



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

September 20, 2005

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Arturo Ruiz, M.D.
1801 Jenice Court
Las Cruces, New Mexico 88001

Arturo Ruiz, M.D.
120 Hobart Street
Utica, New York 13501

Arturo Ruiz, M.D.
2209 Genesee Street
Utica, New York 13413

Paul Robert Maher, Esq.
NYS Department of Health
Office of Professional Medical Conduct
433 River Street - 4th Floor
Troy, New York 12180

RE: In the Matter of Arturo Ruiz, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 05-118) 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.

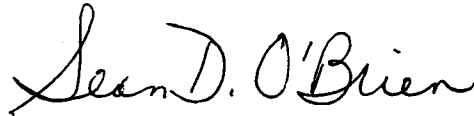
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified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

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

Arturo Ruiz, 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. 05-118

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**

In this proceeding pursuant to N.Y. Pub. Health Law (PHL) § 230-c (4)(a)(McKinney 2005), the ARB considers the action to take against the Respondent, a former New York medical resident, following the Respondent's misdemeanor conviction for assault. After a hearing below, a BPMC Committee voted to censure and reprimand the Respondent. On review, the Petitioner asks the ARB to modify that Determination, by barring the Respondent from returning to practice in New York or by placing limitations upon any future practice and requiring evaluations before allowing the Respondent to return to practice. After considering the record and the issue for review, the ARB overturns the Committee's Determination to censure and reprimand the Respondent, because we find that penalty inappropriate following a criminal conviction for assault. We vote 5-0 to place the Respondent on probation for five years should he ever return to practice in New York and we include in the probation terms a requirement that the Respondent take a class in anger management.

Committee Determination on the Charges

The Committee conducted a hearing in this matter under the expedited hearing procedures (Direct Referral Hearing) in PHL § 230(10)(p). In the hearing, the Petitioner charged that the Respondent violated N. Y. Educ. Law (EL) §§ 6530(9)(a)(i) (McKinney Supp. 2005) and committed professional misconduct by engaging in conduct that resulted in a criminal conviction under New York Law. In a Direct Referral Proceeding, the statute limits the Committee to considering whether a criminal conviction occurred, and if the Committee determines a conviction occurred, the Committee then determines the nature and the extent of the penalty to impose against the licensee, Wolkoff v. Chassin, 89 N.Y.2d 250 (1996). The Respondent made no appearance at the Direct Referral Hearing, but submitted a written statement in response to the misconduct specification [Hearing Exhibit A].

Following the hearing, the Committee rendered a written Determination that found that the Respondent entered a guilty plea to Assault Third Degree, a Class A Misdemeanor, in City Court in Utica, New York on March 24, 2004. The Court sentenced the Respondent to a one-year conditional discharge and issued an Order of Protection. The charge involved the Respondent's former girlfriend. A Police Report in Evidence as Hearing Exhibit 5 stated that the Respondent grabbed the victim during an argument, about the ears, neck and throat area "causing them to turn red", ripped off the victims shirt and struck the victim on her left cheek, causing the cheek to swell and turn black and blue in the area of the left eye and causing the victim "substantial pain". The Respondent's response to the specification [Hearing Exhibit A] indicated that the Respondent suffered a substance abuse problem and that his impairment from the substance abuse problem influenced/compounded the assault. The Respondent indicated that he had entered

substance abuse treatment in Utica following his arrest and eventually left New York for his native New Mexico, where he remains in recovery.

The Committee found that the Respondent's criminal conviction amounted to professional misconduct and the Committee voted to censure and reprimand the Respondent. The Committee refused to grant the Petitioner's request that the Committee place the Respondent on probation and order that the Respondent undergo substance abuse monitoring during the probation. The Committee stated that they could only legally impose sanctions on the Respondent for the assault conviction. The Committee indicated that substance abuse monitoring constituted a penalty for a different category of misconduct. The Committee recommended either a separate disciplinary proceeding against the Respondent for impairment or a notification to the State Education Department that attaches the Respondent's Exhibit A, in the event the Respondent attempts to register as a physician in New York in the future.

Review History and Issues

The Committee rendered their Determination on June 14, 2005. This proceeding commenced on June 21, 2005, when the ARB received the Respondent's Notice requesting a Review. The record for review contained the Committee's Determination, the hearing record and Petitioner's brief. The Respondent made no submission specifically for the review. The ARB considered the Respondent's hearing submission [Hearing Exhibit A] in reviewing the case. The record closed when the ARB received the Petitioner's brief on July 18, 2005.

The Petitioner's brief asks the ARB to consider the circumstances surrounding the Respondent's criminal conviction and to bar the Respondent from ever practicing medicine in New York State. In the alternative, the Petitioner requests that the ARB impose a condition that

would require that the Respondent undergo an evaluation for substance abuse and limit any license the Respondent receives to impose further conditions to protect the public.

ARB Authority

Under PHL §§ 230(10)(i), 230-c(1) and 230-c(4)(b), the ARB may review Determinations by Hearing Committees to determine 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. 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). The ARB may choose to substitute our judgment and impose a more severe sanction than the Committee on our own motion, even without one party requesting the sanction that the ARB finds appropriate, Matter of Kabnick v. Chassin, 89 N.Y.2d 828 (1996). In determining the appropriate penalty in a case, the ARB may consider both aggravating and mitigating circumstances, as well as considering the protection of society, rehabilitation and deterrence, Matter of Brigham v. DeBuono, 228 A.D.2d 870, 644 N.Y.S.2d 413 (1996).

The statute provides no rules as to the form for briefs, but the statute limits the review to only the record below and the briefs [PHL § 230-c(4)(a)], 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).

A party aggrieved by an administrative decision holds no inherent right to an administrative appeal from that decision, and that party may seek administrative review only pursuant to statute or agency rules, Rooney v. New York State Department of Civil Service, 124 Misc. 2d 866, 477 N.Y.S.2d 939 (Westchester Co. Sup. Ct. 1984). The provisions in PHL §230-c provide the only rules on ARB reviews.

Determination

The ARB has considered the record and the parties' briefs. We affirm the Committee's Determination that the Respondent's criminal conviction made the Respondent subject to disciplinary action under EL § 6530(9)(a)(i). Neither party challenged the Committee's Determination on the charges. We overturn the Committee's Determination to censure and reprimand the Respondent. We vote to place the Respondent on probation for five years under the terms that appear in the Appendix to this Determination, should the Respondent ever return to practice in New York.

The ARB agrees with the Committee that the Committee could only consider the Respondent's conviction for assault as the basis for imposing a penalty in this case, because a Committee would deny a Respondent due process by imposing a penalty for uncharged misconduct, Dhabuwala v. State Bd. for Professional Medical Conduct, 225 A.D.2d 209, 651 N.Y.S.2d 249 (3rd Dept. 1996). This due process concern arises because a licensee must obtain notice about the charges and possible penalties in order to respond to those charges, mount a defense and answer questions about that licensee's ability to continue to practice safely. In this

case, we overturn the Committee's Determination to censure and reprimand the Respondent, because that penalty constitutes an inappropriate sanction for assault.

When a physician commits a crime involving violence, a Committee or the ARB should be able to inquire about the violent conduct to determine whether the conduct represents a pattern of conduct that will continue and that may compromise the safety of patients and of staff under the physician's supervision, or whether the conduct constitutes an aberration with no danger for repetition. In this case, the Respondent himself introduced substance abuse as a defense and explanation, so no issue exists over adequate notice. Questions remain about whether substance abuse constitutes the sole explanation for the Respondent's conduct and, if so, whether the Respondent will remain in recovery in the future.

The ARB concludes that we must address these remaining questions through observation over the Respondent and his practice, should the Respondent return to practice in New York. The ARB votes 5-0 to place the Respondent on probation for five years under the terms that appear as the Appendix to this Determination.

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 overturns the Committee's Determination to censure and reprimand the Respondent.
3. The ARB places the Respondent on probation for five years, under the terms that appear at the Appendix to this Determination, should the Respondent ever return to practice in New York.

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

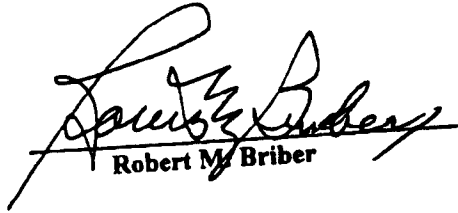
- A. The Respondent shall conduct himself in all ways in a manner befitting his professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his profession.
- B. The Respondent shall submit written notification to the New York State Department of Health addressed to the Director, Office of Professional Medical Conduct (OPMC), Hedley Park Place, 433 River Street Suite 303, Troy, New York 12180-2299; 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.
- C. The Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of Respondent's compliance with the terms of this Order. Respondent shall personally meet with a person designated by the Director of OPMC as requested by the Director.
- D. The period of probation shall be tolled during periods in which Respondent is not engaged in the active practice of medicine in New York State. 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. 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 Respondent's return to practice in New York State.
- E. 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 staff at practice locations or OPMC offices.
- F. The 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.

- G. The Respondent shall enroll in and complete a education program in the area of anger management. Said program shall be subject to the prior written approval of the Director of OPMC.
- H. The Respondent shall comply with all terms, conditions, restrictions, limitations and penalties to which he 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 the Respondent as may be authorized pursuant to the law.

In the Matter of Arturo Ruiz, M.D.

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

Dated: September 11, 2005


Robert M. Briber

In the Matter of Arturo Ruiz, M.D.

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

Matter of Dr. Ruiz.

Dated: Sept 12, 2005

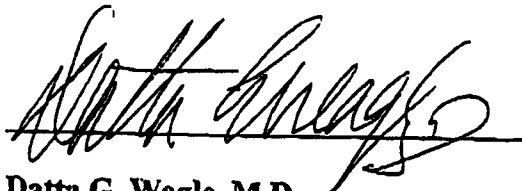


Thea Graves Pellman

In the Matter of Arturo Ruiz, M.D.

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

Dated: 9/11, 2005



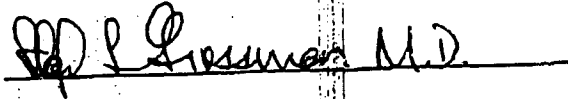
Datta G. Wagle, M.D.

In the Matter of Arturo Ruiz, M.D.

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

Matter of Dr. Ruiz.

Dated: September 8 2005

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

Stanley L Grossman, M.D.

In the Matter of Arturo Ruiz, M.D.

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

Dated: Sept. 7, 2005

Therese G. Lynch M.D.

Therese G. Lynch, M.D.