



STATE OF NEW YORK  
DEPARTMENT OF HEALTH

433 River Street, Suite 303 Troy, New York 12180-2299

Richard F. Daines, M.D.  
Commissioner

James W. Clyne, Jr.  
Executive Deputy Commissioner

Public

September 2, 2010

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Alex Fabricio Argotte, M.D.

Robert Bogan, Esq.

REDACTED

NYS Department of Health  
ESP-Corning Tower-Room 2509  
Albany, New York 12237

**RE: In the Matter of Alex Fabricio Argotte, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 10-157) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), (McKinney Supp. 2007) and §230-c subdivisions 1 through 5, (McKinney Supp. 2007), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the Respondent or the Department may seek a review of a committee determination.

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

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

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

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

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

Sincerely,

REDACTED

James F. Horan, Acting Director  
Bureau of Adjudication

JFH:cah

Enclosure

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

**COPY**

IN THE MATTER  
OF  
ALEX FABRICIO ARGOTTE, M.D.

DETERMINATION

AND

ORDER

BPMC #10-157

A hearing was held on July 21, 2010, at the offices of the New York State Department of Health, 433 River Street, Troy, New York. A Notice of Referral Proceeding and a Statement of Charges, both dated April 8, 2010, were served upon the Respondent, **Alex Fabricio Argotte, M.D.** Pursuant to Section 230(10)(e) of the Public Health Law, Chairperson, **John B. Waldman M.D., Eleanor C. Kane M.D.,** and **David Irvine** duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. **Kimberly A. O'Brien Esq.,** Administrative Law Judge, served as the Administrative Officer.

The Petitioner appeared by **Thomas Conway Esq.,** General Counsel, by **Robert Bogan Esq.,** of Counsel. The Respondent appeared at the hearing and represented himself.

Evidence was received and transcripts of these proceedings were made.

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

## STATEMENT OF CASE

This case was brought pursuant to Public Health Law Section 230(10) (p). The statute provides for an expedited hearing when a licensee is charged solely with a violation of Education Law Section 6530(9). In such cases, a licensee is charged with misconduct based upon a prior criminal conviction in New York State or another jurisdiction, or upon a prior administrative adjudication regarding conduct that would amount to professional misconduct, if committed in New York. The scope of an expedited hearing is limited to a determination of the nature and severity of the penalty to be imposed upon the licensee.

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

### WITNESSES

For the Petitioner:	None
For the Respondent:	Alex Fabricio Argotte, M.D

### FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers below in parentheses refer to exhibits or transcript page numbers, denoted by the prefix "Ex." or "Tr." These citations refer to evidence found persuasive by the Hearing Committee in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence. All Hearing Committee findings were unanimous.

1. Alex Fabricio Argotte, M.D, the Respondent was authorized to practice medicine in New York State on August 13, 1996, by the issuance of license number 204078 by the New York State Education Department (Ex. 4).

2. On or about April 16, 2009, the Commonwealth of Kentucky, Board of Medical Licensure (hereinafter "Kentucky Board"), by an Agreed Order of Suspension and Probation (hereinafter "Kentucky Order") suspended Respondent for three months and placed his license on probation for five years with terms and conditions (Ex. 5), and on or about May 14, 2010, by an Agreed Order "terminated conditions" of the Kentucky Order (Ex. 6).

#### **HEARING COMMITTEE CONCLUSIONS**

The Hearing Committee concludes that the conduct of the Respondent as set forth in the Statement of Charges would not constitute professional misconduct under the laws of New York State, had the conduct occurred in New York State.

#### **VOTE OF THE HEARING COMMITTEE**

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

VOTE: DISMISSED (3-0)

#### **HEARING COMMITTEE DETERMINATION**

The Hearing Committee is required to hear and consider only evidence and testimony relating to whether the Kentucky findings of administrative violations constitute misconduct in New York State and if so the nature and severity of the penalty to be imposed upon the licensee. The Petitioner alleged in the Statement of Charges that the Respondent's actions in Kentucky, if they occurred in New York State, would have constituted: practicing the profession fraudulently; negligence on more than one occasion, failure to comply with federal state or local rules or regulations governing the practice of medicine; exercising undue

influence on the patient; moral unfitness; and/or failing to maintain a patient record that accurately reflects the evaluation and treatment of the patient. The Hearing Committee determined that the evidence of the Respondent's treatment of the patient as set forth in the Kentucky Orders is insufficient to sustain the factual allegations or the specification of misconduct contained in the Statement of Charges (Appendix 1).

Initially, the Kentucky Board suspended Respondent's license to practice medicine for three months, imposed a five year probation, restricted Respondent from having contact with the patient and treating family members or anyone he was having a sexual relationship with, and ordered the Respondent to undergo psychological and substance abuse screening and counseling (Ex. 5). On or about May 14, 2010 the Kentucky Board issued an Agreed Order which specifically states that a Kentucky Board consultant found nothing to support the allegations that Respondent committed acts of domestic violence, or inappropriately treated or prescribed for himself and his ex-girlfriend (Ex. 6). The Kentucky Board did find that Respondent violated the physician/patient relationship when he began treating his girlfriend (Ex. 6).

There was no showing by the Petitioner that a physician who treats someone he is intimately involved with constitutes professional misconduct under the laws of New York State. The Respondent testified on his own behalf and Petitioner did not object to Respondent's presentation (Tr. 14). The Hearing Committee found Respondent to be highly credible and his testimony supported by the evidence offered at the hearing. The Respondent testified that because his girlfriend at the time had no health insurance he provided treatment free of charge and admitted that at the time he lacked the knowledge or understanding that this constituted misconduct (Tr.16-17). During the hearing, Respondent offered compelling evidence including reports, evaluations and recommendations all

consistently indicating that Respondent is a well respected and capable physician who has no past or current history of violence, psychological disorders, inappropriate prescribing and/or substance abuse, and he successfully engaged in therapy and completed continuing medical education regarding physician / patient boundary issues (Ex. 6, A through M). For the foregoing reasons, the Committee believes that there is insufficient credible evidence to sustain the specification of misconduct set forth in the Statement of Charges and accordingly Respondent should be allowed to practice medicine in the state of New York.

**ORDER**

IT IS HEREBY ORDERED THAT:

1. The factual allegations and specification of misconduct contained in the Statement of Charges (Appendix 1) are **DISMISSED**; and
2. This Order shall be effective upon service on the Respondent in accordance with the requirements of Public Health Law Section 230(10) (h).

**DATED: New York,**

AUGUST 30, 2010

REDACTED

**John B. Waldman, M.D.**  
**Chairperson**

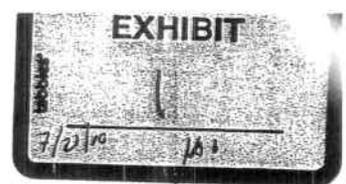
**Eleanor C. Kane, M.D.**  
**David Irvine**

To: Alex Fabricio Argotte, M.D

REDACTED

Robert Bogan, Esq.  
Bureau of Professional medical Conduct  
Corning Tower Room 2509  
Empire State Plaza  
Albany, New York 12237

# **APPENDIX I**



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**IN THE MATTER**  
  
**OF**  
  
**ALEX FABRICIO ARGOTTE, M.D.**  
**CO-09-06-3488-A**

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**NOTICE OF**  
  
**REFERRAL**  
  
**PROCEEDING**

**TO:** ALEX FABRICIO ARGOTTE, M.D.

REDACTED

**PLEASE TAKE NOTICE THAT:**

An adjudicatory proceeding will be held pursuant to the provisions of New York Public Health Law §§230(10)(p) and New York State Administrative Procedures Act §§301-307 and 401. The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 19<sup>th</sup> day of May, 2010, at 10:00 a.m., at the offices of the New York State Department of Health, Hedley Park Place, 433 River Street, 5<sup>th</sup> Floor, Troy, NY 12180.

At the proceeding, evidence will be received concerning the allegations set forth in the Statement of Charges, that 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 who shall be an attorney admitted to practice in New York state. You may produce evidence and/or sworn testimony on your behalf. Such evidence and/or sworn testimony shall be strictly limited to evidence and testimony relating to the nature and severity of the penalty to be imposed upon the licensee. Where the charges are based on the conviction of state law crimes in other jurisdictions, evidence may be offered that would show that the conviction would not be a crime in New York State. The Committee also may limit the number of witnesses whose testimony will be received, as well as the length of time any witness will be permitted to testify.

If you intend to present sworn testimony, the number of witnesses and an estimate of the time necessary for their direct examination must be submitted to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Hedley Park Place, 433 River Street, Fifth Floor South, Troy, NY 12180, ATTENTION: HON. JAMES F. HORAN, ACTING DIRECTOR, BUREAU OF ADJUDICATION (Telephone: (518-402-0748), (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, no later than ten (10) days prior to the scheduled date of the Referral Proceeding, as indicated above.

Pursuant to the provisions of New York Public Health Law §230(10)(p), you shall file a written answer to each of the charges and allegations in the Statement of Charges not less than ten (10) days prior to the date of the hearing. Any charge or allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such answer. The answer shall be filed with the Bureau of Adjudication, at the address indicated above, and a copy shall be forwarded to the attorney for the Department of Health, whose name appears below. You may file a written brief and affidavits with the Committee. Six (6) copies of all papers you submit must be filed with the Bureau of Adjudication at the address indicated above, no later than fourteen (14) days prior to the scheduled date of the Referral Proceeding, and a copy of all papers must be served on the same date on the Department of Health attorney, indicated below. Pursuant to §301(5) of the State Administrative Procedure Act, the Department, upon reasonable notice, will provide, at no charge, a qualified interpreter of the deaf to interpret the proceedings to, and the testimony of, any deaf person. Pursuant to the terms of New York State Administrative Procedure Act §401 and 10 N.Y.C.R.R. §51.8(b), the Petitioner demands, hereby, disclosure of the evidence that Respondent intends to introduce at the hearing, including the names of witnesses, a list of and copies of documentary evidence, and a description of physical and/or other evidence that cannot be photocopied.

**YOU ARE ADVISED, HEREBY, THAT THE ATTACHED CHARGES WILL BE MADE PUBLIC FIVE (5) BUSINESS DAYS AFTER THEY ARE SERVED.**

Department attorney: Initial here \_\_\_\_\_

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 (5) 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

*April 8*, 2010

REDACTED

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

Inquiries should be addressed to:

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

IN THE MATTER  
OF  
ALEX FABRICIO ARGOTTE, M.D.  
CO-09-06-3488-A

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STATEMENT  
OF  
CHARGES

ALEX FABRICIO ARGOTTE, M.D., the Respondent, was authorized to practice medicine in New York state on August 13, 1996, by the issuance of license number 204078 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about April 16, 2009, the Commonwealth of Kentucky, Board of Medical Licensure (hereinafter "Kentucky Board"), by an Agreed Order of Suspension and Probation (hereinafter "Kentucky Order"), inter alia, placed Respondent's license to practice medicine on five (5) years probation with terms and conditions, that include, inter alia, that his license to practice medicine be suspended for three (3) months, that he obtain psychotherapy, and that he obtain neurological testing, based on having had sexual contact with a patient while the patient was under the care of the physician; engaging in dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm the public or any member thereof; and knowingly making a false statement in any document executed in connection with the practice of his profession.

B. The conduct resulting in the Kentucky Board's disciplinary action against Respondent would constitute misconduct under the laws of New York state, pursuant to the following sections of New York state Law:

1. New York Education Law §6530(2) (practicing the profession fraudulently);
2. New York Education Law §6530(3) (negligence on more than one occasion);

3. New York Education Law §6530(16) (failure to comply with federal, state, or local laws, rules, or regulations governing the practice of medicine);
4. New York Education Law §6530(17) (exercising undue influence on the patient);
5. New York Education Law §6530(20) (moral unfitness); and/or
6. New York Education Law §6530(32) (failing to maintain a record for each patient that accurately reflects the evaluation and treatment of the patient).

**SPECIFICATION**

Respondent violated New York Education Law §6530(9)(d) by having his license to practice medicine suspended and/or having other disciplinary action taken after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the license suspension and/or other disciplinary action would, if committed in New York state, constitute professional misconduct under the laws New York state, in that Petitioner charges:

1. The facts in Paragraphs A and/or B.

DATED: *April 8*, 2010  
Albany, New York

REDACTED

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