



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

February 18, 2004

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Neil Burack, M.D.
P.O. Box 696
McLean, Virginia 22101-0696

Robert Bogan, Esq.
NYS Department of Health
433 River Street - 4th Floor
Troy, New York 12180-2299

RE: In the Matter of Neil D. Burack, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 03-37) 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.

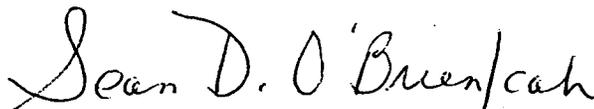
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either certified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

Neil D. Burack, 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. 03-37

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 Mahar, Esq.
Pro Se**

The Respondent holds a medical license in California in addition to holding a license to practice medicine in New York (License). This proceeding arose after California accepted the Respondent's surrender of his California license due to mental impairment. Following a hearing in New York, a BPMC Committee determined that the surrender in California provided a basis for disciplinary action against the Respondent's License and the Committee voted to revoke that License. In this proceeding pursuant to N.Y. Pub. Health Law § 230-c (4)(a)(McKinney 2004), the Respondent asks the ARB to nullify that Determination and to accept evidence from outside the hearing record concerning the Respondent's condition. The ARB votes to reject the attempt to submit outside evidence and we vote 5-0 to affirm 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(9)(b) & (9)(d) (McKinney Supp. 2004) by committing professional misconduct because:

- the duly authorized professional disciplinary agency from another state, California, found the Respondent guilty for professional misconduct [§6530(9)(b)] and/or took disciplinary action against the Respondent's medical 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, under the following specifications,

- practicing the profession while impaired by alcohol, drugs, physical disability or mental disability, a violation under N.Y. Educ. Law § 6530(7)(McKinney Supp. 2004), and,
- having a psychiatric condition which impairs the licensee's ability to practice, a violation under N.Y. Educ. Law § 6530(8)(McKinney Supp. 2004).

An expedited hearing (Direct Referral Proceeding) ensued pursuant to N.Y. Pub. Health Law §230(10)(p)(McKinney 2004), before a BPMC Committee, which rendered the Determination now on review. In the 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).

During the hearing, the Committee issued a Determination that ordered the Respondent to obtain a psychiatric evaluation (Evaluation Order).

The evidence at the hearing demonstrated that the Medical Board of California (California Board) accepted the surrender of the Respondent's Physician's and Surgeon's Certificate, based on disabilities that impaired the Respondent's ability to practice safely. The California Board accepted the Surrender in September 2001. The Direct Referral Committee determined that the Surrender established that California found the Respondent guilty for and disciplined the Respondent for conduct that would constitute misconduct in New York as practicing with a mental disability and having a psychiatric condition, which impairs practice.

The Committee found that the conduct in California and the California Board findings made the Respondent liable for disciplinary action against his License pursuant to Educ. Law §§6530(9)(b) & (9)(d). The Committee issued the Evaluation Order, however, to assess the Respondent's current condition, before imposing a penalty pursuant to Pub. Health Law § 230-a.

Under the Evaluation Order, Zev Labins, M.D. interviewed the Respondent and made a psychiatric diagnosis (Labins Evaluation). Dr. Labins found that the Respondent presented with a psychiatric disorder with grandiose and persecutory delusions that significantly interfere with his ability to practice medicine. The Respondent challenged the Labins Evaluation and alleged that he never made three statements that Dr. Labins quoted the Respondent as making. The Committee found that the Respondent's denials lacked credibility. The Committee also found no evidence to corroborate the Respondent's testimony that he was free of mental illness.

The Committee voted to revoke the Respondent's License.

Review History and Issues

The Committee rendered their Determination on September 9, 2003. This proceeding commenced on September 25, 2003, 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 the Petitioner's response brief. The record closed when the ARB received the response brief on November 5, 2003.

The Respondent's Review Notice indicated that the Respondent was unable to obtain medical records to prove his stability in time for the second hearing day in this matter, August 28, 2003. The Respondent argued that those records would have shown that no psychosis existed. The Respondent argued further that the hearing denied him due process. The Respondent argued that he should have received a consultation with a neurologist and a physician trained in sleep disorders. The Respondent challenged Dr. Labins' qualifications to evaluate the

Respondent and denied making several statements that Dr. Labins attributed to the Respondent. By letter on October 16, 2003, the Respondent sought to submit records from outside the hearing record. The records bore dates from February and March 2000.

The Petitioner responds that the Respondent received adequate notice about the nature of the hearing below.

Determination

The ARB has considered the record and the parties' briefs. We refuse to accept evidence from outside the hearing record, we affirm the Committee's Determination that the Respondent's conduct made him liable to disciplinary action pursuant to Educ. Law §§ 6530(9)(b) & (9)(d) and we affirm the Committee's Determination to revoke the Respondent's License.

First, we reject the Respondent's attempt to submit evidence to the ARB from outside the hearing record. Under the provisions in Pub. Health Law § 230-c(4)(a), the ARB may consider only the hearing record and the briefs from the parties. We also note that the records that the Respondent attempted to submit to prove his condition dated from 2000. The California Board accepted the Respondent's license surrender in that state in September 2001 [Hearing Exhibit 5]. The California Surrender Order, at the third page, stated that the Respondent acknowledged that he suffered from disabilities that impaired his medical practice and that such disabilities provided cause for surrendering his California license. The ARB holds that by submitting the records accompanying his October 16, 2003 letter, the Respondent attempted improperly to re-litigate the findings in the California Surrender Order and to repudiate the Respondent's acknowledgement that he suffered from mental disabilities. We also note that the Respondent failed to provide a copy of his October 16, 2003 letter to the Petitioner, despite instructions to provide all

submissions to the opposing party. Such instruction appeared in a September 25, 2003 letter to the parties from the Administrative Officer for the ARB.

Next, we reject the Respondent's challenges to the Labins Evaluation and to the Committee's reliance on that Evaluation. We see no problem with the Committee's Evaluation Order. The California Surrender Order established the charges against the Respondent sufficiently for the Committee to consider a sanction under Pub. Health Law § 230-a. By making the Evaluation, the Committee provided an opportunity to assess the Respondent's condition in the time since the California Order. The Respondent also had an opportunity to submit evidence about his current mental state at the original hearing day in this matter on January 23, 2003. After the Committee issued the Evaluation Order on February 5, 2003, the Respondent had additional time to gather evidence for the additional hearing on August 28, 2003. We reject the Respondent's contention that he lacked sufficient time to submit records. We note that the records that the Respondent attempted to submit to the ARB on October 16, 2003 dated from February and March 2000, so those records would have shown nothing about the Respondent's condition following the California Surrender Order. As for the Respondent's objections to the Labins Evaluation and the Respondent's testimony that he suffered no psychosis, the Committee observed the Respondent's testimony and weighed that testimony against the findings in the Labins Evaluation. The Committee rejected the Respondent's version and relied on the Labins Evaluation. We defer to the Committee as the fact finder in their assessment about the Respondent's credibility. We hold that the Labins Evaluation provided the Committee sufficient credible evidence to assess the Respondent's current mental condition.

Finally, we agree with the Committee that the Respondent's mental condition continues to impair his ability to practice and presents a danger to any potential patients. We also agree with

the Committee that the Respondent might be able to deal with his problem successfully through treatment. The Respondent, however, refuses to seek treatment for his impairment and argues instead that he suffers from no impairment. The ARB sees no alternative but to revoke the Respondent's License.

ORDER

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

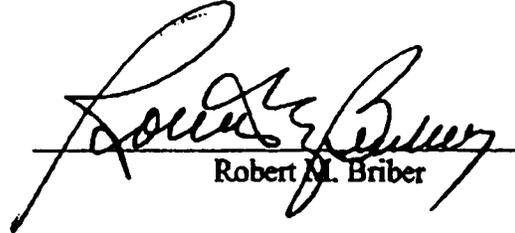
1. The ARB affirms the Committee's Determination that the Respondent's conduct made him liable for disciplinary action pursuant to Educ. Law §§ 6530(9)(b) & (9)(d).
2. The ARB affirms the Committee's Determination to revoke the Respondent's License.

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 Neil D. Burack, M.D.

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

Dated: February 5, 2005



Robert M. Briber

In the Matter of Neil D. Burack, M.D.

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

Dated: FEB. 5, 2004

A handwritten signature in cursive script, appearing to read "Thea Graves Pellman", written over a horizontal line.

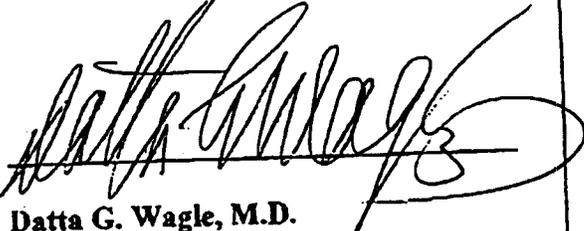
Thea Graves Pellman

In the Matter of Neil D. Burack, M.D.

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

Matter of Dr. Burack.

Dated: 2/6/, 2004



Datta G. Wagle, M.D.

In the Matter of Neil D. Burack, M.D.

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

Dated: February 16, 2004

Stanley L. Grossman, M.D.

Stanley L. Grossman, M.D.

In the Matter of Neil D. Burack, M.D.

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

Dated: Feb 4, 2004

Therese G. Lynch M.D.

Therese G. Lynch, M.D.