



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., Dr.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

PUBLIC

March 24, 2003

PUBLIC

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Tarek L. A. Haw, M.D.
a/k/a Tarek Lotfi Aly-Elhaw, M.D.
2048 E. Goodman Street
Boise, Idaho 83712

Robert Bogan, Esq.
Paul Robert Mahar, Esq.
NYS Department of Health
433 River Street, Suite 303
Troy, New York 12180

Tarek L. A. Haw, M.D.
a/k/a Tarek Lotfi Aly-Elhaw, M.D.
1075 N. Curtis - Suite 201
Boise, Idaho 83706

RE: In the Matter of Tarek L. A. Haw, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 03-04) of the Professional Medical Conduct Administrative Review Board in the above referenced matter. This Determination and Order shall be deemed effective upon 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.

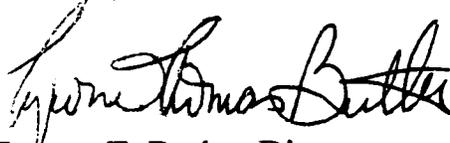
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified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

This exhausts all administrative remedies in this matter [PHL §230-c(5)].

Sincerely,



Tyrone T. Butler, Director
Bureau of Adjudication

TTB:cah
Enclosure

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

In the Matter of

Tarek L. A. Haw, M.D. (Respondent)

**A proceeding to review a Determination by a
Committee (Committee) from the Board for
Professional Medical Conduct (BPMC)**

Administrative Review Board (ARB)

Determination and Order No. 03-04

COPY

**Before ARB Members Grossman, Lynch, Pellman, Price and Briber
Administrative Law Judge James F. Horan drafted the Determination**

**For the Department of Health (Petitioner):
For the Respondent:**

**Paul Robert Maher, Esq.
Pro Se**

After conducting a hearing pursuant to N.Y. Pub. Health Law § 230(10)(p)(McKinney's Supp. 2003), a BPMC Committee sustained charges that the Respondent violated N. Y. Educ. Law §6530(9)(b)&(9)(d) (McKinney Supp. 2003) by engaging in conduct that resulted in disciplinary action in another state (Idaho). The Committee voted a censure and reprimand against the Respondent's New York Medical License (License). The Respondent then filed a Notice requesting that the ARB review the Committee Determination's pursuant to N.Y. Pub. Health Law § 230-c (McKinney's Supp. 2003). After reviewing the hearing record and the review submissions from both parties, the ARB affirms the Committee's Determination that the Respondent engaged in conduct that made the Respondent liable for disciplinary action against his License, but the ARB modifies the grounds that provide the basis for that Determination. We also overturn the Committee's Determination on penalty. We vote to place the Respondent's License on probation for three years, under that the Terms that appear in the Appendix to this Determination.

Committee Determination on the Charges

The Petitioner commenced the proceeding by filing charges with BPMC alleging that the Respondent violated N. Y. Educ. Law §§ 6530(9)(b) & (9)(d) (McKinney Supp. 2003) by committing professional misconduct because:

- the duly authorized professional disciplinary agency from Idaho found the Respondent guilty for professional misconduct [§6530(9)(b)] and/or took disciplinary action against the Respondent's medical license in that state [§6530(9)(d)], for,
- conduct that would constitute professional misconduct, if the Respondent had committed such conduct in New York.

The Petitioner's Statement of Charges [Petitioner Exhibit 1] alleged that the Respondent's misconduct in Idaho would constitute misconduct if committed in New York, under the following categories:

- practicing medicine with negligence on more than one occasion, a violation under N. Y. Educ. Law §§ 6530(3) (McKinney Supp. 2003);
- practicing medicine with incompetence on more than one occasion, a violation under N.Y. Educ. Law § 6530(5)(McKinney Supp. 2003);
- failure to comply with an order of the Board, a violation under N.Y. Educ. Law § 6530(15) (McKinney Supp. 2003), and,
- engaging in conduct that evidences moral unfitness, a violation under N.Y. Educ. Law § 6530(25)(McKinney Supp. 2003).

An expedited hearing (Direct Referral Proceeding) ensued pursuant to N.Y. Pub. Health Law §230(10)(p)(McKinney 2003), before a BPMC Committee, which rendered the Determination

now on review. In the Direct Referral Proceeding, the statute limits the Committee to determining the nature and severity for the penalty to impose against the licensee, see In the Matter of Wolkoff v. Chassin, 89 N.Y.2d 250 (1996).

The Committee determined that the Idaho State Board of Medicine (Idaho Board) entered a Final Order that restricted the Respondent's License to prohibit the Respondent from prescribing, dispensing, administering and otherwise treating any female patients with injectable hormone therapy. The Idaho Board also reprimanded the Respondent and fined him \$20,000.00. In addition, the Idaho Board ordered the Respondent to pay \$116,067.05 for costs of investigation and prosecution, based on violating the community standards of health care, violating an Idaho Board Order and obstructing an investigation by the Idaho Board.

The Committee held that the Respondent's conduct in Idaho would amount to negligence on more than one occasion in New York due to the Idaho Board's finding that the Respondent dispensed unlabeled syringes of estrogen and testosterone. The Committee also held that the Respondent failed to comply with orders of the Idaho Board, which would have amounted to failing to comply with orders of the Board if the Respondent committed such misconduct in New York. The Committee determined the conduct in Idaho and the findings by the Idaho Board made the Respondent liable for disciplinary action in New York pursuant to N. Y. Educ. Law §§ 6530(9)(b) & (9)(d). The Committee found insufficient evidence to find the Respondent liable for disciplinary action for using injectable estrogen in Idaho, upon the Committee's finding the use of injectable estrogen legal in New York. The Committee voted to censure and reprimand the Respondent for dispensing the unlabeled syringes and for failing to comply with the Idaho Board orders.

Review History and Issues

The Committee rendered their Determination on January 6, 2003. This proceeding commenced on January 17, 2003, when the ARB received the Respondent's Notice requesting a Review. The record for review contained the Committee's Determination, the hearing record, the Respondent's Review Notice and Attachment and the Petitioner's response. The record closed when the ARB received the Petitioner's response on March 4, 2003.

With the Respondent's Review Notice, he attached a copy the Idaho Court Decision in Haw v. Idaho State Board of Medicine, No. CV Oc02-02252D (4th Jud. Dist., Dec. 31, 2002). The Respondent indicated that the Decision set aside the Idaho Board's Order in his case.

Upon receiving the Respondent's Notice and attachment, the Administrative Officer for the ARB contacted the parties and indicated that if the Respondent wished the Notice and Attachment to constitute his total submission to the ARB, then the Respondent should advise the Administrative Officer and the counsel for the Petitioner.

On March 4, 2003, the Petitioner's counsel submitted a response brief to the ARB that indicated that the Respondent had submitted no review brief separate from the Notice and Attachment and that the Respondent also provided no letter advising the Petitioner's counsel that the Respondent would rely solely on the Notice and the Attachment as a review submission. In response to the Notice and Attachment, the Petitioner argued that the Idaho Court Order affirmed findings by the Idaho Board that the Respondent breached an identified standard of care in treating patients and that the Respondent made no dispute with the finding that he delivered syringes to patients without labels. The Petitioner requests that the ARB leave the Committee's Determination undisturbed.

Determination

The ARB has considered the record and the parties' briefs. We accept the submissions by the Respondent and the Petitioner, even though the Respondent disregarded the instructions by our Administrative Officer concerning the Respondent's Notice. On the Respondent's motion and on our own, we overturn the Committee and dismiss the charges that the Respondent failed to comply with Idaho Board Orders. On our own motion, we sustain, but modify, the Committee's Determination that the Respondent practiced with negligence on more than one occasion. On our own motion, we affirm the Committee's Determination to censure and reprimand the Respondent, but we modify the penalty and place the Respondent on probation for three years, under the terms that appear in the Appendix to this Determination.

Respondent's Notice: Under N.Y. Pub. Health Law § 230-c(4)(a), the party that files a Review Notice must perfect that notice by filing a review brief within thirty days. The failure to file a brief can lead to the Review Notice's dismissal. The adverse party receives seven days from receiving the appealing party's brief to file a response. In this case, the Respondent filed only a Review Notice with an Attachment. The Administrative Officer for the ARB asked the Respondent to indicate by letter to the ARB and the Petitioner whether the Respondent would be submitting only the Notice with Attachment or whether the Respondent would also submit a separate brief. The Respondent never filed a review brief and failed to answer the Administrative Officer's letter. The Respondent's conduct caused possible prejudice to the Petitioner, because the Petitioner had no idea whether to file a response to the Notice and Attachment or to wait for a brief and file a response to the brief.

The ARB chooses against dismissing the Respondent's Notice for failure to perfect the appeal. We note that no attorney represented the Respondent in this review, so we will overlook

the Respondent's procedural error and we will accept the Respondent's Notice with Attachment. We will also accept the March 4, 2003 response from the Petitioner, so that the Petitioner will suffer no prejudice from the Respondent's failure to inform the ARB and the Petitioner concerning the Respondent intentions about filing a separate review brief.

ARB Review Authority: In reviewing a Committee's Determination under N.Y. Pub. Health Law § 230-c (4)(a), the ARB determines whether the Determination and Penalty are consistent with the Committee's findings of fact and conclusions of law; and, whether the Penalty is appropriate and within the scope of penalties which N.Y. Pub. Health Law § 230-a permits. The ARB may substitute our judgement for that of the Committee, in deciding upon a penalty Matter of Bogdan v. Med. Conduct Bd. 195 A.D.2d 86, 606 N.Y.S.2d 381 (3rd Dept. 1993) and in determining guilt on the charges, Matter of Spartalis v. State Bd. for Prof. Med. Conduct 205 A.D.2d 940, 613 NYS 2d 759 (3rd Dept. 1994). We may choose to substitute our judgement and impose a more severe sanction than the Committee on our own motion, Matter of Kabnick v. Chassin, 89 N.Y.2d 828 (1996).

Failing To Comply With A Board Order: The Committee determined that the Respondent's Idaho misconduct included what in New York would constitute failure to comply with an order of the Board, a violation under N.Y. Educ. Law § 6530(15). The Committee held that the Respondent failed to turn over patient charts in response to an Idaho Board order and that the Respondent placed advertisements in a newspaper naming expert witnesses in the hearing against him.

The Idaho Board fined the Respondent \$20,000.00 for violating a protective order, by placing two advertisements in newspapers concerning witnesses against the Respondent. The Respondent's Review Notice argued that the Idaho Court decision in Haw v. Idaho State Board

of Medicine, struck down the decision by the Idaho Board. The ARB holds that the Idaho District Court Decision did indeed invalidate the fine concerning the advertisements and the Court remanded to the Idaho Board for reconsideration. The advertisements, therefore, failed to provide grounds for the Committee to impose a sanction against the Respondent's New York License.

The Committee also based their penalty against the Respondent, in part, on their finding that the Respondent failed to turn over patient charts to the Idaho Board. Nothing in the District Court Decision addressed the patient charts issue. The ARB, however, reviewed the findings from the Idaho Board. We discovered that the Idaho Board made no finding that the Respondent failed to turn over patient charts. The complaint before the Idaho Board, at Count 23, charged that the Respondent failed to provide upon demand certain records. The Administrative Law Judge who made the Findings of Fact in the Respondent's case found insufficient evidence to support the records' charge [Petitioner Hearing Exhibit 5, Recommended Order, pages 85-86]. The Idaho Board adopted that finding in its final order [Petitioner Hearing Exhibit 5, Final Order, page 2]. On our own motion, the ARB concludes that no grounds existed for the Committee to find that the Respondent failed to comply with an Idaho Board order to produce documents.

The ARB overturns the Committee's Determination that the Respondent's conduct in Idaho would amount to misconduct in New York as a failure to comply with an order of the Board, a violation under N.Y. Educ. Law § 6530(15).

Negligence On More Than One Occasion: The Idaho Board found that the Respondent violated the standards of care in treating certain patients with injectable estrogen as hormone therapy, in that:

- no proper indication existed for estrogen therapy of any kind in some patients, and/or,
- indications existed for other forms or modalities of treatment.

The Idaho Board also found that the Respondent dispensed unlabeled syringes to patients. The Respondent argued that the decision in Haw v. Idaho State Board of Medicine invalidated the entire basis for the Committee's determination in New York. Upon reviewing Haw v. Idaho State Board of Medicine, the ARB rejects the Respondent's argument. Although the District Court invalidated the Idaho Board fine on the advertisements, the Court affirmed the Idaho Board's findings concerning both injectable estrogen and dispensing the unlabeled syringes. As to the unlabeled syringes, the Court found that the Respondent made no dispute over the Idaho Board finding that the Respondent delivered syringes without labels to patients.

The Committee held that by delivering the unlabeled syringes to patients, the Respondent engaged in conduct that would constitute professional misconduct in New York. We affirm the Committee's Determination on the unlabeled syringes.

The Committee dismissed the specification charging that the Idaho conduct involving the injectable estrogen therapy would constitute misconduct in New York. On our own motion, we overturn the Committee and sustain the specification. The Committee dismissed the specification upon concluding that using injectable estrogen is legal in New York. We conclude that the Committee erred in dismissing the specification, because the specification in no way concerned injectable estrogen's legal use in New York. The Idaho Board found that the Respondent violated care standards by treating certain patients with injectable estrogen as hormone therapy, without indication and/or when indications existed to use other forms or modalities of hormone therapy. The ARB concludes that the Idaho Board's findings concerned improper use rather than illegal

use. We conclude further that the Respondent's conduct in violating care standards in Idaho would constitute practicing with negligence on more than one occasion in New York.

We conclude that the Respondent's conduct concerning the injectable estrogen therapy and the unlabeled syringes would make the Respondent liable for disciplinary action pursuant to N. Y. Educ. Law §§ 6530(9)(b) & (9)(d).

Penalty: The Committee voted to censure and reprimand the Respondent. The ARB finds that penalty inappropriate. By dispensing the unlabeled syringes and by using injectable estrogen improperly, the Respondent has called into doubt his judgement in providing care. In addition to censuring and reprimanding the Respondent, we conclude that the Respondent should practice for three years on probation, to assure that the Respondent has corrected the problems in his practice that the Idaho Board findings identified. We hold that the three years on probation provides the appropriate penalty for either dispensing the unlabeled syringes, standing alone, or for using the injectable estrogen improperly, standing alone. The three-year probation will also provide a sufficient sanction for the two violations combined. We provide the Probation Terms at the Appendix to this Determination.

ORDER

NOW, with this Determination as our basis, the ARB renders the following **ORDER**:

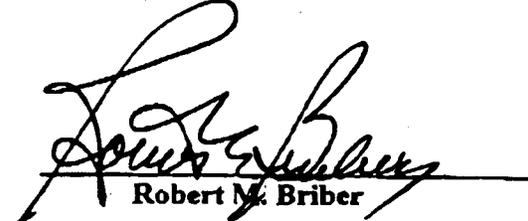
1. The ARB affirms the Committee's Determination that the Respondent committed professional misconduct.
2. The ARB overturns the Committee's Determination to limit the penalty in this case to a censure and reprimand.
3. The ARB votes to place the Respondent on probation for three years under the terms that the ARB specifies in the Appendix to this Determination.

Robert M. Briber
Thea Graves Pellman
Winston S. Price, M.D.
Stanley L. Grossman, M.D.
Therese G. Lynch, M.D.

In the Matter of Tarek L. A. Haw, M.D.

Robert M. Briber, an ARB Member, concurs in the Determination and Order in the Matter of Dr. Haw.

Dated: March 18, 2003



Robert M. Briber

In the Matter of Tarek L. A. Haw, M.D.

Thea Graves Pellman, an ARB Member concurs in the Determination and Order in the

Matter of Dr. Haw.

Dated: 3/18/03, 2003

A handwritten signature in cursive script, appearing to read 'Thea Graves Pellman', written over a horizontal line.

Thea Graves Pellman

In the Matter of Tarek L. A. Haw, M.D.

Winston S. Price, M.D., an ARB Member concurs in the Determination and Order in the Matter of

Dr. Haw.

Dated: 03/19, 2003

A handwritten signature in black ink, appearing to read 'W. S. Price', written over a horizontal line.

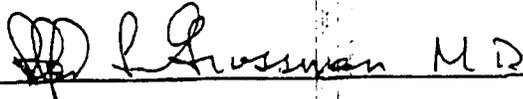
Winston S. Price, M.D.

In the Matter of Tarek L. A. Haw, M.D.

Stanley L. Grossman, an ARB Member concurs in the Determination and Order in the

Matter of Dr. Haw.

Dated: March 20, 2003

 Stanley L. Grossman M.D.

Stanley L Grossman, M.D.

In the Matter of Tarek L. A. Haw, M.D.

Therese G. Lynch, M.D., an ARB Member concurs in the Determination and Order in the Matter of Dr. Haw.

Dated: March 17, 2003

Therese G. Lynch M.D.

Therese G. Lynch, M.D.

Appendix

Terms of Probation

1. The Respondent shall conduct himself in all ways in a manner befitting his professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his profession.
2. The Respondent shall submit written notification to the New York State Department of Health addressed to the Director, Office for Professional Medical Conduct (OPMC), to include a full description of any employment and practice, professional and residential addresses and telephone numbers within or without New York State, and any and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty days of each action.
3. The Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of the Respondent's compliance with the terms of this Order. Respondent shall personally meet with a person designated by the Director of OPMC as requested by the Director.
4. The period of probation shall be tolled during periods in which Respondent is not engaged in the active practice of medicine in New York State. Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in or intends to leave the active practice of medicine in New York State for a period of thirty (30) consecutive days or more. Respondent shall then notify the Director again prior to any change in that status. The period of probation shall resume and any terms of probation which were not fulfilled shall be fulfilled upon Respondent's return to practice in New York State.
5. The Respondent's professional performance shall be reviewed by the Director of OPMC. This review shall may include at least a quarterly a review of office records, patient records and/or hospital charts, interviews with or periodic visits with Respondent and his staff at practice locations or OPMC offices. The Director shall also conduct random record reviews and interviews.
6. The Respondent shall maintain legible and complete medical records which accurately reflect the evaluation and treatment of patients. The medical records shall contain all information required by State rules and regulations regarding controlled substances.
7. The Respondent shall comply with all terms, conditions, restrictions, limitations and penalties to which he or she is subject pursuant to the Order and shall assume and bear all costs related to compliance. **Upon receipt of evidence of noncompliance with, or any violation of these terms, the Director of OPMC and/or the Board may initiate a violation of**

probation proceeding and/or any such other proceeding against Respondent as may be authorized pursuant to the law.



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., Dr.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

January 6, 2003

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Tarek L. A. Haw, M.D.
A/k/a Tarek Lotfi Aly-Elhaw, M.D.
2048 E. Goodman Street
Boise, Idaho 83712

Robert Bogan, Esq.
Paul Robert Mahar, Esq.
NYS Department of Health
Office of Professional
Medical Conduct
433 River Street, Ste 303
Troy, New York 12180

Tarek L. A. Haw, M.D.
A/k/a Tarek Lotfi Aly-Elhaw, M.D.
1075 N. Curtis
Suite 201
Boise, Idaho 83706

**RE: In the Matter of Tarek L. A. Haw, M.D.,
A/K/A Tarek Lotfi Aly-Elhaw, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. BPMC 03-04) 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.

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.

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, appearing to read "Tyrone T. Butler". The signature is written in a cursive style with a large initial "T".

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:djh
Enclosure

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

COPY

IN THE MATTER
OF
TAREK L. A. HAW, M.D.
aka
TAREK LOTFI ALY-ELHAW, M.D.

DETERMINATION

AND

ORDER

BPMC No. 03-04

A hearing was held on December 19, 2002, at the offices of the New York State Department of Health ("the Petitioner"). A Notice of Referral Proceeding and a Statement of Charges, both dated October 11, 2002, were served upon the Respondent, **Tarek L. A. Haw, aka Tarek Lotfi Aly-Elhaw, M.D.** **Arsenio G. Agopovich, M.D.**, Chairperson, **Ernst A. Kopp, M.D.**, and **Rev. Thomas Kornmeyer**, 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. **John Wiley, Esq.**, Administrative Law Judge, served as the Administrative Officer.

The Petitioner appeared by **Donald P. Berens, Jr., Esq.**, General Counsel, by **Robert Bogan, Esq.**, and **Paul Robert Maher, Esq.**, of Counsel. The Respondent appeared in person and represented himself.

Evidence was received 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). The statute provides for an expedited hearing when 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 a prior criminal conviction in New York State or another jurisdiction, or upon a prior administrative adjudication regarding conduct that would amount to professional misconduct, if committed in New York. The scope of an expedited hearing is limited to a determination of the nature and severity of the penalty to be imposed upon the licensee.

In the instant case, the Respondent is charged with professional misconduct pursuant to Education Law Section 6530(9)(b) and (d). Copies of the Notice of Referral Proceeding and the Statement of Charges are attached to this Determination and Order as Appendix 1.

WITNESSES

For the Petitioner:

None

For the Respondent:

Tarek L. A. Haw, M.D.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers below in parentheses refer to exhibits, denoted by the prefix "Ex." These citations refer to 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. All Hearing Committee findings were unanimous.

1. Tarek L. A. Haw, M.D., aka Tarek Lotfi Aly-Elhaw, M.D., the Respondent, was authorized to practice medicine in New York State on October 30, 1981, by the

issuance of license number 148036 by the New York State Education Department (Petitioner's Ex. 4).

2. On January 23, 2002, the Idaho State Board of Medicine ("Idaho Board"), by a Findings of Fact, Conclusions of Law and Final Order ("Idaho Order"), permanently restricted the Respondent's license to practice medicine to prohibit him from prescribing, dispensing, administering, or otherwise treating any female patients with injectable hormone therapy, reprimanded him, imposed a \$20,000.00 administrative fine, and required him to pay \$116,067.05 costs of investigation and prosecution, based on violating the community standards of health care, violating an order of the Idaho Board, and obstructing an investigation by the Idaho Board (Petitioner's Ex. 5).

HEARING COMMITTEE CONCLUSIONS

The Hearing Committee concludes that the conduct of the Respondent would constitute professional misconduct under the laws of New York State, had the conduct occurred in New York State, pursuant to:

- New York Education Law Section 6530(3) - "Practicing the profession with negligence on more than one occasion;" and
- New York Education Law Section 6530(15) - "Failure to comply with an order issued [by the Board]...."

The Petitioner also charged the Respondent with incompetence on more than one occasion (New York Education Law Section 6530[5]), but the Hearing Committee concludes that there is no evidence in support of this charge.

VOTE OF THE HEARING COMMITTEE

FIRST SPECIFICATION

"Respondent violated New York Education Law Section 6530(9)(b) by having been found guilty of improper professional practice or professional misconduct by a duly

authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York state, constitute professional misconduct under the laws of New York state..."

VOTE: Sustained (3-0)

SECOND SPECIFICATION

"Respondent violated New York Education Law Section 6530(9)(d) by having disciplinary action taken by a duly authorized disciplinary agency of another state, where the conduct resulting in the disciplinary action would, if committed in New York state, constitute professional misconduct under the laws of New York state..."

VOTE: Sustained (3-0)

HEARING COMMITTEE DETERMINATION

The Idaho Order faulted the Respondent for several acts and practices, but the primary criticism in the Idaho Order was that the Respondent regularly used injectable estrogen as hormone therapy for female patients rather than using other forms and modalities of hormone therapy. The Petitioner contended that, had the Respondent engaged in this practice in New York State, it would have constituted under New York State law both negligence on more than one occasion and incompetence on more than one occasion. The Respondent testified that his practices and procedures regarding injectable estrogen are legal in New York State and do not constitute professional misconduct of any type in New York State. The Hearing Committee finds insufficient evidence in the hearing record to adopt the Petitioner's position. The Hearing Committee concludes that the Respondent's use of injectable estrogen is legal in New York State and sees no reason in the hearing record to conclude that the Respondent's practices regarding this procedure constitute either negligence or incompetence in New York State.

The Idaho Order does cite one practice of the Respondent that does constitute negligence on more than one occasion under New York State law. The Respondent on occasion supplied his patients with unlabeled syringes of estrogen and testosterone. The Respondent did not address this subject during the hearing and in no way contended that it is an acceptable practice. Although the Hearing Committee finds this practice to be negligent, the hearing record is insufficient to support a conclusion that it is also an act of incompetence.

The Idaho Order also supports a finding of failure to comply with an order of the Board. The Respondent failed to turn over patient charts when ordered to do so by the Idaho Board and violated another order of the Idaho Board by placing advertisements in a newspaper naming expert witnesses who were to testify against him.

The Petitioner recommended a penalty consisting of a censure and reprimand, and a limitation on the Respondent's license prohibiting him from using injectable estrogen. Since the Hearing Committee did not conclude that the use of injectable estrogen constitutes professional misconduct, the proposed limitation on the Respondent's license will not be imposed. The Respondent will be censured and reprimanded for dispensing unlabeled syringes of estrogen and testosterone and for failure to comply with orders of the Idaho Board.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Respondent is censured and reprimanded.
2. This Order shall be effective upon service on the Respondent by personal service or by certified or registered mail.

DATED: Troy, New York

6/1/02, 2003



Arsenio G. Agopovich, M.D.
Chairperson

Ernst A. Kopp, Esq.
Rev. Thomas Kornmeyer

APPENDIX I

ORIGINAL



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

IN THE MATTER
OF
TAREK L. A. HAW, M.D.
aka
TAREK LOTFI ALY – ELHAW, M.D.
CO-02-08-4207-A

NOTICE OF
REFERRAL
PROCEEDING

TO: TAREK L. A. HAW, M.D., aka TAREK LOTFI ALY – ELHAW, M.D.
2048 E. Goodman Street
Boise, Idaho 83712

TAREK L. A. HAW, M.D., aka TAREK LOTFI ALY – ELHAW, M.D.
1075 N. Curtis
Suite 201
Boise, Idaho 83706

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law § 230(10)(p) and N.Y. State Admin. Proc. Act Sections 301-307 and 401. The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 21st day of November 2002, at 10:00 in the forenoon of that day at the Hedley Park Place, 5th Floor, 433 River Street, Troy, New York 12180.

At the proceeding, evidence will be received concerning the allegations set forth in the attached Statement of Charges. A stenographic record of the proceeding will be made and the witnesses at the proceeding will be sworn and examined.

You may appear in person at the proceeding and may be represented by counsel. You may produce evidence or sworn testimony on your behalf. Such evidence or sworn testimony shall be strictly limited to evidence and testimony relating to the nature and severity of the penalty to be imposed upon the licensee. Where the charges are based on the conviction of state law crimes in other jurisdictions, evidence may be offered that would show that the conviction would not be a crime in New York state. The Committee also may limit the number of witnesses whose testimony will be received, as well as the length of time any witness will be permitted to testify.

If you intend to present sworn testimony, the number of witnesses and an estimate of the time necessary for their direct examination must be submitted to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Hedley Park Place, 5th Floor, 433 River Street, Troy, New York, ATTENTION: HON. TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION, (hereinafter "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before November 11, 2002.

Pursuant to the provisions of N.Y. Public Health Law §230(10)(p), you shall file a written answer to each of the Charges and Allegations in the Statement of Charges no later than ten days prior to the hearing. Any Charge of Allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such an 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. You may file a brief and affidavits with the Committee. Six copies of all such papers you wish to submit must be filed with the Bureau of Adjudication at the address indicated above on or before November 11, 2002, and a copy of all papers must be served on the same date on the Department of Health attorney indicated below. Pursuant to Section 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.

The proceeding may be held whether or not you appear. Please note that requests for adjournments must be made in writing to the Bureau of Adjudication, at the address indicated above, with a copy of the request to the attorney for the Department of Health, whose name appears below, at least five days prior to the scheduled date of the proceeding. Adjournment requests are not routinely granted. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation. Failure to obtain an attorney within a reasonable period of time prior to the proceeding will not be grounds for an adjournment.

The Committee will make a written report of its findings, conclusions as to guilt, and a determination. Such determination may be reviewed by the Administrative Review Board for Professional Medical Conduct.

SINCE THESE PROCEEDINGS MAY RESULT IN A DETERMINATION
THAT SUSPENDS OR REVOKES YOUR LICENSE TO PRACTICE
MEDICINE IN NEW YORK STATE AND/OR IMPOSES A FINE FOR
EACH OFFENSE CHARGED, YOU ARE URGED TO OBTAIN AN
ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: Albany, New York

October 11, 2002



PETER D. VAN BUREN

Deputy Counsel

Bureau of Professional Medical Conduct

Inquiries should be addressed to:

Robert Bogan
Associate Counsel
New York State Department of Health
Office of Professional Medical Conduct
433 River Street – Suite 303
Troy, New York 12180
(518) 402-0828

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

IN THE MATTER	STATEMENT
OF	OF
TAREK L. A. HAW, M.D., aka TAREK LOTFI ALY-ELHAW CO-02-08-4207-A	CHARGES

TAREK L. A. HAW, M.D., aka TAREK LOTFI ALY-ELHAW, M.D., the Respondent, was authorized to practice medicine in New York state on October 30, 1981, by the issuance of license number 148036 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about January 23, 2002, the Idaho State Board of Medicine, (hereinafter "Idaho Board"), by a Findings of Fact, Conclusions of Law and Final Order (hereinafter "Idaho Order"), permanently restricted Respondent's license to practice medicine to prohibit him from prescribing, dispensing, administering, or otherwise treating any female patients with injectable hormone therapy, reprimanded him, imposed a \$20,000.00 administrative fine, and required him to pay \$116,067.05 costs of investigation and prosecution, based on violating the community standards of health care, violating an order of the Idaho Board, and obstructing the investigation by the Idaho Board.

B. The conduct resulting in the Idaho Medical Board disciplinary action against Respondent would constitute misconduct under the laws of New York State, pursuant to the following sections of New York State law:

1. New York Education Law §6530(3) (negligence on more than one occasion);
2. New York Education Law §6530(5) (incompetence on more than one occasion);
3. New York Education Law §6530(15) (failure to comply with an order of the Board); and/or
4. New York Education Law §6530(20) (moral unfitness).

SPECIFICATIONS
FIRST SPECIFICATION

Respondent violated New York Education Law §6530(9)(b) by having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the findings was based 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 A and/or B.

SECOND SPECIFICATION

Respondent violated New York Education Law §6530(9)(d) by having disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the disciplinary action would, if committed in New York state, constitute professional misconduct under the laws New York state, in that Petitioner charges:

2. The facts in paragraphs A and/or B.

DATED: *Oct. 11*, 2002
Albany, New York


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