



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

**PUBLIC**

September 29, 2003

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

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

Rafael A. Lopez, M.D.  
a/k/a Rafael Lopez-Steuart, M.D.  
P.O. Box 1205  
Owings, MD 20736

Rafael A. Lopez, M.D.  
a/k/a Rafael Lopez-Steuart, M.D.  
11500 Cedar Run  
Owings, MD 20736

**RE: In the Matter of Rafael A. Lopez, M.D.  
aka Rafael Lopez-Steuart, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 03-255) 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.

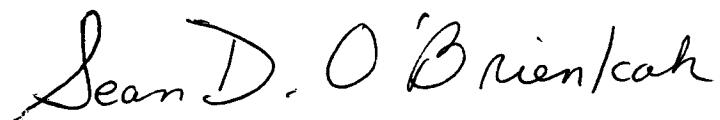
The notice of review served on the Administrative Review Board should be forwarded to:

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,



Sean D. O'Brien, Director  
Bureau of Adjudication

SDO:cah  
Enclosure

**COPY**

**IN THE MATTER**  
**OF**  
**RAFAEL A. LOPEZ, M.D.**  
**A.K.A. RAFAEL A. LOPEZ-STEUART, M.D.**

**DETERMINATION**

**AND**

**ORDER**

BPMC-03-255

A Notice of Referral Proceeding and Statement of Charges, both dated August 1, 2003, were served upon the Respondent, **RAFAEL A. LOPEZ, M.D., A.K.A. RAFAEL A. LOPEZ-STEUART, M.D.** **STEVEN V. GRABIEC, M.D.**, Chairperson, **STEVEN PINSKY, M.D.** and **WILLIAM W. WALENCE, 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 17, 2003, 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 **PAUL ROBERT MAHER, ESQ.** and **ROBERT BOGAN, ESQ.**, of Counsel. The Respondent, although duly notified of the hearing, did not appear or present any evidence.

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. Once the existence of a criminal conviction or administrative finding capable of being considered misconduct in New York is established, 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 a violation of subdivision (20) (actions in the practice of medicine evidencing moral unfitness to practice medicine). 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: None

## **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.

1. **RAFAEL A. LOPEZ, M.D., A.K.A. RAFAEL A. LOPEZ-STEUART, M.D.**, the Respondent, was authorized to practice medicine in New York State on August 6, 1982, by the issuance of license number 151156 by the New York State Education Department (Ex. 4).
2. On April 25, 2003, the Maryland State Board of Quality Assurance ("the Maryland Board) issued a Final Decision and Order ("the Maryland Order") imposing a reprimand, two years of probation, and a requirement that Respondent undergo a psychiatric evaluation. The Maryland Board concluded that Respondent had committed unprofessional conduct in the practice of medicine when he threw a temper tantrum in the operating room, screamed obscenities at an x-ray technician, and threw an osteotome that bounced off a Mayo stand and landed on the floor (Ex. 5).

## **HEARING COMMITTEE CONCLUSIONS**

The hearing Committee concludes that the conduct resulting in the Maryland Board's disciplinary actions against Respondent do not constitute misconduct under the laws of

New York State pursuant to New York Education Law §6530(9)(b) or (d), and that this proceeding should be dismissed.

## **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: NOT 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 of New York state.

**VOTE: NOT SUSTAINED (3-0)**

### **HEARING COMMITTEE DETERMINATION**

The record in this case establishes that Respondent was subjected to discipline by the Maryland Board after he threw a temper tantrum in the operating room, screamed

obscenities at an x-ray technician, and threw an osteotome that bounced off a Mayo stand and landed on the floor.

In order for the Maryland Board findings against Respondent to constitute misconduct in New York State, the underlying conduct must also have been of a type that would have constituted misconduct had it been committed in New York State (New York Education Law §6530(9)(b) and (d)).

The Maryland statute under which Respondent was disciplined (Md. Code Ann., Health Occ. §14-404(a)(3)) provides that a physician may be subjected to discipline when he "is guilty of immoral or unprofessional conduct in the practice of medicine" (emphasis supplied). The Statement of Charges in the instant proceeding alleges that the Maryland Board found Respondent guilty of "moral unfitness". This is a blatant misstatement of the Maryland Board's findings. It is clear from the Maryland Order that Respondent was found guilty not of immoral conduct, but of "unprofessional conduct". Had Respondent's conduct been viewed by the Maryland Board to have been immoral, it would have found him guilty of immoral conduct, but it did not do so.

Furthermore, Respondent's conduct did not, as evaluated by this Hearing Committee, evidence moral unfitness to practice medicine. Although his conduct was reprehensible, dangerous, and possibly indicative of emotional volatility inconsistent with the safe and effective practice of medicine, it had no apparent connection with precepts of morality. The general finding in Maryland that Respondent's behavior was "unprofessional", as the Maryland Board viewed it, does not make it misconduct in New York, absent a specific, charged New York statutory prohibition.

Accordingly, the charges of misconduct at issue in this case are dismissed.

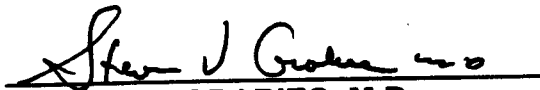
**ORDER**

**IT IS HEREBY ORDERED THAT:**

1. The charges of misconduct against **RAFAEL A. LOPEZ, M.D., A.K.A. RAFAEL A. LOPEZ-STEUART, M.D.** are **DISMISSED**.

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

**DATED: Niagara Falls, New York**  
9/25/, 2003

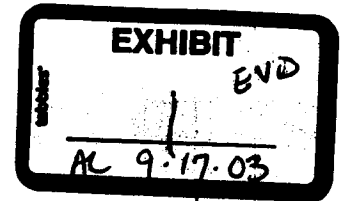
  
**STEVEN V. GRABIEC, M.D.**  
Chairperson

**STEVEN PINSKY, M.D.**  
**WILLIAM W. WALENCE, PH.D.**



# APPENDIX 1

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



IN THE MATTER

NOTICE OF

OF

REFERRAL

RAFAEL A. LOPEZ, M.D.,  
aka RAFAEL LOPEZ-STEUART, M.D.  
CO-03-06-2798-A

PROCEEDING

TO: RAFAEL A. LOPEZ, M.D., aka RAFAEL LOPEZ-STEUART, M.D.  
P.O. Box 1205  
Owings, MD 20736

RAFAEL A. LOPEZ, M.D., aka RAFAEL LOPEZ-STEUART, M.D.  
11500 Cedar Run  
Owings, MD 20736

**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 20<sup>th</sup> day of August 2003, 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. JAMES F. HORAN, ACTING DIRECTOR, BUREAU OF ADJUDICATION, (hereinafter "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before August 10, 2003.

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 August 10, 2003, 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 1*, 2003

  
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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<b>IN THE MATTER</b>	<b>STATEMENT</b>
<b>OF</b>	<b>OF</b>
<b>RAFAEL A. LOPEZ, M.D., aka RAFAEL LOPEZ-STEUART, M.D. CO-03-06-2798-A</b>	<b>CHARGES</b>

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RAFAEL A. LOPEZ, M.D., aka RAFAEL LOPEZ-STEUART, M.D., the Respondent, was authorized to practice medicine in New York state on August 6, 1982, by the issuance of license number 151156 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A. On or about April 25, 2003, the Board of Physician Quality Assurance of the State of Maryland, (hereinafter "Maryland Board"), by Final Decision and Order (hereinafter "Maryland Order"), REPRIMANDED Respondent and placed him on two (2) years probation subject to terms and conditions, based on moral unfitness.

B. The conduct resulting in the Maryland 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(20) (moral unfitness).

**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 disciplinary action taken 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 of New York state, in that Petitioner charges:

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

DATED: *August 1, 2003*  
Albany, New York

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