STATE OF NEW YORK
DEPARTMENT OF HEALTH

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

Antonia C. Novello, M.D., M.P.H., Dr.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

April 8, 2002

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Anthony M. Benigno, Esq.
NYS Department of Health
ESP-Corning Tower-Room 2509
Albany, New York 12237

Catherine A. Gale, Esq.
Gale & Dancks, LLC
P. O. Box 97
Fayetteville, New York 13066-0097

Estrella Martinez, M.D.
257 Manning Boulevard
Albany, New York 12206

RE: In the Matter of Estrella Martinez, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 02-102) 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), 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.

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.

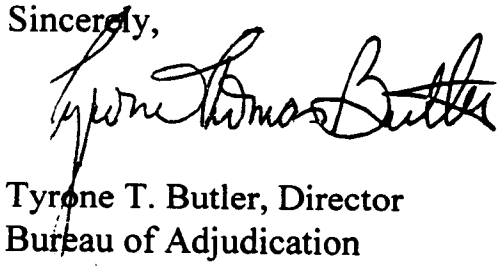
The notice of review served on the Administrative Review Board should be forwarded to:

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,



Tyrone T. Butler, Director
Bureau of Adjudication

TTB:cah
Enclosure

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

IN THE MATTER OF ESTRELLA MARTINEZ, M.D.	DETERMINATION AND ORDER

BPMC #02-102

COPY

A Notice of Hearing and Statement of Charges, both dated July 20, 2001, were served upon the Respondent, **ESTRELLA MARTINEZ, M.D.**. **PETER B. KANE, M.D.**, Chairperson, **FRANK E. IAQUINTA, M.D.** and **MR. PETER S. KOENIG**, 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. **STEPHEN L. FRY, ESQ.**, Administrative Law Judge (ALJ), served as the Administrative Officer.

A hearing was held on August 30, 2001, at the Offices of the New York State Department of Health, Hedley Park Place, 433 River Street, Troy, New York. The Department ("Petitioner") appeared by **DONALD P. BERENS, JR., ESQ.**, General Counsel, by **ANTHONY M. BENIGNO, ESQ.**, of Counsel. The Respondent appeared in person and by **CATHERINA A. GALE, ESQ**.

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

The Statement of Charges in this case, issued pursuant to Public Health Law §230(10)(b) alleges that Respondent committed Professional Misconduct by:

- Practicing medicine fraudulently (Education Law §6530(2));
- Engaging in conduct in the practice of medicine which evinces moral unfitness to practice medicine (Education Law §6530(20));
- Willfully making or filing a false report (Education Law §6530(21));
- Violating a condition or limitation imposed on her license pursuant to Public Health Law §230 (Education Law §6530(29)).

SUMMARY OF PROCEEDINGS

Notice of Hearing Date:	July 20, 2001
Prehearing Conference Date:	August 30, 2001
Hearing Date:	August 30, 2001
Public Health Law §230(7) Order Date:	September 7, 2001
Medical/Psychiatric Examination Report (ALJ's Ex. 1) Received	December 28, 2002
Last Post-Hearing Submission (Petitioner's Reply) Received by ALJ	February 5, 2002
Deliberation Dates:	August 30, 2001 and February 20, 2002

WITNESSES

For the Petitioner:	Donald L. Reinhard, OPMC Investigator
For the Respondent:	Gary Wilson, M.D. Mina Sun, M.D. Rosemarie Amendolia, Ph.D. Respondent

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, denoted by the prefix "Ex.", or transcript pages, denoted by "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 unless otherwise specified.

1. **ESTRELLA MARTINEZ**, the Respondent, was authorized to practice medicine in New York State on May 22, 1990, by the issuance of license number 182125 by the New York State Education Department (Ex. 2).

2. On June 14, 1993, Respondent entered into an agreement with the New York State Board for Professional Medical Conduct ("the Board") entitled "Temporary Surrender of License and Registration". In this surrender agreement, Respondent admitted that she was at that time incapacitated for the active practice of medicine due to drug abuse, but denied that any patient harm had resulted. The agreement also specified that Respondent's license could not be restored until a showing was made that she was no longer incapacitated for the practice of medicine; until she provided treatment records; and until she supplied documentation that mandated post-restoration probationary monitoring and treatment programs were in place (Ex. 3).

3. On January 17, 1996, the Board issued a Restoration Order (Ex. 4) restoring Respondent's medical license subject to certain conditions, including the following:

- that she remain free from alcohol and all other mood altering substances, other than those prescribed by her treating physician;
- that she be monitored by a sobriety monitor and be subjected to random, supervised, unannounced blood, breathalyzer and/or urine tests for the presence of alcohol and other drugs, including (specifically) Naltrexone and Fentanyl;
- that her practice be supervised (with additional terms specified in the Order) by a licensed physician;
- that her practice be limited in the first year to 40 hours per week, subject thereafter to reconsideration of this restriction;
- that she not write nor administer any triplicate or controlled drug prescriptions;
- that she continue in treatment with a qualified psychotherapist and a qualified chemical dependency expert;
- that she continue participation in self-help fellowship (such as AA, NA or Caduceus);

4. On April 10, 1996, Respondent executed an application for renewal of her DEA registration, wherein she checked the "NO" box next to the question that included "Has the applicant...ever had a State professional license or controlled substance registration revoked, suspended, denied, restricted or placed on probation?" (Ex. 5).

5. On August 24, 1999, in Albany City Court, Respondent was convicted of violation of New York State Vehicle and Traffic Law §1192.1 (driving while ability impaired by the consumption of alcohol) (Ex. 6).

HEARING COMMITTEE CONCLUSIONS

The Hearing Committee concludes that Respondent committed professional misconduct under the laws of New York State, pursuant to:

- New York Education Law §6530(2) (practicing medicine fraudulently);
- New York Education Law §6530(21) (making or filing a false report);
- New York Education Law §6530(29) (violating a condition or limitation imposed on the licensee).

The Hearing Committee concludes that Respondent did not commit misconduct by engaging in conduct that evinces moral unfitness to practice medicine (New York Education Law §6530(20)).

VOTE OF THE HEARING COMMITTEE

SPECIFICATIONS

FIRST SPECIFICATION

Respondent committed professional misconduct as defined in New York Education Law §6530(2) (practicing medicine fraudulently) by incorrectly answering the question on her DEA renewal application regarding the status of her New York medical license.

VOTE: SUSTAINED (3-0)

SECOND SPECIFICATION

Respondent committed professional misconduct as defined in New York Education Law §6530(20) by engaging in conduct evincing moral unfitness to practice medicine.

VOTE: NOT SUSTAINED (3-0)

THIRD SPECIFICATION

Respondent committed professional misconduct as defined in New York Education Law 6530(21) (willfully making or filing a false report) by incorrectly answering the question on her DEA renewal application regarding the status of her New York medical license.

VOTE: SUSTAINED (3-0)

FOURTH SPECIFICATION

Respondent committed professional misconduct as defined in New York Education Law 6530(29) (violating a condition or limitation imposed on the licensee) by consuming alcohol in violation of the Order restoring her medical license.

VOTE: SUSTAINED (3-0)

HEARING COMMITTEE DETERMINATION

The essential facts in this case, insofar as they relate to the Department's charges, are not disputed and have been set forth above in Fact-Findings #2-5 above (see paragraph #1 of Respondent's Closing Arguments and Recommendations), and it is concluded without extensive discussion, that Specifications #1,3 and 4 of the Statement of Charges were substantiated. It is clear that Respondent did violate the terms of her license restoration order by consuming alcohol within the coverage period of the order, and that she willfully provided false information on her DEA registration application so that she would obtain renewal without difficulties.

The Hearing Committee did conclude unanimously that Respondent's conduct, although of a serious nature, did not demonstrate moral unfitness to practice medicine as charged in Specification #2. Specifically, the Hearing Committee concludes that the

concealment of Respondent's license probationary status on her DEA renewal application, although willful (and therefore properly the subject of a sanction, to be imposed below), was the product more of the extreme stress and fear she was facing regarding her ability to practice as a physician, and the operation of a somewhat self-delusional thought process related to her emotional condition, than by some intractable defect in her moral fiber (see Tr. 74-75, 97-98). Accordingly, this specification is not upheld.

The primary issue to be decided in this case is the appropriate penalty to be imposed for the misconduct set forth above. The Hearing Committee concludes, for reasons to be elaborated upon below, that the appropriate sanctions are a one-year suspension of Respondent's medical license, to be stayed providing Respondent during that period meets all the terms of a five-year probation (the details of which are also outlined below) and the imposition of a $5,000 fine, to be paid over the next year. It is intended by the Hearing Committee that these penalties will serve as a strong deterrent to future misconduct by Respondent.

On the other hand, the Hearing Committee is inclined to allow Respondent to continue to practice medicine under conditions imposed in the Order, which is attached below. The Hearing Committee draws this conclusion despite the recommendation of the Department (see Petitioner's Proposed Findings of Fact, Argument & Recommendations) that Respondent's license be revoked because of the effects of her illnesses or suspended until she can demonstrate long-term recovery[1].

[1] One basis for the Department's recommendation that Respondent's license be suspended or revoked is that she cannot be trusted to provide true information about her drug and alcohol problems, which conclusion was based on the DEA license application matter (discussed in the body of this decision) as well as her providing allegedly false testimony about her relapse on alcohol in the summer of 1999. According to Petitioner, Respondent lied to the Hearing Committee by stating that the incident of August 10-11, 1999, was the only time she consumed alcohol or drugs since her recovery, which was allegedly inconsistent with information given to Marworth staff that she began to relapse on alcohol in July 1999, before the arrest. (see Petitioner's

It is noted, first of all, that the Department did not charge Respondent with misconduct under either New York Education Law §6530 (7) or (8), which read as follows:

7. Practicing the profession while impaired by alcohol, drugs, physical disability or mental disability;
8. Being a habitual abuser of alcohol, or being dependent on or a habitual user of narcotics, barbiturates, amphetamines, hallucinogens, or other drugs having similar effects, except for a licensee who is maintained on an approved therapeutic regimen which does not impair the ability to practice, or having a psychiatric condition which impairs the licensee's ability to practice;

These subsections are the applicable statutory provisions under which a physician with a drug, alcohol and/or psychiatric problem that impacts upon the physician's practice of medicine should be charge with misconduct.

However, in assessing the appropriate penalty in this case, the Hearing Committee feels that it must consider, as one important factor, the potential effects of a Respondent's continued practice upon her or his patients. It was apparent from the evidence presented that Respondent does have significant problems that are relevant to her practice of medicine. Respondent's tendencies to abuse controlled substances and alcohol are inexorably related to her psychiatric history and diagnoses (Tr. 134-5, A.L.J. Ex. 1). Respondent has a history of major depression dating to the late 1980's related to a period or periods of abuse of prescription pain medications (Tr. 69-70, 125).

Since 1996, Respondent has been treated by Rosemarie Amendolia, Ph.D., a clinical psychologist, for major depression, post-traumatic stress disorder (related to conditions and occurrences in her childhood) and chemical dependency (Ex. A; Tr. 105-

Proposed Findings of Fact #7). However, respondent's testimony was not that clearly specific (Tr. 82). Her testimony was that that she did not consume any alcohol in the 3 and 1/2 years since her recovery "to that time". Respondent's license was restored in January 1996 (it is assumed that this is the date she considered to be her date of "recovery"). In any event, Respondent knew that her report to Marworth staff would get back

106, 123-126). It was Dr. Amendolia's testimony, to summarize, that Respondent has made considerable progress in treatment for these conditions and that her major depression is presently kept under control with therapy and medications (Tr. 87, 127-130, 137). Respondent is currently prescribed Prozac, Wellbutrin, and Trazodone for sleep (Tr. 87, 91-92).

After hearing and seeing the evidence relating to Respondent's abuse of drugs and alcohol, and the testimony of her therapist, the Hearing Committee was left with some concern as to whether Respondent could safely continue to practice, and, if so, under what circumstances. This concern led the Hearing Committee to adopt the suggestion of both parties (Tr. 10-11, 17-18) that it order a comprehensive medical/psychiatric evaluation of Respondent pursuant to Public Health Law §230.7, with an emphasis on her ability to deal with her addictive tendencies. The report from this evaluation (ALJ's Ex. 1), conducted by the Marworth Center of Waverly Pennsylvania (as directed by the Board under the Hearing Committee's delegation), was considered by the Hearing Committee along with the other evidence adduced at the hearing. It is noted that Respondent did not provide the Hearing Committee with the results of an independent medical/psychiatric examination as authorized by Public Health Law §230.7, so the Marworth evaluation report is entitled to considerable weight.

The Marworth evaluation report paints a somewhat less optimistic picture of Respondent's psychiatric condition than conveyed by Dr. Amendolia's testimony. In addition to the diagnoses made by Dr. Amendolia, the Marworth staff made an additional diagnosis of borderline personality disorder, and summarized her prognosis as follows:

to the Hearing Committee, so it is difficult to conclude that her intent was to lie or conceal her apparent alcohol use in July 1999.

> The clinical staff at Marworth have ongoing concerns for Dr. Martinez related to her judgment and decision making skills. Dr. Martinez's history reflects a pattern of placing herself in positions in which she was treated poorly by others. It appears she does not have the skills to prevent these recurrent episodes of being hurt or abused. Most notable is her tendency to become completely overwhelmed and incapacitated by strong negative emotions when she feels rejected and alone, without supports. Currently she seems to have emotional supports, which are positive and available to her. Collateral reports indicate her work has been good and there are no complaints in this regard. Her personal life, however, has generally been much less successful. In order for Dr. Martinez to continue to function adequately, she will need significant support in her life. She will need to participate in 12-step meetings, have a sponsor, and participate in ongoing regular psychotherapy for an extended period of time. Marworth would recommend a more intensive structured outpatient program than that in which she is currently engaged, to address both her addiction and psychiatric illnesses, which are recurrent in nature. Difficulties with family members are likely to present her with overwhelming emotions. While she is clearly bright and strongly motivated to continue her medical career, she will need treatment to assist her with her judgment and developing the skills necessary to modulate difficult emotions.

Although they concluded that Respondent's personal/psychiatric problems were of concern and required treatment, the Marworth staff did not, most notably, conclude that Respondent's continuing practice of medicine was inappropriate or dangerous if she receives reasonable treatment and support. The Marworth staff did conclude that Respondent needed a more intensive structured outpatient program "...that would place greater emphasis on her chemical dependency and the need for abstinence from all mood altering chemicals." This need will be addressed further, below

The Hearing Committee believes, from her testimony and the other evidence, that Respondent is highly motivated to continue to deal with her personal and emotional problems so that they will not affect her practice of medicine. The Hearing Committee's primary reason for not following the Department's recommendation that Respondent not be allowed to continue to practice medicine is that Respondent has been demonstrating ever since she recommenced practice after her license was restored in January of 1996 that she

can engage in a safe and successful practice of medicine despite her psychiatric problems and chemical dependency potentiality (Ex. A, Tr. 42-44, 56-60).

While she practices, Respondent is being monitored on voluntary ongoing basis by the Committee for Physicians' Health of the Medical Society of the State of New York. Her case manager, in a letter to OPMC dated August 7, 2001 (Ex. A) summed up her progress as follows:

> Dr. Martinez has continued in psychotherapy/chemical dependency treatment with Rosemarie Amendolia, Ph.D. Reports from Dr. Amendolia indicate a consistent investment in treatment and significant progress on the part of Dr. Martinez in her ongoing treatment protocol.
>
> Dr. Martinez continues to see Carin Gordon, MD for medication management. Dr. Gordon reports that Dr. Martinez is fully compliant with her medication protocol...
>
> Dr. Martinez has a practice monitor; Mina Sun, MD. Practice monitor reports indicate continuing competence in the practice of medicine and strong advocacy for Dr. Martinez...Dr. Martinez undergoes a protocol of forensic, random, directly observed urine drug screens. All screens (2 times per week at this point in time) have been negative [see Ex. B] and she has been compliant with the process. In addition, Dr. Martinez is breathalyzed an additional 2 times per week. All breathalyzer screens have been negative.
>
> * * *
>
> Dr. Martinez has been fully compliant with her CPH-MSSNY program since her relapse in August 1999.

Dr. Sun, Respondent's current employer (since March 1, 2001), testified at the hearing and was highly enthusiastic about Respondent's abilities as a physician and strongly supportive of Respondent's efforts to continue to practice medicine (Tr. 55-60). Dr. Sun is currently performing monitoring of Respondent for CPH, and she testified that she would be willing to continue this monitoring (Tr. 60). Dr. Sun's testimony is particularly convincing because her own personal liability is affected by her determination to employ Respondent, despite knowledge of Respondent's history (Tr. 57-58).

In addition, Respondent's previous supervisor, Dr. Gary Wilson of Ellis Hospital in Schenectady, NY, who hired her in March of 1998 with knowledge of her history of drug and alcohol abuse, and who served as her practice supervisor, testified very favorably as to Respondent's performance (Tr. 42-44, 56-60).

There is also evidence that Respondent presently has a fairly well developed support network in place. In addition to her ongoing therapy with Dr. Amendolia, Respondent participates in A.A. meetings at least twice weekly and N.A. meetings at least once weekly, with sponsorship (Tr. 88-89).

The Hearing Committee believes that with a continuation of Respondent's existing treatment and rehabilitation efforts, the addition of the more intensive outpatient program recommended by Marworth, and stringent monitoring, Respondent can continue to safely practice medicine. Accordingly, the Hearing Committee hereby directs that Respondent's license be placed on probation for 5 years, under specific terms set forth in the Order that follows.

ORDER

IT IS HEREBY ORDERED THAT:

1. Respondent's New York Medical License is hereby **SUSPENDED** for one year. The suspension is stayed, for so long as Respondent complies with the terms of her probation, which is ordered below. Should the Department determine that there has been a material violation of the terms of her probation, the suspension may be immediately reinstated, upon written notice to Respondent.

2. A fine in the amount of five Thousand Dollars ($5,000.00) is assessed against the Respondent. Payment of the fine shall be completed within one year of the effective date of this Order. The Respondent shall make payment to the Bureau of Accounts Management, New York State Department of Health, Erastus Corning Tower Building, Room 1258, Empire State Plaza, Albany, New York, 12237. Any portion of the fine not paid by the prescribed date shall be subject to all provisions of law relating to debt collection by the State of New York. This includes, but is not limited to, the imposition of interest; late payment charges and collection fees; referral to the New York Department of Taxation and Finance for collection; and non-renewal of permits or licenses (Tax Law §171(27); State Finance Law §18; CPLR §5001; Executive Law §32).

3. The Respondent's medical license is hereby placed on probation for five (5) years. The probation will be monitored by the Office for Professional Medical Conduct, which may delegate all or part of the monitoring called for herein to an appropriate agency, such as the Committee for Physicians' Health.

4. The terms of Respondent's probation are as follows:

   A). During the period of probation set forth above, Respondent shall remain alcohol and drug free, except for drugs prescribed for Respondent by another physician for legitimate medical purposes. Respondent shall promptly report any use of alcohol or drugs during her probationary period to OPMC and all of the agencies and individuals involved in her care and monitoring. Failure to promptly report such use shall itself constitute a violation of probation.

B). Respondent shall be supervised in medical practice by a licensed physician ("supervisor"), approved by OPMC, who is familiar with Respondent's history of chemical dependency and alcohol abuse. Respondent shall obtain a successor Supervisor subject to OPMC approval within seven (7) days of becoming aware that the original supervisor will no longer serve in that capacity. The supervisor shall oversee Respondent's dispensing, inventorying and wasting of controlled substances. Respondent shall provide the Supervisor with a copy of this decision and order and provide OPMC with written verification from the Supervisor that such provision has been made. The Supervisor shall notify OPMC immediately if Respondent violates any term of this Order. The Supervisor shall have the capacity to perform a "stat" toxicological screen and breathalyzer test on Respondent in response to any complaint or observation that indicates she may not be drug and/or alcohol free.

C). Respondent shall immediately take steps to enroll in an outpatient drug/alcohol rehabilitation program, to be approved by OPMC. Respondent shall participate in such program for at least one year and thereafter during the entire term of her probation, unless the program certifies to OPMC that Respondent no longer requires participation in the program. The outpatient program shall submit quarterly reports to OPMC detailing Respondent's progress in the program, and shall immediately report to OPMC any significant pattern of absences or discontinuation of recommended treatment by Respondent.

D). For at least the first year of probation, Respondent shall receive therapy or counseling from a mental health professional for her psychiatric/psychological conditions. The mental health professional shall be approved by OPMC or its designee, with input from Respondent and the other agencies involved in her care. The therapy may be independent of, or part of, Respondent's program of care with the outpatient alcohol/drug program. Beyond the first year of probation, this care shall not be discontinued until and unless the approved mental health professional certifies that Respondent no longer requires this care, or certifies that a different level of care is required, in which case such different level of care will be maintained, as approved by OMPC, until the provider of this level of care certifies that Respondent no longer needs such care. Any need to change the provider of services under this section shall be reported to OPMC within 7 days of its occurrence. The mental health care provider shall immediately report to OPMC any significant pattern of absences or discontinuation of recommended treatment by Respondent.

E). During the term of her probation, Respondent shall continue on whatever medication regimen is prescribed for her psychological/psychiatric condition and sleep disorder.

F). During the period of probation, Respondent shall obtain sobriety monitoring, detailed more fully below. The monitor shall be a health care professional or agency, program for impaired physicians, or outpatient substance abuse program, as approved by OPMC or its designee with input from Respondent. Respondent

shall be responsible for arranging for the approved monitor, and for ensuring that the monitoring meets the requirements of this order. OPMC or its designee shall ensure that the monitor is familiar with the provisions of this order. Respondent shall submit to OPMC or its designee the name of a proposed successor within seven days of learning that the approved sobriety monitor is no longer willing or able to serve. In the event the approved sobriety monitor is a person or agency other than her practice supervisor, the monitor may delegate some or all of the actual specimen gathering and testing functions to Respondent's practice supervisor. The sobriety monitor shall file quarterly reports with OPMC detailing the monitoring results.

G). The sobriety monitor shall direct Respondent to submit to random, supervised, unannounced tests of blood, breath and/or urine for the presence of drugs and/or alcohol at least four (4) times monthly (or at such greater frequency as the sobriety monitor or outpatient substance abuse program might feel is appropriate) for the first year of her probation, and thereafter at such frequency as the sobriety monitor or outpatient program feels is appropriate. The monitor shall report to OPMC or its designee within 24 hours if at any time such a test is refused by Respondent or is positive. Respondent shall report as soon as practicable to submit to drug and/or alcohol screening. The sobriety monitor shall have the capacity to screen Respondent seven days per week.

H). Respondent shall participate in self-help meetings, including AA and NA at least one time per week each, during the term of her probation. Respondent shall participate in any additional or substituted meetings as recommended by her outpatient alcohol/substance abuse program.

I). During the period of probation, Respondent shall practice for no more than 50 hours per week, or as approved by OPMC upon Respondent's written request, if OPMC determines, after input from the other agencies and professionals involved with Respondent's case, that such increase would not jeopardize patient safety. Respondent shall keep written records of her work hours, to be made available to OPMC or its designee upon request.

J). Respondent shall not treat or self-prescribe for herself or any member of her family.

K). Respondent shall notify in writing any practitioner, group, clinic or medical facility with whom she becomes affiliated or at which she practices during the effective period of this probation, of the contents of this order and terms of probation, and provide a copy of any such notification to OPMC.

L). OPMC may, at its discretion, take any and all steps necessary to monitor Respondent's status, condition or professional performance. Respondent must cooperate in providing releases permitting unrestricted access to records and other information, to the extent permitted by law: from any employer, medical facility or institution with which she is affiliated or at which she practices; from any treatment facility, treating practitioner, support group or other individual/facility involved in the education, treatment, monitoring or oversight of Respondent; or maintained by a

rehabilitation program for impaired Respondents. Respondent shall fully cooperate with OPMC in the implementation of this probation, and respond in a timely manner to requests from OPMC to provide written periodic verification of her compliance with the terms of this Order. Respondent shall personally meet with a person designated by the Director of OPMC as requested by the Director.

M). Respondent shall submit written descriptive notification to OPMC of any changes in employment and practice, professional and residential addresses or telephone numbers within or without New York State, and any and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility during the probationary period, within 30 days of each event;

N). Respondent shall notify the Director of OPMC, in writing, if she ceases to be engaged in or intends to leave the active practice of medicine in New York State for a period of thirty (30) consecutive days or more. Respondent shall again notify the Director prior to any change in that status. Respondent's probation shall be tolled while Respondent is not practicing in New York during such period and shall resume upon her return to practice in New York State.

O). 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 and obligations imposed by law and by her profession. Respondent shall maintain legible and complete medical records that accurately reflect the evaluation and treatment of patients.

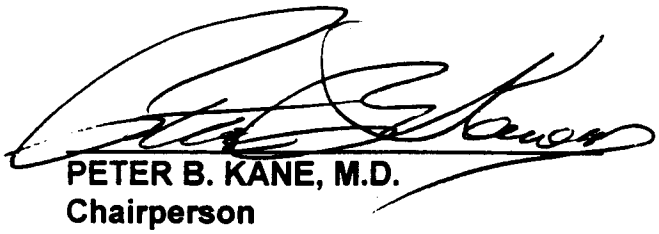
P). Respondent shall comply with all terms, conditions, and restrictions to which she is subject pursuant to the Order and shall assume and bear all costs related to compliance.

Q). If there is full compliance with every term and condition set forth herein, Respondent may practice as a physician in New York State; provided, however, that on receipt of evidence of non-compliance or any other violation of the term(s) and condition(s) of probation, a violation of probation proceeding and/or such other proceeding as may be warranted, or reinstatement of her suspension, may be initiated against Respondent pursuant to New York Public Health Law Sections 230 or any other applicable laws.

R). OPMC may, in its discretion, and upon request by Respondent, relieve her of any uncompleted term of her probation, or any individual provision(s) thereof, if it is satisfied that such relief would not be contrary to the best interests of New York State residents.

The **ORDER** shall be effective upon service on the Respondent or the Respondent's attorney by personal service or by certified or registered mail.

DATED: Cazenovia, New York
4/4, 2002



PETER B. KANE, M.D.
Chairperson

FRANK E. IAQUINTA, M.D.
MR. PETER S. KOENIG

APPENDIX 1

STATE OF NEW YORK : DEPARTMENT OF HEALTH

STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

----------X

IN THE MATTER	:	**NOTICE**
OF	:	**OF**
ESTRELLA MARTINIZ, M.D.	:	**HEARING**

----------X

TO: ESTRELLA MARTINEZ, M.D.
257 Manning Boulevard
Albany, New York 12206
(518) 437-0148

PLEASE TAKE NOTICE:

A hearing will be held pursuant to the provisions of N.Y. Pub. Health Law Section 230 and N.Y. State Admin. Proc. Act Sections 301-307 and 401. The hearing will be conducted before a committee on professional conduct of the State Board for Professiona Medical Conduct commencing at 10:00 a.m. on the 15th day of August, 2001, at Hedley Park Place - 5th Floor Conference Room, 433 River Street, Troy, New York 12180 (telephone 518-402-0748), and such other adjourned dates, times and places as the committee may direct.

At the hearing, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the hearing will be made and the witnesses at the hearing will be sworn and examined. You shall appear in person at the hearing and may be represented by counsel. You have the right to produce witnesses and evidence on your behalf, to issue or have subpoenas issued on your behalf in order to require the production of witnesses and documents and you may cross-examine witnesses and examine evidence produced against you. A summary of the Department of Health Hearing Rules is enclosed.

The hearing will proceed whether or not you appear at the hearing. Please note that requests for adjournments must be made in writing and by telephone to the Bureau of Adjudication, Hedley Park Place, 5th Floor, 433 River Street, Troy, New York 12180,

(518-402-0748), upon notice to the attorney for the Department of Health whose name appears below, and at least five days prior to the scheduled hearing date. Adjournment requests are not routinely granted as scheduled dates are considered dates certain. Claims of court engagement will require detailed Affidavits of Actual Engagement. Claims of illness will require medical documentation.

Pursuant to the provisions of N.Y. Pub. Health Law Section 230(10)(c) you shall file a written answer to each of the Charges and Allegations in the Statement of Charges no later than ten days prior to the date of the hearing. Any Charge and 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. 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.

At the conclusion of the hearing, the committee shall make findings of fact, conclusions concerning the charges sustained or dismissed, and, in the event any of the charges are sustained, a determination of the penalty to be imposed or appropriate action to be taken. Such determination may be reviewed by the administrative review board for professional medical conduct.

THESE PROCEEDINGS MAY RESULT IN A DETERMINATION THAT YOUR LICENSE TO PRACTICE MEDICINE IN NEW YORK STATE BE REVOKED OR SUSPENDED, AND/OR THAT YOU BE FINED OR SUBJECT TO THE OTHER SANCTIONS SET OUT IN NEW YORK PUBLIC HEALTH LAW SECTION 230-a. YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: July 20, 2001
Albany, New York

PETER D. VANBUREN
Deputy Counsel
Bureau of Professional
Medical Conduct

Inquiries should be directed to:

MICHAEL J. McTIGHE
Senior Attorney
Bureau of Professional Medical Conduct
Corning Tower Room 2509
Empire State Plaza
Albany, New York 12237-0032
(518) 474-5168

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

----------X

IN THE MATTER	:	STATEMENT
OF	:	OF
ESTRELLA MARTINEZ, M.D.	:	CHARGES

----------X

ESTRELLA MARTINEZ, M.D., the Respondent, was authorized to practice medicine in New York State on or about May 22, 1990, by the issuance of license number 182125 by the New York State Education Department. Respondent is currently registered with the New York State Education Department, has an office practice address at 463 Saratoga Road, Scotia, New York 12302, and resides at 257 Manning Boulevard, Albany, New York 12206.

FACTUAL ALLEGATIONS

A. Admitting to abuse of Fentanyl, Percocet, Dilauded, Duragesic, and Lortab, Respondent entered into a Temporary Surrender of her license to practice medicine in New York State on or about June 14, 1993. On or about January 17, 1996, the New York State Board for Professional Medical Conduct ordered restoration of Respondent's medical license and registration subject to limitations and conditions which included, inter alia, the provision that for a period of five years from January 17, 1996, Respondent "shall remain free from alcohol and other mood altering substances other than those prescribed for Petitioner's treatment by a licensed physician aware of Petitioner's history." On or about April 10, 1996, Respondent filed a Renewal Application for DEA Registration.

1. In response to Question 2(b) on the DEA Renewal Application, which states in part, "Has the applicant ... ever had a State professional license revoked, suspended, denied, restricted or placed on probation?", Respondent answered "No" by checking the "No" box.
2. On or about August 24, 1999, in Albany City Court, Respondent was convicted of driving while impaired due to the consumption of alcohol, in violation of New York State Vehicle and Traffic Law § 1192(1),

SPECIFICATIONS

FIRST SPECIFICATION

(Fraudulent Practice)

Respondent is charged with professional misconduct as defined by Education Law Sec. 6530(2) by reason of his practicing medicine fraudulently, as alleged in the facts of the following:

1. Paragraphs A and A-1.

SECOND SPECIFICATION

(Moral Unfitness)

Respondent is charged with professional misconduct as defined by Education Law Sec. 6530(20) by reason of conduct which evidences moral unfitness to practice medicine, as alleged in the facts of the following:

2. Paragraphs A and A-1.

THIRD SPECIFICATION

(Making Or Filing A False Report)

Respondent is charged with professional misconduct as defined by Education Law Sec. 6530(21) by reason of wilfully making or filing a false report , as alleged in the facts of

the following:

3. Paragraphs A and A-1.

FOURTH SPECIFICATION

(Violating Condition Or Limitation Imposed On Licensee)

Respondent is charged with professional misconduct as defined by Education Law Sec. 6530(29) by reason of having violated a condition or limitation imposed by the New York State Board for Professional Medical Conduct's Restoration Order dated January 17 1996, as alleged in the facts of the following:

4. Paragraphs A and A-2.

DATED: July 20, 20001
Albany, New York

Peter D. Van Buren

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