



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

July 16, 2004

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

PUBLIC

Manuel Roque Carranto, M.D.
5657 Arlington Avenue, Apt. 42
Riverside, California 92504

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

Manuel Roque Carranto, M.D.
Convenience Medical & Surgical Center
1630 Puente Avenue
Baldwin Park, California 91706

RE: In the Matter of Manuel Roque Carranto, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No.04-102) 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.

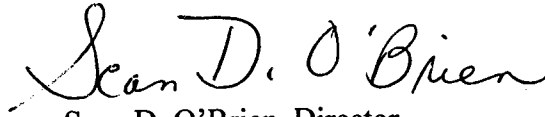
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified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

Manuel R. Carranto, 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. 04-102

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:**

**Paul Robert Maher, Esq.
Pro Se**

The Respondent held a medical license in California and in New York. In this proceeding pursuant to N.Y. Pub. Health Law § 230-c (4)(a)(McKinney 2004), we consider the appropriate sanction to impose against the Respondent's License to practice medicine in New York (License) after the Medical Board of California (California Board) revoked the Respondent's license in that state due to the Respondent's mental condition. After a hearing below, a BPMC Committee revoked the Respondent's License in reliance on the findings by the California Board. On administrative review, the Respondent raises several objections to the BPMC hearing and to the California Board's action. After reviewing the record below and the parties' submissions, the ARB affirms the Committee's Determination that the California Board's findings provide a basis for disciplinary action against the Respondent's License and we affirm the Committee's Determination to revoke the Respondent's action due to a mental condition that impairs his ability to practice medicine.

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) & 6530(9)(d) (McKinney Supp. 2004) by committing professional misconduct because:

- the duly authorized professional disciplinary agency from a sister state (California) found that the Respondent guilty for misconduct [6530(9)(b)] or took action against the Respondent's 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 California would constitute misconduct if committed in New York as:

- suffering from a psychiatric condition which impairs the ability to practice medicine, a violation under N. Y. Educ. Law § 6530(7) (McKinney Supp. 2004).

The proceeding commenced by a Summary Order from the Commissioner of Health, pursuant to N.Y. Pub. Health Law § 230(12)(a). The Order suspended the Respondent's License summarily, upon the Commissioner's Determination that the Respondent's practice of medicine constituted an imminent danger to the health, safety and welfare of the people of New York. The Order indicated that the Commissioner based the Order on what the Order characterized as a "substantially equivalent" finding by the California Board.

An expedited hearing (Direct Referral Proceeding) followed pursuant to N.Y. Pub. Health Law §230(10)(p)(McKinney Supp. 2003), before a BPMC Committee, which rendered the Determination which the ARB now reviews. In such a 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 Respondent indicated that financial constraints prevented him from hiring an attorney or from appearing at the hearing in New York. He did submit documents that the Committee's Administrative Officer received into the hearing record. The ARB review addresses the Committee's Determination on the charges and penalty only, as the ARB lacks the authority to review Summary Orders [see Pub. Health Law § 230-c (1)].

The hearing record shows that the California Board issued an Order in October 2004 imposing restrictions on the Respondent's California license upon the Board's conclusion that the Respondent's psychiatric condition made his unrestricted medical practice a danger to the public health, safety and welfare. The California Board's action followed a series of letters that the Respondent sent to public officials. The letters contained sufficient evidence of "bizarre paranoid ideation" to cause a California District Attorney to bring the letters to the California Board's attention. The California Board also based their Order on a two-hour psychiatric assessment and document review. The Respondent failed to comply with the conditions on the Order and the California Board revoked the Respondent's California license for mental impairment.

The BPMC Committee determined that the California Board's Determination made the Respondent liable for disciplinary action under Educ. Law §§ 6530(9)(b) & 6530(9)(d). The Committee's Determination stated that the Respondent failed to file an answer to the New York charges, so that the allegations were deemed admitted under N.Y. Pub. Health Law § 230(10)(p). The Committee also found that the Respondent failed to counter the evidence about mental impairment that the California documents set forth. The Committee found the documents that the

Respondent submitted long, rambling and filled with repetitive content that tended to reinforce the California Board's conclusions. The Committee concluded that the California Board's findings established that the Respondent suffered from a condition that would impair his practice in New York and the Committee voted to revoke the Respondent's License.

Review History and Issues

The Committee rendered their Determination on May 10, 2004. This proceeding commenced on May 24, 2004, when the Respondent filed a Notice requesting 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 June 17, 2004.

The Respondent's brief asked for an injunction against the Committee's action and a change of venue and argued that the Respondent could not get a fair trial in New York due to racial prejudice. The Respondent's brief also challenged the California psychiatric assessment, the proceedings in California and the Committee's reliance on a decision under appeal.

In reply, the Petitioner argues that ample basis existed for the decisions concerning the Respondent's licensure by both the California Board and the Committee. The Petitioner argues further that no basis exists in fact for the Respondent's allegation of racial bias and that no basis exists in law for the Respondent's request for a change in venue.

Determination

The ARB has considered the record and the parties' briefs. We reject the Respondent's challenges to the Committee's Determination and we affirm the Committee's Determination in full.

First, we reject the Respondent's request for a change of venue for this action to a Federal District Court in California. Under Pub. Health Law § 230-c(4)(a), the ARB alone holds the authority to conduct administrative reviews over BPMC Committee Determinations. This Determination constitutes the final administrative step in the New York physician disciplinary process. When the Respondent receives this Determination, he may challenge the Determination before whatever court holds jurisdiction over the challenge.

We hold further that we lack authority to issue the injunction the Respondent requests against the Committee's Determination. 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 PHL §230-a permits. If we agree with either party's challenge to a Determination, the ARB may substitute our judgment 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); in determining guilt on the charges, Matter of Spartalis v. State Bd. for Prof. Med. Conduct 205 A.D.2d 940, 613 NYS 2d 759 (3rd Dept. 1994); and in determining credibility, Matter of Minielly v. Comm. of Health, 222 A.D.2d 750, 634 N.Y.S.2d 856 (3rd Dept. 1995). We substitute our judgment by amending, modifying or annulling a Determination, rather than granting an injunction.

Although the Respondent requested relief as a change of venue or an injunction, the ARB will treat the Respondent's challenge to the Committee's Determination as a request for administrative review. The Respondent is proceeding without counsel, and an adjudicative body should construe broadly the submissions by a pro se litigant, Cruz v. Gomez, 202 F.3d 593 (2d Cir. 2000).

The Respondent requested the change of venue on grounds that he could not receive a fair hearing due to racial prejudice. We will treat that as a challenge on the grounds of bias. To overturn a decision due to bias, the party attacking the decision must show that the outcome in the decision flowed from bias, and the party must provide proof rather than merely making allegations, Matter of Moss v. Chassin, 209 A.D.2d 889, 618 N.Y.S.2d 931 (3rd Dept. 1994). The Respondent offered no proof on the allegations on bias. We reject the Respondent's allegations concerning bias. We note also that the Committee based their Determination solely on the California Board's Determination.

The Respondent also challenged the summary suspension process and the hearing that took place in the Respondent's absence. As to the summary suspension, we again note that under Pub. Health Law § 230-c (1) the ARB lacks the authority to review a summary suspension order. Further, the summary suspension in this case ended when the Committee rendered their final Determination. As to the hearing proceeding in the Respondent's absence, due process allows a hearing to proceed in a Respondent's absence if the Respondent has received notice concerning the hearing and a chance to participate, Matter of Lazachek v. Board of Regents, 1010 A.D.2d 639, 475 N.Y.S.2d 160, leave denied 63 N.Y.2d 608. The Respondent received notice about this hearing and received the opportunity to submit evidence, which the Committee's Administrative Officer received into the record.

The bulk of the Respondent's brief challenged the California Board's action and the psychiatric examination on which the California Board based its action. The Respondent notes that he has appealed the California Board's Order. We hold that the California courts present the proper forum to challenge the California Board's action. The Committee and the ARB lack the authority to overturn the California Board's Order. If the Respondent succeeds in his appeals and the California courts overturn the California Board's Order, the basis will no longer exist for disciplinary action in New York.

Under Educ. Law §§ 6530(9)(b) & 6530(9)(d), a Respondent becomes liable for disciplinary action against his/her License if the duly authorized medical board from another state finds the Respondent guilty for misconduct or disciplines the Respondent for conduct which would constitute misconduct in New York. The Committee found that the California Board disciplined the Respondent for practicing with mental impairment. Practicing while mentally impaired constitutes grounds for disciplinary action in New York under Educ. Law §§ 6530(7).

We hold that the Committee acted appropriately and consistently with the evidence in finding that California Order established that the California Board found that the Respondent suffered from a mental condition that impairs his ability to practice and that the Respondent refused to comply with conditions relating to his impaired condition. The Committee also acted appropriately in finding that the Respondent's conduct in California constitutes misconduct in New York and provides grounds for disciplinary action by BPMC. We agree with the Committee that revocation constitutes the appropriate penalty under Pub. Health Law § 230-a. We agree further that the arguments that the Respondent submitted challenging the California Board's Order only served to reinforce the California Board's findings about the Respondent's impairment.

ORDER

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

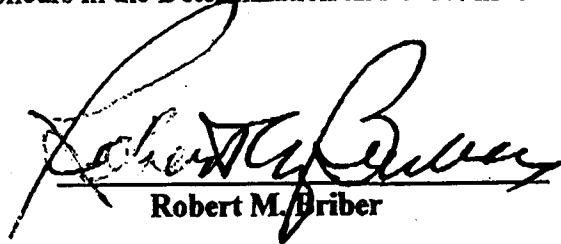
1. The ARB affirms the Committee's Determination that the Respondent committed professional misconduct.
2. The ARB affirms the Committee's Determination to revoke the Respondent's License.

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 Manuel Roque Carranto, M.D.

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

Dated: July 3, 2004



Robert M. Briber

In the Matter of Manuel Roque Carranto, M.D.

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

Dated: 7/15, 2004

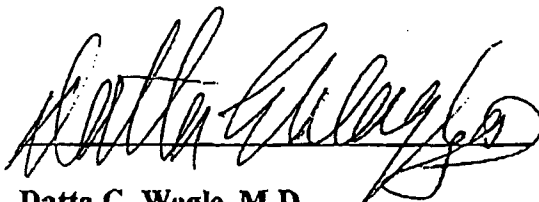


Thea Graves Pellman

In the Matter of Manuel Roque Carranto, M.D.

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

Dated: 7/27, 2004

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

Datta G. Wagle, M.D.

In the Matter of Manuel Roque Carranto, M.D.

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

Dated: July 4, 2004

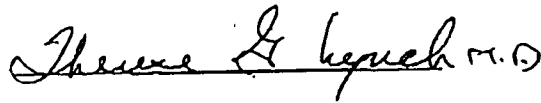
Stanley L. Grossman, M.D.

Stanley L. Grossman, M.D.

In the Matter of Manuel Roque Carranto, M.D.

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

Dated: July 3, 2004



Therese G. Lynch, M.D.