



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

June 14, 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

Robert Bogan, 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 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.

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.

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.

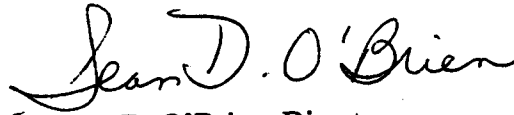
The notice of review served on the Administrative Review Board should be forwarded to:

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 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
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

COPY

IN THE MATTER
OF
ARTURO RUIZ, M.D.

DETERMINATION

AND

ORDER

BPMC #05-118

A hearing was held on May 26, 2005, at the offices of the New York State Department of Health ("the Petitioner"). A Notice of Referral Proceeding and a Statement of Charges, both dated February 17, 2005, were served upon the Respondent, **Arturo Ruiz, M.D.** Pursuant to Section 230(10)(e) of the Public Health Law, **Fred S. Levinson, M.D.**, Chairperson, **Diane M. Sixsmith, M.D.**, and **Ms. Frances Tarlton**, 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.**, of Counsel. The Respondent did not appear in person, but did submit a letter to be included in the hearing record. This letter is undated, signed by the Respondent and addressed to the Petitioner. The Administrative Law Judge admitted the letter into evidence as Respondent's Exhibit A.

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)(i). Copies of the 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: None

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. Arturo Ruiz, M.D., the Respondent, was authorized to practice medicine in New York State as a resident at Saint Elizabeth Medical Center during 2003 and 2004 (Petitioner's Ex. 6, Respondent's Ex. A).

2. On March 25, 2004, in the City Court of Utica, New York, the Respondent was found guilty, based on a plea of guilty, of Assault in the Third Degree, in violation of New York Penal Law Section 120.00, a class A misdemeanor, and was sentenced to a one year conditional discharge and an Order of Protection (Petitioner's Ex. 5).

VOTE OF THE HEARING COMMITTEE

SPECIFICATION

"Respondent violated New York Education Law Section 6530(9)(a)(i) by having been convicted of committing an act constituting a crime under New York state law..."

VOTE: Sustained (3-0)

HEARING COMMITTEE DETERMINATION

The Respondent practiced as a resident at a hospital in New York State in 2003 and 2004. He has never had a license to practice medicine in New York State.

The record in this case establishes that the Respondent was convicted of Assault in the Third Degree based on an act of violence against a former girlfriend committed on March 24, 2004, in Utica, New York. According to the police report contained in Petitioner's Ex. 5, the Respondent grabbed the victim "during an argument, by the ears, throat and neck area, causing them to turn red," ripped off her shirt, and "struck her on the left cheek causing her cheek to swell and turn black and blue in the area of her left eye, causing her substantial pain."

In the Respondent's letter (Respondent's Ex. A), he stated that he had a substance abuse problem and explained that the assault was "influenced/compounded by the fact that I was impaired because of substance abuse." He proceeded to describe the steps that he had taken to combat and control his addiction.

The Petitioner recommended that this Hearing Committee impose a censure and reprimand on the Respondent. The Petitioner also recommended that we impose three

years of probation with substance abuse monitoring, the three-year period to begin when and if the Respondent returns to New York State to practice medicine. The Petitioner argued that the probation with monitoring was necessary to protect the people of New York State from the substance abuse problems disclosed in Respondent's Ex. A.

The Hearing Committee will impose the censure and reprimand sought by the Petitioner, but will not impose a sanction of probation and monitoring. The only charge in the Statement of Charges is the assault conviction, and, therefore, the only sanctions that we can and should impose are those that fit this one act of professional misconduct. Probation for the purpose of substance abuse monitoring is not such a sanction. To impose a sanction for the substance abuse problem is to take action on a category of professional misconduct for which there is no charge in the Statement of Charges, a clear violation of due process of law.

It is not necessary to impose a probation and monitoring sanction in this Determination and Order to protect the people of New York State from a physician impaired by substance abuse. There are other ways for the Petitioner to accomplish this. The Petitioner can seek such a sanction against the Respondent in a disciplinary proceeding in which the Statement of Charges alleges such impairment and the Petitioner's evidence addresses this subject. Also, the Petitioner can notify the New York State Department of Education, the State agency responsible for licensing physicians, that there is a substance abuse problem that needs to be examined should the Respondent ever apply for a license to practice medicine in New York State. The Hearing Committee recommends that this notification be given to the Department of Education and, given the fact that Respondent's Ex. A indicates that the Respondent has not been practicing medicine for some time, that medical retraining be required as a prerequisite to obtaining a license.

The Petitioner has a responsibility to protect the public from impaired physicians, but it must do so in a manner consistent with due process of law. Imposing a sanction for impairment when a physician has not been charged with impairment is not consistent with due process of law.

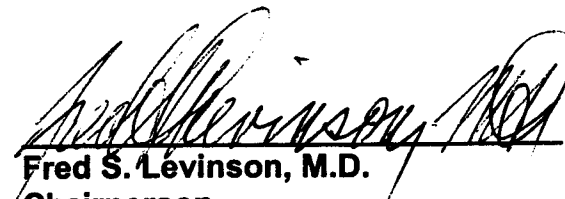
ORDER

IT IS HEREBY ORDERED THAT:

1. The Respondent is censured and reprimanded for his conviction of Assault in the Third Degree.
2. This Order shall be effective upon service on the Respondent in accordance with the requirements of Public Health Law Section 230(10)(h).

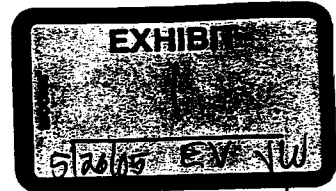
DATED: Middletown, New York

June 13, 2005


Fred S. Levinson, M.D.
Chairperson

Diane M. Sixsmith, M.D.
Frances Tarlton

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



IN THE MATTER

OF

ARTURO RUIZ, M.D.
SY-04-04-2092-A

NOTICE OF
REFERRAL
PROCEEDING

TO: ARTURO RUIZ, M.D.
120 Hobart Street
Utica, NY 13501

ARTURO RUIZ, M.D.
2209 Genesee Street
Utica, NY 13413

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law § 230(10)(p) and N.Y. State Admin. Proc. Act Sections 301-307 and 401. The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 21st day of April 2005, at 10:00 in the forenoon of that day at the Hedley Park Place, 433 River Street, 5th Floor, Troy, New York 12180.

At the proceeding, evidence will be received concerning the allegations set forth in the attached Statement of Charges. A stenographic record of the proceeding will be made and the witnesses at the proceeding will be sworn and examined.

You may appear in person at the proceeding and may be represented by counsel. You may produce evidence or sworn testimony on your behalf. 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.

If you intend to present sworn testimony, the number of witnesses and an estimate of the time necessary for their direct examination must be submitted to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Hedley Park Place, 5th Floor, 433 River Street, Troy, New York, ATTENTION: HON. SEAN O' BRIEN, DIRECTOR, BUREAU OF ADJUDICATION, (hereinafter "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before April 11, 2005.

Pursuant to the provisions of N.Y. Public Health Law §230(10)(p), you shall file a written answer to each of the Charges and Allegations in the Statement of Charges no later than ten days prior to the hearing. Any Charge of Allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such an answer. The answer shall be filed with the Bureau of Adjudication, at the address indicated above, and a copy shall be forwarded to the attorney for the Department of Health whose name appears below. You may file a brief and affidavits with the Committee. Six copies of all such papers you wish to submit must be filed with the Bureau of Adjudication at the address indicated above on or before April 11, 2005, and a copy of all papers must be served on the same date on the Department of Health attorney indicated below. 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 proceeding may be held whether or not you appear. Please note that requests for adjournments must be made in writing to the Bureau of Adjudication, at the address indicated above, with a copy of the request to the attorney for the Department of Health, whose name appears below, at least five days prior to the scheduled date of the proceeding. Adjournment requests are not routinely granted. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation. Failure to obtain an attorney within a reasonable period of time prior to the proceeding will not be grounds for an adjournment.

The Committee will make a written report of its findings, conclusions as to guilt, and a determination. Such determination may be reviewed by the Administrative Review Board for Professional Medical Conduct.

SINCE THESE PROCEEDINGS MAY RESULT IN A DETERMINATION
THAT SUSPENDS OR REVOKES YOUR LICENSE TO PRACTICE
MEDICINE IN NEW YORK STATE AND/OR IMPOSES A FINE FOR
EACH OFFENSE CHARGED, YOU ARE URGED TO OBTAIN AN
ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: Albany, New York

February 17, 2005



PETER D. VAN BUREN

Deputy Counsel

Bureau of Professional Medical Conduct

Inquiries should be addressed to:

Robert Bogan
Associate Counsel
New York State Department of Health
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
ARTURO RUIZ, M.D.
SY-04-04-2092-A

STATEMENT
OF
CHARGES

ARTURO RUIZ, M.D., the Respondent, was authorized to practice medicine in New York state, at Saint Elizabeth Medical Center, Family Medicine Residency Program, as a Resident, from on or about February 3, 2003 to on or about April 7, 2004.

FACTUAL ALLEGATIONS


A. On or about March 25, 2004, in the City Court of Utica, New York, Respondent was found guilty, based on a plea of guilty, of Assault in the third degree, in violation of New York Penal Law §120.00, a class A misdemeanor, and was sentenced to a one (1) year conditional discharge and an Order of Protection.

SPECIFICATION

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

1. The facts in Paragraph A.

DATED: *February 7*, 2005
Albany, New York


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