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

RECEIVED
JUN 0 5 1995
OFFICE OF PROFESSIONAL MEDICAL CONDUCT

June 2, 1995

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Frederick Zimmer, Esq.
Associate Counsel
NYS Department of Health
Bureau of Professional Medical Conduct
Corning Tower-Room 2438
Empire State Plaza
Albany, New York 12237

V. Michael Liccione, Esq.
25 Hopper Street
Utica, New York 13501

Alexander Delgado, M.D.
516 Nichols Street
Utica, New York 13501

RE: In the Matter of Alexander Delgado, M.D.

EFFECTIVE DATE: 06/09/95

Dear Mr. Zimmer, Mr. Liccione and Dr. Delgado:

Enclosed please find the Determination and Order (No. 95-116) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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,

Tyrone T. Butler/rlw

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nm
Enclosure

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

IN THE MATTER -OF- ALEXANDER DELGADO, M.D. Respondent	DECISION AND ORDER OF THE HEARING COMMITTEE BPMC ORDER NO. 95-116

This matter was commenced by a Notice of Hearing and Statement of Charges, both dated January 17, 1995 which were served upon **ALEXANDER DELGADO, M.D.,** (hereinafter referred to as "Respondent"). **GERALD ANSELL, M.D., Chairperson, ERNST A. KOPP, M.D., and MICHAEL WALKER**, 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. **JONATHAN M. BRANDES, ESQ.**, Administrative Law Judge, served as the Administrative Officer. A hearing was held on May 3, 1995 at the offices of the New York State Department of Health, Empire State Plaza, Albany, New York. The State Board For Professional Medical Conduct appeared by **FREDERICK ZIMMER, ESQ.**, Assistant Counsel, Bureau of Professional Medical Conduct. Respondent appeared in person and by **V. MICHAEL LICCIONE, ESQ.**. Evidence was received. Legal arguments were heard. Respondent testified in his own behalf. A transcript of these proceedings was made. The parties submitted written closing statements.

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

STATEMENT OF CASE

This case was brought pursuant to Public Health Law Section 230(10)(p). This statute provides for an expedited hearing where a licensee is charged solely with a violation of Education Law Section 6530(9)(a)(i). In such cases, a licensee is charged with misconduct based upon prior professional disciplinary action or criminal conviction. The scope of this 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)(a)(i). The charge arises from a conviction in the Oneida County Court arising from the possession of illegal drugs, resisting arrest and petit larceny. The allegations in this proceeding and the underlying conviction are more particularly set forth in the Notice of Referral Proceeding and Statement of Charges, a copy of which is attached to this Decision and Order as Appendix I.

FINDINGS OF FACT

The Committee adopts the factual statement set forth on pages one and two of the Statement of Charges (Appendix I) as its findings of fact and incorporates them herein. The Committee adds the fact that Respondent is presently suspended from the practice of medicine in New York State.

CONCLUSIONS

Respondent did not deny any of the charges. After consultation with counsel, Respondent offered a statement under oath regarding what he considered to be mitigating factors in his overall history. The testimony of Respondent and cross-examination by the State, brought forth a picture of repeated attempts at recovery from an ongoing substance abuse problem and repeated relapses. One case of possible patient

involvement was brought out. Respondent showed repeated examples of denial as when he refused to admit he ever "sold" drugs although he did admit that people gave him money on occasion so that he could obtain drugs for them. Rather than selling drugs, Respondent characterized himself as "an agent." Such verbal chicanery is precisely the stuff of which addiction is made.

The State is seeking revocation of Respondent's license to practice medicine. The said license is presently under suspension. Hence, Respondent is not and cannot presently practice medicine in this state. The Committee notes Respondent is not seeking reinstatement of his license, but rather seeks to remain in a state of suspension. While the Committee wishes to encourage Respondent to overcome his drug problems, this humanistic consideration must be weighed against the equally humanistic consideration entailed in the Committee's responsibility to protect the public and the medical community from unworthy practitioners. Ultimately, the question is this: Given a physician who is convicted of serious drug offenses, who admits having used heroin and crack cocaine and who admitted relapses into substance abuse, can the medical community tolerate the existence of a medical license for such a person, albeit one in suspension? The Committee finds without hesitation in the negative. Respondent has been given every opportunity to overcome an extremely challenging lifelong problem. He has squandered those opportunities. As the State points out in the brief submitted by counsel, "Respondent's temporary surrender should by its very terms <u>be temporary and imply some legitimate and timely effort on his part to remedy his situation</u> (emphasis supplied)". The Committee adopts this view as its own and finds Respondent to have failed in his efforts to overcome his difficulties. Finally, the Committee is mindful that revocation is the ultimate penalty. However, it does not prohibit Respondent from turning his life around and re-applying at a later time.

ORDER

Therefore, based upon the foregoing,

IT IS HEREBY ORDERED THAT:

1. The Factual allegations in the Statement of Charges are **SUSTAINED.**

Furthermore, it is hereby **ORDERED** that;

2. The Specification of Misconduct contained within the Statement of Charges (Appendix I) is **SUSTAINED**;

Furthermore, it is hereby **ORDERED** that;

3. The license of Respondent to practice medicine in the state of New York be and is hereby **REVOKED**

Dated:
Endicott, New York:

June 1, **1995**

GERALD ANSELL, M.D.,
Chairperson

ERNST A. KOPP, M.D.
MICHAEL WALKER

TO: **FREDERICK ZIMMER, ESQ.**
Associate Counsel
Bureau of Professional Medical Conduct
New York State Department of Health
Corning Tower
Albany, New York 12237

V. MICHAEL LICCIONE, ESQ.
25 Hopper St.
Utica, N.Y. 13501

ALEXANDER DELGADO, M.D.
516 Nichols Street
Utica, N.Y. 13501

APPENDIX ONE

STATE OF NEW YORK : DEPARTMENT OF HEALTH

STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

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IN THE MATTER	:	NOTICE OF
OF	:	REFERRAL
ALEXANDER DELGADO, M.D.	:	PROCEEDING
Respondent		

----------x

TO: Alexander Delgado, M.D.
1427 Oneida Street
Utica, New York 13501

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. 1995) and N.Y. State Admin. Proc. Act Sections 301-307 and 401 (McKinney 1984 and Supp. 1995). The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 5th day of April, 1995 at 10:00 a.m. in the forenoon of that day at Room E of the Cultural Education Center, Empire State Plaza, Albany, New York 12237.

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 March 30, 1995.

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 April 2, 1995 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
February 17, 1995

Peter D. Van Buren

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

Inquiries should be addressed to:

Frederick Zimmer
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

IN THE MATTER OF ALEXANDER DELGADO, M.D. Respondent	STATEMENT OF CHARGES

ALEXANDER DELGADO, M.D., the Respondent, was authorized to practice medicine in New York State on June 18, 1982 by the issuance of license number 150311 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. The City Court of Utica, on or about March 7, 1994, found Respondent guilty of three counts of violating N.Y. Penal Law §220.03(criminal possession of a controlled substance in the 7th degree through the knowing and unlawful possession of a controlled substance) in that, on or about September 14, 1992, he knowingly and unlawfully possessed Cocaine, Heroin and 10 Valium tablets. The Utica City Court sentenced Respondent to sixty days in the Oneida County Jail and assessed a $90.00 surcharge against him.

B. The Oneida County Court, on or about August 8, 1994, convicted Respondent upon a plea of guilty of two counts of violating N.Y. Penal Law §220.03 in that, on or about January 19,

1994, Respondent knowingly and unlawfully possessed the controlled substances Cocaine and Heroin. The Oneida County Court sentenced Respondent, on or about September 21, 1994, to sixty days in the Oneida County Jail, probation for three years, credit for time served, each count to run concurrently, with a $90.00 surcharge.

C. Respondent, on or about October 12, 1994, pled guilty to violating N.Y. Penal Law §220.03 in that on or about September 7, 1994, he knowingly and unlawfully possessed Heroin. The Utica City Court sentenced Respondent to ninety days in the Oneida County Jail and assessed a $90.00 surcharge against him.

D. Respondent, on or about November 30, 1994, pled guilty to one count of violating N.Y. Penal Law §205.30(resisting arrest) and also pled guilty to violating N.Y. Penal Law §155.25 (petit larceny). Respondent was sentenced to thirty days of prison, with credit for time served, each count to run consecutively.

FIRST SPECIFICATION

Respondent is charged with professional misconduct by reason of his having been convicted of committing an act constituting a crime under N.Y. State law, in violation of N.Y. Educ. Law §6530(9)(a)(i)(McKinney Supp. 1995) in that Petitioner charges the facts in paragraphs A and/or B and/or C and/or D.

DATED: February 17, 1995
Albany, New York

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