



STATE OF NEW YORK
DEPARTMENT OF HEALTH

Public

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

Richard F. Daines, M.D.
Commissioner

James W. Clyne, Jr.
Executive Deputy Commissioner

February 25, 2010

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Estrella Martinez, M.D.

Redacted Address

Anthony M. Maragno, Esq.
113 Great Oaks Boulevard
Albany, New York 12203

Robert Bogan, Esq.
NYS Department of Health
433 River Street - Suite 303
Troy, New York 12180-2299

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

Dear Parties:

Enclosed please find the Determination and Order (No. 10-30) 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 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
Hedley Park Place
433 River Street - Fourth Floor
Troy, New York 12180

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), (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 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 penalties other than suspension or revocation 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
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
ESTRELLA MARTINEZ, M.D.

DETERMINATION

AND

ORDER

BPMC #10-30

A hearing was held on December 17, 2009, at the offices of the New York State Department of Health ("the Petitioner"). A Notice of Referral Proceeding and a Statement of Charges, both dated October 21, 2008, were served upon the Respondent, **ESTRELLA MARTINEZ, M.D.**

Pursuant to Section 230(10)(e) of the Public Health Law, **Robert M. Briber**, Chair, **Arthur S. Hengerer, M.D.**, and **Russell W. Denea, M.D.**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. **David A. Lenihan, Esq.**, Administrative Law Judge, served as the Administrative Officer. The Petitioner appeared by **Thomas Conway, Esq.**, General Counsel, by **Robert Bogan, Esq.**, of Counsel. The Respondent, **Estrella Martinez, M.D.**, appeared with counsel, **Anthony M. Maragno, 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

This case was brought pursuant to Public Health Law Section 230(10)(p). The statute provides for an expedited hearing when a licensee is charged solely with a violation of Education Law Section 6530(9). In such cases, a licensee is charged with misconduct based upon a prior criminal conviction in New York State or another jurisdiction, or upon a prior administrative adjudication regarding conduct that would amount to professional misconduct, if committed in New York. The scope of an expedited hearing is limited to a determination of the nature and severity of the penalty to be imposed upon the licensee.

In the instant case, the Respondent is charged with one specification of professional misconduct pursuant to Education Law §6530(9)(a)(i), by having been convicted of crime in New York, specifically possession of a controlled substance in the seventh degree in violation of New York Penal Law §220.03, a class A misdemeanor. Copies of the Notice of Referral Proceeding and the Statement of Charges are attached to this Determination and Order as Appendix 1.

WITNESSES

For the Petitioner:

ESTRELLA MARTINEZ, M.D.

Anthony Ferraioli, M.D.

Dr. R. P. Singh (by phone)

For the Respondent:

None

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 "Exhibit" 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.

1. Estrella Martinez, M.D., the Respondent, did appear at the hearing and was duly and personally served with process on October 28, 2008. (Petitioner's Exhibit 2)
2. Estrella Martinez, M.D., 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 (Petitioner's Exhibit 4).
3. On or about May 8, 2007, the Respondent was found guilty, in Albany City Court, County of Albany, State of New York of possession of a controlled substance in the seventh degree in violation of New York Penal Law §220.03, a class A misdemeanor and was sentenced to three (3) years of probation and a \$160.00 surcharge. (Petitioner's Exhibit 5).
4. On or about June 14, 1993, the Respondent entered into an agreement with the Department to temporarily surrender her license to practice medicine based upon her incapacity to practice medicine due to drug abuse. (Petitioner's Exhibit 6 a)
5. On January 17, 1996, the New York State Board for Professional Medical Conduct, after a hearing in which it was determined that the Respondent was no longer incapacitated to practice medicine, issued a Restoration Order subject to conditions

to ensure that she maintain her sobriety. Said conditions were to remain in place for a period of five (5) years. (Petitioner's Exhibit 6 a) On August 24, 1999, in Albany City Court, the Respondent was convicted of a violation of New York State Vehicle and Traffic Law § 1192.1, driving while ability impaired by the consumption of alcohol. (Petitioner's Exhibit 7)

6. The above DWAI conviction, and other matters, resulted in a Disciplinary proceeding by the Department, held on August 30, 2001. In addition to the DWAI conviction, 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?" (Petitioner's Exhibit 7)
7. After the August 30, 2001 hearing, the Hearing Committee concluded 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).
8. In imposing a penalty for the above professional misconduct, the 2001 panel **SUSPENDED** Respondent's New York Medical License for one year and **STAYED** the suspension for so long as the Respondent complied with the terms of her probation. It was provided in the 2001 Order that "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." (Petitioner's Exhibit 7).

9. The terms of the 2001 Order provided that the Respondent's medical license was to be placed on probation for five (5) years. The Order went on to state that during the period of probation the Respondent shall remain alcohol and drug free. (Petitioner's Exhibit 7).
10. On June 20, 2006, the Respondent was issued a Notice of Violation of the terms of the above probation since she was required to remain alcohol and drug free and that she resumed consuming alcohol during the period of probation and failed to appear for required drug and/or alcohol tests during the probation period.
11. On August 16, 2006, the Respondent admitted guilt to the above allegations and entered a Consent Agreement with the Department whereby she consented to having her license indefinitely suspended for a period of no less than 18 months and making her subject to a new set of conditions, which included continued sobriety. (Petitioner's Exhibit 8).
12. The above condition of sobriety was violated by her May 27, 2007 drug possession conviction in Albany City Court, which initiated the present proceeding. (Petitioner's Exhibit 1)

VOTE OF THE HEARING COMMITTEE

FIRST SPECIFICATION

Respondent violated New York Education Law Section 6530(9)(a)(i) by having been convicted of committing an act constituting a crime under New York State law in that on or about May 8, 2007, the Respondent was found guilty, in Albany City Court, County of Albany, State of New York of possession of a controlled substance in the seventh degree in violation of New York Penal Law §220.03, a class A misdemeanor.

VOTE: Sustained (3-0)

HEARING COMMITTEE DETERMINATION

The Respondent did appear at the hearing, with counsel. The Administrative Law Judge, after considering the documentary evidence, which included an Affidavit of Personal Service of the Notice of Referral Proceeding and the Statement of Charges (Petitioner's Exhibit 2), ruled that the Petitioner had met the requirements of law for service of process and that jurisdiction had been established. The record in this case indicates that Respondent had, most recently, been convicted in Albany City Court of committing a crime, specifically possession of a controlled substance in the seventh degree in violation of New York Penal Law §220.03, a class A misdemeanor.

This most recent conviction is the latest in a long and tortuous history of substance abuse for the Respondent, who is currently under indefinite suspension by the Department. The record shows that she was licensed to practice medicine in 1990 and that in 1993 she surrendered her license due to incapacity from drug abuse. Dr. Martinez's medical license

was restored in 1996, subject to the condition that she maintain her sobriety. In 1999 she was convicted of driving while impaired in violation of the 1996 conditions and she was placed on probation, which probation she proceeded to violate in 2006 by failing to appear for drug/alcohol testing. The 2006 violations were settled by another Consent Order, which, in turn, was violated by her 2007 drug conviction in Albany City Court.

At the hearing, the Respondent's attorney presented a letter from the Criminal Probation Department showing that the 2007 probation has now been discharged by Judge Keefe. (Respondent's Exhibit A) An affidavit from her social worker, Ms. Fenency, shows that the Respondent has been compliant with her treatment plan and that she has made significant improvements in her overall mental health and well being. (Respondent's Exhibit B) A similar affidavit from her physician, Dr. Foley, shows that the Respondent is now recovered from her opioid dependence and has been compliant with her treatment plan. (Respondent's Exhibit C)

An affidavit from Terrance Bendent, the Director of the Committee for Physician Health ("CPH"), shows that Dr. Martinez has applied to be a CPH participant and that they are awaiting an evaluation from a psychiatrist, Dr. R. P. Singh. (Respondent's Exhibit D)

This psychiatrist, Dr. R. P. Singh, testified by phone and indicated that he has begun treatment with her and that her drug and alcohol dependence is in remission and that she appears to him to be a good candidate for monitoring by CPH.

Doctor Anthony Ferraioli testified that he has been the Respondent's treating psychiatrist since 2003 and her medical records for this period were offered into evidence. (Respondent's Exhibits E and F) Dr. Ferraioli indicated that her latest relapse was due to a tremendous pain syndrome that she endured along with major depression. Dr. Ferraioli

was optimistic about the future for the Respondent pointing out that she has been in remission for the last five or six months. The Laboratory reports (Respondent's Exhibit G) show that the Respondent has been clean and sober for some time now and Dr. Ferraioli indicated that the Respondent did not relapse after a very serious car accident in 2008 and this augurs well for her future recovery.

The panel was impressed with the testimony of Dr. Martinez herself. To her credit she has served the poor and homeless in Albany and she would like to continue this work in the future. It is obvious that the Respondent has had a long and difficult struggle with substance abuse. It was noted that she was sober for 11 years up until 2006 when a convergence of depression and pain syndrome caused her to relapse. The panel was impressed that a near fatal car accident in 2008 did not bring about another relapse. Dr. Martinez testified that she is now a vegetarian and works out every day and takes good care of herself. She appeared sober and healthy and told the panel that medicine is a major part of her life and that she wants to help others, especially the poor and the homeless.

She expressed remorse for her past conduct and appears serious and dedicated to her recovery. As to an appropriate penalty, the Hearing Committee considered the full range of penalties available and determined that the people of New York State would be protected by an indefinite suspension of the Respondent's license. The panel took into account the history of her several relapses, but also recognized her years of sobriety and the good work that she has done. They saw a very intelligent and capable physician who could be a great asset to the people of the State of New York. Dr. Martinez came across as a person of strong faith who was truly enthusiastic about helping people. The panel wanted to keep open the possibility of a future medical practice for her and determined that

the Respondent may, after a year, petition the Board for a Modification Order staying the indefinite suspension of her license. The panel also recognized that there is, nevertheless, a risk of future relapse and was concerned about any Modification Order the Board would issue. The panel was of the unanimous opinion that such an order should include monitoring and strict terms of probation and/or further conditions of the Respondent's practice of medicine in order to insure her continued sobriety.

ORDER

IT IS HEREBY ORDERED THAT:

1. The license of the Respondent to practice medicine in New York State is indefinitely **SUSPENDED** for a period of at least One (1) year.
2. After One year, the Respondent may petition the Board for a Modification Order staying the indefinite suspension of her license and any Modification Order the Board may issue shall include terms of probation and/or further conditions of the Respondent's practice of medicine.
3. This Order shall be effective upon service on the Respondent in accordance with the requirements of Public Health Law Section 230(10)(h).

DATED: Schenectady, New York
202, 2010

Redacted Signature

Robert M. Briber, Chair

Arthur S. Hengerer, M.D.
Russell W. Denea, M.D.

To:
Estrella Martinez, M.D., Respondent

Redacted Address

Robert Bogan, Esq., Attorney for Petitioner
Associate Counsel
NYS Department of Health
Bureau of Professional Medical Conduct
433 River Street, Suite 303
Troy, New York 12180-2299

Anthony M. Maragno, Esq. Attorney for Respondent
113 Great Oaks Boulevard
Albany, NY 12203

APPENDIX I



IN THE MATTER
OF
ESTRELLA MARTINEZ, M.D.
PM-06-11-6638-A

NOTICE OF
REFERRAL
PROCEEDING

TO: ESTRELLA MARTINEZ, M.D.

Redacted Address

ESTRELLA MARTINEZ, M.D.

Redacted Address

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of New York Public Health Law §§230(10)(p) and New York State Administrative Procedures Act §§301-307 and 401. The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 17th day of December, 2008, at 10:00 a.m., at the offices of the New York State Department of Health, Hedley Park Place, 433 River Street, 5th Floor, Troy, NY 12180.

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.

You may appear in person at the proceeding and may be represented by counsel who shall be an attorney admitted to practice in New York state. 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, Hedley Park Place, 433 River Street, Fifth Floor South, Troy, NY 12180, ATTENTION: HON. SEAN D. O'BRIEN, DIRECTOR, BUREAU OF ADJUDICATION (Telephone: (518-402-0748), (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, no later than ten days prior to the scheduled date of the Referral Proceeding, as indicated above.

Pursuant to the provisions of New York Public Health Law §230(10)(p), you shall file a written answer to each of the charges and allegations in the Statement of Charges not less than ten days prior to the date of the hearing. Any charge or 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. You may file a written brief and affidavits with the Committee. Six copies of all papers you submit must be filed with the Bureau of Adjudication at the address indicated above, no later than fourteen days prior to the scheduled date of the Referral Proceeding, and a copy of all papers must be served on the same date on the Department of Health attorney indicated below. Pursuant to §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. Pursuant to the terms of New York State Administrative Procedure Act §401 and 10 N.Y.C.R.R. §51.8(b), the Petitioner hereby demands disclosure of the evidence that the Respondent intends to introduce at the hearing, including the names of witnesses, a list of and copies of documentary evidence and a description of physical or other evidence which cannot be photocopied.

The proceeding may be held whether or not you appear. Please note that requests for adjournments must be made in writing to the 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

Oct. 21, 2008

Redacted Signature

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

Inquiries should be addressed to:

Robert Bogan
Associate Counsel
New York State Department of Health
Office of Professional Medical Conduct
433 River Street – Suite 303
Troy, New York 12180
(518) 402-0828

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

IN THE MATTER
OF
ESTRELLA MARTINEZ, M.D.
PM-06-11-6638-A

STATEMENT
OF
CHARGES

ESTRELLA MARTINEZ, M.D., (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.

FACTUAL ALLEGATION

A. On or about May 8, 2007, in Albany City Court, County of Albany, Criminal Part, Albany, New York, Respondent was found guilty, of Criminal possession of a controlled substance in the seventh degree, in violation of New York Penal Law, §220.03, a class A misdemeanor, and was sentenced to three (3) years probation and a \$160.00 surcharge.

SPECIFICATION

Respondent violated New York Education Law §6530(9)(a)(i) by having been convicted of committing an act constituting a crime under New York state law, in that Petitioner charges:

1. The facts in Paragraph A.

DATED: *Oct. 21*, 2008
Albany, New York

Redacted Signature

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