



STATE OF NEW YORK  
DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Antonia C. Novello, M.D., M.P.H., Dr.P.H.  
*Commissioner*

Dennis P. Whalen  
*Executive Deputy Commissioner*

October 5, 2001

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Robert Bogan, Esq.  
& Robert Maher, Esq.  
NYS Department of Health  
Hedley Park Place – 4<sup>th</sup> Floor  
Troy, New York 12180

Hermes Fernandez, Esq.  
111 Washington Avenue  
Albany, New York 12210

Carlos F. Delos Reyes, M.D.  
REDACTED

Carlos F. Delos Reyes, M.D.  
Elmira Psychiatric Center  
100 Washington Street  
Elmira, New York 14901

**RE: In the Matter of Carlos F. Delos Reyes, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 01-229) 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), 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.

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

Tyhone T. Butler, Director  
Bureau of Adjudication

TTB:cah  
Enclosure

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

IN THE MATTER  
OF  
**CARLOS F. DELOS REYES, M.D.**

DETERMINATION  
AND  
ORDER

BPMC #01-229

**COPY**

A Notice of Referral Proceeding and Statement of Charges, both dated June 15, 2001, were served upon the Respondent, **CARLOS F. DELOS REYES, M.D.** **RAVINDER MAMTANI, M.D.**, Chairperson, **THAKOR C. RANA, M.D.** and **MS. NANCY J. MACINTYRE, R.N., Ph.D.**, 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. **STEPHEN L. FRY, ESQ.**, Administrative Law Judge, served as the Administrative Officer.

A hearing was held on September 19, 2001, at the Offices of the New York State Department of Health, Hedley Park Place, 433 River Street, Troy, New York. The Department appeared by **DONALD P. BERENS, JR., ESQ.**, General Counsel, by **ROBERT BOGAN, ESQ.** and **PAUL ROBERT MAHER, ESQ.**, of Counsel. The Respondent appeared by **HERMES FERNANDEZ, 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 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, the Respondent is charged with professional misconduct pursuant to Education Law Sections 6530(9)(b) and (d), based upon actions allegedly constituting violations of subdivisions (2), (4), (16), (20), (21), (24) and (32). A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order as Appendix 1.

## WITNESSES

For the Petitioner:

None

For the Respondent:

Respondent  
Dr. Albert Chen  
Mr. Joseph King

## 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 "Ex.". 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 unless otherwise specified.

1. **CARLOS F. DELOS REYES, M.D.**, the Respondent, was authorized to practice medicine in New York State on March 18, 1987, by the issuance of license number 169564 by the New York State Education Department (Ex. 4). Respondent is a practicing psychiatrist.
2. On September 11, 2000, the Department of Health and Human Services, Regulation and Licensure, State of Nebraska (hereinafter "Nebraska Board"), by a Finding of Facts, Conclusions of Law and Order (hereinafter "Nebraska Order"), revoked Respondent's medical license and required him to pay a \$5,000.00 civil penalty, based on an incident of inappropriate and excessive prescribing of a medication without adequate medical assessment, prescribing pain medication to be used for an extended period of time when not the treating physician and without communicating with the patient's treating physician, and lying to authorities during the investigation of the attempted filling of the prescription in question.

## HEARING COMMITTEE CONCLUSIONS

The hearing Committee concludes that the conduct resulting in the Nebraska Board's disciplinary actions against Respondent would constitute misconduct under the laws of New York State, pursuant to:

- New York Education Law §6530(7);

## VOTE OF THE HEARING COMMITTEE

### SPECIFICATIONS

#### FIRST SPECIFICATION

Respondent violated New York Education Law §6530(9)(b) by having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York state, constitute professional misconduct under the laws of New York state.

**VOTE: SUSTAINED (3-0)**

#### SECOND SPECIFICATION

Respondent violated New York Education Law §6530(9)(d) by having had 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 disciplinary action would, if committed in New York state, constitute professional misconduct under the laws New York state.

**VOTE: SUSTAINED (3-0)**

## HEARING COMMITTEE DETERMINATION

The record in this case indicates that on September 11, 2000, the Nebraska Board, by issuance of the Nebraska Order, revoked Respondent's medical license and required him to pay a \$5,000.00 civil penalty, based on an incident of inappropriate and excessive prescribing of a medication without adequate medical assessment, prescribing pain medication to be used for an extended period of time when not the treating physician and without communicating with the patient's treating physician, and lying to authorities during the investigation of the attempted filling of the prescription in question.

The charges stemmed from a single incident when Respondent, on his last day of work at the Norfolk Regional Center in Norfolk Nebraska in late October, 1997, wrote a prescription for a colleague for 120 bottles of Stadol, with two refills. Stadol is an analgesic used by the patient to treat the symptoms of Multiple Sclerosis (Ex. 5). At the time the prescription was written, Stadol was not a controlled substance (Ex. A).

The charges brought in New York State (Ex. 1) with regard to this prescription alleged that the conduct covered by the Nebraska Order would have constituted Misconduct in New York under several definitions of Professional Misconduct, as set forth in Education Law §6530. These definitions are set forth below:

- (2). Practicing the profession ... beyond its authorized scope;
- (4). Practicing the profession with gross negligence on a particular occasion;
- (24). Practicing or offering to practice beyond the scope permitted by law, or accepting and performing professional responsibilities which the licensee knows or has reason to know that he or she is not competent to perform, or performing without adequate supervision professional services which the licensee is authorized to perform only under the supervision of a licensed professional, except in an emergency situation where a person's life or health is in danger;
- (32). Failing to maintain a record for each patient which accurately reflects the

evaluation and treatment of the patient...

The hearing Committee concludes that the conduct described in the Nebraska Order would not have constituted misconduct under either subdivisions (2) or (24) because the issuance of a prescription for pain medication for a patient with MS is not beyond the scope of the practice authorized by law for a psychiatrist. Although the Department contends that prescribing a medication for someone who is not a physician's patient, without a physical examination and without consulting the patient's primary care physician, is beyond the scope of the practice allowable by law, this contention is rejected. It is clear from the language of the cited statutes that the term "scope" refers to the range of services the professional is allowed to provide by law, not to the "advisability" of providing those services. The Department presented no evidence or arguments that there are any statutory prohibitions in New York against a psychiatrist prescribing Stadol under the circumstances presented here. Citation of these statutory provisions in this context is nothing more than an attempt to get around the lack of coverage in the misconduct definitions for individual, non-egregious acts of negligence.

With regard to the charge of gross negligence, the Hearing Committee concludes that even if it is assumed, for the sake of argument, that the manner in which Stadol was prescribed for this patient was negligent, Respondent's conduct did not rise to the level of "gross negligence", because it was not egregious or conspicuously bad. The medication was one that the patient had been using by prescription from her own physician for a serious medical condition, Multiple Sclerosis (Ex. 5), and although Respondent's writing of this prescription was clearly not good medical practice, it did not rise to the level of gross negligence.



However, Respondent does not dispute that the charge of inadequate recordkeeping was valid, in that he did not make any medical record entry with regard to this prescription. It is axiomatic that anyone for whom a physician writes a prescription becomes the physician's patient, for whom a medical record accurately reflecting the evaluation and treatment provided must be maintained. Therefore, Respondent's actions would have constituted misconduct under subdivision (32) of the cited statute.

With regard to the misinformation provided by Respondent to investigating authorities, as cited in the Nebraska Order, the Department charged that Respondent committed misconduct under the following subdivisions of Education Law §6530:

- 20). Conduct in the practice of medicine which evidences moral unfitness to practice medicine;
- 21). Willfully 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, or willfully impeding or obstructing such filing, or inducing another person to do so.

The thrust of Respondent's case on these issues was that he did not intentionally provide misinformation to authorities investigating this prescription. This argument cannot be considered because the Nebraska findings of fact are binding on this tribunal, and the Nebraska Board made specific findings that Respondent lied to various investigators, supporting the patient's initial confession that she altered the prescription (this confession was later recanted, as was Respondent's denial that he had written the prescription for as much of the medication as indicated on the prescription; see Ex. 5).

The Hearing Committee concludes that although Respondent's behavior in misleading investigators was morally deficient, it was not "conduct in the practice of medicine". Therefore, subdivision (20) does not apply. Furthermore, subdivision (21) does not apply because Respondent was not "making or filing a ... report".

It is noted that the Department also cited, in the list of misconduct definitions it felt

were applicable to this case, subdivision (16), which covers "...willful or grossly negligent failure to comply with substantial provisions of federal, state, or local laws, rules or regulations governing the practice of medicine". Nothing in the Nebraska Order, the other documentary evidence presented at the hearing, or the Department's presentation at the hearing indicates what provisions of state, federal or local laws, rules or regulations Respondent allegedly violated that might form the basis for a finding of misconduct under this section. Accordingly, this allegation is not upheld.

Inasmuch as Respondent was found guilty of professional misconduct by the disciplinary authority of another state after disciplinary action was brought against him, where the acts of which he was found guilty would have, in part, constituted misconduct had they been committed in New York, he has committed misconduct in New York under Education Law §6530(9)(A) and (B). Accordingly, the only question remaining to be decided is the penalty to be imposed.

The Hearing Committee's determination as to penalty is based in large part upon the conclusion that Respondent's problems stemmed from an ill-advised, but well intentioned, attempt to help a suffering colleague and friend by prescribing a quantity of the Stadol that she could purchase at one time under her prescription drug plan with only one co-paymant (Ex. B). The hearing Committee also feels that Respondent has already received harsh punishment for his actions, namely the revocation of his medical license in Nebraska.

As far as this record reveals, the misconduct at issue is the only blot on an otherwise unblemished record. The Hearing Committee also feels that Respondent can be relied upon to practice psychiatry safely and conscientiously in New York in the future. This conclusion is based upon his own testimony, as well as that of Dr. Chen, his current supervisor at the Elmira Psychiatric Center, and upon testimonials from Donna Hendricks,

the Program Director of the EOC Alcoholism and Drug Rehabilitation Clinic in Elmira, where he also works (Ex. D), and Dr. Duane Sherwin, who was the Senior Staff Psychiatrist at the Norfolk Regional Center in Nebraska while Respondent worked there (See Ex's B and C).

Accordingly, the Hearing Committee concludes that Censure and Reprimand is the appropriate penalty to be imposed in this case. This puts the Respondent on notice that future deviations from acceptable medical conduct will not be tolerated.

**ORDER**

**IT IS HEREBY ORDERED THAT:**

1. A censure and reprimand should be issued covering the findings of misconduct covered herein.

The **ORDER** shall be effective upon service on the Respondent or the Respondent's attorney by personal service or by certified or registered mail.

**DATED: Hopewell Junction, New York**  
\_\_\_\_\_, 2001

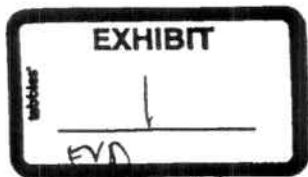
9/29/01

REDACTED

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**RAVINDER MAMTANI, M.D.**  
**Chairperson**

**THAKOR C. RANA, M.D.**  
**MS. NANCY J. MACINTYRE, R.N., Ph.D.**

# APPENDIX 1



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

IN THE MATTER

OF

CARLO F. DELOS REYES, M.D.  
CO-00-09-4317-A

NOTICE OF  
REFERRAL  
PROCEEDING

TO: CARLO F. DELOS REYES, M.D.  
REDACTED

CARLO F. DELOS REYES, M.D.  
Elmira Psychiatric Center  
100 Washington Street  
Elmira, NY 14901

**PLEASE TAKE NOTICE THAT:**

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law § 230(10)(p) and N.Y. State Admin. Proc. Act Sections 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 19<sup>th</sup> day of July 2001, at 10:00 in the forenoon of that day at the Hedley Park Place, 5<sup>th</sup> Floor, 433 River Street, Troy, New York 12180.

At the proceeding, evidence will be received concerning the allegations set forth in the attached Statement of Charges. 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 that 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, 5<sup>th</sup> Floor, 433 River Street, Troy, New York, ATTENTION: HON.

TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION, (hereinafter "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before July 9, 2001.

Pursuant to the provisions of N.Y. Public Health Law §230(10)(p), you shall file a written answer to each of the Charges and Allegations in the Statement of Charges no later than ten days prior to the hearing. Any Charge of Allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such an 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 brief and affidavits with the Committee. Six copies of all such papers you wish to submit must be filed with the Bureau of Adjudication at the address indicated above on or before July 9, 2001, 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 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

*June 15*, 2001

REDACTED

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

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IN THE MATTER  
OF  
CARLO F. DELOS REYES, M.D.  
CO-00-09-4317-A

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STATEMENT  
OF  
CHARGES

CARLO F. DELOS REYES, M.D., the Respondent, was authorized to practice medicine in New York state on March 18, 1987, by the issuance of license number 169564 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A. On or about September 11, 2000, the Department of Health and Human Services, Regulation and License, State of Nebraska (hereinafter "Nebraska Board"), by a Finding of Facts, Conclusions of Law and Order (hereinafter "Nebraska Order"), revoked Respondent's medical license and required him to pay a \$5,000.00 civil penalty, based on inappropriate and excessive prescribing of a medication without adequate medical assessment, prescribing pain medication to be used for an extended period of time when not the treating physician and without communicating with the patient's treating physician, lying to a Nebraska Board investigation, during the course of an investigation, on more than one occasion, and submitting a false statement to the Nebraska Board.

B. The conduct resulting in the Nebraska Board disciplinary action against Respondent would constitute misconduct under the laws of New York state, pursuant to the following sections of New York state Law:

1. New York Education Law §6530(2) (practicing the profession beyond its authorized scope);
2. New York Education Law §6530(4) (gross negligence);

3. New York Education Law §6530(16) (failure to comply with federal, state, or local laws, rules or regulations, governing the practice of medicine);
4. New York Education Law §6530(20) (moral unfitness);
5. New York Education Law §6530(21) (making or filing a false report);
6. New York Education Law §6530(24) (practicing beyond the scope permitted by law); and/or
7. New York Education Law §6530(32) (inadequate recordkeeping).

*by law or*

**SPECIFICATIONS**  
**FIRST SPECIFICATION**

Respondent violated New York Education Law §6530(9)(b) by having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York state, constitute professional misconduct under the laws of New York state, in that Petitioner charges:

1. The facts in paragraphs A and/or B.

**SECOND SPECIFICATION**

Respondent violated New York Education Law §6530(9)(d) by having had 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 disciplinary action would, if committed in New York state, constitute professional misconduct under the laws New York state, in that Petitioner charges:

2. The facts in paragraphs A and/or B.

DATED: *June 15*, 2001  
Albany, New York

REDACTED

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