



STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12237

Mark R. Chassin, M.D., M.P.P., M.P.H.
Commissioner

Paula Wilson
Executive Deputy Commissioner

OFFICE OF PUBLIC HEALTH
Lloyd F. Novick, M.D., M.P.H.
Director
Diana Jones Ritter
Executive Deputy Director

May 5, 1994

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Stacey Mondeschein, Esq.
New York State Department of Health
5 Penn Plaza - Sixth Floor
New York, New York 10001

Hector L. Feliciano, M.D.
2801 Lieb Road
Parkton, MD 21120-9154

RE: In the Matter of Hector Feliciano, M.D.

Dear Ms. Mondeschein and Dr. Feliciano:

Enclosed please find the Determination and Order (No. BPMC-94-63) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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), "(t)he

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, appearing to read "Tyrone T. Butler". The signature is fluid and cursive, with a large initial "T" and "B".

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
HECTOR FELICIANO, M.D.**

**DETERMINATION
AND
ORDER**
NO. BPMC-94-63

A Notice of Hearing and Statement of Charges, both dated January 5, 1994 were served upon the Respondent, Hector Feliciano, M.D. **PETER D. KUEMMEL, R.P.A.**, (Chair), **RALPH LEVY, M.D.**, and **STANLEY L. GROSSMAN, M.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. **CHRISTINE C. TRASKOS, ESQ.**, served as the Administrative Officer. A hearing was held on February 23, 1994. The Department of Health appeared by **STACEY B. MONDESCHEIN, ESQ.**, Assistant Counsel. Respondent failed to appear personally at the hearing and was not represented by counsel. 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 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. 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)(d).

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 transcript page numbers or exhibits. These citations represent 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.

1. Respondent was authorized to practice medicine in New York State on January 22, 1973 by the issuance of license number 115091 by the New York State Education Department (Pet. Ex. #2).

2. On September 10, 1990, the Maryland Board of Physician Quality Assurance, issued an Order for Summary Suspension against the Respondent's medical license pursuant to a finding that the "public health, safety and welfare imperatively required emergency action" (Pet. Ex. 4).

3. As a result Respondent signed a Consent Order dated February 16, 1993 with the Maryland Board of Physician Quality Assurance in which he admitted the truth of Findings of Fact and Conclusions of Law that Respondent:

- a. Was guilty of immoral or unprofessional conduct in the practice of medicine (Md. Health Occ. Code Ann. Sec. 14-404 (3));
- b. Failed to meet appropriate standards as determined by appropriate peer review for the delivery of quality medical and surgical care performed in an outpatient surgical facility (Md Health Occ. Ann. Sec. 14-404 (22)) and
- c. Sold, prescribed, gave away, or administered drugs for illegal or illegitimate medical purposes (Md. Health Occ. Code Ann. Sec. 14-404 (27)) (Pet. Ex. 4).

4. Pursuant to the terms of the above-mentioned Consent Order, Respondent's license to practice medicine in Maryland was suspended, with the suspension to be stayed for a period of three years subject to completion of the terms of probation imposed by the Maryland Board of Physician Quality Assurance, which include periodic peer reviews and periodic drug surveys (Pet. Ex. 4).

5. In his letter to Stacey B. Mondeschein dated January 31, 1994, Respondent stated that he has successfully completed all the requirements of his "Probation Before Judgment." This included a preceptorship with an appointed physician, attendance at 2 conferences on substance abuse and addiction, passing the SPEC (FLEX - type) exam, continuing medical education and six month peer reviews. Respondent expressed his remorse for the incidents in question and stated that he had learned his lesson (ALJ Exhibit 1).

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 Committee concluded that the Department has met its burden of proof. In the Consent Order with the Maryland Board of Physician Quality Assurance, Respondent in addition to other changes admitted to allegations that he "sold, prescribed, gave away, or administered drugs for illegal or illegitimate medical purposes." The record demonstrates that Respondent prescribed potentially additive narcotic medications for two patients "in excess of normal therapeutic amounts for a time period of over one (1) year." Education Law Section 6530(2) defines professional misconduct as "Practicing the profession fraudulently or beyond its authorized scope;" Education Law Section 6530(3) defines professional misconduct as "Practicing the profession with negligence on more than one occasion;" Section 6530(4) defines professional misconduct as "Practicing the profession with gross negligence on a particular occasion." Section 6530(5) defines professional

misconduct as "Practicing the profession with incompetence on more than one occasion." and Section 6530(16) defines professional misconduct as "A willful or grossly negligent failure to comply with substantial provisions of federal, state or local laws, rules, or regulations governing the practice of medicine." As a result, the Hearing Committee unanimously voted to sustain the specification of misconduct alleged by the Department.

DETERMINATION AS TO PENALTY

The Hearing 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, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties.

The record established that Respondent committed significant violations of the Maryland controlled Substance statutes. Such misuse of controlled substance privileges has the potential of placing patients in grave risk for dependence or overdose. Respondent did not appear at this proceeding, but offered a letter in which he indicated that he was in full compliance with all terms and conditions set forth by the Maryland Board. Respondent, however, was not subject to cross-examination nor to questions from the Hearing Committee in this proceeding. The Hearing Committee considers Respondent's misconduct to be very serious and is concerned for the health and welfare of patients in New York State. Therefore, the Hearing Committee determined that revocation of Respondent's license is the appropriate sanction under the circumstances.

ORDER

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

1. The Specification of professional misconduct contained within the Statement of Charges (Pet. Exhibit #1) is **SUSTAINED**, and

2. Respondent's license to practice medicine in the State of New York is hereby **REVOKED**.

DATED: Albany, New York
May 2, 1994



PETER D. KUEMMEL, R.P.A, Chair

**RALPH LEVY, M.D.
STANLEY D. GROSSMAN, M.D.**

To: Hector L. Feliciano, M.D.
2801 Lieb Road
Parkton, MD 21120-9154

Stacey B. Mondeschein, Esq.
Assistant Counsel
New York State Department of Health
5 Penn Plaza - Sixth Floor
New York, New York 10001

APPENDIX I

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

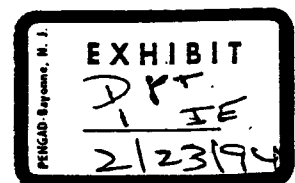
-----X
: IN THE MATTER : NOTICE OF
: OF : REFERRAL
: HECTOR FELICIANO, M.D. : PROCEEDING
: :
-----X

TO: HECTOR FELICIANO, M.D.
2801 Leib Road
Parkton, Maryland 21120-9154

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law Section 230(10)(p) (McKinney Supp. 1993) and N.Y. State Admin. Proc. Act Sections 301-307 and 401 (McKinney 1984 and Supp. 1993). The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 23d day of February, 1994 at 3:00 p.m. o'clock in the afternoon of that day at 5 Penn Plaza, 6th 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. 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, Corning Tower Building, 25th Floor, Empire State Plaza, Albany, New York 12237, ATTENTION: HON. TYRONE BUTLER, (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before February 11, 1994 .

You may file a written answer, brief, and affidavits with the Committee. Six copies of all papers you wish to submit must be filed with the Bureau of Adjudication at the address indicated above on or before February 11, 1994 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 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

January 5, 1994



CHRIS STERN HYMAN
Counsel
Bureau of Professional
Medical Conduct

Inquiries should be addressed to:

Stacey B. Mondschein
Assistant Counsel
NYS Department of Health
Bureau of Professional
Medical Conduct
5 Penn Plaza, 6th Floor
New York, New York 10001
(212) 613-2617

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

-----X
IN THE MATTER : STATEMENT
OF : OF
HECTOR FELICIANO, M.D. : CHARGES
-----X

HECTOR FELICIANO, M.D., the Respondent, was authorized to practice medicine in New York State on January 22, 1973 by the issuance of license number 115091 by the New York State Education Department. The Respondent is not currently registered with the New York State Education Department to practice medicine.

FACTUAL ALLEGATIONS

A. On or about February 16, 1993, pursuant to a consent order the the Maryland Board of Physician Quality Assurance, Respondent's license to practice medicine in Maryland was suspended, with the suspension to be stayed for a period of three years, subject to successful completion of the terms of probation imposed by the Maryland Board of Physician Quality Assurance. This action resolved a disciplinary matter initiated on or about September 10, 1990 with an Order of Summary Suspension.

1. The Maryland State Board of Physician Quality Assurance ordered the stayed suspension of Respondent's medical license upon finding that Respondent:

a. Was guilty of immoral or unprofessional conduct in the practice of medicine (Md. Health Occ. Code Ann. Sec. 14-404 (3));

b. Failed to meet appropriate standards as determined by appropriate peer review for the delivery of quality medical and surgical care performed in an outpatient surgical facility (Md Health Occ. Ann. Sec. 14-404 (22)) and

c. Sold, prescribed, gave away, or administered drugs for illegal or illegitimate medical purposes (Md. Health Occ. Code Ann. Sec. 14-404 (27)).

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

HAVING BEEN FOUND GUILTY OF ACTS CONSTITUTING
PROFESSIONAL MISCONDUCT UNDER NEW YORK STATE LAW

Respondent is charged with committing professional misconduct within the meaning of N. Y. Educ. Law

Sec. 6530(9)(b) (McKinney Supp. 1993), in 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, if committed in New York State, would constitute misconduct under the laws of New York State, including, but not limited to N.Y. Educ. Law Secs. 6530(2), (3), (4), (5) and (16). Petitioner charges:

1. The facts in paragraphs A, A(1), A(1)(a), A(1)(b) and/or A(1)(c).

SECOND SPECIFICATION

HAVING DISCIPLINARY ACTION TAKEN BY A DULY AUTHORIZED
PROFESSIONAL DISCIPLINARY AGENCY OF ANOTHER STATE

Respondent is charged with professional misconduct within the meaning of N. Y. Educ. Law Sec. 6530(9)(d) (McKinney Supp. 1993), having his license to practice medicine revoked suspended or having other disciplinary action taken by a duly authorized disciplinary agency of another state, where the conduct resulting in the revocation, suspension or other disciplinary action involving the license, if

committed in New York State, would constitute misconduct under the laws of New York State, including, but not limited to N.Y. Educ. Law Secs. 6530(2), (3), (4), (5) and (16). Petitioner charges:

2. The facts in paragraphs A, A(1), A(1)(a), A(1)(b) and/or A(1)(c).

DATED: New York, New York

January 5, 1994



Chris Stern Hyman
Counsel
Bureau of Professional Medical
Conduct