



STATE OF NEW YORK  
DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

*Public*

February 7, 2007

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Timothy J. Mahar, Esq.  
NYS Department of Health  
ESP-Corning Tower-Room 2512  
Albany, New York 12237

David A. Rigle, M.D.  
161 Cresline Drive  
Syracuse, New York 13206

Peter G. Barber, Esq.  
Murphy, Burns, Barber & Murphy, LLP  
4 Atrium Drive  
Executive Woods  
Albany, New York 12205

**RE: In the Matter of David A. Rigle, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 07-29) 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 Respondent 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.

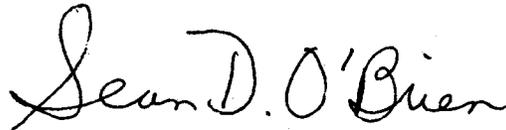
The notice of review served on the Administrative Review Board should be forwarded to:

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 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  
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

COPY

-----X  
IN THE MATTER : DETERMINATION  
: :  
OF : AND  
: :  
DAVID A. RIGLE, M.D. : ORDER  
-----X  
BPMC #07-29

A Notice of Hearing and Statement of Charges, both dated September 6, 2006, were served upon the Respondent, David A. Rigle, M.D. FRANCES E. TARLTON (CHAIR), RIAZ A. CHAUDHRY, M.D., AND THERESA S. BRIGGS, M.D., Ph.D., duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to Section 230(10) (Executive) of the Public Health Law. LARRY G. STORCH, ADMINISTRATIVE LAW JUDGE, served as the Administrative Officer. The Department of Health appeared by Timothy J. Mahar, Esq., Associate Counsel. The Respondent appeared by Murphy, Burns, Barber & Murphy, LLP, Peter G. Barber, Esq., of Counsel. Evidence was received and witnesses sworn and heard and transcripts of these proceedings were made.

After consideration of the entire record, the Hearing Committee issues this Determination and Order.

**PROCEDURAL HISTORY**

Date of Service: September 14, 2006  
Pre-Hearing Conference: October 26, 2006  
Hearing Dates: October 26, 2006  
January 26, 2007  
Witness for Department: Roberta Curran  
Witness for Respondent: David A. Rigle, M.D.  
Deliberations Held: January 26, 2007

**STATEMENT OF CASE**

Petitioner has charged Respondent with one specification of professional misconduct. The charge relates to Respondent's alleged failure to comply with an order for a medical and psychiatric examination issued pursuant to Public Health Law §230(7).

A copy of the Statement of Charges is attached to this Determination and Order in Appendix I.

**FINDINGS OF FACT**

The following Findings of Fact were made after a review of the entire record in this matter. Numbers in parentheses refer to transcript page numbers or exhibits. These citations represent 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.

1. David A. Ragle, M.D. (hereinafter "Respondent"), was authorized to practice medicine in New York State by the New York State Education Department's issuance of license number 183181 on July 24, 1990. (Ex. #3).

2. On May 1, 2006, Respondent executed a Stipulation and Application for an examination order pursuant to Public Health Law §230(7). The Stipulation and Application were agreed to by the Director of the Office of Professional Medical Conduct on May 24, 2006, and so ordered by the Chair of the State Board on the same date. (Ex. #2).

3. Under the terms of the Stipulation, Respondent agreed to schedule a medical and psychiatric examination by Marworth Treatment Center (Marworth), located in Waverly Pennsylvania, to begin within 14 days of the effective date of the Order, unless the Director extended the deadline in writing. (Ex. #2; T. 21).

4. Roberta Curran is a supervising medical conduct investigator, employed by the Office of Professional Medical Conduct (OPMC). She works in the physician monitoring program, which is charged with the oversight of physicians who are under Board orders. (T. 17-18).

5. On May 31, 2006, Ms. Curran sent Respondent a letter via overnight mail, directing him to contact Marworth, and instructing him to schedule an examination to begin by June 9, 2006. (T. 27-28).

6. On June 7, 2006, Ms. Curran received a telephone call from Dominick VanGarelli, a healthcare professional counselor at Marworth. He advised Ms. Curran that he had not heard from Respondent. (T. 29-30).

7. Ms. Curran's next contact with Mr. VanGarelli occurred on June 13, 2006. Mr. VanGarelli indicated that he had left messages for Respondent, leaving specific times when he would be available for calls, but that Respondent had called at times other than those specified. (T. 32).

8. At some point, Mr. VanGarelli did speak to Respondent, and advised him that there was an opening for an evaluation beginning on June 18, 2006. Respondent declined to attend. (T. 34-35).

9. On October 24, 2006, Ms. Curran contacted Mr. VanGarelli, who confirmed that an evaluation had not been scheduled, and that he had not been in contact with Respondent since June 9, 2006. (T. 39-40).

10. On November 9, 2006, following the commencement of these proceedings, OPMC agreed to substitute an evaluation

at Rush Behavioral Health, in Oak Park, Illinois, for the Marworth evaluation. That evaluation occurred on December 6-8, 2006. (Ex. B; T. 89).

#### CONCLUSIONS OF LAW

This is a fairly straightforward case. On May 1, 2006, Respondent voluntarily entered into a stipulation and application for an examination order pursuant to Public Health Law §230(7). Such examinations occur when the Board has reason to believe that a licensee may be impaired by alcohol, drugs, physical disability or mental disability.

Respondent executed the Stipulation and Application for the examination order on May 1, 2006. The examination order was issued on May 24, 2006. (Ex. #2). Under the terms of the agreement, Respondent was obligated to schedule an examination by Marworth to begin within 14 days of the effective date of the order, unless the Director of the Office of Professional Medical Conduct extended the deadline in writing. Respondent failed to comply.

Roberta Curran testified as to communication which she had with Dominick VanGarelli, a representative of Marworth. She testified that Mr. VanGarelli had made multiple attempts to contact Respondent, even leaving messages detailing exact times

when he would be available to take a call. Instead, Respondent called at times when Mr. VanGarelli would not be available. She further testified that Mr. VanGarelli ultimately spoke to Respondent and advised him that there was an opening at Marworth on June 18, 2006. Respondent refused to go.

Respondent has sought to manipulate and delay the evaluation process from the very beginning. The Department initially sought to refer Respondent for an evaluation at Rush Behavioral Health, in Oak Park, Illinois. He refused, citing an aversion to flying. He requested a location closer to home, and Marworth was selected. (T. 24-25). He then refused to schedule an evaluation.

Respondent attempted to deflect blame for his failure to go for the evaluation. He claimed that it was unfair to expect him to leave home on Father's Day, and that the program was too long. He also claimed that the Marworth program involved treatment as well as evaluation and that he didn't want to go for treatment. (T. 78-83).

These are all *post-hoc* rationalizations. Under the terms of the stipulation, it is up to the Examining Physician (Marworth), to determine the exact nature of the examination to be conducted, as well as its length. Respondent does not get to pick and choose the elements of the evaluation he will undergo.

The Hearing Committee was also troubled by another element of Respondent's testimony at the hearing. Respondent claimed that he had not issued prescriptions for anyone, including himself, since 1990. (T. 115). Counsel for the Department then confronted Respondent with evidence of a number of telephone-ordered prescriptions for erectile dysfunction medications. These prescriptions had apparently been issued for Respondent's personal use. Respondent refused to characterize these telephone orders as prescriptions, preferring the term "request". (T. 115-126). Respondent's refusal to acknowledge his self-prescribing reflected very poorly on his credibility.

Based on the foregoing, the Hearing Committee unanimously concluded that Respondent failed to comply with the Board's Order issued pursuant to Public Health Law §230(7), in violation of Education Law §6530(15), and voted to sustain the specification of professional misconduct set forth in the Statement of Charges.

DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determined that Respondent's license to practice medicine as a physician in New York State should be suspended for a period of six months. In addition, Respondent shall be assessed a civil penalty in the amount of \$2,500.00. This determination was reached upon due consideration of the full spectrum of penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties.

Respondent failed to go for an evaluation at Marworth, as required. He did not present himself for an evaluation (at Rush Behavioral Health) until December 6, 2006. This was well after these proceedings commenced, and six months after he agreed to the evaluation. The Committee agrees with the Department that Respondent flouted the Board's authority by not complying with the examination order. Accordingly, the Committee determined that Respondent's medical license should be suspended for a period roughly equal to the delay caused by his misconduct. In addition, the Committee also determined that a monetary penalty, in the amount of \$2,500.00 was also appropriate.

ORDER

Based upon the foregoing, **IT IS HEREBY ORDERED THAT:**

1. The Specification of professional misconduct, as set forth in the Statement of Charges, (Exhibit #1) is

SUSTAINED;

2. Respondent's license to practice medicine as a physician in New York State be and hereby is SUSPENDED for a period of SIX MONTHS from the effective date of this Determination and Order;

3. Respondent shall be assessed a civil penalty in the amount of \$2,500.00 (TWO THOUSAND FIVE HUNDRED DOLLARS).

Payment of the aforesaid sum shall be made to the Bureau of Accounts Management, New York State Department of Health, Erastus Corning Tower Building, Room 1258, Empire State Plaza, Albany, New York 12237 within thirty (30) days of the effective date of this Order. Any civil penalty not paid by the date prescribed herein shall be subject to all provisions of law relating to debt collection by the State of New York. This includes but is not limited to the imposition of interest, late payment charges and collection fees, referral to the New York State Department of Taxation and Finance for collection, and



TO: Timothy J. Mahar, Esq.  
Associate Counsel  
New York State Department of Health  
Corning Tower Building - Room 2512  
Empire State Plaza  
Albany, New York 12237

David A. Ragle, M.D.  
161 Cresline Drive  
Syracuse, NY 13206

Peter G. Barber, Esq.  
Murphy, Burns, Barber & Murphy, LLP  
4 Atrium Drive  
Executive Woods  
Albany, New York 12205

# APPENDIX I

IN THE MATTER  
OF  
DAVID A. RIGLE, M.D.

STATEMENT  
OF  
CHARGES

David A. Rigle, M.D., the Respondent, was authorized to practice medicine in New York State on or about July 24, 1990, by the issuance of license number 183181 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

- A. On or about May 28, 2006, Respondent was served with a "Stipulation & Examination Order Pursuant to N.Y. Public Health Law §230(7)" (hereinafter Board order) in *Matter of David Anthony Rigle, M.D.* The Board order required, among other things, the following:
1. *Licensee [Respondent herein] shall schedule [a medical and psychiatric] examination by Marworth in Waverly, Pennsylvania (Examining Physician) to begin within 14 days of the effective date of the Order, unless the Director extends this deadline in writing.*
- B. Respondent has not scheduled the medical and psychiatric examination to be conducted by Marworth. More than 14 days have passed from the effective date of the Board order.
- C. Respondent has failed to comply and/or has violated the Board order issued pursuant to Public Health Law §230(7).

**SPECIFICATION OF CHARGES**

**FIRST SPECIFICATION**

**VIOLATION OF A BOARD ORDER ISSUED  
PURSUANT TO PUBLIC HEALTH LAW §230(7)**

Respondent is charged with professional misconduct under New York Education Law §6530(15) by reason of his having failed to comply with an order issued pursuant to subdivision 7 of Public Health Law §230, in that Petitioner charges:

1. The facts set forth in paragraphs A, B and C.

DATE: September 6, 2006  
Albany, New York



Peter D. Van Buren  
Deputy Counsel  
Bureau of Professional Medical Conduct