

DOH STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Barbara A. DeBuono, M.D., M.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

March 26, 1997

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Marcia Kaplan, Esq.
NYS Department of Health
5 Penn Plaza - Sixth Floor
New York, New York 10001

David Velez, M.D.
2101 28th Street
Sacramento, CA 95818

David Velez, M.D.
PO Box 2783
Granite Bay, CA 95746

RE: In the Matter of David Velez, M.D.

Dear Ms. Kaplan and Dr. Velez:

Enclosed please find the Determination and Order (No. BPMC-97-77) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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
Hedley Park Place
433 River Street - Fourth Floor
Troy, New York 12180

If your license or registration certificate is lost, misplaced or its whereabouts is otherwise unknown, you shall submit an affidavit to that effect. If subsequently you locate the requested items, they must then be delivered to the Office of Professional Medical Conduct in the manner noted above.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), and §230-c subdivisions 1 through 5, (McKinney Supp. 1992), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the licensee or the Department may seek a review of a committee determination.

Request for review of the Committee's determination by the Administrative Review Board stays penalties **other than suspension or revocation** 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
Hedley Park Place
433 River Street, Fifth Floor
Troy, New York 12180

The parties shall have 30 days from the notice of appeal in which to file their briefs to the Administrative Review Board. Six copies of all papers must also be sent to the attention of Mr. Horan at the above address and one copy to the other party. The stipulated record in this matter shall consist of the official hearing transcript(s) and all documents in evidence.

Parties will be notified by mail of the Administrative Review Board's
Determination and Order.

Sincerely,

A handwritten signature in black ink that reads "Tyrone T. Butler". The signature is written in a cursive style with a large, prominent initial "T".

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:crc
Enclosure

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

COPY

IN THE MATTER
OF
DAVID VELEZ, M.D.

DETERMINATION
AND
ORDER
BPMC-97-77

A proceeding before a Hearing Committee (Committee) from the State Board for Professional Medical Conduct (BPMC) into charges concerning professional misconduct by a physician.

**BEFORE: STANLEY GITLOW, M.D. (Chair), JAMES EISENKRAFT, M.D. and
KENNETH KOWALD.**

A Notice of Hearing and Statement of Charges (Appendix I) alleges that a sister state's duly authorized disciplinary agency took disciplinary action against **DAVID VELEZ, M.D. (Respondent)** for conduct which would constitute professional misconduct under New York Law. The duly designated three member BPMC Committee, whose names appear above, conducted a hearing into those charges, pursuant to N.Y. Pub. Health Law § 230(10)(e)(McKinney's Supp. 1997), on March 6, 1997. At that hearing, the Committee received exhibits into evidence from both the Respondent and the New York State Department of Health (Petitioner), the Petitioner presented oral argument and a stenographic reporter recorded the proceeding. After considering the entire record from the hearing, the Committee renders this Determination that includes our Findings of Fact and Conclusions of Law. We vote unanimously to sustain the charge against the Respondent and to revoke his license to practice medicine in New York State.

Administrative Law Judge **JAMES F. HORAN**, served as the Committee's Administrative Officer and drafted this Determination.

The Petitioner appeared by **HENRY M. GREENBERG, GENERAL COUNSEL**, by **MARCIA E. KAPLAN, Esq.**, of Counsel.

The **RESPONDENT** made no appearance at the hearing, but submitted a letter to the Petitioner's Counsel, that the Committee received into the record as Respondent's Exhibit A.

STATEMENT OF CASE

The Petitioner brought this case pursuant to N.Y. Pub. Health Law § 230(10)(p) (McKinney's Supp. 1997) and N. Y. Educ. Law § 6530(9)(McKinney's Supp. 1997). Those statutes provide for an expedited hearing when the case against a licensee arises solely from a prior criminal conviction in New York or another jurisdiction, or from a prior administrative adjudication regarding conduct which would amount to professional misconduct, if committed in New York. In such an expedited hearing, the statutes limit the Committee to determining the nature and severity for the penalty to impose against the licensee.

In the instant case, the Petitioner alleges that the Respondent committed professional misconduct under N.Y. Educ. Law § 6530(9)(d) (McKinney's Supp. 1997), because:

- the duly authorized disciplinary agency from another state (California) took disciplinary action against the Respondent's California license; and
- the conduct from which the California action arose would have constituted misconduct in New York.

The California disciplinary action charged that the Respondent committed sexual misconduct and other unprofessional actions involving twelve patients. The Petitioner charged that such California conduct would have constituted misconduct under the following categories in New York:

- practicing the profession fraudulently, a violation under N.Y. Educ. Law § 6530(2) (McKinney's Supp. 1997);
- practicing with negligence on more than one occasion, a violation under N.Y. Educ. Law § 6530(3)(McKinney's Supp. 1997);
- practicing with gross negligence on a particular occasion, a violation under N.Y. Educ. Law § 6530(4)(McKinney's Supp. 1997);
- practicing with incompetence on more than one occasion, a violation under N.Y. Educ. Law § 6530(5)(McKinney's Supp. 1997);
- conduct in practice that evidences moral unfitness to practice, a violation under N.Y. Educ. Law § 6530(20)(McKinney's Supp. 1997);

- willfully harassing, abusing, or intimidating a patient either physically or verbally, a violation under N.Y. Educ. Law § 6530(31)(McKinney's Supp. 1997); and,
- failing to maintain an accurate patient record, a violation under N.Y. Educ. Law § 6530(32)(McKinney's Supp. 1997).

At the hearing, the Petitioner's counsel urged the Committee to sustain all the charges against the Respondent and to revoke his New York Medical License.

In a response letter to the Petitioner's counsel, that the Petitioner's counsel provided to the Committee (Respondent's Exhibit A), the Respondent challenges the allegations from the California disciplinary proceeding. He argues that he made no attempt to litigate accusations against him due to inadequate financial resources, unwilling insurance companies, poor legal advise and his own unwillingness to continue in medical practice due to no longer trustworthy patients. The Respondent states that he has abandoned medical practice to work in a medical products business and that he has no intention to practice in New York. The Respondent asks to retain his New York License to hang on his wall, because he feels he has earned the license.

SIGNIFICANT LEGAL RULINGS

The Respondent failed to appear on the scheduled hearing day. Upon reviewing the Petitioner's Affidavit of Service (Petitioner Exhibit 2) and the Respondent's Response Letter (Respondent Exhibit A), the Committee's Administrative Officer determined that the Petitioner had served the charges properly upon the Respondent and that the Respondent had adequate notice concerning the charges and the proceeding against him. The Administrative Officer determined further that the Respondent had defaulted in appearing and that the hearing would proceed in the Respondent's absence.

FINDINGS OF FACT

The Committee makes the following Findings of Fact after reviewing the entire record in this matter. The numbers in brackets refer to the exhibits that the Committee persuasive in arriving at

a particular finding. If any evidence in the record appears to conflict with these findings, the Committee considered and rejected that evidence in favor of the cited evidence.

1. The New York State Education Department authorized the Respondent to practice medicine in New York State on October 21, 1977, by issuing license number 132895 [Petitioner Exhibit 3].
2. In July, 1979, after finishing his New York residency, the Respondent moved to California and commenced a medical practice there [Respondent's Exhibit A].
3. By a January 24, 1996 Accusation and an April 17, 1996 Supplemental Accusation, the Medical Board of California (California Board) charged that the Respondent had committed sexual misconduct and other professional misconduct in his care and treatment for twelve patients [Petitioner Exhibit 5].
4. In order to settle that disciplinary action, the California Board accepted the Respondent's offer to surrender his medical license on July 16, 1996 [Petitioner's Exhibit 4].
5. In stipulating to surrender his license, the Respondent conceded that the California Board could have established a factual basis for the charges at a hearing [Petitioner's Exhibit 4, page 3, paragraph 6].

CONCLUSIONS OF LAW

The Committee made the following conclusions pursuant to the above Findings of Fact. All conclusions resulted from a unanimous vote by the Hearing Committee.

The Hearing Committee concluded unanimously that the Petitioner sustained their burden to prove the charges. Preponderant evidence demonstrates that Respondent settled a disciplinary action against him, before the California Board, by surrendering his California medical license. The Committee concludes that the surrender constitutes a disciplinary action by the California Board. The Committee concludes further that the action, resulting in the California surrender, arose from conduct that would constitute misconduct in New York, under N.Y. Educ. Law §§ 6530(2), 6530(3), 6530(4), 6530(5), 6530(20), 6530(31) & 6530(32)(McKinney's Supp. 1997)

In his Response Letter (Respondent's Exhibit A), the Respondent contested some charges against him from the California disciplinary action. That California action, rather than this hearing, constituted the proper forum for the Respondent to litigate those charges. In surrendering his California license, the Respondent admitted that the California Board could establish the factual basis for the California charges. That admission and surrender left no facts for this Committee to resolve concerning the Respondent's California conduct. The Committee, therefore, rejects the Respondent's attempt to reopen the California action through his Response Letter.

DETERMINATION AS TO PENALTY

Pursuant to the Findings of Fact and Conclusions of Law that we set forth above, the Committee votes unanimously to revoke the Respondent's license to practice medicine in New York State. We reach this Determination after considering all the penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand, and monetary penalties. We conclude that the repeated sexual misconduct and other unprofessional activity, that resulted in the Respondent's license surrender in California, demonstrated that the Respondent lacks integrity and moral fitness. The Committee concludes that we can protect the public in this State only by revoking the Respondent's license to practice medicine.

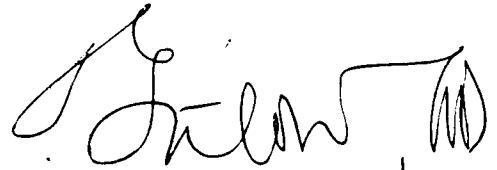
The Respondent indicated that he had not intention to return to practice in New York and asked to retain his New York License only to hang on his wall. The Respondent's statement, however, binds him in no way legally from returning to New York to practice. The Committee determines that public protection clearly outweighs the Respondent's stated desire to retain a New York License solely for show value and we find no basis on which to impose a penalty other than revocation.

ORDER

Based upon the foregoing, **THE COMMITTEE ISSUES THE FOLLOWING ORDER:**

1. The Committee **SUSTAINS** the charge that the Respondent's conduct in California constitutes misconduct under New York Law.
2. The Committee **REVOKES** the Respondent's License to practice medicine in New York State.

**Dated: New York, New York
March 24, 1997**



Stanley Gitlow, M.D. (Chairperson)

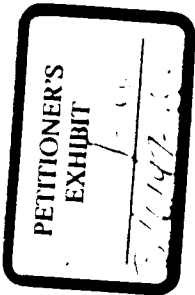
**James Eisenkraft, M.D.
Kenneth Kowald**

APPENDIX I

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

IN THE MATTER
OF
DAVID VELEZ, M.D.

NOTICE OF
REFERRAL
PROCEEDING



TO: DAVID VELEZ, M.D.
P.O. Box 2783
Granite Bay, CA 95746
2101 28th Street
Sacramento, CA 95818

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law §§230(10)(p) (McKinney Supp. 1997) and N.Y. State Admin. Proc. Act §§301-307 and 401 (McKinney 1984 and Supp. 1997). The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on March 6, 1997, at 10:00 a.m., at the offices of the New York State Department of Health, 5 Penn Plaza, Sixth 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, Hedley Park Place, 433 River Street, Fifth Floor South, Troy, NY 12180, ATTENTION: HON. TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION (Telephone: (518-402-0748), (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, no later than twenty days prior to the scheduled date of the Referral Proceeding, as indicated above.

Pursuant to the provisions of N.Y. Pub. Health Law §230(10)(c), you shall file a written answer to each of the charges and allegations in the Statement of Charges not less than ten days prior to the date of the hearing. Any charge or allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such answer. The answer shall be filed with the Bureau of Adjudication, at the address indicated above, and a copy shall be forwarded to the attorney for the Department of Health whose name appears below. You may file a written brief and affidavits with the Committee. Six copies of all papers you submit must be filed with the Bureau of Adjudication at the address indicated above, no later than fourteen days prior to the scheduled date of the Referral Proceeding, and a copy of all papers must be served on the same date on the Department of Health attorney indicated below. Pursuant to §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. Pursuant to the terms of N.Y. State Admin. Proc. Act §401 (McKinney Supp. 1997) and 10 N.Y.C.R.R. §51.8(b), the Petitioner hereby demands disclosure of the evidence that the Respondent intends to introduce at the hearing, including the names of witnesses, a list of and copies of documentary evidence and a description of physical or other evidence which cannot be photocopied.

The proceeding may be held whether or not you appear. Please note that requests for adjournments must be made in writing to the Bureau of Adjudication, at the address indicated above, with a copy of the request to the attorney for the Department of Health, whose name appears below, at least five days prior to the scheduled date of the proceeding. Adjournment requests are not routinely granted. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation. Failure to obtain an attorney within a reasonable period of time prior to the proceeding will not be grounds for an adjournment.

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

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

DATED: New York, New York
February, 4 1997



ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct

Inquiries should be addressed to:

Marcia E. Kaplan
Associate Counsel
NYS Department of Health
Division of Legal Affairs
5 Penn Plaza, Suite 601
New York, New York 10001
(212) 613-2615

IN THE MATTER
OF
DAVID VELEZ, M.D.

STATEMENT
OF
CHARGES

DAVID VELEZ, M.D., the Respondent, was authorized to practice medicine in New York State on or about October 21, 1977, by the issuance of license number 132895 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. On or about July 16, 1996, the Medical Board of California issued a Decision and Order, effective August 15, 1996, accepting the surrender of Respondent's license to practice medicine. Disciplinary action was instituted in California by the filing of an Accusation and a Supplemental Accusation (Case Numbers 02-94-36720 and 02-96-61516) in which it was alleged that from in or about March 1988 to in or about December 1995, Respondent had committed sexual misconduct and other unprofessional conduct, as specified in the Accusation and Supplemental Accusation, in his care and treatment of patients D.McK., S.K., D.D., S.C., K.W., J.R., B.S., T.C., C.E., A.A., K.P. and M.E. Respondent agreed in the Stipulation for Surrender of License that, at a hearing, the California Board could establish a factual basis for the charges in the Accusation and Supplemental Accusation. The conduct resulting in the disciplinary action involving the surrender of Respondent's California license would, if committed in New York state, constitute professional misconduct under the laws of New York state (namely N.Y. Educ. Law §6530(2) (practicing the profession fraudulently); 6530(3)(practicing the profession with

negligence on more than one occasion); 6530(4) (practicing the profession with gross negligence on a particular occasion); 6530(5) (incompetence on more than one occasion); 6530(20)(moral unfitness); 6530(31) (willfully harassing, abusing or intimidating a patient either physically or verbally); and/or 6530(32) (failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient).

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

HAVING HAD DISCIPLINARY ACTION TAKEN

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(9)(d)(McKinney Supp. 1997) by having his or her license to practice medicine revoked, suspended or having other disciplinary action taken, or having his or her application for a license refused, revoked or suspended or having voluntarily or otherwise surrendered his or her license after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation, suspension or other disciplinary action involving the license or refusal, revocation or suspension of an application for a license or the surrender of the license would, if committed in New York state, constitute professional misconduct under the laws of New York state (namely N.Y. Educ. Law Section 6530(2)(3)(4)(5)(20)(31) and/or (32) as alleged in the facts of the following:

1. Paragraph A.

DATED: February 4, 1997
New York, New York

A handwritten signature in black ink, appearing to read "Roy Nemerson", written over a horizontal line.

ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct