

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

IN THE MATTER
OF
ALAIN MARTIN VIDA

COMMISSIONER'S
SUMMARY
ORDER

TO: ALAIN MARTIN VIDA
6908 Santa Fe Avenue
Huntington Park, California

The undersigned, Barbara A. DeBuono, M.D., M.P.H., Commissioner of Health of the State of New York, pursuant to N.Y. Public Health Law §230 (McKinney 1990 and Supp. 1998), upon the recommendation of a Committee on Professional Medical Conduct of the State Board for Professional Medical Conduct, has determined that the duly authorized professional disciplinary agency of another jurisdiction (the State of California) has made a finding substantially equivalent to a finding that the unrestricted practice of medicine by ALAIN MARTIN VIDA (the Respondent)[New York State License number 153251 issued February 25, 1983] in that jurisdiction constitutes an imminent danger to the health of its people, as is more fully set forth in the Order, dated February 26, 1998, of the Medical Board of California upon Petition for Interim Suspension, attached hereto as Appendix "A" and made a part hereof.

It is therefore:

ORDERED, pursuant to N.Y. Public Health Law §230(12)(b) (McKinney 1990 and Supp. 1998), that effective immediately, Respondent shall not practice medicine in the State of New York

- Until and unless he submits to the Director of the Office of Professional Medical Conduct a proposed written Plan of

Compliance, fully addressing the purposes set forth in Appendix "B", attached hereto; and

- Until and unless the Director approves such plan, in writing, as sufficient to address such purposes; and
- Until and unless such plan is fully operational, as determined by the Director in her reasonable discretion, and communicated to Respondent in writing.

Any violation of any term of this (Commissioner's) Order shall constitute Professional Misconduct within the meaning of N.Y. Educ. Law §6530(29). Any medical practice in the State of New York in violation of said Order may constitute unauthorized medical practice, a Felony defined by N.Y. Educ. Law §6512.

This Order shall remain in effect until the final conclusion of a hearing which shall commence within thirty days after the final conclusion of the disciplinary proceedings in the State of California. The hearing will be held pursuant to the provisions of N.Y. Pub. Health Law §230 (McKinney 1990 and Supp. 1998), and N.Y. State Admin. Proc. Act §§301-307 and 401 (McKinney 1984 and Supp. 1998). The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on a date and at a location to be set forth in a written Notice of Summary Hearing to be provided to the Respondent after the California proceedings are finally concluded. Said written Notice may be provided in person, by mail, or by other means. If Respondent wishes to be provided said written notice

at an address other than that set forth above, Respondent shall notify both the attorney whose name is set forth in this Order, and the Director of the Bureau of Adjudication, New York State Department of Health, Hedley Park Place, 433 River Street, Fifth Floor South, Troy, NY 12180 (Telephone: 518-402-0748).

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 OTHER SANCTIONS SET FORTH IN NEW YORK PUBLIC HEALTH LAW §230-a (McKinney Supp. 1998). YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: Albany, New York
June 26, 1998


BARBARA A. DeBUONO, M.D., M.P.H.
Commissioner of Health

Inquiries should be directed to:

Roy Nemerson
Deputy Counsel, B.P.M.C.
N.Y.S. Department of Health
Division of Legal Affairs
5 Penn Plaza
Suite 601
New York, New York 10001
(212) - 613-2615

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BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
STATE OF CALIFORNIA

In the Matter of the Petition for Interim Suspension Against:)	
)	Board Case No. 06-97-73295
ALAIN M. VIDA, M.D.)	
)	OAH No. L-1998020009
Physician and Surgeon's Certificate No. A 30479,)	
)	
Respondent.)	

ORDER ON PETITION FOR INTERIM SUSPENSION

On January 30, 1998, Ron Joseph ("petitioner"), Executive Officer, Medical Board of California ("Board"), filed a Petition for Interim Order of Suspension pursuant to Government Code §11529 seeking to suspend the physician and surgeon certificate issued to respondent.

The matter came before David B. Rosenman, Administrative Law Judge, Office of Administrative Hearings, on February 20, 1998, pursuant to agreement of the parties and notice.

Gloria A. Barrios, Deputy Attorney General, represented petitioner. Respondent Alain Vida appeared and was represented by Henry R. Fenton, attorney.

Documentary evidence was submitted and oral argument presented, and the matter was submitted.

FINDINGS OF FACTS

The Administrative Law Judge makes the following findings of fact:

1. Respondent received his certificate as a physician and surgeon, certificate no. A 30479, on September 29, 1976. The license will expire on October 31, 1998, unless renewed.

2. An Accusation alleging the same acts as set forth in the present Petition was filed with the Board on December 4, 1997 (assigned OAH case no. L1998010285). Respondent indicates a willingness to waive the statutory requirement that a hearing be held on that accusation within 30 days of his request.

3. On February 6, 1998 the Administrative Law Judge issued an Order on complainant's ex parte application for interim

APPENDIX "A"

suspension. The Ex Parte Order included several limitations and conditions on respondent's continued ability to practice under his license.

4. Consistent with the burden and standards of proof set forth in Business and Professions Code, section 11529(e), petitioner established that Respondent has engaged in acts constituting violations of Business and Professions Code §§ 2234(b) (gross negligence), 2234(c) (repeated acts of negligence), 2234(e) (commission of dishonest or corrupt acts), and 2264 (aiding and abetting the unlicensed practice of medicine).

5. Permitting respondent to continue to engage in the practice of medicine, without appropriate restrictions, in light of these violations will endanger the public health, safety, and welfare.

6. Serious injury would result to the public welfare unless this Order is issued before the matter can be heard pursuant to the notice required by Government Code §11529(b).

7. There is a reasonable probability that petitioner will prevail in the underlying action to permanently discipline respondent's license.

8. The likelihood of injury to the public in not issuing the order outweighs the likelihood of injury to respondent in issuing the order.

Discussion:

9. The declarations submitted by respondent (his own and 2 of his present medical assistants) differ substantially with much of the information set forth in the declaration of Manuel Ishida, formerly employed by respondent as a medical assistant and a physician's assistant. On the cold declarations, it is difficult to ascertain which version of events is more credible. Therefore, most of the Ishida declaration has not been used to make the findings herein.

10. Respondent gave a Board investigator a business card which states, in part: "Dr. Vida Allergy & Asthma Center, Dr. Vida, Specialist." Respondent stated to the investigator that he is board certified in pediatrics and that his "only training in allergy medicine was from the University of Alabama where he attended medical school." This statement is ambiguous, as it could mean his only training was when he was in medical school, or was taken from the medical school at some other time. Petitioner has established that respondent is not a member of various professional societies that would indicate a specialization in allergy medicine. However, the opinion of

petitioner's expert, Dr. Stevenson, specifically notes that respondent's "qualifications to act as a specialist in Allergic Diseases are not clear." Petitioner has not established that respondent is so lacking in experience, training or expertise in allergy medicine that his business card would constitute false advertising.

11. Petitioner has not submitted specific evidence of any instance wherein a patient received excessive treatment, as there has been no review of particular patient records and comparison of what an expert believes would be appropriate treatment as opposed to the treatment provided by respondent. If the patients treated at respondent's clinics need the treatment they are receiving, then there has been no excessive treatment by respondent.

12. The documents and declarations submitted by petitioner establish that respondent allowed his various clinics to operate, and for medical assistants to test and treat patients, when there is no doctor present in the clinic. The list of office hours of the various clinics and the schedule of doctors covering the clinics (Exhibits 6 and 8 to the petition) establish that various clinics were open and operating when there was no doctor scheduled to be in the clinic.

For example, the following clinics were open for business with no doctor to cover during June, 1997: Los Angeles, June 3, 10, 17 and 24; Huntington Park, June 23; Santa Ana, June 16 and 26; and Santa Fe Springs, June 2, 6, 9, 16, 27 and 30. This is confirmed by the investigator's declaration that on June 23 in Huntington Park she observed a medical assistant administering allergy injections and she saw no doctor present, and the schedule had no doctor assigned for that day.

Business and Professions Code section 2069 requires the supervising doctor to be present in the clinic while a medical assistant is giving a skin test or an injection. Respondent's continued and repeated failure to comply with this requirement constitutes an egregious violation of the Medical Practices Act, is gross negligence, and justifies the order herein.

13. Other examples of respondent's actions which constitute simple or gross negligence include: the lack of written protocols for the medical assistants at respondent's clinics; the lack of access to the emergency kit in the Huntington Park clinic; the inclusion of solutions past their expiration dates in the emergency kit in the Huntington Park clinic; and respondent's admission that medical assistants can call in renewals of prescription drugs while respondent is not present in the clinic.

14. Respondent is responsible for the actions of Manuel Ishida while he was employed by respondent as a physician's assistant. Even if, as respondent claims, he was not aware that Ishida was not a licensed physician's assistant and was deceived by Ishida, respondent is nevertheless responsible for aiding and abetting Ishida's unlicensed practice. See Khan v. Medical Board (1993) 12 Cal.App.4th 1834, 1843-45.

15. The petition establishes that many of these violations were occurring on a continuous basis in June, 1997. Because the scheduling of doctors to cover offices and the unfettered actions of medical assistants and physician's assistants appears to be respondent's normal operating procedure, it is inferred that such violations continued to the time that respondent sold the clinics and could continue in his present or future practice of medicine.

16. Respondent sold his clinics to Magellan Medical Corp. and Dr. Marc Martinez between December, 1997 and February, 1998. Respondent notified Dr. Martinez of the restrictions set forth in the Ex Parte Order. No documents of sale were submitted and it was not clear what additional responsibilities, if any, respondent may have as a consultant to the purchaser.

17. Complainant has not established sufficient cause to require respondent to engage a practice or billing monitor. As noted in Finding 11, no particular act or acts of excessive testing or treatment have been shown.

DETERMINATION OF ISSUES

In light of the foregoing facts, the Petition is sustained and respondent's license is restricted in accordance with Government Code §11529(a), as set forth below.

ORDER

WHEREFORE, IT IS HEREBY ORDERED that:

The license issued to respondent, Alain Vida, Physician and Surgeon's Certificate No. A 30479, is restricted as follows pursuant to Government Code section 11529:

1. Respondent shall not operate any of his clinics on days that there is no qualified physician on duty at that clinic.

2. Respondent shall not use medical assistants or physician's assistants to interact with patients until he has prepared and distributed written specific orders or standing orders ("protocols") to them that comply with Business and Professions Code section 2069. If respondent intends such use of medical assistants or physician's assistants, he shall send to

the Board copies of these protocols as soon as they are prepared.

3. Respondent shall successfully complete the Ethics course in which he has enrolled. Respondent shall send to the Board proof of successful completion of the course.

4. Respondent shall obey all federal, state and local laws, and all rules governing the practice of medicine in California.

5. Respondent shall appear in person for interviews with the Board or its designee upon request at reasonable intervals and with reasonable notice.

6. Respondent shall allow access to his medical practice location(s) by Board personnel during normal clinic operating hours, to determine if respondent is complying with the terms of this Order.

7. If respondent violates any of these restrictions in any respect, the Board, after giving respondent notice and the opportunity to be heard, may suspend respondent's certificate until the hearing on the Accusation in OAH case no. L1998010285.

DATED: February 26, 1998.



DAVID B. ROSENMAN
Administrative Law Judge
Office of Administrative Hearings

DBR:dr

APPENDIX "B"

1. Respondent shall operate no medical office, clinic, or facility in the State of New York unless a fully qualified and competent physician is present and supervising every aspect of medical evaluation and care rendered at such office, clinic, or facility, at all times.
2. Respondent shall make no use of physician assistants, specialist assistants, or any other non-physician health care provider without having previously identified every such individual, in writing, to the Director of the Office of Professional Medical Conduct.
3. With regard to every such non-physician health care provider, Respondent shall have in place comprehensive practice protocols, approved in advance, in writing, by the Director, and setting forth the precise responsibilities of each individual and the precise instructions and orders of practice, likewise approved in advance, in writing, by the Director.
4. Respondent shall be available upon request, in person, for interviews with representatives of the Office of Professional Medical Conduct, at reasonable intervals and upon reasonable notice, to address any matter within the scope of OPMC.
5. Respondent shall provide complete and immediate access to Designee(s) of the Director at every practice location and to all records and personnel, at any time, to determine Respondent's compliance with the terms of this Order.