



New York State Board for Professional Medical Conduct

433 River Street, Suite 303 Troy, New York 12180-2299 • (518) 402-0863

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

Patrick F. Carone, M.D., M.P.H.
Chair
Ansel R. Marks, M.D., J.D.
Executive Secretary

February 10, 1998

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

James Gaston, M.D.
109 East 67th Street
New York, New York 10021

RE: License No. 085014

Dear Dr. Gaston:

Enclosed please find Order #BPMC 98-31 of the New York State Board for Professional Medical Conduct. This Order and any penalty provided therein goes into effect upon receipt of this letter or seven (7) days after the date of this letter, whichever is earlier.

If the penalty imposed by the Order is a surrender, revocation or suspension of this license, you are required to deliver to the Board the license and registration within five (5) days of receipt of the Order.

Board for Professional Medical Conduct
New York State Department of Health
Hedley Park Place, Suite 303
433 River Street
Troy, New York 12180

If the penalty imposed by the Order is a fine, please write the check payable to the New York State Department of Health. Noting the BPMC Order number on your remittance will assist in proper crediting. Payments should be directed to the following address:

Bureau of Accounts Management
New York State Department of Health
Corning Tower, Room 1315
Empire State Plaza
Albany, New York 12237

Sincerely,



Ansel R. Marks, M.D., J.D.
Executive Secretary
Board for Professional Medical Conduct

Enclosure

cc: Donald Bernstein, Esq.
Tressler, Soderstrom, Maloney & Priess
655 Madison Avenue, Suite 1900
New York, New York 10021-8043

Steven J. Masef, Esq.

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

IN THE MATTER
OF
JAMES P. GASTON, M.D.

CONSENT
AGREEMENT
AND
ORDER
BPMC #98-31

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

JAMES P. GASTON, M.D., being duly sworn, deposes and says:

That in or about October, 1960, I was licensed to practice as a physician in the State of New York, having been issued License No. 085014 by the New York State Education Department.

My current address is 109 East 67th Street, New York, N.Y. 10021, and I will advise the Director of the Office of Professional Medical Conduct of any change of my address.

I understand that the New York State Board for Professional Medical Conduct has charged me with three specifications of professional misconduct.

A copy of the Statement of Charges is annexed hereto, made a part hereof, and marked as Exhibit "A".

I agree not to contest the allegations in full satisfaction of the charges against me. I hereby agree to the following penalty:

- a. Censure and Reprimand;
- b. A fine of THREE THOUSAND DOLLARS (\$3,000.00) payable within thirty (30) days from the date of the Order approving this consent.

I further agree that the Consent Order for which I hereby apply shall impose a condition that, except during periods of actual

suspension, I maintain current registration of my license with the New York State Education Department Division of Professional Licensing Services, and pay all registration fees. This condition shall be in effect beginning thirty days after the effective date of the Consent Order and continuing until the full term of the Order has run, and until any associated period of probation and all probation terms have been completed and satisfied. I hereby stipulate that any failure by me to comply with such condition shall constitute misconduct as defined by New York State Education Law §6530(29)(McKinney Supp 1997).

I agree that in the event I am charged with professional misconduct in the future, this agreement and order shall be admitted into evidence in that proceeding.

I hereby make this Application to the State Board for Professional Medical Conduct (the Board) and request that it be granted.

I understand that, in the event that this Application is not granted by the Board, nothing contained herein shall be binding upon me or construed to be an admission of any act of misconduct alleged or charged against me, such Application shall not be used against me in any way and shall be kept in strict confidence during the pendency of the professional misconduct disciplinary proceeding; and such denial by the Board shall be made without prejudice to the continuance of any disciplinary proceeding and the final determination by the Board pursuant to the provisions of the Public Health Law.

I agree that, in the event the Board grants my Application, as set forth herein, an order of the Chairperson of the Board shall be issued in accordance

with same.

I am making this Application of my own free will and accord and not under duress, compulsion or restraint of any kind or manner. In consideration of the value to me of the acceptance by the Board of this Application, allowing me to resolve this matter without the various risks and burdens of a hearing on the merits, I knowingly waive any right I may have to contest the Consent Order for which I hereby apply, whether administratively or judicially, and ask that the Application be granted.



JAMES P. GASTON, M.D.
RESPONDENT

Sworn to before me this

2nd day of *February*, 19*98*



NOTARY PUBLIC

MARTHA M. REDO
Notary Public, State of New York
No. 31-4957575
Qualified in New York County
Commission Expires October 16, 19*99*

The undersigned agree to the attached application of the Respondent and to the proposed penalty based on the terms and conditions thereof.

DATE: 2 Feb '93


TRESSLER, SODERSTROM, MALONEY
& PRIESS
by DONALD BERNSTEIN, ESQ.
Attorney for Respondent

DATE: Feb. 3, 1998


STEVEN J. MASEF
Assistant Counsel
Bureau of Professional
Medical Conduct

DATE: February 4, 1998


ANNE F. SAILE
Director
Office of Professional
Medical Conduct

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

IN THE MATTER
OF
JAMES P. GASTON, M.D.

CONSENT
ORDER

Upon the proposed agreement of JAMES P. GASTON, M.D. (Respondent) for Consent Order, which application is made a part hereof, it is agreed to and ORDERED, that the application and the provisions thereof are hereby adopted and so ORDERED, and it is further

ORDERED, that this order shall take effect as of the date of the personal service of this order upon Respondent, upon receipt by Respondent of this order via certified mail, or seven days after mailing of this order by certified mail, whichever is earliest.

SO ORDERED.

DATED: 2/19/98


PATRICK F. CARONE, M.D., M.P.H.
Chairperson
State Board for Professional
Medical Conduct

EXHIBIT A

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

IN THE MATTER
OF
JAMES P. GASTON, M.D.

NOTICE
OF
HEARING

TO: JAMES P. GASTON, M.D.
109 East 67th Street
New York, N.Y. 10021

PLEASE TAKE NOTICE:

A hearing will be held pursuant to the provisions of N.Y. Pub. Health Law §230 (McKinney 1990 and Supp. 1997) and N.Y. State Admin. Proc. Act §§301-307 and 401 (McKinney 1984 and Supp. 1997). The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on February 9, 1998, 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. 1997) 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.
1997). YOU ARE URGED TO OBTAIN AN ATTORNEY TO
REPRESENT YOU IN THIS MATTER.

DATED: New York, New York
December 15, 1997



ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct

Inquiries should be directed to: Steven J. Masef
Assistant Counsel
Bureau of Professional
Medical Conduct
5 Penn Plaza, Suite 601
New York, New York 10001
(212) 613-2615

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

IN THE MATTER
OF
JAMES P. GASTON, M.D.

STATEMENT
OF
CHARGES

JAMES P. GASTON, M.D., the Respondent, was authorized to practice medicine in New York State on or about October 11, 1960, by the issuance of license number 085014 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. On or about August 14, 1995, Patient A by her attorneys requested copies of medical records from Respondent but Respondent failed to provide said copies of medical records notwithstanding the request (Patient A is identified in the attached Appendix A).
- B. On or about June 7, 1997, Respondent received written communication from the Department of Health instructing Respondent to provide copies of Patient A's medical records pursuant to Patient A's request of August 14, 1995, but Respondent failed to provide said copies of the medical records or otherwise respond.

- C. On or about July 25, 1997, Respondent received written communication from the Department of Health instructing Respondent to provide copies of Patient A's medical records pursuant to the request from Patient A on August 14, 1995 and the Department of Health communication received by Respondent on June 7, 1997. Respondent failed to provide such copies or otherwise respond.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

FAILURE TO PROVIDE ACCESS BY QUALIFIED PERSONS TO PATIENT INFORMATION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(40)(McKinney Supp. 1997) by failing to provide access by qualified persons to patient information in accordance with the standards set forth in section eighteen of the N.Y. Public Health Law as alleged in the facts of:

1. Paragraphs A, B and C.

SECOND AND THIRD SPECIFICATIONS
FAILING TO RESPOND TO WRITTEN COMMUNICATIONS

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(28)(McKinney Supp. 1997) by failing to respond within 30 days to written communications from the Department of Health and to make available any relevant records with respect to an inquiry or complaint about the licensee's professional misconduct, as alleged in the facts of:

2. Paragraph B
3. Paragraph C.

DATED: December 18, 1997
New York, New York



ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct