

DOH 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

August 30, 1995

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

Luis Orcullo Bacayo, M.D.
118 Lincoln Street
Ransom, Illinois 60470

RECEIVED
AUG 30 1995
OFFICE OF PROFESSIONAL
MEDICAL CONDUCT

RE: In the Matter of Luis Orcullo Bacayo, M.D.

Effective Date: 09/06/95

Dear Ms. Cholakis and Dr. Bacayo:

Enclosed please find the Determination and Order (No. 95-198) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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.

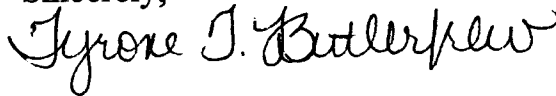
The notice of review served on the Administrative Review Board should be forwarded to:

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 large, prominent "T" and "B".

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-
LUIS ORCULLO BACAYO, M.D.

Respondent

DECISION
AND
ORDER
OF THE
HEARING
COMMITTEE

BPMC ORDER NO. 95-198

This matter was commenced by a Notice of Hearing and Statement of Charges, both dated July 17, 1995 which were served upon **LUIS ORCULLO BACAYO, M.D.**, (hereinafter referred to as "Respondent"). **KENDRICK A. SEARS, M.D.**, Chairperson, **ALBERT L. BARTOLETTI, M.D.**, and **GEORGE F. COUPERTHWAIT, JR.**, 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. **JONATHAN M. BRANDES, ESQ.**, Administrative Law Judge, served as the Administrative Officer. A hearing was held on August 23, 1995 at the Cultural Education Center, Empire State Plaza, Albany, New York. The State Board For Professional Medical Conduct appeared by **CATHERINE CHOLAKIS, ESQ.**, Assistant Counsel, Bureau of Professional Medical Conduct. Respondent made no appearance whatsoever. Evidence was received. A transcript of these proceedings was made.

After consideration of the entire record, the Hearing Committee issues this Decision and Order.

STATEMENT OF CASE

This case was brought pursuant to Public Health Law Section 230(10)(p). This 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 prior professional disciplinary action or criminal conviction. The scope of this 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) [having had disciplinary action taken in another state]. The charge arises from a Consent Order between Respondent and the state of Illinois. The underlying facts involve unlawful prescribing of dangerous drugs. The allegations in this proceeding and the underlying findings from Illinois are more particularly set forth in the Notice of Referral Proceeding and Statement of Charges, a copy of which is attached to this Decision and Order as Appendix One.

FINDINGS OF FACT

The Committee adopts the factual statement set forth on pages one through three of the Statement of Charges (Appendix One) as its findings of fact and incorporates them herein.

CONCLUSIONS

Respondent had notice of this proceeding but chose not to be heard. Respondent entered into a consent order under the cloud of prescribing an anorectic on the premise that it would keep the patient awake. This is not just sub-standard medicine, it is dangerous practice. Respondent is a practitioner in the state of Illinois. Therefore, that state has the opportunity to carefully monitor his practice. New York does not have that option. Given the seriousness of the charges and the stringency of the Illinois Consent Order, the Committee concludes that the only effective way to protect the people of this state is to revoke Respondent's license to practice medicine.

ORDER

WHEREFORE, Based upon the forgoing facts and conclusions,

It is hereby **ORDERED** that:

1. The Factual allegations in the Statement of Charges are **SUSTAINED**.

Furthermore, it is hereby **ORDERED** that;

2. The Specification of Misconduct contained within the Statement of Charges (Appendix One) is **SUSTAINED**;

Furthermore, it is hereby **ORDERED** that;

3. The license of Respondent to practice medicine in the State of New York is **REVOKED**;

Furthermore, it is hereby **ORDERED** that;

4. This order shall take effect **UPON RECEIPT** or **SEVEN (7) DAYS** after mailing of this order by Certified Mail.

Dated:
Syracuse, New York

August 28, 1995


KENDRICK A. SEARS, M.D., Chairperson

ALBERT L. BARTOLETTI, M.D.
GEORGE F. COUPERTHWAIT, JR.

TO: CATHERINE CHOLAKIS, ESQ.
Assistant Counsel
Bureau of Professional Medical Conduct
New York State Department of Health
Corning Tower Building
Empire State Plaza
Albany, N.Y. 12237

LUIS ORCULLO BACAYO M.D.
118 Lincoln Street
Ransom, Illinois 60470

APPENDIX ONE

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

-----X

IN THE MATTER : NOTICE OF
OF : REFERRAL
LUIS ORCULLO BACAYO, M.D. : PROCEEDING

-----X

TO: LUIS ORCULLO BACAYO, M.D.
118 Lincoln Street
Ransom, Illinois 60470

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. 1995) and N.Y. State Admin. Proc. Act Sections 301-307 and 401 (McKinney 1984 and Supp. 1995). The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 23rd day of August, 1995 at 10:00 a.m. in the forenoon of that day at Conference Room E, Cultural Education Building, 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 August 16, 1995.

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 August 16, 1995 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 the 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: Albany, New York
July 17, 1995

Peter D. Van Buren

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

Inquiries should be addressed to:

Catherine Cholakis
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
LUIS ORCULLO BACAYO, M.D. : CHARGES

-----X

LUIS ORCULLO BACAYO, M.D., the Respondent, was authorized to practice medicine in New York State by the issuance of license number 114960 by the New York State Education Department. The Respondent is not currently registered with the New York State Education Department.

FACTUAL ALLEGATIONS

- A. On or about September 15, 1994, Respondent entered into a Consent Order with the Department of Professional Regulation of the State of Illinois (hereinafter "the Department"). As a result of the aforementioned Order, Respondent's Controlled Substances license is suspended for a period of two (2) years, followed by three (3) years of probation and his license to practice medicine in the State of Illinois was placed on probation for a period of five (5) years with the following conditions:
1. Respondent is to complete fifty (50) hours of remedial education for each year of probation;
 2. Said remedial education shall include topics such as management of obesity, record keeping and controlled substances;

3. Every six months, Respondent shall copies of ten (10) patient files to the department for review;
4. Failure by Respondent to cooperate with the terms probation shall ground to revoke Respondent's license to practice as a Physician and Surgeon in the State of Illinois.

B. The conduct which resulted in this Consent Order was Respondent's prescribing Ionamin on seven occasions to an undercover Department Investigator who requested medication to keep him awake while working two jobs.

C. The conduct which resulted in this Consent Order would, if committed in New York State, constitute professional misconduct under N.Y. Educ. Law § 6530(20) [conduct in the practice of medicine which evidences moral unfitness to practice medicine], (35) [ordering of excessive tests, treatment...not warranted by the condition of the patient], (16) [a wilful failure to comply with substantial provisions of federal, state or local laws, rules, or regulations governing the practice of medicine].

FIRST SPECIFICATION

HAVING OTHER DISCIPLINARY ACTION TAKEN

OR VOLUNTARILY SURRENDERED LICENSE

Respondent is charged with professional misconduct under N.Y. Educ. Law §6530(9)(d) (McKinney Supp. 1995) by reason of his having had other disciplinary action taken and/or having

NEW YORK STATE DEPARTMENT OF HEALTH

voluntarily surrendered his license after a disciplinary action instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the action would, if committed in New York State, constitute professional misconduct under the laws of New York State, in that Petitioner charges the facts paragraphs A, B and/or C.

DATED: *July 17*, 1995
Albany, New York

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