



# STATE OF NEW YORK DEPARTMENT OF HEALTH

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

Mark R. Chassin, M.D., M.P.P., M.P.H.  
Commissioner

Paula Wilson  
Executive Deputy Commissioner

August 9, 1993

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Francisco Pereda, M.D.  
c/o Wende Correctional Facility  
Inmate No. 93A2191  
P.O. Box 1187  
Alden, New York 14004-1187

Salvatore Cheda, Esq.  
Cheda & Sheehan  
76-03 Roosevelt Avenue  
Jackson Heights, New York 11372

Ann Hroncich, Esq.  
NYS Department of Health  
Bureau of Professional Medical Conduct  
5 Penn Plaza - Sixth Floor  
New York, New York 10001-1810

**RE: In the Matter of Francisco Pereda, M.D.**

Dear Dr. Pereda, Mr. Cheda and Ms. Hroncich:

Enclosed please find the Determination and Order (No. BPMC-93-122) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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

New York State Department of Health  
Office of Professional Medical Conduct  
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 than 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), "(t)he 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.

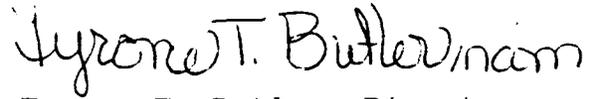
The notice of review served on the Administrative Review Board should be forwarded to:

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

Very truly yours,

A handwritten signature in black ink that reads "Tyrone T. Butler, nam". The signature is written in a cursive style with a large initial 'T'.

Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:nam  
Enclosure

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

-----X  
IN THE MATTER :  
OF :  
FRANCISCO PEREDA, M.D. :  
-----X

HEARING  
COMMITTEE'S  
DETERMINATION  
AND ORDER  
NO. BPMC-93-122

A Notice of Hearing and Statement of Charges dated May 13, 1993 were served upon the Respondent, FRANCISCO PEREDA, M.D. DONNA B. O'HARE, M.D., Chairperson, NOEL L. COHEN, M.D., and MATTHEW M. CAMMEN, duly designated members of the State Board of Professional Medical Conduct served as the Hearing Committee in this matter pursuant to Section 230(10)(e) of the Public Health Law. BENJAMIN J. MIGLIORE, ESQ., Administrative Law Judge, served as the Hearing Officer. A hearing was held on June 23, 1993 at the Offices of the New York State Department of Health, 5 Penn Plaza, Sixth Floor - Conference Room A, New York, New York. The Department of Health appeared by Ann Hroncich, Esq., Associate Counsel. The Respondent did not appear in person, however, he was represented at the hearing by Salvador Cheda, Esq. of Cheda & Sheehan, 76-03 Roosevelt Avenue, Jackson Heights, New York, New York 11372. Evidence was received and a transcript of this proceeding was made.

STATEMENT OF CASE

The proceeding 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 New York 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 the expedited hearing is limited to a determination of the nature and severity of the penalty to be imposed upon a licensee.

In the instant case, Respondent is charged with professional misconduct pursuant to New York Education Law Section 6530(9)(a)(i) (McKinney Supp. 1993), in that he has been convicted of committing an act constituting a crime under New York State Law. A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order (Appendix I).

#### **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 transcript page numbers or exhibits. The 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. Francisco Pereda, M.D. was authorized to practice medicine in New York State on June 25, 1984 by the issuance of license number 15813 by the New York State Education Department. The Respondent is currently registered with the New York State

Education Department to practice medicine for the period January 1, 1993 through December 31, 1994 (Pet. Ex. 1).

2. On or about January 14, 1993, the Respondent was convicted in Nassau County, State of New York, of two counts of rape in the first degree and two counts of assault in the second degree. The convictions stem from administering the drug temazepam to two female patients without their consent and made them physically helpless, unconscious and in a state of stupor. Respondent then engaged in sexual intercourse with the two female victims (Pet. Exs. 1 and 4).

3. On or about March 1, 1993, the Respondent was sentenced to an indeterminate term of imprisonment which shall have a minimum term of 5 years and maximum term of 15 years for the two counts of Rape in the first degree, to run concurrent with each other, and an indeterminate term of imprisonment which shall have a minimum term of 2 and 1/3 years and a maximum term of 7 years for the two counts of assault in the second degree, to run concurrent with each other (Pet. Exs. 1 and 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.

The Hearing Committee unanimously concluded that the Department of Health had met its burden of proof. The preponderance of the evidence clearly demonstrated that the Respondent's conduct underlying the conviction in New York State of an act constituting a crime under the Penal Law of this State constituted misconduct under New York Education Law Section 6530(9)(a)(i) (McKinney's Supp. 1993).

The Hearing Committee, therefore, sustained the specification of misconduct contained in 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 medical license be revoked, and he be fined \$10,000.00. The Committee's determination as to penalty is based upon the Respondent being convicted of violent felony offenses. He used a drug upon the victims that was capable of causing unconsciousness and potentially death. He administered the drug to have sex with the victims. The Respondent, as a physician, was placed in a position of public trust. He exploited that position of trust by using and abusing the power and privilege to

administer drugs, entrusted to him, for his own sexual gratification. He administered the drugs with complete disregard for the consequences it could have on the victims.

In regard to the lack of opportunity to submit letters from friends and colleagues showing the Respondent's character, the Committee concluded that Respondent's attorney had the opportunity to submit such character evidence since such letters were available prior to this hearing (See Ex. 5). In addition, the Respondent was served on May 18, 1993. He had sufficient time to prepare a defense which included character evidence. The Committee determined that the severity of the crimes outweighs the character witness testimony that might come in and, therefore, any further delay in the proceedings to obtain character evidence was not justified.

In regard to the fine of \$10,000.00, the Committee determined that the Respondent had put the taxpayers at considerable expense by his misconduct. According to the pre-sentence report of the Nassau County Probation Department, Respondent admitted to earning \$500,000.00 per year as a physician with offices in Queens and Floral Park (Pet. Ex. 6). Based on this fact, the Committee concluded that the fine of \$10,000.00 was appropriate.

Lastly, the Committee could not find any redeeming factors in this case.

**ORDER**

Based upon the foregoing it is hereby ordered that:

1. The specification of professional misconduct contained in the Statement of Charges is **SUSTAINED**; and
2. Respondent's license to practice medicine in New York State is hereby **REVOKED** and he shall be fined **\$10,000.00** (Ten Thousand Dollars).

DATED: New York, New York

August 1, 1993



**DONNA B. O'HARE, M.D.**  
Chairperson

**NOEL L. COHEN, M.D.**  
**MATTHEW M. CAMMEN**

TO: Ann Hroncich, Esq.  
NYS Department of Health  
Bureau of Professional Medical Conduct  
5 Penn Plaza - Sixth Floor  
New York, New York

Salvatore Cheda, Esq.  
Cheda & Sheehan  
76-03 Roosevelt Avenue  
Jackson Heights, New York 11372

Francisco Pereda, M.D.  
c/o Wende Correctional Facility  
Inmate No. 93A2191  
P.O. Box 1187  
Alden, New York 14004-1187

APPENDIX



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

-----X  
: IN THE MATTER : NOTICE OF  
: : REFERRAL  
: OF :  
: FRANCISCO PEREDA, M.D. : PROCEEDING  
: :  
-----X

TO: FRANCISCO PEREDA, M.D.  
c/o Wende Correctional Facility  
Inmate No. 93A2191  
P.O. Box 1137  
Alden, N.Y. 14004-1137

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. 1993) and N.Y. State Admin. Proc. Act Sections 301-307 and 401 (McKinney 1984 and Supp. 1993). The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 23rd day of June 1993 at one o'clock in the afternoon of that day at 5 Penn Plaza, 6th Floor, New York, New York 10001.

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: NANCY MASSARONI, (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before June 11, 1993.

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 June 11, 1993 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 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: New York, New York  
*May 13*, 1993



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Chris Stern Hyman  
Counsel  
Bureau of Professional  
Medical Conduct

Inquiries should be addressed to:

Ann Hroncich  
Associate Counsel  
212-613-2615

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

-----X  
IN THE MATTER : STATEMENT  
OF : OF  
FRANCISCO PEREDA, M.D. : CHARGES  
-----X

FRANCISCO PEREDA, M.D., the Respondent, was authorized to practice medicine in New York State on June 25, 1984, by the issuance of license number 158513, by the New York State Education Department. The Respondent is currently registered with the New York State Education Department to practice medicine for the period January 1, 1993 through December 31, 1994, at 176 Tulip Avenue, Floral Park, N.Y. 11001.

FIRST SPECIFICATION

HAVING BEEN CONVICTED OF  
AN ACT CONSTITUTING A CRIME  
UNDER NEW YORK STATE LAW

Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law Sec. 6530(9)(a)(i) (McKinney Supp. 1993), in that he has been convicted of committing an act constituting a crime under New York State Law, specifically:

On or about January 14, 1993, the Respondent was convicted, after a trial by jury, in the County Court of the State of New York, County of Nassau, of two counts of Rape in the First Degree, a felony, in violation of Section 130.35(2) of the Penal Law, in that between on or about March 20, 1991 and March 21, 1991, in Nassau County, Respondent engaged in sexual intercourse with two female victims, who were incapable of consent by reason of being physically helpless, and two counts of Assault in the Second Degree, a felony, in violation of Section 120.05(5) of the Penal Law, in that between on or about March 20, 1991 and March 21, 1991, in Nassau County, Respondent, for other than lawful medical or therapeutic treatment, did intentionally cause stupor, unconsciousness or other physical impairment or injury to two females by administering to them, without their consent, a drug, substance or preparation capable of producing the same, to wit, Respondent administered temazepam to them.

On or about March 1, 1993, the Respondent was sentenced to an indeterminate term of imprisonment which shall have a minimum term of 5 years and a maximum term of 15 years for the two counts of Rape in the First Degree, to run concurrent with each other, and an indeterminate term of imprisonment which shall have a minimum term of 2-1/3 years and a maximum term of 5 years for the two counts of Assault in the Second Degree, to run concurrent with each other, and was committed to the custody of the New York State Department of Correctional Services.

DATED: NEW YORK, NEW YORK

May 13 , 1993



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CHRIS STERN HYMAN  
Counsel  
Bureau of Professional  
Medical Conduct