



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

November 1, 2004

PUBLIC

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Nancy Strohmeier, Esq.
NYS Department of Health
5 Penn Plaza – 6th Floor
New York, New York 10001

Ralph A. Erbaio, Jr., Esq.
Hoffman, Einiger & Polland, PLLC
220 East 42nd Street, Suite 435
New York, New York 10017

Rao R. Suryadevara, M.D.
38-01 149th Street
Flushing, New York 11354

RE: In the Matter of Rao R. Suryadevara, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 04-141) 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.

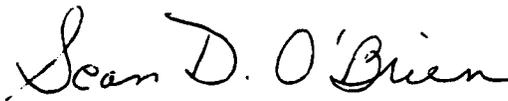
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified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

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

Rao R. Suryadevara, M.D. (Respondent)

Administrative Review Board (ARB)

**A proceeding to review a Determination by a
Committee (Committee) from the Board for
Professional Medical Conduct (BPMC)**

Determination and Order No. 04-141

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:**

**Nancy Strohmeyer, Esq.
Ralph A. Erbaio, Jr., Esq.**

After a hearing below, a BPMC Committee found the Respondent guilty for professional misconduct, for practicing medicine while mentally impaired and for suffering from a mental condition that impairs practice. The Committee voted to revoke the Respondent's license to practice medicine in New York State (License). In this proceeding pursuant to N.Y. Pub. Health Law § 230-c (4)(a)(McKinney 2004), the Respondent argues that the Committee erred in their conclusions concerning the evidence at the hearing and that the Committee imposed an overly harsh penalty. The Respondent asks that the ARB nullify the Determination or reduce the penalty. After reviewing the hearing record and the parties' review submissions, the ARB affirms the Committee's Determination in full.

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(7) & 6530(8)(McKinney Supp. 2004) by committing professional misconduct under the following categories:

- practicing medicine while impaired, and,

- suffering from a psychiatric condition that impairs practice.

The Respondent admitted that he suffered from a psychiatric condition, but denied that the condition impaired his practice or that he suffered from a mental disability. A hearing then proceeded before the Committee that rendered the Determination now on review.

The Committee sustained the charges. The Committee found that the Respondent practiced for a period of years during which he was actively psychotic and that he suffered delusions and hallucinations that altered his perception of reality. The Committee also found that the Respondent heard voices while practicing at the Veteran's Administration Hospital in Danville, Illinois and that the Respondent believed that the voices were real. The Committee also found that the Respondent suffers from a severe, ongoing obsessive, compulsive disorder, which the Respondent demonstrated by an inability to answer questions at the hearing without the questioner repeating the question multiple times. In addition, the Committee found that the Respondent remains in denial about the nature of his condition.

In making their findings, the Committee noted that both parties presented expert testimony. The Committee found both the Respondent's expert and treating psychiatrist, Carol W. Berman, M.D., and the Petitioner's expert witness, Stafford Henry, M.D., knowledgeable and generally credible. The Committee noted that both experts agreed that the Respondent experienced psychotic episodes, but disagreed over the Respondent's ultimate diagnosis. The Committee found the Respondent's testimony troubling and found that the Respondent's inability to process information in a realistic and timely fashion makes his continued medical practice problematic.

The Committee voted to revoke the Respondent's License. The Committee found that the Respondent's symptoms directly impact his ability to perceive reality and process information. The Committee concluded that the Respondent's continued practice posed potential harm for his patients.

Review History and Issues

The Committee rendered their Determination on June 25, 2004. This proceeding commenced on July 13, 2004, 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 response brief and the Petitioner's brief and response brief. The record closed when the ARB received the response briefs on August 20, 2004.

The Respondent argued that the Committee made a Determination without factual support. The Respondent contended that the Committee based their Determination on the charges in large part on the Committee's misperception about the Respondent's inability to answer questions. The Respondent also argued that the Committee erred in giving equal weight to the testimony by both parties' expert witnesses. The Respondent argued that the testimony by Dr. Berman, as the Respondent's treating psychiatrist, deserved greater weight than the testimony by Dr. Henry, a forensic psychiatrist. The Respondent also challenged the Committee's Determination on penalty and asked that the ARB overturn the revocation. The Respondent argued that the ARB has made Determinations previously that allowed impaired physicians to continue in medical practice.

The Petitioner argued that the evidence did demonstrate the Respondent's difficulty in processing information and the severity of his illness. As to the weight of the experts' opinions, the Petitioner argued that the Committee rejected portions of the testimony by both experts. Although the Committee's assessment on the Respondent's condition comported with Dr. Berman's diagnosis that the Respondent suffered a severe, ongoing obsessive-compulsive disorder, the Committee disagreed with Dr. Berman's opinion about the Respondent's ability to practice safely.

Determination

The ARB has considered the record and the parties' briefs. We affirm the Committee's Determination on the charges and on the penalty.

The evidence in the hearing demonstrated that the Respondent practiced while impaired, that he suffers ongoing impairment, that he has ignored past impairment symptoms and failed to obtain treatment, that the Respondent fails to realize the extent of his illness and that his illness could imperil patient care, due to the Respondent's inability to process information in a timely fashion. We defer to the Committee in their judgment on witness credibility. We see no error in the Committee's decision to accept some and reject other expert testimony by Dr. Berman. The Committee accepted Dr. Berman's diagnosis for the Respondent's condition, but rejected Dr. Berman's assertion that obsessive-compulsive behavior constitutes an asset in a physician and concerning the Respondent's diagnosis. In determining that the Respondent's continuing practice poses a threat to patients, the Committee relied on the expert testimony by Dr. Henry and also on the Committee's impression about the Respondent during the Respondent's testimony. Those impressions went beyond the Committee's conclusions about the Respondent's ability to process information. The Committee also noted that the Respondent's testimony indicated that the Respondent remained in denial about his condition. The record also indicated that the Respondent had failed to follow up on treatment recommendations in the past.

In arguing that revocation constitutes an overly harsh penalty for physician impairment, the Respondent referred to prior ARB Determinations in which impaired physicians retained their licenses: Hason v. Dept. of Health, 295 A.D.2d 818, 744 N.Y.S.2d 86 (3rd Dept. 2002); Moran v. Chassin, 225 A.D.2d 835, 638 N.Y.S.2d 835 (3rd Dept. 1996); *Matter of Melissa Hunt*,

M.D., ARB # 97-120, 1997 WL 1053238 (NYDOH, Admin. Rev. Bd.). The ARB disagrees with the Respondent that this case presents facts similar to those prior cases. In Hason, Dr. Hason displayed a long recovery and compliance with treatment and the ARB sent the Respondent for additional assessment. In the current case, the Respondent has been in treatment currently for only a short time and the Respondent failed to follow up treatment in the past. In Moran, Dr. Moran's own treating physicians noted factors that Dr. Moran must avoid in practice to be able to function and, as a result, the ARB banned Dr. Moran from the clinical practice of medicine. In the current case, the Committee has rejected the opinion by Dr. Berman concerning the Respondent's ability to continue in practice. In *Hunt*, the ARB suspended Dr. Hunt from practice for six months to allow her to enter a treatment program. As the Petitioner's reply brief points out, when Dr. Hunt failed to enter treatment, she lost her license.

In considering whether the Respondent will pose a danger to patients, the ARB can find no infallible means to predict the future. We agree with the Committee, however, that we should consider the Respondent's past conduct and his demeanor at the hearing when we consider whether we can protect the public and allow the Respondent to remain in practice. We agree with the Committee that the evidence from the hearing indicates that the Respondent's continued practice could imperil patient care. We affirm the Committee's Determination to revoke the Respondent's License.

ORDER

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

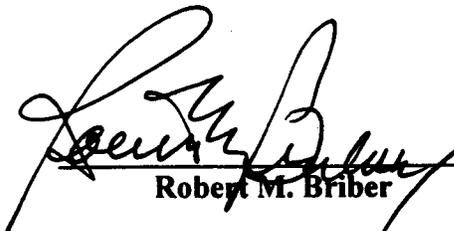
1. The ARB affirms the Committee's Determination that the Respondent committed professional misconduct.
2. The ARB affirms the Committee's Determination to revoke the Respondent's License.

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 Rao R. Suryadevara, M.D.

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

Dated October 20, 2004


Robert M. Briber

In the Matter of Rao R. Suryadevara, M.D.

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

Dated: 10-21, 2004



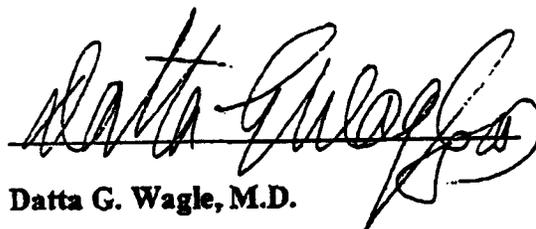
Thea Graves Pellman

In the Matter of Rao R. Suryadevara, M.D.

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

Matter of Dr. Suryadevara.

Dated: 10/20, 2004

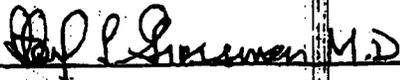


Datta G. Wagle, M.D.

In the Matter of Rao R. Suryadevara, M.D.

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

Dated: October 23, 2004

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Stanley L. Grossman, M.D.

In the Matter of Rao R. Suryadevara, M.D.

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

Dated: October 20 2004

Therese G. Lynch M.D.

Therese G. Lynch, M.D.