



STATE OF NEW YORK
DEPARTMENT OF HEALTH

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

Richard F. Daines, M.D.
Commissioner

Wendy E. Saunders
Chief of Staff

January 12, 2009

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Jamie Marcelo Benitez, M.D.

- Redacted Address

Paul E. Walker, Esq.
Peltz & Walker
222 Broadway
New York, New York 10036

Ann Gayle, Esq.
NYS Department of Health
Division of Legal Affairs
90 Church Street – 4th Floor
New York, New York 10007

RE: In the Matter of Jamie Marcelo Benitez, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 09-07) 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), (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 Respondent 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:

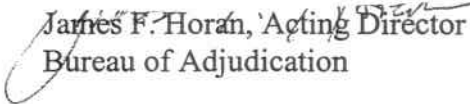
James F. Horan, Esq., Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Hedley Park Place
433 River Street, Fifth Floor
Troy, New York 12180

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 Signature


James F. Horan, Acting Director
Bureau of Adjudication

JFH:djh

Enclosure

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

COPY

IN THE MATTER

DETERMINATION

OF

AND

JAIME MARCELO BENITEZ M.D.

ORDER

BPMC NO. 09-07

A Notice of Hearing, and Statement of Charges both dated July 14, 2008 were served upon the Respondent **JAIME MARCELO BENITEZ M.D.** Chairperson **RUTH HOROWITZ, NISHA SETHI M.D.,** and **THEODORE SPEVACK D.O.** duly designated members of the State Board of Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to Section 230(10)(e) of the Public Health Law. Administrative Law Judge **KIMBERLY A. O'BRIEN ESQ.** served as the Administrative Officer.

The Department of Health appeared by **THOMAS CONWAY ESQ.,** General Counsel, by **ANN GAYLE,** of Counsel. The Respondent **JAIME MARCELO BENITEZ M.D.** appeared in person and by Counsel **PAUL E. WALKER ESQ.**

Evidence was received and argument heard, and transcripts of these proceedings were made.

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

PROCEDURAL HISTORY

Notice of Hearing & Statement of Charges	July 14, 2008
Respondent's Answer	August 1, 2008
Hearing Dates	August 14, 2008 and September 15, 2008
Witnesses for Petitioner	Patient A, Christina Casals Ariet M.D.
Witnesses for Respondent	Jaime Marcelo Benitez M.D., David Trachtenburg,
Final Hearing Transcript Received	October 1, 2008
Parties Briefs	October 20, 2008
Deliberations Date	November 25, 2008

STATEMENT OF THE CASE

The State Board of Professional Medical Conduct is a duly authorized professional disciplinary agency of the State of New York pursuant to Section 230 et seq. of the Public Health Law of New York. This case was brought by the New York State Department of Health, Office of Professional Medical Conduct (hereinafter "Petitioner" or "Department") pursuant to Section 230 of the Public Health Law. JAIME MARCELO BENITEZ, M.D. (hereinafter "Respondent") is charged with four specifications of misconduct as set forth in Section 6530 of the Education Law of the State of New York (hereinafter Education Law) and the case involves one patient. The Department withdrew the Second Specification of misconduct, negligence on more than one occasion. The Respondent is charged with: engaging in contact of a sexual nature with a patient; gross negligence; willfully harassing, abusing or intimidating a patient; moral unfitness. The Respondent admits that he is a psychiatrist and that he did treat Patient A on occasion and denies the remainder of the

factual allegations set forth in paragraph A, and all specifications of misconduct set forth in the original Notice of Hearing and Statement of Charges attached hereto and made part of this Decision and Order, and marked as Appendix 1.

FINDING OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Unless otherwise noted, all findings and conclusions set forth below are the unanimous determinations of the Hearing Committee. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence. Numbers below in parentheses refer to exhibits (denoted by the prefix "Ex.") or transcript page numbers ("Tr."). These citations refer to evidence found persuasive by the Hearing Committee in arriving at a particular finding. Having heard argument and considered the documentary evidence presented, the Hearing Committee hereby makes the following finding of fact:

1. JAIME MARCELO BENITEZ M.D., the Respondent, is a psychiatrist and was authorized to practice medicine in New York State on or about April 12, 2005, by the issuance of license number 235704, by the New York State Education Department (Ex. 2).

2. The Respondent is from Ecuador, English is not his first language and he has limitations in writing English (Tr. 122). The Respondent worked at Broadway House Shelter, 1245 Broadway, Brooklyn, New York ("Broadway House Shelter" or "Shelter"), from 2005 to March 2007, as a consultant and conducted clinical psychiatric assessments of Shelter residents (Tr. 104-107). The Respondent has worked at Woodhull Hospital and Mental Health Center ("Woodhull Hospital") from December 2006 to the present, where he provides intense outpatient psychiatric treatment in a

secure institutional setting, and many of his patients are Latino (Tr. 119, 145-146, 158-161).

3. Patient A is a 42 year old mildly retarded female, with an eighth grade level of special education and chronic psychiatric problems (Ex. 3). Patient A resides at Broadway House Shelter, where she receives meals each day (Ex. 3, Tr. 16, 41-44, 48). On or about July 6, 2006, January 18, 2007, and March 1, 2007, the Respondent treated Patient A at the Shelter (Ex. 3, Tr. 105-110).

4. On or about March 1, 2007, at approximately 7:30 pm, at the Broadway House Shelter, Patient A was treated by the Respondent. Patient A told the Respondent about: her history, why she was living at the shelter, and her desire to find permanent housing. Patient A also told the Respondent she was hungry and had no money to buy dinner (Tr. 21-23, 33-34, 48-50, 56-57, 114-116).

5. During the March 1, 2007 appointment, the Respondent was moved by Patient A's history and circumstances. He gave her \$8.00 of his own money to buy dinner and his card so that she could contact him if she needed counseling, kissed her on the mouth, and hugged her for a few seconds (Tr. 114-119, Ex. 5). In a letter dated March 6, 2007, to Dr. Kang Yung Yu, Director of Psychiatry Interfaith Medical Center/ Broadway House Shelter, the Respondent documented his encounter with Patient A (Ex. 5).

DISCUSSION AND CONCLUSIONS

The Respondent is charged with four specifications of misconduct including: engaging in contact of a sexual nature with a patient; gross negligence; willfully harassing, abusing or intimidating a patient; moral unfitness. The Hearing Committee's

conclusions were unanimous and based mainly on the Respondent and Patient A's testimony and the documentary evidence introduced at the hearing.

The Hearing Committee sustained in part the factual allegations in Paragraph A including that on or about March 1, 2007, the Respondent "inappropriately kissed, and hugged" Patient A, and "gave her eight dollars," and the First and Third Specifications of misconduct, engaging in contact of a sexual nature with a patient and gross negligence (Ex. 1). The Respondent admitted in writing that he responded to Patient A, inappropriately kissing her on the mouth and hugging her for a few seconds (Ex. 5). By his own admission, the Respondent is guilty of engaging in physical contact of a sexual nature with a patient, which is professional misconduct as defined in New York State Education Law ("Education Law") Section 6530(44). The Hearing Committee also finds the Respondent's failure to maintain professional physician patient boundaries by responding on a personal level to Patient A's history, giving her eight dollars from his pocket, and kissing and hugging her to be grossly negligent pursuant to Education Law Section 6530(4). Based on these factual findings and the hearing record, the Hearing Committee by a preponderance of evidence sustained the First and Third Specifications of misconduct (Ex. 1).

The Hearing Committee did not sustain the factual allegation of "fondling" set forth in Paragraph A and based on this finding and the hearing record the remaining two Specifications specifically: the Fourth Specification willfully harassing, abusing or intimidating a patient, and the Fifth Specification moral unfitness were not sustained.

The Respondent testified on his own behalf and presented one other witness Dr. David Trachtenberg, who is the Respondent's current supervisor at Woodhull Hospital. The Respondent's testimony, as well as Dr. Trachtenberg's testimony,

revealed to the Hearing Committee that the Respondent is keenly aware that what he did was wrong, remorseful, committed to changing his practice so that there is never another incident. It is clear to the Hearing Committee that the Respondent set out on a slippery slope, in his care and treatment of Patient A on March 1, 2007. The Respondent's emotional reaction to Patient A's circumstances lead him to give her money for food, and then his card to extend his help in the future. The Respondent's serious breach of professional physician patient boundaries naturally lead Patient A, who is vulnerable and almost childlike, to misunderstand the Respondent's intentions. While Patient A's testimony was confused and she did not provide many details about the alleged incident, the Hearing Committee did rely on Patient A's testimony about her perceptions of the incident to reach a determination. Patient A's obvious vulnerabilities would have signaled any reasonably prudent physician to maintain appropriate professional boundaries. The Hearing Committee concluded that the Respondent is entirely culpable for this egregious lapse in professional judgment. The Respondent's conduct during the March 1, 2007 appointment with Patient A constitutes "significant deviations from acceptable standards of medical care and present the risk of potentially grave consequences to the patient" (Ex. ALJ 1A "Definitions of Professional Misconduct-Greenberg Memorandum" pp. 5&6, See Education Law Section 6530(4)). The Committee found the Respondent's significant boundary violations lead to inappropriate physical contact with Patient A and constitute gross negligence.

The Respondent's testimony and the documentary evidence admitted at the hearing do not indicate to the Committee that the Respondent intended to take advantage of the treatment setting to prey upon this vulnerable patient. The Hearing Committee could not find sufficient credible evidence that the Respondent willfully

harassed, abused or intimidated Patient A pursuant to Education Law Section 6530(31) and/ or is morally unfit pursuant to Education Law Section 6530(20). In order to make these findings the Hearing Committee would be required to find that the Respondent intentionally set out to take advantage of Patient A or had disregard for the consequences of his conduct on a vulnerable person seeking treatment (See Ex. ALJ 1A).

Because there were no witnesses or physical evidence presented regarding the allegations of inappropriate contact with Patient A, the Hearing Committee had to make a credibility determination about the Respondent. The Hearing Committee determined that while Patient A was both sympathetic and vulnerable, the Respondent was credible. The Hearing Committee based this determination on a number of factors including that: the case involved only one patient who is confused and has limited mental capacity, there were no witnesses, close in time to the incident the Respondent admitted in a letter to his employer that he inappropriately kissed Patient A on the mouth and hugged her, and he is remorseful.

The Hearing Committee found that the Respondent was not self-serving in his written account or testimony, lending greatly to his credibility. From the outset, it was the Respondent's word against that of a confused mentally retarded patient. The Hearing Committee determined that if the Respondent had intended to use the treatment setting to take advantage of Patient A, he would not have admitted so much or provided such a detailed written account of his conduct. Close in time to the incident the Respondent took responsibility for his conduct and admitted in writing and at the hearing that he responded on an emotional level to Patient A, inappropriately kissed and hugged Patient A, and was surprised by Patient A's actions and his own

response. The Respondent's admissions and expressions of remorse show the hearing Committee that the Respondent is taking responsibility for his actions, and open to and can benefit from additional training and supervision.

DETERMINATION AS TO PENALTY

Upon concluding that the Respondent is guilty of two specifications of professional misconduct, the Hearing Committee determined that the Respondent requires supervision and continuing medical education regarding appropriate physician patient boundaries. After due and careful consideration of the penalties available pursuant to Public Health Law Section 230-a, the Hearing Committee has determined that in order to protect the public the Respondent: shall work in an institutional setting for a two year probationary period, and shall successfully complete sixteen (16) hours of Continuing Medical Education in the area of physician patient boundaries, preferably simulation based, within one (1) year of the effective date of this Determination and Order. The terms of probation are attached hereto and made a part of this Decision and Order, and marked as Appendix A ("Ex. A").

ORDER

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

1. The factual allegations in paragraph A that "On or about March 1, 2007, Respondent inappropriately kissed, hugged" and gave Patient A "eight dollars," and the First and Third Specifications set forth in the Statement of Charges (Ex. 1) are

SUSTAINED;

2. The factual allegation in paragraph A that the Respondent "fondled" Patient A, and the Forth and Fifth Specifications set forth in the Statement of Charges (Ex.1) are **NOT SUSTAINED**;

3. The Respondent shall be on probation for two years and shall work in a supervised institutional setting during the entire probationary period.

4. The Respondent shall successfully complete sixteen (16) hours of Continuing Medical Education in the area of physician patient boundaries, preferably simulation based, within one (1) year of the effective date of this order and said continuing education shall be subject to the prior written approval of the Director of OPMC (See Ex. A);

5. This **ORDER** shall be effective upon service on the Respondent pursuant to Public Health Law Section 230(10)(h).

New York, New York

DATED: January 1, 2009

Redacted Signature

BY: _____
RUTH HOROWITZ Chair
NISHA SETHI M.D.
THEODORE SPEVACK D.O.

To: Jaime Marcelo Benitez, M.D.
93-04 75th Street
Woodhaven, NY 11421-2814

Paul E. Walker, Esq.
PELTZ & WALKER
222 Broadway
New York, NY 10036

Ann Gayle, Esq.
NYSDOH -Bureau of Professional Medical Conduct
90 Church Street
New York, NY 10007

Appendix A

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

IN THE MATTER
OF
JAIME MARCELO BENITEZ, M.D.

NOTICE
OF
HEARING

TO: Jaime Marcelo Benitez, M.D.
Redacted Address



PLEASE TAKE NOTICE:

A hearing will be held pursuant to the provisions of N.Y. Pub. Health Law §230 and N.Y. State Admin. Proc. Act §§301-307 and 401. The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on August 14, 2008, at 10:00 a.m., at the Offices of the New York State Department of Health, 90 Church Street, 4th Floor, New York, New York 10007, and at such other adjourned dates, times and places as the committee may direct.

At the hearing, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the hearing will be made and the witnesses at the hearing will be sworn and examined. You shall appear in person at the hearing and may be represented by counsel. You have the right to produce witnesses and evidence on your behalf, to issue or have subpoenas issued on your behalf in order to require the production of witnesses and documents, and you may cross-examine witnesses and examine evidence produced against you. A summary of the Department of Health Hearing Rules is enclosed.

The hearing will proceed whether or not you appear at the hearing. Please note that requests for adjournments must be made in writing and by telephone 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, (henceforth "Bureau of Adjudication"), (Telephone: (518-402-0748), upon notice to the attorney for the Department of Health whose name appears below, and at least five days prior to the scheduled hearing date.

Adjournment requests are not routinely granted as scheduled dates are considered dates certain. Claims of court engagement will require detailed Affidavits of Actual Engagement. Claims of illness will require medical documentation.

Pursuant to the provisions of N.Y. Pub. Health Law §230(10)(c), 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. 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 N.Y. State Admin. Proc. 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.

At the conclusion of the hearing, the committee shall make findings of fact, conclusions concerning the charges sustained or dismissed, and in the event any of the charges are sustained, a determination of the penalty to be imposed or appropriate action to be taken. Such determination may be reviewed by the Administrative Review Board for Professional Medical Conduct.

THESE PROCEEDINGS MAY RESULT IN A

DETERMINATION THAT YOUR LICENSE TO PRACTICE
MEDICINE IN NEW YORK STATE BE REVOKED OR
SUSPENDED, AND/OR THAT YOU BE FINED OR
SUBJECT TO OTHER SANCTIONS SET OUT IN NEW
YORK PUBLIC HEALTH LAW §§230-a. YOU ARE URGED
TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS
MATTER.

DATED: New York, New York
July 14, 2008

Redacted Signature

Roy Nemerson
Deputy Counsel
Bureau of Professional
Medical Conduct

Inquiries should be directed to: Ann Gayle
Associate Counsel
Bureau of Professional Medical Conduct
90 Church Street, 4th Floor
New York, New York 10007
212-417-4450

IN THE MATTER
OF
JAIME MARCELO BENITEZ, M.D.

STATEMENT
OF
CHARGES

JAIME MARCELO BENITEZ, M.D., the Respondent, was authorized to practice medicine in New York State on or about April 12, 2005, by the issuance of license number 235704, by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. Respondent, a psychiatrist, treated Patient A on at least 7/6/06, 1/18/07, and 3/1/07 at Broadway House Shelter, located at 1245 Broadway, Brooklyn, New York. On or about March 1, 2007, Respondent inappropriately kissed, hugged, and fondled Patient A, and gave her eight dollars.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

ENGAGING IN CONTACT OF A SEXUAL NATURE WITH A PATIENT

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law 6530(44) by engaging in physical contact of a sexual nature with a patient, as alleged in the facts of:

1. Paragraph A.

SECOND SPECIFICATION

NEGLIGENCE ON MORE THAN ONE OCCASION

Respondent is charged with committing professional misconduct as defined

in N.Y. Educ. Law §6530(3) by practicing the profession of medicine with negligence on more than one occasion as alleged in the facts of two or more of the following:

2. Paragraph A.

THIRD SPECIFICATION

GROSS NEGLIGENCE

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(4) by practicing the profession of medicine with gross negligence as alleged in the facts of the following:

3. Paragraph A.

FOURTH SPECIFICATION

WILLFULLY HARASSING, ABUSING OR INTIMIDATING A PATIENT

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(31) by willfully harassing, abusing, or intimidating a patient either physically or verbally, as alleged in the facts of:

4. Paragraph A.

FIFTH SPECIFICATION

MORAL UNFITNESS

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(20) by engaging in conduct in the practice of the profession of medicine that evidences moral unfitness to practice as alleged in the facts of the following:

5. Paragraph A.

DATE: July 14, 2008
New York, New York

Redacted Signature

Roy Nemerson
Deputy Counsel
Bureau of Professional Medical Conduct

Appendix 1

Appendix

Terms of Probation

1. Respondent 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 and obligations imposed by law and by his profession.
2. Respondent shall submit written notification to the New York State Department of Health addressed to the Director, Office of Professional Medical Conduct (OPMC), 433 River Street, 4th Floor, Troy, New York 12180; said notice is to include a full description of any employment and practice, professional and residential addresses and telephone numbers within or without New York State, and any and all investigations, charges, convictions or disciplinary actions by any foreign, local, state or federal agency, institution or facility, within thirty days of each action.
3. Respondent shall fully cooperate with and respond in a timely manner to any requests from OPMC to provide written periodic verification of Respondent's compliance with the terms of this Order.
4. Respondent shall be on probation for two years. During the period of probation, the Respondent shall only practice in an institutional setting. The period of probation shall be tolled during periods in which Respondent is not engaged in the active practice of medicine in New York State. Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in or intends to leave the active practice of medicine in New York State for a period of thirty (30) consecutive days or more. Respondent shall then notify the Director again prior to any change in that status. The period of probation shall resume and any terms of probation which were not fulfilled shall be fulfilled upon Respondent's return to practice in New York State.
5. Respondent shall successfully complete, within one (1) year of the effective date of the probationary period, sixteen hours of Continuing Medical Education, preferably simulation based, in the area of maintaining physician patient boundaries. The course shall be approved by the Director of OPMC.
6. Respondent shall maintain medical malpractice insurance coverage with limits no less than \$2 million per occurrence and \$6 million per policy year, in accordance with Section 230(18)(b) of the Public Health Law. Proof of coverage shall be submitted to the Director of OPMC prior to Respondent's practice after the effective date of this Order.
7. Respondent shall comply with all terms, conditions, restrictions, limitations and penalties to which he or she is subject pursuant to the Order and shall assume and bear all costs related to compliance. Upon receipt of evidence of noncompliance with, or any violation of these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding and/or any such other proceeding against Respondent as may be authorized pursuant to the law.