



STATE OF NEW YORK DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Antonia C. Novello, M.D., M.P.H., Dr.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

PUBLIC

March 8, 2004

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mehdi Mohtashemi, M.D.
2 Robin Drive
Rochester, New York 14618

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

Sheldon W. Boyce, Esq.
Chamberlain, D'Amanda, Oppenheimer
& Greenfield
1600 Crossroads Building
2 State Street
Rochester, New York 14614-1397

RE: In the Matter of Mehdi Mohtashemi, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 03-222) 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.

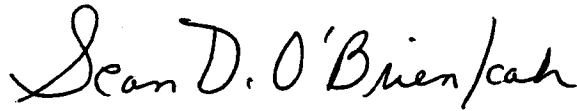
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified 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 "Sean D. O'Brien/cah". The signature is written in a cursive style with a large initial 'S' and 'D'.

Sean D. O'Brien, Director
Bureau of Adjudication

SDO:cah
Enclosure

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

In the Matter of

Mehdi Mohtashemi, M.D. (Respondent)

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

Administrative Review Board (ARB)

Determination and Order No. 03-222

COPY

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

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

**Valerie B. Donovan, Esq.
Sheldon W. Boyce, Esq.**

After a hearing below, a BPMC Committee determined that the Respondent committed professional misconduct in his conduct towards three patients and one nurse. The Committee voted to suspend the Respondent's New York medical license (License) for ninety days and to place the Respondent on probation for three years. In this proceeding pursuant to N.Y. Pub. Health Law § 230-c (4)(a)(McKinney 2003), the Respondent argues that the Committee erred in finding that the Respondent's conduct constituted misconduct, and in the alternative, the Respondent argues that license suspension constituted an excessive penalty. After reviewing the hearing record and the review submissions by the parties, we vote to affirm the Committee's Determination that the Respondent committed professional misconduct and to affirm the Committee's Determination to suspend the Respondent's License and to place the Respondent on probation. On our own motion, we increase the time period for the suspension and probation and we modify the terms for the suspension and probation.

Committee Determination on the Charges

The Petitioner commenced the proceeding by filing charges with BPMC alleging that the Respondent violated N. Y. Educ. Law §§ 6530(20) & 6530(31) (McKinney Supp. 2003) by committing professional misconduct under the following specifications:

- engaging in conduct that evidences moral unfitness, and,
- willfully harassing, abusing or intimidating a patient.

The harassment/abuse charges related to the Respondent's conduct towards three patients. The record identifies the patients by the initials A-C, to protect patient privacy. The moral unfitness charges relate to conduct towards Patients A-C, as well as the Respondent's conduct towards an operating room nurse, Nurse D. The Respondent denied the charges and the case proceeded to a hearing before the Committee that rendered the Determination now on review.

The Committee determined that the Respondent made rude comments to Patients A-C and that the Respondent pinched Nurse D, grabbed the Nurse's face and slammed the Nurse's head into a wall. The Committee concluded that the Respondent interfered with future care relationships for Patients A-C. The Committee determined that the Respondent's remarks to the Patients amounted to willful harassment and that the remarks to the Patients and the conduct towards Nurse D evidenced moral unfitness in practice.

The Committee voted to suspend the Respondent's License for ninety days, to require the Respondent to obtain a psychiatric evaluation during the suspension and to attend courses on anger management, interpersonal relationships and patient relationships during the suspension. The Committee placed the Respondent on probation for three years under terms that appear at Appendix 3 to the Committee's Determination. The probation terms require a practice monitor. The terms state that the monitor could be an anesthesiologist or a professional acceptable to the Office for Professional Medical Conduct (OPMC), such as a nurse practitioner.

Review History and Issues

The Committee rendered their Determination on August 26, 2003. This proceeding commenced on August 29, 2003, when the ARB received the Respondent's Notice requesting a Review. The record for review contained the Committee's Determination, the hearing record, the Respondent's brief and the Petitioner's response brief. The record closed when the ARB received the response brief on October 3, 2003.

The Respondent asks the ARB to overrule the Committee's Determination as to both the charges and the penalty. The Respondent argues that:

- suspension constitutes an excessive penalty because the Respondent committed no patient harm;
- the Respondent's behavior, as found by the Committee, may have been rude, but failed to evidence moral unfitness; and,
- the Respondent lacked the intent to harass Patients A-C.

The Respondent asks that the ARB dismiss the charges, or in the alternative, that the ARB reduce the penalty to remove any actual suspension. In response, the Petitioner disputes the contentions in the Respondent's brief and the Petitioner asks that the ARB affirm the Committee's Determination in full.

Determination

The ARB has considered the record and the parties' briefs. We affirm the Committee's findings concerning the Respondent's conduct towards Patients A-C and Nurse D. Neither party challenged the Committee's factual findings. We affirm the Committee's Determination on the

charges, but we modify the Committee's Determination on penalty, to increase the actual time on suspension and probation and to modify terms for the suspension and probation.

The ARB may substitute our judgement 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 (3rd Dept. 1993). We may choose to substitute that judgement and impose a more severe sanction than the Committee on our own motion, Matter of Kabnick v. Chassin, 89 N.Y.2d 828 (1996). We elect to exercise that authority in this case.

On the charges concerning moral unfitness, the Respondent argued that the Committee's Administrative Officer used a definition for moral unfitness outside the definition in the governing statutes. The Respondent argued that his behavior may have been rude, but that the conduct failed to evidence moral unfitness. The ARB rejects that argument. A physician engages in conduct that evidences moral unfitness by violating trust that the public bestows on the medical profession and/or violating the medical professions' moral standards, Matter of Prado v. Novello, 301 A.D.2d 692, 754 N.Y.S.2d 390. As a physician, the Respondent held a position of authority over Nurse D. The Respondent abused that authority and violated the medical professions' moral standards by engaging in the abusive conduct towards Nurse D. Also, the Respondent betrayed the trust that the public places in the medical profession, and the trust that Patients A-C placed in the Respondent specifically, by his rude conduct towards those Patients. In two of those cases, the conduct took place with the Patients' wives present. We agree with the Committee that the Respondent's conduct towards the Patients could harm and interfere with future patient care relationships.

On the patient abuse and/or harassment charges, the Respondent argues that the Respondent never intended the reaction that the Committee found to have resulted from the

Respondent's conduct towards the Patients and that, therefore, the Respondent failed to act willfully, under Educ. Law § 6530(31). Again, we reject this argument. To find willful conduct under the Educ. Law, a committee must establish that a licensee engaged in a knowing or deliberate act, Matter of Brestin v. Comm. of Educ., 116 A.D.2d 357, 501 N.Y.S.2d 923 (Third Dept. 1986). Under the Pub. Health Law, willful means deliberate and voluntary, as opposed to accidental conduct, People v. Coe, 131 Misc. 2d 807, 501 N.Y.S. 2d 470 (1986). The Respondent referred to Patient A as a "baby". We infer from that statement a deliberate and voluntary intent by the Respondent to demean the Patient. We conclude in the same way that the Respondent intended to be abusive and demeaning in his remarks to Patients B and C. We infer that the Respondent harassed and/or abused Patients A-C by his statements to those Patients.

As to penalty, the Respondent argued that Committee's findings fail to justify an actual suspension from practice. We disagree. The Respondent engaged in repeated abusive conduct towards Patients and a staff member. The Committee also found that the Respondent lacked either remorse for the harm he caused or insight into his misconduct. The ARB concludes that the Respondent presents as a candidate to repeat his misconduct, unless he receives a "wake up" call that leaves the Respondent with the realization that repeating such conduct could end the Respondent's medical career in New York. We agree with the Committee that actual time on suspension may provide the Respondent the time to understand the serious nature of the acts at issue in this case. We disagree with the Committee that ninety days will provide sufficient time on suspension. The Respondent's abusive conduct towards Nurse D, standing alone, warrants a suspension for longer than ninety days. On our own motion, we substitute our judgement for the Committee's and we vote 5-0 to suspend the Respondent from practice for six months. That six -

month suspension includes any time that the Respondent has spent already on suspension under the Committee's Determination.

Along with the order suspending the Respondent from practice, the Committee ordered that the Respondent undergo a psychiatric evaluation during the suspension and that the Respondent attend courses on anger management, interpersonal relationships and patient relationships. On our own motion, the ARB overturns the requirement that the Respondent undergo a psychiatric evaluation. We see no reason for another psychiatric evaluation, as the record reveals that the Respondent underwent such evaluations already. We vote 5-0, therefore, to delete the current probation term at Committee Determination, Appendix 3, paragraph 10, that addresses that psychiatric evaluation. We affirm the Committee's Order that the Respondent attend courses on anger management, interpersonal relationships and patient relationships.

The Committee placed the Respondent on probation for three years and required that the Respondent practice with a monitor. We agree with the Committee about the need for probation and for a practice monitor, but again, on our own motion, we modify the probation in length and in terms. We conclude that the Respondent should spend five years on probation rather than three. The longer probation will provide a better opportunity to judge whether the Respondent has corrected his behavior. As to the practice monitor, the probation terms at Committee Determination, Appendix 3, paragraph 9, states that the Respondent shall be monitored by an anesthesiologist, or a professional acceptable to OPMC, such as a nurse practitioner. The ARB concludes that only another anesthesiologist, a professional at the same level as the Respondent, should serve as the Respondent's monitor. We vote 5-0 to delete from paragraph 9, the following language:

"(or a professional person acceptable to OPMC [ie: nurse practitioner or other health care worker],".

The ARB also concludes that the Respondent would benefit from performing non-medical community service. The majority of the ARB concludes that community service will aid the Respondent in relating to other persons. The ARB votes 4-1 to add a new paragraph 10 to the probation terms to read:

"10. The Respondent shall perform one hundred hours of non-medical community service during the probation period."

The ARB votes 5-0 to affirm all other terms under the probation.

ORDER

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

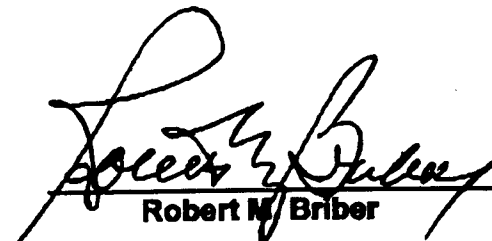
1. The ARB affirms the Committee's Determination that the Respondent committed professional misconduct.
2. The ARB affirms the Committee's Determination to suspend the Respondent's License and to place the Respondent on probation under the terms at Committee Determination, Appendix 3.
3. The ARB modifies the suspension to extend the suspension from three months to six months and the ARB amends the suspension to remove the requirement that the Respondent obtain a psychiatric evaluation.
4. The ARB modifies the probation to increase the probation period from three years to five years and to modify some probation terms as we indicate in our Determination.
5. The ARB orders the Respondent to complete one hundred hours non-medical community service during the probation period.

Robert M. Briber
Thea Graves Pellman
Datta G. Wagle, M.D.
Stanley L. Grossman, M.D.
Therese G. Lynch, M.D.

In the Matter of Mehdi Mohtashemi, M.D.

Robert M. Briber, an ARB Member, concurs in the Determination and Order in the Matter of Dr. Mohtashemi.

Dated: January 6, 2004



Robert M. Briber

In the Matter of Mehdi Mohtashemi, M.D.

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

Dated: Jan 7, 2004
~~2003~~



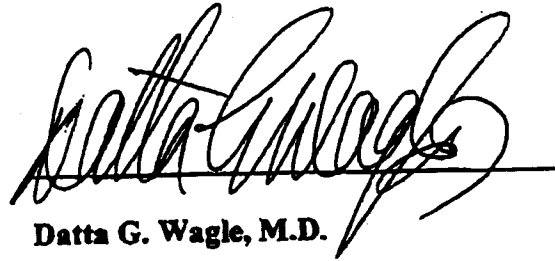
Thea Graves Pellman

In the Matter of Mehdi Mohtashemi, M.D.

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

Matter of Dr. Mohtashemi.

Dated: 1/11, 2004



Datta G. Wagle, M.D.

In the Matter of Mehdi Mohtashemi, M.D.

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

Dated: May 5, 2003

Stanley L. Grossman M.D.

Stanley L Grossman, M.D.

In the Matter of Mehdi Mohtashemi, M.D.

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

Dated: *January 6*, 2004

Therese G. Lynch M.D.

Therese G. Lynch, M.D.