

November 18, 2011

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Roger Felix, M.D.  
3211 Coors Boulevard SW, Suite D3  
Albuquerque, New Mexico 87106

Roger Felix, M.D.  
REDACTED ADDRESS

Richard P. Walsh, Esq.  
Lombardi, Walsh, Wakeman,  
Harrison, Amodeo & Davenport, P.C.  
111 Winners Circle  
Albany, New York 11205

Kenneth Joel Haber, Esq.  
The Law Office of Kenneth Joel Haber, P.C.  
15879 Crabbs Branch Way  
Rockville, Maryland 20855

Joel E. Abelove, Esq.  
NYS Department of Health  
ESP - Corning Tower - Room 2512  
Albany, New York 12237

**RE: In the Matter of Roger Felix, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 11-276) 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., Chief 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  
Chief Administrative Law Judge  
Bureau of Adjudication

JFH:cah

Enclosure

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

COPY

IN THE MATTER  
OF  
ROGER FELIX, M.D.

DETERMINATION

AND

ORDER

BPMC #11-276

A hearing was held on October 20, 2011, 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 August 19, 2011, were served upon the Respondent, **ROGER FELIX, M.D.**

Pursuant to Section 230(10)(e) of the Public Health Law, **Therese G. Lynch M.D., Chair, Frank E. Iaquinta, M.D., and, Gail S. Homick Herring.,** 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 **James E. Dering, Esq.,** General Counsel, by **Joel E. Abelove, Esq.,** of Counsel. The Respondent, **Roger Felix, M.D.,** was duly served and appeared with counsel, **Richard P. Walsh, Esq.** of Albany and **Kenneth Joel Haber** of Maryland. 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) (b) by having been found guilty of professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York state, constitute professional misconduct under the laws of New York state. Respondent is also charged with violation of New York Education Law §6530(9)(d) by having disciplinary action taken 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 of New York state. Copies of the Notice of Referral Proceeding and the Statement of Charges are attached to this Determination and Order as Appendix 1.

**WITNESSES**

For the Petitioner:	None
For the Respondent:	Respondent, Roger Felix, M.D. David Breault, LISW (by phone)

## 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.

1. Roger Felix, M.D. did appear at the hearing and was duly served and notified of the hearing on August 24, 2011. (Petitioner's Exhibit 2.)
2. The Respondent, Roger Felix, M.D., was authorized to practice medicine in New York State on July 1, 1992, by the issuance of license number 189403 by the New York State Education Department. (Petitioner's Ex. 3)
3. On or about September 1, 2010, the New Mexico Medical Board (hereinafter "New Mexico Board), by a Stipulation of Licensure, (hereinafter "New Mexico Stipulation"), required Respondent to undergo psychotherapy and enter into a treatment contract with the Monitored Treatment program; complete courses in medical record management, ethics, and professional boundaries, within one year; have Respondent's medical records monitored by a physician; and appear before the Board on a quarterly basis or upon the Board's request and Respondent shall submit quarterly reports to the Board attesting to his compliance with the Stipulation. (Petitioner's Ex. 4)
4. The basis of the New Mexico Board action was a complaint alleging violations of the Medical Practice Act, specifically §61-645(D)(29), conduct unbecoming in a person

licensed to practice or detrimental to the best interests of the public and §61-6-15(D)(33), improper management of medical records. (Petitioner's Ex. 4)

5. The Respondent's employment agreement and clinical privileges had been permanently terminated by ABQ Health Partners based on Respondent's disruptive behavior and violation of the code of ethics. Respondent had written in a 9 year-old female's medical record, "Hot little chick. I'm not sure I can wait until she gets old enough."

6. The conduct resulting in the New Mexico 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(20) (moral unfitness); and/or
2. New York Education Law §6530(S2) (failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient). (Petitioner's Ex. 4).

### **VOTE OF THE HEARING COMMITTEE**

#### **FIRST SPECIFICATION**

"Respondent violated New York Education Law §6530(9)(b) by having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York state, constitute professional misconduct under the laws of New York state..."

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

## SECOND SPECIFICATION

"Respondent violated New York Education Law §6530(9)(d) by having disciplinary action taken 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 of New York state..."

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

### HEARING COMMITTEE DETERMINATION

The Respondent did appear at the hearing, with counsel, and was duly served. As to the merits of the case, the Department contended that the record shows that the Respondent was charged with moral unfitness and failure to keep proper records. The documentation submitted by the Department's attorney shows that on September 1, 2010, the New Mexico Board, by an agreed stipulation, required Respondent to undergo psychotherapy and enter into a treatment contact with the Monitored Treatment program.

This stipulation, in the record as Exhibit 4, settled a disciplinary proceeding against the Respondent. The facts in the disciplinary case are that the Respondent was found to have entered a comment in the medical record of a nine year old girl. It is undisputed that the Respondent put the following into the medical record of this young girl: "Hot little chick. I'm not sure I can wait until she gets old enough."

The Respondent did not contest this fact in the New Mexico disciplinary proceeding and he agreed to the stipulation that placed him on probation and required monitoring and treatment. The terms of the probation have now been completed and the Respondent has, as of September 29, 2011, been reinstated to an unfettered license in New Mexico. (See Respondent's Exhibit A, page 31.)

The testimony at the hearing shows that the respondent was going through a stressful period in his life at the time of the incident in question. The computer system he used was voice operated. In some strange form of maladaptation he would dictate bizarre statements on to the electronic records of patients. He would then view them on the monitor and erase them while he was making other needed corrections so that they would not become part of the patient record.

However in the case at hand the Respondent either hit the wrong key or forgot to erase the comments about the "Hot little chick." In its deliberations, the Hearing Committee noted that the respondent was evaluated extensively by expert specialists and councilors, including a psychologist and a forensic psychiatrist. These specialists were chosen by the New Mexico Board and the New Mexico Monitored Treatment Program. The New Mexico specialists concluded that the Respondent provides no risk to self or others and that there is no evidence of paraphilia or impairment. The Committee found the evidence about the Respondent's treatment in New Mexico convincing

The terms of the New Mexico probation required the Respondent to complete courses in medical record management, ethics, and professional boundaries and to have his medical records monitored by a physician and for him to appear before the Board on a quarterly basis or upon the Board's request. The Respondent was also obliged to submit quarterly reports to the Board attesting to his compliance with the Stipulation. (Petitioner's Ex. 4)

The record goes on to show that the basis of the New Mexico Board action was a complaint alleging violations of the Medical Practice Act, specifically §61-645(D)(29), conduct unbecoming in a person licensed to practice or detrimental to the best interests of the public and §61-6-15(D)(33), improper management of medical records. (Petitioner's Ex. 4)



It is noted that the Respondent's employment agreement and clinical privileges had been permanently terminated by his employer, the ABQ Health Partners, based on the Respondent's disruptive behavior and violation of the code of ethics. Two of the panel members found that the conduct resulting in the New Mexico Board disciplinary action against Respondent would constitute misconduct under the laws of New York state, pursuant to the moral unfitness section of New York state Law. (New York Education Law §6530(20). All three members of the panel agreed that the record keeping section of the New York Education Law §6530(32) was violated in that the comments the Respondent put in the patient's record showed that he failed to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient. Since there was unanimity on the record keeping charge, the panel was therefore unanimous in sustaining both specifications.

As to the penalty, the Department's attorney had requested a revocation of the Respondent's license. The panel, in its deliberations, was troubled by the pattern of behavior in this case and was concerned for the protection of New York patients should the Respondent ever desire to come back to New York. To protect the people of New York the panel concluded that the Respondent's license to practice medicine in New York should be restricted with the proviso that in the course of practicing medicine in New York State, any examination or treatment of a female of any age shall be done only in the presence of a chaperone. The panel further determined that the chaperone shall be proposed by the Respondent and subject to the written approval of the Director of OPMC in accordance with terms and conditions established by the Director.

The panel was unanimous in determining that the people of New York State would be protected by a Censure and Reprimand and a restriction on his license requiring a chaperone for the treatment of females of any age.

**ORDER**

**IT IS HEREBY ORDERED THAT:**

1. The Respondent is censured and reprimanded for conduct resulting in the stipulated settlement of the New Mexico disciplinary action, the basis of which would constitute misconduct under the laws of New York State.
2. The Respondent's license to practice medicine in New York is restricted such that in the course of practicing medicine in New York State, any examination or treatment of a female shall be done only in the presence of a chaperone. The chaperone shall be proposed by the Respondent and subject to the written approval of the Director of OPMC in accordance with terms and conditions established by the Director.
3. This Order shall be effective upon service on the Respondent in accordance with the requirements of Public Health Law Section 230(10) (h).

**DATED: Pittsford, New York  
November 17, 2011**

REDACTED SIGNATURE

**Therese G. Lynch M.D., Chair**

**Frank E. Iaquina, M.D.  
Gail S. Homick Herring**

To:

Roger Felix, M.D., Respondent  
3211 Coors Blvd. SW, Suite D3  
Albuquerque, NM 87106

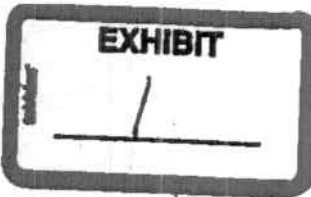
Roger Felix, M.D., Respondent  
REDACTED ADDRESS

Richard P. Walsh, Esq.  
Lombardi, Walsh, Wakeman, Harrison, Amodeo & Davenport, P.C.  
111 Winners Circle  
Albany, New York 11205

Kenneth Joel Haber, Esq.  
The Law Office of Kenneth Joel Haber, P.C.  
15879 Crabbs Branch Way  
Rockville, MD 20855

Joel E. Abelove, Esq.  
Attorney for Petitioner  
Associate Counsel  
NYS Department of Health  
Bureau of Professional Medical Conduct  
Corning Tower, Room 2512  
Empire State Plaza  
Albany, New York 12237

## **APPENDIX 1**



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

---

IN THE MATTER  
OF  
ROGER FELIX, M.D.  
CO-10-09-5587-A

NOTICE OF  
REFERRAL  
PROCEEDING

---

TO:    ROGER FELIX, M.D.  
       3211 Coors Blvd., SW  
       Suite D3  
       Albuquerque, NM 87106

ROGER FELIX, 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 20<sup>th</sup> day of October, 2011, at 10:00 a.m., at the offices of the New York State Department of Health, Hedley Park Place, 433 River Street, 5<sup>th</sup> Floor, Troy, NY 12180.

At the proceeding, evidence will be received concerning the allegations set forth in the Statement of Charges, that 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 who shall be an attorney admitted to practice in New York state. You may produce evidence and/or sworn testimony on your behalf. Such evidence and/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, 433 River Street, Fifth Floor South, Troy, NY 12180, ATTENTION: HON. JAMES F. HORAN, ACTING 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 (10) 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 (10) 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 (6) copies of all papers you submit must be filed with the Bureau of Adjudication at the address indicated above, no later than fourteen (14) 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 demands, hereby, disclosure of the evidence that 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 and/or other evidence that cannot be photocopied.

**YOU ARE ADVISED, HEREBY, THAT THE ATTACHED CHARGES WILL BE MADE PUBLIC FIVE (5) BUSINESS DAYS AFTER THEY ARE SERVED.**

Department attorney: Initial here \_\_\_\_\_

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 (5) 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

*August 19, 2011*

REDACTED SIGNATURE

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

Inquiries should be addressed to:

Joel E. Ablove  
Associate Counsel  
Bureau of Professional Medical Conduct  
Corning Tower – Room 2512  
Empire State Plaza  
Albany, NY 12237  
(518) 473-4282

IN THE MATTER  
OF  
ROGER FELIX, M.D.  
CO-10-09-5587-A

STATEMENT  
OF  
CHARGES

ROGER FELIX, M.D., Respondent, was authorized to practice medicine in New York state on July 1, 1992, by the issuance of license number 189403 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A. On or about September 1, 2010, the New Mexico Medical Board (hereinafter "New Mexico Board"), by a Stipulation of Licensure, (hereinafter "New Mexico Stipulation"), required Respondent to undergo psychotherapy and enter into a treatment contact with the Monitored Treatment program; complete courses in medical record management, ethics, and professional boundaries, within one year; have Respondent's medical records monitored by a physician; and appear before the Board on a quarterly basis or upon the Board's request and Respondent shall submit quarterly reports to the Board attesting to his compliance with the Stipulation, based on a complaint alleging violations of the Medical Practice Act, specifically §61-645(D)(29), conduct unbecoming in a person licensed to practice or detrimental to the best interests of the public and §61-6-15(D)(33), improper management of medical records. Respondent's employment agreement and clinical privileges had been permanently terminated by ABQ Health Partners based on Respondent's disruptive behavior and violation of the code of ethics. Respondent had written in a 9-year-old female's medical record, "Hot little chick. I'm not sure I can wait until she gets old enough."

B. The conduct resulting in the New Mexico 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(20) (moral unfitness); and/or



2. New York Education Law §6530(32) (failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient).

**SPECIFICATIONS**

**FIRST SPECIFICATION**

Respondent violated New York Education Law §6530(9)(b) by having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York state, constitute professional misconduct under the laws of New York state, in that Petitioner charges:

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

**SECOND SPECIFICATION**

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

2. The facts in Paragraphs A and/or B.

DATED: *August 19*, 2011  
Albany, New York

REDACTED SIGNATURE

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