

NEW YORK
state department of
HEALTH

Public

Nirav R. Shah, M.D., M.P.H.
Commissioner

Sue Kelly
Executive Deputy Commissioner

May 8, 2012

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Benjamin Sanchez, Jr., M.D.

REDACTED

Joel E. Ablove, Esq.
NYS Department of Health
Bureau of Professional Medical Conduct
Corning Tower, ESP – Room 2512
Albany, New York 12237-0032

RE: In the Matter of Benjamin Sanchez, Jr., M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 12-95) 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.

Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine together with the registration certificate. Delivery shall be by either certified mail or in person to:

Office of Professional Medical Conduct
New York State Department of Health
Hedley Park Place
433 River Street - Fourth Floor
Troy, New York 12180

If your license or registration certificate is lost, misplaced or its whereabouts is otherwise unknown, you shall submit an affidavit to that effect. If subsequently you locate the requested items, they must then be delivered to the Office of Professional Medical Conduct in the manner noted above.

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 licensee or the Department may seek a review of a committee determination.

Request for review of the Committee's determination by the Administrative Review Board stays penalties other than suspension or revocation until final determination by that Board. Summary orders are not stayed by Administrative Review Board reviews.

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

James F. Horan
Chief Administrative Law Judge
Bureau of Adjudication

JFH: djh
Enclosure

DETERMINATION

AND

ORDER

BPMC #12-95

IN THE MATTER

OF

BENJAMIN SANCHEZ, JR, M.D.
CO-10-12-7791-A

A hearing was held on March 21, 2012, at the offices of the New York State Department of Health ("the Petitioner"), 433 River Street, Troy, New York. A Notice of Referral Proceeding and a Statement of Charges, both dated January 12, 2012, were served upon the Respondent, Benjamin Sanchez, Jr., M.D.

Pursuant to Section 230(10)(e) of the Public Health Law, **Calvin J. Simons, M.D.**, Chair, **Trevor A. Litchmore, M.D.**, and **Dennis Zimmerman, M.S.**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. **Kimberly A. O'Brien, Esq.**, Administrative Law Judge, served as the Administrative Officer. The Petitioner appeared by **James E. Dering, Esq.**, General Counsel, by **Joel Abelove, Esq.**, of Counsel. The Respondent, **Benjamin Sanchez, Jr. M.D.**, did not appear in person or by a representative. 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, Respondent, Benjamin Sanchez, Jr., M.D., is charged with two specifications of professional misconduct pursuant to Education Law §6530(9)(a)(iii) and Education Law §6530(9)(d). 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: | 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." or "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. Benjamin Sanchez, Jr. M.D., Respondent, was authorized to practice medicine in New York State on August 23, 1991, by the issuance of license number 186696, by the New York State Education Department (Ex. 3).
2. Benjamin Sanchez, Jr. M.D., Respondent, was personally served with the Notice of Referral Proceeding, Statement of Charges and Summary of Department of Health Hearing Rules (Ex. 1&2).
3. On or about July 30, 2009, in Hillsborough County Court, State of Florida, Respondent was convicted, based on a plea of nolo contendere, of Criminal Mischief, and was sentenced to serve 90 days in jail and pay \$280.00 in court costs (Ex. 5).
4. On or about July 27, 2009, in the Circuit Court, Sixth Judicial Circuit, in and for Pinellas County Florida, Respondent was convicted, based on a plea of nolo contendere, of Criminal Mischief, and sentenced to probation for a term of four (4) years & (6) six months (Ex. 6). During the pre-hearing conference held outside the presence of the Hearing Committee, the Petitioner withdrew and redacted sanctions set forth in paragraph B of the original Statement of Charges. During the hearing, the Petitioner offered the Hearing Committee redacted copies of the Statement of Charges, and the members of the Hearing Committee individually affirmed on the hearing record that they could make a fair and appropriate hearing determination based on the redacted version of the Statement of Charges and would not be prejudiced by having seen the original contents of paragraph B (Ex.1, Tr. 4&5).
5. On or about December 16, 2010, the State of Florida, Board of Medicine (hereinafter "Florida Board"), issued a Final Order (hereinafter "Florida Order"), and based on the criminal mischief convictions reprimanded Respondent, indefinitely

suspended Respondent's license to practice medicine "until such time as he appears before the board and demonstrates he can practice medicine with reasonable skill and safety...", and imposed a fine of \$2,500.00 plus \$6,003.90 in costs (Ex. 4, 5 & 6).

6. The criminal and professional misconduct charged herein constitutes both criminal and professional misconduct under the laws of New York State (Ex. 1, 4, 5&6; Tr. 11-13).

VOTE OF THE HEARING COMMITTEE

FIRST SPECIFICATION

"Respondent violated New York Education Law Section 6530(9)(a)(iii) 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 ..."

VOTE: Sustained (3-0)

SECOND SPECIFICATION

"Respondent violated New York Education Law Section 6530(9)(d) by having his license to practice medicine suspended or having had other disciplinary action taken after disciplinary action was instituted by a duly authorized professional disciplinary agency of another state where the conduct resulting in the suspension or other 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 & CONCLUSIONS

The Respondent did not appear at the hearing either in person or by counsel. The Petitioner was personally served with the Notice of Referral Proceeding, Statement of Charges and Summary of Department of Health Hearing Rules, and Respondent did not contact the Department (Tr. 6). In this case, the Hearing Committee having sustained the charges was then required to determine what if any penalty should be imposed on Respondent for the misconduct.

The Department presented un refuted documentary evidence including a December 2010 Florida Board Order indefinitely suspending Respondent's right to practice medicine in Florida and calling into question his competence to practice medicine safely, and two separate criminal mischief convictions against Respondent for damaging property in two different Florida counties. While the Hearing Committee noted that the criminal conduct which caused the Florida Board to indefinitely suspend Respondent's license all occurred on January 29, 2009 and was limited to property damage, they concluded that Respondent's failure to appear and/or submit any mitigating information about his conduct gave them no other recourse but to revoke the Respondent's license to practice medicine in New York State.

ORDER

IT IS HEREBY ORDERED THAT:

1. The specified charges against the Respondent are **SUSTAINED** (Appendix 1/Ex.1); and
2. Respondent's New York State Medical License 186696 is **REVOKED**; and

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: May 4, New York, 2012

REDACTED

~~Calvin J. Simons, M.D., Chair~~

Trevor A. Litchmore, M.D.
Dennis Zimmerman, M.S.

To: Benjamin Sanchez, Jr. M.D.
REDACTED

Joel E. Abelove, Esq.
Bureau of Professional Medical Conduct
Empire State Plaza
Corning Tower Room 2512
Albany, New York 12237-0032

APPENDIX 1

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

IN THE MATTER
OF
BENJAMIN SANCHEZ, JR., M.D.
CO-10-12-7791-A

NOTICE OF
REFERRAL
PROCEEDING

TO: Benjamin Sanchez, Jr., M.D.

REDACTED

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 March, 2012, at 10:30 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 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

January 12, 2012

REDACTED

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

Inquiries should be addressed to:

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

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

IN THE MATTER
OF
BENJAMIN SANCHEZ, JR., M.D.
CO-10-12-7791-A

STATEMENT
OF
CHARGES

BENJAMIN SANCHEZ, JR., M.D., the Respondent, was authorized to practice medicine in New York state on August 23, 1991, by the issuance of license number 186696 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about July 30, 2009, in Hillsborough County Court, Tampa, Florida, Respondent was convicted, based on a plea of nolo contendere, of charges of Criminal Mischief, and was sentenced to ninety (90) days jail, and to pay \$280.00 in court costs.

B. On or about July 27, 2009, in the Circuit Court, Sixth Judicial Circuit of Florida, in and for Pinellas County, Respondent was convicted, based upon a plea of nolo contendere, of Criminal Mischief, [REDACTED] and was sentenced to [REDACTED] 4.5 years probation for the Criminal Mischief conviction [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

C. On or about December 16, 2010, the State of Florida, Board of Medicine (hereinafter "Florida Board"), by a Final Order (hereinafter "Florida Order"), suspended

Respondent's license to practice medicine indefinitely until such time as he appears before the board and demonstrates he can practice medicine with reasonable skill and safety. An evaluation of Respondent by two approved evaluators must agree that he is safe to return to the practice of medicine and that he has been stable for a minimum of one year. Additionally, Respondent received a reprimand and was fined \$2,500.00 plus \$6,003.90 in costs, based on the convictions described in Paragraphs A and B above.

D. The conduct resulting in the Florida Board disciplinary actions 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(9)(a)(iii) (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).

SPECIFICATIONS
FIRST 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:

1. The facts in Paragraph A and B.

SECOND SPECIFICATION

Respondent violated New York Education Law §6530(d) by having his license to practice medicine suspended or having had other disciplinary action taken after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the suspension or other disciplinary action 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, B, C, and/or D.

DATED: *January 12*, 2012
Albany, New York

REDACTED

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