



STATE OF NEW YORK  
DEPARTMENT OF HEALTH

433 River Street, Suite 303 Troy, New York 12180-2299

Richard F. Daines, M.D.  
Commissioner

Public

Wendy E. Saunders  
Chief of Staff

September 4, 2007

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Francisco Javier Monreal, M.D.  
4413 South Salina Street  
Syracuse, New York 13205

Joel Abelove, Esq.  
NYS Department of Health  
Bureau of Professional Med. Conduct  
Corning Tower, Room 2589  
Empire State Plaza  
Albany, New York 12237

**RE: In the Matter of Francisco Javier Monreal, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 07-141) of the Professional Medical Conduct Administrative Review Board in the above referenced matter. This Determination and Order shall be deemed effective upon 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.

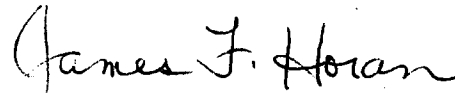
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified 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.

This exhausts all administrative remedies in this matter [PHL §230-c(5)].

Sincerely,

A handwritten signature in black ink that reads "James F. Horan". The signature is written in a cursive style with a large initial "J".

James F. Horan, Acting Director  
Bureau of Adjudication

JFH:cah

Enclosure

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

In the Matter of

Javier Monreal, M.D. (Respondent)

Administrative Review Board (ARB)

A proceeding to review a Determination by a  
Committee (Committee) from the Board for  
Professional Medical Conduct (BPMC)

Determination and Order No. 07-141

COPY

Before ARB Members Grossman, Lynch, Pellman, Wagle and Wilson  
Administrative Law Judge James F. Horan drafted the Determination

For the Department of Health (Petitioner):  
For the Respondent:

Joel Abelow, Esq.  
Pro Se

After a hearing below, a BPMC Committee determined that the Respondent engaged in serious professional misconduct and that the Respondent suffers from a psychiatric condition that impairs his ability to practice medicine. The Respondent failed to appear at the hearing before the Committee. The Committee voted to revoke the Respondent's license to practice medicine in New York State. In this proceeding pursuant to New York Public Health Law (PHL) § 230-c (4)(a)(McKinney Supp. 2007), the Respondent asks the ARB to nullify the Committee's Determination and to order a full hearing. After considering the Committee's Determination, the hearing record and briefs from each party, the ARB denies the request for a hearing and affirms the Committee's Determination to revoke the Respondent's License.

Committee Determination on the Charges

The Petitioner commenced the proceeding by filing charges with BPMC alleging that the Respondent violated New York Education Law (EL) §§ 6530(3), 6530(5), 6530(8), 6530(20), 6530(23), 6530(28), 6530(32) & 6530(35) (McKinney Supp. 2007) by committing professional misconduct under the following categories:

- practicing medicine with negligence on more than one occasion;
- practicing medicine with incompetence on more than one occasion;
- suffering from a psychiatric condition that impairs the practice of medicine;
- engaging in conduct that evidences moral unfitness;
- revealing personally identifiable facts, data or information obtained in a professional capacity, without prior patient consent;
- failing to respond to written communications from the Department of Health and to make relevant records available;
- failing to maintain accurate patient records; and,
- ordering excessive tests, treatments or the use of treatment facilities.

The charges related in part to care that the Respondent provided to twelve children under the age of fourteen (Patients A-L) and to the Respondent's statements to the Patients' families. The Charges also included the allegation that the Respondent's communications with various agencies in New York State by letters or legal papers show evidence of being paranoid, grandiose and/or disorganized. The Charges indicate that conditions that present in that way include Bipolar Disorder, Delusional Disorder, Depression with Psychotic Features and/or Personality Disorders.

The Respondent failed to appear at the hearing on the charges. The Committee's Administrative Officer ruled that the Respondent received proper notice of the hearing. The Administrative Officer indicated that he had communicated with the Respondent by conference call and by certified letter and the Respondent indicated his unwillingness to recognize the authority of BPMC and to participate in the action. The record also contains a letter from the Respondent [Hearing Exhibit 2A], which demonstrated that the Respondent knew that the hearing would take place on June 11, 2007. The Respondent also failed to file an answer to the Statement of Charges.

The Committee determined that the failure to file an answer amounted to admitting the allegations in the charges, under the provisions in PHL § 230(10)(c)(2). The Committee found that the admitted charges represent a clear pattern of cursory examinations, incorrect diagnoses

and improper treatment modalities that amounted to significant deviations from the accepted standards of medical practice. The Committee also expressed great concern over a history of insensitive and inappropriate statements by the Respondent to Patients' families. The Committee also found the Respondent's correspondence and legal filings provided substantial evidence for the Committee to conclude that the Respondent may be impaired by one or more psychiatric disorders. The Committee voted to revoke the Respondent's License.

#### Review History and Issues

The Committee rendered their Determination on July 5, 2007. The cover letter with the Determination instructed the Respondent to surrender his License. On July 18, 2007, the Respondent sent a letter to the Administrative Officer for the ARB indicating that the Respondent was seeking an injunction against the internal decision deliberated in his absence. On July 24, 2004, the ARB received a brief from the Respondent asking for a face-to-face hearing immediately and providing a response to the Petitioner's charges. In the weeks following, the Administrative Officer received a number of letters from the Respondent's family, staff and some patients on the Respondent's behalf. Nothing in the briefs or the letters indicated that copies of the Brief or letters went to the counsel for the Petitioner. On August 9, 2007, the Administrative Officer provided the Brief and the letters to both parties. The Petitioner submitted a brief on August 21, 2007. The Petitioner argued that the Respondent failed to file his appeal and brief appropriately and asked the ARB to refuse to consider the case. In the alternative, the Petitioner asked that the ARB affirm the Committee's Determination.

### ARB Authority

Under PHL §§ 230(10)(i), 230-c(1) and 230-c(4)(b), the ARB may review Determinations by Hearing Committees to determine whether the Determination and Penalty are consistent with the Committee's findings of fact and conclusions of law and whether the Penalty is appropriate and within the scope of penalties which PHL §230-a permits. The ARB may substitute our judgment for that of the Committee, in deciding upon a penalty Matter of Bogdan v. Med. Conduct Bd. 195 A.D.2d 86, 606 N.Y.S.2d 381 (3<sup>rd</sup> Dept. 1993); in determining guilt on the charges, Matter of Spartalis v. State Bd. for Prof. Med. Conduct 205 A.D.2d 940, 613 NYS 2d 759 (3<sup>rd</sup> Dept. 1994); and in determining credibility, Matter of Minielly v. Comm. of Health, 222 A.D.2d 750, 634 N.Y.S.2d 856 (3<sup>rd</sup> Dept. 1995). The ARB may choose to substitute our judgment and impose a more severe sanction than the Committee on our own motion, even without one party requesting the sanction that the ARB finds appropriate, Matter of Kabnick v. Chassin, 89 N.Y.2d 828 (1996). In determining the appropriate penalty in a case, the ARB may consider both aggravating and mitigating circumstances, as well as considering the protection of society, rehabilitation and deterrence, Matter of Brigham v. DeBuono, 228 A.D.2d 870, 644 N.Y.S.2d 413 (1996).

The statute provides no rules as to the form for briefs, but the statute limits the review to only the record below and the briefs [PHL § 230-c(4)(a)], so the ARB will consider no evidence from outside the hearing record, Matter of Ramos v. DeBuono, 243 A.D.2d 847, 663 N.Y.S.2d 361 (3<sup>rd</sup> Dept. 1997).

A party aggrieved by an administrative decision holds no inherent right to an administrative appeal from that decision, and that party may seek administrative review only

pursuant to statute or agency rules, Rooney v. New York State Department of Civil Service, 124 Misc. 2d 866, 477 N.Y.S.2d 939 (Westchester Co. Sup. Ct. 1984). The provisions in PHL §230-c provide the only rules on ARB reviews.

#### Determination

The ARB has considered the record and the parties' briefs. We reject the Respondent's request for a further hearing, we refuse to consider evidence from outside the hearing record and we affirm the Committee's Determination to revoke the Respondent's License.

The provisions on administrative reviews under PHL § 230-c(4)(a) limit an administrative review to only the record below and the briefs from the parties, so the ARB will consider no evidence from outside the hearing record, Matter of Ramos v. DeBuono, 243 A.D.2d 847, 663 N.Y.S.2d 361 (3<sup>rd</sup> Dept. 1997). The letters that the Respondent attempted to submit constitute evidence outside the hearing record.

Under our authority from PHL § 230-c(4)(b), the ARB may remand a case to a Committee for further proceedings. The ARB treated the Respondent's request for a face-to-face hearing as a motion for a remand. We reject that motion. The Respondent had the opportunity for a hearing on June 11, 2007. The Respondent's letter in the record [Hearing Exhibit 2A] establishes that the Respondent knew about the hearing and that the Respondent refused to participate.

The Respondent's refusal to file an answer to the charges amounted to an admission to the Statement of Charges. The admitted charges demonstrate that the Respondent practiced at a significant deviation from the standards of practice, that the Respondent made insensitive and inappropriate statements to Patients' families and that the Respondent suffers from a psychiatric

condition that impairs his ability to practice medicine. The admitted charges demonstrate the Respondent's unfitness to practice medicine in New York State. The ARB agrees that the Respondent's continued practice presents a threat to public health and safety and we affirm the Committee's Determination to revoke the Respondent's License.

ORDER

NOW, with this Determination as our basis, the ARB renders the following ORDER:

1. The ARB affirms the Committee's Determination that the Respondent committed professional misconduct.
2. The ARB affirms the Committee's Determination to revoke the Respondent's License.
3. The ARB rejects the Respondent's request for a remand for a hearing.

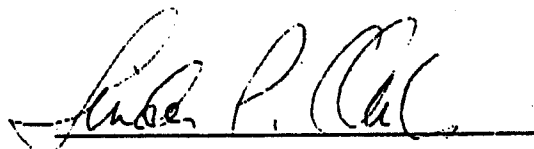
Thea Graves Pellman  
Datta G. Wagle, M.D.  
Stanley L. Grossman, M.D.  
Linda Prescott Wilson  
Therese G. Lynch, M.D.



In the Matter of Francisco Javier Monreal, M.D.

Linda Prescott Wilson, an ARB Member concurs in the Determination and Order in the  
Matter of Dr. Monreal.

Dated: 20 August, 2007

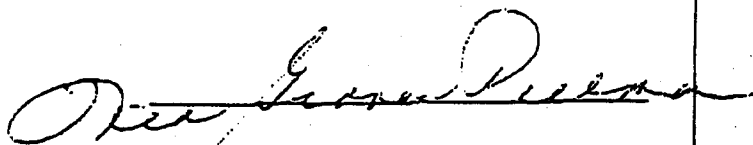
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Linda Prescott Wilson

In the Matter of Francisco Javier Monreal, M.D.

Thea Graves Pellman, an ARB Member concurs in the Determination and Order in the Matter of Dr. Monreal.

Dated: Aug 30, 2007

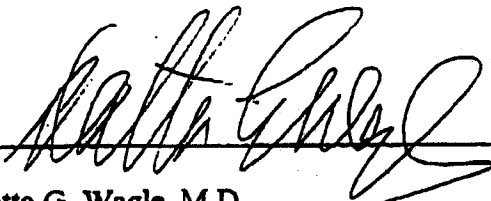


Thea Graves Pellman

In the Matter of Francisco Javier Monreal, M.D.

Datta G. Wagle, M.D., an ARB Member concurs in the Determination and Order in the  
Matter of Dr. Monreal.

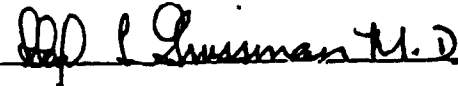
Dated: 8/29/, 2007

  
Datta G. Wagle, M.D.

In the Matter of Francisco Javier Monreal, M.D.

Stanley L. Grossman, an ARB Member concurs in the Determination and Order in the  
Matter of Dr. Monreal.

Dated: August 29, 2007

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Stanley L. Grossman, M.D.

In the Matter of Francisco Javier Monreal, M.D.

Therese G. Lynch, M.D., an ARB Member concurs in the Determination and Order in the  
Matter of Dr. Monreal.

Dated: August 29, 2007

Therese G. Lynch

Therese G. Lynch, M.D.