



STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Dennis P. Whalen
Executive Deputy Commissioner

November 18, 1998

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

Rafael Gonzalez, M.D.
Clinica San Rafael
8 Garcia Godoy Street
Gazcue, Santa Domingo
Dominican Republic

RE: In the Matter of Rafael Gonzalez, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 98-273) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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,

Handwritten signature of Tyrone T. Butler in cursive script.

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
RAFAEL GONZALEZ, M.D.**

**DETERMINATION
AND
ORDER**

BPMC-98-273

A Notice of Summary Proceeding dated September 11, 1998, a Commissioner's Summary Order, dated September 10, 1998, and a Statement of Charges, dated September 1, 1998 were served upon the Respondent, **RAFAEL GONZALEZ, M.D.** **ELEANOR KANE, M.D.**, Chairperson, **ALVIN RUDORFER, D.O.** and **JAMES J. DUCEY** duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to Sections 230(10)(e) and 230(12) of the Public Health Law. **JANE B. LEVIN, ESQ.**, served as Administrative Officer for the Hearing Committee. A hearing was held on October 14, 1998.

The Department of Health appeared by **HENRY M. GREENBERG, GENERAL COUNSEL**, by **STEVEN MASEF, ESQ.**, Assistant Counsel. The Respondent did not appear, and did not file an answer.

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 when 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)(a)(ii). A copy of the Notice of Summary Proceeding, the Summary Order, and the Statement of Charges is attached to this Determination and Order in Appendix I.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers in parenthesis refer to transcript page numbers or exhibits, and they denote evidence that the Hearing Committee found persuasive in determining 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 the State of New York on August 20, 1976 by the issuance of license number 128144 by the New York State Education Department. (Pet. Ex. 2)

2. On September 19, 1996, the Respondent was convicted after trial before the United States District Court for the Southern District of New York of committing acts constituting two counts of Medicare Fraud Conspiracy (18 USC 371) and 43 counts of making False Statements to the Medicare Program (42 USC 1320 a-7b(a)(2)). The Respondent was sentenced in absentia, having fled the jurisdiction, to incarceration for a period of 78 months and was ordered to make restitution in the amount of \$3,567, 792.20. Pet. Ex. 3).

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 Hearing Committee, unless noted otherwise.

The Hearing Committee unanimously concluded that the Department has sustained its burden of proof. The Respondent did not appear or submit an answer. The documentary evidence submitted by the Department demonstrates the Respondent's conviction of Medicare Fraud Conspiracy and Making False Statements to the Medicare Program. N.Y. Education Law Section 6530(9)(a)(ii) defines professional misconduct as having been convicted of committing an act which constitutes a crime under federal law.

As a result, the Hearing Committee voted to sustain the single specification of professional misconduct contained within the Statement of Charges.

DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above unanimously determined that the Respondent's license to practice medicine in the State of New York should be revoked. 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.

ORDER

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

1. The specification of professional misconduct contained within the Statement of Charges (Pet. Ex. 1) is **SUSTAINED.**
2. The Respondent's license to practice medicine in the State of New York is hereby **REVOKED.**

DATED: Rhinebeck, New York
November 17, 1998



ELEANOR KANE, M.D., Chairperson

ALVIN RUDORFER, D.O.
JAMES J. DUCEY

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

IN THE MATTER
OF
RAFAEL GONZALEZ, M.D.

NOTICE OF
SUMMARY
PROCEEDING

TO: RAFAEL GONZALEZ, M.D.
Clinica San Rafael
8 Garcia Godoy Street
Gazcue, Santa Domingo
Dominican Republic

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law §§230(12) and (10)(p) (McKinney 1990 and Supp. 1998) and N.Y. State Admin. Proc. Act §§301-307 and 401 (McKinney 1984 and Supp. 1998). The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on October 14, 1998, at 10:00 a.m., at the offices of the New York State Department of Health, 5 Penn Plaza, Sixth 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 to the Commissioner's Summary Order that has been or is being served upon you. 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, Hedley Park Place, 433 River Street, Fifth Floor South, Troy, NY 12180, ATTENTION: HON. TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION (Telephone: (518-402-0748), (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, no later than twenty days prior to the scheduled date of the Referral Proceeding, as indicated above.

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. You may file a written brief and affidavits with the Committee. Six copies of all papers you submit must be filed with the Bureau of Adjudication at the address indicated above, no later than fourteen days prior to the scheduled date of the Referral Proceeding, and a copy of all papers must be served on the same date on the Department of Health attorney indicated 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 (McKinney Supp. 1998) 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.

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: New York, New York
September, // 1998



ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct

Inquiries should be addressed to:

Roy Nemerson
Deputy Counsel, B.P.M.C.
NYS Department of Health
Division of Legal Affairs
5 Penn Plaza, Suite 601
New York, New York 10001
(212) 613-2615

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

IN THE MATTER
OF
RAFAEL GONZALEZ, M.D.

COMMISSIONER'S
SUMMARY
ORDER

TO: RAFAEL GONZALEZ, M.D.
Clinica San Rafael
8 Garcia Godoy Street
Gazcue, Santa Domingo
Dominican Republic

The undersigned, Barbara A. DeBuono, M.D., M.P.H., Commissioner of Health of the State of New York, pursuant to N.Y. Public Health Law §230 (McKinney 1990 and Supp. 1998), upon the recommendation of a Committee on Professional Medical Conduct of the State Board for Professional Medical Conduct, has determined that RAFAEL GONZALEZ, M.D., the Respondent, has pleaded or been found guilty or convicted of committing an act constituting a felony under New York State law, federal law, or the law of another jurisdiction which, if committed within this state, would have constituted a felony under New York State law, as is more fully set forth in the Statement of Charges attached hereto and made a part hereof.

It is therefore:


ORDERED, pursuant to N.Y. Public Health Law §230(12)(b) (McKinney 1990 and Supp. 1998), that effective immediately, Respondent shall not practice medicine in the State of New York. This Order shall remain in effect unless modified or vacated by the Commissioner of Health pursuant to N.Y. Pub. Health Law §230(12) (McKinney 1990 and Supp. 1998).

PLEASE TAKE NOTICE that a hearing will be held pursuant to the provisions of N.Y. Pub. Health Law §230 (McKinney 1990 and Supp. 1998), and N.Y. State

Admin. Proc. Act §§301-307 and 401 (McKinney 1984 and Supp. 1998). The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on a date and at a location to be set forth in a written Notice of Summary Hearing to be provided to the Respondent either contemporaneously with this Summary Order or subsequently. Said written Notice may be provided in person, by mail, or by other means. If Respondent wishes to be provided said written notice at an address other than that set forth above, Respondent shall notify both the attorney whose name is set forth in this Order, and the Director of the Bureau of Adjudication, New York State Department of Health, Hedley Park Place, 433 River Street, Fifth Floor South, Troy, NY 12180 (Telephone: 518-402-0748).

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 FORTH IN NEW YORK PUBLIC HEALTH LAW §230-a (McKinney Supp. 1998). YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: Albany, New York
September 1^o, 1998


BARBARA A. DeBUONO, M.D., M.P.H.
Commissioner of Health

Inquiries should be directed to:

Roy Nemerson
Deputy Counsel / BPMC
N.Y.S. Department of Health
Division of Legal Affairs
5 Penn Plaza
Suite 601
New York, New York 10001
(212) - 613-2615

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IN THE MATTER
OF
RAFAEL GONZALEZ, M.D.

STATEMENT
OF
CHARGES

RAFAEL GONZALEZ, M.D., the Respondent, was authorized to practice medicine in New York State on or about August 20, 1976, by the issuance of license number 128144 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. By a September 19, 1996 judgement of guilt after trial before the United States District Court for the Southern District of New York, Respondent was convicted of committing acts constituting two counts of Medicare Fraud Conspiracy (18 USC 371) and 43 counts of making False Statements to the Medicare Program (42 USC 1320 a-7b(a)(2)). Respondent was sentenced in absentia, having fled the jurisdiction, to incarceration for a period of 78 months and was ordered to make restitution in the amount of \$3,567,792.20.

SPECIFICATION OF CHARGES

SPECIFICATION
CRIMINAL CONVICTION (Federal)

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(9)(a)(ii)(McKinney Supp. 1998) by having been convicted of committing an act constituting a crime under federal law as alleged in the facts of the following:

1. Paragraph A.

DATED: September 1, 1998
New York, New York



ROY NEMERSON
Deputy Counsel
Bureau of Professional