



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*

July 12, 2001

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Paul Maher, Esq.  
NYS Department of Health  
Hedley Park Place  
433 River Street – 4<sup>th</sup> Floor  
Troy, New York 12180

Gabriel D. Cacuci, M.D.  
aka Gabriel D. Cacuci, M.D.  
2817 Summer Lake Drive  
Las Vegas, Nevada 89128

**RE: In the Matter of Gabriel Cacuci, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 01-156) 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.

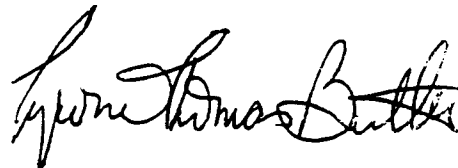
The notice of review served on the Administrative Review Board should be forwarded to:

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 "Tyrone T. Butler", written in a cursive style.

Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:nm  
Enclosure

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

**COPY**

**IN THE MATTER  
OF  
GABRIEL CACUCI, M.D.**

**DETERMINATION  
AND  
ORDER**

BPMC-01-156

A Notice of Referral Proceeding dated March 16, 2001 and an Amended Statement of Charges, dated April 10, 2001, were served upon the Respondent, **GABRIEL CACUCI, M.D.** **GERALD S. WEINBERGER, M.D.**, Chairperson, **ROBERT KLUGMAN, M.D.** and **REV. EDWARD J. HAYES**, 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 June 20, 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 **PAUL ROBERT MAHER, ESQ.** and **ROBERT BOGEN, ESQ.**, of Counsel. The Respondent did not appear at the hearing, but provided documents to be considered by the Hearing Committee.

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 Sections 6530(9)(a)(iii) and (d). 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:

NONE

## 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 transcript page numbers or exhibits, denoted by the prefixes "Tr." and "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. **GABRIEL CACUCI, M.D.**, the Respondent, was authorized to practice medicine in New York State on January 25, 1972, by the issuance of license number 111174 by the New York State Education Department (Ex. 4).
2. On November 2, 2000, in the Justice Court, Las Vegas Township, Clark County, Nevada, Respondent, by a plea of Nolo Contendre, was found guilty of Obtaining Money under False Pretenses, a misdemeanor, and was fined \$500.00 (Ex. 7).
3. On March 15, 2000, the Board of Medical Examiners of the State of Nevada (hereinafter the "Nevada Board"), by an Order (hereinafter the "Nevada Order"), accepted the voluntary surrender of Respondent's license to practice medicine. The order specified that the Respondent was "under investigation" when the surrender was made (Ex. 5).

## **HEARING COMMITTEE CONCLUSIONS**

The hearing Committee concludes that the conduct resulting Respondent's conviction of obtaining Money Under False Pretenses would constitute misconduct under the laws of New York State, pursuant to:

- New York Education Law §6530(9)(a)(iii);

## **VOTE OF THE HEARING COMMITTEE**

### **SPECIFICATIONS**

#### **FIRST SPECIFICATION**

Respondent violated New York Education Law §6530(9)(a)(iii) by having been convicted of an act constituting a crime under the law of another jurisdiction and which if committed in New York State, would have constituted a crime under New York state law.

**VOTE: SUSTAINED (3-0)**

#### **SECOND SPECIFICATION**

Respondent violated New York Education Law §6530(9)(d) by having surrendered his license or having other disciplinary action taken against him 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: NOT SUSTAINED (3-0)**

## HEARING COMMITTEE DETERMINATION

The record in this case indicates that On November 2, 2000, in the Justice Court, Las Vegas Township, Clark County, Nevada, Respondent, by a plea of Nolo Contendre, was found guilty of Obtaining Money under False Pretenses, a misdemeanor, and was fined \$500.00. There was no contention that the conduct covered by the conviction would not have constituted a crime in New York State. Therefore, the hearing Committee determines that the conviction forms the proper basis for a finding of misconduct pursuant to New York Education Law §6530(9)(a)(iii).

However, the Respondent's voluntary surrender of his Nevada medical license does not form the basis for a finding of misconduct because it did not, as far as this record reveals, occur "after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state", as required by Education Law §6530(9)(d) (emphasis supplied). The Order itself states that the surrender was made "while [Respondent was] under investigation by the Nevada State Board of Medical Examiners" (Ex. 5). There is no mention of a disciplinary proceeding having been initiated. Therefore, the existence of the Nevada Order cannot form the basis for a finding of misconduct under the definition cited in the Amended Statement of Charges.

The only other misconduct definition cited in the Amended Statement of Charges with regard to the Nevada Order was Education Law §6530(16), which covers "[a] willful or grossly negligent failure to comply with substantial provisions of federal, state, or local laws, rules, or regulations governing the practice of medicine". No explanation was made by the Department, or apparent from the record, as to how the existence of the Nevada Order constitutes misconduct under this subdivision. Therefore, the specification dealing with the Nevada order cannot be sustained.

constitutes misconduct under this subdivision. Therefore, the specification dealing with the Nevada order cannot be sustained.

The remaining question to be addressed is the appropriate penalty to be imposed upon Respondent as a result of the Nevada criminal conviction. Although Respondent is unlikely to return to New York to practice medicine because of his age (80), the Hearing Committee concludes that a three (3) year period of probation to be imposed, should choose to do so, is the appropriate penalty, given the nature of the conduct leading to the criminal conviction. The terms of the probation are set forth in the order, which follows.

## **ORDER**

### **IT IS HEREBY ORDERED THAT:**


- 1). If, at some future date, the Respondent chooses to assume or resume practice in New York, he must apply to the New York State Education Department to reactivate his medical license, and provide that agency with all requested information and documentation. Respondent must also provide OPMC with verification of the reactivation of his license prior to resuming practice in New York State.
- 2). Respondent must provide ninety (90) days prior written notice, concerning his intention to assume practice in New York State, to the New York State Office of Professional Medical Conduct ("O.P.M.C"). This notice should be sent by registered or certified mail, return receipt requested, to the Board, addressed to the Director, Office of Professional Medical Conduct, Hedley Park Place, 433 River Street - Fourth Floor, Troy, New York 12180-2299. Said notice is to include a full description of any employment and practice since the date of this hearing, as well as a listing of professional and residential addresses and telephone numbers within or without New York State. The notification must also list any and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility since the date of this hearing.
- 3). OPMC will monitor Respondent's completion of a three-year probationary period, to commence upon the resumption of lawful medical practice in New York State.
- 4). The terms of Respondent's probation are as follows:

- Respondent shall conduct himself in all ways in a manner befitting his professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his profession. Respondent acknowledges that if he commits professional misconduct as enumerated in New York State Education Law '6530 or '6531, those acts shall be deemed to be a violation of probation and that an action may be taken against Respondent's license pursuant to New York State Public Health Law §230(19);
- Respondent shall submit written descriptive notification to OPMC at the address listed above, of any changes in employment and practice, professional and residential addresses or telephone numbers within or without New York State, and any and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility during the probationary period, within 30 days of each event;
- Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of Respondent's compliance with the terms of this Order. Respondent shall personally meet with a person designated by the Director of OPMC as requested by the Director.
- The period of probation shall be tolled during periods in which Respondent is not engaged in the active practice of medicine in New York State. Respondent shall notify the Director of OPMC, in writing, if he ceases to be engaged in or intends to leave the active practice of medicine in New York State for a period of thirty (30) consecutive days or more. Respondent shall again notify the Director prior to any change in that status. The period of probation shall resume and any terms of probation which were not fulfilled shall be fulfilled upon Respondent's return to practice in New York State.
- Respondent's professional performance may be reviewed by the Director of OPMC. This review may include, but shall not be limited to, a review of office records, patient records and/or hospital charts, interviews with or periodic visits with Respondent and his/her staff at practice locations or OPMC offices.
- Respondent shall maintain legible and complete medical records which accurately reflect the evaluation and treatment of patients.
- Respondent shall have quarterly meetings with a monitoring physician who shall review his practice. This monitoring physician shall review randomly selected medical records and evaluate whether Respondent's practice comports with generally accepted standards of medical practice. This monitoring physician shall be selected by Respondent and is subject to the approval of the Director of the Office of Professional Medical Conduct. Respondent shall not practice medicine until an acceptable monitoring physician is approved by the Director.
- Respondent shall comply with all terms, conditions, and restrictions to which he is subject pursuant to the Order and shall assume and bear all costs related to compliance. Upon receipt of evidence of noncompliance with, or any violation of these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding and/or any such other proceeding against Respondent as may be authorized pursuant to the law.

- OPMC may, in its discretion, and upon request by Respondent, relieve him of any uncompleted term of his probation if it is satisfied that Respondent's continued unsupervised practice of medicine in New York State would not be contrary to the best interests of New York State residents.

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: Ardsley, New York  
7/10/01, 2001

  
GERALD S. WEINBERGER, M.D.  
Chairperson

ROBERT KLUGMAN, M.D.  
REV. EDWARD J. HAYES

# **APPENDIX 1**

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

IN THE MATTER

OF

GAVRIL D. CACUCI, M.D. aka GABRIEL D. CACUCI, M.D.  
CO-00-06-2722-A

NOTICE OF

REFERRAL

PROCEEDING

TO: GAVRIL D. CACUCI, M.D. aka GABRIEL D. CACUCI, M.D.  
2817 Summer Lake Drive  
Las Vegas, NV 89128

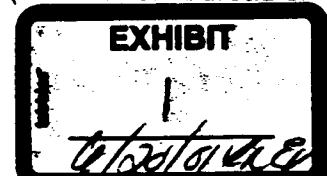
**PLEASE TAKE NOTICE THAT:**

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 18<sup>th</sup> day of April 2001, at 10:00 in the forenoon of that day at the Hedley Park Place, 5<sup>th</sup> Floor, 433 River Street, Troy, New York 12180.

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, 5<sup>th</sup> 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 April 9, 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 April 9, 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

*March 16*, 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

1-1  
JUL 16/2015

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

---

IN THE MATTER  
OF  
GAVRIL D. CACUCI, M.D., aka GABRIEL D. CACUCI, M.D.  
CO-00-06-2722-A

---

AMENDED  
STATEMENT  
OF  
CHARGES

GAVRIL D. CACUCI, M.D. aka GABRIEL D. CACUCI, M.D., the Respondent, was authorized to practice medicine in New York state on January 25, 1972, by the issuance of license number 111174 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A. On or about November 2, 2000, in the Justice Court, Las Vegas Township, Clark County, Nevada, Respondent, based on a plea of Nolo Contendere, was found guilty of Obtaining Money Under False Pretenses, a misdemeanor, and fined \$500.00.

B. On or about March 15, 2000, the Board of Medical Examiners of the State of Nevada, (hereinafter "Nevada Board"), by an Order (hereinafter "Nevada Order"), accepted the irrevocable surrender of Respondent's license to practice medicine while under investigation.

C. The conduct resulting in the Nevada Board's 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(16) (failure to comply with federal, state, or local laws, rules, or regulations).

**SPECIFICATIONS**  
**SPECIFICATION ONE**

Respondent violated New York Education Law §6530(9)(a)(iii) by having been convicted of an act constituting a crime under the law of another jurisdiction and which if committed in New York state, would have constituted a crime under New York state law, in that Petitioner charges:


1. The facts in paragraph A.

**SPECIFICATION TWO**

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

2. The facts in paragraphs A, B, and/or C.

DATED: *April 10*, 2001  
Albany, New York

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