



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

January 17, 1996

Karen Schimke
Executive Deputy Commissioner

NEW YORK STATE DEPARTMENT OF HEALTH 19

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Fredrick Zimmer, Esq.
Assistant Counsel
New York State Department of Health
Bureau of Professional Medical Conduct
Empire State Plaza, Tower Building, Room 2429
Albany, New York 12237-0032

Renato F. Duran, M.D.
5289 F. Chestnut Ridge
Orchard Park, New York 14127

EFFECTIVE DATE 1/24/96

RE: In the Matter of Renato F. Duran, M.D.

Dear Mr. Zimmer and Dr. Duran:

Enclosed please find the Determination and Order (No. 96-7) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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

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.

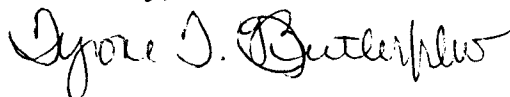
The notice of review served on the Administrative Review Board should be forwarded to:

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,

A handwritten signature in black ink that reads "Tyrone T. Butler". The signature is written in a cursive style with a prominent initial "T" and a long, sweeping underline.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:crc
Enclosure

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

IN THE MATTER
OF
RENATO F. DURAN, M.D.

DETERMINATION
AND
ORDER

No. 96-7

WALTER M. FARKAS, M.D., (Chair), CAROL LYNN HARRISON, Ph.D.
and KENNETH L. GAYLES, M.D. duly designated members of the State Board for
Professional Medical Conduct, served as the Hearing Committee in this matter pursuant
to §230(10) and §230(12) of the Public Health Law.

MARC P. ZYLBERBERG, ESQ., ADMINISTRATIVE LAW JUDGE, (ALJ")
served as the Administrative Officer.

The Department of Health appeared by FREDERICK ZIMMER, ESQ.,
Assistant Counsel.

Respondent, RENATO F. DURAN, M.D., did not appear personally and
was not represented by counsel.

Evidence was received and examined, including witnesses who were
sworn or affirmed. Transcripts of the proceeding were made. After consideration of
the record, the Hearing Committee issues this Determination and Order, pursuant to
the Public Health Law and the Education Law of the State of New York.

PROCEDURAL HISTORY

A Commissioner's Order and Notice of Hearing, dated November 14, 1995, and a Statement of Charges, dated November 14, 1995, were issued by **BARBARA A. DeBUONO, M.D., MPH**, as Commissioner of Health of the State of New York.

Said Order, Notice of Hearing and Statement of charges, together with a summary of Department of Health Hearing Rules were served on Respondent as hereinafter set forth.

Date of Commissioner's Order and Notice of Hearing:	November 14, 1995
Date of Service of Order and Notice of Hearing:	November 17 and 18, 1995
Date of Statement of Charges:	November 14, 1995
Date of Service of Statement of Charges:	November 17 and 18, 1995
Answer to Statement of Charges:	None Filed
Pre-Hearing Conference Held:	NONE
Hearing Held:	November 27, 1995
Witnesses called by the Petitioner, Department of Health:	Edward McCarty Bridget Marie Campbell, R.N. Thomas A. Norman Andrew D. Benz Robert Kirkpatrick Blaine Lilac Jeffrey C. Bea Mel Pisetzner, M.D.
Witnesses called by the Respondent, Renato F. Duran, M.D.:	NONE
Motion to Amend Charges A.6 and A.8 made on November 27, 1995:	Granted November 27, 1995 (See Appendix I)
Deliberations Held:	January 8, 1996

STATEMENT OF CASE

The State Board for Professional Medical Conduct is a duly authorized professional disciplinary agency of the State of New York (§230 et seq. of the Public Health Law of the State of New York [hereinafter "P.H.L."]).

This case was brought by the New York State Department of Health, Bureau of Professional Medical Conduct ("Petitioner") pursuant to §230 of the P.H.L.

These proceedings were commenced with the issuance of a Commissioner's Order ("Order") which summarily suspended Respondent's license to practice medicine in the State of New York, upon a finding by the Commissioner of Health that Respondent's continued practice presented an imminent danger to the health of the people of New York State. The Order was accompanied by a Statement of Charges setting forth two specifications of professional misconduct.

RENATO F. DURAN, M.D., ("Respondent") (also known as "Renata Duran", "Renato Fernando Duran" and "Renalto Duran") is charged with: (1) practicing the profession (of medicine) while impaired by drugs or a mental disability in violation of the Education Law of the State of New York ("Education Law")¹ and (2) being a habitual user of drugs or alcohol or having a psychiatric condition which impairs his ability to practice medicine, in violation of the Education Law².

The charges concern Respondent's conduct during a period beginning in the middle 1980's and especially his conduct from August 1995 to November 27, 1995, the date of the Hearing. A copy of the Commissioner's Order and Notice of Hearing and Statement of Charges is attached to this Determination and Order as Appendix I.

¹ Education Law §6530(7) and First Specification of Petitioner's Exhibit # 1.

² Education Law §6530(8) and Second Specification of Petitioner's Exhibit # 1.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. These facts represent evidence and testimony found persuasive by the Hearing Committee in arriving at a particular finding. Unless otherwise noted, all Findings and Conclusions herein were unanimous. The State, who has the burden of proof, was required to prove its case by a preponderance of the evidence. All Findings of Fact made by the Hearing Committee were established by at least a preponderance of the evidence.

1. Respondent was authorized to practice medicine in New York State by the issuance of license number 161781 by the New York State Education Department (Petitioner's Exhibits # 1 & # 3)³.

2. Respondent is currently registered with the New York State Education Department to practice medicine for the period January 1, 1995 through September 30, 1997 (Petitioner's Exhibits # 1 & # 3).

3. Respondent's current registration address is 5289 F Chestnut Ridge, Orchard Park, New York, 14127 (Petitioner's Exhibit # 3).

4. Michael J. Palczynski attempted to personally serve the Commissioner's Order and Notice of Hearing on Respondent at his last known address of 5289 Chestnut Ridge, Orchard Park, New York (apt. F), on November 17, 1995 at 2:00 P.M., on November 17, 1995 at 6:00 P.M. and on November 18, 1995 at 11:00 A.M.

³ Refers to exhibits in evidence submitted by the New York State Department of Health (Petitioner's Exhibit) (no exhibits were submitted by Respondent).

The affidavit of Mr. Palczynski indicates that he was unable to find Respondent or another person at said dwelling and therefore affixed the papers to the door and mailed a copy to that same address (Petitioner's Exhibit # 1-A); [PHT-4]⁴.

5. Carol Trzcinski mailed, by certified mail, on November 17, 1995, the Commissioner's Order and Notice of Hearing and Statement of Charges to Respondent, at his last known address (Petitioner's Exhibit # 1-B); [PHT-4].

6. Carol Trzcinski mailed, by certified mail, on November 17, 1995, the Commissioner's Order and Notice of Hearing and Statement of Charges to Respondent, at a former known address of 6971 East Eden Road, Hamburg, New York, 14075 (Petitioner's Exhibit # 1-C); [PHT-4].

7. On November 17, 1995, Jeffrey F. Torsell personally served the Commissioner's Order and Notice of Hearing, Statement of Charges and Hearing Rules on Respondent, by going to the office of Respondent's last known attorney⁵, Gregory J. Kay, at 1122 Union Road, West Seneca, New York and delivering a copy to a secretary named Amy Edel (Petitioner's Exhibit # 1-D); [PHT-5].

8. Mel Pisetzner, M.D., graduated from the State University of Buffalo Medical School, in New York in 1967. Dr. Pisetzner became board certified in Psychiatry, Neurology, in 1974. He is presently in private practice in Rochester, New York and has been a professor of Psychiatry at the University of Rochester since 1983. Dr. Pisetzner testified as the State's expert witness (Petitioner's Exhibit # 2); [T-118-138].

⁴ Numbers in brackets, PHT-, refer to transcript page numbers for the Pre-Hearing. Numbers in brackets, T-, refer to transcript page numbers for the Hearing.

⁵ See also ALJ Exhibit # 1 from Gregory J. Kay, dated November 21, 1995, which indicates that Mr. Kay believes that Respondent has left the area and that Mr. Kay no longer represents Respondent on the matter before the State for Professional Medical Conduct. This exhibit was obtained at the request of the ALJ, in a phone conference with Mr. Kay and Petitioner's attorney [PHT-2].

9. On August 7, 1992, Respondent was admitted to BryLin Hospitals, Buffalo, New York ("BryLin") with an admission diagnosis of Fiorinal dependence, admitting use of up to 24 tablets per day for past 6 years (Petitioner's Exhibit # 9); [T-121-122].

10. Fiorinal is a pain medication usually used for tension headaches but sometimes for migraine headaches or headaches in general. Fiorinal contains three compounds: aspirin, caffeine and butalbital and it is a short-to-medium acting barbiturate [T-130].

11. Respondent's medical record indicates that Respondent suffers from bipolar mood disorder or manic depression (Petitioner's Exhibit # 9); [T-124].

12. Bipolar mood disorder is a cyclical disorder in which there is at least one episode of a depressive bout and one episode of a manic or hypo-manic state. During these episodes, the sufferer is often unable to function normally and may experience symptoms of euphoria, grandiosity and inability to exercise good judgment [T-124-125].

13. Respondent's treatment plan was to be detoxified from Fiorinal. Respondent was discharged on August 16, 1992 (Petitioner's Exhibit # 9); [T-124].

14. On September 12, 1992, Respondent was admitted (under mental hygiene arrest, ie: involuntarily) to BryLin with an admission diagnosis of Psychoactive substance use disorder, barbiturate abuse (Petitioner's Exhibit # 10); [T-126].

15. The September 12, 1992 admission includes an admission diagnosis of "rule out bipolar disorder" and "rule out polysubstance abuse" (Petitioner's Exhibit # 10).

16. Respondent's discharge diagnosis was bipolar disorder, psychoactive substance abuse disorder, barbiturates use, migraine headaches and brush burns of his buttocks. Respondent was discharged on September 18, 1992 (Petitioner's Exhibit # 10); [T-128].

17. On November 16, 1992, Respondent entered BryLin outpatient treatment program and was primarily involved in group therapy for his substance abuse (Petitioner's Exhibit # 11); [T-128].

18. Respondent had a fairly extensive history of substance abuse by his own account, as recorded in his medical hospital records. Respondent had acknowledged that he had been using alcohol since the age of 12 saying that he had at least one glass of alcohol with dinner. He acknowledged some experimental use of marijuana in the 1970's. He acknowledged that he had been using Fiorinal since 1991. He stated that he had started prescribing it for himself and he described an extensive use of amphetamines in the 1970's, taking amphetamines (Dexamyl), by his account, systematically for seven years. By Respondent's account, he used Dexamyl addictively for seven years but stopped when it was taken off the market (Petitioner's Exhibits # 9, 10 & 11); [T-123-124].

19. Respondent, from at least August 17, 1992 through September 12, 1992, continued to abuse alcohol and barbiturates. Attempts were made to detoxify Respondent from Fiorinal. Respondent discontinued use of Lithium, which was given to him to treat his Bipolar disorder. Respondent also threatened to kill himself (Petitioner's Exhibits # 10 & 11); [T-125-126].

20. Robert Kirkpatrick is employed at Attica Correctional Facility ("**Attica**"), as a corrections lieutenant, for 12⁶ years [T-75-76].

21. Blaine Lilac is employed at Attica, as a corrections officer [T-81].

22. Jeffrey C. Bea is employed at Attica, as a corrections sergeant [T-93].

⁶ The transcript indicates 12, however, the Hearing Committee remembers it to be 22.

23. Respondent was an employee of New York State Office of Mental Health and worked at Attica from at least October 20, 1992 through August of 1995 (Petitioner's Exhibits # 5 & 8).

24. Respondent was given training or orientation on what items constitute contraband at Attica (ie: items which are forbidden from being brought into the facility) (Petitioner's Exhibit # 8); [T-77-79].

25. For example, the following items constitute contraband, at Attica:

"Drugs, ammunition (live or spent), guns, knives, anything that would be a danger to the facility." "... any kind of literature that would explain how to buy, make, repair weapons, explosives, such things as how to change your identity, how to become a fugitive..." [T-77, 79].

26. On May 24, 1995, Respondent brought contraband into Attica where he was employed, including live and spent ammunition and had in his belongings, two gun digest books (magazines) (Gun Digest Treasury and Handloader's Digest/1995); [T-82-83, 85-86, 94, 104].

27. Even after Respondent was sent out to his vehicle to remove and dispose of the contraband ammunition, Respondent attempted to reenter Attica with spent ammunition [T-97-98, 102].

28. During August of 1995, a search of Respondent's office at Attica showed the following items of contraband literature: (a) Fugitive -- How to Run, Hide, and Survive; (b) New ID in America; (c) The Blue Press; (d) B Square; (e) Get Even: The Complete Book of Dirty Tricks; (f) Handgun Stopping Power; and (g) Midwest Shooters (Petitioner's Exhibit # 14); [T-105-107].

29. Edward McCarty is employed by Buffalo Cartage, a shipment courier service [T-11].

30. On August 14, 1995, Respondent pointed a gun (an Automatic Rifle, AR-15) at Mr. McCarty, a courier, who had arrived at Respondent's residence to pick up a letter [T-13].

31. Thomas A. Norman is a detective employed, for 21 years, by the Town of Orchard Park Police Department in New York State [T-30].

32. Andrew D. Benz is a police officer employed, for 7 years, by the Town of Orchard Park Police Department in New York State [T-38].

33. On August 15, 1995, Officer Benz arrested Respondent, pursuant to an arrest warrant. At the time of his arrest, Respondent was found to have in his possession a boot knife, a prescription for 90 tablets of Isollyl (Fiorinal) issued by Respondent to Erin Duran (Respondent's wife or ex-wife) and an empty bottle of Prozac 20 mg. issued to Erin Duran. Neither of the prescriptions belonged to Erin Duran (Petitioner's Exhibits # 6, 6-A, 6-B, 6-C, 6-D and 6-E); [T-38-40, 46-47, 59-61, 68].

34. On August 15, 1995, Detective Norman, pursuant to a search warrant, searched Respondent's residence. Respondent was found to have at his residence 10 firearms, including one which had been converted to an automatic weapon, and a sawed off barrel (Petitioner's Exhibits # 7-A and 7-B); [T-49-52].

35. Bridget Marie Campbell is a nurse, employed for 15 years, at Rockland Children Psychiatric Center in Orangeburg, New York ("Rockland") [T-18].

36. Respondent had been employed by Rockland for approximately 5 years and was acquainted with Nurse Campbell [T-18].

37. On August 14, 1995, Respondent telephoned Rockland and spoke to Nurse Campbell. During his conversation with Nurse Campbell, Respondent used language which was sexually suggestive, inappropriate and offensive to Nurse Campbell [T-20-23, 29].

38. Following Respondent's arrest, of August 15, 1995, he was contacted by the Committee for Physicians' Health of the Medical Society of the State of New York ("Committee"). A clinical evaluation was scheduled by Suzanne Stanton, Coordinator for the Committee, for August 29, 1995. Respondent failed to attend this evaluation and was referred to the Impaired Physicians' Program of the Office of Professional Medical Conduct (Petitioner's Exhibit # 12).

39. On October 20, 1995, an indictment warrant was issued ordering the arrest of Respondent. Respondent has been indicted with the following crimes:

Penal Law §265.03 - criminal possession of a weapon in the second degree;

Penal Law §120.14-1 - menacing in the second degree;

Penal Law §265.02-2 - criminal possession of a weapon in the third degree;

Penal Law §265.01-1 - criminal possession of a weapon in the fourth degree.

The above arrest warrant was issued because Respondent failed to appear in Erie County Supreme Court to be arraigned in connection with the above indictment and criminal charges (Petitioner's Exhibit # 13); [T- 64-65, 70].

40. Respondent, as of the date of the Hearing, was considered a fugitive from justice and his whereabouts were unknown [T-64-65, 68-70].

CONCLUSIONS OF LAW

The Hearing Committee makes the following conclusions, pursuant to the Findings of Fact listed above. All conclusions resulted from a unanimous vote of the Hearing Committee.

The Hearing Committee concludes that the following Factual Allegations, from the November 14, 1995, Statement of Charges, are **SUSTAINED**:⁷

Paragraph A.	:		(8 - 40)
Paragraph A.1.	:		(8 - 16)
Paragraph A.2	:		(8 - 16)
Paragraph A.3.	:		(8 - 19)
Paragraph A.4.	:		(20 - 28)
Paragraph A.5.	:		(29 - 30)
Paragraph A.6.	:		(31 - 34)
Paragraph A.7	:		(35 - 37)
Paragraph A.8	:		(31 - 34)
Paragraph A.9	:		(38)
Paragraph A.10	:		(39 - 40)

Based on the above, the complete Findings of Fact and the entire record, the Hearing Committee concludes that the following Specifications of Charges are **SUSTAINED**:⁸

⁷ The numbers in parentheses refer to the Findings of Fact previously made herein by the Hearing Committee and support each Factual Allegation contained in the Statement of Charges.

⁸ The citations in parentheses refer to the Factual Allegations which support each Specification.

FIRST SPECIFICATION: (Paragraphs: A., A.1, A.2, A.3, A.4, A.5, A.6, A.7, A.8, A.9, and A.10)

SECOND SPECIFICATION: (Paragraphs: A., A.1, A.2, A.3, A.4, A.5, A.6, A.7, A.8, A.9, and A.10)

DISCUSSION

Respondent is charged with two specifications alleging professional misconduct within the meaning of §6530 of the Education Law.

Petitioner requested to amend Factual Allegations A.6 and A.8 to conform with the proof presented by the testimony of Detective Norman and Police Officer Benz. Petitioner’s request was granted by the ALJ and the Charges were amended as shown at Appendix I and [T-71-72].

The Hearing Committee was instructed by the ALJ to use ordinary English usage and understanding for all terms, allegations and charges.

With regard to the testimony presented herein, the Hearing Committee evaluated each witness for possible bias. The witnesses were also assessed according to their training, experience, credentials, demeanor and credibility.

Dr. Mel Pisetzner, as the State’s expert, had no professional association with Respondent. The Hearing Committee determined that Dr. Pisetzner presented a very credible and thorough review of the documents and questions posed. All of the State’s witnesses presented credible, direct and forthright testimony. They did not appear to have had a stake in the outcome of these proceedings and no motive for falsification or fabrication of their testimony was alleged or shown.

Respondent failed to appear and therefore did not offer any testimony.

Using the above understanding, the Hearing Committee unanimously concludes that the Department of Health has shown by a preponderance of the evidence that Respondent's conduct constituted professional misconduct under the laws of New York State. The Department of Health has met its burden of proof as to the specifications of misconduct contained in the November 14, 1995 Statement of Charges.

IMMINENT DANGER

First, the Hearing Committee unanimously votes and concludes that Respondent's conduct, past and present, indicates that his continued authorization to practice medicine presents an imminent danger to the health and safety of the people of New York State. It is therefore recommended that the Summary Order be continued until final resolution of this matter. The Hearing Committee's rationale is set forth in the remainder of this Determination and Order.

I. Service of Charges and of Notice of Hearing.

P.H.L. §230(10)(d) requires that the Charges and Notice of Hearing be served on the licensee personally, at least twenty (20) days before the Hearing. If personal service cannot be made, due diligence must be shown and certified under oath. Thereafter, registered or certified mail to the licensee's last known address must be served, at least fifteen (15) days before the Hearing.

P.H.L. §230(12) provides for an expedited hearing process where the Commissioner of Health has determined that a licensee is causing, engaging in or maintaining a condition or activity which constitutes an imminent danger to the health of people of the State of New York. P.H.L. §230(12) requires that a hearing be commenced within ten days from the date of service of the Commissioner's Order and that the Hearing be completed within ninety days of the date of service of said Order.

P.H.L. §230(10)(d) and P.H.L. §230(12) are contradictory.

It is noted that pursuant to §6502(5) of the Education Law, a licensee, such as Respondent, is under a duty to notify the Department of Education of any change of mailing address within thirty (30) days of such change. Matter of Tarter v. Sobol, 189 A.D.2d 916 (Third Dep't. 1993).

As more fully set forth by the affidavits submitted and the representations of Counsel for the Department of Health, a number of attempts at personal service were made. The Hearing Committee and the ALJ are hard pressed to find any other reasonable method which would have given Respondent more notice and opportunity to appear at the Hearing, given Respondent's status as a fugitive. In determining whether due diligence has been exercised, no rigid rule can properly be prescribed. Each case must be viewed on its own separate facts.

As more fully set forth in the Findings of Fact and the Exhibits, it is determined that Petitioner has shown due diligence in this case.

Therefore, service of the Commissioner's Order and Notice of Hearing, together with the Statement of Charges, upon Respondent by the various means indicated in the affidavits was proper and timely. It is determined that Respondent was served on November 18, 1995 (date of posting and third attempt) and the Commissioner's Summary Suspension Order remains in effect until February 15, 1996.

II. Practicing the Profession While Impaired by Drugs or Mental Disability

Respondent is charged with professional misconduct by reason of his having practiced the profession while impaired by drugs or a mental disability in violation of Education Law §6530(7).

The testimony and evidence presented by the Department at the hearing convincingly demonstrates that Respondent suffers from psychiatric disorders including bipolar disorder, has a long history of drug addiction which continues through the present and has abused alcohol. Respondent's ability to practice medicine is obviously impaired by his psychiatric condition as well as by his addiction to barbiturates. Of great concern is Respondent's practice of medicine as a psychiatrist during the period of May through August of 1995 when he was involved in a series of bizarre incidents while clearly impaired. Respondent made no effort to rectify his situation during or after this period either through cooperation with the Committee on Physicians' Health or with law enforcement authorities. The continued practice of medicine by Respondent in such circumstances is unacceptable.

The Hearing Committee agrees with Dr. Pisetzner's conclusion that Respondent's medical history and actions demonstrate that he is impaired and that such impairment affects his ability to practice medicine. Respondent has been diagnosed as having a bipolar disorder and evidence exists in the record that Respondent possesses an anti-social personality.

Based on a review of the prescriptions in Respondent's possession at the time of his arrest, it is reasonable to conclude that Respondent had resumed using Fiorinal.

Respondent's conduct in introducing contraband in Attica was more than a mere lack of judgment or negligence. Respondent showed total disregard for human life and safety at a maximum correctional facility. Respondent's conduct was intentional and willful. The extent of harm and danger Respondent's behavior caused, between the ammunition and the literature contraband, may never be known.

The same disregard for human life can be said about the gun menacing incident with the courier from Buffalo Cartage, Mr. McCarty.

Based on Respondent's conduct, the possession of 10 firearms, including a converted illegal automatic weapon is also of great concern to the Hearing Committee.

The Hearing Committee concludes that the continued practice of medicine by Respondent would constitute an imminent danger to the public particularly in light of Respondent's failure to cooperate with the examination proposed by the Committee on Physician Health, his failure to appear for the arraignment on October 20, 1995 and failure to cooperate with law enforcement officials.

The Hearing Committee determines and concludes that Respondent has practiced medicine (psychiatry) while impaired by drugs and while impaired by a mental disability, in violation of Education Law §6530(7).

III. Being a Habitual User or Dependent on Drugs or Having a Psychiatric Condition Which Impairs the Ability to Practice

Respondent is charged with professional misconduct by reason of his having been a habitual user of alcohol or being dependent on or a habitual user of narcotics, barbiturates, amphetamines, hallucinogens or other drugs having similar effects or having a psychiatric condition which impairs the ability to practice in violation of Education Law §6530(8).

Respondent's history of drug and alcohol use, as outlined by the

Department's expert, Dr. Pisetzner, began at the age of twelve with alcohol. This was followed by experimental marijuana use in the 1970's along with extensive amphetamine use to the point where Respondent was addicted to the amphetamine, Dexamyl, for seven years.

Beginning in the middle 1980s, Respondent became addicted to the barbiturate, Fiorinal. In 1991, Respondent was hospitalized in New York City for detoxification from Fiorinal (Petitioner's Exhibit # 9, at p. 27). Respondent was subsequently hospitalized at the BryLin facility in August of 1992. By that time, Respondent was using up to 24 tablets of Fiorinal per day. Respondent was described as having significant evidence of mood disorder with both periods of depression and mania with some euphoria and grandiosity. He was detoxified at BryLin from Fiorinal and placed on Lithium Carbonate to treat his bipolar disorder.

Following Respondent's discharge from BryLin on August 16, 1992, he discontinued Lithium, began abusing barbiturates again, abused alcohol and threatened to attempt suicide. Respondent was readmitted, on an involuntary basis, to BryLin in September of 1992.

The Hearing Committee determines and concludes that Respondent has practiced medicine (psychiatry) while being a habitual user of barbiturates and amphetamines. Respondent has continued to practice medicine (psychiatry) while impaired by drugs and Respondent has continued to practice medicine (psychiatry) while impaired by a psychiatric condition which impairs his abilities to provide adequate care and treatment to patients, in violation of Education Law §6530(8).

DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact, Conclusions of Law and Discussion set forth above, unanimously determines that Respondent is guilty of professional misconduct under the definitions of §6530 of the Education Law and under §230 of the P.H.L. The Hearing Committee unanimously determines that Respondent's license to practice medicine in New York State should be REVOKED.

This determination is reached after due and careful consideration of the full spectrum of penalties available pursuant to P.H.L. §230-a, including:

(1) Censure and reprimand; (2) Suspension of the license, wholly or partially; (3) Limitations of the license; (4) Revocation of license; (5) Annulment of license or registration; (6) Limitations; (7) the imposition of monetary penalties; (8) a course of education or training; (9) performance of public service and (10) probation.

The record establishes that Respondent has threatened another person with an automatic weapon, has been in possession of, at least one, illegal weapon, has engaged in an obscene phone call, has failed to follow the rules of a maximum security facility where he was employed as a psychiatrist and has failed to show even the most basic cooperation with the Committee of Physicians' Health or with law enforcement authorities.

Respondent has shown very little inclination to take actions which can alleviate his condition. The only recourse for the Hearing Committee in such circumstances is to prevent Respondent from practicing medicine by revoking his license in New York.

Respondent's conduct show signs of deficient moral character and judgment which can not be tolerated under these circumstances. Respondent's lack of integrity, character and moral fitness is evident in his course of conduct, not only in 1995, but, for at least the past 6 years.

The Hearing Committee considers Respondent's misconduct to be very serious. With a concern for the health and welfare of patients in New York State, the Hearing Committee determines that revocation of Respondent's license is the appropriate sanction to impose under the circumstances.

By execution of this Determination and Order, all members of the Hearing Committee certify that they have read and considered the complete record of these proceedings.

ORDER

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

1. The First and Second Specifications of professional misconduct from the Statement of Charges (Petitioner's Exhibit # 1) are **SUSTAINED**, and
2. Respondent's license to practice medicine in the State of New York is hereby **REVOKED**.

DATED: Albany, New York
January 12 , 1996


WALTER M. FARKAS, M.D., (Chair),

**CAROL LYNN HARRISON, Ph.D.
KENNETH L. GAYLES, M.D.**

To: RENATO F. DURAN, M.D.
Respondent
5289 F. Chestnut Ridge
Orchard Park, NY 14127

Frederick Zimmer, Esq.
Assistant Counsel,
New York State Department of Health
Bureau of Professional Medical Conduct
Empire State Plaza
Corning Tower Building, Room 2429
Albany, NY 12237-0032

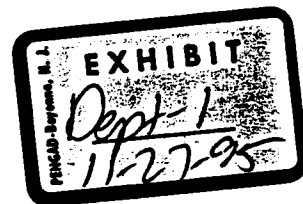
APPENDIX I

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

-----X

IN THE MATTER : COMMISSIONER'S
OF : ORDER AND
RENATO F. DURAN, M.D. : NOTICE OF HEARING
Respondent

TO: Renato F. Duran, M.D.
5289 F. Chestnut Ridge
Orchard Park, New York 14127



The undersigned, Barbara A. DeBuono, M.D., M.P.H., as Commissioner of the New York State Department of Health, after an investigation, upon the recommendation of a committee on professional medical conduct of the State Board for Professional Medical Conduct, and upon the Statement of Charges attached hereto and made a part hereof, has determined that the continued practice of medicine in the State of New York by RENATO F. DURAN, M.D., the Respondent, constitutes an imminent danger to the health of the people of this state.

It is therefore:

ORDERED, pursuant to N.Y. Pub. Health Law Section 230(12) (McKinney Supp. 1995), that effective immediately RENATO F. DURAN, M.D., 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 Section 230(12) (McKinney Supp. 1995).

PLEASE TAKE NOTICE that a hearing will be held pursuant to the provisions of N.Y. Pub. Health Law Section 230 (McKinney 1990

and Supp. 1995), and N.Y. State Admin. Proc. Act Sections 301-307 and 401 (McKinney 1984 and Supp. 1995). The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on the 27th day of November, 1995 at 10:00 a.m. at the Radisson Hotel at the Buffalo International Airport, 4243 Genesee Street, Buffalo, New York in Renaissance Room G of the hotel, and at such other adjourned dates, times and places as the committee may direct. The Respondent may file an answer to the Statement of Charges with the below-named attorney for the Department of Health.

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. The Respondent shall appear in person at the hearing and may be represented by counsel. The Respondent has the right to produce witnesses and evidence on his behalf, to issue or have subpoenas issued on his behalf for the production of witnesses and documents and to cross-examine witnesses and examine evidence produced against him. A summary of the Department of Health Hearing Rules is enclosed. 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 hearing will proceed whether or not the Respondent appears at the hearing. Scheduled hearing dates are considered dates certain and, therefore, adjournment requests are not


routinely granted. Requests for adjournments must be made in writing to the Administrative Law Judge's Office, Empire State Plaza, Corning Tower Building, 25th Floor, Albany, New York 12237-0026 and by telephone (518-473-1385), 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. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation.

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 or sanction 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 FORTH IN NEW YORK PUBLIC HEALTH LAW SECTION 230-a (McKinney Supp. 1995). YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: Albany, New York

14 November, 1995


BARBARA A. DeBUONO, MD, MPH
Commissioner of Health

Inquiries should be directed to:

Frederick Zimmer
Assistant Counsel
NYS Department of Health
Division of Legal Affairs
Corning Tower Building
Room 2429
Empire State Plaza
Albany, New York 12237-0032
(518) 473-4282

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

-----X
IN THE MATTER : STATEMENT
OF : OF
RENATO F. DURAN, M.D., : CHARGES
Respondent
-----X

RENATO F. DURAN, M.D., the Respondent, was authorized to practice medicine in New York State on April 1, 1985 by the issuance of license number 161781 by the New York State Education Department. Respondent is currently registered to practice medicine in New York State for the period ending approximately on September 30, 1997.

FACTUAL ALLEGATIONS

A. Respondent, during a period beginning approximately in the middle 1980s and continuing through the present, including periods when Respondent was involved in the active practice of medicine, suffered from a psychiatric condition/mental disability including but not necessarily limited to bipolar disorder, which impaired his ability to practice medicine and/or from an impairment due to his habitual use and/or dependency upon narcotics, barbiturates, amphetamines, hallucinogens or other drugs having similar effects and/or habitual abuse of alcohol, as is evidenced by events including but not limited to the following;

1. Respondent, during periods beginning on or about August 7, 1992 and continuing through approximately August 16, 1992 and from on or about September 12, 1992 and continuing through approximately September 18, 1992 was admitted to Brylin Hospital with problems pertaining to substance abuse disorder, barbituate abuse, including but not limited to Fiorinal use of up to 24 tablets of Fiorinal a day for approximately six years. The September 12th admission was also to rule out bipolar disorder and polysubstance abuse.

2. Respondent, in September of 1992, was diagnosed as suffering from bipolar disorder, psychoactive substance abuse disorder and barbituate use.

3. Respondent, on various occasions during a period beginning on approximately August 17, 1992 and continuing through approximately September 12, 1992, abused alcohol and barbituates, discontinued his Lithium and threatened to kill himself.

4. Respondent, during or about the month of May 1995, brought contraband into the Attica Correctional Facility where he was employed as Chief Psychiatrist, including live ammunition and gun magazines. During August of 1995, Repondent was in possession of literature entitled "Fugitive: How to Run, Hide and Survive" and "New ID in America". On occasions, Respondent brought contraband into the facility after being directed to remove it.

5. Respondent, on or about August 14, 1995, pointed a gun at a courier who had arrived at Respondent's residence to pick up a letter.

11/27/95
Amended
MPZ

6. Respondent, on or about August ¹⁵~~14~~, 1995, was found to have at his residence approximately ¹⁰~~14~~ firearms, including one which had been converted to an automatic weapon, and a sawed off ~~shotgun~~. BARREL

7. Respondent, on or about August 14, 1995, made an obscene telephone call to a nurse at the Rockland Children's Psychiatric Hospital.

11/27/95
Amended
MPZ

8. Respondent, on or about August ¹⁵~~14~~, 1995, was found to have ^{IN HIS POSSESSION} ~~on his person~~ a boot knife, a prescription for 90 tablets of Isollyl (Fiorinal) issued by Respondent to ~~his wife~~ ^{ERIN DURAN} and an empty bottle of Prozac 20 mg. issued to ~~Respondent's wife~~ ^{ERIN DURAN}.

9. Respondent failed to attend an evaluation scheduled by the Committee on Physician's Health for August 29, 1995.

10. Respondent, on or about October 20, 1995, failed to appear in Erie County Supreme Court to be arraigned in connection with the events described in Paragraphs A.5 and A.6 above.

SPECIFICATIONSFIRST SPECIFICATIONPRACTICING THE PROFESSION WHILE IMPAIRED BY DRUGS OR MENTAL
DISABILITY

Respondent is charged with professional misconduct by reason of his having practiced the profession while impaired by drugs or a mental disability in violation of N.Y. Educ. Law §6530(7) (McKinney Supp. 1995) in that the Petitioner charges:


1. The facts in Paragraphs A and A.1, A.2, A.3, A.4, A.5, A.6, A.7, A.8, A.9 and/or A.10.

SECOND SPECIFICATIONBEING A HABITUAL USER OR DEPENDENT ON DRUGS OR HAVING A
PSYCHIATRIC CONDITION WHICH IMPAIRS THE ABILITY TO
PRACTICE

Respondent is charged with professional misconduct by reason of his having been a habitual user of or dependent upon narcotics, barbituates, amphetamines, hallucinogens or other drugs having similar effects or being a habitual abuser of alcohol or having a psychiatric condition which impairs the ability to practice in violation of N.Y. Educ. Law §6530 (8) (McKinney Supp. 1995) in that Petitioner charges:

2. The facts in Paragraphs A and A.1, A.2, A.3, A.4, A.5, A.6, A.7, A.8, A.9 and/or A.10.

DATED: *November 14,* 1995
Albany, New York


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