



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

April 1, 2004

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Robert Bogan, Esq
Paul Robert Maher, Esq.
NYS Department of Health
Bureau of Professional
Medical Conduct
433 River Street, Suite 303
Troy, New York 12180

Venkataramanaiah Pulivarthi, M.B.B.S.
a/k/a Venkata R. Pulivarthi, M.B.B.S.
a/k/a Venkata Ramanaiah Pulivarthi, M.B.B.S.
3637 Trinity Mills Road
Apartment 1112
Dallas, Texas 75287

**RE: In the Matter of Venkataramanaiah Pulivarthi, M.B.B.S.
a/k/a Venkata R. Pulivarthi, M.B.B.S.
a/k/a Venkata Ramanaiah Pulivarthi, M.B.B.S.**

Dear Parties:

Enclosed please find the Determination and Order (No. 04-66) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the 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 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.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), and §230-c subdivisions 1 through 5, (McKinney Supp. 1992), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the licensee or the Department may seek a review of a committee determination.

Request for review of the Committee's determination by the Administrative Review Board stays penalties other than suspension or revocation until final determination by that Board. Summary orders are not stayed by Administrative Review Board reviews.

All notices of review must be served, by certified mail, upon the Administrative Review Board and the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

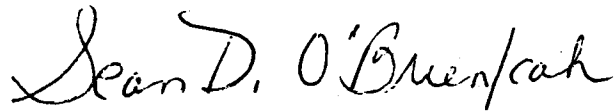
The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Hedley Park Place
433 River Street, Fifth Floor
Troy, New York 12180

The parties shall have 30 days from the notice of appeal in which to file their briefs to the Administrative Review Board. Six copies of all papers must also be sent to the attention of Mr. Horan at the above address and one copy to the other party. The stipulated record in this matter shall consist of the official hearing transcript(s) and all documents in evidence.

Parties will be notified by mail of the Administrative Review Board's Determination and Order.

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
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER

OF

**VENKATARAMANIAH PULIVARTHI, M.B.B.S.,
aka VENKATA R. PULIVARTHI, M.B.B.S.,
aka VENKATA RAMANIAH PULIVARTHI, M.B.B.S.**

DETERMINATION

AND

ORDER

BPMC #04-66

COPY

A hearing was held on March 17, 2004, at the offices of the New York State Department of Health ("the Petitioner"). A Commissioner's Order and Notice of Referral Proceeding, dated December 15, 2003, and a Statement of Charges, also dated December 15, 2003, were served upon the Respondent, **Venkataramanaiah Pulivarthi, M.B.B.S., aka Venkata R. Pulivarthi, M.B.B.S., aka Venkata Ramanaiah Pulivarthi, M.B.B.S.** Pursuant to Section 230(10)(e) of the Public Health Law, **Teresa S. Briggs, M.D., Ph.D.**, Chairperson, **Scott Groudine, M.D.**, and **Stephen E. Lyons, R.P.A.-C.**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. **John Wiley, Esq.**, Administrative Law Judge, served as the Administrative Officer.

The Petitioner appeared by **Donald P. Berens, Jr., Esq.**, General Counsel, by **Robert Bogan, Esq.**, and **Paul Robert Maher, Esq.**, of Counsel. The Respondent appeared in person and represented himself.

Evidence was received and transcripts of these proceedings were made.

After consideration of the entire record, the Hearing Committee issues this Determination and Order.

STATEMENT OF CASE

This case was brought pursuant to Public Health Law Section 230(10)(p). The statute provides for an expedited hearing when a licensee is charged solely with a violation of Education Law Section 6530(9). In such cases, a licensee is charged with misconduct based upon a prior criminal conviction in New York State or another jurisdiction, or upon a prior administrative adjudication regarding conduct that would amount to professional misconduct, if committed in New York. The scope of an expedited hearing is limited to a determination of the nature and severity of the penalty to be imposed upon the licensee.

In the instant case, the Respondent is charged with professional misconduct pursuant to Education Law Section 6530(9)(a)(ii), 6530(9)(b), and 6530(9)(d). Copies of the Commissioner's Order and Notice of Referral Proceeding and the Statement of Charges are attached to this Determination and Order as Appendix 1.

WITNESSES

For the Petitioner: None

For the Respondent: Venkataramanaiah Pulivarthi, M.B.B.S.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers below in parentheses refer to exhibits, denoted by the prefix "Ex." These citations refer to evidence found persuasive by the Hearing Committee in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence. All Hearing Committee findings were unanimous.

1. Venkataramanaiah Pulivarthi, M.B.B.S., aka Venkata R. Pulivarthi, M.B.B.S., aka Venkata Ramanaiah Pulivarthi, M.B.B.S., the Respondent, was authorized to practice

medicine in New York State on July 6, 1995, by the issuance of license number 200035 by the New York State Education Department (Petitioner's Ex. 4).

2. On November 15, 2002, in the United States District Court, District of South Carolina, the Respondent was found guilty, based on a plea of guilty, of conspiracy to distribute and distributing Schedule IV controlled substances, in violation of 21 U.S.C. Section 846, a felony. On September 22, 2003, the Respondent was sentenced to three years probation, a \$100.00 assessment, and 100 hours community service. (Petitioner's Ex. 5).

3. On March 13, 2003, the State Board of Medical Examiners of South Carolina, by an Order of Temporary Suspension, temporarily suspended the Respondent's license to practice medicine pending final disposition of a disciplinary proceeding regarding the November 15, 2002, criminal conviction (Petitioner's Ex. 6).

4. On April 22, 2003, the North Carolina Medical Board, by a Notice of Revocation, notified the Respondent that his license to practice medicine would be automatically revoked unless the Board received a request for a hearing within 60 days of the Notice of Revocation. This action was based on the November 15, 2002, criminal conviction. (Petitioner's Ex. 7[a]).

5. On May 30, 2003, the North Carolina Medical Board revoked the Respondent's license to practice medicine, based on the Respondent not requesting a hearing within 60 days of receipt of the Notice of Revocation (Petitioner's Ex. 7[b]).

HEARING COMMITTEE CONCLUSIONS

The Hearing Committee concludes that the conduct of the Respondent would constitute professional misconduct under the laws of New York State, had the conduct occurred in New York State, pursuant to:

- New York Education Law Section 6530(9)(a)(ii) - "Being convicted of committing an act constituting a crime under...federal law;" and

- New York Education Law Section 6530(20) - "Conduct in the practice of medicine which evidences moral unfitness to practice medicine..."

VOTE OF THE HEARING COMMITTEE

FIRST SPECIFICATION

"Respondent violated New York Education Law Section 6530(9)(a)(ii) by being convicted of committing an act constituting a crime under federal law..."

VOTE: Sustained (3-0)

SECOND SPECIFICATION

"Respondent violated New York Education Law Section 6530(9)(b) by having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the findings was based would, if committed in New York state, constitute professional misconduct under the laws of New York state..."

VOTE: Sustained (3-0)

THIRD SPECIFICATION

"Respondent violated New York Education Law Section 6530(9)(d) by having his license revoked, suspended or having other disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation, suspension or other disciplinary action would, if committed in New York state, constitute professional misconduct under the laws of New York state..."

VOTE: Sustained (3-0)

HEARING COMMITTEE DETERMINATION

The Respondent was convicted for engaging in a conspiracy to dispense controlled substances to patients in violation of the requirements of Federal law and for engaging in the distribution of controlled substances in violation of the requirements of Federal law. The Respondent prescribed controlled substance pain medications in excess of what was medically indicated when he was employed as a physician at the Comprehensive Care and Pain Management Center ("the pain clinic") in Myrtle Beach, South Carolina.

The Respondent testified that when he began his employment at the pain clinic, he was given a pain management protocol by a member of the clinic's management. He testified that he had reservations about the amount of pain medication listed in this protocol and expressed his discomfort to management, but received no response from them. Two months after the Respondent commenced employment at the pain clinic, investigators from the Federal Drug Enforcement Administration ("DEA") came to the clinic. It was on that day that the Respondent learned that there was an ongoing criminal investigation of the pain clinic. The Respondent resigned immediately thereafter.

In his testimony, the Respondent portrayed himself as a conscientious and responsible physician who found himself in a place of employment where controlled substances were prescribed in an irresponsible and illegal manner. He testified that he was able to reduce the amount of controlled substances being prescribed to several of the pain clinic's patients. However, the Respondent was not convicted for working among physicians who conspired to dispense controlled substances to patients illegally. He was convicted for being one of those physicians. The Respondent, as he testified, may have questioned the pain clinic's pain management protocol and may have reduced the amount of controlled substances prescribed to some patients, but he, nonetheless,

participated in the conspiracy that prescribed excessive controlled substances to other patients.

The Respondent testified that he resigned from the pain clinic only two months after his hiring and that this is a factor that should be considered in determining the penalty that should be imposed by this Hearing Committee. He stated that one reason for his resignation was that the clinic's managers did not respond to his questions about the amount of controlled substances being prescribed at the clinic. The Respondent's other reason was that he learned of the DEA criminal investigation. The Hearing Committee concludes that the latter reason is the primary reason for his resignation. The Respondent learned at the beginning of his employment about the excessive prescribing of controlled substances, but remained employed for two months. In contrast, he resigned as soon as he learned about the DEA investigation. His resignation was motivated primarily by his self-interest in avoiding legal problems, not by a concern about the medical care being provided at the clinic. A resignation motivated by a desire to avoid criminal prosecution, no matter how soon the resignation occurs after commencement of employment, is not a factor relevant to the decision that this Hearing Committee needs to make.

The Respondent also argued that he is a good physician, having, for instance, given poor patients money to buy medicine. The Respondent, however, provided no corroborating evidence for this position. He also provided virtually no detail in his own testimony on this point.

The Respondent also testified that he had no problems in his professional career involving pain medications other than during the two months that he worked at the pain clinic. The Hearing Committee concludes that this factor is greatly outweighed by the fact

that he committed a felony at the pain clinic and facilitated the abuse of controlled substances.

The Respondent also argued that he has suffered enough. In addition to the criminal punishment, he has lost his medical licenses in South Carolina and North Carolina. The Hearing Committee is unpersuaded by this argument. The sentence imposed by the District Court included no time in prison. Therefore, it could be argued that he received a light sentence for his conviction. More importantly, punishment of the Respondent is not the primary concern of the Hearing Committee; protection of the public is. The people of New York State need to be protected from physicians who prescribe controlled substances in bad faith. Imposing a minor penalty, a penalty that does not prevent the Respondent from practicing medicine, is inconsistent with providing such protection.

Although the Respondent stated that he was sorry, he did not truly accept responsibility for his criminal activity. He testified that he pled guilty to the criminal charge in large part because of the expense of going to trial. He did not state that another reason was that he was guilty. The Respondent attempted to convince the Hearing Committee that it was those around him at the pain clinic who were guilty and that he was the sole voice of professional responsibility there. His criminal conviction, however, conclusively, rebuts that position.

The Petitioner recommended that the Respondent's license to practice medicine be revoked. The Hearing Committee will adopt that recommendation.

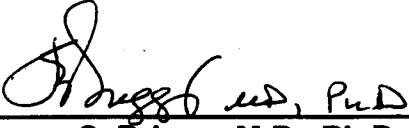
ORDER

IT IS HEREBY ORDERED THAT:

1. The license of the Respondent to practice medicine is revoked.

2. This Order shall be effective upon service on the Respondent in accordance with the requirements of Public Health Law Section 230(10)(h).

DATED: Albany, New York
March 23, 2004



Teresa S. Briggs, M.D., Ph.D.
Chairperson

Scott Groudine, M.D.
Stephen E. Lyons, R.P.A.-C.

APPENDIX I

ORIGINAL

EXHIBIT

JAE 3/17/04

STATE OF NEW YORK DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER

OF

VENKATARAMANIAH PULIVARTHI, M.B.B.S.
aka VENKATA R. PULIVARTHI, M.B.B.S.
aka VENKATA RAMANIAH PULIVARTHI, M.B.B.S.
CO-03-04-1809-A

**COMMISSIONER'S
ORDER
AND
NOTICE OF
REFERRAL
PROCEEDING**

TO: VENKATARAMANIAH PULIVARTHI, M.B.B.S.
aka VENKATA R. PULIVARTHI, M.B.B.S.
aka VENKATA RAMANIAH PULIVARTHI, M.B.B.S.
3637 Trinity Mills Road
Apt. 1112
Dallas, TX 75287

The undersigned, Antonia C. Novello, M.D., M.P.H., Dr. P.H., Commissioner of the New York State Department of Health, after an investigation, upon the recommendation of a committee on professional medical conduct of the State Board for Professional Medical Conduct, and upon the Statement of Charges attached, hereto, and made a part hereof, has determined that **VENKATARAMANIAH PULIVARTHI, M.B.B.S., aka VENKATA R. PULIVARTHI, M.B.B.S., aka VENKATA RAMANIAH PULIVARTHI, M.B.B.S.,** Respondent, licensed to practice medicine in New York state on July 6, 1995, by license number 200035, has been found guilty, based on a plea of guilty, of committing acts constituting a felony under federal law in the United States District Court, District of South Carolina.

It is therefore,

ORDERED, pursuant to N.Y. Public Health Law Section 230(12)(b), that effective immediately, **VENKATARAMANIAH PULIVARTHI, M.B.B.S., aka VENKATA R. PULIVARTHI, M.B.B.S., aka VENKATA RAMANIAH PULIVARTHI, M.B.B.S.,**

Respondent, shall not practice medicine in the State of New York or in any other jurisdiction where that practice is dependent on a valid New York State license to practice medicine. This order shall remain in effect unless modified or vacated by the Commissioner of Health pursuant to N.Y. Public Health Law Section 230(12).

PLEASE TAKE NOTICE that a hearing will be held pursuant to the provisions of N.Y. Public Health Law Section 230, and N.Y. State Admin. Proc. Act Sections 301-307 and 401. The hearing will be conducted before a committee on professional conduct of the State Board of Professional Medical Conduct, on the 22nd day of January, 2004 at 10:00 am in the forenoon at Hedley Park Place, 433 River Street, 5th Floor, Troy, New York 12180. The Respondent may file an answer to the Statement of Charges with the below-named attorney for the Department of Health.

At the hearing, evidence will be received concerning the allegations set forth in the Statement of Charges, that is attached. A stenographic record of the hearing will be made and the witnesses at the hearing will be sworn and examined. The Respondent shall appear in person at the hearing and may be represented by counsel. The Respondent has the right to produce witnesses and evidence on his behalf, to issue or have subpoenas issued on his behalf for the production of witnesses and documents. Such evidence or sworn testimony shall be strictly limited to evidence and testimony relating to the nature and severity of the penalty to be imposed upon the licensee. Where the charges are based on the conviction of state law crimes in other jurisdictions, evidence may be offered that would show that the conviction would not be a crime in New York state. The Committee also may limit the number of witnesses whose testimony will be received, as well as the length of time any witness will be permitted to testify. Respondent has the right cross-examine witnesses and examine evidence produced against him. A summary of the Department of Health Hearing Rules is

enclosed. Pursuant to Section 301(5) of the State Administrative Procedure Act, the Department, upon reasonable notice, will provide at no charge, a qualified interpreter of the deaf to interpret the proceedings to, and the testimony of, any deaf person.


The hearing will proceed whether or not the Respondent appears at the hearing. Scheduled hearing dates are considered dates certain and, therefore, adjournment requests are not routinely granted. Requests for adjournments must be made in writing to the Administrative Law Judge's Office, Hedley Park Place, 433 River Street, 5th Floor, Troy, New York 12180 (518-402-0751), upon notice to the attorney for the Department of Health whose name appears below, and at least five days prior to the scheduled hearing date. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation.

At the conclusion of the hearing, the committee shall make findings of fact, conclusions concerning the charges sustained or dismissed, and, in the event that any of the charges are sustained, a determination of the penalty or sanction to be imposed or appropriate action to be taken. Such determination may be reviewed by the Administrative Review Board for Professional Medical Conduct.

**THESE PROCEEDINGS MAY RESULT IN A
DETERMINATION THAT YOUR LICENSE TO
PRACTICE MEDICINE IN NEW YORK STATE BE
REVOKED OR SUSPENDED, AND/OR THAT
YOU MAY BE FINED OR SUBJECT TO OTHER
SANCTIONS SET FORTH IN NEW YORK PUBLIC
HEALTH LAW SECTION 230-A. YOU ARE
URGED TO OBTAIN AN ATTORNEY FOR THIS MATTER.**

DATED: Albany, New York

December 15, 2003



ANTONIA C. NOVELLO, M.D., M.P.H., Dr. P.H.,
Commissioner

Inquires should be addressed to:

Robert Bogan
Associate Counsel
Office of Professional Medical Conduct
433 River Street - Suite 303
Troy, New York 12180
(518) 402-0828

STATE OF NEW YORK

DEPARTMENT OF HEALTH

STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER

OF

VENKATARAMANAI AH PULIVARTHI, M.B.B.S.,
aka VENKATA R. PULIVARTHI, M.B.B.S.,
aka VENKATA RAMANAI AH PULIVARTHI, M.B.B.S.
CO-03-04-1809-A

STATEMENT

OF

CHARGES

VENKATARAMANAI AH PULIVARTHI, M.B.B.S., aka VENKATA R. PULIVARTHI, M.B.B.S., aka VENKATA RAMANAI AH PULIVARTHI, M.B.B.S., the Respondent, was authorized to practice medicine in New York state on July 6, 1995, by the issuance of license number 200035 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about November 15, 2002, in the United State District Court, District of South Carolina, Respondent was found guilty, based on a plea of guilty, of Conspiracy to distribute and distributing Schedule IV Controlled Substances, in violation of 21 United States Code §846, a felony, and on September 22, 2003, was sentenced to three (3) years probation, a \$100.00 assessment, and 100 hours community service.

B. On or about March 13, 2003, the State Board of Medical Examiners of South Carolina (hereinafter "South Carolina Board"), by an Order of Temporary Suspension (hereinafter "South Carolina Order"), immediately temporarily suspended Respondent's license to practice medicine pending final disposition of a disciplinary proceeding and until further Order of the South Carolina Board, based on the conviction set forth in Paragraph A above.

C. On or about April 22, 2003, the North Carolina Medical Board, (hereinafter "North Carolina Board"), by a Notice of Revocation, (hereinafter "North Carolina Order"), notified Respondent that his license would be automatically revoked unless the Board received a

request for a hearing within sixty (60) days of his receipt of the North Carolina Order, based on the criminal conviction set forth in Paragraph A, above.

North

D. On or about May 30, 2003, the South Carolina Board revoked Respondent's license to practice medicine, based on Respondent not requesting a hearing within sixty (60) days of receipt of the North Carolina Order, set forth in Paragraph C above.

E. The conduct resulting in the South Carolina Board disciplinary action against Respondent would constitute misconduct under the laws of New York state, pursuant to the following sections of New York state law:

1. New York Education Law §6530(9)(a)(ii) (being convicted of committing an act constituting a crime under federal law); and/or
2. New York Education Law §6530(20) (moral unfitness).

F. The conduct resulting in the North Carolina Board disciplinary action against Respondent would constitute misconduct under the laws of New York state, pursuant to the following sections of New York state law:

1. New York Education Law §65309(a)(ii) (being convicted of committing an act constituting a crime under federal law).

SPECIFICATIONS

FIRST SPECIFICATION

Respondent violated New York Education Law §6530(9)(a)(ii) by being convicted of committing an act constituting a crime under federal law, in that Petitioner charges:

1. The facts in Paragraph A.

SECOND AND THIRD SPECIFICATIONS

Respondent violated New York Education Law §6530(9)(b) by having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the findings was based would, if committed in New York state, constitute professional misconduct under the laws of New York state, in that the Petitioner charges:

2. The facts in Paragraphs A, B, and/or E;
3. The facts in Paragraphs A, C, D, and/or F.

FOURTH AND FIFTH SPECIFICATIONS

Respondent violated New York Education Law §6530(9)(d) by having his license revoked, suspended or having other disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation, suspension or other disciplinary action would, if committed in New York state, constitute professional misconduct under the laws New York state, in that Petitioner charges:

4. The facts in Paragraphs A, B, and/or E;
5. The facts in Paragraphs A, C, D, and/or F.

DATED: *Dec. 15*, 2003
Albany, New York


PETER D. VAN BUREN
Deputy Counsel
Bureau of Professional Medical Conduct