



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

February 12, 2004

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Robert Bogan, Esq.
Paul Robert Maher, Esq.
NYS Department of Health
Hedley Park Place
433 River Street-4th Floor
Troy, New York 12180

Rafael A. Lopez, M.D.
a/k/a Rafael Lopez-Stuart, M.D.
P.O. Box 1205
Owings, MD 20736

Rafael A. Lopez, M.D.
a/k/a Rafael Lopez-Stuart, M.D.
11500 Cedar Run
Owings, MD 20736

**RE: In the Matter of Rafael A. Lopez, M.D.
a/k/a Rafael Lopez-Stuart, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 03-255) 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.

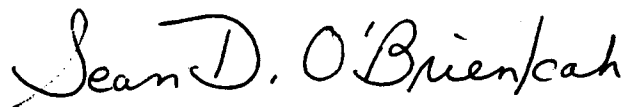
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified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

**Rafael A. Lopez, M.D.
a/k/a Rafael A. Lopez-Steuart (Respondent)**

Administrative Review Board (ARB)

Determination and Order No. 03-255

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

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): Paul Robert Mahar, Esq.
For the Respondent: Pro Se**

The Respondent holds a license to practice medicine in New York, as well as a medical license in Maryland. This case arose due to actions the State of Maryland took against the Respondent for his practice in that state. After a hearing below, a BPMC Committee found that the conduct in Maryland failed to constitute misconduct under New York Law and the Committee dismissed the New York disciplinary charges. In this proceeding pursuant to N.Y. Pub. Health Law § 230-c (4)(a)(McKinney 2004), the Petitioner asks the ARB 1.) to nullify that Committee Determination, 2.) to find that the Respondent's abusive conduct in Maryland would evidence moral unfitness under New York Law and 3.) to impose an appropriate penalty against the Respondent's License. After reviewing the record, we hold that the Respondent's Maryland conduct would make him liable for disciplinary action under New York Law. We censure and reprimand the Respondent and place him on probation for two years.

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(9)(b) & (9)(d) (McKinney Supp. 2004) by committing professional misconduct because:

- the duly authorized professional disciplinary agency from another state (Maryland) found the Respondent guilty for professional misconduct [§6530(9)(b)] and/or took disciplinary action against the Respondent's medical license in that state [§6530(9)(d)], for,
- conduct that would constitute professional misconduct, if the Respondent had committed such conduct in New York.

The Petitioner's Statement of Charges [Petitioner Exhibit 1] alleged that the Respondent's misconduct in Maryland would constitute misconduct if committed in New York, as engaging in conduct in practice that evidences moral unfitness, a violation under N.Y. Educ. Law § 6530(20)(McKinney Supp. 2004). An expedited hearing (Direct Referral Proceeding) ensued pursuant to N.Y. Pub. Health Law §230(10)(p)(McKinney 2004), before a BPMC Committee, which rendered the Determination now on review. In the Direct Referral Proceeding, the statute limits the Committee to determining the nature and severity for the penalty to impose against the licensee, see In the Matter of Wolkoff v. Chassin, 89 N.Y.2d 250 (1996).

The evidence at the hearing demonstrated that the Maryland State Board of Quality Assurance (Maryland Board) issued a Final Decision and Order against the Respondent's Maryland medical license on April 25, 2003. The Maryland Board censured and reprimanded the Respondent, placed the Respondent on probation and required the Respondent to undergo a psychiatric evaluation. The Maryland Board concluded that the Respondent committed unprofessional conduct in medical practice by throwing a temper tantrum in an operating room, screaming obscenities at an x-ray technician and throwing an osteotome.

The Direct Referral Committee determined that the Maryland Board found the Respondent guilty for professional misconduct and that the Maryland took disciplinary action

against the Respondent, but the Committee concluded that the record failed to show that the Respondent's conduct in Maryland would constitute misconduct under New York Law. The Committee noted that the Maryland Board found that the Respondent's Maryland conduct amounted to immoral or unprofessional conduct, rather than moral unfitness, the charge in this Direct Referral proceeding. The Committee found the Respondent's conduct connected in no way with the precepts of morality and the Committee dismissed the case.

Review History and Issues

The Committee rendered their Determination on September 29, 2003. This proceeding commenced on October 3, 2003, when the ARB received the Petitioner's Notice requesting a Review. The record for review contained the Committee's Determination, the hearing record and the Petitioner's brief. The record closed when the ARB received the brief on November 3, 2003. The Respondent received the opportunity to submit a brief or response brief, but the Respondent made no submission to the ARB.

The Petitioner's brief argues that violent conduct during a surgical procedure evidences moral unfitness and asks that the ARB overrule the Committee, sustain the charges and impose an appropriate penalty.

Determination

The ARB has considered the record and the Petitioner's brief. We hold that the Respondent's Maryland conduct would constitute professional misconduct in New York. We vote to sustain the charges, to censure and reprimand the Respondent and to place the Respondent on probation for two years, if the Respondent returns to practice in New York.

The record shows that the Respondent's Maryland misconduct included screaming obscenities at an x-ray technician and throwing an object in the operating room. 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 the x-ray technician. The Respondent abused that authority and violated the medical professions' moral standards by engaging in the abusive conduct towards the x-ray technician.

As a penalty, we vote to impose a penalty similar to what the Maryland Board imposed as the sanction in the state in which the misconduct took place. The Respondent's conduct raised a concern about the Respondent's mental state. We note that Maryland has already ordered the Respondent to undergo an evaluation, so we see no need for a further evaluation in New York. We hold that two years on probation will provide an adequate time period to observe the Respondent and assure that he presents no danger to repeat his abusive conduct. The probation terms appear as the Appendix to this Determination. The probation will commence running at such time as the Respondent returns to medical practice in New York State. We also censure and reprimand the Respondent.

ORDER

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

1. The ARB overturns the Committee's Determination to dismiss the charges.
2. The ARB sustains the charges that Respondent's misconduct in Maryland made the Respondent liable for disciplinary action against his License pursuant to N. Y. Educ. Law §§ 6530(9)(b) & (9)(d).
3. The ARB votes to censure and reprimand the Respondent and to place the Respondent on probation for two years, under the terms that appear at the Appendix.

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

Appendix

Terms of Probation

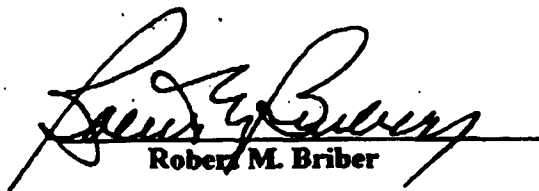
- 1. The Respondent shall conduct himself in all ways in a manner befitting his professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his profession.**
- 2. The Respondent shall submit written notification to the New York State Department of Health addressed to the Director, Office of Professional Medical Conduct (OPMC), 433 River St., Troy, NY 12180; said notice is to include a full description of any employment and practice, professional and residential addresses and telephone numbers within or without New York State, and any and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty days of each action.**
- 3. The Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of the Respondent's compliance with the terms of this Order. The Respondent shall personally meet with a person designated by the Director of OPMC as requested by the Director.**
- 4. The period of probation shall be tolled during periods in which the Respondent is not engaged in the active practice of medicine in New York State. The Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in or intends to leave the active practice of medicine in New York State for a period of thirty (30) consecutive days or more. The Respondent shall then notify the Director again prior to any change in that status. The period of probation shall resume and any terms of probation which were not fulfilled shall be fulfilled upon the Respondent's return to practice in New York State.**
- 5. The Respondent's professional performance may be reviewed by the Director of OPMC. This review may include, but shall not be limited to, a review of office records, patient records and/or hospital charts, interviews with or periodic visits with Respondent and his/her staff at practice locations or OPMC offices.**
- 6. Respondent shall maintain legible and complete medical records, which accurately reflect the evaluation and treatment of patients. The medical records shall contain all information required by State rules and regulations regarding controlled substances.**

7. The Respondent shall comply with all terms, conditions, restrictions, limitations and penalties to which he or she is subject pursuant to the Order and shall assume and bear all costs related to compliance. Upon receipt of evidence of noncompliance with, or any violation of these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding and/or any such other proceeding against Respondent as may be authorized pursuant to the law.

In the Matter of Rafael A. Lopez, M.D.

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

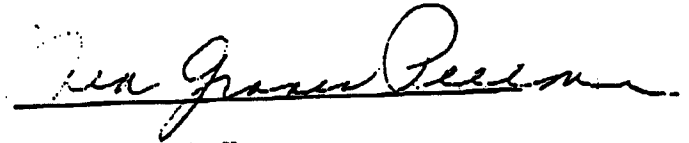
Dated: February 3, 2004


Robert M. Briber

In the Matter of Rafael A. Lopez, M.D.

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

Dated: Feb 3, 2004



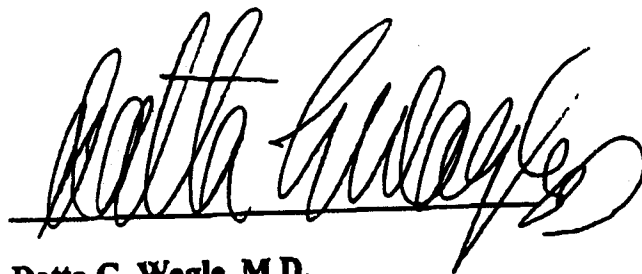
Thea Graves Pellman

In the Matter of Rafael A. Lopez, M.D.

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

Matter of Dr. Lopez.

Dated: 2/4, 2004

A handwritten signature in black ink, appearing to read "Datta G. Wagle", written over a horizontal line.

Datta G. Wagle, M.D.

In the Matter of Rafael A. Lopez, M.D.

Stanley L. Grossman, an ARB Member concurs in the Determination and Order in the

Matter of Dr. Lopez.

Dated: February 6, 2004

Stanley L. Grossman, M.D.

Stanley L. Grossman, M.D.

In the Matter of Rafael A. Lopez, M.D.

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

Dated: February 2, 2004

Therese G. Lynch M.D.

Therese G. Lynch, M.D.