

THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, N.Y. 12234

OFFICE OF PROFESSIONAL DISCIPLINE
ONE PARK AVENUE, NEW YORK, NEW YORK 10016-5802

December 7, 1990

Merlin Hidalgo, Physician
12 Astor Place
Wesley Hills, N.Y. 10952

Re: License No. 146234

Dear Dr. Hidalgo:

Enclosed please find Commissioner's Order No. 10996. This Order and the penalty contained therein goes into effect five (5) days after the date of this letter.

If the penalty imposed by the Order in your case is a revocation or a surrender of your license, you must deliver your license and registration to this Department within ten (10) days after the date of this letter. Your penalty goes into effect five (5) days after the date of this letter even if you fail to meet the time requirement of delivering your license and registration to this Department.

You may, pursuant to Rule 24.7 (b) of the Rules of the Board of Regents, a copy of which is attached, apply for restoration of your license after one year has elapsed from the effective date of the Order and the penalty; but said application is not granted automatically.

Very truly yours,

DANIEL J. KELLEHER
Director of Investigations
By:

GUSTAVE MARTINE
Supervisor

RECEIVED

DEC 11 1990

Office of Professional
Medical Council

DHJ/GM/er

CERTIFIED MAIL - RRR

cc: Myron, Beldock, Esq.
Beldock, Levine & Heffernan, Esq.
99 Park Avenue
New York, N.Y. 10016

**REPORT OF THE
REGENTS REVIEW COMMITTEE**

MERLIN HIDALGO

CALENDAR NO. 10996



The University of the State of New York

IN THE MATTER
of the
Disciplinary Proceeding
against

MERLIN HIDALGO

No. 10996

who is currently licensed to practice
as a physician in the State of New York.

REPORT OF THE REGENTS REVIEW COMMITTEE

MERLIN HIDALGO, hereinafter referred to as respondent, was given due notice of this proceeding and informed that he could appear and be represented by an attorney.

On August 10, 1990, the scheduled date of our hearing, respondent appeared before us in person and was represented by his attorney, Myron Beldock, Esq. Marcia Kaplan, Esq., represented the New York State Department of Health.

Petitioner's recommendation as to the penalty to be imposed, should respondent be found guilty, was revocation.

Respondent's recommendation as to the penalty to be imposed, should respondent be found guilty, was a 1 year suspension, stayed, with probation.

We have reviewed the record including respondent's July 30, 1990 letter and brief, photographs of the Wyckoff Heights Medical

MERLIN HIDALGO (10996)

Center, and August 8, 1990 letter with attachments, in this matter; and our unanimous findings of fact, determination as to guilt, and recommendation as to the penalty to be imposed follow:

FINDINGS OF FACT

1. Respondent was licensed to practice as a physician in this State by the New York State Education Department.
2. Respondent was convicted of committing an act constituting a crime, as set forth in the statement of charges and the record herein.

DETERMINATION AS TO GUILT

The charge, annexed hereto, made a part hereof, and marked as Exhibit "A", has been proven by a preponderance of the evidence and respondent is guilty thereof.

**RECOMMENDATION AS TO THE
PENALTY TO BE IMPOSED**

Respondent's license to practice as a physician in the State of New York be revoked upon the charge of which respondent has been found guilty, that execution of said revocation be stayed, and that respondent be placed on probation for eight years as set forth under the terms of probation which are annexed hereto, made a part hereof, and marked as Exhibit "B". Those terms imposed herein require, inter alia, that respondent must comply with the criminal probation imposed upon respondent by Justice Michael L. Pesce that respondent perform 5000 hours of community service by providing medical care to AIDS patients as well as that respondent make

MERLIN HIDALGO (10996)

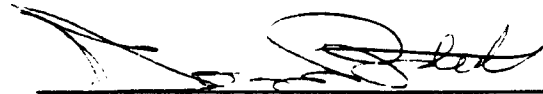
restitution in the amount of \$500,000. Those terms imposed herein also require, inter alia, that respondent work at all times under the supervision of another physician and that respondent obtain and complete, within the first 18 months of the period of probation herein, training consisting of a course concerning New York State law regarding physician's assistants and other health personnel.

Respectfully submitted,

JORGE L. BATISTA

HERBERT BERNETTE EVANS

GEORGE POSTEL



Chairperson

Dated:

9/20/90

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

-----X

IN THE MATTER : STATEMENT
OF : OF
MERLIN HIDALGO, M.D. : CHARGES

-----X

MERLIN HIDALGO, M.D., the Respondent, was authorized to practice medicine in New York State on 1981 by the issuance of license number 146234 by the New York State Education Department. The Respondent is currently registered with the New York State Education Department to practice medicine for the period January 1, 1989 through December 31, 1991 from 12 Astor Place, Wesley Hills, New York.

SPECIFICATION

HAVING BEEN CONVICTED OF
AN ACT CONSTITUTING A CRIME
UNDER NEW YORK STATE LAW

Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law Sec. 6509(5)(a)(i) (McKinney 1985)

in that he has been found guilty of committing an act constituting a crime under New York State law, specifically:

On or about October 13, 1989, the Respondent was convicted after a plea of guilty in the Supreme Court of the State of New York, County of New York, of:

(1) Grand Larceny in the Second Degree, a felony, in violation of Section 155.40 of the Penal Law, in that from on or about December 26, 1984 to on or about May 1, 1988, the Respondent stole from New York State and certain of its fiscal agents, McAuto Systems Group, Inc. and Computer Sciences Corporation, by submitting numerous Medicaid claim forms which he knew contained false statements of consultations, medical care, services and supplies provided to Medicaid patients, in reliance upon which he was paid inappropriately in excess of \$700,000.

(2) Unauthorized Practice of a Profession, a felony, in violation of Section 6512 of the Education Law, in that from on or about November 1, 1985 to on or about May 2, 1988, Respondent knowingly aided and abetted three and more unlicensed persons to practice medicine and employed and held out these unlicensed persons as being able to practice medicine.

(3)-(65) Offering A False Instrument for Filing in the First Degree, 63 separate felony counts, in violation of Section 175.35 of the Penal Law, in that from on or about and between December 27, 1984 and March 21, 1988, the Respondent submitted Medicaid claim forms to the State of New York and its fiscal agents, Computer Sciences Corporation and/or McAuto Systems Group, which forms Respondent knew would become part of the records of the State of New York and its agents, and which the Respondent knew

contained false statements and false information in that it was claimed on these forms that specialty consultations or certain medical care, services and supplies had been furnished to 46 medicaid patients, which medical care, services and supplies Respondent knew had not been provided.

On or about February 21, 1990, the Respondent was sentenced to five years probation on each count, to run concurrently, conditioned upon restitution of \$500,000 to be paid within one year and community service on weekends at a clinic that deals with AIDS patients, and \$100 penalty assessment.

DATED: NEW YORK, NEW YORK
May 30, 1990



CHRIS STERN HYMAN
Counsel
Bureau of Professional
Medical Conduct

EXHIBIT "B"

TERMS OF PROBATION
OF THE REGENTS REVIEW COMMITTEE

MERLIN HIDALGO

CALENDAR NO. 10996

1. That respondent shall make quarterly visits to an employee of and selected by the Office of Professional Medical Conduct of the New York State Department of Health, unless said employee agrees otherwise as to said visits, for the purpose of determining whether respondent is in compliance with the following:
 - a. That respondent, during the period of probation, shall act in all ways in a manner befitting respondent's professional status, and shall conform fully to the moral and professional standards of conduct imposed by law and by respondent's profession;
 - b. That respondent shall submit written notification to the New York State Department of Health, addressed to the Director, Office of Professional Medical Conduct, Empire State Plaza, Albany, NY 12234 of any employment and/or practice, respondent's residence, telephone number, or mailing address, and of any change in respondent's employment, practice, residence, telephone number, or mailing address within or without the State of New York;
 - c. That respondent shall comply with the sentence and each and every term of probation imposed by the criminal court in the underlying criminal proceeding in Kings County, that respondent shall submit written proof from that Department of Probation demonstrating to the satisfaction of the New York State Department of Health, Office of Professional Medical Conduct, that respondent has, in accordance with said sentence, probation, and Department of Probation direction, made restitution in the amount of \$500,000 and has successfully completed the 5,000 hours of community service imposed upon respondent by said criminal court sentence and probation, said proof to be forwarded to the New York State Department of Health, addressed to the Director, Office of Professional Medical Conduct, as aforesaid.

The June 1, 1990 Certificate of Disposition along with the August 3, 1990 letter of Justice Michael L. Pesce, relative to the foregoing provisions of this term of probation herein, are set forth in the exhibit annexed hereto, made a part hereof, and marked as Exhibit "C";

- d. That respondent shall only practice as a physician in a supervised setting, at respondent's expense, under the supervision of a physician licensed by the State of New York, said supervising physician to be selected by respondent and previously approved, in writing, by the Director of the Office of Professional Medical Conduct who shall submit written quarterly reports to said Director regarding said supervision;
- e. That respondent shall, at respondent's expense, obtain, by enrolling in and diligently pursuing a course concerning New York State law regarding physician's assistants and other health personnel, said course to be selected by respondent and previously approved, in writing, by the Director of the Office of Professional Medical Conduct; said course to be completed within the first 18 months of the period of probation herein, such completion to be verified in writing and said verification to be submitted to the Director of the Office of Professional Medical Conduct within 30 days after such completion;
- f. That respondent shall submit written proof from the Division of Professional Licensing Services (DPLS), New York State Education Department (NYSED), that respondent has paid all registration fees due and owing to the NYSED and respondent shall cooperate with and submit whatever papers are requested by DPLS in regard to said registration fees, said proof from DPLS to be submitted by respondent to the New York State Department of Health, addressed to the Director, Office of Professional Medical Conduct, as aforesaid, no later than the first three months of the period of probation; and
- g. That respondent shall submit written proof to

the New York State Department of Health, addressed to the Director, Office of Professional Medical Conduct, as aforesaid, that 1) respondent is currently registered with the NYSED, unless respondent submits written proof to the New York State Department of Health, that respondent has advised DPLS, NYSED, that respondent is not engaging in the practice of respondent's profession in the State of New York and does not desire to register, and that 2) respondent has paid any fines which may have previously been imposed upon respondent by the Board of Regents; said proof of the above to be submitted no later than the first two months of the period of probation;

2. If the Director of the Office of Professional Medical Conduct determines that respondent may have violated probation, the Department of Health may initiate a violation of probation proceeding and/or such other proceedings pursuant to the Public Health Law, Education Law, and/or Rules of the Board of Regents.

THE PEOPLE OF THE STATE OF
NEW YORK

No 18656

against

NO FEE

Merlin Z Hidalgo
8K030398
8K030399
Defendant

On Indictment

No. 8283/88

Filed

August 31

CLERK URGENT 2 for
OFFERING FALSE INSTRUMENT FOR FILING 1
(63 COUNTS)
EDUCATION LAW GS 12.1 UNAUTHORIZED
PRACTICE OF PROFESSION

19 88

I DO CERTIFY that it appears from an examination of the Records on file in this office,

That on *October 13* 19 *89* the defendant was convicted of the crime of
Offering False Instrument for Filing 1° E Felony (63 counts), Education Law GS 12.1 E Fel
and Grand Larceny 2° 1° C Felony

That on *February 21* 19 *90* upon the aforesaid conviction by *Ch. of Dist.*
the Honorable *Michael Row* then a Justice of this Court, sentenced the defendant to

the following:

- Offering False Instrument for Filing 1° (63 counts), Probation 5 years or to each count*
- Education Law GS 12.1 (Unauthorized Practice of Profession) Probation 5 years*
- Grand Larceny 2° - Probation 5 years Counts are Concurrent and \$500,000* Restitution (Partially) 1 year) plus \$100 - Amends to pay by 3/23/90*

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 1 day of

June 19 *90*

Wilbur Lewis

NO FEE
FOR OFFICIAL USE

County Clerk and Clerk of the Supreme Court,
Kings County.

Supreme Court
of the
State of New York



MICHAEL L. PESCE
JUSTICE

JUSTICES' CHAMBERS
360 ADAMS STREET
BROOKLYN, N.Y. 11201

August 3, 1990

Regents Review Committee
c/o Beldock Levine & Hoffman
99 Park Avenue
New York, NY 10016-1502

Re: Dr. Merlin Hidalgo

To whom it may concern:

I understand that Dr. Merlin Hidalgo is the subject of licensing proceedings before the Regents Review Committee, and I thought that the committee might wish to hear from me as the sentencing judge.

Dr. Hidalgo pled guilty to a sixty-five count indictment in exchange for a sentence of probation, \$500,000 restitution, and 5,000 hours of community service. It was my intention that he fulfill the community service obligation by providing medical care to AIDS patients.

While I appreciate the seriousness of the offenses Dr. Hidalgo has committed, and while I offer no opinion as to Dr. Hidalgo's professional fitness, I do believe that Dr. Hidalgo's expertise is a valuable resource that should not be lightly cast aside. Perhaps a similar period of probation could be imposed by the committee, if there is concern over supervision.

I recommend that Dr. Hidalgo be permitted to continue to practice medicine, at least to the extent of completing the sentence of community service.

Very truly yours,


Michael L. Pesce

MLP:slr

**ORDER OF THE COMMISSIONER OF
EDUCATION OF THE STATE OF NEW YORK**

MERLIN HIDALGO

CALENDAR NO. 10996



The University of the State of New York

IN THE MATTER

OF

MERLIN HIDALGO
(Physician)

DUPLICATE
ORIGINAL
VOTE AND ORDER
NO. 10996

Upon the report of the Regents Review Committee, a copy of which is made a part hereof, the record herein, under Calendar No. 10996, and in accordance with the provisions of Title VIII of the Education Law, it was

VOTED (November 16, 1990): That the record herein be accepted; that the findings of fact and determination as to guilt rendered by the Regents Review Committee in the matter of MERLIN HIDALGO, respondent, be accepted; that respondent is guilty of the charge by a preponderance of the evidence; that the measure of discipline recommended by the Regents Review Committee be modified, and that, based upon a more serious view of respondent's misconduct, respondent's license to practice as a physician in the State of New York be revoked upon the charge of which respondent was found guilty; and that the Commissioner of Education be empowered to execute, for and on behalf of the Board of Regents, all orders necessary to carry out the terms of this vote;

and it is

ORDERED: That, pursuant to the above vote of the Board of Regents, said vote and the provisions thereof are hereby adopted and **SO ORDERED**, and it is further

ORDERED that this order shall take effect as of the date of

MERLIN HIDALGO (10996)

the personal service of this order upon the respondent or five days after mailing by certified mail.

IN WITNESS WHEREOF, I, Thomas Sobol, Commissioner of Education of the State of New York, for and on behalf of the State Education Department and the Board of Regents, do hereunto set my hand and affix the seal of the State Education Department, at the City of Albany, this 28th day of November, 1990.

Thomas Sobol

Commissioner of Education

24.7 Review in other cases. The Committee on the Professions shall review and submit its recommendation to the Board of Regents for final determinations in the following cases:

(b) petitions for restoration of a professional license which has been revoked or surrendered pursuant to Education Law, section 6510 or 6510-a. At least one year shall have elapsed from the date of service of the order of revocation, acceptance of surrender, or denial of a prior application for restoration or reinstatement by vote of the Board of Regents, for the acceptance by the department of a petition to the Board of Regents for restoration of a license or certificate, except that a period of time during which the license was suspended during the pendency of the discipline proceeding may reduce the one-year waiting period. This section shall not apply to restoration of licenses which have been temporarily surrendered pursuant to Education Law, section 6510-b, or Public Health Law, section 230(13).

(1) Materials submitted in response to the Committee on the Professions' recommendation to the Board of Regents shall be filed no later than 15 days following the postmarked date of the written notification of the decision or recommendation of the Committee on the Professions.

(2) If an applicant has failed to remain current with developments in the profession, and a substantial question is presented as to the applicant's current fitness to enter into the active practice of the profession, the Board of Regents may require that the applicant take and obtain satisfactory grades on a proficiency examination satisfactory to the department prior to the issuance of a license or limited permit.