



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 March 16, 2004

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Leslie Lynn Powers, M.D.
15 West 75th Street, Apt. 4B
New York, New York 10023-2001

Denise Lepicier, Esq.
Associate Counsel
NYS Department of Health
Bureau of Professional Medical Conduct
5 Penn Plaza – 6th Floor
New York, New York 10001

RE: In the Matter of Leslie L. Powers, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No.03-328) 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.

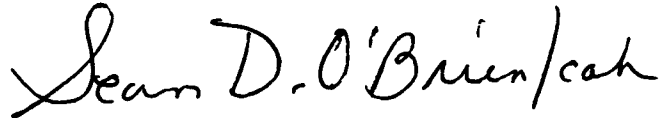
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either certified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

Leslie L. Powers, 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. 03-328

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:**

**Denise Lepicier, Esq.
Pro Se**

After a hearing below, a BPMC Committee determined that a.) the Respondent suffers from a condition that impairs her ability to practice medicine and b.) the Respondent has practiced medicine while impaired. The Committee voted to revoke the Respondent's License to practice medicine in New York State. 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. After considering the hearing record and the parties' review submissions, we hold that the record proves that the Respondent's impairment makes her unfit to practice medicine in New York and we affirm the Committee's Determination to revoke the Respondent's License.

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 specifications:

- practicing the profession while impaired by a mental disability, and,
- suffering from a psychiatric disorder that impairs the ability to practice.

The Respondent denied the charges. A hearing on the charges took place before the Committee, which rendered the Determination now on review.

The Committee found that the Respondent has been diagnosed with a mood or psychiatric disorder and possibly a substance abuse disorder. The Committee also found the Respondent's prescription practices dangerous and improper and found that the Respondent self-medicated improperly with psychotropic drugs. The Committee concluded that the Respondent should not practice medicine because the Respondent lacks the ability to integrate new information and remember such for a sufficiently long enough time to be able to formulate a diagnostic impression and treatment plan.

In making their findings and conclusions, the Committee indicated that they relied on a psychiatric evaluation of the Respondent by Zev Labins, M.D. and hospital records and physician charts relating to the Respondent. Dr. Labins also testified at the hearing, for the Petitioner. The Committee found Dr. Labins' testimony fair, honest and consistent with the medical records in evidence. The Committee found the Respondent's testimony difficult to understand and found her explanations unclear. The Committee concluded that the Respondent lacks insight into her condition and that the Respondent sees no need for psychiatric treatment.

The Committee voted to revoke the Respondent's License.

Review History and Issues

The Committee rendered their Determination on November 26, 2003. This proceeding commenced on December 15, 2003, when the ARB received the Respondent's Notice requesting a Review. The Committee's Administrative Officer sent the parties a letter on December 18, 2003, acknowledging the Notice and advising the parties:

- about the date to submit briefs,
- against submitting items from outside the hearing record, and,

- about the need to serve copies on the other party of briefs and other submissions to the ARB.

The record for review contained the Committee's Determination, the hearing record, the Respondent's brief and the Petitioner's brief and response brief. The record closed when the ARB received the Petitioner's response brief on February 17, 2003.

The Respondent argued that the Petitioner presented fraudulent evidence, that the Committee's Administrative Officer denied the Respondent a fair hearing and that Dr. Labins presented the Committee with a false *curriculum vitae*. In response, the Petitioner contends that the Respondent's brief misstates or misrepresents the facts and that the brief attached documents form outside the hearing record.

Determination

The ARB has considered the record and the parties' briefs. First, we reject the Respondent's attempt to present evidence to the ARB from beyond the hearing record. Under N.Y. Pub. Health Law 230-c (4)(a), the ARB may review only the hearing record and briefs from the parties. We affirm the Committee's Determination that the Respondent practiced while impaired and that the Respondent suffers from a condition that impairs her ability to practice. We also affirm the Committee's Determination to revoke the Respondent's License.

The testimony by Dr. Labins and the medical records in evidence concerning the Respondent establish the Respondent's impairment and prove by preponderant evidence that the Respondent's condition and ongoing practice fall within the definitions for professional conduct under N. Y. Educ. Law §§ 6530(7) & 6530(8). The Respondent's allegations concerning Dr.

Labins' qualifications and the Respondent's statements denying any impairment merely created factual issues for the Committee to resolve. We defer to the Committee in their judgement that Dr. Labins presented as a more credible witness than the Respondent.

The Respondent also challenged the records in evidence concerning her prescribing practices and she alleged that her ex-husband had prescribed drugs fraudulently in the Respondent's name since 1988. As the Petitioner's brief pointed out, the Respondent failed to offer any proof on her allegations at the hearing. The Respondent also raised allegations about the hearing's fairness. We hold that the record demonstrates that the Respondent received an opportunity to review the evidence against her and to present her own evidence. We see no need to remand this case for any further proceedings. Upon reviewing all the evidence at the hearing, the Committee found credible the evidence that the Respondent engaged in dangerous prescribing patterns. Again, we uphold the Committee's Determination.

We affirm the Committee's Determination to revoke the Respondent's License. The Respondent's condition prevents her from practicing medicine effectively. The Respondent also engages in dangerous prescribing practices that could result in patient harm. Nothing in the record gives the ARB any confidence that the Respondent can correct her problems. The Respondent fails to recognize that she suffers any impairment and she refuses to seek treatment. We conclude that the public's protection requires that we revoke the Respondent's License.

ORDER

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

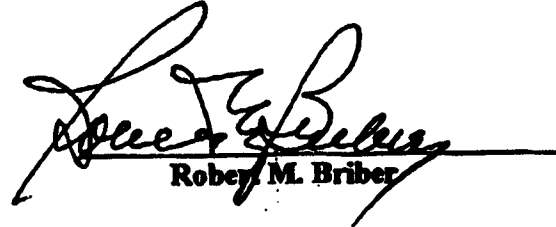
1. The ARB affirms the Committee's Determination that the Respondent committed professional misconduct.
2. The ARB affirms the Committee's Determination to revoke the Respondent's License.

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 Leslie L. Powers, M.D.

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

Dated: March 8, 2004



Robert M. Briber

In the Matter of Leslie L. Powers, M.D.

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

Dated: 3/10/04, 2004



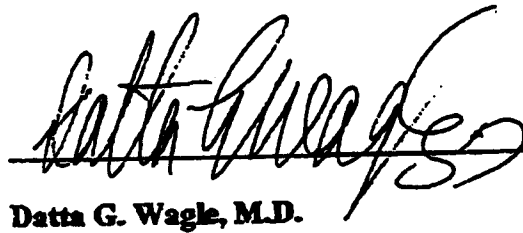
Thea Graves Pellman

In the Matter of Leslie L. Powers, M.D.

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

Matter of Dr. Powers.

Dated: 3/8, 2004


Datta G. Wagle, M.D.

In the Matter of Leslie L. Powers, M.D.

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

Matter of Dr. Powers.

Dated: 03/11, 2004

Stanley L. Grossman, M.D.

Stanley L. Grossman, M.D.

In the Matter of Leslie L. Powers, M.D.

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

Dated: March 8, 2004

Therese G. Lynch M.D.

Therese G. Lynch, M.D.