



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 18, 2004

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mani-Manjari Devi, M.D.
30 Third Avenue
Brooklyn, New York 11217

Denise Lepicier, Esq.
NYS Department of Health
Bureau of Professional Medical Conduct
5 Penn Plaza
New York, New York 10001

RE: In the Matter of Mani-Manjari Devi, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 03-316) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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 cursive script that reads "Sean D. O'Brien/cah".

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

Mani-Manjari Devi, 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. 03-316

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):

Denise Lepcier, Esq.

For the Respondent:

Pro Se

After a hearing below, a BPMC Hearing Committee found that the Respondent committed professional misconduct by refusing to undergo an evaluation to determine if the Respondent suffers from a disability that impairs her ability to practice medicine. The Committee voted to revoke the Respondent's License to practice medicine in New York (License). In this proceeding pursuant to N.Y. Pub. Health Law § 230-c (4)(a)(McKinney 2004), the Respondent asks the ARB to overturn that Determination and return her License and the Respondent asks the ARB to review material from outside the hearing record. After reviewing the hearing record and submissions from the parties, the ARB refuses to consider material from outside the hearing record. We affirm the Committee's Determination that the Respondent committed professional misconduct and we affirm 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 committed professional misconduct under the definition in N. Y. Educ. Law §

6530(15) (McKinney Supp. 2004) by failing to comply with an Evaluation Order issued pursuant to Pub. Health Law § 230(7). The Respondent submitted a document she titled "Opposition and Objection to the Notice of Hearing" in which the Respondent indicated that she refused to appear for an evaluation or for the hearing. A hearing followed before the Hearing Committee, which rendered the Determination now on review. The Respondent failed to appear at the hearing.

The evidence before the Hearing Committee demonstrated that a BPMC Committee (Evaluation Committee) issued a November 14, 2002 Order (Evaluation Order), pursuant to Pub. Health Law § 230(7). The Evaluation Committee found reason to believe that the Respondent might suffer an impairment or mental disability. The Hearing Committee found that the Respondent failed to comply with the Evaluation Order and the Hearing Committee sustained the charge that the Respondent committed professional misconduct by failing to comply with the Evaluation Order. The Committee found the Respondent unable or unwilling to comply with clear, legal mandates and the Committee concluded that only license revocation would provide adequate protection to New York's citizens.

Review History and Issues

The Committee rendered their Determination on November 19, 2003. This proceeding commenced on December 1, 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 brief.

In a letter on November 27, 2003, the Respondent stated:

"A copy of my health certificate is enclosed. Please arrange to rescind the revocation of my license and registration. License was given me for my education and caliber, and not for my health. It is illegal to revoke my License linking it to the health of a licensee. Nowhere in the World requires Health Examination for Medical License."

The letter attached a Certificate of Health that the Respondent apparently submitted for employment at the Neighborhood Health Center in Brooklyn, NY. On that Certificate, a

physician discussed the Respondent immunization history for Rubella, Measles, Varicella and a Tuberculin Test. The Certificate also states that the Respondent was free from any impairment which is of potential risk to patients or which might interfere with the performance of the Respondent's duties, including the habituation or addiction to depressants, stimulants, narcotics, alcohol or other drugs or "substances" which may alter an individual's behavior. The Administrative Officer for the ARB treated that letter as a Review Notice and provided the parties a schedule for submitting briefs and response briefs and that instructed the parties to provide copies of all briefs and response briefs to the opposing party.

The Respondent submitted a letter brief bearing the date December 10, 2003. The brief reasserted her earlier statement that her License attested to educational achievements and caliber rather than health. The Respondent argued that the Department of Health lacked jurisdiction to revoke a license that the Education Department issued. The Respondent's brief also repeated her earlier assertions that the Certificate of Health from Neighborhood Health Center constituted compliance with the Evaluation Order and that the Respondent suffered no impairment.

The Petitioner submitted a brief arguing that the Respondent had offered no valid explanation for failing to comply with the Evaluation Order. The Petitioner asked the ARB to uphold the Committee's Determination in all respects. By letter on December 17, 2003, the Petitioner informed the Administrative Officer for the ARB that the Respondent had failed to provide the Petitioner with copies of the Respondent's ARB submissions.

On December 29, 2003, the Respondent submitted a "Request to reject DOH appeal". The Request stated that the DOH appeal must be denied and dismissed with prejudice because the Respondent submitted the Certificate of Health.

Determination

The ARB has considered the record and the parties' briefs. The ARB rejects the Respondent's attempt to submit the Certificate of Health, because the Certificate constitutes a document outside the hearing record. The ARB holds that the Committee acted within their authority in finding the Respondent committed professional misconduct and the ARB affirms the Committee's Determination to revoke the Respondent's License.

In reviewing a Committee's Determination under Pub Health Law § 230-c, the ARB determines 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 Pub Health Law §230-a permits. The statute limits the review to only the record below and the briefs, 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 (3rd Dept. 1997).

As the ARB may consider no material from outside the hearing record, we refuse to consider the Certificate of Health, which the Respondent attached to her ARB submissions. The Respondent could have submitted that Certificate to the Hearing Committee. By attempting to submit the document for post-hearing consideration, the Respondent also precluded the Petitioner from challenging the document.

We also reject the Respondent's argument that the Department of Health lacked jurisdiction to revoke a License that the State Education Department granted. Under Pub. Health Law § 230, BPMC conducts disciplinary hearings concerning physician licenses. If a BPMC Committee sustains misconduct charges, the Committee may impose a penalty from the list in Pub. Health Law § 230-a, including license revocation.

Further, we reject the Respondent's argument that a licensee's health plays no part in physician licensing. The provisions in Educ. Law § 6530(7) define physician misconduct to include practicing the profession while impaired by physical or mental disability and the provisions in Pub. Health Law § 230(7) allow a BPMC Committee to order a physician to undergo an evaluation to determine whether a physician suffers from a disability that impairs practice.

The ARB holds that the Evaluation Committee acted within its authority under § 230(7) in ordering the Evaluation in this case. The evidence from the hearing demonstrates clearly that the Respondent refused to undergo that Evaluation and the Respondent clearly continues to refuse to undergo an Evaluation, even following the Hearing Committee's revocation order. We affirm the Hearing Committee's Determination to revoke the Respondent's License. We see no alternative to protect the public.

ORDER

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

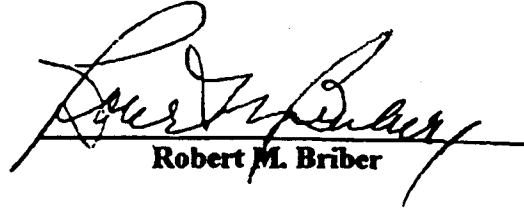
1. The ARB affirms the Committee's Determination that the Respondent committed professional misconduct.
2. The ARB affirms the Committee's Determination to revoke the Respondent's License.

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 Mani-Manjari Devi, M.D.

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

Dated: February 13, 2004

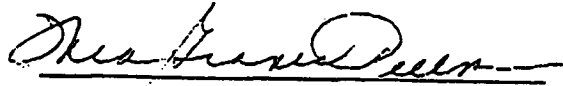


Robert M. Briber

In the Matter of Mani-Manjari Devi, M.D.

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

Dated: Feb. 13, 2004

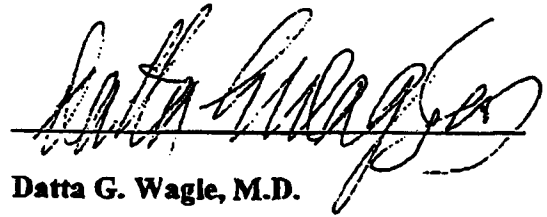
A handwritten signature in cursive script, reading "Thea Graves Pellman", written over a horizontal line.

Thea Graves Pellman

In the Matter of Mani-Manjari Devi, M.D.

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

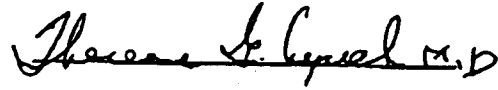
Dated: 2/14, 2004


Datta G. Wagle, M.D.

In the Matter of Mani-Manjari Devi, M.D.

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

Dated: February 3, 2004

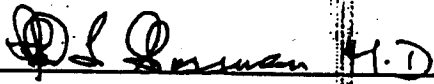
A handwritten signature in cursive script that reads "Therese G. Lynch, M.D." with a horizontal line drawn through the text.

Therese G. Lynch, M.D.

In the Matter of Mani-Manjari Devi, M.D.

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

Dated: February 16, 2004



A handwritten signature in black ink, appearing to read "S. L. Grossman M.D.", is written over a horizontal line.

Stanley L. Grossman, M.D.