



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

June 14, 1994

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Alan Lupinacci, M.D.
310 Roseland Avenue
Essex Falls, New Jersey

Ralpa J. Bavaro, Esq.
Associate Counsel
NYS Department of Health
5 Penn Plaza - Sixth Floor
New York, New York 10001

Effective Date: 6/21/94

RE: In the Matter of Alan Lupinacci, M.D.

Dear Dr. Lupinacci and Mr. Bavaro :

Enclosed please find the Determination and Order (No. 94-85) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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.

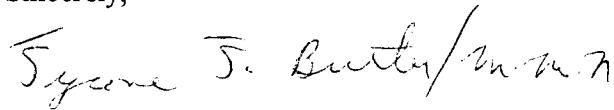
The notice of review served on the Administrative Review Board should be forwarded to:

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,



Tyrone T. Butler, Director
Bureau of Adjudication

TTB:mmn

Enclosure

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

-----X
IN THE MATTER
OF
ALAN LUPINACCI, M.D.
-----X

DETERMINATION
AND
ORDER

No. BPMC-94-85

A Notice of Hearing and Statement of Charges, both dated March 15, 1994, were served upon the Respondent, **Alan Lupinacci, M.D. Michael A. Gonzalez, R.P.A. (Chair), Rafael A. Lantigua, M.D., and Jean Pakter, 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. **JEFFREY ARMON, ADMINISTRATIVE LAW JUDGE**, served as the Administrative Officer. A hearing was held on April 6, 1994. The Department of Health appeared by Ralph J. Bavaro, Esq., Associate Counsel. The Respondent did not appear. 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). 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. Alan Lupinacci, M.D. (hereinafter "Respondent") was authorized to practice medicine in New York State on March 26, 1979 by the issuance of license number 137586 by the New York State Education Department. Respondent is not currently registered with the New York State Education Department to practice medicine.

2. Respondent was personally served with the Notice of Hearing and Statement of Charges on March 16, 1994 at 2 Penn Plaza East, 10th Floor, Newark, New Jersey. (T.4-5; Pet. Ex. #1)

3. The Attorney General of New Jersey filed a Verified Complaint dated October 28, 1992 with the New Jersey State Board of Medical Examiners which alleged that Respondent had improperly touched thirteen patients in a manner which was sexually motivated and not related to any legitimate medical practice. (Pet. Ex. #5)

4. The New Jersey State Board of Medical Examiners filed an Interim Order dated November 5, 1992 which temporarily suspended Respondent's license to practice medicine in New Jersey based upon the Verified Complaint filed by the Attorney General of New Jersey. (Pet. Ex. #4)

5. The New Jersey State Board of Medical Examiners on January 15, 1993 filed an Order which continued the temporary suspension of Respondent's license to practice medicine and surgery in New Jersey based upon findings that the statements of the thirteen complaining patients were credible and that the danger posed by Respondent's continued practice was clear and imminent. (Pet. Ex. #3)

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 concluded that Respondent had been properly served with the Notice of Hearing and Statement of Charges based upon the Affidavit of Service (Pet. Ex. #1), and that it had obtained jurisdiction over the Respondent as a result.

The Hearing Committee further concluded that the Department had met its burden of proof. The preponderance of the evidence clearly demonstrated that Respondent had his license to practice medicine suspended by the State Board of New Jersey. The basis for such suspension was conduct which, if committed in New York State, would constitute professional misconduct pursuant to Education Law Section 6530 (20) [conduct in the practice of medicine which evidences moral unfitness to practice medicine]. Therefore, the Hearing Committee voted to sustain the specification 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, 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.

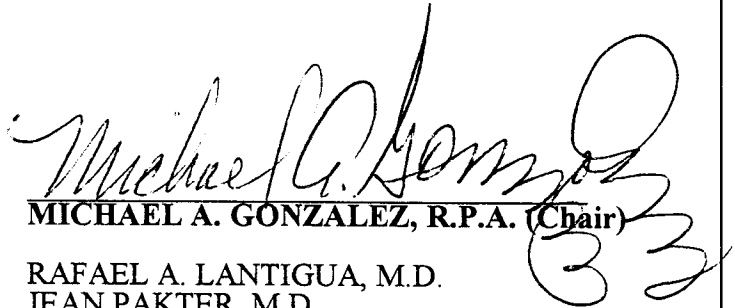
The Committee took note of the Respondent's failure to appear at this proceeding after having been properly served with the Notice of Hearing, the seriousness of the allegations of misconduct, the number of complaining patients and the fact that the New Jersey Board determined that Respondent's continued practice posed a clear and imminent public danger. The Committee also noted that the action by the New Jersey State Board was not final and that a full hearing had not yet been conducted in New Jersey and that Respondent could move for a reinstatement of his New York license should he ultimately be found not guilty in New Jersey of professional misconduct.

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**;
2. Respondent's license to practice medicine in New York State be and hereby is **REVOKED**.

DATED: Albany, New York
June 11, 1994


MICHAEL A. GONZALEZ, R.P.A. (Chair)
RAFAEL A. LANTIGUA, M.D.
JEAN PAKTER, M.D.

TO: Ralph J. Bavaro, Esq.
Associate Counsel
New York State Department of Health
5 Penn Plaza - 6th Floor
New York, New York 10001

Alan Lupinacci, M.D.
310 Roseland Avenue
Essex Falls, New Jersey

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

-----X
: IN THE MATTER : NOTICE OF
: OF : REFERRAL
: ALAN LUPINACCI, M.D. : PROCEEDING
: :
-----X

TO: ALAN LUPINACCI, M.D.
310 Roseland Avenue
Essex Fells, NJ

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 6th day of April, 1994 at 1:00 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, DIRECTOR, BUREAU OF ADJUDICATION, (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before March 27, 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 March 27, 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
March 15, 1994


CHRIS STERN HYMAN
COUNSEL
Bureau of Professional
Medical Conduct

Inquiries should be addressed to:

Ralph J. Bavaro
Associate Counsel
(212) 613-2601

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

-----X
IN THE MATTER : STATEMENT
OF : OF
ALAN LUPINACCI, M.D. : CHARGES
-----X

ALAN LUPINACCI, M.D., the Respondent, was authorized to practice medicine in New York State on March 26, 1979 by the issuance of license number 137586 by the New York State Education Department. The Respondent is not currently registered with the New York State Education Department to practice medicine.

FACTUAL ALLEGATION

- A. By Order of Temporary Suspension issued by the New Jersey State Board of Medical Examiners on January 15, 1993, Respondent's license to practice medicine in the State of New Jersey was temporarily suspended. Said Order continued a prior interim temporary suspension imposed by the Board on November 5, 1992. The Board's Order of Temporary Suspension included findings that, based upon Respondent's

sexual abuse of patients, he posed a clear and imminent threat to public safety.

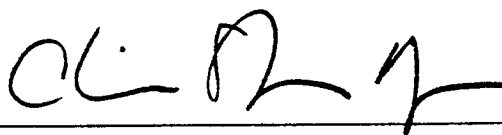
SPECIFICATION OF CHARGES

FIRST SPECIFICATION

Respondent is charged with professional misconduct under New York Education Law Section 6530(9)(d)(McKinney Supp. 1994) in that his license to practice medicine was suspended by a duly authorized professional disciplinary agency of another state based upon conduct which would, if committed in New York State, constitute professional misconduct under New York State law.

DATED: New York, New York

March 15, 1994



CHRIS STERN HYMAN
Counsel
Bureau of Professional Medical
Conduct