



STATE OF NEW YORK DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Antonia C. Novello, M.D., M.P.H., Dr.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

September 6, 2001

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Robert Bogan, Esq.
& Robert Maher, Esq.
NYS Department of Health
Hedley Park Place – 4th Floor
Troy, New York 12180

Jason Fixler, Esq.
Fixler & Associates, L.L.P.
Attorneys at Law
530 Saw Mill River Road
Elmsford, New York 10523

Maria Lourdes Padilla Burgos, M.D.
1701 Edgewater Drive
Mt. Dora, Florida 32757

Maria Lourdes Padilla Burgos, M.D.
201 East Magnolia Avenue Suite C
Eustis, Florida 32726

W. Cleveland Acree, II, Esq.
Unger, Acree, Weinstein, Mercus,
Merrill, Kass & Metz, P.L.
710 Peachtree Road
Orlando, Florida 32804

**RE: In the Matter of Maria Lourdes Padilla Burgos, M.D.
(a/k/a Ma. Lourdes B. Padilla, M.D.)**

Dear Parties:

Enclosed please find the Determination and Order (No. 01-198) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

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.

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, appearing to read "Tyfone T. Butler". The signature is fluid and cursive, with the first name "Tyfone" being more prominent.

Tyfone T. Butler, Director
Bureau of Adjudication

TTB:cah
Enclosure

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

IN THE MATTER

OF

**MARIA LOURDES PADILLA BURGOS,
M.D. (a/k/a Ma. Lourdes B. Padilla, M.D.)**

DETERMINATION

AND

ORDER

BPMC #01-198

COPY

A Notice of Referral Proceeding and Statement of Charges, both dated May 14, 2001, were served upon the Respondent, **MARIA LOURDES PADILLA BURGOS, M.D. (a/k/a Ma. Lourdes B. Padilla, M.D.)**. **WILLIAM K. MAJOR, JR., M.D.**, Chairperson, **ANDREW J. MERRITT, M.D.** and **MS. VIRGINIA R. MARTY**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to Section 230(10)(e) of the Public Health Law. **STEPHEN L. FRY, ESQ.**, Administrative Law Judge, served as the Administrative Officer.

A hearing was held on August 22, 2001, at the Offices of the New York State Department of Health, Hedley Park Place, 433 River Street, Troy, New York. The Department appeared by **DONALD P. BERENS, JR., ESQ.**, General Counsel, by **ROBERT BOGEN, ESQ.** and **PAUL ROBERT MAHER, ESQ.**, of Counsel. The Respondent appeared by **JASON FIXLER, ESQ.** and **W. CLEVELAND ACREE, II, ESQ.**

Evidence was received and transcripts of these proceedings were made.

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

STATEMENT OF CASE

This case was brought pursuant to Public Health Law Section 230(10)(p). The statute provides for an expedited hearing where a licensee is charged solely with a violation of Education Law Section 6530(9). In such cases, a licensee is charged with misconduct based upon a prior criminal conviction in New York or another jurisdiction, or upon a prior administrative adjudication regarding conduct which would amount to professional misconduct, if committed in New York. The scope of an expedited hearing is limited to a determination of the nature and severity of the penalty to be imposed upon the licensee.

In the instant case, the Respondent is charged with professional misconduct pursuant to Education Law Section 6530(9)(d), based upon actions constituting violations of subdivisions (3), (11), (16) and (25). A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order as Appendix 1.

WITNESSES

For the Petitioner:

NONE

For the Respondent:

RESPONDENT

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers below in parentheses refer to exhibits, denoted by the prefix "Ex.". These citations refer to evidence found persuasive by the Hearing Committee in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence. All Hearing Committee findings were unanimous unless otherwise specified.

1. **MARIA LOURDES PADILLA BURGOS, M.D.**, the Respondent, was authorized to practice medicine in New York State on October 30, 1981, by the issuance of license number 148379, under the name of Ma. Lourdes B. Padilla, M.D., by the New York State Education Department (Ex. 4).

2. On December 13, 2000, the State of Florida, Board of Medicine (hereinafter "Florida Board"), by a Final Order (hereinafter "Florida Order "), fined Respondent \$3,000.00, reprimanded her, required her to pay \$303.43 costs, and perform 20 hours community service, based upon her assent to a consent agreement resulting from allegations that she pre-signed blank prescription pads used by a nurse employee to prescribe medications to patients in her absence (Ex. 5).

HEARING COMMITTEE CONCLUSIONS

The hearing Committee concludes that the conduct resulting in the Florida Board's disciplinary actions against Respondent would constitute misconduct under the laws of New York State, pursuant to:

- New York Education Law §6530(3) - negligence on more than one occasion;
- New York Education Law §6530(11) – permitting, aiding or abetting an unlicensed person to perform activities requiring a license;
- New York Education Law §6530(25) – delegating professional responsibilities to a person not qualified by training, experience or licensure to perform them;

VOTE OF THE HEARING COMMITTEE

SPECIFICATION

Respondent violated New York Education Law §6530(9)(d) by having had disciplinary action taken after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the disciplinary action would, if committed in New York state, constitute professional misconduct under the laws New York state.

VOTE: SUSTAINED (3-0)

HEARING COMMITTEE DETERMINATION

The record in this case indicates that on December 13, 2000, the State of Florida, Board of Medicine, by a Final Order, fined Respondent \$3,000.00, reprimanded her,

required her to pay \$303.43 costs, and perform 20 hours community service, based upon her assent to a consent agreement resulting from allegations that she pre-signed blank prescription pads used by a nurse employee to prescribe medications to patients in her absence (Ex. 5). The nurse was a Licensed Practical Nurse who was, in 1998, convicted of a criminal violation and disciplined by the State of Florida for calling in a bogus prescription for a controlled substance using Respondent's name and D.E.A. number (Ex. C).

The Hearing Committee determines that the conduct leading to the Florida Order, namely the practice of pre-signing prescription blanks so a nurse may issue prescriptions in the physician's absence, would constitute misconduct if committed in New York. Nurses (other than nurse practitioners) are not authorized to issue prescriptions in New York (Education Law §6902), and by allowing a nurse to do so, a physician commits professional misconduct under New York Education Law section 6530, subdivisions (3), (11) and (25), cited above. The Hearing Committee concludes that Respondent's actions did not constitute misconduct under subdivision (16), which requires a showing that there was a gross or willful failure to comply with federal, state or local laws, rules or regulations governing the practice of medicine.

The Hearing Committee concludes, however, that no additional sanction should be imposed upon Respondent by New York State. Some of the factors that lead to this conclusion are as follows:

- Respondent has already received appropriate discipline for her acts in the State of Florida, as detailed in Fact Finding #2, above;
- Respondent has successfully completed the terms of the Florida Order and her Florida licensure is now listed as "clear" (Ex. B);

- The acts for which Respondent was disciplined did not, as far as this record reveals, lead to the filling of any bogus prescriptions or patient harm; the acts were revealed knowingly by Respondent during an investigation into the unrelated attempt of Respondent's former employee nurse to illegally obtain controlled substances using Respondent's D.E.A. number (Ex. C);
- The violations for which Respondent was disciplined resulted from her well intentioned, but misguided, attempts to ensure that some of her pediatric patients were able to obtain Ritalin while she was on vacation without having to pay for additional doctors' visits (Respondent's testimony and Ex. A);
- Respondent has ceased the practices which led to the discipline in Florida (Respondent's testimony);
- Respondent has fully cooperated with licensing authorities in both states and is remorseful for her failure to understand that her actions were illegal (Respondent's testimony and Department's concession at the hearing);

The Hearing Committee concludes that no meaningful purpose would be accomplished by subjecting Respondent to additional discipline in New York State.

ORDER

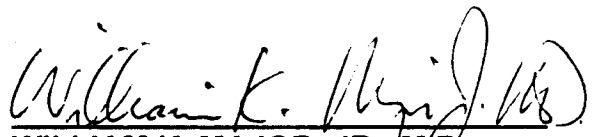
IT IS HEREBY ORDERED THAT:

1. No action is to be taken against Respondent's New York State Medical license.

The **ORDER** shall be effective upon service on the Respondent or the Respondent's attorney by personal service or by certified or registered mail.

DATED: Orchard Park, New York

Sept. 4, 2001



Handwritten signature of William K. Major, Jr. in cursive script.

WILLIAM K. MAJOR, JR., M.D.
Chairperson

ANDREW J. MERRITT, M.D.
MS. VIRGINIA R. MARTY

APPENDIX 1

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

IN THE MATTER

OF

MA. LOURDES B. PADILLA, M.D.
AKA
MA. LOURDES P. BURGOS, M.D.
AKA
MARIA L. PADILLA BURGOS, M.D.
AKA
MARIA LOURDES PADILLA BURGOS, M.D.
CO-01-02-0591-A

NOTICE OF

REFERRAL

PROCEEDING

TO: MA. LOURDES B. PADILLA, M.D.
AKA
MA. LOURDES P. BURGOS, M.D.
AKA
MARIA L. PADILLA BURGOS, M.D.
AKA
MARIA LOURDES PADILLA BURGOS, M.D.
1701 Edgewater Drive
Mt. Dora, FL 32757

MA. LOURDES B. PADILLA, M.D.
AKA
MA. LOURDES P. BURGOS, M.D.
AKA
MARIA L. PADILLA BURGOS, M.D.
AKA
MARIA LOURDES PADILLA BURGOS, M.D.
201 East Magnolia Avenue Suite C
Eustis, FL 32726

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law § 230(10)(p) and N.Y. State Admin. Proc. Act Sections 301-307 and 401. The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 18th day of June 2001, at 10:00 in the forenoon of that day at the Hedley Park Place, 5th Floor, 433 River Street, Troy, New York 12180.

EXHIBIT

JEX 8/22/01

At the proceeding, evidence will be received concerning the allegations set forth in the attached Statement of Charges. 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 that 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, 5th Floor, 433 River Street, Troy, New York, ATTENTION: HON. TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION, (hereinafter "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before June 8, 2001.

Pursuant to the provisions of N.Y. Public Health Law §230(10)(p), you shall file a written answer to each of the Charges and Allegations in the Statement of Charges no later than ten days prior to the hearing. Any Charge of Allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such an 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 brief and affidavits with the Committee. Six copies of all such papers you wish to submit must be filed with the Bureau of Adjudication at the address indicated above on or before June 8, 2001, and a copy of all papers must be served on the same date on the Department of Health attorney indicated below. Pursuant to Section 301(5) of the State Administrative Procedure Act, the Department, upon reasonable notice, will provide at no charge a qualified interpreter of the deaf to interpret the proceedings to, and the testimony of, any deaf person.

The proceeding may be held whether or not you appear. Please note that requests for adjournments must be made in writing to the Bureau of Adjudication, at the

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

The Committee will make a written report of its findings, conclusions as to guilt, and a determination. Such determination may be reviewed by the Administrative Review Board for Professional Medical Conduct.

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

DATED: Albany, New York

May 14, 2001



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

Inquiries should be addressed to:

Robert Bogan
Associate Counsel
New York State Department of Health
Office of Professional Medical Conduct
433 River Street – Suite 303
Troy, New York 12180
(518) 402-0820

STATE OF NEW YORK

DEPARTMENT OF HEALTH

STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER

OF

MA. LOURDES B. PADILLA, M.D.

AKA

MA. LOURDES P. BURGOS, M.D.

AKA

MARIA L. PADILLA BURGOS, M.D.

AKA

MARIA LOURDES PADILLA BURGOS, M.D.

CO-01-02-0591-A

STATEMENT

OF

CHARGES

MA. LOURDES B. PADILLA, M.D., AKA MA. LOURDES P. BURGOS, M.D., AKA MARIA L. PADILLA BURGOS, M.D., AKA MARIA LOURDES PADILLA BURGOS, M.D., the Respondent, was authorized to practice medicine in New York state on October 30, 1981, by the issuance of license number 148379 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about December 13, 2000, the State of Florida, Board of Medicine (hereinafter "Florida Board"), by a Final Order (hereinafter "Florida Order"), fined Respondent \$3,000.00, reprimanded her, required her to pay \$303.43 costs, and perform 20 hours community service, based on pre-signing blank prescription pads to be used by a nurse employee to prescribe medications to patients in Respondent's absence.

B. The conduct resulting in the Florida Board disciplinary action against Respondent would constitute misconduct under the laws of New York state, pursuant to the following sections of New York state Law:

1. New York Education Law §6530(3) (negligence on more than one occasion);
2. New York Education Law §6530(11) (permitting, aiding or abetting an unlicensed person to perform activities requiring a licensee);

3. New York Education Law §6530(16) (failure to comply with federal, state, or local laws, rules, or regulations governing the practice of medicine); and/or

4. New York Education Law §6530(25) (delegating professional responsibilities to a person not qualified, by training, by experience, or by licensure, to perform them).

SPECIFICATION

Respondent violated New York Education Law §6530(9)(d) by having disciplinary action taken after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the disciplinary action would, if committed in New York state, constitute professional misconduct under the laws New York state, in that Petitioner charges:

1. The facts in paragraphs A and/or B.

DATED: *May 14*, 2001
Albany, New York


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