

Public



STATE OF NEW YORK  
DEPARTMENT OF HEALTH

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

Richard F. Daines, M.D.  
Commissioner

James W. Clyne, Jr.  
Executive Deputy Commissioner

September 3, 2009

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Alberto Nanez-Hoyos, P.A.

Redacted Address

Courtney Berry, Esq.  
NYS Department of Health  
90 Church Street- 4<sup>th</sup> Floor  
New York, New York 10007

**RE: In the Matter of Alberto Nanez-Hoyos, P.A.**

Dear Parties:

Enclosed please find the Determination and Order (No. 09-167) 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), (McKinney Supp. 2007) and §230-c subdivisions 1 through 5, (McKinney Supp. 2007), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the Respondent 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,

Redacted Signature

James F. Horan, Acting Director  
Bureau of Adjudication

JFH:cah

Enclosure.

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

COPY

IN THE MATTER

OF

ALBERTO NANEZ-HOYOS PA

DETERMINATION

AND

ORDER

BPMC #09-167

A Notice of Hearing, and Statement of Charges both dated April 2, 2009 were served upon the Respondent **ALBERTO NANEZ-HOYOS P.A.** Chairperson **SHELDON PUTTERMAN M.D., CASSANDRA HENDERSON M.D., and DONALD KELLY** 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. Administrative Law Judge **KIMBERLY A. O'BRIEN ESQ.** served as the Administrative Officer.

The Department of Health appeared by **THOMAS CONWAY ESQ.**, General Counsel, by **COURTNEY BERRY**, of Counsel. The Respondent **ALBERTO NANEZ-HOYOS P.A.** appeared in person and represented himself.

Evidence was received and argument heard, and transcripts of these proceedings were made.

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

**PROCEDURAL HISTORY**

Notice of Hearing  
& Statement of Charges

April 2, 2009

Pre-hearing Conference	June 16, 2009 <sup>1</sup>
Hearing Date	June 24, 2009
Witnesses for Petitioner	None
Witnesses for Respondent	Alberto Nanez-Hoyos P.A.
Final Hearing Transcript Received	July 8, 2009
Deliberations Date	July 10, 2009

### STATEMENT OF THE CASE

The State Board of Professional Medical Conduct is a duly authorized professional disciplinary agency of the State of New York pursuant to Section 230 et seq. of the Public Health Law of New York. This case was brought by the New York State Department of Health, Office of Professional Medical Conduct (hereinafter "Petitioner" or "Department") pursuant to Section 230 of the Public Health Law. Alberto Nanez-Hoyos P.A. (hereinafter "Respondent") is charged with two specifications of misconduct as set forth in Section 6530 of the Education Law of the State of New York (hereinafter Education Law). The Respondent is charged with fraudulent practice and willfully making or filing a false report. The Respondent failed to file a written answer to the charges and the Department moved to have the charges deemed admitted pursuant to New York Public Health Law Section 230 (10) (c). Upon a showing that the Respondent was duly served and failed to file a written answer, the Department's motion was granted and the factual allegations set forth in paragraph A and the two specifications of misconduct set forth in the original Notice of

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1. Due to an unforeseen scheduling issue with the Hearing Committee, the hearing originally scheduled for June 16, 2009 was adjourned to June 24, 2009. A pre-hearing conference was held with the parties on June 16, 2009 where documents were admitted and the Respondent was encouraged to seek counsel.

Hearing and Statement of Charges attached hereto and made part of this Decision and Order, and marked as Appendix 1 were deemed admitted.

### **FINDINGS OF FACT**

The following Findings of Fact were made after a review of the entire record in this matter. Unless otherwise noted, all findings and conclusions set forth below are the unanimous determinations of the Hearing Committee. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence. Numbers below in parentheses refer to exhibits (denoted by the prefix "Ex.") or transcript page numbers ("Tr."). These citations refer to evidence found persuasive by the Hearing Committee in arriving at a particular finding. Having heard argument and considered the documentary evidence presented, the Hearing Committee hereby makes the following finding of fact:

1. **ALBERTO NANEZ- HOYOS**, the Respondent, was authorized to practice as a Physician's Assistant in New York State on or about September 1, 2004, by the issuance of a limited permit number P39729, by the New York State Education Department (Ex. 2).
2. The factual allegations and two specifications of misconduct set forth in the Statement of Charges are deemed admitted pursuant to Section 230(10)(c) of the New York Public Health Law (Ex. 1).

### **DISCUSSION AND CONCLUSIONS**

The Department alleged that the Respondent submitted and/or caused to be submitted an altered Limited Permit to Practice as a Physician's Assistant ("Limited Permit"), and knowingly, falsely and with intent to deceive represented that the Limited Permit expired on September 1, 2008 when the true expiration date was September 1, 2006. The Respondent is charged with two specifications of misconduct fraudulent practice and willfully making or filing a false report. Because the factual allegations

and two specifications of misconduct were deemed admitted, the Hearing Committee made a determination solely about what penalty if any should be imposed. The Hearing Committee's conclusions were unanimous and based on the Respondent's testimony and the documentary evidence introduced at the hearing.

The Respondent testified on his own behalf and denied the charges. The Respondent became emotional at times when he recounted his family's immigration from Columbia and the sacrifices made to send him to school to be a Physician's Assistant (Tr. 16-21). Further, he testified about his personal struggles with language, finances, and training to become a physician's assistant (Tr. 21-31). Finally, he testified about: his passion for his work, the pressures of the private clinic setting where he practiced as a physician's assistant, people he worked with who he believes took advantage of him, and his interest in working in a hospital setting (Tr. 33 -79).

The Respondent's testimony about his journey to become a physician's assistant and his passion for his work mitigated the penalty. However, the Hearing Committee found that the Respondent's testimony revealed he is naive about his practice and would benefit from practicing in the structured environment of an institutional setting. This setting will provide the Respondent with an opportunity to enhance his understanding of the practice of the Physician's Assistant and the business of medicine.

#### **DETERMINATION AS TO PENALTY**

After due and careful consideration of the penalties available pursuant to Public Health Law Section 230-a, the Hearing Committee has determined that in order to protect the public the Respondent's license shall be suspended for three years and the

suspension shall be stayed, and the Respondent shall be on probation for the entire three-year period. The Respondent shall work in an institutional setting throughout the probationary period. The terms of probation are attached hereto and made a part of this Decision and Order, and marked as Appendix B.

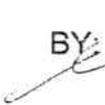
**ORDER**

Based on the foregoing, **IT IS HEREBY ORDERED THAT:**

1. The factual allegations in paragraph A, and the First and Second Specifications set forth in the Statement of Charges (Appendix 1) are **SUSTAINED**;
2. The Respondent's license shall be suspended for three years and the suspension shall be stayed. The Respondent shall be on probation for the three –year period of stayed suspension and shall work in an institutional setting during the entire period of probation (Appendix B);
3. This **ORDER** shall be effective upon service on the Respondent pursuant to Public Health Law Section 230(10)(h).

New York, New York

DATED: Aug 28, 2009

BY:  **SHELDON PUTTERMAN M.D. Chair**  
CASSANDRA HENDERSON M.D.  
DONALD KELLY

**To:** Alberto Nanez-Hoyos P.A.  
111-45 76<sup>th</sup> Drive  
Forest Hills, NY 11375

Courtney Berry Esq.  
NYSDOH -Bureau of Professional Medical Conduct  
90 Church Street  
New York, NY 10007

# APPENDIX 1

IN THE MATTER  
OF  
ALBERTO NANEZ-HOYOS, P.A.

STATEMENT  
OF  
CHARGES

Alberto Nanez-Hoyos, P.A., the Respondent, was authorized under a Limited Permit to practice as a Physician Assistant in New York State on or about September 1, 2004, by the issuance of Limited Permit number P33729 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

- A. Between on or about July 26, 2005 and on or about August 22, 2006, Respondent was hired and employed as a Physician Assistant by the Vicente Corporation at the premises known as Brooklyn Family Medical and/or Brooklyn Family Center at 1155 Broadway, Brooklyn, New York, and submitted and/or caused to submit to the Vicente Corporation thereat an altered "Limited Permit to practice as a Physician Assistant" which Respondent knowingly and falsely represented thereon as expiring on September 1, 2008, when, in fact, with he knew the true expiration date was September 1, 2006. Respondent intended to deceive.

**SPECIFICATION OF CHARGES**

**FIRST SPECIFICATION**

**FRAUDULENT PRACTICE**

Respondent is charged with committing professional misconduct as defined by N.Y. Educ. Law §6530(2) by practicing the profession of medicine fraudulently

as alleged in the facts of the following:

1. Paragraph A.

**SECOND SPECIFICATION**

**FALSE REPORT**

Respondent is charged with committing professional misconduct as defined by N.Y. Educ. Law §6530(21) by wilfully making or filing a false report, or failing to file a report required by law or by the department of health or the education department, as alleged in the facts of the following:

2. Paragraph A.

DATE: April 2, 2009  
New York, New York

Redacted Signature

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Roy Nemerson  
Deputy Counsel  
Bureau of Professional Medical Conduct

# APPENDIX B

## **Appendix B**

### **Terms of Probation**

1. Respondent shall conduct himself in all ways in a manner befitting his professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his profession.
2. Respondent shall submit written notification to the New York State Department of Health addressed to the Director, Office of Professional Medical Conduct (OPMC), 433 River Street, 4th Floor, Troy, New York 12180; said notice is to include a full description of any employment and practice, professional and residential addresses and telephone numbers within or without New York State, and any and all investigations, charges, convictions or disciplinary actions by any foreign, local, state or federal agency, institution or facility, within thirty days of each action.
4. Respondent's license shall be suspended for three (3) years with the entire suspension stayed and shall be on probation during the three-year period of stayed suspension("period of probation"). During the period of probation, the Respondent shall only practice in an institutional setting. The practice setting is subject to the approval of the Director, Office of Professional Medical Conduct (OPMC). The period of probation shall be tolled during periods in which Respondent is not engaged in the active practice of medicine in New York State. Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently 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 then notify the Director again prior to any change in that status. The period of probation shall resume and any terms of probation which were not fulfilled shall be fulfilled upon Respondent's return to practice in New York State.
5. During the three -year period of probation, the Respondent shall successfully practice in an institutional setting. If the Respondent fails to successfully practice in an institutional setting, then the Respondent shall be suspended for the three-year period of probation, and the Director of OPMC and/or the Board may initiate a violation of probation proceeding and/or any such other proceeding against Respondent as may be authorized pursuant to the law.
6. Respondent shall maintain medical malpractice insurance coverage with limits no less than \$2 million per occurrence and \$6 million per policy year, in accordance with Section 230(18)(b) of the Public Health Law. Proof of coverage shall be submitted to the Director of OPMC prior to Respondent's practice after the effective date of this Order.
7. Respondent shall comply with all terms, conditions, restrictions, limitations and penalties to which he or she is subject pursuant to the Order and shall assume and bear all costs related to compliance. Upon receipt of evidence of noncompliance with, or any violation of these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding and/or any such other proceeding against Respondent as may be authorized pursuant to the law.