



STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Barbara A. DeBuono, M.D., M.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

May 27, 1998

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Marcia Kaplan, Esq.
NYS Department of Health
5 Penn Plaza - Sixth Floor
New York, New York 10001

Jacinto Lopez, M.D.
6431 Rugby Ave. Apt G
Huntington Park, California 90255-10553

RE: In the Matter of Jacinto Lopez, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 98-103) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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
Hedley Park Place
433 River Street - Fourth Floor
Troy, New York 12180

If your license or registration certificate is lost, misplaced or its whereabouts is otherwise unknown, you shall submit an affidavit to that effect. If subsequently you locate the requested items, they must then be delivered to the Office of Professional Medical Conduct in the manner noted above.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), 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 penalties **other than suspension or revocation** until final determination by that Board. Summary orders are not stayed by Administrative Review Board reviews.

All notices of review must be served, by **certified mail**, upon the Administrative Review Board **and** the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

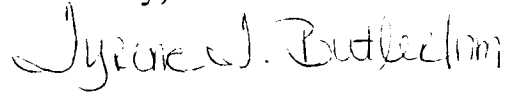
The notice of review served on the Administrative Review Board should be forwarded to:

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

The parties shall have 30 days from the notice of appeal in which to file their briefs to the Administrative Review Board. Six copies of all papers must also be sent to the attention of Mr. Horan at the above address and one copy to the other party. The stipulated record in this matter shall consist of the official hearing transcript(s) and all documents in evidence.

Parties will be notified by mail of the Administrative Review Board's
Determination and Order.

Sincerely,

A handwritten signature in black ink that reads "Tyrone T. Butler". The signature is written in a cursive style with a large initial "T".

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nm
Enclosure

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

COPY

IN THE MATTER
-OF-
JACINTO LOPEZ, M.D.

Respondent

DETERMINATION

AND

ORDER

BPMC-98-103

A Notice of Referral Proceeding and Statement of Charges, both dated January 14, 1998, were served upon the Respondent, Jacinto Lopez, M.D. **DANIEL W. MORRISSEY, O.P. (Chair), ROBERT B. BERGMANN, M.D. and RALPH LUCARIELLO, M.D.**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee (hereinafter the Committee) in this matter pursuant to Section 230(10)(e) of the Public Health Law. **JEFFREY W. KIMMER, ESQ., ADMINISTRATIVE LAW JUDGE**, served as the Administrative Officer. The Department of Health appeared by Marcia Kaplan, Esq., Associate Counsel, OPMC. The Respondent not appear in person nor was he represented by counsel. Evidence was received, statements were heard and transcripts of these proceedings were made.

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

STATEMENT OF CASE

This case was brought pursuant to Public Health Law Section 230(10)(p). This statute provides for an expedited proceeding 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 proceeding 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 § 6530(9)(b) (found guilty of misconduct by another state). In this instance the charge herein arises from Respondent having been found guilty of gross negligence, repeated negligent acts and incompetence by the Division of Medical Quality, Medical Board of California, State of California (California Board) in connection with the performance of a second trimester abortion. The allegations in this proceeding are more particularly set forth in the Statement of Charges which is attached to this Determination and Order as Appendix One.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers in parentheses refer to exhibits. These citations represent evidence found persuasive by the Committee in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence.

1. JACINTO LOPEZ, M.D.(hereinafter, "Respondent"), was licensed to practice medicine in New York State on February 3, 1969 by the issuance of license number 103084 by the New York State Education Department. (Pet. Ex. #3).

2. On or about December 16, 1990, the Respondent performed surgery (a second trimester abortion) on a patient. This surgery was unsuccessful and a second surgery was performed on or about December 17, 1990. (Pet. Ex. # 4)

3. On or about April 10, 1997, Respondent was found guilty of unprofessional conduct by the California Board in conjunction with the surgeries noted in number 2 above. The conduct which this finding was based included performing a second trimester abortion without sufficient experience and training, failure to keep adequate medical records including a failure to note a suspected perforation of the uterus, failure to monitor his patient after surgery including leaving her unattended and failure to appreciate the potentially life threatening nature of the complications from an incomplete abortion. (Pet. Ex. #4)

CONCLUSIONS OF LAW

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

The Committee concluded that the Department has sustained its burden of proof in this matter. The preponderance of the evidence demonstrates that Respondent was found guilty of professional misconduct by a duly authorized professional disciplinary

agency of another state. The conduct which this finding was based constitutes professional misconduct in New York. Specifically, the Respondent's conduct would amount to misconduct under N.Y. Educ. Law § 6530(3) (negligence on more than one occasion, N.Y. Educ Law § 6530(4) (gross negligence) and N.Y. Educ. Law § 6530(5) (incompetence on more than one occasion).

DETERMINATION AS TO PENALTY

The 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 **revoked**. This determination was reached upon due consideration of the full spectrum of penalties available pursuant to statute.

As noted above, the Committee concluded that the Department has sustained its burden of proof in this matter. The Committee based its determination on the seriousness of the misconduct committed in California. Such conduct represents a serious violation of the standards of the medical profession. Additionally the Respondent did not present any mitigating evidence for the Committee's consideration. Respondent did not appear nor was he represented by counsel. The Committee also found the Respondent's acts of misconduct relating to his medical treatment of the patient to represent a potential threat to the medical consumer in this state. It is the Committee's duty to protect the consumers of medical services of this state. The practice of medicine is a privilege to be bestowed on those who warrant it. The

Committee views the actions committed by the Respondent to be extremely egregious misconduct. Furthermore, the record contains no evidence about any rehabilitative efforts the Respondent may have made subsequent to the California decision. The Respondent has not presented any evidence that he should be allowed to exercise the privilege of practicing medicine in New York and that revocation is the only appropriate sanction under the circumstances.

ORDER

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

1. The Specification of professional misconduct, as set forth in the Statement of Charges (Appendix I) is **SUSTAINED**;
2. Respondent's license to practice medicine in New York State be and hereby is **REVOKED**.

DATED: Albany, New York
May 18, 1998

Daniel W. Morrissey, O.P.
DANIEL W. MORRISSEY, O.P. (CHAIR)
Robert B. Bergmann, M.D.
Ralph Lucariello, M.D.

TO: MARCIA KAPLAN, ESQ.
Associate Counsel
Bureau of Professional Medical Conduct
New York State Department of Health
5 Penn Plaza
6th Floor
New York , N.Y. 10001

JACINTO LOPEZ, M.D.
6431 Rugby Ave. Apt. G
Huntington Park, CA 90255 10553

APPENDIX I

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

IN THE MATTER
OF
JACINTO LOPEZ, M.D.

STATEMENT
OF
CHARGES

JACINTO LOPEZ, M.D., the Respondent, was authorized to practice medicine in New York State on or about February 3, 1969, by the issuance of license number 103084 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. On or about April 10, 1997, the Division of Medical Quality, Medical Board of California (California Board) revoked Respondent's license to practice medicine in California, stayed the revocation, and placed the Respondent on probation for five years under terms and conditions including that he obtain 40 hours of continuing medical education for each year of probation, pass an oral clinical examination as a condition precedent to practicing medicine except in an approved clinical training program, and have his practice monitored by an approved physician who shall provide periodic reports to the California Board. The California Board found Respondent guilty of improper professional practice or professional misconduct in violation of California Business and Professions Code sections 2234 (b), (c) and (d), by committing gross negligence, and/or repeated negligent and incompetent acts, in the treatment of patient Laura V in the performance of an elective abortion, as more fully set forth in its Decision. The conduct upon which the finding was based would, if committed in New York state, constitute professional misconduct under N.Y. Educ. Law sections 6530(3)(4) and (5).

SPECIFICATION OF CHARGES
FIRST SPECIFICATION
HAVING BEEN FOUND GUILTY OF
PROFESSIONAL MISCONDUCT

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(9)(b)(McKinney Supp. 1998) 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 (namely N.Y. Educ. Law §§ 6530(3)(4) and/or(5)) as alleged in the facts of the following:

1. Paragraph A.

DATED: January *A*, 1998
New York, New York



ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct