



STATE OF NEW YORK
DEPARTMENT OF HEALTH

Coming Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12237

Barbara A. DeBuono, M.D., M.P.H.
Commissioner

Karen Schimke
Executive Deputy Commissioner

April 18, 1995

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OFFICE OF PROFESSIONAL
MEDICAL CONDUCT

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Harold Torres-Gomez, M.D.
Inmate #262364, B-2 South
Riverfront State Prison
CN 9104
Elm Street & Delaware Avenue
Camden, New Jersey 08101-9104

Paul Stein, Esq.
Associate Counsel
NYS Dept. of Health
Bureau of PMC
5 Penn Plaza, 6th Floor
New York, NY 10001

RE: In the Matter of Harold Torres-Gomez, M.D.
EFFECTIVE DATE: 04/25/95

Dear Dr. Torres-Gomez and Mr. Stein:

Enclosed please find the Determination and Order (No. 95-91) 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.

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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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 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 (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.

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
Empire State Plaza
Corning Tower, Room 2503
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.

Sincerely,

A handwritten signature in cursive script that reads "Tyrone T. Butler/rbw".

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:rlw
Enclosure

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

**IN THE MATTER
OF
HAROLD TORRES-GOMEZ, M.D.**

**DETERMINATION
AND
ORDER**

BPMC-95-91

HILDA RATNER, M.D., (Chair), **ROBERT J. O'CONNOR, M.D.** and **MICHAEL A. GONZALEZ, R.P.A.** duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to §230(10)(e) of the Public Health Law of the State of New York.

MARC P. ZYLBERBERG, ESQ., **ADMINISTRATIVE LAW JUDGE**, served as the Administrative Officer.

The New York State Department of Health appeared by **PAUL STEIN, ESQ.**, Associate Counsel.

Respondent, **HAROLD TORRES-GOMEZ, M.D.** failed to appear personally at the hearing and was not represented by counsel.

A hearing was held on March 21, 1995. Evidence was received and examined. A Transcript of the proceedings was made. After consideration of the record, the Hearing Committee issues this Determination and Order, pursuant to the Public Health Law and the Education Law of the State of New York.

STATEMENT OF CASE

The State Board for Professional Medical Conduct is a duly authorized professional disciplinary agency of the State of New York. (§230 et seq. of the Public Health Law of the State of New York [hereinafter P.H.L.]

This case, brought pursuant to P.H.L. §230(10)(p), is also referred to as an "expedited hearing". The scope of an expedited hearing is strictly limited to evidence or sworn testimony relating to the nature and severity of the penalty to be imposed on the licensee¹ (Respondent).

HAROLD TORRES-GOMEZ, M.D., (hereinafter "Respondent") is charged with professional misconduct within the meaning of §6530(9)(a)(iii) and §6530(9)(d) of the Education Law of the State of New York ("Education Law").

Education Law §6530(9)(a)(iii) defines professional misconduct in terms of being convicted of committing an act constituting a crime under the law of another jurisdiction and which, if committed within New York, would have constituted a crime under the laws of New York State.

In order to find that Respondent committed professional misconduct, the Hearing Committee, pursuant to §6530(9)(a)(iii) of the Education Law, must determine: (1) whether Respondent has been convicted of a crime in another state and (2) whether Respondent's conduct or underlying act(s) would, if committed in New York State, constitute a crime under the laws of New York State.

A violation of Education Law §6530(9)(d) is defined as: "professional misconduct ... by reason of having disciplinary action taken by a duly authorized professional disciplinary agency of another state, for conduct, which conduct, would, if committed in New York State constitute professional misconduct under the Laws of New York State.

¹ P.H.L. §230(10)(p), fifth sentence.

In order to find that Respondent committed professional misconduct, the Hearing Committee, pursuant to §6530(9)(d) of the Education Law, must determine: (1) whether Respondent had some disciplinary action taken or instituted against him by a duly authorized professional disciplinary agency of another state and (2) whether Respondent's conduct on which the disciplinary action was taken would, if committed in New York State, constitute professional misconduct under the laws of New York State.

A copy of the Statement of Charges is attached to this Determination and Order as Appendix I.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. These facts 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. Some evidence was rejected as irrelevant. Unless otherwise noted, all Findings and Conclusions herein were unanimous. The State, who has the burden of proof, was required to prove its case by a preponderance of the evidence. All Findings of Fact made by the Hearing Committee were established by at least a preponderance of the evidence.

1. Respondent was authorized to practice medicine in New York State on July 1, 1985 by the issuance of license number 163068 by the New York State Education Department (Petitioner's Exhibits # 1 and # 2)²

² refers to exhibits in evidence submitted by the New York State Department of Health (Petitioner's Exhibit). The contents of the exhibits (including the acts and admissions of Respondent) are not repeated in the Findings of Fact but are incorporated by reference as if they had been fully set forth in said Findings of Fact.

2. The Respondent is not currently registered with the New York State Education Department to practice medicine in the State of New York (Petitioner's Exhibits # 1 and # 2)

3. On February 28, 1995, Respondent was an inmate at Riverfront State Prison in Camden, New Jersey. Paul Stein has submitted an affirmation of due diligence, indicating that due to Respondent's status as an inmate, personal service could not be made (Petitioner's Exhibit # 1A).

4. On February 28, 1995, Rodney Cooper mailed, by registered mail, a copy of the Referral Proceeding, Statement of Charges and summary of Department of Health Hearing rules to Respondent, at his last known address (Petitioner's Exhibits # 1B and # 1C).

5. On March 20, 1995, Paul Stein verified that Respondent had received a copy of the Referral Proceeding, Statement of Charges and summary of Department of Health Hearing rules (Petitioner's Exhibit # 1D).

6. On May 6, 1994, after a jury trial in Essex County, New Jersey, Respondent was found guilty, under indictment No. 3100-9-93, of:

- a. Count 1 Criminal sexual assault, and
- b. Count 3 Endangering the welfare of a child, and
- c. Count 4 Hindering apprehension

(Petitioner's Exhibits # 3 and # 4).

7. June 30, 1994 in New Jersey Superior Court, Essex County, Respondent was sentenced to 10 years in state prison on Count 1 and 5 years in state prison on Count 4 (Petitioner's Exhibits # 3 and # 5).

8. On July 11 (or 13), 1994, in Essex County, New Jersey, Respondent plead guilty, under indictment No. 1469-4-92, to:

- a. Count 2 Sexual assault, and
- b. Count 6 Endangering the welfare of a child

(Petitioner's Exhibits # 3, #6 and # 7).

9. On July 29, 1994, in New Jersey Superior Court, Essex County, Respondent was sentenced to 10 years in state prison on Count 2 and 18 months in state prison on Count 6 (Petitioner's Exhibits # 3 and # 7).

10. On July 11 (or 13), 1994, in Essex County, New Jersey, Respondent plead guilty, under indictment No. 1950-6-94, to:

- a. Count 2 Sexual assault, and
- b. Count 5 Endangering the welfare of a child, and
- c. Count 7 Sexual assault, and
- d. Count 8 Endangering the welfare of a child

(Petitioner's Exhibits # 3, #6 and # 7).

11. On July 29, 1994, in New Jersey Superior Court, Essex County, Respondent was sentenced to 10 years in state prison on Count 2, 10 years in state prison on Count 7, 18 months in state prison on Count 5 and 18 months in state prison on Count 8 (Petitioner's Exhibits # 3 and # 7).

12. On July 13, 1994, in Essex County, New Jersey, Respondent plead guilty, under indictment No. 1949-6-94, to:

- a. Count 1 Sexual assault, and
- b. Count 3 Endangering the welfare of a child, and
- c. Count 10 Aggravated sexual assault, and
- d. Count 12 Endangering the welfare of a child

(Petitioner's Exhibits # 3, #6 and # 7).

13. On July 29, 1994, in New Jersey Superior Court, Essex County, Respondent was sentenced to 10 years in state prison on Count 1, 18 months in state prison on Count 3, 18 months in state prison on Count 12 and 15 years in state prison on Count 10 (Petitioner's Exhibits # 3 and # 7).

14. A summary of Respondent's act and conduct, without repeating the exhibits in evidence, are as follows: (1) between 1988 and 1993, Respondent, a pediatrician, sexually abused four of his juvenile patients; (2) three of the aforementioned patients

were girls and one was a boy; (3) the boy was less than 13 years old and the sexual assaults on him by Respondent occurred at least 10 times between 1988 and 1992; (4) while Respondent was under indictment for sexual abuse, he sexually abused another patient; (5) one of the girls (8 years old) was sexually abused by Respondent, during a purported eye examination, while her mother was present in the darkened room with Respondent (Petitioner's Exhibit # 4, # 6 and # 8).

15. The State Board of Medical Examiners of the State of New Jersey, ("New Jersey Board") is a state agency charged with regulating the practice of medicine and surgery pursuant to the laws of the State of New Jersey (Petitioner's Exhibits # 8, # 9 and # 10).

16. On April 28, 1993, the Attorney General of the State of New Jersey charged³, by Administrative Complaint, Respondent with violating New Jersey laws (Petitioner's Exhibit # 8).

17. As a result of the above Complaint, the New Jersey Board issued an Interim Order of Temporary Suspension, dated April 28, 1993 and Filed May 4, 1993, which immediately suspended Respondent's license pending a hearing by the New Jersey Board (Petitioner's Exhibit # 9)⁴.

18. As a result of the above, on August 10, 1994 (filed February 8, 1995), the New Jersey Board found that Respondent "did commit those acts of sexual assault upon" two of his patients as charged in the administrative complaint (Petitioner's Exhibit # 11).

³ In the Matter of the Suspension or Revocation of the License of Harold Torres-Gomez, M.D. to Practice Medicine and Surgery in the State of New Jersey, Administrative Action Verified Complaint, Department of Law & Public Safety, Division of Consumer Affairs, State Board of Medical Examiners, signed by a Deputy Attorney General and dated April 28, 1993 and filed with the New Jersey State Board of Medical Examiners, on April 28, 1993 (Petitioner's Exhibit # 8).

⁴ Order of Temporary Suspension of Respondent's license to practice medicine and surgery in New Jersey was continued and issued on May 24, 1993 (Petitioner's Exhibit # 10).

19. In an Order Granting Summary Decision and Revoking Licensure effective August 10, 1994 and filed February 8, 1995, the New Jersey Board, revoked Respondent's license to practice medicine and surgery in the State of New Jersey, assessed a civil penalty in the amount of \$5,000, and assessed all costs of investigation incurred in the matter (\$5,077.76) (Petitioner's Exhibit # 11).

CONCLUSIONS OF LAW

The Hearing Committee makes the following conclusions, pursuant to the Findings of Fact listed above. All conclusions resulted from a unanimous vote of the Hearing Committee.

The Hearing Committee concludes that the following Factual Allegations, from the February 23, 1995, Statement of Charges, are **SUSTAINED**:⁵

- | | | |
|--------------|---|-----------------|
| Paragraph A. | : | (6 - 7, 14) |
| Paragraph B | : | (8 - 9, 14) |
| Paragraph C | : | (10 - 11, 14) |
| Paragraph D | : | (12 - 13, 14) |
| Paragraph E | : | (14 - 19) |

Based on the above, the Hearing Committee concludes that the following Specifications of Charges are **SUSTAINED**:⁶

- | | |
|-----------------------|-----------------|
| FIRST SPECIFICATION: | (Paragraph: A) |
| SECOND SPECIFICATION: | (Paragraph: B) |
| THIRD SPECIFICATION: | (Paragraph: C) |
| FOURTH SPECIFICATION: | (Paragraph: D) |
| FIFTH SPECIFICATION: | (Paragraph: E) |

⁵ The numbers in parentheses refer to the Findings of Fact previously made herein by the Hearing Committee and support each Factual Allegation.

⁶ The citations in parentheses refer to the Factual Allegation which support each Specification.

The Hearing Committee concludes that the Department of Health has shown by a preponderance of the evidence that Respondent was found guilty of crimes and improper professional practice and of professional misconduct by the State of New Jersey and his conduct in New Jersey would constitute crimes and professional misconduct under the laws of New York State. The Department of Health has met its burden of proof.

I Service of Charges and of Notice of Hearing.

P.H.L. §230(10)(d) requires that the Charges and Notice of Hearing be served on the licensee personally, at least twenty (20) days before the Hearing. If personal service cannot be made, due diligence must be shown and certified under oath. After due diligence has been certified, then, the Charges and Notice of Hearing must be served by registered or certified mail to the licensee's last known address, at least fifteen (15) days before the Hearing.

From the affirmations and affidavit submitted, service of the Notice of Referral Proceeding and the Statement of Charges on Respondent was proper and timely. Jurisdiction over the Respondent was obtained pursuant to P.H.L. §230(10)(d).

II Professional Misconduct under §6530(9)(a)(iii) of the Education Law.

The Hearing Committee concludes that the Department of Health has shown, by a preponderance of the evidence, that Respondent was convicted of committing a crime under New Jersey Law. The Hearing Committee further concludes that Respondent's acts committed in New Jersey, would, if committed in New York constitute the crimes of, at least; (1) Sodomy in the third degree; (2) Sexual

abuse in the third degree and (3) Sexual abuse in the second degree⁷

Respondent's convictions constitute professional misconduct under the laws of New York State. The Department of Health has met its burden of proof.

III Professional Misconduct under §6530(9)(d) of the Education Law.

The New Jersey Board of Medicine is a duly authorized professional disciplinary agency. In 1993, said New Jersey Board charged Respondent with violating New Jersey Statutes and instituted disciplinary action against Respondent. As a result, Respondent's license to practice medicine in New Jersey was revoked.

Under the Education Law, Respondent's acts and conduct constitute, at a minimum, the practice of medicine which evidences moral unfitness⁸ and willfully physically harassing and abusing a patient⁹.

The Hearing Committee finds that Respondent's conduct, if committed in New York State, would constitute professional misconduct under §6530 of the Education Law as stated above. Therefore, Respondent has committed professional misconduct pursuant to §6530(9)(d) of the Education Law.

DETERMINATION

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determines that Respondent's license to practice medicine in New York State should be REVOKED.

This determination is reached after due and careful consideration of the full spectrum of penalties available pursuant to P.H.L. §230-a, including:

⁷ New York State Penal Law §§130.40, 130.55 and 130.60.

⁸ Education Law §6530(20).

⁹ Education Law §6530(31).

(1) Censure and reprimand; (2) Suspension of the license, wholly or partially; (3) Limitations of the license; (4) Revocation of license; (5) Annulment of license or registration; (6) Limitations; (7) the imposition of monetary penalties; (8) a course of education or training; (9) performance of public service and (10) probation.

The Committee is bound by the documentary evidence presented by Petitioner.

Respondent's lack of integrity, character and moral fitness is evident in his course of conduct, as represented by the Record.

The Hearing Committee concludes that if this case had been held in New York, on the facts presented, including Respondent's pattern of sexual assaults on minors and the endangerment of his patients, such conduct would have resulted in a vote for revocation of Respondent's license.

The Hearing Committee considers Respondent's misconduct to be particularly egregious. Respondent, as a pediatrician, was in a unique position to know the seriousness of the harm which his sexual abuse was inflicting on his minor patients. Respondent was, or should have been, acutely aware of the defenselessness of his patients and of the long period of harm and after effects that his actions would cause. The Hearing Committee has noted that the State of New Jersey has revoked Respondent's license.

With a concern for the health and welfare of patients in New York State, the Hearing Committee determines that revocation of Respondent's license is the appropriate sanction to impose under the circumstances.

ORDER

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

1. The First through Fifth Specifications of professional misconduct contained within the Statement of Charges (Petitioner's Exhibit # 1) are **SUSTAINED**, and
2. Respondent's license to practice medicine in the State of New York is hereby **REVOKED**.

DATED: Albany, New York
April, 17, 1995



HILDA RATNER, M.D., (Chair),

ROBERT J. O'CONNOR, M.D.

MICHAEL A. GONZALEZ, R.P.A.

To: Paul Stein, Esq.
Associate Counsel
New York State Department of Health
Bureau of Professional Medical Conduct
5 Penn Plaza, 6th Floor
New York, New York 10001

Harold Torres-Gomez, M.D.
Respondent
Inmate # 262364, B-2 South
Riverfront State Prison
CN 9104
Elm Street & Delaware Avenue
Camden, New Jersey 08101-9104

A P P E N D I X I

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

-----X

In the Matter : STATEMENT
of : OF
HAROLD TORRES-GOMEZ, M.D. : CHARGES

-----X

HAROLD TORRES-GOMEZ, M.D., the Respondent, was authorized to practice as a physician in New York State on July 1, 1985 by the issuance of license number 163068 by the New York State Education Department. The Respondent is not currently registered with the New York State Education Department to practice medicine in the State of New York. His current address is Riverfront State Prison, CN 9104, Elm Street & Delaware Avenue, Camden, NJ 08101-9104.

FACTUAL ALLEGATIONS

- A. On or about June 30, 1994, in New Jersey Superior Court, Essex County, Respondent was sentenced to 10 years in state prison on Count 1 (sexual assault in the second degree) and 5 years in state prison on Count 4 (hindering apprehension in the third degree), of indictment no. 3100-9-93, of which counts he was found guilty on May 6, 1994, after a jury trial.
- B. On or about July 29, 1994, in New Jersey Superior Court, Essex County, Respondent was sentenced to 10 years in

state prison on Count 2 (sexual assault in the second degree) and 18 months in state prison on Count 6 (endangering the welfare of a child in the 4th degree), of indictment no. 1469-4-92, to which counts he pled guilty on July 11, 1994.

- C. On or about July 29, 1994, in New Jersey Superior Court, Essex County, Respondent was sentenced to 10 years in state prison on Count 2 (sexual assault in the 2nd degree), 18 months in state prison on Count 4 (endangering the welfare of a child in the 4th degree), 10 years in state prison on Count 7 (sexual assault in the second degree), and 18 months in state prison on Count 8 (endangering the welfare of a child in the 4th degree), of indictment no. 1950-6-94, to which counts he pled guilty on July 11, 1994.
- D. On or about July 29, 1994, in New Jersey Superior Court, Essex County, Respondent was sentenced to 10 years in state prison on Count 1 (sexual assault in the 2nd degree), 18 months in state prison on Count 3 (endangering the welfare of a child in the 4th degree), 10 years in state prison on Count 10 (aggravated sexual assault in the 1st degree), and 18 months in state prison on Count 12 (endangering the welfare of a child in the 4th degree), of indictment no. 1949-6-94, to which counts he pled guilty on July 11, 1994.

E. In an Order Granting Summary Decision and Revoking Licensure effective August 10, 1994 and filed February 8, 1995, the State of New Jersey, Department of Law and Public Safety, Division of Consumer Affairs, State Board of Medical Examiners revoked Respondent's license to practice medicine and surgery in the State of New Jersey, assessed a civil penalty in the amount of \$5,000, and assessed all costs of investigation incurred in the matter (\$5,077.76). These sanctions were imposed after a Verified Complaint, filed April 28, 1993 and subsequently amended, alleged that Respondent had committed various acts of sexual assault against two minors from 1988 through 1992, and that Respondent had been convicted on May 6, 1994, after a jury trial in the Superior Court of New Jersey, Essex County of the crimes of sexual assault in the second degree, endangering the welfare of a minor in the second degree (which was subsequently dismissed because it merged for sentencing with Count 1, sexual assault in the second degree), and hindering apprehension in the third degree.

SPECIFICATIONS

FIRST THROUGH FOURTH SPECIFICATIONS

Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law Sec. 6530(9)(a)(iii) (McKinney

Supp. 1995), in that he was convicted of committing an act constituting a crime under the law of another jurisdiction and which, if committed within the state would have constituted a crime under New York state law, as Petitioner specifically alleges:

1. The facts in Paragraph A.
2. The facts in Paragraph B.
3. The facts in Paragraph C.
4. The facts in Paragraph D.

FIFTH SPECIFICATION

Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law Sec. 6530(9)(d) (McKinney Supp. 1995), in that he had his license to practice medicine revoked, suspended or had other disciplinary action taken after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation, suspension or other disciplinary action involving the license would, if committed in New York state, constitute professional misconduct under the laws of New York State, namely:

"Practicing the profession fraudulently or beyond its authorized scope" (Educ. Law sec. 6530 (2) (McKinney Supp. 1995)); and/or

"Practicing the profession with gross negligence on a particular occasion" (Educ. Law sec. 6530 (4) (McKinney Supp. 1995)); and/or

"Practicing the profession with negligence on more than one occasion" (Educ. Law sec. 6530 (3) (McKinney Supp. 1995)); and/or

"Conduct in the practice of medicine which evidences moral unfitness to practice medicine" (Educ. Law sec. 6530 (20) (McKinney Supp. 1995)); and/or

"Willfully harassing, abusing, or intimidating a patient either physically or verbally" (Educ. Law sec. 6530 (31) (McKinney Supp. 1995)),

as Petitioner specifically alleges:

5. The facts in Paragraph E.

Dated: New York, New York
February 23, 1995



CHRIS STERN HYMAN
Counsel
Bureau of Professional
Medical Conduct