

VIRGINIA:

BEFORE THE BOARD OF MEDICINE

IN RE: SANTIAGO NUNEZ DEVILLAVICENCI, M.D.
License No.: 0101-016405

ORDER

In accordance with Sections 54.1-2919, 2.2-4019 and 2.2-4021 of the Code of Virginia (1950), as amended ("Code"), an informal conference was held with Santiago Nunez DeVillavicenci, M.D., on June 2, 2004, in Williamsburg, Virginia. Members of the Virginia Board of Medicine ("Board") serving on the Informal Conference Committee ("Committee") were: Juan M. Montero, II, M.D., Chairman; Dianne L. Reynolds-Cane, M.D.; and Stephen E. Heretick, Esquire. Dr. Nunez DeVillavicenci appeared personally and was represented by legal counsel, Michael Goodman, Esquire. The purpose of the informal conference was to inquire into allegations that Dr. Nunez DeVillavicenci may have violated certain laws governing the practice of medicine in the Commonwealth of Virginia, as set forth in a Notice of Informal Conference dated May 3, 2004.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Now, having properly considered the evidence and statements presented, the Committee makes the following Findings of Fact and Conclusions of Law:

1. Santiago Nunez DeVillavicenci, M.D., was issued license number 0101-016405 to practice medicine and surgery in the Commonwealth of Virginia on July 2, 1963. Said license is currently active and will expire on May 31, 2006, unless renewed or otherwise restricted.



COMMONWEALTH of VIRGINIA

Robert A. Nebiker
Director

Department of Health Professions

6603 West Broad Street, 5th Floor
Richmond, Virginia 23230-1712

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May 3, 2004

Santiago Nunez DeVillavicenci, M.D.
720 E. Tazwell's Way
Williamsburg, Virginia 23185

FEDERAL EXPRESS
8455 4788 0189

RE: License No.: 0101-016405

Dear Dr. Nunez DeVillavicenci:

This letter is official notification that an informal conference of the Virginia Board of Medicine ("Board") will be held on **Wednesday, June 2, 2004, at 9:00 a.m., at the Williamsburg Marriott, 50 Kingsmill Road, Williamsburg, Virginia**. The conference will be conducted pursuant to Sections 54.1-2919, 2.2-4019 and 2.2-4021 of the Code of Virginia (1950), as amended ("Code").

An Informal Conference Committee ("Committee") will inquire into allegations that you may have violated certain laws governing the practice of medicine in Virginia. Specifically:

1. You may have violated Sections 54.1-2915.A(1), (2) and (3), as further defined in Sections 54.1-2914.A(3), (9), (11), (12) and (5), as defined in Section 18.2-250, and Sections 54.1-3303 and 54.1-3408.A of the Code, in that on several occasions between March 6, 2002 and January 15, 2003, with the intent to evade the law with respect to the sale, use and disposition, you wrote prescriptions in the names of two of your co-workers for various controlled substances, to include Adderall, Temazepam, Alprazolam, Xanax, Clonazepam and Lomotil. After filling the prescriptions and paying for them with funds that you provided, the co-workers returned the filled prescriptions to you for your personal and unauthorized use.
2. You may have violated Section 54.1-2915.A(3), as further defined in Sections 54.1-2914.A(8), (11) and (12), Section 54.1-3303 and Section 54.1-3408.A of the Code, in that outside of a bona-fide physician-patient relationship and without performing proper

evaluations or documenting your treatment, you prescribed medications for members of your immediate family, and for co-workers at Colonial Psychiatric Associates, Newport News, Virginia. Specifically:

a. Between on or about August 20, 2000 and January 31, 2003, you wrote and provided Individual A, a member of your immediate family, with prescriptions for Provera, Atenolol, Hyzaar, Amoxicillin and Premarin.

b. In an April 10, 2003 interview with the Department of Health Professions' Investigator ("Department's Investigator"), you acknowledged that on at least one occasion, you wrote a prescription for Xanax for Individual B, a person with whom you worked. You never performed an examination of Individual B nor did you maintain a treatment record for her.

3. You may have violated Section 54.1-2915.A(3), as further defined in Sections 54.1-2914.A(8) and (12), Section 54.1-3303 and Section 54.1-3408.A of the Code, in that between on or about May 2, 2001 and February 21, 2003, you wrote numerous prescriptions for your personal and unauthorized use, to include Tramadol, Viagra and Hyzaar.

4. You may have violated Section 54.1-2915.A(3), as further defined in Section 54.1-2914.A(8), (11), (12) and (13), Sections 54.1-3303 and 54.1-3408.A of the Code, and 18 VAC 85-20-90(A) and (B) of the Regulations of the Virginia Board of Medicine, in that on or about January 22, 2003, you provided Individual C, a person with whom you did not have a bona-fide physician-patient relationship, with a prescription for Adderall, a Schedule II stimulant, for weight loss. Further, you failed to properly evaluate and maintain records of your treatment of said Individual C.

5. You may have violated Section 54.1-2915.A(4) and (3), as further defined in Sections 54.1-2914.A(8), (11), (12), and Section 54.1-3302 and Section 54.1-3457(1) and (2) of the Code, in that you dispensed your own excess medication and medication returned to you by other individuals to your patients to be used as samples. Said practice is dangerous to the health and welfare of your patients, in that such medications may be contaminated or adulterated. Further, you engaged in misbranding and the delivery of misbranded drugs through the re-labeling and dispensing of returned prescriptions, which endangers patients because the medications do not include written information and instructions regarding use of the medication.

6. You may have violated Section 54.1-2915.A(5) in that, you may be mentally and/or physically incapable of practicing medicine safely. Specifically:

a. On or about March 24, 2003, you were detained by Virginia State Police after reports were received that you were driving erratically. You failed a field sobriety test and a search of your vehicle yielded several prescription bottles of medication, with the names of other individuals on them, and opened and unopened samples of controlled substances. You were subsequently charged with Driving Under the Influence of controlled substances and seven counts of drug possession. On or about July 22, 2003, you were found guilty of Reckless Driving and Possession of Alprazolam, both misdemeanors. You paid fines and costs in the amount of \$819.00, and your driver's license was restricted.

b. On or about May 12, 2003, you underwent a comprehensive assessment at the William J. Farley Center at Williamsburg Place, Williamsburg, Virginia, where diagnoses of post traumatic stress disorder and depressive disorder were noted.

c. In 2003, you were undergoing treatment with a licensed clinical social worker and were being prescribed anti-depressant and anti-anxiety medications by physicians. In addition to the medications that you were being prescribed, you obtained and self-administered Adderal and Xanax without the knowledge of your treating physicians and therapist.

d. On or about April 23, 2003, you entered into a Participation Contract with Virginia Health Practitioners' Intervention Program ("HPIP"), and signed a Recovery Monitoring Contract with HPIP on or about May 23, 2003.

Please see Attachment I for the identity of the individuals referenced above.

At the informal conference, the following actions may be taken by this Committee:

1. If a majority of the Committee is of the opinion that a suspension or revocation of your license may be justified, the Committee shall present to the Board in writing its findings, and the Board may proceed with a formal hearing.
2. The Committee may notify you in writing that you are fully exonerated of any charge that might affect your right to practice medicine in Virginia.
3. The Committee may reprimand or censure you.
4. The Committee may impose a monetary penalty pursuant to Section 54.1-2401 of the Code.

5. The Committee may place you on probation for such time as it may designate and direct that during such period you furnish the Committee or its chairman, at such intervals as the Committee may direct, evidence that you are not practicing in violation of the provisions of Chapter 29, Title 54.1 of the Code, which governs the practice of medicine in Virginia.

You have the right to information which will be relied upon by the Committee in making a decision. Therefore, I enclose a copy of the documents which will be distributed to the members of the Committee and will be considered by the Committee when discussing the allegations with you and when deliberating upon your case. These documents are enclosed only with the original notice sent by Federal Express. Further, a copy of this package is being provided to Mr. Goodman, your counsel.

To facilitate this proceeding, you must submit eight (8) copies of any documents you wish for the Committee to consider to Renee Dixon, Discipline Case Manager, Board of Medicine, Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, Virginia 23230-1717, by **May 18, 2004**. Your documents may not be submitted by facsimile or e-mail. Should you or Lorraine McGehee wish to submit any documents for the Committee's consideration after May 18, 2004, such documents shall be considered only upon a ruling by the Chair of the informal conference committee that good cause has been shown for late submission.

You may be represented by an attorney at the informal conference. Absent good cause shown to support a request for a continuance, the informal conference will be held on June 2, 2004. A request to continue this proceeding must state in detail the reason for the request and must establish good cause. Such request must be made, in writing, to me at the address listed on this letter and must be received by 5:00 p.m. on **May 14, 2004**. Only one such motion will be considered. Absent exigent circumstances, such as personal or family illness, a request for a continuance after **May 14, 2004**, will not be considered.

Relevant sections of the Administrative Process Act, which govern proceedings of this nature, as well as laws relating to the practice of medicine and other healing arts in Virginia cited in this notice can be found on the internet at <http://leg1.state.va.us>. To access this information, please click on the *Code of Virginia* for statutes and *Virginia Administrative Code* for regulations.

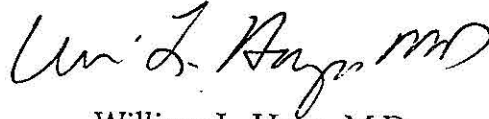
Please advise the Board, in writing, of your intention to be present. Should you fail to appear at the informal conference, the Board may proceed to a formal administrative hearing in order to impose sanctions.

May 3, 2004

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Should you have any questions regarding this notice, please contact Lorraine McGehee, Deputy Director, Administrative Proceedings Division, at (804) 662-7440.

Sincerely,



William L. Harp, M.D.
Executive Director
Virginia Board of Medicine

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sjr/Nunez DeVillavicenci96NIF.DOC

Enclosures:

Attachment I
Informal Conference Package
Map

cc: Dianne L. Reynolds-Cane, M.D., President, Virginia Board of Medicine
Robert A. Nebiker, Director, Department of Health Professions
Reneé S. Dixon, Discipline Case Manager, Board of Medicine
Lorraine McGehee, Deputy Director, Administrative Proceedings Division
Michael L. Goodman, Esquire [w/enclosures]
Colleen Lewis, Investigator [89796]
Donna Whitney, Intervention Program Manager

2. Dr. Nunez DeVillavicenci has violated Section 54.1-2915.A(3), as further defined in Sections 54.1-2914.A(11) and (12), and Section 54.1-3303 of the Code, in that on several occasions between March 6, 2002 and January 15, 2003, Dr. Nunez DeVillavicenci wrote prescriptions in the names of two of his co-workers for various controlled substances, to include Adderall, Temazepam, Alprazolam, Xanax, Clonazepam and Lomotil. After filling the prescriptions and paying for them with funds that Dr. Nunez DeVillavicenci provided, the co-workers returned the filled prescriptions to Dr. Nunez DeVillavicenci for his personal and unauthorized use.

3. Dr. Nunez DeVillavicenci violated Section 54.1-2915.A(3), as further defined in Sections 54.1-2914.A(11) and (12), and Section 54.1-3303.A of the Code, in that outside of a bona-fide physician-patient relationship and without performing proper evaluations or documenting his treatment, Dr. Nunez DeVillavicenci prescribed medications for members of his immediate family, and for co-workers at Colonial Psychiatric Associates, Newport News, Virginia. Specifically:

a. Between on or about August 20, 2000 and January 31, 2003, Dr. Nunez DeVillavicenci wrote and provided Individual A, a member of his immediate family, with prescriptions for Provera, Atenolol, Hyzaar, Amoxicillin and Premarin.

b. In an April 10, 2003 interview with the Department of Health Professions' Investigator ("Department's Investigator"), Dr. Nunez DeVillavicenci acknowledged that on at least one occasion, he wrote a prescription for Xanax for Individual B, a person with whom he worked. Dr. Nunez DeVillavicenci never

performed an examination of Individual B nor did he maintain a treatment record for her.

4. Dr. Nunez DeVillavicenci violated Section 54.1-2915.A(3), as further defined in Section 54.1-2914.A(12), and Section 54.1-3303 of the Code, in that between on or about May 2, 2001 and February 21, 2003, Dr. Nunez DeVillavicenci wrote numerous prescriptions for his personal and unauthorized use, to include Tramadol, Viagra and Hyzaar.

5. Dr. Nunez DeVillavicenci violated Section 54.1-2915.A(3), as further defined in Section 54.1-2914.A(8), (11), (12) and (13), and Section 54.1-3303 of the Code, and 18 VAC 85-20-90(A) and (B) of the Regulations of the Virginia Board of Medicine, in that, on or about January 22, 2003, Dr. Nunez DeVillavicenci provided Individual C, a person with whom he did not have a bona-fide physician-patient relationship, with a prescription for Adderall, a Schedule II stimulant, for weight loss. Further, he failed to properly evaluate and maintain records of his treatment of Individual C.

6. On or about March 24, 2003, Dr. Nunez DeVillavicenci was detained by Virginia State Police after reports were received that he was driving erratically. On or about July 22, 2003, he was found guilty of Reckless Driving and Possession of Alprazolam, both misdemeanors. Dr. Nunez DeVillavicenci paid fines and costs in the amount of \$819.00, and his driver's license was restricted.

7. On or about May 12, 2003, Dr. Nunez DeVillavicenci underwent a comprehensive assessment at the William J. Farley Center at Williamsburg Place,

Williamsburg, Virginia, where diagnoses of post traumatic stress disorder and depressive disorder were noted. The Farley Center found no evidence to support a diagnosis of substance abuse disorder.

8. On or about April 23, 2003, Dr. Nunez DeVillavicenci entered into a Participation Contract with Virginia Health Practitioners' Intervention Program ("HPIP"), and signed a Recovery Monitoring Contract with HPIP on or about May 23, 2003, which expires in May 2008.

9. Dr. Patricia Pade, Medical Director for HPIP, appeared before the Committee on Dr. Nunez DeVillavicenci's behalf. Dr. Pade stated that Dr. Nunez DeVillavicenci was fully compliant with all requests of HPIP and all requirements of his Recovery Monitoring Contract. Based on all information, Dr. Nunez DeVillavicenci was permitted to return to practice in late May 2003, with appropriate monitoring, and HPIP advocates his continued practice of medicine.

10. Letters from Dr. Nunez DeVillavicenci's treating physicians all indicated that Dr. Nunez DeVillavicenci was capable of safely practicing medicine, and supported his continued practice. In addition, several co-workers sent letters in support of Dr. Nunez DeVillavicenci.

11. Dr. Nunez DeVillavicenci completed a three day continuing medical education course entitled "Prescribing Controlled Drugs: Critical Issues and Common Pitfalls" at the Center for Professional Health at Vanderbilt University Medical, from May 26-28, 2004, for 21 hours of category one CME credit. Dr. Nunez DeVillavicenci stated the

course was extremely beneficial and increased his knowledge regarding proper prescribing by a physician.

12. Dr. Nunez DeVillavicenci demonstrated appropriate insight into his situation and recovery. In addition, Dr. Nunez DeVillavicenci stated that he has neither self prescribed nor prescribed for any individual with whom he does not have a bona fide physician/patient relationship since his entry into the HPIP program.

ORDER

WHEREFORE, it is hereby ORDERED that Santiago Nunez DeVillavicenci, M.D., be, and hereby is, issued a REPRIMAND.

Further, concerns regarding Dr. Nunez DeVillavicenci's previous professional judgment and personal insight have been addressed by his continued full compliance with his HPIP contract and active monitoring by HPIP. Therefore, in view of Dr. Nunez DeVillavicenci's demonstrated consistent efforts since May 2003 to remediate the conduct which brought him before this Committee, the Committee determines that no further action is necessary to protect the public's health and safety.

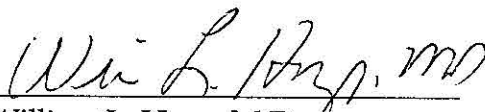
In accordance with his Recovery Monitoring Contract, the Board will be notified of any future non-compliance with or dismissal or resignation from HPIP.

Pursuant to Section 54.1-2400.2(F) of the Code, the signed original of this Order shall remain in the custody of the Department of Health Professions as a public record, and shall be made available for public inspection and copying upon request.

Pursuant to Section 54.1-2919 of the Code, Dr. Nunez DeVillavicenci may, not later than 5:00 p.m., on July 19, 2004, notify William L. Harp, M.D., Executive Director, Board of Medicine, 6603 West Broad Street, Richmond, Virginia 23230, in writing that he desires a formal administrative hearing before the Board. Upon the filing with the Executive Director of a request for the hearing, this Order shall be vacated.

Therefore, this Order shall become final on July 19, 2004, unless a request for a formal administrative hearing is received as described above.

FOR THE BOARD



William L. Harp, M.D.

Executive Director
Virginia Board of Medicine

ENTERED: 6/14/04