



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

May 25, 1994

Paula Wilson
Executive Deputy Commissioner

CERTIFIED MAIL - RETURN RECEIPT

Reinaldo Melchor Gutierrez, M.D.
6 Willben Lane
Plainview, New York 11803

Arturo G. Quintana, Esq.
1800 Islep Avenue
Brentwood, New York 11717

Marcia E. Kaplan, Esq.
Associate Counsel
New York State Department of Health
5 Penn Plaza - Sixth Floor
New York, New York 10001

Re: In the Matter of Reinaldo Melchor Gutierrez, M.D.

Dear Dr. Gutierrez, Mr. Quintana, and Ms. Kaplan

Enclosed please find the Determination and Order (No. BPMC 94-72) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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 I 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,



Tyrone T. Butler, Director
Bureau of Adjudication

TTB:mmn

Enclosure

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

**IN THE MATTER
OF
REINALDO MELCHOR GUTIERREZ, M.D.**

**DETERMINATION
AND
ORDER**

NO. BPMC-94-72

A Notice of Hearing and Statement of Charges, both dated January 21, 1994, were served upon the Respondent, Reinaldo Melchor Gutierrez, M.D. **PETER D. KEUMMEL, R.P.A.** (Chair), **STANLEY L. GROSSMAN, M.D.**, and **RALPH LEVY, D.O.**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to Section 230(10)(e) of the Public Health Law. **CHRISTINE C. TRASKOS, ESQ.**, Administrative Law Judge, served as the Administrative Officer. A hearing was held on February 23, 1994. The Department of Health appeared by **MARCIA E. KAPLAN, ESQ.**, Associate Counsel. Respondent was represented by **ARTURO G. QUINTANA, ESQ.** Evidence was received and witnesses sworn and heard 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 where 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 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 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, Respondent is charged with professional misconduct pursuant to Education Law Section 6530(9)(e).

FINDINGS OF FACT

The following Findings of Act were made after a review of the entire record in this matter. Numbers in parentheses refer to transcript page numbers or exhibits. These 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. Respondent was authorized to practice medicine in New York State on February 1, 1967 by the issuance of license number 098248 by the New York State Education Department. (Pet. Ex. #2)

2. On or about April 25, 1990, the Commissioner of Health issued an Order, pursuant to a Stipulation in which Respondent admitted and the Commissioner found "violations of 10 NYCRR, Section 80.62(b) and 3335(3) of the Public Health Law, in that, nine (9) of the Respondent's patient records failed to contain sufficient information to justify the diagnoses and warrant the treatment; and on 208 occasions, prescribed controlled substances in quantities that exceed a 30 day supply. (Pet.'s Ex. 3)

3. Pursuant to the terms of the above-mentioned Stipulation and Order, Respondent was assessed a civil penalty of \$15,000.00 with \$5,000.00 suspended provided Respondent comments no violations of Article 33 of the Public Health Law and Part 80 of NYCRR for a 2 year period. In addition, Respondent's use of Official New York State triplicate Prescription forms for

controlled substances was suspended for 2 years and Respondent further agreed that he would not prescribe controlled substances governed by Article 33 of the Public Health Law, Schedule II-V inclusive for his wife, himself and offspring. (Pet. Ex. 3).

4. In an affidavit dated January 27, 1994, Respondent states that at the time he signed the Stipulation and Order admitting to a violation of Article 33 of the Public Health Law, his counsel advised him that this would not constitute professional medical misconduct under Section 6530 of the Education Law. If Respondent had known that this would later subject him to charges of professional medical misconduct he would have requested a hearing. (Resp. Ex. A).

5. In the aforesaid affidavit, Respondent further states that he complied in full with all conditions in the Stipulation and Order and paid a fine of \$10,000.00 dollars to the State Department of Health. (Resp. Ex. A).

CONCLUSIONS OF LAW

The following conclusion were made pursuant to the Findings of Fact listed above. All conclusions resulted from a unanimous vote of the Hearing Committee unless noted otherwise.

The Committee concluded that the Department has met its burden of proof. Notwithstanding the points set forth in Respondent's affidavit, Respondent signed a Stipulation with the Department in which he clearly admitted that he had violated Article 33 of the Public Health Law. Paragraph 12 of the Stipulation and Order plainly states that the Stipulation, "together with other pertinent information will be forwarded to the New York State Department of Health, Office of Professional Medical Conduct." Education Law Section 6530(9)(e) defines professional medical misconduct as "Having been found by the Commissioner of Health to be in violation of article thirty-three of the public health law."

Contrary to Respondent's argument, the aforesaid statute does not require that an element of willfulness be established before a finding of misconduct can be made. In addition, Respondent further argued that the imposition of any additional penalties upon him would be "very close to double jeopardy." The principle of double jeopardy is not applicable in administrative proceedings. Therefore, the Hearing Committee unanimously voted to sustain the specification of misconduct alleged by the Department.

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 license to practice medicine in New York State should be suspended for three years following the effective date of this Determination and Order. The suspension shall be stayed. However, as a condition for the stay of suspension, Respondent for a period of three years shall not prescribe controlled substances for patients, shall perform 450 hours of community service and shall be placed upon probation. The complete terms of probation are attached to this Determination and Order in Appendix II. 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.

The record established that Respondent committed significant violations of state controlled substance statutes, as found by the Commissioner of Health in the Stipulation and Order. Such misuse of controlled substance privileges has the potential of placing patients in grave risk of harm. The Hearing Committee has an independent responsibility for determining the sanction to be imposed upon Respondent's New York medical license, due to his misconduct. Therefore, the

Hearing Committee determined that the stayed suspension, the three year probation on writing prescriptions for controlled substances, the community service requirement and probation are the appropriate sanctions under the circumstances.

ORDER

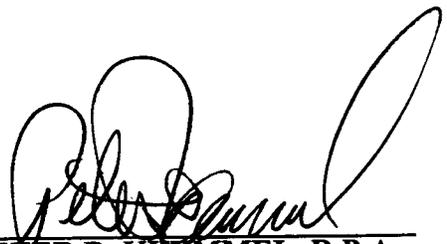
Based upon the foregoing, **IT IS HEREBY ORDERED THAT:**

1. The Specification of professional misconduct contained within the Statement of Charges (Pet. Exhibit #1) is **SUSTAINED**, and

2. Respondent's license to practice medicine in New York State be and hereby is **SUSPENDED** for a period of three years from the effective date of this Determination and Order. The suspension shall be stayed, Respondent shall be prohibited from writing prescriptions for controlled substances for thee years, Respondent shall perform 450 hours of community service and Respondent shall be placed on probation in accordance with the terms of probation contained in Appendix II which is attached to this Determination and Order and incorporated herein.

DATED: Stoney Brook, New York

May 19, 1994


PETER D. KUEMMEL, R.P.A.
Chairperson

STANLEY L. GROSSMAN, M.D.
RALPH LEVY, D.O.

TO: Reinaldo Melcher Gutierrez, M.D.
6 Willben Lane
Plainview, New York 11803

Arturo G. Quintana, Esq.
1800 Islep Avenue
Brentwood, New York 11717

Marcia E. Kaplan, Esq.
Associate Counsel
New York State Department of Health
5 Penn Plaza , 6th Floor
New York, New York 10001

APPENDIX I

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

-----X
: IN THE MATTER : NOTICE OF
: OF : REFERRAL
: REINALDO MELCHOR GUTIERREZ, M.D. : PROCEEDING
: :
-----X

TO: REINALDO MELCHOR GUTIERREZ, M.D.
6 Willben Lane
Plainview, N.Y. 11803

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 23rd day of February, 1994 at 2:00 o'clock in the afternoon of that day at 5 Penn Plaza, 6th Floor, New York, New York 10001.

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. 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: HON. TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION, (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before February 14, 1994 .

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 February 14, 1994 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.

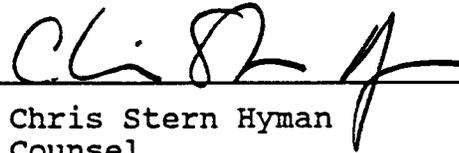
The Committee will make a written report of its findings, conclusions as to guilt, and a determination. Such determination may be reviewed by the administrative review board for professional medical conduct.

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: New York, New York

January 5, 1994



Chris Stern Hyman
Counsel
Bureau of Professional
Medical Conduct

Inquiries should be addressed to:

Marcia E. Kaplan
Associate Counsel
(212) 613-2615

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

-----X
IN THE MATTER : STATEMENT
OF : OF
REINALDO MELCHOR GUTIERREZ, M.D. : CHARGES
-----X

REINALDO MELCHOR GUTIERREZ, M.D., the Respondent, was authorized to practice medicine in New York State on February 1, 1967 by the issuance of license number 098248 by the New York State Education Department. The Respondent is currently registered with the New York State Education Department for the period January 1, 1993 through December 31, 1994 to practice medicine from 6 Willben Lane, Plainview, N.Y. 11803.

FIRST SPECIFICATION

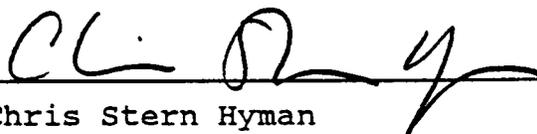
1. Respondent is charged with professional misconduct within the meaning of New York Educ. Law Section 6530(9)(e) (McKinney Supp. 1993) in that he has been found by the commissioner of health to be in violation of article thirty-three of the public health law, specifically:

On or about April 25, 1990, the Commissioner of Health issued an Order, based upon a Stipulation, finding Respondent in violation of N.Y. Pub. Health Section 3335(3) and 10 NYCRR 80.62(b), as follows: nine of the Respondent's patient records failed to contain sufficient

information to justify the diagnosis and warrant the treatment; and on 208 occasions, Respondent prescribed controlled substances in quantities exceeding a 30 day supply. The Order provided for the following sanctions: a \$15,000 fine, \$5000 of which was suspended contingent upon Respondent's compliance with the payment schedule and provided he commits no violations of Art. 33 for two years; a two year suspension of Respondent's triplicate prescription privileges; and Respondent's agreement not to prescribe controlled substances for himself, his wife, or his offspring, and a \$2000 fine for any violation of this agreement.

DATED: New York, New York

January 5, 1994



Chris Stern Hyman
Counsel
Bureau of Professional
Medical Conduct

APPENDIX II

TERMS OF PROBATION

1. Dr. Gutierrez 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 imposed by law and by his profession.
2. Dr. Gutierrez shall comply with all federal, state and local laws, rules and regulations governing the practice of medicine in New York State.
3. Dr. Gutierrez shall submit prompt written notification to the Board addressed to the Director, Office of Professional Medical Conduct, Empire State Plaza, Corning Tower Building, Room 438, Albany, New York 12237, regarding any change in employment, practice, residence or telephone number, within or without New York State.
4. In the event that Dr. Gutierrez leaves New York to reside or practice outside the State, Dr. Gutierrez shall notify the Director of the Office of Professional Medical Conduct in writing at the address indicated above, by registered or certified mail, return receipt requested, of the dates of his departure and return. Periods of residency or practice outside New York shall toll the probationary period, which shall be extended by the length of residency or practice outside New York.
5. Dr. Gutierrez shall not prescribe controlled substances for patients during his three year period of probation.
6. Dr. Gutierrez shall perform 450 hours of community service, i.e. 150 hours per year during the three year probationary period.
7. Dr. Gutierrez's probation shall be supervised by the Office of Professional Medical Conduct.
8. Dr. Gutierrez shall have quarterly meetings with an employee or designee of the Office of Professional Medical Conduct during the period of probation. During these quarterly meetings Dr. Gutierrez's professional performance may be reviewed by having a random selection of office records, patient records and hospital charts reviewed.
9. For the first year of probation, Dr. Gutierrez shall have bi-monthly, and for the remaining two years, quarterly meetings with a monitoring physician who shall review his practice. The monitoring physician shall be a board-certified family practitioner who has been in practice as such for at least five years, selected by Dr. Gutierrez and subject to the approval of the Office of Professional Medical Conduct. This monitoring physician shall review randomly selected medical records and evaluate whether Dr. Gutierrez's medical care comports with generally accepted standards of medical practice. Dr. Gutierrez shall not practice medicine in New York State until an acceptable monitoring physician is approved by the Office of Professional Medical Conduct.
10. Dr. Gutierrez shall submit quarterly declarations, under penalty of perjury, stating whether or not there has been compliance with all terms of probation and, if not, the specifics of such non-compliance. These shall be sent to the Director of the Office of Professional Medical Conduct at the address indicated above.

11. Dr. Gutierrez shall submit written proof to the Director of the Office of Professional Medical Conduct at the address indicated above that he has paid all registration fees due and is currently registered to practice medicine with the New York State Education Department. If Dr. Gutierrez elects not to practice medicine in New York State, then he shall submit written proof that he has notified the New York State Education Department of that fact.

12. If there is full compliance with every term set forth herein, Dr. Gutierrez may practice as a physician in New York State in accordance with the terms of probation; provided, however, that upon receipt of evidence of non-compliance or any other violation of the terms of probation, a violation of probation proceeding and/or such other proceedings as may be warranted, may be initiated against Dr. Gutierrez pursuant to New York Public Health Law Section 230(19) or any other applicable laws.