



STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning 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

September 12, 1995

RECEIVED

SEP 12 1995

OFFICE OF PROFESSIONAL
MEDICAL CONDUCT

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Kimberly A. O'Brien, Esq.
NYS Department of Health
Corning Tower-Room 2438
Empire State Plaza
Albany, New York 12237

Mireya Altagracia Francis-Carvajal, M.D.
REDACTED

RE: In the Matter of Mireya Altagracia Francis-Carvajal, M.D.

Dear Ms. O'Brien and Dr. Francis-Carvajal:

Enclosed please find the Determination and Order (No. 95-217) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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

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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,

REDACTED
Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nm
Enclosure

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

IN THE MATTER

-OF-

MIREYA ALTAGRACIA FRANCIS-CARVAJAL, M.D.

Respondent

DECISION
AND
ORDER
OF THE
HEARING
COMMITTEE
BPMC ORDER
NO. 95- 217

This matter was commenced by a Notice of Hearing and Statement of Charges, both dated August 4, 1995 which were served upon **MIREYA ALTAGRACIA FRANCIS-CARVAJAL, M.D.**, (hereinafter referred to as "Respondent"). **IRVING S. CAPLAN, Chairperson, ROBERT M. KOHN, M.D.**, and **PAUL J. WEINBAUM, M.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. **JONATHAN M. BRANDES, ESQ.**, Administrative Law Judge, served as the Administrative Officer. A hearing was held on September 6, 1995 at the Cultural Education Center, Empire State Plaza, Albany, New York. The State Board For Professional Medical Conduct appeared by **KIMBERLY A. O'BRIEN, ESQ.**, Senior Attorney, of counsel to **JEROME J. JASINSKI, ESQ.**, Acting General Counsel. Respondent appeared *pro se*. Evidence was received. Testimony was heard. A transcript of these proceedings was made.

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

STATEMENT OF CASE

This case was brought pursuant to Public Health Law Section 230(10)(p). This 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 prior professional disciplinary action or criminal conviction. The scope of this 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)(b) [having been disciplined by the duly authorized professional disciplinary agency of another state] and Section 6530(9)(d) [having a license application refused by the duly authorized professional disciplinary agency of another state]. The first charge arises from a consent agreement and Final Order issued by and between Respondent and the State Medical Board of Florida (hereinafter referred to as the Florida Board). The second charge arises from an application for licensure before the State Medical Board of Ohio (hereinafter referred to as the Ohio Board). The underlying facts involve failure to keep records and prescribing legend drugs without medical justification followed by the commission of fraud in an application to the Ohio Board for licensure. The allegations in this proceeding and the underlying events are more particularly set forth in the Notice of Referral Proceeding and Statement of Charges, a copy of which is attached to this Decision and Order as Appendix One.

SIGNIFICANT LEGAL RULINGS BY THE ADMINISTRATIVE LAW JUDGE

Respondent offered exhibits A through I into evidence. The Administrative Law Judge received all the exhibits pending further review as to their admissibility. Upon review of the exhibits, The Administrative Law Judge ruled that exhibits C and E through H, would be distributed to the Committee for consideration in this proceeding. Exhibits A, B, D and I were rejected because they addressed the prior acts of Respondent which have already been fully litigated. Hence exhibits A, B, D and I are irrelevant and were not distributed

to the Committee. The exhibits which were distributed dealt with Respondent's job performance at the time of the incidents in Florida and Ohio. As such they were admissible for mitigation purposes.

FINDINGS OF FACT

The Committee adopts the factual statement set forth on pages one through four of the Statement of Charges (Appendix One) as its findings of fact and incorporates them herein.

CONCLUSIONS

The Department has established by clear and convincing evidence that Respondent was disciplined in Florida for violations of prescribing standards in reference to controlled substances. This establishes findings of fact A.1 through A.4 it also establishes the elements of the First Specification. That is, Respondent was disciplined by another state for acts which would constitute misconduct in this state. With regard to the Second Specification, the Department has again established by clear and convincing evidence that Respondent was denied licensure in the state of Ohio because she falsified her application. Hence, findings of fact B.1 through B. 5 are established. These facts support the Second Specification which is also sustained.

Having sustained the factual allegations and the two specifications, the Committee now turns its attention to penalty. The Committee assessed the evidence presented by the Department and the evidence and testimony presented by Respondent. The Committee finds that while it is possible to forgive (though not endorse) Respondent's acts in Florida, it is inconceivable that Respondent did not knowingly lie on her application to Ohio. Nevertheless, this appears to be an isolated incident. There was no evidence that Respondent is other than clinically capable. Furthermore, Respondent is serving a medical community which is in dire need of staff.

In the final analysis, Respondent does not appear to be an immediate threat to the community. On the other hand, caution is warranted. Therefore, the Committee will express its extreme concern over the unconscionable acts in Ohio and express further deep concern over the acts in Florida, by Revoking Respondent's license to practice medicine. However, based upon the mitigation offered, the Committee will stay the revocation in lieu of successful completion of probation according to terms set forth in the order which follows.

ORDER

WHEREFORE, Based upon the forgoing facts and conclusions,

It is hereby **ORDERED** that:

1. The Factual allegations in the Statement of Charges are **SUSTAINED**.

Furthermore, it is hereby **ORDERED** that;

2. The Specifications of Misconduct contained within the Statement of Charges (Appendix One) are **SUSTAINED**;

Furthermore, it is hereby **ORDERED** that;

3. The license of Respondent to practice medicine in the State of New York is **REVOKED**;

Furthermore, it is hereby **ORDERED** that;

4. The said revocation is STAYED, pending successful completion of a term of probation of no less than two years, pursuant to the following terms:

- a. Respondent shall fulfil all the requirements of any probation or other penalty imposed by any other state including but not limited to the states of Florida and Ohio;

- b. The Director of the Office of Professional Medical Conduct or his or her designee (hereinafter collectively referred to as "the Director") shall review the professional performance of Respondent by randomly selecting patient records, or hospital charts for patients who were cared for by Respondent.
- c. Respondent shall, at her own expense, obtain a practice monitor.
 - i. The said practice monitor shall be approved by the Director.
 - ii. The said practice monitor shall randomly select and review a sufficient number of patient files at each of the institutions where Respondent practices to ensure familiarity with the quality of Respondent's practice.
 - iii. The said practice monitor shall be present with Respondent during treatment and other practice activities such that the practice monitor is familiar with the quality of Respondent's work.
 - iv. The said practice monitor shall report to the Director at least quarterly with regard to the quality of Respondent's work.
 - v. The said practice monitor shall immediately report to the Director any deviation from accepted standards of medical care.
- d. During the period of probation, Respondent shall, as part of her routine fulfillment of state continuing medical education requirements, complete at least one course of category one continuing medical education in the area of risk management.

- e. Respondent shall practice only in a supervised environment such as a state or privately operated facility.
- f. The Director shall approve all positions of employment prior to acceptance by Respondent

Furthermore, it is hereby **ORDERED** that;

- 5. This order shall take effect **UPON RECEIPT** or **SEVEN (7) DAYS** after mailing of this order by Certified Mail.

Dated:
Malone, New York

9-9 1995

REDACTED

IRVING S. CAPLAN, Chairperson

ROBERT M. KOHN, M.D.
PAUL J. WEINBAUM, M.D.



TO: **KIMBERLY A. O'BRIEN, ESQ.**
Senior Attorney
New York State Department of Health
Corning Tower Building
Empire State Plaza
Albany, N.Y. 12237

MIREYA ALTAGRACIA FRANCIS-CARVAJAL, M.D.

REDACTED

APPENDIX ONE

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

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IN THE MATTER : NOTICE OF
OF : REFERRAL
MIREYA ALTAGRACIA FRANCIS-CARVAJAL , M.D. : PROCEEDING

-----x

TO: MIREYA ALTAGRACIA FRANCIS-CARVAJAL, M.D.
REDACTED

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. 1995) and N.Y. State Admin. Proc. Act Sections 301-307 and 401 (McKinney 1984 and Supp. 1995). The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the sixth day of September, 1995 at 10:00 a.m. in the forenoon of that day at the Cultural Education Building, Room E, Concourse, Empire State Plaza, Albany, New York 12237.

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

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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 August 28, 1995.

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 August 28, 1995 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
August 4, 1995

REDACTED

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

Inquiries should be addressed to:

Kimberly A. O'Brien
Senior Attorney

NYS Department of Health
Division of Legal Affairs
Corning Tower Building
Room 2429
Empire State Plaza
Albany, New York 12237
(518) 473-5172

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

-----X
IN THE MATTER : STATEMENT
OF : OF
MIREYA ALTAGRACIA FRANCIS-CARVAJAL, M.D. : CHARGES
-----X

MIREYA ALTAGRACIA FRANCIS-CARVAJAL, M.D., the Respondent, was authorized to practice medicine in New York State on March 29, 1987, by the issuance of license number 173702 by the New York State Education Department. Respondent is registered with the New York State Education Department to practice medicine from 8257 Seneca Turnpike, Clinton N.Y. 13323.

FACTUAL ALLEGATIONS

- A. 1. The State Medical Board of Florida, [hereinafter "the Florida Board"], by Final Order on or about August 7, 1993, adopted a consent agreement in which Respondent was charged and admitted that, in her capacity as a licensed physician, she is subject to the provisions of Chapters 455 and 458, Florida Statutes, and the jurisdiction of the Florida Board, and admitted that the facts set forth in the administrative complaint, if proven, would constitute violations of Chapter 458, Florida Statutes.
2. More specifically, the Stipulated Facts in the Order, in part, include that the Administrative Complaint charged failure to keep records and prescribing legend drugs

without professional justification.

3. The Florida Board and Respondent agreed to a stipulated disposition, Respondent consented to a Letter of Concern, pay a \$2,500 administrative fine and complete five hours of continuing medical education to continue to practice in the state of Florida, and Respondent knew such facts.
 4. The conduct underlying the Florida Board's finding of unprofessional conduct would, if committed in New York State, constitute professional misconduct under N.Y. Educ. Law §6530(3) (McKinney Supp. 1994) [negligence on one or more occasion] and/or N.Y. Educ. Law §6530(5) (McKinney Supp. 1994) [incompetence on one or more occasion] and/or N.Y. Educ. Law §6530(32) (McKinney Supp. 1994) [failure to maintain an accurate record]
- B. 1. Respondent, on or about December 10, 1992, filed an application for a certificate to practice medicine and surgery in the State of Ohio [hereinafter "Ohio Application"]. The State Medical Board of Ohio, [hereinafter "the Ohio Board"], by Final Order on or about March, 1994, found Respondent guilty of " fraud, misrepresentation, or deception in applying for or securing any license or certificate issued by the Board" in violation of Ohio Revised Code Section 4731.22(A), and/or "publishing a false, fraudulent,

deceptive or misleading statement," in violation of Ohio Revised Code Section 4731.22(B) (5)

2. More specifically, the Ohio Board based its determination ,in part, on the following:
Respondent, upon filing an application for a license to practice medicine in Ohio, answered in the negative in response to the Ohio Application question,

"Have you ever been notified of an investigation concerning you by, filed against you with, any board bureau, department, agency, or other body, including those in Ohio with respect to a professional license?"

when, in fact, Respondent was notified of an investigation, charged and entered into a Consent Agreement with the state of Florida for failing to perform a psychiatric evaluation and prescribing legend drugs without medical justification in the medical chart within 72 hours of admission on one occasion concerning three patients, and Respondent knew such facts. Respondent consented to a penalty of a Letter of Concern, \$2,500 administrative fine and five hours of continuing medical education to continue to practice in the state of Florida, and Respondent knew such facts.

3. Respondent answered on the Ohio Application that she had taken about six (6) FLEX examinations to the Ohio Application question,

"[L]ist each and every written FLEX or State Board except National Boards) exam taken whether in Ohio or any other state territory or province."

Respondent had in fact taken about twenty(20) exams and Respondent knew such facts.

4. The conduct underlying the Ohio Board's finding of unprofessional conduct would, if committed in New York State, constitute professional misconduct under N.Y. Educ. Law §6530(2) (McKinney Supp. 1994) [practicing fraudulently] and/or N.Y. Educ. Law §6530(20) (McKinney Supp. 1994) [moral unfitness] and/or N.Y. Educ. Law §6530(21) (McKinney Supp. 1994) [willfully making or filing a false report].
5. The Ohio Board denied Respondent's application for a license to practice medicine and surgery in Ohio, citing a real concern about the misrepresentations made on the Ohio Application on the part of Respondent.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

DISCIPLINE IN ANOTHER STATE

Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law §6530(9)(b) (McKinney Supp. 1994) by reason of his having been disciplined by a duly authorized professional disciplinary agency of another state, in that Petitioner charges:

1. The facts in Paragraphs A.1, A.2, A.3 and/or A.4.

SECOND SPECIFICATION

APPLICATION TO PRACTICE MEDICINE IN ANOTHER

STATE DENIED

Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law §6530(9)(d) (McKinney Supp. 1994) by reason of having his application to practice medicine denied by a duly authorized professional disciplinary agency of another state, in that Petitioner charges:

2. The facts in Paragraphs B.1, B.2, B.3, B.4 and/or B.5.

DATED: *Aug. 4*, 1995

Albany, New York

REDACTED

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