

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

April 19, 1996

Merlin z. Hidalgo, Physician
42-F Building
4 Edison Court
Monsey, New York 10952-1927

Re: Application for Restoration

Dear Dr. Hidalgo:

Enclosed please find the Commissioner's Order regarding Case No. 96-49-60R which is in reference to Calendar No. 0015169. This order and any decision contained therein goes into effect five (5) days after the date of this letter.

Very truly yours,

DANIEL J. KELLEHER
Director of Investigations

By: 
Gustave Martine
Supervisor

The University of the State of New York
Education Department



IN THE MATTER

of the

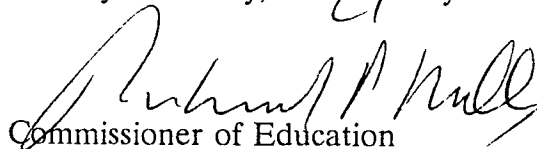
Application of MERLIN Z. HIDALGO
for restoration of his license to practice
medicine in the State of New York

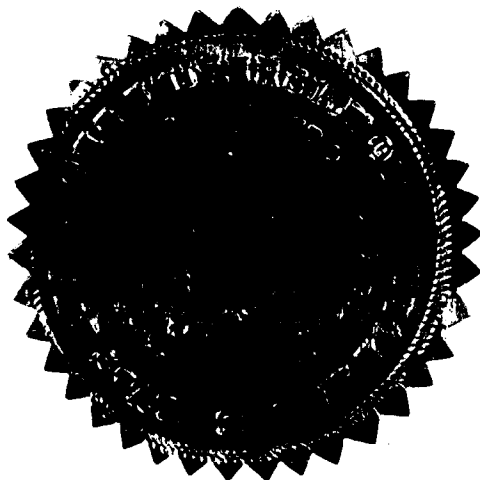
Case No. 96-49-60R

It appearing that the license of MERLIN Z. HIDALGO, 42-F Building, 4 Edison Court, Monsey, New York 10952-1927, to practice medicine in the State of New York, having been revoked by action of the Board of Regents on March 2, 1991, and he having petitioned the Board of Regents for restoration of said license, and the Regents having given consideration to said petition, and having agreed with and accepted the recommendations of the Peer Review Panel and the Committee on the Professions, now, pursuant to action taken by the Board of Regents on March 13, 1996, it is hereby

ORDERED that the petition for restoration of License No. 146234, authorizing MERLIN Z. HIDALGO to practice medicine in the State of New York, is denied.

IN WITNESS WHEREOF, I, Richard P. Mills,
Commissioner of Education of the State of New
York, for and on behalf of the State Education
Department, do hereunto set my hand and affix
the seal of the State Education Department at
the City of Albany, this 29th day of March, 1996.


Commissioner of Education



Case No. 96-49-60R

It appearing that the license of MERLIN Z. HIDALGO, 42-F Building, 4 Edison Court, Monsey, New York 10952-1927, to practice medicine in the State of New York, having been revoked by action of the Board of Regents effective March 2, 1991, and he having petitioned the Board of Regents for restoration of said license, and the Regents having given consideration to said petition, and having agreed with and accepted the recommendations of the Peer Review Panel and the Committee on the Professions, now, pursuant to action taken by the Board of Regents on March 13, 1996 it was

VOTED that the petition for restoration of License No. 146234, authorizing MERLIN Z. HIDALGO to practice medicine in the State of New York, be denied.

96-49-60R
January 3, 1996

THE UNIVERSITY OF THE STATE OF NEW YORK
The State Education Department

Report of the Committee on the Professions
Application for Restoration of Medical License

Re: **Merlin Z. Hidalgo**

Not represented by counsel

Merlin Z. Hidalgo, 42-F Building 4, Edison Court, Monsey, New York 10952-1927, petitioned for restoration of his medical license. The chronology of events is as follows:

- 06/12/81 Issued license number 146234 to practice medicine in New York State.
- 10/13/89 Pled guilty to the crimes of Grand Larceny in the Second Degree, Unauthorized Practice of a Profession, and Offering A False Instrument for Filing in the First Degree. (See "Disciplinary History.")
- 09/21/90 Regents Review Committee recommended that license be revoked, revocation stayed, eight years probation under specified terms and conditions.
- 11/15/90 Board of Regents voted revocation.
- 12/12/90 Commissioner's Order effective.
- 12/14/90 Temporary Restraining Order granted by Appellate Division of the Supreme Court.
- 03/02/91 Stay denied, Temporary Restraining Order vacated.
- 03/02/91 Revocation effective.
- 02/09/92 Petition for restoration submitted.
- 04/28/95 Peer Panel restoration review.
- 06/26/95 Recommendation of Peer Review Panel (See "Recommendation of the Peer Review Panel.")
- 01/03/96 Report and recommendation of Committee on the Professions. (See "Recommendation of the Committee on the Professions.")

Disciplinary History. (See attached report of the Regents Review Committee.) On October 13, 1989, Dr. Hidalgo pled guilty to the crimes of: (1) Grand Larceny in the Second Degree, a felony, in that from December 26, 1984 through May 1, 1988, Dr. Hidalgo stole from New York State and certain of its fiscal agents 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 that from November 1, 1985 through May 2, 1988, Dr. Hidalgo knowingly aided and abetted three or more unlicensed persons to practice medicine and employed and held out these unlicensed persons as being able to practice medicine. (3) 63 separate felony counts of Offering A False Instrument for Filing in the First Degree, in that from December 27, 1984 through March 21, 1988, Dr. Hidalgo submitted Medicaid claim forms to the State of New York and its fiscal agents, which forms he knew would become part of the records of the State of New York and its agents, and which he 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 he knew had not been provided.

On February 21, 1990, Dr. Hidalgo 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.

On May 30, 1990, the Department of Health charged Dr. Hidalgo with professional misconduct in that he had been found guilty of committing an act constituting a crime under New York State law. On September 21, 1990, the Regents Review Committee (Batista, Evans, Postel) found Dr. Hidalgo guilty of the charge and recommended that his license be revoked, that the execution of said revocation be stayed, and that he be placed on probation for eight years under specified terms and conditions. Said terms and conditions included compliance with the criminal probation, that he work at all times under the supervision of another physician, and that he 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 assistants and other health personnel.

On November 15, 1990, the Board of Regents voted to revoke Dr. Hidalgo's license. The Commissioner's Order became effective on December 12, 1990. On December 14, 1990, Dr. Hidalgo instituted an Article 78 proceeding to contest the action of the Regents and obtained a Temporary Restraining Order. On March 2, 1991, the Temporary Restraining Order was vacated, and the revocation became

effective. The Appellate Division, Third Department, of the New York State Supreme Court denied Dr. Hidalgo's appeal.

Recommendation of the Peer Review Panel. (See attached report of the Peer Review Panel.) The Peer Review Panel (Diamond, Lopez, Santiago) met on April 28, 1995. In its report dated June 26, 1995, the Panel recommended that Dr. Hidalgo's petition for restoration of his medical license be denied.

Recommendation of the Committee on the Professions. On January 3, 1996, Dr. Hidalgo met with the Committee on the Professions (Szetela, Porter, Holcomb) regarding his petition for the restoration of his license as a physician in New York. Dr. Hidalgo was not represented by an attorney.

Dr. Hidalgo began the meeting by explaining to the Committee that sometime in 1988 staff from Medicaid reviewed the functioning of his medical practice. He explained that he got into trouble because he had hired individuals who were licensed in the Philippines (but not licensed in any manner here in the United States) to work for him as physician assistants. He also explained that there were times when he was not present in the office while these physician assistants were continuing to see patients. Dr. Hidalgo also stated that he used specialty codes in Medicaid billing where they were not appropriate. The Committee asked Dr. Hidalgo if he understood why it was wrong to employ unlicensed physician assistants. Dr. Hidalgo explained that at the time he thought it was alright to use these individuals as assistants just for doing physicals but that he now understands that this was wrong and could have been a danger to patients.

The Committee asked Dr. Hidalgo why he believed he should have his license restored. Dr. Hidalgo replied that the factors that led to the revocation of his license won't recur. He asserted that he was completely rehabilitated and competent to practice medicine.

The Committee stated that part of the responsibility of a licensed professional was doing the right thing when no one else was watching. The Committee pointed out that Dr. Hidalgo had stolen over \$700,000 in the course of his independent practice. The Committee asked Dr. Hidalgo how they could be sure that this would not happen again. Dr. Hidalgo replied that he was not thinking during the time that this happened and that he has learned his lesson from this tragic event. Dr. Hidalgo stated that he is now more cautious and more aware of the requirements of the law.

When questioned by the Committee about the use of unlicensed individuals to provide services, Dr. Hidalgo stated that at the time he thought he could hire medical staff the same way a hospital does; now he understands that was wrong. The Committee then

questioned Dr. Hidalgo about the billing for services that were not provided. Dr. Hidalgo admitted that there were a few occasions when services were billed when he was not present. When questioned by the Committee as to how he could have overcharged as much as \$700,000 without realizing that these were inappropriate charges, Dr. Hidalgo stated that he tried to follow the Medicaid manual as he understood it. He asserted that he did not realize at the time that his billing was illegal. The Committee questioned Dr. Hidalgo about other staff he may have employed to work on billing. Dr. Hidalgo stated that there were five to six clerical people working for him, but he was overworked and trying to handle everything himself. As a result, things were handled superficially. While Dr. Hidalgo asserted that he was not saving any money from his practice, the Committee pointed out, and Dr. Hidalgo conceded, that he had made several real estate purchases which later were liquidated in his efforts toward restitution.

Dr. Hidalgo stated that he had volunteered 30 hours per week at Bronx-Lebanon Hospital taking care of AIDS patients, and when he lost his license he continued to volunteer in other capacities helping emergency room patients, cleaning examining rooms, and transporting patients to and from x-ray, etc.

The Committee asked Dr. Hidalgo if he truly understood that the manner in which he chose to practice medicine had placed patients at risk and defrauded the United States Government of \$700,000 intended to pay for medical services for the poor. Dr. Hidalgo stated that he wishes that he could undo this but that given the opportunity to return to practice he would be more cautious and attend to what is proper.

The overarching concern in all restoration cases is the protection of the public. A former licensee petitioning for restoration has the significant burden of satisfying the Board of Regents that licensure should be granted in the face of misconduct that resulted in the loss of licensure. There must be a clear preponderance of evidence that the misconduct will not recur and that the root causes of the misconduct have been addressed and satisfactorily dealt with by the petitioner.

After review of the entire record and its meeting with the petitioner, the Committee on the Professions voted unanimously to support the recommendation of the Peer Review Panel of the State Board for Medicine and recommend to the Board of Regents that Dr. Hidalgo's petition for the restoration of his license to practice medicine in New York be denied.