



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

April 16, 2002

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Robert Bogan, Esq.
& Robert Maher, Esq.
NYS Department of Health
Hedley Park Place – 4th Floor
Troy, New York 12180

Hermes Fernandez, Esq.
Bond, Schoeneck & King, LLP
111 Washington Avenue
Albany, New York 12210-2211

Douglas Holland Rank, M.D.
6462 Stover Drive
Cincinnati, Ohio 45237

Douglas Holland Rank, M.D.
3133 Custer Drive
Lexington, Kentucky 40517

RE: In the Matter of Douglas Holland Rank, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 01-272) 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.

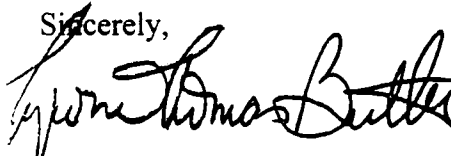
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified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



Tyrone T. Butler, Director
Bureau of Adjudication

TTB:cah
Enclosure

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

In the Matter of

Douglas Holland Rank, 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. 01-272

COPY

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

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

**Paul Robert Mahar, Esq.
Hermes Fernandez, Esq.**

In this proceeding pursuant to N.Y. Pub. Health Law § 230-c (4)(a)(McKinney's 2002), the ARB determines the penalty to impose against the Respondent following a ruling that he engaged in sexual conduct with a patient, while practicing medicine in another state. After a hearing below, a BPMC Committee revoked the Respondent's New York Medical License. The Respondent asks the ARB to reduce that penalty and alleges that the Committee failed to consider mitigating factors in assessing the penalty in this case. After reviewing the hearing record and the review submissions from the parties, the ARB affirms the Committee's Determination.

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. 2001) by committing professional misconduct because:

- the duly authorized professional disciplinary agency from another state 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 Kentucky would constitute misconduct if committed in New York, under the following categories:

- practicing medicine with negligence on more than one occasion, a violation under N. Y. Educ. Law §§ 6530(3) (McKinney 2002),
- willful or grossly negligent failure to comply with Federal, state or local laws, rules or regulations governing the practice of medicine, a violation under N. Y. Educ. Law §6530(16) (McKinney 2002)
- engaging in conduct that evidences moral unfitness, a violation under N. Y. Educ. Law § 6530(20) (McKinney 2002), and,
- physical contact of a sexual nature between a patient and psychiatrist, in the practice of psychiatry, a violation under N. Y. Educ. Law §6530(44) (McKinney 2002).

An expedited hearing (Direct Referral Proceeding) ensued pursuant to N.Y. Pub. Health Law §230(10)(p)(McKinney 2002), 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 Kentucky State Board of Medical Licensure (Kentucky Board) determined that the Respondent, a psychiatrist, engaged in sexual contact with a patient under his care and failed to meet acceptable psychiatrist/patient boundaries. The Kentucky Board revoked the Respondent's Kentucky medical license, stayed the revocation, suspended the license for two years, stayed the last eighteen months and placed the Respondent on probation for five years.

The BPMC Committee determined that the Respondent's Kentucky conduct would constitute misconduct in New York as:

- practicing with negligence on more than one occasion,
- willful or grossly negligent failure to comply with statutes, rules or regulations governing medical practice,
- engaging in conduct that evidenced moral unfitness, and,
- engaging in contact of a sexual nature between a psychiatrist and patient.

The Committee concluded that the conduct made the Respondent liable for disciplinary action against his License, pursuant to N. Y. Educ. Law §§ 6530(9)(b) & (9)(d).

The Committee voted to revoke the Respondent's License. The Committee noted that the patient at issue suffered marital difficulties during her relationship with the Respondent. The Committee found that the Respondent's relationship with the Patient came about despite the Respondent's acknowledgement that he knew he was wrong to have sexual contact with a patient. The Committee noted that the Respondent engaged in the conduct on multiple occasions and that the Respondent willfully violated the rules against the conduct.

Review History and Issues

The Committee rendered their Determination on November 16, 2001. This proceeding commenced on December 5, 2001, 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 January 11, 2002.

The Respondent asks that the ARB overrule the Committee. The Respondent argues that the Kentucky Board imposed a well-reasoned decision and that the Committee failed to consider mitigating factors in assessing a penalty in New York. The Respondent contends that the relationship with the patient constituted a brief, isolated incident without premeditation or

coercion. The Respondent argues that he has acknowledged his responsibility and sought remediation. He also notes that the severe sanction in Kentucky has resulted in collateral losses in his Kentucky practice.

In response, the Petitioner argued that the Respondent was aware of the patient's vulnerability and the Petitioner asked that the ARB affirm the Committee's Determination.

Determination

The ARB has considered the record and the parties' briefs. We affirm the Committee's Determination to revoke the Respondent's License. We disagree with the Respondent's assertion that the Kentucky conduct constituted an aberration, without premeditation. The Respondent conceded that he knew he was violating rules and he knew he was wrong to conduct a relationship with a patient, but the Respondent engaged in the conduct anyway. The Respondent also engaged in the conduct on multiple occasions. We conclude that the Committee considered the facts in this case carefully and that the Committee came to the appropriate conclusion. A physician who engages in sexual conduct with a vulnerable patient violates the medical profession's standards and violates the patient's trust. The Respondent's conduct demonstrates his unfitness to practice medicine in New York.

ORDER

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

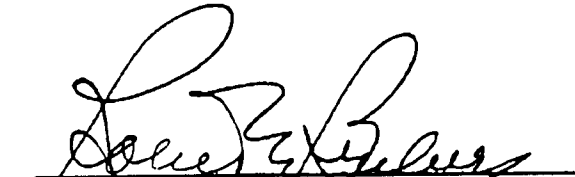
1. The ARB affirms the Committee's Determination that the Respondent committed professional misconduct.
2. The ARB affirms the Committee's Determination to revoke the Respondent's License.

Robert M. Briber
Thea Graves Pellman
Winston S. Price, M.D.
Stanley L. Grossman, M.D.
Therese G. Lynch, M.D.

In the Matter of Douglas Holand Rank, M.D.

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

Dated: March 20, 2002


Robert M. Briber

In the Matter of Douglas Holand Rank, M.D.

Thea Graves Pellman, an ARB Member concurs in the Determination and Order in the

Matter of Dr. Rank.

Dated: 4/11, 2002



Thea Graves Pellman

In the Matter of Douglas Holand Rank, M.D.

Winston S. Price, M.D., an ARB Member concurs in the Determination and Order in the
Matter of Dr. Rank.

Dated: 3/12, 2002

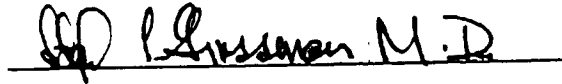
A handwritten signature in black ink, appearing to read "W. S. Price".

Winston S. Price, M.D.

In the Matter of Douglas Holand Rank, M.D.

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

Dated: March 11, 2002

Handwritten signature of Stanley L. Grossman, M.D. in cursive script, written over a horizontal line.

Stanley L. Grossman, M.D.

In the Matter of Douglas Holand Rank, M.D.

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

Dated: March, 2002

Therese G. Lynch M.D.

Therese G. Lynch, M.D.