



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

March 27, 2009

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Alfonso Ortiz, M.D.

Redacted Address

Peter Chavkin, Esq.
666 Third Avenue
New York, New York 10017

Robert Bogan, Esq.
NYS Department of Health
433 River Street – Suite 303
Troy, New York 12180

RE: In the Matter of Alfonso A. Ortiz, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 09-52) 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:cah

Enclosure

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

IN THE MATTER
OF
ALFONSO A. ORTIZ, M.D.

DETERMINATION
AND
ORDER

BPMC #09-52
COPY

A hearing was held on February 19, 2009, 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 January 8, 2008, were served upon the Respondent, **ALFONSO A. ORTIZ, M.D.**

Pursuant to Section 230(10)(e) of the Public Health Law, **John B. Waldman, M.D.**, Chair, **Trevor A. Litchmore, M.D.**, and, **Ann Ford Fricke, M.S., N.P.**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. **David A. Lenihan, 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, **ALFONSO A. ORTIZ, M.D.**, did appear and was duly served. Respondent was represented by counsel, **Peter Chavkin, Esq.** of **Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.** of New York City. 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 when 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 State or another jurisdiction, or upon a prior administrative adjudication regarding conduct that 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 §6530(9)(ii) – of being convicted of an act constituting a crime under the law of another jurisdiction, which, if committed in New York, would have constituted a crime under New York law. Specifically, the Respondent was convicted in the State of Nevada of driving under the influence of intoxicating liquor, a misdemeanor. Copies of the Notice of Referral Proceeding and the Statement of Charges are attached to this Determination and Order as Appendix 2.

WITNESSES

For the Petitioner:	None
For the Respondent:	Dr. Alfonso A. Ortiz

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. **ALFONSO A. ORTIZ, M.D.**, the Respondent, did appear at the hearing and was duly served and notified of the hearing on January 16, 2008. (Petitioner's Exhibit 2.)
2. **ALFONSO A. ORTIZ, M.D.**, the Respondent, was authorized to practice medicine in New York State on May 26, 1987, by the issuance of license number 170235 by the New York State Education Department (Petitioner's Ex. 4).
3. On or about December 18, 2003, the respondent was found guilty in Las Vegas Municipal Court of Driving while intoxicated, a misdemeanor, and was sentenced to one day in jail, a \$400 fine plus fees of \$120. (Petitioner's Ex. 5).
4. On or about February 7, 2006, the respondent was found guilty in Las Vegas Municipal Court of Driving while intoxicated, a misdemeanor, and was sentenced to one hundred eighty days in jail, credit for time served and the rest suspended, a \$995 fine plus fees of \$132. (Petitioner's Ex. 5)

VOTE OF THE HEARING COMMITTEE

FIRST AND SECOND SPECIFICATIONS

Respondent violated New York Education Law Section 6530(9)(ii) by having been 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 he was found guilty of DWI on two occasions in the State of Nevada.

VOTE: Sustained (3-0)

HEARING COMMITTEE DETERMINATION

The Respondent did appear at the hearing, with counsel. There was no dispute about jurisdiction. There was also no dispute about the basic facts of this case. The Respondent acknowledged on the record that he was convicted in the State of Nevada of Driving While Intoxicated. (TR. 14)

The record in this case thus indicates that Respondent was convicted, on two occasions, of driving while intoxicated, in the State of Nevada. The first occasion was in December of 2003 and, as a result of a plea of *nolo contendere* to a charge of DWI, the Respondent was sentenced to one day in jail and a \$400 fine plus costs. The second offense was in 2006 and it also resulted in a plea of *nolo contendere* and it occasioned a sentence of 180 days in jail, 2 days credit for time served, and the rest suspended, along with a \$950 fine plus costs.

It appears to his credit that the Respondent sought treatment for his alcoholism and went into an extensive rehabilitation program over the course of the next several years. The panel was impressed with the efforts that the respondent has made to rehabilitate himself and maintain his sobriety.

In 2007, the Respondent attempted to re-activate his New York license and he started an extensive rehabilitation program to that end. In July of 2008, the Respondent entered the program run by the Committee for Physician Health (CPH). Karen Clancy of the program wrote an impressive and laudatory three-page letter in support of the Respondent, dated February 10, 2009. (Respondent's Exhibit A.).

This supportive letter points out that Dr. Ortiz has a long history of problematic and excessive use of alcohol and other intoxicants. This letter describes an intensive in-

patient program of 13.5 weeks that began in July of 2008, which included daily psychotherapy and didactic therapy. This program utilized insight-oriented psychotherapy stressing 12 Step meetings and Caduceus meetings. In October of 2008, Dr. Ortiz completed this program and transferred directly to the Seafield Center's sober residence for professionals where he now resides. The record goes on to show that Dr. Ortiz continues to complete four observed, random toxicology screens each month and that he has demonstrated continuous abstinence.

The panel was impressed with the efforts that the Respondent has made to maintain his sobriety but was concerned that his lengthy separation from the practice of medicine may have diminished his medical skills and knowledge. Accordingly, the panel determined that his medical knowledge should be evaluated before he resumes his practice. This evaluation should be done by an entity acceptable to and approved by OPMC.

The panel considered the full range of penalties available in the case and determined that a five year probation would be appropriate.

ORDER

IT IS HEREBY ORDERED THAT:

1. The specifications of professional misconduct, as set forth in the Statement of Charges, are **SUSTAINED**.
2. The license of the Respondent to practice medicine in New York State is hereby **SUSPENDED FOR A PERIOD OF ONE YEAR; HOWEVER, THE SUSPENSION IS STAYED IN WHOLE.**
3. Respondent is placed on a term of probation of five years. The terms of the probation are attached hereto as Appendix I and are incorporated into this Order.

4. The Respondent is Ordered to submit to a competency evaluation and pass this evaluation before he may resume the practice of medicine. This evaluation and test shall be done at the Respondent's expense and shall be done by an institution approved by OPMC.
5. This Order shall be effective upon service on the Respondent in accordance with the requirements of Public Health Law Section 230(10)(h).

DATED: Albany, New York
March 24, 2009

Redacted Signature

John B. Waldman, M.D., Chair

Trevor A. Litchmore, M.D.
Ann Ford Fricke, M.S., N.P.

To:

ALFONSO ORTIZ, M.D.,
Respondent

Redacted Address

Peter Chavkin, Esq.
Attorney for Respondent
666 Third Avenue
New York, NY 10017

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

APPENDIX 1

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. For a period of one year, Respondent shall practice medicine only when a practice monitor shall be present in his office. The practice monitor shall be on-site during office hours, unless determined otherwise by the Director of OPMC. The practice monitor shall be proposed by the Respondent and subject to the written approval of the Director of OPMC. The practice monitor shall not be a family member or personal friend, or be in a professional relationship, which could pose a conflict with supervision responsibilities.
5. Respondent shall ensure that the practice monitor is familiar with the Order and terms of probation, and be aware of the alcohol and substance abuse issues in this case, and be willing to report to OPMC. Respondent shall ensure that the practice monitor is in a position to regularly observe and assess Respondent's medical practice and sobriety. Respondent shall cause the practice monitor to report within 24 hours any suspected impairment, inappropriate behavior; questionable medical practice or possible misconduct to OPMC
6. Respondent shall authorize the practice monitor to have access to patient records and to submit quarterly written reports to the Director of OPMC,

regarding Respondent's practice, including, but not limited to procedures for obtaining written consent to procedures and appropriate chaperoning of patients, These narrative reports shall address all aspects of Respondent's clinical practice including, but not limited to, the evaluation and treatment of patients, general demeanor, and other such on-duty conduct as the practice monitor deems appropriate to report

7. 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.

8. 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.

9. Respondent shall continue to participate in the program for sobriety of the Committee for Physician Health, or similar program approved by OPMC, throughout the period of this probation and shall agree to full disclosure of his records at CPH to OPMC

APPENDIX 2

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



IN THE MATTER

OF

ALFONSO A. ORTIZ, M.D.
CO-07-04-2144-A

NOTICE OF

REFERRAL

PROCEEDING

TO: ALFONSO A. ORTIZ, M.D.

Redacted Address

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of New York Public Health Law §§230(10)(p) and New York State Administrative Procedures Act §§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 21st day of February, 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.

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. SEAN D. O'BRIEN, 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 ten days prior to the scheduled date of the Referral Proceeding, as indicated above.

Pursuant to the provisions of New York Public Health Law §230(10)(p), 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 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.

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

Jan. 8, 2008

Redacted Signature

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) 402-0828

STATE OF NEW YORK

DEPARTMENT OF HEALTH

STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER
OF
ALFONSO A. ORTIZ, M.D.
CO-07-04-2144-A

STATEMENT
OF
CHARGES

ALFONSO A. ORTIZ, M.D., Respondent, was authorized to practice medicine in New York state on May 26, 1987, by the issuance of license number 170235 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about December 18, 2003, in the Las Vegas Municipal Court, Las Vegas, Nevada, Respondent was found guilty, based on a plea of nolo contendere, of Driving under the influence of intoxicating liquor, a misdemeanor, and was sentenced to one (1) day jail, a \$400.00 fine, a \$90.00 administrative fee, a \$60.00 chemical analysis fee, a mandatory DUI-Short Review, and a Victim Impact Panel.

B. On or about February 7, 2006, in the Las Vegas Municipal Court, Las Vegas, Nevada, Respondent was found guilty, based on a plea of nolo contendere, of Driving under the influence of intoxicating liquor, a misdemeanor, and was sentenced to 180 days in jail, with 2 days credit for time served, the rest suspended, a \$995.00 fine, a \$115.00 administrative fee, a \$10.00 const fee, a \$7.00 specialty fee, a victim impact panel, a DUI-Short Review, and 100 hours of community service.

SPECIFICATIONS
FIRST AND SECOND SPECIFICATIONS

Respondent violated New York Education Law §6530(9)(ii) 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:

1. The facts in Paragraph A.
2. The facts in Paragraph B.

DATED: *Jan. 8*, 200*8*
Albany, New York

13 02/06/08

Redacted Signature

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