



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

Karen Schimke  
Executive Deputy Commissioner

March 29, 1995

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Karen Carlson, Esq.  
NYS Department of Health  
Corning Tower-Room 2438  
Empire State Plaza  
Albany, New York 12237

William F. Ryan, Esq.  
Tabner, Laudato & Ryan, Esqs.  
P.O. Box 12605  
26 Computer Drive West  
Albany, New York 12212-2605

Romeo Acosta, M.D.  
7200 West Commercial Boulevard  
Downstate Medical Center  
Lauderdale, Florida 33319

**RE: In the Matter of Romeo Acosta, M.D.**

EFFECTIVE DATE: 04/05/95

Dear Ms. Carlson, Mr. Ryan and Dr. Acosta:

Enclosed please find the Determination and Order (No. 95-72) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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.

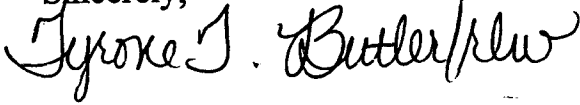
All notices of review must be served, by **certified mail**, upon the Administrative Review Board **and** the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

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,  


Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:nm  
Enclosure

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

**IN THE MATTER  
OF  
ROMEO ACOSTA, M.D.**

**DETERMINATION  
AND  
ORDER  
BPMC-95-72**

A Notice of Hearing and Statement of Charges, both dated November 14, 1994, were served upon the Respondent, **ROMEO ACOSTA, M.D.** **CHARLOTTE BUCHANAN, (Chair)**, **PETER B. KANE, M.D.** and **JOHN D. FULCO, 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.**, Administrative Law Judge, served as the Administrative Officer. A hearing was held on December 28, 1994. The Department of Health appeared by **KAREN E. CARLSON, ESQ.**, Assistant Counsel. The Respondent appeared by **TABNER, LAUDATO & RYAN, ESQS.**, **WILLIAM F. RYAN, JR.**, of 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 State. 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)(b) and (d). A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order in Appendix I.

### **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 May 15, 1972 by the issuance of license number 112138 by the New York State Education Department.  
(Pet. Ex.3)
2. On or about December 12, 1988, the State of Florida, Department of Professional Regulation, Board of Medicine (hereinafter "the Florida Board"), disciplined Respondent for failing to practice medicine within an acceptable standard of care in his treatment of a single patient, in violation of Florida Statute Section 458.333(1)(t), and for failing to maintain written medical records justifying the course of treatment in violation of Florida Statutes Section 458.331(1)(m). As a result, Respondent entered into a Stipulation with the Florida Board, dated October 13, 1988 in which the Board reprimanded Respondent, placed him on probation for four (4) years, fined him Two Thousand (\$2,000) Dollars and ordered him to complete 100 hours of community service. (Pet. Ex. 4)

3. On or about July 12, 1991, the Florida Board of Medicine further disciplined Respondent for violation of Florida Statutes Section 458.331(1)(x) for failure to comply with the terms of his probation as set forth in the Stipulation and Final Order dated December 12, 1988. As a result, Respondent's license to practice medicine was suspended until he satisfactorily completes the SPEX examination and otherwise complies with the requirements to reactivate his Florida medical license. Respondent was also assessed an administrative fine of One Thousand (\$1,000) Dollars and the terms of the original probation were to be continued. (Pet. Ex. 5)
4. On or about December 21, 1993, the Florida Board entered into another Consent Agreement with Respondent. In this agreement Respondent neither admitted nor denied allegations of gross or repeated malpractice, or failing to practice medicine with that level of care, skill, or treatment which is recognized by a reasonably prudent, similar physician, in his treatment of four (4) patients during January, February, and March of 1988, in violation of Florida Statutes Section 458.331(1)(t). (Pet. Ex. 6)
5. On or about April 4, 1994, a Final Order of the Florida Board approved the aforementioned Consent Order and Respondent's license was again suspended until he complied with all provisions for reactivation and he was fined One Thousand (\$1000) Dollars. (Pet. Ex. 6)

### 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 Hearing Committee unanimously concluded that the Department has sustained its burden of proof. The preponderance of the evidence demonstrates that Respondent was disciplined by the Florida Board of Medicine for practicing the profession with negligence on more than one occasion, for failure to maintain adequate patient records and for failing to comply with terms of probation.

Education Law Section 6530(9)(b) defines professional misconduct as "having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York State, constitute professional misconduct under the laws of New York State." Education Law Section 6530(9)(d) defines professional misconduct in part as having disciplinary action taken against his or her license... "after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation suspension or other disciplinary action involving the license or refusal, revocation or suspension of an application for a license or the surrender of the license would, if committed in New York State, constitute professional misconduct under the laws of New York State." As a result, the Hearing Committee voted to sustain the First, Second and Third Specifications of professional misconduct contained within the Statement of Charges.

#### **DETERMINATION AS TO PENALTY**

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, determined by a unanimous vote 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.

At the hearing, the Respondent's attorney requested that Respondent be allowed to maintain his New York license and that it be suspended until such time as Respondent completes a proper examination and otherwise complies with any other conditions that may be imposed upon him.

(T. 7,8) The Hearing Committee is deeply concerned with Respondent's pattern of professional misconduct and his inability to comply with the terms of his probation. In 1988, Respondent took a shotgun approach of ordering a host of inappropriate tests for a patient with a known malignancy. He also exhibited dishonesty in the maintenance of a patient's record. In 1991, his license was suspended for his failure to comply with the terms of his probation. In 1993, Respondent was again

before the Florida Board with additional allegations of repeated instances of poor patient care and in 1994, his suspension was re-affirmed.

The Hearing Committee's primary obligation is to protect the health and safety of the citizens of New York State from the inappropriate practice of medicine. The Hearing Committee has no obligation to allow Respondent a second or third chance as the Florida Board has elected to do. If at some time in the future, Respondent is able to demonstrate that he has satisfactorily completed all necessary re-training and examinations that are in full compliance with New York State standards, he can then re-apply for a medical license in this State. Under the totality of the circumstances, revocation is the appropriate sanction in this instance.

#### ORDER

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

1. The Specification of professional misconduct contained within the Statement of Charges (Petitioner's Exhibit #1) is **SUSTAINED**; and
2. Respondent's license to practice medicine in the State of New York is **REVOKED**.

**DATED:** Albany, New York  
*March 27*, 1995

*Charlotte S. Buchanan*  
**CHARLOTTE BUCHANAN, (Chair)**

**PETER B. KANE, M.D.**  
**JOHN D. FULCO, M.D.**



**TO:** Karen Carlson, Esq.  
NYS Department of Health  
Corning Tower-Room 2438  
Empire State Plaza  
Albany, New York

William F. Ryan, Jr., Esq.  
Tabner, Laudato & Ryan, Esqs.  
P.O. Box 12605  
26 Computer Drive West  
Albany, New York 12212-2605

Romeo Acosta, M.D.  
7200 West Commercial Boulevard  
Downstate Medical Center  
Lauderdale, Florida 33319

**APPENDIX I**

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

-----X  
IN THE MATTER : NOTICE OF  
OF : REFERRAL  
ROMEO ACOSTA, M.D. : PROCEEDING  
-----X

TO: Romeo Acosta, M.D.  
7200 West Commercial Blvd.  
Downstate Medical Center  
Lauderdale, Florida 33319

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. 1994) and N.Y. State Admin. Proc. Act Sections 301-307 and 401 (McKinney 1984 and Supp. 1994). The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 28th day of December, 1994 at 10:00a.m. in the forenoon of that day at the Cultural Education Center, Conference Room B, Empire State Plaza, Albany, New York 12237.

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, DIRECTOR, BUREAU OF ADJUDICATION, (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before December 14, 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 December 14, 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

above, with a copy of the request to the attorney for the Department of Health, whose name appears below, at least five days prior to the scheduled date of the proceeding. Adjournment requests are not routinely granted. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation. Failure to obtain an attorney within a reasonable period of time prior to the proceeding will not be grounds for an adjournment.

The Committee will make a written report of its findings, conclusions as to guilt, and a determination. Such determination may be reviewed by the administrative review board for professional medical conduct.

SINCE THESE PROCEEDINGS MAY RESULT IN A DETERMINATION THAT SUSPENDS OR REVOKES YOUR LICENSE TO PRACTICE MEDICINE IN NEW YORK STATE AND/OR IMPOSES A FINE FOR EACH OFFENSE CHARGED, YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: Albany, New York  
*November 14, 1994*

*Peter D. Van Buren*

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

Inquiries should be addressed to:

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

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

-----X

IN THE MATTER : STATEMENT  
OF : OF  
ROMEO ACOSTA, M.D. : CHARGES

-----X

Romeo Acosta, M.D., the Respondent, was authorized to practice medicine in New York State on May 15, 1972 by the issuance of license number 112138 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**

1. The State of Florida, Department of Professional Regulation, Board of Medicine [hereinafter "the Florida Board"], in a Final Order dated December 12, 1988, disciplined Respondent for failing to practice medicine within an acceptable standard of care in his treatment of a single patient, in violation of Florida Statutes, §458.331(1)(t), and for failing to maintain written medical records justifying the course of treatment in violation of Florida Statutes §458.331(1)(m).
2. More specifically, Respondent was disciplined based on his treatment of a Patient complaining of chronic back and knee pain who also had a history of cancer and radiation therapy.

3. The Florida Board entered into a Stipulation with Respondent, dated October 13, 1988, which:
  - placed Respondent on a four year term of probation;
  - reprimanded Respondent;
  - fined Respondent two thousand dollars;
  - ordered Respondent to complete 100 hours of community service.
4. The conduct resulting in the discipline imposed on Respondent would, if committed in New York State, constitute professional misconduct under the laws of New York State specifically N.Y. Educ. Law § 6530(32) (McKinney Supp. 1994) [failing to maintain a record for each patient which accurately reflects the evaluation and treatment of each patient].
5. The Florida Board, by Final Order dated July 12, 1991, found Respondent guilty of violating any provision of a chapter, rule of the board or department or lawful order of the board or department, previously entered in a disciplinary hearing, in violation of Florida Statutes §458.331(1)(x).
6. More specifically, the Board found that Respondent failed to comply with the terms of his probation as set forth in the stipulation and Final Order dated December 12, 1988.
7. The Florida Board ordered:
  - a suspension of Respondent's license to practice



medicine until he satisfactorily completes an examination and complies with the requirements to reactivate a license in Florida;

- Respondent to pay an administrative fine of one thousand dollars;
  - a continuation of the terms in the original stipulation which placed Respondent on a four year term of probation.
8. The conduct underlying the Florida Board's finding would, if committed in New York State, constitute professional misconduct under N.Y. Educ. Law §6530(29) (McKinney Supp. 1994) [ violating any term of probation or condition or limitation imposed on the licensee].
9. The Florida Board, in a Final Order dated April 9, 1994, disciplined Respondent for gross or repeated malpractice, or failing to practice medicine with that level of care, skill, or treatment which is recognized by a reasonably prudent, similar physician, in his treatment of four patients during January, February, and March of 1988, in violation of Florida Statutes §458.331(1)(t).
10. More specifically, the Florida Board entered into a Consent Agreement with Respondent, dated December 21, 1993, ordering Respondent to the following:
- A suspension of Respondent's license to practice medicine until that time that he has complied with the lawful provisions for reactivating a license in Florida;
  - A fine of one thousand dollars.
11. The conduct resulting in the discipline imposed on

Respondent would, if committed in New York State, constitute professional misconduct under the laws of New York State, specifically N.Y. Educ. Law §6530(3) (McKinney Supp. 1994) [practicing the professional with negligence on more than one occasion].

### SPECIFICATIONS

#### FIRST SPECIFICATION

Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law §6530(d) (McKinney Supp. 1994) by reason of his having disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the disciplinary action would, if committed in New York State, constitute professional misconduct under the laws of New York State in that Petitioner charges:

1. The facts in Paragraphs 1 through 4.

#### SECOND SPECIFICATION

Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law §6530(b) (McKinney Supp. 1994) by reason of his having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the

conduct upon which the finding was based would, if committed in New York State constitute professional misconduct under the laws of New York State in that Petitioner charges:


2. The facts in paragraphs 5 through 8.

**THIRD SPECIFICATION**

Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law §6530(9)(d) (McKinney Supp. 1994) by reason of his having disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the disciplinary action would, if committed in New York State constitute professional misconduct under the laws of New York State in that Petitioner charges:

3. The facts in paragraphs 9 through 11.

DATED: *Nov. 14*, 1994  
Albany, New York

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