



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

July 26, 1993

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Kevin P. Donovan, Esq.
NYS Department of Health
Bureau of Professional Medical Conduct
Empire State Plaza
Corning Tower - Room 2429
Albany, New York 12237

Wilfredo Fernandez-Vila, M.D.
1714 Houston Boulevard
South Houston, Texas 77587

RE: In the Matter of Wilfredo Fernandez-Vila, M.D.

Dear Mr. Donovan and Dr. Vila:

Enclosed please find the Determination and Order (No. BPMC-93-107) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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 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 (p), 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.

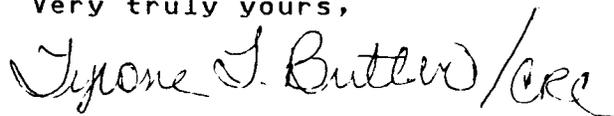
The notice of review served on the Administrative Review Board should be forwarded to:

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". The signature is written in dark ink and is positioned above the typed name.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:crc
Enclosure

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

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IN THE MATTER :

OF :

WILFREDO FERNANDEZ-VILA, M.D. :

-----X

HEARING COMMITTEE'S
DETERMINATION

AND
ORDER

NO. BPMC-93- 107

A Notice of Hearing and Statement of Charges, both dated March 8, 1993, were served upon the Respondent, Wilfredo Fernandez-Vila, M.D. ALBERT L. BARTOLETTI, M.D., (Chairperson), TERESA S. BRIGGS, M.D., Ph.D. and SUMNER SHAPIRO, 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, Administrative Law Judge, served as the Hearing Officer. A hearing was held on April 21, 1993 at the Corning Tower Building, 25th Floor Conference Room, Room 2509, Empire State Plaza, Albany, New York 12237. The Department of Health appeared by Kevin P. Donovan, Assistant Counsel. The Respondent did not appear in person and was not represented by counsel. Evidence was received and a transcript of this proceeding was made.

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

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 N.Y. 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 N.Y. Education Law, Section 6530(9)(c) (McKinney Supp. 1993). A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order.

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. Wilfredo Fernandez-Vila, M.D. was authorized to practice medicine in New York State on December 13, 1967 by the issuance of license number 100494 by the New York State Education Department. The Respondent is not currently registered with the New York State Education Department to practice medicine in New York State. (Pet. Ex. #1)

2. On September 4, 1987, the Respondent entered into a

Memorandum of Agreement with the U.S. Drug Enforcement Administration (DEA) in which he stated that during the period May 1984 to March 1986 he had issued prescriptions for excessive quantities of Schedule II and IIN narcotic and amphetamine controlled substances and for Schedule II amphetamine products for excessive lengths of time. (Pet. Ex. #3)

3. Respondent was placed on a probationary term of five years during which he could not administer or prescribe Schedule II, IIN, III, IIIN and IV controlled substances. (Pet. Ex. #3)

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 Respondent's conduct underlying the Memorandum of Agreement resulting in the placement of the Respondent on probation for five years with restrictions on the administering and prescribing of certain controlled substances constituted misconduct under numerous sections of N.Y. Education Law. (See N.Y. Education Law, Sections 6530(3), (3), (5) and (35); Sections 6509(2) and (9) and Section 6530(9)(c) (McKinney's Supp. 1993).

The Hearing Committee, therefore, sustained the specifications 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 should be revoked. This determination was reached upon due consideration of the full spectrum of penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand and the imposition of monetary penalties.

A physician's license to practice medicine is a privilege granted to members of the profession. The Respondent, by entering into the Memorandum of Agreement Order, signed by Respondent on September 4, 1987 which restricted the prescribing of controlled substances for a period of five years, constitutes grave professional misconduct in this State. By entering into this Order, the Respondent has admitted that he is unable to conform to the acceptable standards of the medical profession.

Respondent made no attempt to respond to the charges of the New York State Board of Professional Medical Conduct nor to defend himself at the hearing. He did not personally appear nor was he represented by counsel.

By entering into the Memorandum of Agreement, Respondent voluntarily admitted that he lacks the capacity to practice medicine in an ethical, competent and moral manner. Accordingly, the Hearing Committee concluded that revocation is the appropriate

sanction.

ORDER

Based upon the foregoing, it is hereby Ordered that:

1. The specification of professional misconduct contained in the Statement of Charges (Pet. Ex. #1) is **SUSTAINED**; and

2. Respondent's license to practice medicine in the State of New York is **REVOKED**.

DATED: Delmar, New York

May 28, 1993

Albert L. Bartoletti M.D.

ALBERT L. BARTOLETTI, M.D.
Chairperson

TERESA S. BRIGGS, M.D., Ph.D.
SUMNER SHAPIRO

TO: Kevin P. Donovan, Esq.
NYS Department of Health
Bureau of Professional Medical Conduct
Corning Tower - Room 2438
Empire State Plaza
Albany, New York 12237

Wilfredo Fernandez-Vila, M.D.
1714 Houston Boulevard
South Houston, Texas 77587

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

-----X
: IN THE MATTER : NOTICE OF
: OF : REFERRAL
: WILFREDO FERNANDEZ-VILA, M.D. : PROCEEDING
: :
-----X

TO: WILFREDO FERNANDEZ-VILA, M.D.
1714 Houston Boulevard
South Houston, Texas 77587

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 21st day of April, 1993 at 1:15 o'clock in the afternoon of that day at NYS Department of Health, Corning Tower, Room 2509, 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.



IN RE JAM

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 April 13, 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 April 13, 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: Albany, New York
March 8, 1993



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

Inquiries should be addressed to:

Kevin P. Donovan
Assistant Counsel
(518) 543-4282

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

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IN THE MATTER : STATEMENT
OF : OF
WILFREDO FERNANDEZ-VILA, M.D. : CHARGES

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WILFREDO FERNANDEZ-VILA, M.D., the Respondent, was authorized to practice medicine in New York State on December 13, 1967, by the issuance of license number 100494 by the New York State Education Department. The Respondent is not currently registered with the New York State Education Department to practice medicine in New York State. The Respondent's last known address is 1714 Houston Boulevard, South Houston, Texas 77587.

FACTUAL ALLEGATIONS

A. On November 4, 1986, the U.S. Drug Enforcement Administration (DEA) issued an order to show cause seeking to revoke Respondent's DEA certificate of registration.

B. A Memorandum of Agreement between the DEA and Respondent, signed by Respondent on September 4, 1987, states that Respondent for the period May 1984 to March 1986, issued prescriptions for excessive quantities of Schedule II and IIN narcotic and amphetamine controlled substances, and for Schedule

II amphetamine products for excessive lengths of time; it placed Respondent on a probationary term of 5 years during which he could not administer or prescribe Schedule II, IIN, III, IIIN, and IV controlled substances.

C. The prescribing conduct set forth in the Memorandum of Agreement would constitute the following misconduct: practicing the profession fraudulently within the meaning of N.Y. Educ. Law §6530(2) (McKinney Supp. 1993) [formerly N.Y. Educ. Law §6509(2) (McKinney 1985)]; practicing the profession with negligence on more than one occasion within the meaning of N.Y. Educ. Law §6530(3) [formerly N.Y. Educ. Law §6509(2) (McKinney 1985)]; incompetence on more than one occasion within the meaning of N.Y. Educ. Law §6530(5) (McKinney Supp. 1993) [formerly N.Y. Educ. Law §6509(2)(McKinney 1985) (McKinney 1985)]; ordering excessive treatment within the meaning of N.Y. Educ. Law §6530(35) (McKinney Supp. 1993) [formerly N.Y. Educ. Law §6509(9) (McKinney Supp. 1985) and 8 NYCRR 29.2(a)(7)].

SPECIFICATION

The Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law 6530(9)(c) (McKinney Supp. 1993) [formerly N.Y. Public Health Law §230 (10)(m)(iv) (McKinney 1990)] in that there was resolution of an adjudicatory proceeding by agreement concerning violations of federal statute

or regulation when the violations of federal statute or regulation would constitute professional misconduct, in that Petitioner charges:

1. The facts of paragraphs A, and B and C.

DATED: Albany, New York
March 8, 1993



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