



# 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*

March 24, 1993

## CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Hector Perez, M.D.  
93 Scholes Street - #1 C  
Brooklyn, New York 11206

Michael S. Kelton, Esq.  
Lippman, Krasnow & Kelton  
711 Third Avenue  
New York, New York 10017

Terrence Sheehan, Esq.  
NYS Department of Health  
5 Penn Plaza - Sixth Floor  
New York, New York 10001

**RE: In the Matter of Hector Perez, M.D.**

Dear Dr. Perez, Mr. Kelton and Mr. Sheehan:

Enclosed please find the Determination and Order (No. 93-38) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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:

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 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.

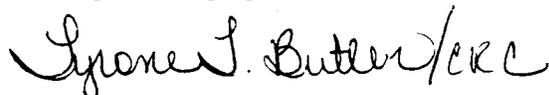
The notice of review served on the Administrative Review Board should be forwarded to:

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 cursive script that reads "Tyrone T. Butler / CRC".

Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:crc  
Enclosure

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

-----X  
IN THE MATTER : DETERMINATION  
OF : AND  
HECTOR PEREZ, M.D. : ORDER  
-----X

ORDER NO. BPMC-93-38

DANIEL W. MORRISSEY, O.P., Chairman, WILLIAM W. FALON,  
M.D. and BENJAMIN WAINFELD, M.D. duly designated members of  
the State Board for Professional Medical Conduct, appointed  
by the Commissioner of Health of the State of New York  
pursuant to Section 230(1) of the Public Health Law, served,  
as the Hearing Committee in this matter pursuant to Section  
230(10)(e) of the Public Health Law. MICHAEL P. MCDERMOTT,  
ESQ., Administrative Law Judge, served as Administrative  
Officer for the Hearing Committee.

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

**SUMMARY OF THE PROCEEDINGS**

Notice of Hearing and Statement of Charges:	August 26, 1992
Amended Statement of Charges:	December 31, 1992
Pre-Hearing Conference:	September 30, 1992
Hearing Dates:	October 8, 1992 November 3, 1992 November 10, 1992 January 26, 1992
Place of Hearing:	NYS Department of Health 5 Penn Plaza New York, NY

Date of Deliberations: December 8, 1992  
February 9, 1993

Petitioner appeared by: Peter J. Millock, Esq.  
General Counsel  
NYS Department of Health  
By: Terrence Sheehan, Esq.  
Associate Counsel

Respondent appeared by: Lippman, Krasnow & Kelton  
711 Third Avenue  
New York, NY 10017  
By: Michael S. Kelton, Esq.  
of Counsel

### STATEMENT OF CHARGES

Essentially, the Statement of Charges charges the Respondent with practicing while impaired, being an habitual abuser of alcohol, and with being convicted of a crime.

The Charges are more specifically set forth in the Statement of Charges, a copy of which is attached hereto and made a part hereof.

### WITNESSES

#### For the Petitioner:

Roberta Lewis, R.N.  
Betty Ikwild-Cherico, R.N.  
Joyce Strauss, R.N.  
Adele Leite  
Colleen Fass, R.N.  
Frances Davis, R.N.  
Joyce Strauss, R.N.  
Justin C. Walker, M.D.  
Albert Baldassarri

#### For the Respondent:

Hector Perez, M.D. the Respondent  
Judith Ann Sapione, R.N.  
Eleanor Fitzpatrick, R.N.

Constantine E. Flokas, M.D.  
Hugo C. Franco, M.D.  
Hector Perez, M.D., the Respondent

### FINDINGS OF FACT

Numbers in parentheses 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. All Hearing Committee findings were unanimous unless otherwise specified.

### GENERAL FINDING

The Respondent is a physician duly licensed to practice medicine in the State of New York under license number 185075 issued by the State Education Department. He is currently registered to practice medicine for the period January 1, 1991 through December 31, 1992 (Pet's. Ex. 1).

1. The Respondent is 31 years old and was born in Puerto Rico. He and his five siblings were raised by his mother. The family came to New York in 1968, and settled in Williamsburg, Brooklyn (Tr. 260).

2. The Respondent did poorly in his early years in school, however, he went on to graduate as valedictorian at Eastern District High School in Brooklyn. He went to Long Island University and graduated cum laude, at which time he entered medical school at the Mt. Sinai Medical Center in

New York City (Tr. 265-269).

3. The Respondent had difficulty adjusting to medical school, and failed many of his courses in his first year. He repeated his first year and passed every course. He failed a few courses in his second year, but made them up during the summer of his second year (Tr. 269-270).

4. The Respondent's internship at Maimonides Medical Center in Brooklyn represented another period of adjustment. On July 30, 1989 he was arrested for driving while ability impaired and on December 1, 1989 he plead guilty to this charge (Pet's. Ex. 2; Tr. 271-272).

5. The Respondent was referred to Hugo Franco, M.D., Director of Alcoholism at New York University Hospital, by the Committee for Physicians Health, in August 1990. The referral was made because there was a suspicion of alcohol abuse which was not linked to any impairment on the job. The chief complaint was that the Respondent was having interpersonal conflicts with members of the staff and there was a suspicion that his mood might be altered by alcohol. Dr. Franco did not find any major character problem or pathology, but did find a conflict between the Respondent's personal and professional identities that needed to be worked on. Dr. Franco's treatment centered around attempting to resolve the Respondent's identity conflict. The Respondent was discharged from Dr. Franco's treatment in or about November 1990 (Tr. 601-609).

6. On October 23, 1991, the Respondent was arrested for driving while intoxicated (Pet's. Ex. 3; Tr. 275).

7. On December 7, 1991, the Respondent was again arrested for driving while intoxicated (Pet's. Ex. 4; Tr. 280-281).

8. On December 13, 1991, the Respondent plead guilty to both the October and December DWI cases, which had been consolidated for disposition. The Respondent promptly paid the fines imposed, was placed on three years probation, and his driver's license was revoked for one year. At the recommendation of the Court, the Respondent entered the Stop-DWI program at Long Island College Hospital (Pet's. Exs. 3 & 4; Tr. 281-284).

9. Toward the end of April 1992, the Respondent called Dr. Franco and began seeing him again, on a weekly basis. He has also gone to Alcoholics Anonymous meetings and Caduceus meetings, although he has indicated that he does not feel comfortable at the Caduceus meetings because they are small and require him to talk about himself, which he finds difficult to do in the presence of others. Dr. Franco urged the Respondent to continue the Caduceus meetings as part of the therapy and the Respondent agreed to do so (Tr. 272-289).

10. Roberta Lewis, R.N., has been a head nurse of a cardiac step-down unit at St. John's Riverside Hospital since 1988 (Tr. 22-23).

11. On May 10, 1992, at approximately 7:15 a.m., Nurse Lewis had a conversation with another nurse named Maria Conihuante. Nurse Conihuante told Nurse Lewis that she had a patient with a rapid heart rate and had paged Dr. Perez who had not responded. She had the operator call Dr. Perez in the physician's room. According to Nurse Conihuante "Dr. Perez sounded like I woke him up." Nurse Lewis told her to again page Dr. Perez. Dr. Perez finally responded to the patient at 7:45 a.m. (Tr. 29-34).

12. At about 8:30 that same morning Nurse Lewis paged Dr. Perez regarding a different patient. This patient needed to be catheterized. Nurse Lewis also paged a urologist regarding this matter. The urologist called back at 9:15 and indicated that the patient would have to be catheterized. Dr. Perez did not respond to additional pages, so at 9:40 a.m., Nurse Lewis advised her supervisor, Joyce Strauss, of the problem. Nurse Strauss decided to go to Dr. Perez' room (Tr. 34-38, 52).

13. Nurse Strauss went to the Respondent's room at the hospital some time between 9 and 10 a.m. in response to Nurse Lewis' concerns about the Respondent. When the Respondent came to the door he looked very tired and glassy-eyed. The Respondent indicated to Nurse Strauss that he would be down to the patient's room in about 10 minutes. Nurse Strauss was present when the Respondent came to the patient's room and she was not comfortable with the way

Respondent behaved at the time.

The Respondent was quiet and his movements were slow and deliberate. As a result of her observations Nurse Strauss contacted Dr. Perez' superior, Dr. Constantine Flokas (Tr. 159-163).

14. After Nurse Strauss called Dr. Flokas, the Respondent told her that he had been out the night before, had gotten home early in the morning and had very little sleep (Tr. 306-308)

15. After Nurse Strauss' call to Dr. Flokas on the morning of May 10, 1992, Dr. Flokas arrived at the hospital and asked the Respondent if he would be willing to take a urine or blood test for alcohol. The Respondent immediately stated that he would, but Dr. Flokas decided not to administer the test (Tr. 310-311).

16. Later that day, May 10, 1992, there was a third incident at approximately 5:00 p.m. when a "red code" was called. When the Respondent arrived he appeared flushed and sweating profusely because he had run up a flight of stairs to answer the code (Tr. 167; 312-313).

17. On December 2, 1992, Colleen Fass, a registered nurse in the intensive care unit, at St. John's Riverside Hospital, paged the Respondent to attend to a patient who was in ventricular tachycardia. When he arrived on the patient's floor, the Respondent looked tired and his eyes were puffy. It was decided to give the patient a lidocaine

drip. Nurse Fass felt that the Respondent was not his normal self that day. He seemed to be acting and moving in slow motion. He talked slower than usual and smelled of alcohol (Tr. 699-712).

18. Nurse Fass reported this incident to her superiors (Tr. 706-707).

19. Nurse Frances Davis also observed the Respondent on December 2, 1992. She assisted him in starting an IV on an uncooperative patient. Initially, Nurse Davis asked the Respondent a number of questions to which he answered with grunts. However, once he answered Nurse Davis's question about the type of dressing he wanted to use, Nurse Davis smelled alcohol on his breath. His movements were also very slow and deliberate (Tr. 741-744).

20. Both Nurse Davis and Nurse Fass reported to Joyce Strauss that they had smelled alcohol on the Respondent's breath. Nurse Strauss then went over to Dr. Perez and asked him a question about a patient. When he replied, she also smelled alcohol on his breath and decided to report this incident to Tony Estrella, her supervisor (Tr. 745, 763-766).

21. Later that same day, December 2, 1992, this matter was reported to Dr. Justin Walker, the Medical Director of the Hospital. Dr. Walker had Dr. Flokas contact Dr. Perez. After doing so, Dr. Flokas reported back to Dr. Walker that the Respondent had resigned on the spot (Tr. 802-804).

22. The Respondent admitted that prior to beginning his shift on December 2, 1992 at 7:00 a.m., he had drunk approximately 6 12-oz. cans of beer between 10:00 p.m. and 1:00 a.m. the prior evening (Tr. 844-845).

23. The Respondent also drank beer sometime prior to the Christmas holidays. He does not remember how many beers he had at that time (Tr. 858).

24. The Respondent is not currently employed or seeking employment and does not have any job applications pending. He and his therapist both agreed that it would not be in the best interest of the patients for the Respondent to return to work at this time (Tr. 857-858).

#### VOTE OF THE HEARING COMMITTEE

All votes were unanimous unless otherwise specified.

#### FIRST AND SECOND SPECIFICATIONS

(Practicing while impaired)

NOT SUSTAINED as the charges specified in paragraph C of the Statement of Charges. The Hearing Committee determines that there was insufficient evidence to sustain this charge.

SUSTAINED as to the charges specified in paragraph D of the Statement of Charges.

#### THIRD SPECIFICATION

(Being an habitual abuser of alcohol)

SUSTAINED as to the charges specified in Paragraphs A and B of the Statement of Charges.

**FOURTH AND FIFTH SPECIFICATION**

(Conviction of a crime)

**SUSTAINED** as to the charges specified in Paragraph A which alleges that the Respondent was convicted of driving while intoxicated.

**DETERMINATION**

The Hearing Committee has considered the full spectrum of available penalties, including revocation, suspension, probation, censure and reprimand or the imposition of civil penalties not exceed \$10,000 per violation.

The Hearing Committee has determined unanimously (3-0) that the interests of the people of the State of New York and those of the Respondent himself would best be served by suspending the Respondent's license to practice medicine; requiring his participation in a full-time alcohol recovery program; reinstating his license and placing him on probation for a period of two years in a limited, supervised medical practice.

The specific terms of the suspension and probation are set forth in the Order.

**ORDER**

**IT IS HEREBY ORDERED THAT:**

1. The Respondent's license to practice medicine in the State of New York is **SUSPENDED INDEFINITELY**, subject to the following conditions:

2. The Respondent shall participate in a full-time alcohol recovery program under the auspices of the New York State Medical Society, Committee on Physicians Health, and the Impaired Physicians Program, Office of Professional Medical Conduct, New York State Department of Health. Said full-time alcohol recovery program shall be of at least six (6) months duration.

Upon certification by both the Committee on Physicians Health and the Impaired Physicians Program that the Respondent has successfully completed the full-time alcohol recovery program, the Respondent's license to practice medicine shall be restored subject to the following conditions which shall remain in effect for a two (2) year probation period. The two year probation period shall commence when the Respondent's license has been restored.

3. The Respondent shall remain alcohol free.

4. During the two year probation period, the Respondent's medical practice shall be limited to practicing at an organized primary health care center.

5. The Respondent shall be **MONITORED** by a monitor approved by the Commissioner of Health. The duties of the monitor are described herein.

6. The Respondent shall submit the name of a successor monitor to the Commissioner of Health for approval within seven (7) days of the Respondent's becoming aware that his monitor will no longer serve as a monitor.

7. The monitor, or an appointed successor monitor, shall monitor the Respondent's compliance with the terms of probation imposed and cause to be performed, at least twice monthly, unannounced urine tests for the presence of alcohol in the Respondent.

8. The monitor shall immediately notify the Office of Professional Medical Conduct if the Respondent refuses such a test.

9. If such a test reveals, or the monitor otherwise learns that the Respondent is not alcohol free, the monitor shall immediately notify the Office of Professional Medical Conduct.

10. The monitor shall see the Respondent at least twice every month. Every three (3) months, the monitor shall submit to the Office of Professional Medical Conduct a report certifying compliance with each of the terms of probation by the Respondent or describing in detail any failure to comply. The report shall include the results of all tests for the presence of alcohol performed during that three (3) month period.

11. The Respondent shall be **SUPERVISED** in his medical practice at the primary health care center by a licensed physician approved by the Commissioner of Health who is familiar with the Respondent's history of alcohol abuse and with the terms of this Order or by a successor licensed physician approved by the Commissioner of Health.

12. The Respondent shall obtain a successor supervising licensed physician, subject to the approval of the Commissioner of Health, within seven (7) days of the Respondent's becoming aware that his supervising physician will no longer serve as the supervising physician.

13. The supervising physician, or an approved successor supervising physician, shall supervise the Respondent's medical practice. The supervising physician shall establish the capability of doing a "stat" screen for the presence of alcohol in the Respondent in response to any complaint or observation that alcohol may be responsible for the Respondent's behavior.

14. The supervising physician, shall submit a report to the Office of Professional Medical Conduct every three (3) months regarding the quality of the Respondent's medical practice, any unexplained absences from work and compliance or failure to comply with each condition described herein.

15. The Respondent will continue in treatment with Hugo Franco, M.D., or an approved successor treating health care professional approved by the Commissioner of Health.

16. Said treating health care professional shall submit a report to the Office of Professional Medical Conduct every three (3) months certifying compliance with treatment by the Respondent and describing in detail any failure to comply.

17. Said treating health care professional shall

report to the Office of Professional Medical Conduct immediately any discontinuation of treatment by the Respondent.

18. Said treating health care professional shall immediately report to the Office of Professional Medical Conduct any significant pattern of absences from scheduled treatment sessions.

19. If the treatment afforded by Dr. Franco, becomes unavailable, the Respondent will submit the name of a successor treating health care professional to the Commissioner of Health for approval within seven (7) days of the Respondent's becoming aware that Dr. Franco will no longer serve as the Respondent's treating psychiatrist.

20. The Respondent shall attend Alcoholic Anonymous or Caduceus meetings at least three (3) times a week.

21. Failure to comply with any of the above conditions relative to suspension, participation in a full-time alcohol recovery program and terms of probation will result in automatic reinstatement of the **INDEFINITE SUSPENSION** penalty upon notice to the Respondent.

DATED: New York, New York  
March 10, 1993

BY: Daniel W. Morrissey, O.P.  
DANIEL W. MORRISSEY, O.P.  
Chairman

WILLIAM W. FALON, M.D.  
BENJAMIN WAINFELD, M.D.

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

-----X AMENDED  
IN THE MATTER : STATEMENT  
OF : OF  
HECTOR PEREZ, M.D. : CHARGES  
-----X

HECTOR PEREZ, M.D., the Respondent, was authorized to practice medicine in New York State on March 1, 1991 by the issuance of license number 185075 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, 1991 through December 31, 1992.

**FACTUAL ALLEGATIONS**

- A. Respondent pled guilty in Brooklyn Criminal Court to driving while intoxicated by alcohol on July 30, 1989, October 23, 1991 and December 7, 1991. After the last conviction, Respondent's driver's license was revoked and he was placed on three years probation.

PLAINTIFF'S  
DEFENDANT'S  
COMPANY'S  
DEPARTMENT'S  
PETITIONER'S for identification  
RESPONDENT'S in evidence  
DATE 1/26/93 REPORTER NM  
STERLING REPORTING SERVICE, INC.

- B. Respondent suffers from the habitual abuse of alcohol. He has suffered from this condition since in or about <sup>MAY 1990</sup> ~~1987~~.
- C. Respondent practiced medicine while his ability to do so was impaired by alcohol while employed as a house physician at St. John's Riverside Hospital, 967 North Broadway, Yonkers, NY 10701 between in or about January, 1992 and in or about June, 1992.
- D. Respondent practiced medicine while his ability to do so was impaired by alcohol while employed as a house physician at St. John's Riverside Hospital on or about December 2, 1992.

### SPECIFICATIONS

#### FIRST AND SECOND SPECIFICATION

#### PRACTICING WHILE IMPAIRED

Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law Section 6530(7) (McKinney Supp. 1992), in that he practiced the profession of medicine while his ability to do so was impaired by alcohol. Specifically, Petitioner charges:

1. The facts alleged in Paragraphs C.

2. The facts alleged in Paragraphs D.

**THIRD SPECIFICATION**  
**BEING AN HABITUAL ABUSER OF ALCOHOL**

Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law Section 6530(8) (McKinney Supp. 1992) in that he is an habitual abuser of alcohol. Specifically, Petitioner charges:

3. The facts in Paragraphs A and B.

**FOURTH AND FIFTH SPECIFICATIONS**  
**CONVICTION OF A CRIME**

Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law Section 6530(9)(a)(i) (McKinney Supp. 1992) in that he has been convicted of a crime under New York State law. Specifically, Petitioner charges:

4. The facts in Paragraph A which allege that Respondent was convicted of driving while intoxicated on October 23, 1991.

5. The facts in Paragraph A which allege that Respondent was convicted of driving while intoxicated on December 7, 1991.

DATED: New York, New York  
December 31, 1992