



STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12237

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

Karen Schimke
Executive Deputy Commissioner

May 24, 1996

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Maria M. Melendez, M.D.
96 Buell Street
Burlington, Vermont 76240

Nathan L. Dembin & Associates, P.C.
Nathan L. Dembin, Esq.
225 Broadway, Suite 1905
New York, New York 10007

Paul Stein, Esq.
NYS Department of Health
Metropolitan Regional Office
5 Penn Plaza-Sixth Floor
New York, New York 10001

RE: In the Matter of Maria M. Melendez, M.D.

Effective Date: 05/31/96

Dear Dr. Melendez, Mr. Dembin and Mr. Stein:

Enclosed please find the Determination and Order (No. 96-129) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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:

bcc: Dr. Vacanti
Ms. Riser
Ms. Bohenek
Ms. Saile
Mr. Osten
Mr. Horan
Mr. Kelleher (w/AOS)
SAPA File
Case File
Reading File

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

If your license or registration certificate is lost, misplaced or its whereabouts is otherwise unknown, you shall submit an affidavit to that effect. If subsequently you locate the requested items, they must then be delivered to the Office of Professional Medical Conduct in the manner noted above.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), and §230-c subdivisions 1 through 5, (McKinney Supp. 1992), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the licensee or the Department may seek a review of a committee determination.

Request for review of the Committee's determination by the Administrative Review Board stays all action until final determination by that Board. Summary orders are not stayed by Administrative Review Board reviews.

All notices of review must be served, by **certified mail**, upon the Administrative Review Board **and** the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

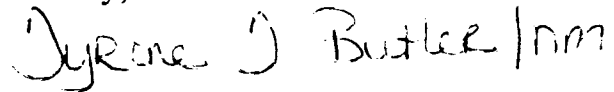
The notice of review served on the Administrative Review Board should be forwarded to:

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

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

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

Sincerely,

A handwritten signature in black ink that reads "Tyrone T. Butler /nm". The signature is written in a cursive style.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nm
Enclosure

COPY

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

**IN THE MATTER
OF
MARIA M. MELENDEZ, M.D.**

**DETERMINATION
AND
ORDER
BPMC-96-129**

PETER D. KUEMMEL, R.P.A., (Chair), GERALD WEINBERGER, M.D. and PASCAL J. IMPERATO, M.D. duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to § 230(10) of the Public Health Law.

MARC P. ZYLBERBERG, ESQ., ADMINISTRATIVE LAW JUDGE, served as the Administrative Officer.

The Department of Health appeared by **PAUL STEIN, ESQ.,** Associate Counsel.

Respondent, **MARIA M. MELENDEZ, M.D.,** appeared personally and was represented by **NATHAN L. DEMBIN & ASSOCIATES, P.C., NATHAN L. DEMBIN, ESQ.** of counsel.

A Hearing was held on March 19, 1996. Evidence was received, a witness was sworn or affirmed and examined. A Transcript of the proceeding was made. After consideration of the entire record, the Hearing Committee issues this Determination and Order, pursuant to the Public Health Law and the Education Law of the State of New York.

STATEMENT OF CASE

The State Board for Professional Medical Conduct is a duly authorized professional disciplinary agency of the State of New York (§ 230 et seq. of the Public Health Law of the State of New York [hereinafter "P.H.L."]).

This case, brought pursuant to P.H.L. § 230(10)(p), is also referred to as an "expedited hearing". The scope of an expedited hearing is strictly limited to evidence or sworn testimony relating to the nature and severity of the penalty (if any) to be imposed on the licensee¹ (Respondent).

MARIA M. MELENDEZ, M.D., ("Respondent") is charged with professional misconduct within the meaning of §6530(9)(a)(iii) Education Law of the State of New York ("Education Law") (Petitioner's Exhibit # 1 and § 6530[9][a][iii] of the Education Law).

Education Law §6530(9)(a)(iii) defines professional misconduct in terms of being convicted of committing an act constituting a crime under the law of another jurisdiction and which, if committed within New York, would have constituted a crime under the laws of New York State.

In order to find that Respondent committed professional misconduct, the Hearing Committee, pursuant to §6530(9)(a)(iii) of the Education Law, must determine: (1) whether Respondent has been convicted of a crime in another state and (2) whether Respondent's conduct or underlying act(s) would, if committed in New York State, constitute a crime under the laws of New York State.

¹ P.H.L. § 230(10)(p), fifth sentence.

Respondent is also charged with professional misconduct within the meaning of § 6530(9)(b) of the Education Law, to wit: "professional misconduct ... by reason of having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state ..." (Petitioner's Exhibit # 1 and § 6530[9][b] of the Education Law).

In order to find that Respondent committed professional misconduct, the Hearing Committee, pursuant to § 6530(9)(b) of the Education Law, must determine: (1) whether Respondent was found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state and (2) whether Respondent's conduct on which the findings were based would, if committed in New York State, constitute professional misconduct under the laws of New York State.

A copy of the Statement of Charges is attached to this Determination and Order as Appendix I.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. These facts represent evidence found persuasive by the Hearing Committee in arriving at a particular finding. All Findings and Conclusions herein were unanimous. The State, who has the burden of proof, was required to prove its case by a preponderance of the evidence. All Findings of Fact made by the Hearing Committee were established by at least a preponderance of the evidence.

1. Respondent was authorized to practice medicine in New York State on September 17, 1984 by the issuance of license number 160102 by the New York State Education Department (Petitioner's Exhibits # 1 & # 2)².

2. Respondent is currently registered with the New York State Education Department to practice medicine for the period January 1, 1995 through June 30, 1997 (Department's Exhibit # 2).

3. On December 15, 1993, the Attorney General for the State of Vermont charged Respondent with 2 counts of causing a false claim to be filed for reimbursement under the Medicaid program, in violation of 33 V.S.A. § 141(d) (Medicaid fraud) and 1 count of making a false prescription for a person who was not her patient, in violation of 18 V.S.A. § 4223(e) (prescription fraud) (Petitioner's Exhibit # 3).

4. The Vermont Attorney General alleged that Respondent gave to Jose Matos (Respondent's former husband) 1 prescription for Clorazepate, a regulated drug, and 1 prescription for Doxepin. These 2 prescription, issued on August 30, 1993, were made out to a Medicaid recipient, C.P., who was not a patient of Respondent. These 2 prescription were filled by a pharmacy on August 31, 1993 and the Medicaid Program was billed on September 9, 1993 (Petitioner's Exhibit # 3).

5. On August 22, 1994, Respondent plead guilty to 1 count of Medicaid fraud and 1 count of prescription fraud in satisfaction of all charges brought against her by the State of Vermont (Petitioner's Exhibits # 4, # 5 & # 6). Both offenses are felonies in Vermont (Petitioner's Exhibit # 7 at p. 34); (ALJ's Exhibit # 1).

² refers to exhibits in evidence submitted by the New York State Department of Health (Petitioner's or Department's Exhibit) or by Dr. Melendez (Respondent's Exhibit).

6. The total financial loss to the Medicaid program was between \$12 and \$100 (Petitioner's Exhibit # 7 at p. 34); [T-66]³.

7. As a result of her plea of guilty on August 22, 1994, Respondent was sentenced, on September 23, 1994, to: (1) "be imprisoned for no less than 2 years, no more than 6 years" on the Medicaid Fraud, which sentence was "all suspended"; (2) "be imprisoned for no less than 1 year, no more than 2 years" on the prescription fraud, which sentence was "all suspended". The execution of the above sentences was suspended and Respondent placed on probation, until further order of the Vermont Court with numerous specific conditions which are set forth in Petitioner's Exhibit # 8. The conditions contained in the probation order (Petitioner's Exhibit # 8) are not repeated at length in these Findings but are fully incorporated herein (Petitioner's Exhibits # 7 & # 8).

8. The Vermont State Board of Medical Practice ("**Vermont Board**") is a state agency charged with regulating the practice of medicine pursuant to the laws of the State of Vermont (Petitioner's Exhibit # 10); (ALJ's Exhibit # 1).

9. On April 6, 1994, the Vermont Board issued Specification of Charges alleging that Respondent had committed unprofessional conduct. On October 13, 1994, the Vermont Board issued Amended Specification of Charges alleging that Respondent had committed unprofessional conduct. Respondent was charged with violations of 26 V.S.A. § 1354 as follows:

(3) ... conviction of a felony ...;

³ Numbers in brackets refer to transcript page numbers [T-].

(6) ... prescribing ... drugs for other than legal and legitimate therapeutic purposes;

(8) willfully making ... a false record ... in her practice as a physician;

(22) ... gross failure to use and exercise on a particular occasion ... that degree of care, skill and proficiency which is commonly exercised by the ordinary skillful, careful and prudent physician engaged in similar practice under the same or similar conditions, ... Respondent was also charged with having engaged in unprofessional and dishonorable conduct in violations of 26 V.S.A. § 1398 (Petitioner's Exhibit # 10).

10. Respondent admitted the October 13, 1994 Amended Specification of Charges and admitted the alleged acts of unprofessional conduct set forth therein (Petitioner's Exhibits # 10 & # 11).

11. On September 8, 1995, the Vermont Board issued a hearing committee report with 47 Findings of Fact and 5 Conclusions of Law (Petitioner's Exhibit # 10).

12. On December 20, 1995, the Vermont Board issued a decision and Order, (a final administrative determination) ("**Final Order**") (Petitioner's Exhibit # 10).

13. The Hearing Committee accepts the Vermont Board's findings of fact, conclusions of law and Final Order and adopts same as part of its own Findings of Fact. The Vermont Board's findings, conclusions and Final Order are annexed hereto as appendix II and are incorporated herein (Petitioner's Exhibit # 10).

14. As a result of the December 20, 1995 Final Order, Respondent's Vermont medical license was suspended for 1 year effective June 5, 1995. As set forth in the Final Order, a number of conditions were imposed on Respondent's medical license (see Appendix II) (Petitioner's Exhibit # 10).

15. Respondent submitted a number of letters of support for the New York Hearing, copies of letters of support from the Vermont proceedings and proof of attendance at continuing medical education seminars (Respondent's Exhibits # A, # B & # C).

16. Respondent's prescriptions for Clorazepate and for Doxepin were the same medicine and dosages as prescribed for her by her therapist. These drugs were intended for Respondent's own use and not for resale or profit (Petitioner's Exhibit # 10); [T-67-68].

CONCLUSIONS OF LAW

The Hearing Committee makes the following conclusions, pursuant to the Findings of Fact listed above. All conclusions resulted from a unanimous vote of the Hearing Committee.

The Hearing Committee concludes that the following Factual Allegations, from the February 20, 1996 Statement of Charges, are **SUSTAINED** ⁴:

Paragraph A.1.	(3 - 4)
Paragraph A.2.	(5 - 7)
Paragraph B.1.	(8 - 9)
Paragraph B.2.	(10)
Paragraph B.3.	(11 - 14)

⁴ The numbers in parentheses refer to the Findings of Fact previously made herein by the Hearing Committee and support each Factual Allegation.

Based on the above, the Hearing Committee concludes that the following Specifications of Charges are **SUSTAINED**:⁵

FIRST SPECIFICATION: (Paragraphs: A.1. and A.2.)

SECOND SPECIFICATION: (Paragraphs: B.1., B.2. and B.3.)

! Professional Misconduct under §6530(9)(a)(iii) of the Education Law.

The Hearing Committee concludes that the Department of Health has shown, by a preponderance of the evidence, that Respondent was convicted of committing crimes (felonies) in Vermont under Vermont Law. The Hearing Committee further concludes that Respondent's conduct or acts, as committed in Vermont, would, if committed in New York constitutes the crime (Class A misdemeanor) of, at least, fraudulent practices. The Hearing Committee believes that the writing of 2 prescriptions to a person who is not a patient, for the purpose of obtaining the prescriptions for free and knowing that Medicaid would pay for the prescriptions falls within the language of Social Services Law § 366-b.

Respondent's convictions constitute professional misconduct under the laws of New York State. The Department of Health has met its burden of proof.

Therefore, Respondent has committed professional misconduct pursuant to § 6530(9)(a)(iii) of the Education Law.

⁵ The citations in parentheses refer to the Factual Allegations which support each Specification.

II Professional Misconduct under § 6530(9)(b) of the Education Law.

The Vermont State Board of Medical Examiners is a duly authorized professional disciplinary agency. In December 1995, said Medical Board issued a Final Order which suspended Respondent's license to practice medicine in the State of Vermont for one year.

Respondent's acts were violations of various sections of Vermont Laws which warranted disciplinary action by the Vermont Board. The Hearing Committee finds that Respondent's conduct, under the Final Order, if committed in New York State, would constitute professional misconduct under, at least, § 6530(2)⁶, § 6530(9)(a)(iii) (see discussion above) and § 6530(21)⁷ of the Education Law.

The Hearing Committee concludes that the Department of Health has shown by a preponderance of the evidence that Respondent was found guilty of improper professional practice by the State of Vermont and her conduct in Vermont would constitute professional misconduct under the laws of New York State. The Department of Health has met its statutory burden of proof.

Therefore, Respondent has committed professional misconduct pursuant to § 6530(9)(b) of the Education Law.

⁶ Each of the following is professional misconduct... [P]racticing the profession fraudulently ... ;

⁷ Each of the following is professional misconduct... 21. Willfully making ... a false report ... ;

DETERMINATION

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determines that Respondent's license to practice medicine in New York State should be **SUSPENDED** for six (6) months and said suspension should be **STAYED**. Respondent should be placed on probation in New York State for a period of six (6) months from the effective date of this Determination and Order and Respondent must comply with the terms and conditions of probation contained in Appendix III. One of the terms of and conditions of probation should include that Respondent only works in a supervised setting such as a P.H.L. Article 28 institution and not in a private practice type of situation. Respondent's probation should be supervised by the New York State Department of Health, by the Office of Professional Medical Conduct. Respondent must also fully comply with and successfully complete the terms of the Vermont Final Order or any amendment thereof.

This determination is reached after due and careful consideration of the full spectrum of penalties available pursuant to P.H.L. § 230-a, including:

(1) Censure and reprimand; (2) Suspension of the license, wholly or partially; (3) Limitations of the license; (4) Revocation of license; (5) Annulment of license or registration; (6) Limitations; (7) the imposition of monetary penalties; (8) a course of education or training; (9) performance of public service and (10) probation.

This case is not a typical Medicaid fraud case nor a typical prescription fraud case. There are a number of mitigating factors involved in the circumstances which Respondent found herself, which the Hearing Committee has taken into consideration.

The extensive findings made by the Vermont Board are very telling. It is clear that Respondent made a mistake and that this was an isolated incident. Respondent admitted the mistake and was forthright in attempting to resolve her problems. Respondent's acts were not done for enrichment and not done as a result of or due to a personal substance abuse problem. The prescriptions written by Respondent were not for resale but for her own use to treat her own malady pursuant to the same prescriptions of her physician. Respondent was faced with severe financial and emotional distress in August of 1993.

The Hearing Committee does not believe that one moment of weakness by Respondent should result in more severe penalties than that already imposed by the State of Vermont in the criminal proceedings and in the medical administrative proceedings.

The Hearing Committee does acknowledge that there was some negative conduct by Respondent in addition to and after the improper prescription writing. Respondent did not expect to get caught and at first she did try to cover up her acts.

However these negatives are overwhelmingly diminished by the positives listed above.

Respondent's testimony was forthright before the Hearing Committee. She was contrite and credible and has shown regret and remorse for her inappropriate actions.

The Hearing Committee believes that Respondent has learned from this experience. Respondent has been involved in public service work for most of her medical career. She has completed 800 hours of community service as ordered by the Vermont court. No question was raised on the medical quality of care provided by Respondent to her patients.

The Hearing Committee has reviewed the letters from Respondent's treating physicians and the efforts made at treatment, as well as the character type other letters of support provided. Respondent has taken numerous continual medical education courses.

The Hearing Committee believes that there is no chance that this isolated incident will lessen the State of New York's strong policy against Medicaid fraud and for revocation of physician licenses where Medicaid fraud is involved.

The Hearing Committee does consider Respondent's misconduct to be serious. With a concern for the health, welfare and public funds of the people in New York State, the Hearing Committee determines that a six months stayed suspension with probation of Respondent's license is the appropriate sanction to impose under the circumstances.

Respondent still has a great deal to offer to her community and to society as a physician. The Hearing Committee believes that Respondent is dedicated, well-trained and compassionate. The Hearing Committee believes that society's interest is best served by allowing Respondent, a bilingual, bicultural psychiatrist, to continue to practice medicine.

It is for those reasons that the Hearing Committee believes a 6 months period of Probation with a limitation on a private practice will help Respondent, as well as adequately safeguard and protect the public funds.

The Hearing Committee believes that a stayed suspension with 6 months of probation and a limitation on a private practice will better benefit society than a revocation of Respondent's license.

Taking all of the facts, details, circumstances and particulars in this matter into consideration, the Hearing Committee determines the above to be the appropriate sanctions under the circumstances. The Hearing Committee unanimously conclude that the sanctions imposed strike the appropriate balance between the need to punish Respondent, deter future misconduct and protect the public.

All other issues raised have been duly considered by the Hearing Committee and would not justify a change in the Findings, Conclusions or Determination contained herein.

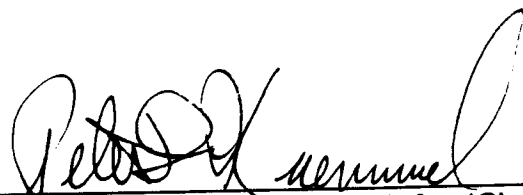
By execution of this Determination and Order, all members of the Hearing Committee certify that they have read and considered the complete record of this proceeding.

ORDER

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

1. The Specification of professional misconduct contained within the Statement of Charges (Petitioner's Exhibit # 1) is **SUSTAINED**, and
2. Respondent's license to practice medicine in the State of New York is hereby **SUSPENDED for six (6) months** from the effective date of this Determination and Order; and
3. The six (6) months **SUSPENSION is STAYED** as long as Respondent complies with the terms of probation; and
4. Respondent shall be on **PROBATION** in New York State for a period of **six (6) months** from the effective date of this Determination and Order; and
5. The complete terms of probation are attached to this Determination and Order in Appendix III and are incorporated herein; and
6. Respondent's probation shall be supervised by the New York State Department of Health, by the Office of Professional Medical Conduct; and
7. In the event that Respondent leaves New York to practice outside the State, the above periods of probation shall be tolled until Respondent returns to practice in New York State.

DATED: New York, New York
May 22, 1996


PETER D. KUEMMEL, R.P.A., (Chair),

GERALD WEINBERGER, M.D.
PASCAL J. IMPERATO, M.D.



Maria M. Melendez, M.D.
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New York, NY 10007

Paul Stein, Esq.
Associate Counsel,
New York State Department of Health
Bureau of Professional Medical Conduct
5 Penn Plaza, 6th Floor
New York, New York 10001

APPENDIX I

**IN THE MATTER
OF
MARIA M. MELENDEZ, M.D.**

STATEMENT
OF
CHARGES

MARIA M. MELENDEZ, M.D., the Respondent, was authorized to practice as a physician in New York State on September 17, 1984 by the issuance of license number 160102 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. 1. On or about December 15, 1993, the Attorney General for the State of Vermont filed an information with Unit III, Orleans Circuit, District Court of Vermont, which was subsequently amended on January 3, 1994, charging Respondent with:

Count I - Medicaid Fraud, in violation of 33 V.S.A. 141(d) as punishable by 33 V.S.A. sec. 143, based on acts that took place in or about August and September of 1993;

Count II - Medicaid Fraud, in violation of 33 V.S.A. 141(d) as punishable by 33 V.S.A. sec. 143, based on acts that took place in or about August and September of 1993; and

Count III - Prescription Fraud, in violation of 18 V.S.A. sec. 4223(e) as punishable by

18 V.S.A. sec. 4223(i), based on acts that took place in or about August of 1993.

2. On or about September 23, 1994, in Unit III, Orleans Circuit, District Court of Vermont, Respondent was sentenced on Count 2 of the above-mentioned Information (Medicaid Fraud) to 2 to 6 years in prison, all suspended, and on Count 3 of the above-mentioned information (Prescription Fraud) to 1 to 2 years in prison, all suspended, both of which counts she was found guilty of by way of a Plea Agreement filed August 22, 1994 in Unit III, Orleans Circuit, District Court of Vermont. Also, Respondent was placed on probation, until further order of the Court, on various conditions, including: participation in mental health counseling; payment of a \$3,500 fine; and performance of 100 days of community service at 8 hours per day.

B. 1. A Specification of Charges dated April 6, 1994 and an Amended Specification of Charges dated October 13, 1994 were issued by the Vermont Board of Medical Practice alleging that Respondent had committed unprofessional conduct:

as set forth in 26 V.S.A. sec. 1354(6) in that she prescribed drugs for other than legal and legitimate therapeutic purposes;

as set forth in 26 V.S.A. sec. 1354(8) in that she willfully made a false record in her practice as a physician;

as set forth in 26 V.S.A. sec. 1354(22) in that in the course of her practice, she grossly failed to use and exercise on a particular occasion that degree of care, skill and proficiency which is commonly exercised by the ordinary skillful, careful and prudent physician engaged in similar practice under the same or similar conditions;

and

as set forth in 26 V.S.A. sec. 1354(3) in that she was convicted (in Orleans Circuit, District Court of Vermont) of two felonies that arise out of the practice of medicine.

2. By stipulation dated June 1, 1995, respondent voluntarily waived her right to a hearing before the Vermont Board on both counts of the amended specification of charges dated October 13, 1994, and admitted the unprofessional conduct set forth in those counts.

3. In an order dated December 20, 1995 and entered December 29, 1995, following a contested hearing as to sanction, the Vermont Board suspended Respondent's Vermont medical license for one year retroactive to June 5, 1995 and indefinitely conditioned her medical license as follows:

(a) Respondent must take and pass the special Purpose Examination (SPEX) administered by the Federation of State Medical Boards before her license is reinstated.

(b) Respondent must successfully complete a continuing medical education course in medical ethics within six months after reinstatement of her license.

(c) Respondent shall not engage in solo medical practice, unless an acceptable situation has been approved by the Board. Respondent shall practice in a setting that includes ongoing peer review.

(d) At or near the end of her term of license suspension, respondent shall complete a clinical skills assessment by a Board-approved, licensed professional (either a clinical psychologist or a psychiatrist) that states that she is competent to practice psychiatry or whatever medical sub-specialty she chooses. Respondent shall execute all necessary medical information releases and shall cause the clinical psychologist or psychiatrist to provide a complete, detailed, written report of the assessment directly to the board.

SPECIFICATIONS

FIRST SPECIFICATION

CRIMINAL CONVICTION (Other Jurisdiction)

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(9)(a)(iii) (McKinney Supp. 1996) by having been convicted of committing an act constituting a crime under the law of another jurisdiction and which, if committed within this state, would have constituted a crime under New York state law, namely, Social Services Law sec. 366-b (McKinney 1992), Fraudulent Practices, as alleged in the facts of the following:

1. Paragraphs A1 and A2.

SECOND SPECIFICATION

HAVING BEEN FOUND GUILTY OF

PROFESSIONAL MISCONDUCT

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(9)(b) (McKinney Supp. 1996) 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, namely:

Practicing the profession fraudulently or beyond its authorized scope (N.Y. Educ. Law sec. 6530(2) (McKinney Supp. 1996)); and/or

Practicing the profession with gross negligence on a particular occasion (N.Y. Educ. Law sec. 6530(4) (McKinney Supp. 1996)); and/or

Being convicted of committing an act constituting a crime under the law of another jurisdiction and which, if committed within this state, would have constituted a crime under New York state law (N.Y. Educ. Law sec. 6530 (9) (a) (iii) (McKinney Supp. 1996)); and/or

Exercising undue influence on the patient, including the promotion of the sale of services, goods, appliances, or drugs in such manner as to exploit the patient for the financial gain of the licensee or of a third party (N.Y. Educ. Law sec. 6530 (17) (McKinney Supp. 1996)); and/or

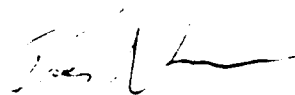
Willfully making or filing a false report, or failing to file a report required by law or by the department of health or the education department or willfully impeding or obstructing such filing, or inducing another person to do so (N.Y. Educ. Law sec. 6530 (21) (McKinney Supp. 1996)); and/or

Failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient (N.Y. Educ. Law sec. 6530 (32) (McKinney Supp. 1996))

as alleged in the facts of the following:

2. Paragraph B1 through B3.

Dated: New York, New York
February 20, 1996



ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct

APPENDIX II

**STATE OF VERMONT
BOARD OF MEDICAL PRACTICE**

Docket No. MPS89-1093

In re Maria M. Melendez, M.D.	}	Hearing held at
	}	Montpelier, Vermont
	}	June 5, 1995

PRESENT: Stanley L. Burns, M.D., Hearing Committee Chair
Priscilla Fox, J.D., Hearing Committee Member

APPEARANCES: Geoffrey A. Yudien, Assistant Attorney General
for petitioner

Sarah Powell, Esq.
for respondent

Maria M. Melendez, M.D., respondent

HEARING COMMITTEE REPORT

This cause came before a hearing committee of the Board of Medical Practice (Board) on a specification of charges against Maria M. Melendez, M.D. (respondent). Evidence having been adduced thereon, the hearing committee has determined that the following findings of fact and conclusions of law are supported by the preponderant weight of the evidence.

Motions

1. Respondent's motion for a continuance of the hearing scheduled for June 5, 1995 was DENIED.

Findings of Fact

1. Respondent Maria M. Melendez, M.D. is a physician licensed by the Board. She holds license number 42-0007904.

2. By stipulation dated June 1, 1995, respondent voluntarily waived her right to a hearing before the Board on Counts I and II of the amended specification of charges dated October 13, 1994, and admitted the unprofessional conduct set forth in those counts. A copy of the amended specification of charges is attached to this report as Appendix A.

3. Because respondent stipulated to the unprofessional conduct set forth in the amended specification of charges, the sole issue before the Board is the issue of sanctions.

4. Petitioner recommended revocation of respondent's license

for a period of two or three years. Respondent argued that her case warrants suspension but not revocation of her license.

5. At the June 5 hearing, the parties presented a list of conditions to the hearing committee, pet. exh. 1, and joined in a recommendation to the committee that those conditions be placed upon respondent's license. A copy of petitioner's exhibit 1 is attached to this report as Appendix B.

6. Respondent is licensed in Vermont, New York, and Puerto Rico. Her New York and Puerto Rico licenses are currently unencumbered. She is currently under a restriction prohibiting her from treating Medicaid patients, but that restriction is a federal rather than state restriction.

7. Respondent received her medical training in Puerto Rico and completed a residency in psychiatry at the Albert Einstein College of Medicine in New York.

8. After completing her residency, respondent worked in a community mental health center in Puerto Rico from 1981 to 1982. She was the administrator of the Puerto Rican community mental health system from 1982 to 1985. Between 1985 and 1987, she created and ran the emergency rooms in two Puerto Rican psychiatric hospitals.

9. In 1988, respondent moved to Vermont with her husband, Jose Matos, and her son. She was hired as the staff psychiatrist by the Northeast Kingdom Mental Health Service, Inc. (NKMHS), in Newport. She later became medical director of NKMHS.

10. Jose Matos moved out of respondent's house in 1990. They were divorced in 1991, but he stayed in the Newport area.

11. Matos encountered legal problems after he moved out of respondent's house. In April 1991, the police contacted respondent and told her that Matos had forged her prescriptions for Percocet. Respondent provided a statement to the police in which she indicated that the prescriptions were forged by Matos.

12. At that point, respondent became aware that Matos should not be trusted with her prescription forms. Matos was eventually convicted for misusing the prescription forms.

13. Respondent's job situation at NKMHS deteriorated when she refused to change her diagnosis and sign patient disability forms with which she did not agree. She also got into a personality conflict with her supervisor and filed a complaint against him with NKMHS's board of directors.

14. In October 1992, respondent entered therapy with a licensed clinical social worker because she was depressed about her

job situation at NKMH.

15. Respondent was fired in May 1993, with no reasons stated for the firing. She appealed to NKMH's board of directors, who ordered her reinstated at the end of May 1993. However, her job situation deteriorated to the point where she did not return to work after July 1993.

16. Respondent started private practice in June 1993 and saw patients at her house.

17. Respondent's physician had been prescribing Doxepin and Clorazepate (a benzodiazepine) for her depression. On August 30, 1993, Matos offered to get her medication for her without her having to pay the more than \$100 cost of the medication.

18. Matos told respondent on August 30, 1993, that Christine Perry, with whom Matos was living at the time, had agreed that she would get the medication for respondent. Respondent never had a physician-patient relationship with Perry and never spoke to Perry about this purported agreement.

19. Respondent knew at that time that Matos had a criminal record. However, she was under the impression that Matos and Perry had concocted the scheme to save respondent money. Respondent allowed herself to be persuaded to go along with the plan, because she was experiencing financial difficulties and had only a five-day supply of her medications left.

20. To further the plan, respondent wrote prescriptions for her own medications (Doxepin and Clorazepate), for her own dosages, but wrote them for Perry instead of herself. Matos took the prescriptions and did manage to obtain the medications at a Newport pharmacy on August 31, 1993.

21. Unbeknownst to respondent, Perry had not agreed to the scheme devised by Matos. Perry contacted the police when she discovered that medications had been dispensed to others pursuant to two prescriptions written for her. The "cashing in" of the two prescriptions later made it more difficult for Perry to get her own Medicaid prescriptions filled.

22. The police contacted respondent about the two prescriptions she had written, ostensibly for Perry's medical needs. Respondent tried to make it appear to the police that she had written the prescriptions for Perry's use. However, respondent knew she was lying when she told the police that she had written the prescriptions for Perry's medical needs rather than her own. Unfortunately for her, she did not know that Perry had already contacted the police by that time.

23. Respondent pled guilty to one count of Medicaid fraud and

one count of prescription fraud in September 1994. She received a suspended sentence of two to six years and was fined, placed on probation, and ordered to perform community service.

24. After her conviction, respondent was eventually forced to file for bankruptcy. In July 1994, she got a job in New York and worked there from August 1994 to February 1995, mainly with Spanish-speaking Medicaid and Medicare recipients. She stopped working in New York in February 1995, because her restriction not to see Medicaid patients became effective. The restriction is in effect from February 10, 1995 to February 10, 2000.

25. In March 1995, respondent came back to Vermont to arrange for a family in Newport to obtain guardianship of her son, so that he could attend school in Newport. Respondent moved to New Jersey to live with her sister for a few months. She made arrangements to do her community service and is performing it now.

26. Respondent is 44 years old. She has been a physician for 19 years. She has always worked in public service, in social and community psychiatry.

27. Respondent says she thinks suspension for a short length of time would be appropriate. She has not been working in Vermont for a year and has not seen any Vermont patients for more than a year. Her goal is to practice medicine again.

28. Respondent never intended to sell the drugs obtained by writing the Dioxin and Clorazepate prescriptions for Perry. She needed them for her own use.

29. Respondent did not know that the scheme would cause Perry to experience difficulty in getting her Medicaid prescriptions filled.

30. Respondent currently lives in Burlington in a community house for ex-prisoners, where she is completing her court-ordered community service. She is the sole source of financial support for her 16-year-old son.

31. Respondent says that working with her counselor has helped her to understand that she wrote the bogus prescriptions as a way to get back into a relationship with Matos and ease her loneliness.

32. In addition, respondent now understands that when Matos came to her asking her for something, she did what he asked to "get him off her back." She had difficulty standing up to Matos when she disagreed with something he wanted her to do. To relieve the pressure, she agreed to do what he asked. This is another reason why she went along with the scheme to use Perry's name to get her own medications.

33. She says that, under different circumstances, she never would have done what she did and had never done anything like it before. She also acknowledges that she was under too much stress at the time.

34. Respondent has sought counseling and treatment to try to understand why she acted as she did. She saw a New Hampshire social worker from October 1992 to March 1994. She then saw a psychiatrist until August 1994, when she moved to New York. She is currently in counseling.

35. Respondent is unlikely to be a repeat offender. She works acceptably in a structured setting such as a community mental health center but appears to be less comfortable in a less-structured setting such as private practice.

36. There are mitigating circumstances in this case. Respondent was in financial difficulty and did something wrong to get her own medication for herself at a lower cost. She did not write prescriptions for someone else or write them to obtain drugs to sell.

37. This is shown by the fact that the prescriptions she wrote were for medicine prescribed for her by her therapist and were in dosages prescribed for her. It is therefore unlikely that she was writing prescriptions for Matos or anyone else.

38. Respondent did not write the prescriptions with the intention of reaping large profits for herself by re-selling the drugs. She wrote them in an attempt to save money on her own prescriptions at a time when she was under great emotional and financial stress.

39. Respondent cooperated with the police to help convict Matos. She has had no contact with Matos, who manipulated her, since her own conviction.

40. The hearing committee watched respondent closely during the June 5 hearing and listened to her carefully. Respondent is extremely and genuinely contrite. Her testimony on all points is credible. She has been and continues to be punished severely for her transgression. She had to pay a \$3,500 fine and is ineligible for Medicaid reimbursement. She had to perform 800 hours of community service (100 days at eight hours per day).

41. For these reasons, petitioner's recommended sanction of license revocation for two to three years, with license conditions, is too harsh for this particular respondent.

42. A more equitable sanction would be a one-year license suspension, with conditions. The list of proposed conditions submitted by the parties should be revised as follows.

43. The intent of proposed condition (a) should be imposed, because taking the Special Purpose Examination (SPEX) (not a "specialty exam" as characterized in proposed condition (a)) administered by the Federation of State Medical Boards may reveal some areas in which respondent's thinking is disordered.

44. Proposed conditions (b) and (c)(1) are unnecessary. The facts in this case do not show that respondent needs to know how to properly manage mental illness pharmacologically. Respondent wrote two prescriptions for her own medication for her own use. She was not running a prescription mill for drug addicts and does not need to take an intensive clinical and didactic course on dispensing controlled substances.

45. Proposed condition (c)(2) should be imposed. Respondent's ethics did lapse when she wrote the prescriptions, and she can benefit from taking an ethics course.

46. The intent of proposed condition (d) should be imposed. Respondent should not practice by herself in a solo practice, unless an acceptable situation has been approved by the Board. She should practice in a setting that includes ongoing peer review.

47. No condition (e) was proposed. Proposed condition (f) should be imposed. At or near the end of her term of license suspension, respondent should complete a clinical skills assessment by a Board-approved, licensed professional (either a clinical psychologist or a psychiatrist) that states that she is competent to practice psychiatry or whatever medical sub-specialty she chooses.

Conclusions of Law

A. By her actions, respondent has committed unprofessional conduct as set forth in 26 V.S.A. § 1354(6), in that she prescribed drugs for other than legal and legitimate therapeutic purposes.

B. By her actions, respondent has committed unprofessional conduct as set forth in 26 V.S.A. § 1354(8), in that she willfully made a false record in her practice as a physician.

C. By her actions, respondent has committed unprofessional conduct as set forth in 26 V.S.A. § 1354(22), in that, in the course of her practice, she grossly failed to use and exercise on a particular occasion that degree of care, skill and proficiency which is commonly exercised by the ordinary skillful, careful and prudent physician engaged in similar practice under the same or similar conditions.

D. By her actions, respondent has engaged in unprofessional and dishonorable conduct, as set forth in 26 V.S.A. § 1398.

E. By her actions, respondent has committed unprofessional conduct as set forth in 26 V.S.A. § 1354(3), in that she has been convicted of two felonies that arise out of the practice of medicine.

Dated: 9/6/95

BOARD OF MEDICAL PRACTICE

Stanley L. Burns M.D.

Stanley L. Burns, M.D.
Hearing Committee Chair

Priscilla Fox

Priscilla Fox, J.D.
Hearing Committee Member

Date of entry: September 8, 1995

HEARING PANEL DISCUSSION AND ORDER

The hearing panel has reviewed and considered the hearing committee's report and documents filed by the parties in response to that report.

(1) Respondent's second set of exhibits: The hearing panel will admit this set of documents as Respondent's Exhibit C. As mitigating evidence, these documents are somewhat repetitious. For the most part, they consist of copies of certificates showing that respondent has completed various continuing medical education courses. The panel gives this type of evidence some slight weight, but not so much weight as to tip the balance decisively either for or against respondent. In any event, petitioner did not file an objection to respondent's submission of these documents.

(2) Respondent's proposed modification of findings and conclusions: The hearing panel will grant respondent's request to modify paragraph 5 of the committee's findings. Respondent's proposed modification clarifies the facts underlying paragraph 5 and removes any limits that the committee's language may have inadvertently imposed on the panel's discretion to adopt paragraph 44 of the committee's report. Petitioner did not file an objection to respondent's request to modify paragraph 5 of the committee's report. Paragraph 5 will be modified to read as follows:

"At the June 5 hearing, the parties presented a list of conditions to the hearing committee, pet. exh. 1. Respondent did not recommend imposition of that specific list of conditions but rather waived her right generally to contest the imposition of conditions on her license. A copy of petitioner's exhibit 1 is attached to this report as Appendix B."

(3) Respondent's request to incorporate Exhibit A: The hearing panel will not grant respondent's request to incorporate Respondent's Exhibit A by attaching it to this final order. Respondent's Exhibit A is a part of the record in this case. As such, it is a public document available to anyone upon request. Attachment of the exhibit is not necessary for an understanding of the hearing committee's report, as was the case with Appendixes A and B. The panel declines to create an order more voluminous than necessary by incorporating Respondent's Exhibit A as an attachment or appendix.

(4) Petitioner's request to modify findings numbered 41 and 42: The Attorney General's Office and the South Investigating Committee joined in requesting that the panel change paragraphs 41 and 42 of the committee's report to indicate a revocation rather than a suspension of respondent's Vermont medical license. The reason given for this request was that revocation would be appropriate, because respondent's felony conviction clearly involved a violation of the public trust.

The panel declines to grant petitioner's request for a harsher sanction for the following reasons. Respondent's unprofessional conduct did not harm any patient, was an isolated incident, is unlikely to be repeated, was not done to reap large profits, and resulted largely from clinical depression for which she has since received treatment.

Furthermore, respondent has paid and continues to pay a severe penalty for her conduct, in that she is prohibited from seeing Medicaid patients until February 10, 2000. The practical effect of this restriction is to make respondent effectively unemployable in a community mental health setting.

In addition, as respondent points out, the Board has imposed license suspension rather than revocation for more serious unprofessional conduct in a prior case. See In re John P. Sheppard, M.D., No. MPS93-0591 (Vt. Bd. of Medical Practice, June 8, 1992) (one-year suspension with six months' credit where licensee charged with 87 counts of Medicaid fraud pled guilty to ten counts). See also In re Robert R. Engisch, M.D., No. MP-24-E-85 (Vt. Bd. of Medical Practice) (license revoked for one year but unprofessional conduct involved falsification of patient records, substantial profit, and repeated felony offenses).

(5) Respondent's motion for retroactive sanction: The hearing panel will grant respondent's motion for retroactive sanction, so that the effective date of suspension of her license will be June 5, 1995. Petitioner did not object to this motion.

The Board recently approved a stipulation and consent order entered into by William S. Ellis, M.D., and the Office of the Attorney General, In re William S. Ellis, M.D., No. MPS03-0195 (Vt. Bd. of Medical Practice, Nov. 2, 1995). In that order, the Board suspended the physician's license for five years but stayed all but six months of the suspension, retroactive to March 8, 1995. The Ellis stipulation recited that the physician had "never before been subject to disciplinary action in Vermont." Id. at 3. Such is also the case here. Respondent has not been subject to disciplinary action by this Board, aside from the present case. Furthermore, respondent has not practiced medicine in any state since February 10, 1995, when her federal Medicaid restriction became effective.

It is true, as respondent points out, that the hearing in this case was held on June 5, 1995, and the hearing committee's report was issued on September 8, 1995. Under 26 V.S.A. § 1355(b), the hearing committee is required to file its report within 60 days of the conclusion of the hearing, unless the hearing panel grants an extension. The hearing panel granted one extension in this case.

It is also true, as respondent notes, that the hearing committee and the hearing panel are essentially part-time

volunteers who must attend to Board work in addition to their own medical practices or other careers. The Board and its staff also labor under a heavy disciplinary caseload. The panel granted an extension in this case to accommodate the Board and its staff because of the Board's heavy schedule of hearings in another case during the summer of 1995. The panel emphasizes that the hearing and post-hearing procedures in this case were handled with all possible dispatch under unavoidable circumstances. Nevertheless, this particular respondent should not be penalized because the Board was, of necessity, engaged in other disciplinary matters.

Therefore, the panel will agree to impose a retroactive sanction in this case, because of the factors discussed in the previous paragraph. However, the panel stresses that the decision to impose a retroactive sanction in this case should not be construed by interested parties or persons as a new, blanket Board policy applicable to every disciplinary case.

Order

IT IS HEREBY ORDERED by the Board of Medical Practice of the State of Vermont that:

1. Respondent's Second Set of Exhibits is ADMITTED as Respondent's Exhibit C.
2. Respondent's request to modify paragraph 5 of the hearing committee report is GRANTED.
3. Respondent's request to attach Respondent's Exhibit A to this order is DENIED.
4. Petitioner's request to modify paragraphs 41 and 42 of the hearing committee report is DENIED.
5. Respondent's motion for retroactive sanction is GRANTED.
6. The findings and conclusions of the hearing committee are adopted, with the modification of paragraph 5 to read as follows:

"At the June 5 hearing, the parties presented a list of conditions to the hearing committee, pet. exh. 1. Respondent did not recommend imposition of that specific list of conditions but rather waived her right generally to contest the imposition of conditions on her license. A copy of petitioner's exhibit 1 is attached to this report as Appendix B."
7. On the basis of the conclusions of law, the Vermont medical license of Maria M. Melendez, M.D., is SUSPENDED for one year, retroactive to June 5, 1995.
8. On the basis of the conclusions of law, the Vermont

medical license of Maria M. Melendez, M.D., is CONDITIONED as follows:

(a) Respondent must take and pass the Special Purpose Examination (SPEX) administered by the Federation of State Medical Boards before her license is reinstated.

(b) Respondent must successfully complete a continuing medical education course in medical ethics within six months after reinstatement of her license.

(c) Respondent shall not engage in solo medical practice, unless an acceptable situation has been approved by the Board. Respondent shall practice in a setting that includes ongoing peer review.

(d) At or near the end of her term of license suspension, respondent shall complete a clinical skills assessment by a Board-approved, licensed professional (either a clinical psychologist or a psychiatrist) that states that she is competent to practice psychiatry or whatever medical sub-specialty she chooses. Respondent shall execute all necessary medical information releases and shall cause the clinical psychologist or psychiatrist to provide a complete, detailed, written report of the assessment directly to the Board.

9. The conditions imposed by this order shall remain in effect until removed by the Board. Violation of any of the conditions imposed by this order may result in further discipline, including revocation of respondent's license.

10. Respondent shall bear all costs of compliance with this order.

11. Pursuant to 3 V.S.A. § 131(c)(2)(C), this document is a public record.

12. This order takes effect as of the date of entry shown below.

Appeal Rights

This is a final administrative determination. A party may appeal by filing a written notice of appeal with the Director of the Office of Professional Regulation, Office of the Secretary of State, within 30 days of the effective date of this order.

Dated: 12/20/95

VERMONT BOARD OF MEDICAL PRACTICE

Stanley L. Burns, M.D.
Stanley L. Burns, M.D.
Hearing Panel Chair

Date of entry: December 29, 1995

APPENDIX B

- a. Respondent must successfully pass a Spex (specialty exam);
- b. Respondent shall complete a Board approved intensive clinical and didactic course on dispensing controlled substances before her license is reinstated;
- c. Respondent shall complete CME courses on the following subjects:
1. Proper pharmacological management of mental illnesses;
 2. Ethics;
- d. Respondent shall not be allowed to be in solo practice and will have peer supervision.
- f. Respondent must complete a clinical skills assessment by a professional that states she is competent to practice psychiatry or whatever sub-specialty she chooses.

**PETITIONER'S
EXHIBIT**

1 8/15/95

APPENDIX III

APPENDIX III

TERMS OF PROBATION

1. Respondent shall conduct herself in all ways in a manner befitting her professional status, and shall conform fully to the moral and professional standards of conduct imposed by law and by her profession.

2. Respondent shall comply with all federal, state and local laws, rules and regulations governing the practice of medicine in New York State.

3. Respondent shall submit written notification to the Board addressed to the Director, Office of Professional Medical Conduct, (hereinafter "OPMC") Empire State Plaza, Corning Tower Building, Room 438, Albany, New York 12237, regarding any change in employment, practice, addresses, (residence or professional) telephone numbers, and facility affiliations within or without New York State, within 30 days of such change.

4. Respondent shall submit written notification to OPMC of any and all investigations, charges, convictions or disciplinary actions taken by any local, state or federal agency, institution or facility, within 30 days of each charge or action.

5. In the event that Respondent leaves New York to reside or practice outside the State, Respondent shall notify the Director of the OPMC in writing at the address indicated above, by registered or certified mail, return receipt requested, of the dates of her departure and return. The probation periods shall be tolled until the Respondent returns to practice in New York State.

6. Respondent shall have quarterly meetings with an employee or designee of OPMC during the periods of probation. In these quarterly meetings, Respondent's professional performance may be reviewed by inspecting selections of office records, patient records and hospital charts.

7. Respondent shall submit semi-annual declarations, under penalty of perjury, stating whether or not there has been compliance with all terms of probation (including the practice restriction set forth in ¶ 10) and, if not, the specifics of such non-compliance. These declarations and a Practice Restriction Declaration shall be sent to the Director of the OPMC at the address indicated above.

8. Respondent shall submit written proof to the Director of the OPMC at the address indicated above that she has paid all registration fees due and is currently registered to practice medicine as a physician with the New York State Education Department. If Respondent elects not to practice medicine as a physician in New York State, then she shall submit written proof that she has notified the New York State Education Department of that fact.

9. Respondent shall maintain legible medical records which accurately reflect evaluation and treatment of patients. These records will contain, at least, a comprehensive history, physical examination findings, chief complaint, present illness, diagnosis and treatment.

10. **Respondent's practice of medicine is restricted** to employment in a supervised setting, such as found in a facility licensed by the State of New York (P.H.L. Article 28, New York State or City Department of Corrections, OASAS, etc.)

Respondent must obtain prior approval from the Director or designee of any employment proposals. Respondent shall notify the Director of the OPMC before any changes in employment are made. This restriction shall be in effect until Respondent has fully completed probation.

11. Respondent shall comply with all terms, conditions, restrictions, and penalties to which she is subject pursuant to the Order of the Board. A violation of any of these terms of probation shall be considered professional misconduct. On receipt of evidence of non-compliance or any other violation of the terms of probation, a violation of probation proceeding and/or such other proceedings as may be warranted, may be initiated against Respondent pursuant to New York Public Health Law §230(19) or any other applicable laws.

12. All expenses, including but not limited to those, of complying with these terms of probation and the Determination and Order, including retraining and monitoring, shall be the sole responsibility of Respondent.

13. Respondent must fully comply with and successfully complete the terms of the Vermont Final Order (Appendix II) or any amendment thereof.

**DOH STATE OF NEW YORK
DEPARTMENT OF HEALTH**

Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12237

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

May 21, 1996

Karen Schimke
Executive Deputy Commissioner

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Kimberly A. O'Brien, Esq.
Senior Attorney
NYS Dept. of Health
Corning Tower-Room 2438
Albany, New York 12237

Mae A. D'Agostino, Esq.
Maynard, O'Connor, Smith,
Catalinotto & D'Agostino
80 State Street
Albany, New York 12207

Leonard Edelman, M.D.
228 Plaza Drive
Lehigh Acres, Florida 33936-6018

RE: In the Matter of Leonard Edelman, M.D.

Effective Date: 05/28/96

Dear Ms. O'Brien, Ms. D'Agostino and Dr. Edelman:

Enclosed please find the Determination and Order (No. 96-126) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

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

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

If your license or registration certificate is lost, misplaced or its whereabouts is otherwise unknown, you shall submit an affidavit to that effect. If subsequently you locate the requested items, they must then be delivered to the Office of Professional Medical Conduct in the manner noted above.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), and §230-c subdivisions 1 through 5, (McKinney Supp. 1992), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the licensee or the Department may seek a review of a committee determination.

Request for review of the Committee's determination by the Administrative Review Board stays all action until final determination by that Board. Summary orders are not stayed by Administrative Review Board reviews.

All notices of review must be served, by **certified mail**, upon the Administrative Review Board **and** the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

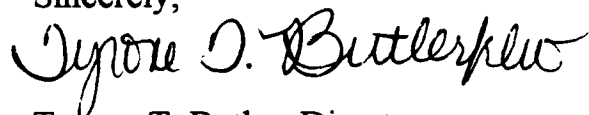
The notice of review served on the Administrative Review Board should be forwarded to:

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

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

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

Sincerely,

A handwritten signature in black ink that reads "Tyrone T. Butler". The signature is written in a cursive style with a large, prominent initial "T".

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:rlw
Enclosure

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

COPY

IN THE MATTER
-OF-
LEONARD EDELMAN, M.D.

Respondent

DETERMINATION

AND

ORDER

BPMC-96-126

A Notice of Referral Proceeding and Statement of Charges, both dated February 20, 1996, were served upon the Respondent, Leonard Edelman, M.D. **WILLIAM P. DILLON, M.D. (Chair), JOSEPH G. CHANATRY, M.D. and D. MARISA FINN** duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to Section 230(10)(e) of the Public Health Law. **JEFFREY W. KIMMER, ESQ., ADMINISTRATIVE LAW JUDGE**, served as the Administrative Officer. The Department of Health appeared by Kimberly A. O'Brien, Esq., Senior Attorney. The Respondent appeared by Maynard, O'Connor, Smith, Catalinotto & D'Agostino, Mae A. D'Agostino of Counsel. Evidence was received, statements were heard and transcripts of these proceedings were made.

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

STATEMENT OF CASE

This case was brought pursuant to Public Health Law Section 230(10)(p). This statute provides for an expedited proceeding where a licensee is charged solely with a violation of Education Law Section 6530(9). In such cases, a licensee is charged with misconduct based upon prior professional disciplinary action or criminal conviction. The scope of this expedited proceeding is limited to a determination of the nature and severity of the penalty to be imposed upon the licensee.

In the instant case, Respondent is charged with professional misconduct pursuant to Education Law § 6530(9)(d) (disciplinary action taken against the license by another state). The charges herein arise from Respondent entering into a Consent Agreement with the State of Florida based on an Administrative Complaint. The Complaint alleged the Respondent failed to wean a patient off Dopamine and failed to administer high concentration oxygen although the patient exhibited symptoms of ischemia. The allegations in this proceeding are set forth in the Statement of Charges, a copy of which is attached to this Determination and Order as Appendix One.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers in parentheses refer to exhibits. These citations represent evidence found persuasive by the Hearing Committee in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence.

1. Leonard Edelman, M.D. (hereinafter, "Respondent"), was licensed to practice medicine in New York State on April 4, 1980, by the issuance of license

number 141635 by the New York State Education Department. (Pet. Exs. #1&2).

2. On or about December 16, 1994, the State of Florida Board of Medicine adopted the Consent Agreement executed by the Respondent and the State of Florida. (Pet. Ex. #3)

3. The Respondent was charged by the State of Florida Board of Medicine with committing acts which constituted gross or repeated malpractice or failing to practice medicine with that level of care, skill and treatment which is recognized by a reasonably prudent similar physician as being acceptable under similar conditions and circumstances; administering a legend drug other than in the course of a physician's practice and failing to keep medical records justifying the course of patient treatment. (Pet. Ex. #3)

4. The State of Florida Board of Medicine issued a Letter of Concern, fined the Respondent Two Thousand Dollars (\$2,000.00) and imposed certain continuing medical education conditions which the Respondent had to meet within one year. (Pet. Ex. # 3)

5. The Respondent has fulfilled the conditions imposed upon him by the State of Florida Board of Medicine. (Res. Ex. # A)

CONCLUSIONS OF LAW

The following conclusions were made pursuant to the Findings of Fact listed

above. All conclusions resulted from a unanimous vote of the Hearing Committee unless noted otherwise.

The Hearing Committee concluded that the Department has sustained its burden of proof in this matter. The preponderance of the evidence demonstrates that Respondent had disciplinary action taken or had his application for a license refused by a professional disciplinary agency of another state. The underlying conduct which was the basis for the action by Florida would constitute professional misconduct in New York. Specifically, the Hearing Committee found the Respondent's actions would fall within the definitions of misconduct set forth at §6530(3) (Practicing the profession with negligence on more than one occasion) and N.Y. Education Law §6530(16) (Willful or grossly negligent failure to follow state law governing the the practice of medicine).

DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determined that Respondent's license should be **Censured and Reprimanded**. Furthermore the Respondent is placed on a one (1) year period of **Probation** under the terms and conditions set forth in Appendix II, attached hereto and made a part of this Order. This determination was reached upon due consideration of the full spectrum of penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties .

The Hearing Committee based its determination on the fact that the conduct upon which the Florida action was based involved only one incident and the Respondent has

exhibited a recognition of his mistake by the full compliance of the conditions imposed by Florida. Therefore the Hearing Committee did not feel that revocation or suspension was warranted. It is the Hearing Committee's duty to protect the consumers of medical services of this state. The committee believes the imposition of a one (1) year probation with monitoring provisions relating to the Respondent's practice will fulfill that duty.

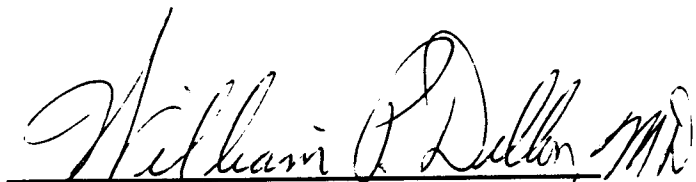
ORDER

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

1. The First Specification of professional misconduct, as set forth in the Statement of Charges (Appendix I) is **SUSTAINED**;
2. Respondent's license to practice medicine in New York State is hereby **CENSURED AND REPRIMANDED**.
3. Respondent is hereby placed on **PROBATION** for a period of one (1) year pursuant to the terms set forth in Appendix II.

DATED: Buffalo, New York

May 18th, 1996



WILLIAM P. DILLON, M.D. (CHAIR)
Joseph G. Chanatry, M.D.
D. Marisa Finn

TO: **KIMBERLY A. O'BRIEN, ESQ.**
Senior Attorney
Bureau of Professional Medical Conduct
New York State Department of Health
Corning Tower Building
Empire State Plaza
Albany, N.Y. 12237

MAE A. D'AGOSTINO, ESQ.
Maynard, O'Connor, Smith, Catalinotto & D'Agostino
80 State Street
Albany, New York 12207

Leonard Edelman, M.D.
228 Plaza Drive
Lehigh Acres, Florida 33936-6018

APPENDIX ONE

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

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IN THE MATTER : STATEMENT
OF OF
LEONARD EDELMAN, M.D. : CHARGES

-----X

LEONARD EDELMAN, M.D., the Respondent, was authorized to practice medicine in New York State on or about April 4, 1980, by the issuance of license number 141635 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A 1. The Board of Medical Examiners of the State of Florida, [hereinafter "the Florida Board"], by Final Consent Order on or about December 16, 1994, approved and adopted in toto a Consent Agreement in which Respondent admitted that the facts set forth in the Administrative Complaint, if proven would constitute violations of Chapter 458, Florida Statutes. The Administrative Complaint alleged, among other things, that Respondent failed to wean a patient off Dopamine despite recurring symptoms of ischemia.
2. The Florida Board ordered that Respondent pay a \$2,000 fine, issued a letter of concern and mandated Continuing Medical Education.

3. The conduct underlying the Florida Board's finding of unprofessional conduct would, if committed in New York State, constitute professional misconduct under N.Y. Educ. Law §6530(16) (McKinney Supp.1996) [failure to comply with substantial provisions of state laws governing the practice of the profession], and or N.Y. Educ. Law §6530(3) (McKinney Supp.1996) [practicing the profession with negligence on more than one occasion]

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

DISCIPLINE IN ANOTHER STATE

Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law §6530(9)(d) (McKinney Supp. 1996) by reason of his having been disciplined 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, in that Petitioner charges:

1. The facts in Paragraphs A.1, A.2, and/or A.3.

DATED: *February 20*, 1996
Albany, New York

Peter D. Van Buren

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

APPENDIX II

TERMS AND CONDITIONS OF PROBATION

The Respondent's license to practice medicine in New York is placed on probation for a period of one (1) year. This probationary period will not take effect until the Respondent informs the New York State Department of Health, Office of Professional Conduct (hereinafter OPMC) by certified mail that he intends to practice medicine in New York and is permanently residing in New York. Upon commencement of the probationary period the following conditions shall be in effect:

1. 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 imposed by law and by his profession.
2. Respondent shall comply with all federal, state and local laws, rules and regulations governing the practice of medicine in New York State.
3. Respondent shall submit prompt (within 20 days) written notification to the Board, addressed to the Director, Office of Professional Medical Conduct, Empire State Plaza, Corning Tower Building, Room 438, Albany, New York 12237, regarding any change in employment, practice, residence or telephone number, within or without New York State.
4. In the event that Respondent leaves New York to reside or practice outside the State, Respondent shall notify the Director of the OPMC in writing at the address indicated above, by registered or certified mail, return receipt requested, of the dates of his departure and return. Periods of residency or practice outside New York State shall toll the probationary period, which shall be extended by the length of residency or practice outside New York State.
5. During the period of probation, the Director of the Office of Professional Medical Conduct or designee, may review the professional performance of the Respondent. This review may include but not be limited to a random selection of the office records, patient records or hospital charts, interviews with or periodic visits with the Respondent and his/her staff at the practice location(s) or one of the offices of the Office of status, Building, Room 438, Albany, New York 12237, regarding any change in employment,

6. Respondent shall submit written notification to OPMC of any and all investigations, charges, convictions or disciplinary actions taken by any local, state or federal agency, institution or facility, within 30 days of each charge or action.
7. Respondent's practice of medicine shall be monitored by a physician monitor, board certified in an appropriate specialty, ("Practice monitor") approved in advance, in writing, by the Director of the Office of Professional Medical Conduct or designee. Respondent may not practice medicine until an approved practice monitor and monitoring program is in place. Any practice of medicine prior to the submission and approval of a proposed practice monitor will be determined to be a violation of probation.
 - a. The practice monitor shall report in writing to the Director of the Office of Professional Medical Conduct or designee, on a schedule to be determined by the office. The practice monitor shall visit Respondent's medical practice at each and every location, on a random basis at least quarterly and shall examine a random (no less than 15) selection of records maintained by Respondent, including patient histories, prescribing information and billing records. Respondent will make available to the monitor any and all records or access to the practice requested by the monitor, including on-site observation. The review will determine whether the Respondent's medical practice is conducted in accordance with the generally accepted standards of professional medical care. Any perceived deviation of accepted standards of medical care or refusal to cooperate with the monitor shall immediately be reported to the Office of Professional Medical Conduct by the monitor.
 - b. Any change in practice monitor must be approved in writing, in advance, by the Office of Professional Medical Conduct.
 - c. All expenses associated with monitoring, including fees to the monitoring physician, shall be the sole responsibility of the Respondent.
 - d. It is the responsibility of the Respondent to ensure that the reports of the practice monitor are submitted in a timely manner. A failure of the practice monitor to submit required reports on a timely basis will be considered a possible violation of the terms of probation.
 - e. Respondent must maintain medical malpractice insurance coverage with limits no less than \$2 million per occurrence and \$6 million per policy year, in accordance with Section 230(18)(b) of the Public Health Law. Proof of coverage shall be submitted to the Director or designee prior to the placement of a practice monitor.

DOH STATE OF NEW YORK
DEPARTMENT OF HEALTH

Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12237

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

April 18, 1996

Karen Schimke
Executive Deputy Commissioner

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Cindy M. Fascia, Esq.
New York State Department of Health
Corning Tower - Room 2438
Empire State Plaza
Albany, New York 12237

Necati M. Alp, M.D.
8415 Bellona Lane Apt. 100
Towson, MD 21204

RE: In the Matter of Necati M. Alp, M.D.

Effective Date: 04/25/96

Dear Ms. Fascia and Dr. Alp :

Enclosed please find the Determination and Order (No. BPMC-96-84) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

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

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

If your license or registration certificate is lost, misplaced or its whereabouts is otherwise unknown, you shall submit an affidavit to that effect. If subsequently you locate the requested items, they must then be delivered to the Office of Professional Medical Conduct in the manner noted above.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), and §230-c subdivisions 1 through 5, (McKinney Supp. 1992), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the licensee or the Department may seek a review of a committee determination.

Request for review of the Committee's determination by the Administrative Review Board stays all action until final determination by that Board. Summary orders are not stayed by Administrative Review Board reviews.

All notices of review must be served, by **certified mail**, upon the Administrative Review Board **and** the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

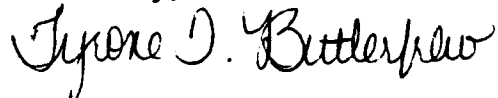
The notice of review served on the Administrative Review Board should be forwarded to:

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

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

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

Sincerely,

A handwritten signature in cursive script that reads "Tyrone T. Butler".

Tyrone T. Butler, Director
Bureau of Adjudication

TTB: crc
Enclosure

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

COPY

**IN THE MATTER
OF
NECATI M. ALP, M.D.**

DETERMINATION

AND

ORDER

BPMC-96-84

A Notice of Hearing and Statement of Charges, both dated January 18, 1996, were served upon the Respondent, **NECATI M. ALP, M.D.** **TERESA S. BRIGGS, M.D.** (Chair), **RICHARD F. KASULKE, M.D.** and **REV. EDWARD J. HAYES**, 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. **CHRISTINE C. TRASKOS, ESQ.**, Administrative Law Judge, served as the Administrative Officer. A hearing was held on March 6, 1996. The Department of Health appeared by **HENRY M. GREENBERG, GENERAL COUNSEL**, by **CINDY M. FASCIA, ESQ.**, Associate Counsel. The Respondent did not appear and was not represented by counsel. 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.

STATEMENT OF CASE

This case was brought pursuant to Public Health Law Section 230(10)(p). The statute provides for an expedited hearing where a licensee is charged solely with a violation of Education Law Section 6530(9). In such cases, a licensee is charged with misconduct based upon a prior criminal conviction in New York or another jurisdiction, or upon a prior administrative adjudication regarding conduct which 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, Respondent is charged with professional misconduct pursuant to Education Law Section 6530(9)(b). A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order in Appendix I.

FINDINGS OF FACT

The following Findings of Facts were made after a review of the entire record in this matter. Numbers in parenthesis 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. Respondent was authorized to practice medicine in New York State on March 10, 1966 by the issuance of license number 096260 by the New York State Education Department.
(Pet.Ex. #3)

2. The State of Maryland Board of Physician Quality Assurance, by Consent Order dated June 28, 1995, found Respondent guilty of immoral or unprofessional conduct in the practice of medicine in violation of Md. Code Ann. §14-404(a)(3) and of failing to meet appropriate standards as determined by appropriate peer review for the delivery of quality medical and surgical care in violation of Md. Code Ann. §14-404(a)(22). The Maryland Board, inter alia, reprimanded Respondent and ordered that Respondent be absolutely prohibited from practicing medicine in Maryland and that Respondent, effective September 30, 1995, shall hold an inactive medical license. (Pet.Ex. #4)

3. The conduct underlying the Maryland Board's finding of unprofessional conduct consisted of Respondent, inter alia, during the course of providing psychiatric care to a patient, engaging in physical contact with the patient, including hugging and kissing, performing physical examinations on the patient, including applying medicinal ointment to her chest, which occurred at the patient's home, inviting the patient for meals at Respondent's home, and engaging in gift-giving. (Pet.Ex. #4)

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 unanimously concluded that the Department has sustained its burden of proof. The preponderance of the evidence demonstrates that Respondent was disciplined by the State of Maryland Board of Physician Quality Assurance for committing boundary violations with a psychiatric patient. Section 6530(9)(b) of the Education Law defines professional misconduct as

"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." As a result, the Hearing Committee voted to sustain the Specification of professional misconduct contained within the Statement of Charges.

DETERMINATION AS TO PENALTY

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

Respondent did not appear at the hearing and no mitigating factors were offered on his behalf. The Hearing Committee believes that inappropriate physical contact with a patient renders a physician morally unfit for the practice of medicine. The Maryland Board ordered Respondent to apply for an inactive license and Respondent agreed that he will never apply for reinstatement of full active medical licensure in the State of Maryland. (Pet.Ex. #4) These sanctions would be tantamount to license revocation under the penalty provisions of Section 230(a) of the Public Health Law of New York State.


Therefore, the Hearing Committee believes that they can do no less than the Maryland Board to protect the citizens of New York State. Under the totality of the circumstances, revocation is the appropriate sanction in this instance.

ORDER

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

1. The Specification of professional misconduct contained within the Statement of Charges (Petitioner's Exhibit #1) is **SUSTAINED**.
2. Respondent's license to practice medicine in New York State be and hereby is **REVOKED**.
3. This Order shall be effective upon the Respondent or the Respondent's attorney by certified or registered mail.

DATED: Albany, New York
April 15 1996



TERESA S. BRIGGS, M.D.
(Chair)

RICHARD F. KASULKE, M.D.
REV. EDWARD J. HAYES

TO: Cindy M. Fascia, Esq.
Associate Counsel
NYS Department of Health
Corning Tower-Room 2438
Empire State Plaza
Albany, New York 12237

Necati M. Alp, M.D.
8415 Bellona Lane Apt. 100
Towson, MD 21204

APPENDIX I

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

-----X

IN THE MATTER : NOTICE OF
OF : REFERRAL
NECATI M. ALP. M.D. : PROCEEDING

-----X

TO: NECATI M. ALP. M.D.
116 ~~West~~ University Parkway
Apt. ~~1218~~
Baltimore, Maryland 21210

*use address : 8415 Bellona Lane
Towson, M.D.
21284*

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law Section 230(10)(p) (McKinney Supp. 1996) and N.Y. State Admin. Proc. Act Sections 301-307 and 401 (McKinney 1984 and Supp. 1996). The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 6th day of March, 1996 at 10:00 a.m. in the forenoon of that day at the Empire State Plaza, Cultural Education Building, Concourse Level, Meeting Room E, Albany, New York 12230.

At the proceeding, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. 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 which 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, Corning Tower Building, 25th Floor, Empire State Plaza, Albany, New York 12237, ATTENTION: HON. TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION, (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before February 21, 1996.

You may file a written answer, brief, and affidavits with the Committee. Six copies of all papers you wish to submit must be filed with the Bureau of Adjudication at the address indicated above on or before February 21, 1996, 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
January 18, 1996

Peter D. Van Buren

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

Inquiries should be addressed to:

E. Marta Sachey
Associate Counsel
NYS Department of Health
Division of Legal Affairs
Corning Tower Building
Room 2429
Empire State Plaza
Albany, New York 12237
(518) 473-4282

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

-----X

IN THE MATTER : STATEMENT
OF : OF
NECATI M. ALP. M.D. : CHARGES

-----X

NECATI M. ALP, M.D., the Respondent, was authorized to practice medicine in New York State on March 10, 1966 by the issuance of license number 096260 by the New York State Education Department. Respondent is not currently registered with the New York State Education Department to practice medicine in New York State.

FACTUAL ALLEGATIONS

1. The State of Maryland Board of Physician Quality Assurance, by Consent Order dated June 28, 1995, found Respondent guilty of immoral or unprofessional conduct in the practice of medicine in violation of Md. Code Ann. §14-404(a)(3) and of failing to meet appropriate standards as determined by appropriate peer review for the delivery of quality medical and surgical care in violation of Md. Code Ann. §14-404(a)(22). The Maryland Board, inter alia, reprimanded Respondent and ordered that Respondent be absolutely prohibited from

practicing medicine in Maryland and that Respondent, effective September 30, 1995, shall hold an inactive medical license.

2. The conduct underlying the Maryland Board's finding of unprofessional conduct consisted of Respondent, inter alia, during the course of providing psychiatric care to a patient, engaging in physical contact with the patient, including hugging and kissing, performing physical examinations on the patient, including applying medicinal ointment to her chest, which occurred at the patient's home, inviting the patient for meals at Respondent's home, and engaging in gift-giving.

3. The conduct underlying the Maryland Board's finding of unprofessional conduct would, if committed in New York State, constitute professional misconduct under N.Y. Educ. Law §6530(20) [conduct in practice of medicine which evidences moral unfitness] and/or §6530(3) [negligence on more than one occasion] (McKinney Supp. 1996).

SPECIFICATION

Respondent is charged with professional misconduct under N.Y. Educ. Law §6530(9)(b) (McKinney Supp. 1996) by reason of his 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 in that, Petitioner charges the facts in Paragraphs 1 through 3.

DATED: *January 18*, 1996
Albany, New York

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