



Department  
of Health

*Public*

ANDREW M. CUOMO  
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Acting Commissioner

SALLY DRESLIN, M.S., R.N.  
Executive Deputy Commissioner

January 22, 2015

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Carlos Vargas, M.D.



Carlos Vargas, M.D.



Jude B. Mulvey, Esq.  
NYS Department of Health  
ESP-Corning Tower-Room 2512  
Albany, New York 12237

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

Dear Parties:

Enclosed please find the Determination and Order (No. 15-012) 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  
Office of Professional Medical Conduct  
Riverview Center  
150 Broadway - Suite 355  
Albany, New York 12204

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. 2013) and §230-c subdivisions 1 through 5, (McKinney Supp. 2013), "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.

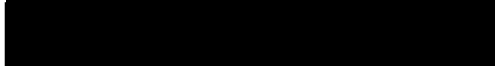
The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Chief Administrative Law Judge  
New York State Department of Health  
Bureau of Adjudication  
Riverview Center  
150 Broadway – Suite 510  
Albany, New York 12204

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,

  
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

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IN THE MATTER  
OF  
CARLOS VARGAS, M.D.

DETERMINATION

AND

COPY

ORDER

BPMC #15-012

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A hearing was held December 29, 2014, at the offices of the New York State Department of Health ("the Petitioner"). A Notice of Hearing and a Statement of Charges, both dated August 7, 2014, were served upon the Respondent, **Carlos Vargas, M.D.**

Pursuant to Section 230(10)(e) of the Public Health Law, **Robert A. Catalano, M.D., M.B.A.**, Chair, **Virginia Marty**, and **Eleanor C. Kane, M.D.**, 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 **Jude B. Mulvey, Esq.**, of Counsel. The Respondent, **Carlos Vargas, M.D.**, did not appear, although duly served. Evidence was received and transcripts of these proceedings were made. After consideration of the entire record, the Hearing Committee issues this Determination and Order.

## PROCEDURAL HISTORY

Date of Service of Notice of Hearing and Statement of Charges:	August 7, 2014
Answer Filed:	None filed
Hearing Date:	December 29, 2014
Witnesses for Petitioner:	April Soltren, OPMC Physician Monitoring Unit
Witnesses for Respondent:	None
Deliberations Date:	December 29, 2014

## STATEMENT OF THE CASE

Petitioner charged Respondent with two (2) specifications of professional misconduct. The first specification charges that Respondent violated N.Y. Education Law §6530(16) by his failure to comply with an order issued pursuant to paragraph (a) of subdivision ten of section two hundred thirty of the Public Health Law.

The second specification charges Respondent with violating any term of probation or condition or limitation imposed on the license pursuant to section two hundred thirty of the Public Health Law.

A copy of the Notice of Hearing and Statement of Charges is attached to this Determination and Order as Appendix I.



## 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 "T." 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. 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 or about September 24, 2008, a Hearing Committee of the New York State Board for Professional Medical Conduct issued Determination and Order Number 08-185 ("BPMC Order 08-185"), finding, after a hearing, *inter alia*, Respondent guilty of four types of professional misconduct:

(a) practicing the profession of medicine fraudulently (violation of N.Y. Education Law § 6530[2]),

(b) having been convicted of an act constituting a crime under New York State law ( 6530 [9][a][i]),

(c) having been convicted of an act constituting a crime in another jurisdiction which, if committed in New York state, would constitute a crime ( 6530[9][a][iii]), and

(d) willfully making or filing a false report ( 6530[2]) (Petitioner's Ex. 7)

3. The above 2008 findings were based, *inter alia*, on Respondent's failure to disclose a 2001 arrest for Driving While Intoxicated, a Class A misdemeanor, in Plattsburgh, New York on his New York State Education license renewal application in December 2001, his failure to disclose a 2005 arrest for Driving While Intoxicated, a Class A misdemeanor, in Boulder, Colorado on his New York State Education license renewal application in 2006, and on his criminal misdemeanor convictions of Driving While Intoxicated in Glens Falls, New York in September 2007 and in Boulder, Colorado in February 2008.

4. The 2008 BPMC Order (08-185) provided that Respondent be placed on a five-year period of probation with terms including, among others, that Respondent enroll and engage in a contract with the Committee for Physicians' Health ("CPH"), that Respondent give written authorization to CPH to provide the Director of the Office of Professional Medical Conduct ("OPMC") with all information or documentation requested by OPMC, that Respondent fully cooperate and respond in a timely manner to all OPMC requests for verification of Respondent's compliance with the terms of BPMC Order 08-185, and that Respondent submit written notification to OPMC including a full description of any employment and practice and professional and residential addresses and telephone numbers. (Petitioner's Ex. 7)

5. Respondent is in violation of the terms and conditions of BPMC Order 08-185 in that:

- a. Respondent failed to enroll in a contract and/or engage as a participant with CPH;
- b. Respondent failed to complete and return correspondence as requested and directed by the Physician Monitoring Program of OPMC;

c. Respondent failed to cooperate with OPMC staff in ascertaining whether Respondent was in compliance with BPMC Order 08-1 85 by, among others, failing to provide written notice of his employment practice after December 24, 2008, failing to meet with a person designated by the Director of OPMC, failing to reply to telephone calls from a representative of OPMC, failing to provide an accessible forwarding address or telephone number, and/or failing to respond to written requests for information from a representative of OPMC on June 27, 2011 and/or July 11, 2011.

**WITNESSES**

For the Petitioner:	April Soltren, OPMC Physician Monitoring
For Respondent:	None

**VOTE OF THE HEARING COMMITTEE**

**FIRST SPECIFICATION**

**VIOLATION OF A BOARD ORDER**

“Respondent violated N.Y. Education Law § 6530(16) by his failure to comply with an order issued pursuant to paragraph (a) of subdivision ten of section two hundred thirty of the public health law...”

VOTE: Sustained (3-0)

**SECOND SPECIFICATION**

**VIOLATION OF CONDITIONS ON A LICENSE**

“Respondent violated Education Law § 6530(29) by violating any term of probation or condition or limitation imposed on the license pursuant to section two hundred thirty of the public health law...”

VOTE: Sustained (3-0)

**HEARING COMMITTEE DETERMINATION**

The Respondent did not appear at the hearing, either in person or by counsel. The Administrative Law Judge, after considering the documentary evidence, which included an Affidavit of Substituted Service of the Notice of Referral Proceeding and the Statement of Charges (Petitioner's Exhibit 2), ruled that the Petitioner had met the requirements of law for jurisdiction in the service of process, that jurisdiction had been established over the Respondent, and that the hearing could proceed on the merits notwithstanding the Respondent's absence. It is noted for the record that the Respondent was aware of these proceedings as he has requested an adjournment of this matter in September and has been in correspondence with the Department's attorney through his father, an attorney in Puerto Rico. (See ALJ Ex. A and T. 23)

The record in this case shows that Respondent has a history of substance abuse dating back to at least 2001. The record shows a 2001 arrest for Driving While Intoxicated, a Class A misdemeanor, in Plattsburgh, New York. The record also establishes a 2005 arrest for Driving While Intoxicated, a Class A misdemeanor, in Boulder, Colorado. These matters were

dealt with by the Board in 2008 and the Order of 2008 (BPMC Order 08-185) provided that Respondent be placed on a five-year period of probation with terms including, among others, that Respondent enroll and engage in a contract with the Committee for Physicians' Health ("CPH"), that Respondent give written authorization to CPH to provide the Director of the Office of Professional Medical Conduct ("OPMC") with all information or documentation requested by OPMC, that Respondent fully cooperate and respond in a timely manner to all OPMC requests for verification of Respondent's compliance with the terms of BPMC Order 08-185, and that Respondent submit written notification to OPMC including a full description of any employment and practice and professional and residential addresses and telephone numbers.

The unrefuted testimony and evidence in the present case shows that the Respondent is in violation of the terms and conditions of BPMC Order 08-185 in that he has failed to enroll in a contract and/or engage as a participant with CPH. Furthermore, the record shows that Respondent has failed to complete and return correspondence as requested and directed by the Physician Monitoring Program of OPMC and has also failed to cooperate with OPMC staff in ascertaining whether he is in compliance with the Order of the Board. It is noted that the documentation submitted from a treatment facility in Puerto Rico (ALJ Ex. B) does show some evidence of a present attempt at rehabilitation and recovery. These attempts, however laudable, do not exonerate the Respondent or excuse his blatant disregard for the provisions of the 2008 probation order in this case.

The Department's attorney, Ms. Mulvey, stated that, given the nature of the violations in this case, there is no other appropriate outcome in New York State but to revoke the Respondent's New York license. The panel, unanimously, agreed with the Department on this

recommendation. As to the penalty, therefore, the Hearing Committee determined that the people of New York State would be protected by a revocation of the Respondent's license. Accordingly, the panel decided, unanimously, to revoke the Respondent's license under the circumstances of this case.

**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 **REVOKED**.
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: Delmar, New York**

**January 17, 2015**

  
**CATALANO, M.D., Chair,**

**Virginia Marty  
Eleanor C. Kane, M.D.,**

To:

Carlos Vargas, M.D.  
Respondent



Carlos Vargas, M.D.  
Respondent



Jude B. Mulvey, 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



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

IN THE MATTER  
OF  
CARLOS VARGAS, M.D.

NOTICE  
OF  
HEARING

TO: Carlos Vargas, M.D.

Carlos Vargas, M.D.

PLEASE TAKE NOTICE:

A hearing will be held pursuant to the provisions of N.Y. Pub. Health Law §230 and N.Y. State Admin. Proc. 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 September 26, 2014, at 10:00 a.m., at the Offices of the New York State Department of Health, Riverview Center, 150 Broadway, Suite 510, Albany, NY 12204 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 who shall be an attorney admitted to practice in New York state. 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

EXHIBIT

1

and examine evidence produced against you. A summary of the Department of Health Hearing Rules is enclosed.

YOU ARE HEREBY ADVISED THAT THE ATTACHED CHARGES WILL BE MADE PUBLIC FIVE BUSINESS DAYS AFTER THEY ARE SERVED.

Department attorney: Initial here                     

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, Riverview Center, 150 Broadway - Suite 510, Albany, NY 12204-2719, ATTENTION: HON. JAMES HORAN, 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 N.Y. Pub. 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 N.Y. State Admin. Proc. 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.

DATE AUGUST 7, 2014

ALBANY, NY

  
Michael A. Hiser  
Deputy Counsel  
Bureau of Professional Medical Conduct

Inquiries should be directed to:  
Jude Mulvey, Associate Counsel  
Bureau of Professional Medical Conduct

IN THE MATTER  
OF  
CARLOS VARGAS, M.D.

STATEMENT  
OF  
CHARGES

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.

**FACTUAL ALLEGATIONS**

A. On or about September 24, 2008, a Hearing Committee of the New York State Board for Professional Medical Conduct issued Determination and Order Number 08-185 ("BPMC Order 08-185"), finding, after a hearing, inter alia, Respondent guilty of four types of professional misconduct: (1) practicing the profession of medicine fraudulently (violation of N.Y. Education Law § 6530[2]), (2) having been convicted of an act constituting a crime under New York State law (§ 6530 [9][a][i]), (3) having been convicted of an act constituting a crime in another jurisdiction which, if committed in New York state, would constitute a crime (§ 6530[9][a][iii]), and (4) willfully making or filing a false report (§ 6530[21]). A copy of BPMC 08-185 is attached as Exhibit A. The findings were based, inter alia, on Respondent's failure to disclose a 2001 arrest for Driving While Intoxicated, a Class A misdemeanor, in Plattsburgh, New York on his New York State Education license renewal application in December 2001, his failure to disclose a 2005 arrest for Driving While Intoxicated, a Class A misdemeanor, in Boulder, Colorado on his New York State Education license renewal application in 2006, and on his criminal misdemeanor convictions of Driving While Intoxicated in Glens Falls, New York in September 2007 and in Boulder, Colorado in February 2008.

B. BPMC Order 08-185 provided that Respondent was placed on a five-year period of probation with terms including, among others, that Respondent enroll and engage in a contract with the Committee for Physicians' Health ("CPH"), that Respondent give written authorization to CPH to provide the Director of the Office of Professional Medical Conduct ("OPMC") with all information or documentation requested by OPMC, that Respondent fully cooperate and respond in a timely manner to all OPMC requests for verification of Respondent's compliance with the terms of BPMC Order 08-185, and that Respondent submit written notification to OPMC including a full description of any employment and practice and professional and residential addresses and telephone numbers.

C. Respondent is in violation of the terms and conditions of BPMC Order 08-185 in that:

1. Respondent failed to enroll in a contract and/or engage as a participant with CPH;
2. Respondent failed to complete and return correspondence as requested and directed by the Physician Monitoring Program of OPMC;
3. Respondent failed to cooperate with OPMC staff in ascertaining whether Respondent was in compliance with BPMC Order 08-185 by, among others, failing to provide written notice of his employment practice after December 24, 2008, failing to meet with a person designated by the Director of OPMC, failing to reply to telephone calls from a representative of OPMC, failing to provide an accessible forwarding address or telephone number, and/or failing to respond to written requests for information from a representative of OPMC on June 27, 2011 and/or July 11, 2011.

**SPECIFICATION OF CHARGES**

**FIRST SPECIFICATION**

**VIOLATION OF A BOARD ORDER**

Respondent violated N.Y. Education Law § 6530(16) by his failure to comply with an order issued pursuant to paragraph (a) of subdivision ten of section two hundred thirty of the public health law, in that Petitioner charges:

1. The facts of Paragraphs A, B, and C and C.1, A, B and C and C.2, and/or A, B, and C and C.3.

**SECOND SPECIFICATION**

**VIOLATION OF CONDITIONS ON A LICENSE**

Respondent violated Education Law § 6530(29) by violating any term of probation or condition or limitation imposed on the license pursuant to section two hundred thirty of the public health law, in that Petitioner charges:

2. The facts in Paragraphs A, B and C and C.2, and/or A, B and C and C.3.

DATE: August 7, 2014  
Albany, New York

  
Michael A. Hiser  
Deputy Counsel  
Bureau of Professional Medical Conduct