provisions of the regulations of the Department of Health regulating the practice of medicine by physician assistants and the Seventh through Tenth Specifications of engaging in conduct in the practice of the profession of medicine that evidences moral unfitness to practice as alleged in the Facts of paragraphs A and B including all subparts, the Hearing Committee has determined that the Respondent's license to practice the profession of physician assistant should be revoked.

ORDER

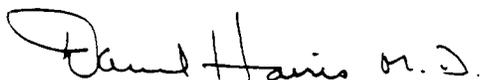
Based upon the foregoing, **IT IS HEREBY ORDERED THAT:**

1. The First, Second, Fifth, Sixth, Seventh and Eighth Specifications of professional misconduct as set forth in the Statement of Charges (Petitioner's Exhibit 24) are **SUSTAINED;**
2. The Third, Fourth, Ninth and Tenth Specifications of professional misconduct are **DISMISSED;**

3. Respondent's license to practice medicine as a Registered Physician Assistant in New York State be and hereby is **REVOKED** on the effective date of this Determination and Order;

4. This Determination and Order shall be effective upon service. Service shall be either by certified mail upon Respondent at Respondent's last known address and service shall be effective upon receipt or seven (7) days after mailing by certified mail, whichever is earlier, or by personal service and such service shall be effective upon receipt.

Dated: Albany, New York
July 21, 1999



David Harris, M.D. (Chair)
Edward C. Sinnot, M.D.
Ms. Diane C. Bonanno

TO: Barry Kaufman, Esq.
Associate Counsel
New York State Department
of Health
5 Penn Plaza
New York, New York 10001

Graciano Evans Clause
164 East 42nd Street, Apt. 2
Brooklyn, New York 11203

Robert H. Harris, Esq.
Schneider Harris & Harris
1015 Broadway
Woodmere, New York 11598

Appendix 1

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

IN THE MATTER
OF
GRACIANO EVANS CLAUSE, R.P.A.

NOTICE
OF
HEARING

TO: GRACIANO EVANS CLAUSE
164 East 42nd Street, Apt 2
Brooklyn, New York 11203

PLEASE TAKE NOTICE:

A hearing will be held pursuant to the provisions of N.Y. Pub. Health Law §230 (McKinney 1990 and Supp. 1999) and N.Y. State Admin. Proc. Act §§301-307 and 401 (McKinney 1984 and Supp. 1999). The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on April 23, 1999, at 10:00 a.m., at the Offices of the New York State Department of Health, 5 Penn Plaza, Sixth Floor, New York, New York, and at such other adjourned dates, times and places as the committee may direct.

At the hearing, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the hearing will be made and the witnesses at the hearing will be sworn and examined. You shall appear in person at the hearing and may be represented by counsel. You have the right to produce witnesses and evidence on your behalf, to issue or have subpoenas issued on your behalf in order to require the production of witnesses and documents, and you may cross-examine witnesses and examine evidence produced against you. A summary of the Department of Health Hearing Rules is enclosed.

The hearing will proceed whether or not you appear at the hearing. Please note that requests for adjournments must be made in writing and by telephone to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Hedley Park Place, 433 River Street, Fifth Floor South, Troy, NY 12180, ATTENTION: HON. TYRONE BUTLER, DIRECTOR, BUREAU OF

ADJUDICATION, (henceforth "Bureau of Adjudication"), (Telephone: (518-402-0748), upon notice to the attorney for the Department of Health whose name appears below, and at least five days prior to the scheduled hearing date.

Adjournment requests are not routinely granted as scheduled dates are considered dates certain. Claims of court engagement will require detailed Affidavits of Actual Engagement. Claims of illness will require medical documentation.

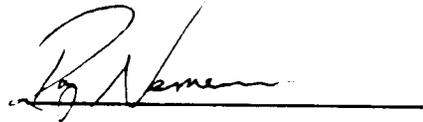
Pursuant to the provisions of N.Y. Pub. Health Law §230(10)(c), you shall file a written answer to each of the charges and allegations in the Statement of Charges not less than ten days prior to the date of the hearing. Any charge or allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such answer. The answer shall be filed with the Bureau of Adjudication, at the address indicated above, and a copy shall be forwarded to the attorney for the Department of Health whose name appears below. Pursuant to §301(5) of the State Administrative Procedure Act, the Department, upon reasonable notice, will provide at no charge a qualified interpreter of the deaf to interpret the proceedings to, and the testimony of, any deaf person. Pursuant to the terms of N.Y. State Admin. Proc. Act §401 (McKinney Supp. 1999) and 10 N.Y.C.R.R. §51.8(b), the Petitioner hereby demands disclosure of the evidence that the Respondent intends to introduce at the hearing, including the names of witnesses, a list of and copies of documentary evidence and a description of physical or other evidence which cannot be photocopied.

At the conclusion of the hearing, the committee shall make findings of fact, conclusions concerning the charges sustained or dismissed, and in the event any of the charges are sustained, a determination of the penalty to be imposed or appropriate action to be taken. Such determination may be reviewed by the Administrative Review Board for Professional Medical Conduct.

THESE PROCEEDINGS MAY RESULT IN A

DETERMINATION THAT YOUR LICENSE TO PRACTICE MEDICINE IN NEW YORK STATE BE REVOKED OR SUSPENDED, AND/OR THAT YOU BE FINED OR SUBJECT TO OTHER SANCTIONS SET OUT IN NEW YORK PUBLIC HEALTH LAW §§230-a (McKinney Supp. 1999). YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: New York, New York
February 16, 1999



ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct

Inquiries should be directed to: Barry Kaufman
Associate Counsel
Bureau of Professional
Medical Conduct
5 Penn Plaza, Suite 601
New York, New York 10001
(212) 613-2615

IN THE MATTER
OF
GRACIANO EVANS CLAUSE, R.P.A.

STATEMENT
OF
CHARGES

:

Graciano Evans Clause, R.P.A., the Respondent, was authorized to practice medicine as a Physician Assistant, in New York State on or about January 4, 1995, by the issuance of license number RPA004907 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. Between in or about July 1997 and October 31, 1997, Respondent was employed by Council Health Center as a registered physician assistant. During this period:
1. Respondent wrote at least seventy-nine (79) prescriptions for thirty-six (36) patients of Council Health Center, falsely indicating on the prescriptions, by means of an ink stamp, that his supervising physician for these patients was Samuel DeLeon, M.D.;
 - a. Respondent's aforesaid conduct was done with knowledge that he was making a misrepresentation of fact; and
 - b. Respondent's aforesaid conduct was done with intent to deceive.
 2. Respondent failed to write the name of Respondent's actual supervising physician on these prescriptions;

3. Respondent did not have permission from Dr. DeLeon, Council Health Center, or any employee of Council Health Center, to use the name or stamp of Dr. DeLeon for any patients of Council Health Center.
4. As a registered physician assistant, Respondent could only lawfully write prescriptions as authorized by the regulations of the Department of Health, 10 N.Y.C.R.R. § 94.2. The conduct of Respondent in writing the aforesaid prescriptions was in violation of the requirements of said regulations of the Department of Health.

B. Respondent intentionally misrepresented and/or concealed known facts, with intent to mislead, on his Curriculum Vitae and on employment applications as follows:

1. On his application for employment with St. Barnabas Hospital, Correctional Health Services, dated on or about December 15, 1997, Respondent:
 - a. Failed to disclose that he had been employed by Council Health Center as a physician assistant and terminated from said employment;
 - b. Failed to disclose that he had been employed by Bronx-Lebanon Hospital Center, Methadone Clinic, as a physician assistant and terminated from said employment;
 - c. Misrepresented the duration of his employment at Long Island College Hospital; and/or
 - d. Misrepresented the duration of his employment at Staten Island University Hospital.

2. During the application process with Council Health Center, in or about July 1997, Respondent:
 - a. Failed to disclose on his Curriculum Vitae that he had been employed by Bronx-Lebanon Hospital Center, Methadone Clinic, as a physician assistant and terminated from said employment;
 - b. Misrepresented the duration of his employment at Long Island College Hospital ; and/or
 - c. Misrepresented the duration of his employment at Staten Island University Hospital.
3. During the application process with Bronx-Lebanon Hospital Center, in or about February 1997, Respondent:
 - a. Misrepresented the duration of his employment at Long Island College Hospital; and/or
 - b. Misrepresented the duration of his employment at Staten Island University Hospital.
- C. While employed as a physician assistant at Bronx-Lebanon Hospital Center, Methadone Clinic, between in or about March 1997 and in or about May 1997, Respondent:
 1. Removed medical supplies from the facility, including, but not limited to, tuberculin syringes and tetanus serum, without authority or permission and for a purpose that was not in the course of his employment at that facility; and/or
 2. Requested samples of Paxil from a pharmaceutical salesman despite not having authorization from his employer to dispense or prescribe said medication.
- D. On or about August 20, 1998, in an interview with the Office of Professional

Medical Conduct regarding the conduct addressed in this proceeding, Respondent, with intent to deceive, falsely denied that he had misrepresented and/or concealed known facts regarding his work history and misrepresented the circumstances leading to his various terminations from employment.

SPECIFICATION OF CHARGES

FIRST THROUGH FOURTH SPECIFICATIONS

FRAUDULENT PRACTICE

Respondent is charged with committing professional misconduct as defined by N.Y. Educ. Law §6530(2)(McKinney Supp. 1999) by practicing the profession of medicine fraudulently or beyond its authorized scope as alleged in the facts of the following:

1. A, A(1), A(1)(a) and A(1)(b), A(2) through A(4);
2. B, B(1) through B(3), including all sub-paragraphs;
3. C, C(1)and C(2);
4. D.

FIFTH SPECIFICATION

PRACTICING BEYOND SCOPE AND WITHOUT PROPER SUPERVISION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(24)(McKinney Supp. 1999) by practicing beyond the scope permitted by law, and/or, performing without adequate supervision professional services which Respondent is authorized to perform only under the supervision of a licensed professional, as alleged in the facts of:

5. A, A(1), A(2) through A(4).

SIXTH SPECIFICATION
FAILURE TO COMPLY WITH LAW

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(16)(McKinney Supp. 1999) by reason of his willful or grossly negligent failure to comply with substantial provisions of the regulations of the Department of Health regulating the practice of medicine by Physician Assistants, as alleged in the facts of:

6. A, A(1), A(1)(a), A(2) through A(4).

SEVENTH THROUGH TENTH SPECIFICATIONS
MORAL UNFITNESS

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(20)(McKinney Supp. 1999) by engaging in conduct in the practice of the profession of medicine that evidences moral unfitness to practice as alleged in the facts of the following:

7. A, A(1), A(1)(a), A(1)(b), A(2) through A(4);
8. B, B(1) through B(3), including all sub-paragraphs;
9. C, C(1) and C(2); and/or

10. D.

DATED: February 16, 1999
New York, New York



ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct

APPENDIX II

EX 24

IN THE MATTER
OF
GRACIANO EVANS CLAUSE, R.P.A.

AMENDED
STATEMENT
OF
CHARGES

Graciano Evans Clause, R.P.A., the Respondent, was authorized to practice medicine as a Physician Assistant, in New York State on or about January 4, 1995, by the issuance of license number RPA004907 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. Between in or about July 1997 and October 31, 1997, Respondent was employed by Council Health Center as a registered physician assistant. During this period:
1. Respondent wrote at least seventy-nine (79) prescriptions for thirty-six (36) patients of Council Health Center, falsely indicating on the prescriptions, by means of an ink stamp, that his supervising physician for these patients was Samuel DeLeon, M.D.;
 - a. Respondent's aforesaid conduct was done with knowledge that he was making a misrepresentation of fact; and
 - b. Respondent's aforesaid conduct was done with intent to deceive.
 2. Respondent failed to write the name of Respondent's actual supervising physician on these prescriptions;

3. Respondent did not have permission from Dr. DeLeon, Council Health Center, or any employee of Council Health Center, to use the name or stamp of Dr. DeLeon for any patients of Council Health Center.
 4. As a registered physician assistant, Respondent could only lawfully write prescriptions as authorized by the regulations of the Department of Health, 10 N.Y.C.R.R. § 94.2. The conduct of Respondent in writing the aforesaid prescriptions was in violation of the requirements of said regulations of the Department of Health.
- B. Respondent intentionally misrepresented and/or concealed known facts, with intent to mislead, on his Curriculum Vitae and on employment applications as follows:
1. On his application for employment with St. Barnabas Hospital, Correctional Health Services, dated on or about December 15, 1997, Respondent:
 - a. Failed to disclose that he had been employed by Council Health Center as a physician assistant and terminated from said employment;
 - b. Failed to disclose that he had been employed by Bronx-Lebanon Hospital Center, Methadone Clinic, as a physician assistant and terminated from said employment;
 - c. Misrepresented the duration of his employment at Long Island College Hospital; and/or
 - d. Misrepresented the duration of his employment at Staten Island University Hospital.

2. During the application process with Council Health Center, in or about July 1997, Respondent:
 - a. Failed to disclose on his Curriculum Vitae that he had been employed by Bronx-Lebanon Hospital Center, Methadone Clinic, as a physician assistant and terminated from said employment;
 - b. Misrepresented the duration of his employment at Long Island College Hospital ; and/or
 - c. Misrepresented the duration of his employment at Staten Island University Hospital.
3. During the application process with Bronx-Lebanon Hospital Center, in or about February 1997, Respondent:
 - a. Misrepresented the duration of his employment at Long Island College Hospital; and/or
 - b. Misrepresented the duration of his employment at Staten Island University Hospital.
4. During the application process with The Brooklyn Hospital Center, in or about September 1998, Respondent:
 - a. Failed to disclose on his application and Curriculum Vitae that he had been employed by Council Health Center as a physician assistant and terminated from said employment;
 - b. Failed to disclose on his application and Curriculum Vitae that he had been employed by Bronx-Lebanon Hospital Center, Methadone Clinic, as a physician assistant and terminated from said employment;
 - c. Misrepresented the duration of his employment at

Long Island College Hospital; and/or

- d. Misrepresented the duration of his employment at Staten Island University Hospital.

C. While employed as a physician assistant at Bronx-Lebanon Hospital Center, Methadone Clinic, between in or about March 1997 and in or about May 1997, Respondent:

1. Removed medical supplies from the facility, including, but not limited to, tuberculin syringes and tetanus serum, without authority or permission and for a purpose that was not in the course of his employment at that facility; and/or
2. Requested samples of Paxil from a pharmaceutical salesman despite not having authorization from his employer to dispense or prescribe said medication.

D. On or about August 20, 1998, in an interview with the Office of Professional Medical Conduct regarding the conduct addressed in this proceeding, Respondent, with intent to deceive, falsely denied that he had misrepresented and/or concealed known facts regarding his work history and misrepresented the circumstances leading to his various terminations from employment.

SPECIFICATION OF CHARGES

FIRST THROUGH FOURTH SPECIFICATIONS

FRAUDULENT PRACTICE

Respondent is charged with committing professional misconduct as defined by N.Y. Educ. Law §6530(2)(McKinney Supp. 1999) by practicing the profession of medicine fraudulently or beyond its authorized scope as alleged in the facts of the

following:

1. A, A(1), A(1)(a) and A(1)(b), A(2) through A(4);
2. B, B(1) through B(4), including all sub-paragraphs;
3. C, C(1) and C(2);
4. D.

FIFTH SPECIFICATION

PRACTICING BEYOND SCOPE AND WITHOUT PROPER SUPERVISION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(24)(McKinney Supp. 1999) by practicing beyond the scope permitted by law, and/or, performing without adequate supervision professional services which Respondent is authorized to perform only under the supervision of a licensed professional, as alleged in the facts of:

5. A, A(1), A(2) through A(4).

SIXTH SPECIFICATION

FAILURE TO COMPLY WITH LAW

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(16)(McKinney Supp. 1999) by reason of his willful or grossly negligent failure to comply with substantial provisions of the regulations of the Department of Health regulating the practice of medicine by Physician Assistants, as alleged in the facts of:

6. A, A(1), A(1)(a), A(2) through A(4).

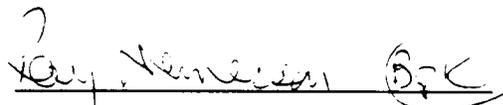
SEVENTH THROUGH TENTH SPECIFICATIONS

MORAL UNFITNESS

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(20)(McKinney Supp. 1999) by engaging in conduct in the practice of the profession of medicine that evidences moral unfitness to practice as alleged in the facts of the following:

7. A, A(1), A(1)(a), A(1)(b), A(2) through A(4);
8. B, B(1) through B(4), including all sub-paragraphs;
9. C, C(1) and C(2); and/or
10. D.

DATED: May 17, 1999
New York, New York


ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct