

Public



STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303 Troy, New York 12180-2299

Richard F. Daines, M.D.
Commissioner

Wendy E. Saunders
Chief of Staff

September 24, 2008

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Carlos Vargas, M.D.

Redacted Address

Carolyn Shearer, Esq.
Bond, Schoeneck & King, PLLC
111 Washington Avenue
Albany, New York 12210-2211

Robert Bogan, Esq.
NYS Department of Health
Bureau of Professional Medical Conduct
433 River Street, Suite 303
Troy, New York 12180-2299

RE: In the Matter of Carlos Vargas, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 08-185) 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), (McKinney Supp. 2007) and §230-c subdivisions 1 through 5, (McKinney Supp. 2007), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the Respondent 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,
Redacted Signature

James F. Horan, Acting Director
Bureau of Adjudication

JFH:djh

Enclosure

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

COPY
DETERMINATION

IN THE MATTER
OF
CARLOS VARGAS, M.D.

AND
ORDER

BPMC NO. 08-185

A hearing was held on August 20, 2008, at the offices of the New York State Department of Health ("the Petitioner"). A Notice of Referral Proceeding and a Statement of Charges, both dated May 13, 2008, were served upon the Respondent, **Carlos Vargas, M.D.**. Pursuant to Section 230(10)(e) of the Public Health Law, **C. Deborah Cross, M.D.**, Chairperson, **Alexander M. Yvars, M.D.**, and **Janet Miller, R.N.**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. **William J. Lynch, Esq.**, Administrative Law Judge, served as the Administrative Officer.

The Petitioner appeared by **Thomas Conway, Esq.**, General Counsel, by **Robert Bogan, Esq.**, of Counsel. The Respondent appeared at the hearing and was represented by Bond, Schoeneck & King, PLLC, **Carolyn Shearer, Esq.**, of Counsel.

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 proceeding was brought pursuant to Public Health Law Section 230. The purpose of the hearing was to determine whether the Respondent committed an act or acts of misconduct and if disciplinary action should be imposed. In the third and fourth specifications of the Statement of Charges, the Respondent was charged with professional misconduct pursuant to Education Law Section 6530(9)(a)(i) and 6530(9)(a)(iii). When a licensee is charged with misconduct based upon a prior criminal conviction in New York State or another jurisdiction, the scope of the inquiry regarding those specifications is limited to a determination of the nature and severity of the penalty to be imposed upon the licensee.

Copies of the Notice of Hearing and the Statement of Charges are attached to this Determination and Order as Appendix I

WITNESSES

For the Petitioner:	None
For the Respondent:	Carlos Vargas, M.D.

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.

1. Carlos Vargas, M.D., the Respondent, was authorized to practice medicine in New York State on May 30, 1986, by the issuance of license number 166244 by the New York State Education Department (Petitioner's Ex. 4).
2. On August 25, 2001, in the City Court of Plattsburgh, New York, Respondent was charged with Driving While Intoxicated, in violation of New York Vehicle and Traffic Law §1192.3, a misdemeanor (Petitioner's Ex. 5).
3. On December 29, 2001, Respondent falsely answered "No" on a New York State Education Department Registration Renewal Document to a question which asked whether criminal charges were pending against him in any court since his last registration application (Petitioner's Ex. 4).
4. On August 6, 2005, in the County Court, Boulder, Colorado, Respondent was charged with Driving Under the Influence, in violation of Colorado Vehicles and Traffic Law §42-4-1301(1)(a), a misdemeanor (Petitioner's Ex. 6, Respondent's Ex. A).
5. On January 10, 2006, Respondent falsely answered "No" on a New York State Education Department Registration Renewal Document to a question which asked whether criminal charges were pending against him in any court since his last registration application (Petitioner's Ex. 4).
6. On September 17, 2007, in the Glens Falls City Court, Glens Falls, New York, Respondent was found guilty, based on a plea of guilty, of Driving While Intoxicated, in violation of New York Vehicle and Traffic Law §1192.2, a misdemeanor, and was sentenced to a conditional discharge and to pay \$660 in fines and fees (Petitioner's Ex. 7).

7. On February 4, 2008, in the County Court, Boulder, Colorado, Respondent was convicted, pursuant to C.R.S. 42.2.127 based on his failure to appear, of Driving Under the Influence, in violation of Colorado Vehicles and Traffic Law §42-4-1301(1)(a), a misdemeanor and was sentenced to pay \$783 in fines and fees (Petitioner's Ex. 6, Respondent's Ex. A).

VOTE OF THE HEARING COMMITTEE

FIRST AND SECOND SPECIFICATION

"Respondent violated New York Education Law §6530(2) by practicing the profession fraudulently..."

VOTE: Sustained (3-0)

THIRD SPECIFICATION

"Respondent violated New York Education Law Section 6530(9)(a)(i) by having been convicted of committing an act constituting a crime under New York state law..."

VOTE: Sustained (3-0)

FOURTH SPECIFICATION

"Respondent violated New York Education Law Section 6530(9)(a)(iii) by being convicted of committing an act constituting a crime under the laws of another jurisdiction and which, if committed within this state, would have constituted a crime under New York state law..."

VOTE: Sustained (3-0)

FIFTH AND SIXTH SPECIFICATION

“Respondent violated New York Education Law Section 6530(21) by willfully making or filing a false report required by law or by the department of health or the education department...”

VOTE: Sustained (3-0)

HEARING COMMITTEE DETERMINATION

Respondent is charged with six specifications of misconduct within the meaning of Education Law §6530.

The first and second specifications charged Respondent with practicing the profession fraudulently. The record establishes that Respondent falsely answered that no criminal charges were pending against him at the time that he submitted applications to renew his medical license registration to the Education Department in New York on two occasions. The first occasion was in 2001, while criminal charges were pending against him in Plattsburgh, New York. The second occasion was in 2006, while criminal charges were pending against him in Boulder, Colorado. The issue to be determined by the Hearing Committee was whether these false statements constituted practicing the profession fraudulently.

Respondent testified that he believed, at the time, that the charges of Driving While Intoxicated and Driving Under the Influence were traffic violations, and he contended that his false statement on the New York State Education documents were honest mistakes.

On cross-examination, however, Respondent acknowledged that he was taken to the police station, fingerprinted and photographed during both incidents. Further, he admitted that he was arraigned before a judge the morning following the Plattsburgh, New York incident in 2001, and that he was sent to the county jail during the Boulder, Colorado incident in 2005.

During the course of its deliberations, the Hearing Committee consulted a memorandum prepared by the General Counsel for the Department of Health. This document, entitled "Definitions of Professional Misconduct Under the New York Education Law" states that:

Practicing the profession fraudulently involves the intentional misrepresentation or concealment of a known fact in some connection with the practice of medicine and made with the intent to deceive. An individual's knowledge that he or she is making a misrepresentation or concealing a known fact with the intention to mislead may properly be inferred from certain facts. Fraud is also a statement or representation made with reckless disregard as to the truth of the statement or representation.

Respondent contended that he did not understand that the charges brought against him in 2001 and 2005 were criminal in nature until he retained the attorney who represented him in this misconduct proceeding. The Hearing Committee, however, found that Respondent's testimony regarding his misunderstanding of the nature of the charges pending against him lacked credibility. The Hearing Committee infers that Respondent knew that he had been charged criminally based upon Respondent's own testimony regarding the facts surrounding the two arrests which included his being photographed, fingerprinted, jailed and arraigned. Further, Respondent obtained representation by an attorney for both of these matters. Respondent's assertion that he mistakenly believed that he was merely charged with traffic violations is simply not believable under these

circumstances. Based upon these facts, the Hearing Committee infers that Respondent knew that he was making a false representation on his registration renewals. In any event, the Hearing Committee finds that Respondent's misrepresentation evidenced a reckless disregard as to the truth of his statement, particularly in light of the fact that Respondent had retained counsel for both matters and could have easily verified whether the pending charges were criminal. For the foregoing reasons, the Hearing Committee sustained the first and second specifications.

The third and fourth specifications related to violations of §6530(9). Respondent did not challenge the existence of the underlying convictions or that those convictions constituted professional misconduct in New York State. Accordingly, the Hearing Committee sustained the two specifications.

The fifth and sixth specifications charged Respondent with willfully making or filing a false report required by law or by the department of health or the education department. The Hearing Committee found that the registration renewal document submitted by Respondent to the Education Department fell within the meaning of Education Law §6530(21), and that Respondent's actions were willful for the reasons explained above concerning the first and second specifications.

Having sustained the six specifications, the Hearing Committee turned to the issue of the appropriate penalty to impose in this matter. Respondent requested that no penalty more severe than a censure and reprimand be imposed. Petitioner recommended that Respondent be placed on probation for five years and required to participate with the Committee for Physician ("CPH"), as a means to ensure the public's safety.

The evidence establishes that a censure and reprimand would be an insufficient penalty. Respondent testified regarding the facts surrounding his three arrests. He stated that his first arrest occurred in Plattsburgh, New York in 2001 after he had wine with staff from a hospital that had interviewed him for a position. His second arrest occurred in Boulder, Colorado in 2005, after he drank wine at a restaurant celebrating his daughter's move there. His third arrest took place in Glens Falls, New York in 2007, after he had consumed beer while watching a basketball game downtown. In spite of this lengthy history of alcohol abuse, Respondent testified that he only began to question his behavior after the third arrest.

In April 2007 following the third arrest, Respondent engaged in therapy with a CASAC (certified alcohol and substance abuse counseling) licensed counselor. His sessions which initially were held twice a week had been reduced to once per week by the time of the hearing. A letter from the therapist submitted in evidence states that "Dr. Vargas has progressed in treatment and shown increased insight into the incident that impacted him personally and professionally...." Nonetheless, when asked whether he had an alcohol problem at the hearing, Respondent answered, "I think so." In addition, as stated above, the Hearing Committee believes that Respondent falsely testified at the hearing regarding his understanding of the nature of the criminal charges that had been pending against him at the time of the registration renewals. On other matters such as his board certifications, his testimony showed a reluctance to admit the truth and a tendency to conceal negative facts. As such, the record is devoid of any evidence of rehabilitation.

For the foregoing reasons, the Hearing Committee concurs with Petitioner's recommendation. Respondent shall be placed on probation for a period of five years. A condition of that probation will be for Respondent to enroll in the Committee for Physician Health, to comply with the terms of that contract, and to give written authorization for CPH to provide the Director of OPMC with all information or documentation requested to determine whether Respondent is in compliance with the contract and this Order. This determination was reached upon due consideration of the full spectrum of penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of a monetary penalty.

ORDER

IT IS HEREBY ORDERED THAT:

1. Respondent is placed on probation for five years. As a term of that probation, Respondent shall enroll in the Committee for Physician Health ("CPH") and shall engage in a contract with CPH that defines the terms, conditions and duration of Respondent's course of therapy and treatment program. Respondent shall comply with the contract. Respondent shall give written authorization for CPH to provide the Director of Office of Professional Medical Conduct ("OPMC") with all information or documentation requested by OPMC to determine whether Respondent is in compliance with the contract and this Order, including full access to all records maintained by CPH with respect to Respondent. Respondent shall cause CPH to report to OPMC promptly if Respondent refuses to comply with the contract, refuses to submit to treatment or if Respondent's

impairment is not substantially alleviated by treatment. Respondent shall also cause CPH to report immediately to OPMC if Respondent is regarded at any time to be an imminent danger to the public. The additional terms of probation are annexed and attached hereto;

2. This Order shall be effective upon service on the Respondent in accordance with the requirements of Public Health Law Section 230(10)(h).

DATED: Elmsford, New York
9/23/, 2008

Redacted Signature

C. Deborah Cross, M.D.
Chairperson

Janet Miller, R.N.
Alexander Yvars, M.D.

TO:

Carlos Vargas, M.D.

Redacted Address

Carolyn Shearer, Esq.
Bond, Schoeneck & King, PLLC.
Attorney for Respondent
111 Washington Avenue
Albany, New York 12210-2211

Robert Bogan, Esq.
Attorney for Petitioner
Associate Counsel
NYS Department of Health
Bureau of Professional Medical Conduct
433 River Street, Suite 303
Troy, New York 12180-2299

Additional Terms of Probation

1. 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.
2. Respondent shall submit written notification to the New York State Department of Health addressed to the Director, Office of Professional Medical Conduct (OPMC), Hedley Park Place, 433 River Street Suite 303, Troy, New York 12180-2299; said notice is to include a full description of any employment and practice, professional and residential addresses and 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, within thirty days of each action.
3. 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.
4. 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 Respondent is not currently 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 then notify the Director again 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.
5. 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.
6. Respondent shall maintain legible and complete medical records which accurately reflect the evaluation and treatment of patients. The medical records shall contain all information required by State rules and regulations regarding controlled substances.
7. Respondent shall comply with all terms, conditions, restrictions, limitations and penalties to which he or she 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.

APPENDIX I

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

EXHIBIT
1 EV
8/20/08 JL

IN THE MATTER
OF
CARLOS VARGAS, M.D.
AL-07-02-1045-A
AL-08-03-1792-A

NOTICE
OF
HEARING

TO: CARLOS VARGAS, M.D.

Redacted Address

PLEASE TAKE NOTICE:

A hearing will be held pursuant to the provisions of New York Public Health Law §230 and New York State Administrative Procedure Act §§301-307 and 401. The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on June 18, 2008, at 10:00 a.m., at the Offices of the New York State Department of Health, Hedley Park Place, 433 River Street, 5th Floor, Troy, NY 12180, and at such other adjourned dates, times and places as the committee may direct.

At the hearing, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the hearing will be made and the witnesses at the hearing will be sworn and examined. You shall appear in person at the hearing and may be represented by counsel. You have the right to produce witnesses and evidence on your behalf, to issue or have subpoenas issued on your behalf in order to require the production of witnesses and documents, and you may cross-examine witnesses and examine evidence produced against you. A summary of the Department of Health Hearing Rules is enclosed.

The hearing will proceed whether or not you appear at the hearing. Please note that requests for adjournments must be made in writing and by telephone 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. JAMES F. HORAN, ACTING DIRECTOR, BUREAU OF ADJUDICATION, (henceforth "Bureau of Adjudication"), (Telephone: (518-402-0748), upon notice to the attorney for the Department of Health whose name appears below, and at least five days prior to the scheduled hearing date. Adjournment requests are not routinely granted as scheduled dates are considered dates certain. Claims of court engagement will require detailed Affidavits of Actual Engagement. Claims of illness will require medical documentation.

Pursuant to the provisions of New York Public 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. 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 New York State Administrative Procedure Act §401 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.

At the conclusion of the hearing, the committee shall make findings of fact, conclusions concerning the charges sustained or dismissed, and in the event any of the charges are sustained, a determination of the penalty to be imposed or appropriate action to be taken. Such determination may be reviewed by the Administrative Review Board for Professional Medical Conduct.

THESE PROCEEDINGS MAY RESULT IN A DETERMINATION THAT YOUR LICENSE TO PRACTICE MEDICINE IN NEW YORK STATE BE REVOKED OR SUSPENDED, AND/OR THAT YOU BE FINED OR SUBJECT TO OTHER SANCTIONS SET OUT IN NEW YORK PUBLIC HEALTH LAW §§230-a. YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: May 13, 2008

Redacted Signature

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

Inquiries should be directed to:

Robert Bogan
Associate Counsel
Bureau of Professional Medical Conduct
433 River Street
Suite 303
Troy, NY 12180

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

IN THE MATTER
OF
CARLOS VARGAS, M.D.
AL-08-03-1792-A

STATEMENT
OF
CHARGES

CARLOS VARGAS, M.D., Respondent, was authorized to practice medicine in New York state on May 30, 1986, by the issuance of license number 166244 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. On or about August 25, 2001, in the City Court of Plattsburgh, Plattsburgh, New York, Respondent was charged with Driving while intoxicated, in violation of New York Vehicle and Traffic Law, §1192.3, a misdemeanor.
- B. On or about December 29, 2001, Respondent prepared and/or submitted to the New York State, Education Department, a Registration Renewal Document, wherein he falsely answered "No" to question "2. Since your last registration application, c. Are criminal charges pending against you in any court?"
- C. On or about August 6, 2005, in the Country Court, Boulder, Colorado, Respondent was charged with Driving under the Influence, in violation of Colorado Regulations of Vehicles and Traffic, §42-4-1301(1)(a), a misdemeanor, and on or about February 4, 2008, was found guilty and sentenced to pay \$783.00 in fines and fees.
- D. On or about January 10, 2006, Respondent prepared and/or submitted to the New York State, Education Department, a Registration Renewal Document, wherein he falsely answered "No" to question "2. Since your last registration application, c. Are criminal charges pending against you in any court?"

E. On or about September 17, 2007, in the Glens Falls City Court, Glens Falls, New York, Respondent was found guilty, based on a plea of guilty, of Driving While Intoxicated, in violation of New York Vehicle and Traffic Law, §1192.2, a misdemeanor and was sentenced to a conditional discharge and \$660.00 in fines and fees.

SPECIFICATIONS

FIRST AND SECOND SPECIFICATIONS

Respondent violated New York Education Law §6530(2) by practicing the profession fraudulently, in that Petitioner charges:

1. The facts in Paragraphs A and/or B.
2. The facts in Paragraphs C and/or D.

THIRD SPECIFICATION

Respondent violated New York Education Law §6530(9)(a)(i) by being convicted of committing an act constituting a crime under New York state law, in that Petitioner charges:

3. The facts in Paragraph E.

FOURTH SPECIFICATION

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

4. The facts in Paragraph C.

FIFTH AND SIXTH SPECIFICATION

Respondent violated New York Education Law §6530(21) by willfully making or filing a false report required by law or by the department of health or the education department, in that Petitioner charges:

5. The facts in Paragraphs A and/or B.
6. The facts in Paragraphs C and/or D.

DATED: *May 13*, 2008
Albany, New York

Redacted Signature

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