

Public



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK

OFFICE OF PROFESSIONAL DISCIPLINE

475 Park Avenue South - Second Floor  
New York, NY 10016-6901

July 14, 2010

Olga Benitez, Physician

REDACTED

Re: Application for Restoration

Dear Dr. Benitez:

Enclosed please find the Commissioner's Order regarding Case No. CP-07-02 which is in reference to Calendar No. 21762. This order and any decision contained therein goes into effect five (5) days after the date of this letter

Very truly yours,

Donald Dawson  
Director of Investigations

By:


REDACTED

Ariana Miller  
Supervisor

DD/AM/go

cc: Dennis J. Alessi, Esq.  
Mandelbaum, Salsburg  
Attorneys at Law  
155 Prospect Avenue  
West Orange, NJ 07052-4204



The  
University of the  
Education  State of New York  
Department

IN THE MATTER

of the

Application of OLGA BENITEZ for  
restoration of her license to practice  
as a physician in the State of New  
York.

Case No. CP-07-02

It appearing that the Order revoking the license of OLGA BENITEZ, REDACTED  
, to practice as a physician in the State of New York, was stayed by  
Order of the Commissioner of Education dated May 16, 2007, and she was placed on probation  
for a period of two years under specified terms and conditions, and she having petitioned the  
Board of Regents for reconsideration of the Order and modification of the Terms of Probation,  
and the Regents having given consideration to said petition and having reviewed the record, and  
having agreed with and accepted the recommendation of the Committee on the Professions, now,  
pursuant to action taken by the Board of Regents on February 10, 2010, it is hereby

ORDERED that the Terms of Probation imposed by the Order of May 16, 2007 are  
hereby modified to read as follows:

6. That the applicant, during the period of probation, shall practice medicine only as a  
salaried physician under supervision in an Article 28 facility, or in another public or private  
setting, approved by the Director, Office of Professional Medical Conduct, under such  
supervision as may be approved by the Director, Office of Professional Medical Conduct.



IN WITNESS WHEREOF, I, David M. Steiner,  
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 2 day of July, 2010.

Commissioner of Education

Case No. CP-07-02

It appearing that the Order revoking the license of OLGA BENITEZ, REDACTED, to practice as a physician in the State of New York, was stayed by Order of the Commissioner of Education dated May 16, 2007, and she was placed on probation for a period of two years under specified terms and conditions, and she having petitioned the Board of Regents for reconsideration of the Order and modification of the Terms of Probation, and the Regents having given consideration to said petition and having reviewed the record, and having agreed with and accepted the recommendation of the Committee on the Professions, now, pursuant to action taken by the Board of Regents on February 10, 2010, it is hereby

VOTED that the Terms of Probation imposed by the Order of May 16, 2007 are hereby modified to read as follows:

6. That the applicant, during the period of probation, shall practice medicine only as a salaried physician under supervision in an Article 28 facility, or in another public or private setting, approved by the Director, Office of Professional Medical Conduct, under such supervision as may be approved by the Director, Office of Professional Medical Conduct.



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

Committee on the Professions  
2<sup>nd</sup> Floor  
89 Washington Avenue  
Albany, New York 12234  
Telephone: (518) 486-1765  
Fax (518) 474-3863

**RECEIVED**

FEB 16 2010

**Office of Counsel**

February 11, 2010

Dennis J. Alessi  
Mandelbaum Salsburg  
Attorneys at Law  
155 Prospect Avenue  
West Orange, NJ 07052-4204

Dear Mr. Alessi:

The application of your client Olga Benitez for reconsideration of the prior order of the Commissioner of Education relating to the restoration of her physician license and for modification of the terms of probation imposed by that order was considered by the Board of Regents at its February 10, 2010 meeting.

After consideration of the entire matter, the Board of Regents voted to modify section 6 of the Terms of Probation imposed pursuant the May 16, 2007 order of the Commissioner of Education to read as follows:

*6. That the applicant, during the period of probation, shall practice medicine only as a salaried physician under supervision in an Article 28 facility, or in another public or private setting, approved by the Director, Office of Professional Medical Conduct, under such supervision as may be approved by the Director, Office of Professional Medical Conduct.*

The Order of the Commissioner of Education pertaining to this decision is being prepared and will be delivered to you shortly.

If you have any questions, you may contact me at 518-486-1765.

Sincerely,

REDACTED

Seth Rockmuller

cc: Walter Ramos  
Mary Ellen Clerkin ✓  
Deborah Couser  
Olga Benitez



**FOR EXECUTIVE SESSION**

**TO:** The Professional Practice Committee

**FROM:** Frank Muñoz REDACTED

**SUBJECT:** Report of the Committee on the Professions Regarding the Application of Olga Benitez for Reconsideration of the Determination of the Board of Regents Regarding the Restoration of her Physician License

**DATE:** January 26, 2010

**STRATEGIC GOAL:** Goal 3

**AUTHORIZATION(S):** REDACTED

**Executive Summary**

Issue for Decision

Should the Regents approve the recommendation of the Committee on the Professions pertaining to an application for reconsideration of a determination of the Board of Regents regarding the restoration of applicant's physician license as listed in the attached report?

Proposed Handling

The question will come before the Professional Practice Committee at its executive session meeting in February 2010 for discussion and action. It will then come before the full Board at its February 2010 meeting for final action.

Procedural History

By order dated May 16, 2007, the application of Olga Benitez for the restoration of her physician license was denied, but the execution of the order revoking her license was stayed and she was placed on probation for a period of two years under specified terms and conditions. Upon successful completion of the probationary period, her license was to be fully restored. Dr. Benitez now seeks modification of the May 16,

2007 order to broaden the settings in which she may practice during her probationary period.

The salient facts in the case and recommendation of the Committee on the Professions are set forth in the attached report of the Committee.

#### Background Information

One application for reconsideration of a determination of the Board of Regents regarding the restoration of a physician license is attached for review and approval.

#### Recommendation

That section 6 of the Terms of Probation imposed pursuant the May 16, 2007 order of the Commissioner of Education in the Application of Olga Benitez for restoration of her license to practice as a physician in the State of New York be modified to read as follows:

*6. That the applicant, during the period of probation, shall practice medicine only as a salaried physician under supervision in an Article 28 facility, or in another public or private setting, approved by the Director, Office of Professional Medical Conduct, under such supervision as may be approved by the Director, Office of Professional Medical Conduct.*

#### Timetable for Implementation

Approval of the Committee on the Professions' recommendation will be effective February 9, 2010.

**Olga Benitez, Physician**  
Application for Reconsideration

(COP: Muñoz, Frey, Templeman)

- **Action Sought to be Reconsidered:** By order dated 5/16/07, the revocation of applicant's medical license was stayed, and she was placed on probation for 2 years with the condition that she practice only in an Article 28 facility.
- **Reason Proffered for Modification of Order:** Applicant has been unable to obtain position in an Article 28 facility due to her exclusion from Medicaid/Medicare programs.
- **COP:** The COP recommends that the terms of probation be modified to broaden the settings in which Dr. Benitez may serve her probationary period.
  - Her request to be reinstated as a provider to the Federal Medicare program was granted by the Department of Health & Human Services on October 4, 2007.
  - On October 9, 2008, the New York State Office of Medicaid Inspector General denied her request to be enrolled again in the New York State Medicaid Program, citing the causes that led to the revocation of her license and the fact that she has been placed on probation.
  - At the time it made its determination, the Board of Regents did not have evidence that Dr. Benitez would be unable to obtain employment in an Article 28 facility as required by the Terms of Probation.
  - More recent cases involving the restoration of physician licenses have included probationary terms that include alternatives to practicing in an Article 28 facility. These alternatives:
    - address the need to assure public protection by requiring that services be provided under supervision approved by the Director of the Office of Professional Medical Conduct (OPMC) and in a setting approved by the OPMC Director; and
    - have been made in recognition of the difficulties that some physicians have had in obtaining positions in an Article 28 facility.



Case Number  
CP-07-02  
January 26, 2010

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

Report of the Committee on the Professions

Application for Reconsideration of the Order of the Board of Regents Regarding the  
Restoration of the Physician License of Olga Benitez

Attorney: Dennis J. Alessi, Esq.

By order dated May 16, 2007, the Commissioner of Education stayed the order of revocation of the physician license of Olga Benitez and placed her on probation for a period of two years under the Terms of Probation recommended by the Peer Committee that considered her case. Those Terms of Probation included the following provision:

*6. That applicant, during the period of probation, shall practice medicine only as a salaried physician under supervision in an Article 28 facility.*

On August 27, 2009, Dr. Benitez submitted an application, pursuant to section 24.9 of the Rules of the Board of Regents, for reconsideration of the Commissioner's order.

Specifically, the application for reconsideration seeks a modification of the above quoted section 6 of the probationary terms. Dr. Benitez asserts that she does not object to working only as a salaried physician under supervision but that she has been unable to complete or even commence probation, because she has not been able to secure a position in an Article 28 facility.

Article 28 facilities treat many patients whose care is paid primarily by Medicare/Medicaid. Dr. Benitez contends that she cannot secure a position at an Article 28 facility because, as a result of the disciplinary action against her, she lost her privileges to be enrolled as a Medicaid/Medicare provider, and the Article 28 facilities to which she has applied will not hire her because she is disqualified from receiving Medicaid/Medicare payments. Her request to be reinstated as a provider to the Federal Medicare program was granted by the Department of Health & Human Services on October 4, 2007. However, on October 9, 2008, the New York State Office of Medicaid Inspector General denied her request to be enrolled again in the New York State Medicaid Program, citing the causes that led to the revocation of her license and the fact that she has been placed on probation. [See 18 NYCRR 504.5(a)(2),(11), and (13)]. She cannot resubmit another application for provider privileges to the Inspector General until October 2010 [18 NYCRR 504.5(d)].

As a result, Dr. Benitez argues that, despite her best efforts, she is simply unable to obtain employment under the probationary terms imposed by the Board of Regents. As a further consequence, Dr. Benitez writes that, although she has been



practicing medicine without incident in New Jersey for seven years,<sup>1</sup> she will be unable to retain hospital privileges there unless she becomes Board certified in Internal Medicine and that she cannot sit for the Boards until New York has released her from probation.

In order for the Board of Regents to reconsider a prior determination in a license restoration matter, section 24.9 of the Rules of the Board of Regents requires a showing that the original action was based on an error of law, that there is new and material evidence which was not previously available, or that circumstances have changed subsequent to the original determination.

The Committee on the Professions (COP) recommended and the Board of Regents determined that Dr. Benitez' license should be restored without restriction following successful completion of her probation. At the time it made its determination, the Board of Regents did not have evidence that Dr. Benitez would be unable to obtain employment in an Article 28 facility as required by the Terms of Probation. Furthermore, it is noteworthy that more recent cases involving the restoration of physician licenses have included probationary terms that include alternatives to practicing in an Article 28 facility. These alternatives, which address the need to assure public protection by requiring that services be provided under supervision approved by the Director of the Office of Professional Medical Conduct (OPMC) and in a setting approved by the OPMC Director, have been made in recognition of the difficulties that some physicians have had in obtaining positions in an Article 28 facility.

In sum, we find that Dr. Benitez has submitted new and material evidence that was not previously available and that circumstances have changed subsequent to the original decision on her application in that she is unable to satisfy the probation term requiring her to work in an Article 28 facility because she has been unable to obtain reinstatement to the New York State Medicaid Program. We are satisfied both that the intent of the original order in this matter will be carried out and that the public will be adequately protected by modification of section 6 of the Terms of Probation to read as follows:

*6. That the applicant, during the period of probation, shall practice medicine only as a salaried physician under supervision in an Article 28 facility, or in another public or private setting, approved by the Director, Office of Professional Medical Conduct, under such supervision as may be approved by the Director, Office of Professional Medical Conduct.*

We so recommend.

Frank Muñoz, Chair  
Joseph Frey  
Leslie Templeman

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<sup>1</sup> Based on her professional misconduct in New York, New Jersey did not impose a revocation or actual suspension of her license; rather, it placed her on probation for three years, which ended in 2003.)

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

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

Re: **Olga Benitez**

Attorney: Michael Schoppmann, Esq.

Olga Benitez, REDACTED petitioned for  
restoration of her physician license. The chronology of events is as follows:

- 08/06/82 Issued license number 151109 to practice medicine in New York State.
- 10/--/98 Charged with professional misconduct by Department of Health.
- 01/19/99 Determination and Order No. 99-6 by Department of Health suspended license to practice medicine for four years, last three years nine months stayed, and ordered probation, a fine, and one hundred fifty hours of community service.
- 07/27/99 Administrative Review Board (ARB) affirmed determination on charges, but overturned penalty and revoked license to practice medicine.
- 03/20/00 Provisional Order of Discipline by New Jersey State Board of Medical Examiners, revoked license to practice in New Jersey.
- 09/13/00 Final Order of Discipline, New Jersey State Board of Medical Examiners, voted three years suspension, execution stayed, probation for three years.
- 09/29/03 Application for restoration submitted.
- 08/04/05 Peer Committee Restoration Review.
- 04/20/06 Report and recommendation of Peer Committee.
- 06/27/06 Committee on the Professions Restoration Review.
- 02/27/06 Report and recommendation of Committee on the Professions.

**Disciplinary History.** (See attached disciplinary documents.) In 1999, the Department of Health charged Dr. Benitez with 33 specifications of misconduct. The Hearing Committee found that she had failed to maintain accurate records and that she had practiced negligently on more than one occasion in treating six patients, because she had failed to obtain and note adequate histories and had failed to perform and note adequate physical examinations. The Committee found further negligence in her failure to provide follow-up treatment to one patient for a heart murmur, to another patient for a breast nodule, to a third patient for tenderness in the abdomen, and to a fourth patient for cystitis. The Committee also found that she had practiced fraudulently and had filed false reports by billing for test interpretations that she had never performed. The Committee found further fraud and false report filings because Dr. Benitez engaged in "unbundling"<sup>1</sup> in billing for tests for three patients. The Committee also sustained charges that Dr. Benitez had ordered certain tests inappropriately for three patients. The Committee further concluded that Dr. Benitez had engaged in conduct evidencing moral unfitness by engaging in excessive billing, falsifying insurance records, and failing to provide follow-up for five different patients.

On January 19, 1999, the New York State Department of Health State Board for Professional Medical Conduct, in Determination and Order No. 99-6, voted unanimously to suspend applicant's license to practice medicine in the State of New York, with the last three years and nine months being stayed, with probation. She was also ordered to pay a \$10,000 fine and to do 150 hours of community service. On July 27, 1999, the Administrative Review Board (ARB), although affirming the Hearing Committee's determination and sustaining the charges against the applicant, voted unanimously to overturn the penalty, and to revoke Dr. Benitez' license to practice medicine in the State of New York. The ARB concluded that there were sufficient grounds to revoke Dr. Benitez' license based on her deficient care for the patients at issue in the proceeding, as well as her fraudulent conduct.

Dr. Benitez was licensed to practice medicine in the State of New Jersey on June 1, 1985. When Dr. Benitez' New York license was revoked, New Jersey started its own inquiry, and her license was provisionally revoked effective March 20, 2000. However, following Dr. Benitez' application for modification or dismissal of the charges against her in New Jersey, on September 13, 2000 the New Jersey Board of Medical Examiners modified the provisional revocation. Dr. Benitez was given a three-year stayed suspension, and was required to take coursework in the management of a medical practice and to pay a fine.

On September 29, 2003, Dr. Benitez submitted an application for restoration of her New York license.

**Recommendation of the Peer Committee.** (See attached Report of the Peer Committee.) The Peer Committee (Norris, Gujavarty, Kase) convened on August 4, 2005. In its report dated April 20, 2006, the Committee voted unanimously to recommend that Dr. Benitez' application for restoration be granted to the extent that the revocation of her license be stayed and that she be placed on probation for a period of

<sup>1</sup> Unbundling occurs when a physician conducts one test, but bills separately for separate parts of the test.

two years under specified terms and conditions, which included a requirement that she only practice medicine as a salaried physician under supervision in an Article 28 facility with quarterly reviews.

**Recommendation of the Committee on the Professions.** On June 27, 2006, the Committee on the Professions (Muñoz, Frey, Templeman) met with Dr. Benitez to consider her application for restoration. Her attorney Michael Schoppmann accompanied her.

The Committee asked Dr. Benitez to explain the events that brought her to her present situation of having to seek restoration of her license. She explained that the problems that led to the revocation of her license, which had occurred between 1990 and 1992, took place during a time in her life which was very difficult. She reported that from 1989 until June of 1990 she was taking infertility drugs, which had pervasive side effects including nausea, fatigue, drowsiness, and anxiety. She told the Committee that after she became pregnant in June of 1990, her husband became hostile towards her, demanded that she get an abortion, and began a campaign of verbal and physical abuse towards her, and that the physical assaults from her ex-husband became so severe that in August of 1990 she had to petition a court for an Order of Protection. The record confirms that a Temporary Order of Protection was granted at that time for a period of two months. Dr. Benitez also reported that she suffered severe complications during her pregnancy, which included hypertension, anemia, and excessive weight gain. She told the Committee that after her twins were born in September of 1991, she secured another Temporary Order of Protection against her ex-husband after he threatened to kill her, and that her ex-husband also harassed her by contacting the Department of Health and OSHA to lodge accusations, most of which were found to be unsubstantiated. She related that during divorce proceedings, her ex-husband petitioned for custody of the children and fought her regarding access and rights to the building where both of them conducted their professional practices. She indicated that her preoccupation with these problems in her life made it difficult for her to concentrate and to provide quality care to her patients.

Dr. Benitez told the Committee that she recognizes that the mistakes that she made were serious and that she takes full responsibility for them. She stated her hope that the Committee would understand that the mistakes did occur during a difficult time in her life. She admitted that she had not, during the 1990 to 1992 time period, adequately documented the history she had taken from patients and information concerning the extent of her physical examinations. She admitted that her billing practice knowledge at that time was not comprehensive. She also indicated that she had relied on information provided by a colleague about the billing process that had not been correct and that she had delegated to others duties and responsibilities for which she now acknowledges she was responsible. However, although she was guilty of improper billing, she denied that it was done with any malice or an attempt to defraud insurance providers.

When asked why her license should be restored to her, Dr. Benitez stated that she is extremely sorry about what happened in her past medical practice, and that since 1995 when she moved her practice to a new location, away from her ex-husband, she has gained control of her life and has distanced herself from the chaos and turmoil she



had experienced in the early 1990's. She has since dedicated her life to volunteering her time, financial resources, and services to serve communities who have little or no access to medical care. She started a free medical clinic at West New York, New Jersey called "La Hermosa Family Care Center", which provides services to uninsured poor and homeless people. She provides services at La Hermosa for free. She also provides medical care at the Union City Family Planning Center in Union City, New Jersey, and at Hoboken Family Planning in Hoboken, New Jersey. In addition, she has been involved with World Missions, a not-for-profit organization, acting as Director from 1996 through 1999, and has organized and participated in missionary trips to Africa. She has raised funds and bought vaccines and supplies for a clinic in Ghana and has opened a school there through her church. She has been able to continue her medical practice because the State of New Jersey allowed her to retain her medical license, despite the fact that New York had revoked her license.

In addition to her efforts to serve communities in New Jersey, Dr. Benitez testified that she has taken corrective measures to correct the shortcomings that led to the loss of her license. She has taken several dozen continuing medical education courses regarding accurate record keeping. She attended a rigorous seminar at Case Western Reserve University in June, 2001, and participated in a seminar offered by the Florida Medical Association entitled "Quality Medical Record Keeping for Healthcare Professionals", in March, 2001. In the latter course, the Florida Medical Association provided her with an on-site critique of her medical records, during which she received an assessment of the strengths and weaknesses of her office record keeping system and practices. She also took the "Physician's Guide to Practice Management", offered by the Medical College of Georgia, from May through August, 2001. The course stressed that the medical record is one of the most important tools she obtains as a physician. She has incorporated the guidelines that she has learned from these courses into her office methodology, to the benefit of her patients and practice at the present time.

In addition to courses on record keeping, she has taken extensive courses on proper billing procedures. The seminar entitled "Intensive Course in Medical Record Keeping" specifically dealt with CPT coding, as well as HCFA guidelines. In addition, Barbara Cobuzzi, an expert in the field of coding and billing, has provided her with specific literature and instruction to completely overhaul her billing practices.

When asked about her work prior to 1991, Dr. Benitez indicated that she had worked in a hospital from 1981 to 1991, and had had no problems. Her record keeping was only a problem during the time of turmoil she described. She also has been working now in New Jersey for over five years without any additional charges of misconduct.

Dr. Benitez stated that she believes that her patients deserve the best she has to offer. Providing the best medical care possible is a passion for her, as well as a recognized privilege. She is thankful that she has been allowed to practice medicine in the State of New Jersey, and hopes that her license will be restored in the State of New York, so that she can also serve the people of this state. She had always wanted to be a doctor since she was a young girl and wants to be an inspiration to her children. It

would be her plan to continue to offer pro-bono medical services as a significant part of her practice.

The overarching concern in all restoration cases is the protection of the public. New York Education Law §6511 gives the Board of Regents discretionary authority to make the final decision regarding applications for the restoration of a professional license. Section 24.7 of the Rules of the Board of Regents charges the COP with submitting a recommendation to the Board of Regents on restoration applications. Although not mandated by law or regulation, the Board of Regents has instituted a process whereby a Peer Committee first meets with an applicant for restoration and provides a recommendation to the COP. A former licensee petitioning for restoration has a significant burden of satisfying the Board of Regents that there is a compelling reason that licensure should be granted in the face of misconduct that resulted in the loss of licensure. There must be clear and convincing evidence that the petitioner is fit to practice safely, that the misconduct will not recur, and that the root causes of the misconduct have been addressed and satisfactorily dealt with by the petitioner. It is not the role of the COP to merely accept, without question, the arguments presented by the petitioner, but to weigh and evaluate all of the evidence submitted and to render a determination based upon the entire record.

The COP agrees with the findings and recommendations of the Peer Committee. Dr. Benitez has presented a compelling case that she understands the nature, causes, and effect of her misconduct, and that she feels great remorse concerning the actions that led to the revocation of her license. Dr. Benitez has demonstrated a true passion for her medical career, appeared genuine in her regret about her previous acts, and was adamant about her desire to provide the best medical care possible in the future.

The COP was also impressed with the efforts that Dr. Benitez has made to reeducate herself in specific areas where she had been deficient. She has participated in many hours of CME course work and it is clear that she has spent a great deal of time addressing the causes of her misconduct. The COP is satisfied that it is highly unlikely that the misconduct would recur. Dr. Benitez has practiced in New Jersey for over five years without incident. In addition, she has been greatly involved in community and public service, and we believe, that if given an opportunity, she would continue those same services in the State of New York. We note that her petition was strongly supported by thirteen affidavits, and that the Office of Professional Medical Conduct does not oppose the restoration of her license.

Based on all of the foregoing, a complete review of the record, and its meeting with her, the Committee on the Professions voted unanimously to recommend that order of revocation of Dr. Benitez' license to practice as a physician in New York State be stayed for a period of two years, that she be placed on probation for a period of two years under specified terms attached to the Report of the Peer Committee and labeled as Exhibit A, and that upon satisfactory completion of the probationary period, her license be fully restored.

Frank Muñoz  
Joseph Frey  
Leslie Templeman

Rec'd. 8-31-09 sm

# MANDELBAUM SALSBERG

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ALL REPLIES TO WEST ORANGE  
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- <sup>1</sup> FELLOW OF THE AMERICAN ACADEMY OF MATRIMONIAL LAWYERS
- <sup>2</sup> DESIGNATED BY THE SUPREME COURT OF NEW JERSEY AS A CERTIFIED CIVIL TRIAL ATTORNEY
- <sup>3</sup> CERTIFIED BY THE SUPREME COURT OF NEW JERSEY AS A CERTIFIED MATRIMONIAL LAW ATTORNEY
- <sup>4</sup> COURT APPOINTED MEDIATOR
- <sup>5</sup> MEMBER OF NJ & PA BAR
- <sup>6</sup> MEMBER OF NJ & FL BAR
- <sup>7</sup> MEMBER OF NJ & NY BAR
- <sup>8</sup> MEMBER OF NJ & MA BAR
- <sup>9</sup> MEMBER OF NJ, NY & CA BAR
- <sup>10</sup> MEMBER OF NJ, NY & PA BAR
- <sup>11</sup> MEMBER OF NJ, NY & D.C. BAR

August 27, 2009

Seth Rockmuller, Esq.  
The University of the State of New York  
Department of Education  
Committee on the Professions  
89 Washington Avenue, 2<sup>nd</sup> Fl., West Wing  
Albany, New York 12234

Re: Olga Benitez, M.D./License No. 151109

Dear Mr. Rockmuller:

This law firm represents the above referenced physician. Please accept this letter in response to your letter dated August 19, 2009. I apologize for my inartfulness of my informal petition dated August 4, 2009. We are requesting reconsideration pursuant to Section 24.9 of the Rules of the Board of Regents.

As you will note, Dr. Benitez' current Order limits her ability to work. Specifically, she is relegated to working in article 28 facilities, which are facilities where the overwhelming majority of patients who are cared for are Medicare/Medicaid patients. Due to the fact that Dr. Benitez is on probation and/or the past findings, New York Medicaid will not remove Dr. Benitez from the Medicaid debarment list. Dr. Benitez is unable to work in the article 28 healthcare sector because she is a debarred individual. It is respectfully requested that her current Order be modified to allow her to work in other healthcare arenas and/or Board of Regents in granting a probationary period to Dr. Benitez is to afford her the opportunity to demonstrate her worthiness to eventually secure the return of an unrestricted, unencumbered license. Given Dr. Benitez' debarment status, it is impossible for her to complete her probation as set forth in the



current Order. We further believe that it was not the intent of the Committee on the Professions for it to restore this licensee's license but not give her the ability to complete her probation. The Committee on the Professions was not aware of Dr. Benitez' debarment status at the time of their determination and it, therefore, lacked material evidence at the time of their determination. Moreover, the Committee on the Professions did not know at the time their decision was made that New York Medicaid would take the position it has taken in advising Dr. Benitez that she is not eligible to be removed from the debarment list. New York Medicaid relies on 18 NYCRR 504.5(a) (2), (11) and (13) which means that Dr. Benitez will not be reinstated by New York and will not be able to work in an article 28 facility. We argue that circumstances have changed since the determination to limit Dr. Benitez' place of employment was rendered. Accordingly, due to lack of evidence and change in a circumstance, Dr. Benitez requests a modification of her existing order.

Currently, Dr. Benitez is serving under the terms of an Order entered by the Board of Regents on March 20, 2007, reinstating her license subsequent to a revocation which occurred on July 27, 1999 (Exhibit A - copy of current Order). Please accept this informal letter as a formal petition on her behalf for modification of the existing Order.

The terms of her current Order provide that she is on probation, her license is tolled until she serves her probation. Further, her ability to practice is limited in that she is relegated to practicing only as a salaried physician under supervision in an article 28 facility. As you well know, the patient base of an article 28 facility is Medicare/Medicaid patients. Dr. Benitez has desperately tried to serve her probation. But, it appears that Dr. Benitez will not ever be able to complete her probation, as ordered.

As a result of Dr. Benitez' license revocation back in 1999, she was debarred by the Office of Inspector General which means that she is prohibited from taking or working anywhere where there are Medicare and Medicaid dollars. Subsequent to the reinstatement of her license in 2007 and her placement on probation, Dr. Benitez was successful in being reinstated by the Office of Inspector General to the Medicare program (Exhibit B - reinstatement notice). Once reinstated by the Federal Government, a request was made to New York State's Medicaid program for reinstatement. Dr. Benitez was denied reinstatement. She was advised verbally that while she had a compelling case for restoration due to 18 NYCRR 504.5, a provision in the law, she would never be reinstated to New York State Medicaid program because of her past actions and the Board's actions. The letter of denial from New York State Medicaid is attached hereto as Exhibit C.

A copy of Section 18 NYCRR 504.5 of the New York State Medicaid statute is annexed hereto (Exhibit D). As you will note, Medicaid mentions Sections 2, 11 and 13 of 18 NYCRR 504.5. In particular Section 10 mentions actions by a licensing board and Section 11 mentions practices of furnishing services under insurance policies as reasons for denial to reinstate to the Medicaid program. Further, based upon 18 NYCRR 504.5(d), Dr. Benitez may not resubmit a new application for enrollment until two years from the date of denial of October 9, 2008. Therefore, she cannot reapply for removal until October 9, 2010. It appears even if she does reapply she will be once again denied. But, at a minimum this means she cannot be employed in an article 28 facility until some time in late 2010.

Be advised that Dr. Benitez was successful in securing employment. She had been offered a position as a staff physician at Comprehensive Care Management Corporation (Exhibit E - letter from Medical Director). Unfortunately, because Comprehensive Care Management Corporation is a health clinic and takes Medicare and Medicaid dollars, Dr. Benitez could not be employed at this facility.

Additionally, the probationary status in New York is also a bar from Dr. Benitez getting on to the panels of certain insurance companies. In particular, she has been informed by Amerihealth and Horizon that she cannot get on to their panels until her license is clear (Exhibit F - letter from Horizon). It is in her interest to timely complete her probation and seek the return of an unrestricted license. She is confident that she will serve her probation without incident or problem.

Dr. Benitez has been successful in securing a return of hospital privileges in New Jersey. However, in order to maintain those privileges she needs to be Board certified. However, she cannot sit for the Internal Medicine Boards until she is off probation. (Exhibit G - letter from American Board of Internal Medicine.)

As you can appreciate, this licensee has a significant stake in getting off of probation. She would very much like to complete her probation and demonstrate that she is a competent practitioner worthy of the return of an unrestricted, unencumbered license. However, this is impossible. Dr. Benitez is in a catch 22 situation.

We have also been informed by the Office of Professional Medical conduct that in addition to Dr. Benitez being in this position there are numerous other licensees in the same position. Dr. Benitez is stymied and cannot begin her probation because of her Medicaid exclusion.

Accordingly, given she is in this situation it is requested that the current Order be modified to allow her to serve her probation in a different fashion. It is respectfully suggested that the Order be modified to allow her to work in a private setting with a practice monitor who would monitor her practice and/or billing. Dr. Benitez would further agree that she would have no responsibility for billing if she were allowed to practice in the other setting.

In the alternative, of course, if the Education Department and/or Board of Regents could divine some other way to solve this dilemma so that she is not on probation and is willing to make a modification of the existing Order, Dr. Benitez would be forever indebted.

Dr. Benitez is a worthy individual who is seeking intervention by way of modification of the existing Order so that she can serve her probation.

After you have had an opportunity to review this petition, please contact the undersigned.

Very truly yours,

WAHRENBERGER & PIETRO, LLP

REDACTED

DENNIS ALESSI

Enclosure

cc: Olga Benitez, MD  
Cheryl Ratner  
Leonard Lapinski

**EXHIBIT A**

The  
 University of the  State of New York  
 Education Department

IN THE MATTER

of the

Application of OLGA BENITEZ for restoration of her license to practice as a physician in the State of New York.

Case No. CP-07-02

It appearing that the license of OLGA BENITEZ, REDACTED to practice as a physician in the State of New York, was revoked by the Administrative Review Board for Professional Medical Conduct, effective July 27, 1999, and she 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 Committee and the Committee on the Professions, now, pursuant to action taken by the Board of Regents on March 20, 2007, it is hereby

ORDERED that the petition for restoration of License No. 151109, authorizing OLGA BENITEZ to practice as a physician in the State of New York, is denied, but that the execution of the revocation order is stayed, and said OLGA BENITEZ is placed on probation for a period of two years under specified terms and conditions, and upon successful completion of the probationary period, her license to practice as a physician in the State of New York shall be fully restored.



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 16 day of May, 2007

REDACTED

Commissioner of Education



# The University of the State of New York

NEW YORK STATE EDUCATION DEPARTMENT  
OFFICE OF PROFESSIONAL RESPONSIBILITY  
STATE BOARD FOR MEDICINE

--X

In the Matter of the Application of

OLGA BENITEZ, M.D.

REPORT OF  
THE PEER  
COMMITTEE  
CAL. NO. 21762

for the restoration of her license to  
practice as a physician in the State of  
New York.

-----X

OLGA BENITEZ, hereinafter referred to as the applicant, was previously licensed to practice as a physician in the State of New York by the New York State Education Department. The applicant's license was revoked as a result of a professional misconduct proceeding, and she has applied for restoration of this license.

On August 4, 2005, this Peer Committee convened to review this matter and make the following recommendation to the Committee on the Professions and the Board of Regents.

### BACKGROUND INFORMATION

The written application, supporting papers provided by the applicant, and papers resulting from the investigation conducted by the Office of Professional Discipline (OPD) have been compiled

OLGA BENITEZ, M.D. (21762)

by the prosecutor from OPD into a packet that has been distributed to this Peer Committee in advance of its meeting and also provided to the applicant.

Listed below is the background information from that packet and the information contained in the applicant's submissions on the day of the meeting. Further details pertaining to these documents may be found therein.

PRIOR DISCIPLINE PROCEEDING

Action by the New York State Department of Health

Case No. BPMC 99-6

January 19, 1999- The New York State Department of Health State Board for Professional Medical Conduct, Determination and Order #99-6, voted unanimously to suspend the applicant's license to practice medicine in the State of New York.

July 27, 1999- The Administrative Review Board (ARB) affirmed the Hearing Committee's Determination sustaining the charges against the applicant, but voted unanimously to overturn the penalty and, revoked the applicant's license to practice medicine in the State of New York.

Specifications of Misconduct

The applicant was found guilty of One Specification of professional misconduct as defined by New York Education Law

OLGA BENITEZ, M.D. (21762)

§6530(3), by practicing medicine with negligence on more than one occasion.

The applicant was found guilty of Six Specifications of professional misconduct as defined by New York State Education Law §6530(2) by practicing the profession of medicine fraudulently.

The applicant was found guilty of Six Specifications of professional misconduct as defined by New York Education Law §6530(21) by willfully making or filing a false report.

The applicant was found guilty of Three Specifications of professional misconduct as defined by New York Education Law §6530(35) by ordering excessive or unnecessary tests or treatments.

The applicant was found guilty of Six Specifications of professional misconduct as defined by New York Education Law §6530(32) by failing to maintain accurate patient records.

The applicant was found guilty of One Specifications of professional misconduct as defined by New York Education Law §6530(20) by engaging in conduct in the practice of the profession of medicine that evidences moral unfitness.

Nature of the Misconduct

The Committee determined that the applicant failed to maintain accurate records for all Patients. The Committee also



OLGA BENITEZ, M.D. (21762)

found that the applicant practiced negligently on more than one occasion in treating six Patients, because the applicant failed to obtain and note adequate histories and to perform and note adequate physical examinations. The committee found further negligence in the failure to provide follow-up treatment to Patient A for a heart murmur, to Patient B for a breast nodule, to Patient D for tenderness in the abdomen and to Patient F for cystitis. The Committee found that the applicant practiced fraudulently and filed false reports by billing for test interpretations the applicant never performed. The Committee found further fraud and false report filings because the applicant engaged in "unbundling" in billing for tests for Patients B, D, and F. Unbundling occurs when a physician conducts one test, but bills separately for separate parts of the test. The Committee also sustained charges that the applicant ordered certain tests inappropriately for Patients B, E and F. The Committee concluded that the applicant engaged in conduct evidencing moral unfitness, by engaging in excessive billing, falsifying insurance records and failing to provide follow-up treatments for Patients A, B, D and F.

APPLICATION FOR RESTORATION

On September 29, 2003, the applicant executed the New York

OLGA BENITEZ, M.D. (21762)

State Education Department's standard form for applying for restoration of licensure. The application contained information and attachments as referred to below:

ATTACHMENTS TO THE PETITION

- Personal statement of the applicant, in which she outlines both her personal and professional history. The applicant describes the corrective measures she has taken in her current practice in New Jersey, specifically in the areas she was found to be deficient. In addition, the applicant speaks of the charitable service she both participates in and provides. The applicant expresses her sincere desire to prove herself worthy of faith and trust and to prepare herself both professionally and personally for the restoration of her license in New York.
- Thirteen affidavits, nine of which were from professional colleagues, three from professional clergy and one from a community professional.
- Documentation that she had participated in over three-dozen different CME courses. Credits for this CME total over 260 credit hours.

OLGA BENITEZ, M.D. (21762)

- Professional rehabilitative activities in the areas of; Medical Records Maintenance, Billing Procedures, Charting and Practice Management.
- Final Order of Discipline by the State of New Jersey Board of Medical Examiners dated October 11, 2000, stating that; effective September 13, 2000, applicant's license to practice medicine and surgery in the State of New Jersey was suspended for a period of three years, the entirety of which is stayed and shall be served as a period of probation.

INVESTIGATION BY OPD

Subsequent to the filing of the Petition, OPD conducted an investigation for the purposes of this proceeding. Information from that investigation, including reports from the investigators and other documentation, was made part of the packet for the proceeding. Certain information from the packet has been summarized above. Among the information not summarized is a report from the investigator dated April 19, 2004.

This report summarizes an in-person interview conducted with the applicant, who was represented by counsel.

The report begins with an outline of the applicant's disciplinary history as filed in her application for restoration.

OLGA BENITEZ, M.D. (21762)

The applicant maintains a current license to practice medicine in New Jersey and has a solo family practice in Union City, New Jersey. The applicant stated that she works between 30 and 35 hours a week. She accepts private insurance plans, but is banned from the Medicare and Medicaid programs, pending the possible restoration of her New York license.

In addition to her family practice, the applicant is the Medical Director at the Jersey City Medical Center. This is a church-based program practice that is open every Thursday. This practice offers free health care treatment to low-income clientele.

Since revocation, the applicant, to the best of her knowledge, has not had any complaints filed against her nor have there been any inquiries from insurance companies regarding her billing practices.

The applicant does not have privileges at any hospital but is eager to have her privileges restored. If her New York license is restored, the applicant is confident these privileges will likely be restored.

The applicant has taken several intensive courses in an effort to correct the problems that led to her revocation. Course work has included but is not limited to; patient documentation,

OLGA BENITEZ, M.D. (21762)

patient assessment and planning, record keeping and evaluation of a patient with medical surgical breast symptoms.

The applicant said that she had attempted to change her billing procedures before the investigation by the Department of Health. She admitted that she was guilty of improper billing, but denied that it was done with malice afterthought or in an attempt to defraud the insurance providers. The applicant said that she made a mistake in that she had relied on information provided by a colleague regarding the billing process.

The applicant supplied a report from Barbara Cobuzzi of Cash Flow Solutions Inc, who reviewed the charges of "unbundling" that were filed against the applicant and it was Ms. Cobuzzi's opinion that the applicant was not guilty of "unbundling".

The applicant takes full responsibility for the actions that led to the revocation of her license but also mentioned that there were personal problems with her husband (from whom she is now divorced). He was her professional partner at the time and had locked her out of the office on several occasions and subsequent thereto, the applicant noted some patient records were missing.

Thirteen written affidavits were submitted in support of reinstatement of the applicant's license and the following were interviewed to elaborate on their written affidavits:

OLGA BENITEZ, M.D. (21762)

Gara M. Sommers, M.D.: is a licensed physician in both New York and New Jersey. She has known the applicant for about two years, both personally and professionally. Dr. Sommers stated that the applicant is an excellent, caring physician and that she has never received any complaints from referrals made to the applicant.

Eliseo Asencio, M.D.: is an internist licensed in both New York and New Jersey. He has known the applicant for over 27 years. The applicant has referred patients to him and she has always followed up with him regarding the care of these patients. Dr. Ascencio is aware of the coursework the applicant is taking to keep current in her profession and to avoid the mistakes made in the past. Dr. Ascencio categorized the applicant as community-oriented and feels she would be an asset to the medical profession, if her license were to be reinstated.

Mary Jane Brewer, M.D.: is the Dean of Students at Brewer Christian College in Jacksonville, Florida. She stated that she has known the applicant for approximately eight years. She has worked in the past at various missions with the applicant and was also a

OLGA BENITEZ, M.D. (21762)

witness at the New Jersey State Board of Medicine's Discipline Hearing. Dr. Brewer stated that the applicant did follow up with her patients but failed to document these follow-ups in her records. The doctor also stated that he felt that the problems with the billing and accounting practices of the office were the result of the applicant's brother being in charge of that area.

Gary J. Guarnaccia, M.D.: is a physician licensed in both New York and New Jersey. He has known the applicant for over ten years and has worked with her in the past and looks forward to working again with her, if her license is reinstated. Dr. Guarnaccia believes the applicant has taken extensive coursework to correct the problems that led to her revocation.

PEER COMMITTEE

On August 4, 2005, this Peer Committee met to consider this matter. The applicant appeared before us represented by her attorneys, Michael Schoppmann, Esq. and Rudolph C. Gabriel, Esq. Also present was Jameione Winston-Day, Esq., an attorney for the New York State Education Department.

Mr. Schoppmann began his opening statement with a background of events that occurred during the hearing that led to the



OLGA BENITEZ, M.D. (21762)

applicant's license being revoked. Mr. Schoppmann stated that while the applicant was advised that she could take an Article 78 proceeding against the ruling by the ARB, she said absolutely not. The applicant stated that this was her responsibility, it was her career and she should have made certain that she was represented better. Mr. Schoppmann went on to say that he and his client, the applicant, were not here to question what the State of New York did previously in terms of its action.

Mr. Schoppmann would like this committee to look at the record which shows that not only were they granted a hearing with the State of New Jersey but New Jersey granted the applicant an unrestricted license to practice medicine in that state, and this is an endorsement of who she is. Mr. Schoppmann went on to say that the applicant has been practicing medicine in New Jersey since 2000 without blemish, without incident, successfully, without suit and without claim.

Mr. Schoppmann continued by telling the committee that the applicant believes that if there were mistakes made, then it was her responsibility. She believes she has to prove herself to this committee. The applicant believes that the privilege to practice medicine is the highest privilege that can be granted. The applicant has taken many courses during the past years that were

OLGA BENITEZ, M.D. (21762)

specifically related to her practice deficiencies. Mr. Schoppmann wanted the committee to note that the applicant should have paid more attention and should have managed her billing practices better. While her actions were structurally incorrect, they were not fraudulent or dishonest.

In closing Mr. Schoppmann said he wanted this committee to come to understand who the applicant is. The State of New Jersey recognized this and gave the applicant a chance and hopefully this committee will do the same. Mr. Schoppmann asked that the committee look at the last five years to see how the applicant has sought to improve herself and remedy problem areas through her CME. The applicant wants to go back to the free clinics where she had worked before and give back to the communities that need her. Mr. Schoppmann said there is no one more deserving of trust and more deserving of the restoration of this privilege than the applicant.

Ms. Winston-Day began her opening statement stating that the purpose of today's proceedings is to assess whether or not the applicant is worthy of the public trust. The committee must determine whether the applicant has sufficed in getting the CME necessary and whether or not the committee believes, after

OLGA BENITEZ, M.D. (21762)

reviewing the documents, they warrant the public trust to restore the applicant's license to practice medicine.

Additional documentation of ongoing CME was offered to supplement the previously provided documents. It was noted by Ms. Winston-Day that these documents would be accepted but there were no signed certification from the programs, although it is signed by the applicant that she attended. These documents are marked as applicant's A, B and C.

Mr. Schoppmann began his questioning of the applicant by asking her to explain what measures to change her method of practice she has taken since the revocation of her New York license to practice medicine. The applicant responded that she took action immediately, not only by taking the standard CME courses but by taking comprehensive courses in medical recordkeeping. The applicant explained that the first course she took was with the Florida Medical Association. This course required extensive reading followed by four hours of instruction and then a personal audit where they were given a set of records to implement what they had learned and make the necessary corrections. The second course was at Ohio State Western University. This was a two-day class where they sat with staff and learned all types of recordkeeping techniques. Some of the areas

OLGA BENITEZ, M.D. (21762)

that were emphasized were; taking patient information, accuracy, assessment, note taking, tests follow-up, follow-up appointments and giving patients information. The applicant took a third course at the Medical College of Georgia. This course lasted for several months. The applicant stated that she was sent a booklet, which was divided into modules. After each module's lesson, they were given a practice type of review where they make the necessary changes and recommendations. Once this was done, they then sent in the draft to the college and the college would in turn send back a corrected draft showing information missed or incorrect. In addition, there was phone contact where necessary.

The applicant was then asked, over and above the previously mentioned courses, what has she done in CME course work. The applicant stated that she has attended as many CME courses as possible in order to continue to learn. The applicant said that she keeps abreast in all of the new developments in her attempt to learn and contribute as much as possible in her treatment of her patients.

The applicant was then asked about her billing and coding operations. Since this was a concern of the State of New York previously, the applicant was asked whether she has hired anyone or brought someone in to oversee her billing and coding

OLGA BENITEZ, M.D. (21762)

operations. The applicant responded that Barbara Cobuzzi, an expert in coding and billing, did a review of all the records from the applicant's past practice. In addition Ms. Cobuzzi gave the applicant information and guidance. The applicant keeps in touch still with Ms. Cobuzzi to consult with her so no more mistakes are made.

Mr. Schoppmann asked the applicant to verify that since she has been granted an unrestricted license to practice medicine in New Jersey, that she has had no complaints to the State Board of Medical Examiners. The applicant responded "no lawsuits, no complaints, absolutely not".

Mr. Schoppmann then asked about the applicant's desire to come back to work in New York and whether she had any employment offers to do so. The applicant responded that she would love to come back because not only does she have roots in New York but she also feels that she has left her church community. Additionally Dr. Gary Guarnaccia has offered the applicant employment. Dr. Guarnaccia is the head of OB-GYN at the Parkway Hospital. He has offered the applicant a full-time position in his office doing family practice for his patients.

The applicant was then asked about her acceptance of responsibility for the circumstances that led to the revocation of

OLGA BENITEZ, M.D. (21762)

her license in New York. The applicant stated that mistakes are costly and when you make a mistake then you have to correct it and make restitution. She said she feels that she has been successful in doing this through her acknowledgment of her mistakes and the reeducation she has completed. The applicant went on to say that there are no words that can tell the committee how bad she feels for the pain she has caused her family, her patients, herself and the community. The applicant would like the opportunity to prove herself worthy of the privilege to practice medicine again in New York.

Mr. Schoppmann asked the applicant if she felt that she was a different physician today than she was when her difficulties arose. In response, the applicant stated that she was different because when you loose everything that is when you realize what you love most. The applicant described the loss as getting up every morning feeling like your purpose in life is gone. It's not a pain you feel in your heart but in your soul.

Ms. Winston-Day began her cross-examination by asking the applicant what she has learned from the courses taken that she was not aware of before. The applicant stated that she has learned to keep accurate records and that those records must be

OLGA BENITEZ, M.D. (21762)

complete and because patient's lives are at stake, proper follow-up care and documentation is crucial.

Ms. Winston-Day asked the applicant to elaborate on the communities where she provides and provided care. The applicant explained that these are very poor communities and many times patients do not go to the doctor because they do not have the resources to pay for services. The applicant accepts whatever payment the patients can give for services. In addition, the applicant stated that she works at a free clinic and at times refers those in need to these free clinics for services.

Dr. Kase asked the applicant questions about her appointment schedule, patient schedule and her distribution of time among her varied obligations. The applicant explained that new patient visits usually take between 45 minutes and an hour and follow-up visits take 20 to 30 minutes approximately. An average day usually runs from 9:30 a.m. until around 7:00 p.m. and that she works half days on Saturday's. Typically, the applicant is in her office most mornings and early afternoons. She provides services to the clinics generally in the late afternoons and evening hours.

Dr. Kase followed with questions about the faith-based care the applicant provides as well as questions about being able to



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OLGA BENITEZ, M.D. (21762)

include a New York practice into what is already a very busy schedule. The applicant noted that in order to provide medical care in the community church setting, she must have a medical license. Concerning the job that Dr. Guarnaccia offered, the applicant explained that she would probably work there only twice a week and that she would restructure her other commitments. Dr. Kase voiced his concerns about the applicant's ambitious plans to work in the variety of settings discussed and said he is concerned about the time and balancing of the workload. The applicant said she feels confident that she can restructure her schedule to be able to continue her current obligations as well as picking up the obligations she had previously in New York. She feels she has to give back to the community and that she left unfinished business in New York.

Dr. Gujavarty asked the applicant about having a monitor come to her practice and about the applicant's standard of pro bono care. The applicant stated that she would have no hesitation about supplying records to a monitor for examination. The applicant also stated that she believed the standards of care for pro bono work anywhere should be the best standards of care. She continued saying that there should be no difference if a person is paying or not paying.

OLGA BENITEZ, M.D. (21762)

Dr. Norris asked a few questions relating to the applicant's current residence, how her income is derived from her practice and any restrictions that may have been placed on her New Jersey medical license. The applicant began by stating that she currently resides in New Jersey but does not feel that will hinder her practicing medicine in New York. The applicant's income is derived from her practice which is half insurance payments and half cash receipts. New Jersey did not and has not put any restrictions on the applicant's license to practice medicine in that state. There has never been any form of monitoring of her practice either.

Questions and discussions arose about the suspension of the applicant's driver's license by the Department of Motor Vehicles. After much discussion, it was clarified by Mr. Schoppmann that there was a single event where a parking violation resulted in a ticket being issued. There was a citation issued and it was mailed to the Staten Island address at which the doctor did not reside. The failure to respond to the citation and the mailed notice triggered a suspension automatically of her license. The failure then to appear for the notice of suspension continued to escalate charges. All of this stemmed from that one single parking violation. He said it was a

OLGA BENITEZ, M.D. (21762)

series of related events but it is one suspension of her license. Mr. Schoppmann said the applicant was allowed to plead guilty to a non-moving violation, which ended the suspension of her license.

Dr. Norris asked the applicant how she strayed so far from what she had been taught at one of the leading residency programs in the country, Montefiore. The applicant stated that it was a very hard period of her life when she lost focus. She explained that she was going through a divorce from a man she felt was abusive. The applicant stated that this abuse was both physical and verbal.

Ms. Winston-Day asked the applicant what assurance she could give the committee that she would not lose focus and put patient's at risk again. The applicant responded that she has learned a great lesson that cost her a great price and caused a tremendous amount of pain for herself, her family and her community. The applicant now says she knows what is important and will not lose focus of what is important.

Ms. Winston-Day then asked what had happened to the patients the applicant had been treating in New York. The applicant said that many of the patients came to New Jersey for treatment while others have gone to other physicians in the

OLGA BENITEZ, M.D. (21762)

area. The applicant had communicated with her patients before leaving so they could find another physician in the area. There were three other physicians in the office so patients could continue to come to the same place if they so chose.

Dr. Gujavarty ended the questioning by asking if there was a reason why the applicant had not obtained her boards. The applicant noted that she was planning to take the boards but was not able to do so after losing her license. She plans on taking the boards if her New York license is restored. She also noted that she trained in primary care at Montefiore under what they called the internal medicine track and primary practice track and that this was a three-year program.

Ms. Winston-Day in her closing statement said that the prosecution would rely on the committee's expertise and impressions as to whether or not the applicant's license should be restored. She reminded the committee to assess whether or not the applicant has accepted full responsibility for what has gone wrong in her past and if she has rehabilitated herself. Ms. Winston-Day also reminded the committee that if the committee agrees to restore the applicant's license, the committee has the ability to place her on probation and to require a form of monitoring that would be appropriate.

OLGA BENITEZ, M.D. (21762)

Mr. Schoppmann closed by saying that the applicant has accepted full responsibility for her past actions. She lost focus, she lost direction and she went on the wrong path.

Mr. Schoppmann asked the committee to look at what it took for a doctor with impeccable credentials and a brilliant background to be pushed astray. He noted that the applicant has brought herself back and proven herself for five years in an unblemished record of practice in New Jersey.

Mr. Schoppmann said that he has never met someone more committed to remediating themselves and proving themselves worthy.

Mr. Schoppmann said that if the applicant is given the opportunity, she will prove herself worthy of the committee's trust.

#### POST HEARING SUBMISSIONS

At the request of the panel the applicant submitted additional papers regarding her CME. These papers are made a part hereof and marked as Hearing exhibit 1.

#### RECOMMENDATION

The Peer Committee has considered the entire record in this matter. We have considered the three criteria typically used in restoration determinations: remorse, re-education, and

OLGA BENITEZ, M.D. (21762)

rehabilitation. However, we are not necessarily limited to such formulaic criteria but may consider other factors, particularly the seriousness of the offences and, ultimately, our judgment as to whether the health and safety of the public would be in jeopardy should the application be granted.

This Peer Committee has no doubt that the applicant is remorseful for the actions that led to the revocation of her license. Time and time again, the applicant spoke of her passion for her career, that it was life and that there was nothing else in this world she would rather be doing than helping people. The applicant appeared genuine when she talked about the shame and embarrassment she has caused not only herself but also her family.

Regarding reeducation, the applicant provided documentation both in writing and through testimony of her CME coursework. The applicant participated in many hours of CME course work that were generic in nature but more importantly, she took courses that were very much specifically related to the problems that led to the revocation of her medical license. The committee was impressed with the efforts the applicant made in her reeducation and her acknowledgement of the areas of deficiencies she needed to improve on.





EXHIBIT "A"

TERMS OF PROBATION  
OF THE PEER COMMITTEE

OLGA BENITEZ, M.D.

CALENDAR NO. 21762

1. That applicant, during the period of probation, shall be in compliance with the standards of conduct prescribed by the law governing applicant's profession;
2. That applicant shall submit written notification to the Director, Office of Professional Medical Conduct (OPMC), Department of Health (DOH), 433 River Street, Troy, NY 12180-2299, of any employment and/or practice, applicant's residence, telephone number, and mailing address and of any change in applicant's employment, practice, residence, telephone number, and mailing address within or without the State of New York;
3. That applicant shall submit written proof from the Division of Professional Licensing Services (DPLS), New York State Education Department (NYSED), 2<sup>nd</sup> Floor, North Wing, 89 Washington Avenue, Albany, New York 12234 that applicant has paid all registration fees due and owing to the NYSED and applicant 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 applicant to the DOH, addressed to the Director, OPMC, as aforesaid, no later than the first three months of the period of probation;
4. That applicant shall submit written proof to the DOH, addressed to the Director, OPMC, as aforesaid, that 1) applicant is currently registered with the NYSED, unless applicant submits written proof that applicant has advised DPLS, NYSED, that applicant is not engaging in the practice of applicant's profession in the State of New York and does not desire to register, and that 2) applicant has paid any fines which may have previously been imposed upon applicant by the Board of Regents or pursuant to section 230-a of the Public Health Law, said proof of the above to be submitted no later than the first two months of the period of probation;

OLGA BENITEZ, M.D. (21762)

5. That applicant shall make quarterly visits to an employee of the OPMC, DOH, unless otherwise agreed to by said employee, for the purpose of said employee monitoring applicant's terms of probation to assure compliance therewith, and applicant shall cooperate with said employee, including the submission of information requested by said employee, regarding the aforesaid monitoring;
6. That applicant, during the period of probation, shall practice medicine only as a salaried physician under supervision in an article 28 facility;
7. That during the period of probation, applicant shall have quarterly performance reports submitted to the New York State Department of Health (DOH), addressed to the Director, Office of Professional Medical Conduct, as aforesaid from applicant's employer, evaluating her performance as a physician in her place of employment, said reports to be prepared by applicant's supervisor or employer;
8. That upon receipt of evidence of noncompliance with or any other violation of any of the aforementioned terms of probation, the New York State Education Department may initiate a violation of probation proceeding and/or such other proceedings pursuant to the Education Law and/or Rules of the Board of Regents.

**EXHIBIT B**



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Inspector General

Washington, D.C. 20201

OCT - 4 2007

Olga Benitez, M.D.

REDACTED

Dear Olga Benitez:

Re: OI File Number 2-99-40797-9

Your request for the reinstatement of your eligibility to participate as a provider of items and services covered by the title XVIII (Medicare) program has been approved. The reinstatement is effective with the date of this notice.

We have notified the appropriate State agencies of this action. However, the States are not obligated to reinstate you to their programs if they have imposed a longer period of exclusion under their own authority.

We recommend that you contact the Medicare carrier to determine your options for participating in that program.

The List of Excluded Individuals/Entities (LEIE) database is carried on the Office of Inspector General's Internet website at <http://oig.hhs.gov/fraud/exclusions.html>. Although your right to participate in the Federal health care programs has been reinstated effective with the date of this letter, your name will remain on the LEIE database until the next monthly update. Until your name is removed from the LEIE database, you should use this letter to demonstrate that your right to participate in the Federal health care programs has been reinstated.

Sincerely,

REDACTED

William J. Hughes  
Reviewing Official  
Health Care Program Exclusions  
Office of Counsel to the Inspector General

cc: Special Agent in Charge, New York

Joann Pietro, Esq.  
Wahrenberger, Pietro & Sherman LLP  
150 Morris Avenue  
Springfield, NJ 07081

**EXHIBIT C**



STATE OF NEW YORK  
OFFICE OF THE MEDICAID INSPECTOR GENERAL  
800 North Pearl Street  
Albany, New York 12204

DAVID A. PATERSON  
GOVERNOR

JAMES G. SHEEHAN  
MEDICAID INSPECTOR GENERAL

October 9, 2008

Olga Benitez, M.D.  
c/o Family Practice & Gynecology Center  
411 43<sup>rd</sup> Street  
Union, NJ 07087

Dear Dr. Benitez:

Your request for enrollment as a provider in the New York State Medicaid Program has been received. Based on the findings of the review, your request for enrollment is denied. Please be advised that this function is now performed by the Office of the Medicaid Inspector General within the Department of Health.

Our determination is based on 18 NYCRR 504.5(a)(2), (11) and (13) and is due to your prior conduct of being charged with professional misconduct. As a result of providing sub-standard medical care, poor record keeping, ordering of excessive test and filing false reports for billing your license was revoked in July 1999. After applying for restoration of your license in September 2003, your license was reinstated in June 27, 2007 and you were placed on probation for two years.

Enrollment in the New York State Medicaid Program is a contractual agreement between the Department of Health as the administrator of the program, and a provider. In determining whether to enter into a contract (enrollment) with an applicant, the Department shall consider many factors with respect to the applicant including any prior finding by a licensing board. Although, your license is active, the causes that led to your license being revoked and currently placing you on probation is sufficient reason for this Agency's decision to deny your application for enrollment.

You may not resubmit a new application for enrollment until two years from the date of this letter. [18 NYCRR 504.5(d)]

-2-

You have the right to appeal this denial by filing a written request for reconsideration. The request must contain all the information you wish to have considered, including any documentation or arguments which would disprove the reason for the denial, or disclose that the denial was based upon mistake of fact. However, please note that your appeal is limited to the consideration of your application and material submitted during the review of your application. Appeals will **NOT** take into account any information obtained or modifications enacted after your review and denial determination. Appeals must be submitted in typewritten form with an original and four (4) copies, and be received by the Agency within forty-five (45) days of the date of this letter.

Please submit your request to my attention at:

Bureau of Investigations & Enforcement  
Office of the Medicaid Inspector General  
800 North Broadway - Lower Level  
Albany, New York 12204

The determination after reconsideration may affirm, reverse or modify the denial, and will be the final decision of this Agency.

Sincerely,

REDACTED

Patricia Meyer, Project Manager  
Bureau of Investigations & Enforcement  
Office of the Medicaid Inspector General

Regular and Certified Mail #7002 0510 0001 7709 8724  
Return Receipt Requested



# **EXHIBIT D**

**Effective Date:**

**Title:** Section 504.5 - Denial of an application.

504.5 Denial of an application. (a) In determining whether to enter into a contract with an applicant, the department shall consider the following factors with respect to the applicant and any affiliated person:

- (1) any false representation or omission of any material fact in making the application;
- (2) any previous or current suspension, exclusion or involuntary withdrawal from participation in the medical assistance program or the Medicaid program of any other state of the United States or from participation in any other governmental or private medical insurance program including, but not limited to, Medicare, Workers' Compensation, Physically Handicapped Children's Program and Rehabilitation Services;
- (3) the receipt of, but not having made restitution for, a Medicaid or Medicare overpayment, as determined to have been made pursuant to a final decision or determination of an agency having the powers to conduct the proceeding and after an adjudicatory proceeding in which no appeal is pending or after resolution of the proceeding by stipulation or agreement; however, if an applicant has entered into a plan of restitution of such overpayments, an application may not be denied based solely on this factor unless the applicant has defaulted in repayment;
- (4) any false representation or omission of a material fact in making application in any state of the United States for any license, permit, certificate or registration related to a profession or business;
- (5) any previous failure to correct deficiencies in the operation of a business or enterprise after having received written notice of the deficiencies from a State or Federal licensing or auditing agency;
- (6) any failure to supply further information concerning the application after receiving a written request for such further information;
- (7) the submission of an application which conceals an ownership or control interest of any person who would otherwise be ineligible to participate;
- (8) an indictment for, or prior conviction of, any crime relating to the furnishing of, or billing for, medical care, services or supplies or which is considered an offense involving theft or fraud or an offense against public administration or against public health and morals;
- (9) a prior finding of having engaged in an unacceptable practice in the medical assistance program, another state's Medicaid program, the Medicare program or any other publicly funded program;
- (10) a current indictment for, or prior conviction of, a crime relating to the furnishing of or billing for medical care, services or supplies, or a determination of having engaged in an unacceptable practice in the medical assistance program;
- (11) a prior finding by a licensing, certifying or professional standards board or agency of the violation of the standards or conditions relating to licensure or certification or as to the quality of services provided;
- (12) any prior pattern or practices in furnishing medical care, services or supplies and any prior conduct

under any private or publicly funded program or policy of insurance;

(13) any other factor having a direct bearing on the applicant's ability to provide high-quality medical care, services or supplies to recipients of medical assistance benefits, or to be fiscally responsible to the program for care, services or supplies to be furnished under the program including actions by persons affiliated with the applicant;

(14) any other factor which may affect the effective and efficient administration of the program, including, but not limited to, the current availability of medical care, services or supplies to recipients

(taking into account geographic location and reasonable travel time).

(b) If any application is denied, the applicant shall be given a written notice of the denial, stating the reason or reasons for the denial. The written notice of denial will be effective upon the date it is mailed to the applicant.

(c) Denial of an application shall preclude the applicant from submitting claims for payment under the medical assistance program either directly, or indirectly through any other person. Any claims submitted by such applicant or such other person and paid by the department shall constitute overpayments.

(d) If an application has been denied, the applicant may reapply only upon correction of the factors leading to its denial, or after two years if the factors relate to prior conduct of the applicant or an affiliated person.

(e)(1) If an application is denied, the applicant may appeal the denial by filing a written request for reconsideration with the department within 45 days of the date of the notice of denial. A timely request stays any action to terminate a provider currently participating in the medical assistance program pending the decision on reconsideration.

(2) The request for reconsideration must include all information which the applicant wishes to be considered in the reconsideration, including any documentation or arguments which would controvert the reason for the denial or disclose that the denial was based upon a mistake of fact.

(3) The department will review its determination to deny enrollment and issue a written determination after reconsideration within 60 days of receipt of the request. The determination after reconsideration may affirm, revoke or modify the denial and will be the final decision of the department.

Volume: C

**EXHIBIT E**

NOV-11-2008 TUE 10:27 AM

FAX NO.

P. 01/03



Comprehensive Care Management Corporation  
2401 White Plains Road  
Bronx, New York 10467

Tel: (718) 515-8600  
Fax: (718) 519-5317

# FAX COVER SHEET

Date: 11/11/08

To: Jeano Pietro, RN, JD

Tel: (973) 258-9000

Fax: (973) 258-9899

From: Dr. Jonathan Gold

Tel: (718) 519-5230

Fax: (718) 653-2078

Number of pages (including cover sheet): 3

### CONFIDENTIAL COMMUNICATION

This transmission is intended only for the individual or entity to which it is addressed and contains information that is confidential. If you have received this communication in error, please destroy the faxed materials and contact the sender immediately at CCM at the phone number indicated above.

This information has been disclosed to you from confidential records and is protected by Federal and State law. This information may include confidential mental health, substance abuse, alcohol abuse and/or HIV-related information. Federal and State law prohibits you from making any further disclosure of this information without the specific written consent of the person to whom it pertains, or as otherwise permitted by law. Any unauthorized further disclosure in violation of the law may result in a fine or jail sentence or both. A general authorization for the release of this information may not be sufficient authorization for further disclosure.

NOV-11-2008 TUE 10:27 AM

FAX NO.

P. 02/03

**CCM**

Comprehensive Care  
Management Corporation  
2401 White Plains Road  
Bronx, New York 10467

Tel: (718) 515-8600  
Fax: (718) 519-5317

November 11, 2008

Patricia Meyer, Project Manager  
Bureau of Investigations & Enforcement  
State of New York  
Office of the Medicaid Inspector General  
800 North Broadway - Lower Level  
Albany, New York 12204

Re: Olga Benitez, MD

Dear Ms Meyer:

I am writing to have Dr. Olga Benitez re-enrolled in the Medicaid Program and removed from the Medicaid Exclusion List.

I am very interested in hiring Dr. Benitez as a full-time physician at Comprehensive Care Management (CCM). CCM is a not-for profit organization which provides care for frail elderly people. It is a division of Beth Abraham Family of Health Services, and it is a Program of All-Inclusive Care of the Elderly (PACE). We provide members with complete primary and subspecialty medical care, medications, hospital care, home care, day care and rehabilitation medicine. Our patients all qualify for nursing home level care and have complex medical problems. In addition, many have severe psychosocial problems. Our patients have very diverse ethnic backgrounds. At several of our sites the majority of patients are Spanish-speaking.

It is difficult for us to attract high caliber physicians to care for these patients. It is especially hard to recruit physicians who are fluent in Spanish. Dr. Benitez is an ideal candidate with her medical knowledge, personality and fluency in Spanish. I and several others of our physicians have interviewed Dr. Olga Benitez and spoken with physicians who have worked with her. The picture which emerges is of a very well trained, caring, smart physician who is especially good at caring for the frail elderly. We want to offer her a full time physician position here, and would like her to start as soon as possible. We are aware of the problems with fraudulent billing in the past. These resulted in a stayed license suspension and exclusion from Medicaid, and have shadowed her career. We accept that this episode was in the past, that it occurred during a period of severe stress in her life and that she has learned important lessons from it.

NOV-11-2008 TUE 10:28 AM

FAX NO.

P. 03/03

Dr. Benitez will not have any direct billing responsibilities, and she will work under my supervision. Our physicians are salaried and do not engage in fee-for service billing. However, they may not be excluded from Medicaid.

I hope that you will move quickly to restore her ability to bill Medicaid and remove her from the Medicaid exclusion list. I feel that she is a rare individual who has a lot to offer to the care of frail elderly people

Thank you for your consideration and help.

Yours truly,

REDACTED

Jonathan W. M. Gold, MD  
Vice President for Medical Affairs  
Comprehensive Care Management  
Professor of Medicine  
Albert Einstein College of Medicine



**EXHIBIT F**

**Horizon**



Horizon Blue Cross Blue Shield of New Jersey

Three Penn Plaza East  
Newark, NJ 07105-2200  
www.horizonblue.com

July 17, 2009

**CERTIFIED MAIL RETURN RECEIPT REQUESTED**

Olga Benitez, MD  
411 43<sup>rd</sup> Street  
Union City, NJ 07087

Dear Dr. Benitez:

The Horizon Blue Cross Blue Shield of New Jersey Credentials Subcommittee (the "Subcommittee") reviewed the additional materials you submitted at its June 2009 meeting. After careful review and discussion, the Subcommittee decided to uphold its original decision to deny your application for participation in the Horizon networks due to the fact that you have had a disciplinary action in the State of New York within the past five years.

If you have any questions about this letter, please contact Dr. Beatriz Jaramillo at (973)466-7108.

Thank you for your interest in Horizon Blue Cross Blue Shield of New Jersey.

Sincerely,

REDACTED

Poonam Alaigh, MD, MS, FACP  
Executive Medical Director and Chairperson, Credentials Subcommittee  
Horizon Blue Cross Blue Shield of New Jersey

CC: Elvis Mustafa  
Keith Spates  
Darrin Chien

# **EXHIBIT G**



American Board of Internal Medicine

*JP*

510 Walnut Street, Suite 1700, Philadelphia, PA, 19106-3609 | 215.446.3500 | FAX 215.446.3477 | e-mail [certs@abim.org](mailto:certs@abim.org)

- Kathleen M. Brown, MD  
Chair
- Walter S. L. ... MD  
Chair Elect
- William P. ... MD  
Chair Elect
- Christine K. ... MD  
President  
Chief Executive Officer
- Mark D. ... MHA  
Senior Vice President  
Chief Financial Officer
- Eric S. ... MD  
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Research Analysis
- Paul J. ... MD  
Vice President  
Test Development
- Timothy H. ... MD  
Vice President  
Communications

September 18, 2008

JoAnn Pietro, Esq  
Whrenberger & Pietro, LLP  
Counselors at Law  
150 Morris Avenue  
Springfield, NJ 07081

*Handwritten initials and a signature*

RE: Dr. Olga Benitez

Dear Ms. Pietro:

I am pleased to inform you that at its recent meeting, ABIM's Staff Credentials Committee agreed that Dr. Benitez is eligible to apply for admission to the Summer 2009 Certification Examination in Internal Medicine. Dr. Benitez's admission to the examination will be contingent upon the ABIM's receipt of confirmation that the probationary status of Dr. Benitez's New York license has been removed and that her license is without conditions or restrictions. From the documentation ABIM has on file from the New York State Licensing Board, it appears Dr. Benitez's probationary period will be completed in June 2009.

Dr. Benitez should be aware that registration for the Summer 2009 Certification Examination in Internal Medicine will open on December 1, 2008. There is a \$400.00 non-refundable late fee for applications received from February 2, 2009 through March 1, 2009. No applications will be accepted after March 1, 2009. Candidates may register for the examination online through "Physician Login" on ABIM's Web site [www.abim.org](http://www.abim.org).

Sincerely,

REDACTED

Cynthia J. Christopher  
Credentials Manager

CJC/mcb

pc: Dr. Olga Benitez

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AMERICAN BOARD OF  
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