



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

Public

Dennis P. Whalen
Executive Deputy Commissioner

June 15, 2005

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Annette Winter, M.D.
15 Orient Court
Ridge, New York 11961-1632

Paul Robert Maher, Esq.
NYS Department of Health
Office of Professional Medical Conduct
433 River Street – 4th Floor
Troy, New York 12180

Annette Winter, M.D.
Windsor Court Apartments
Unit 311
470 Memorial Drive
Chicopee, Massachusetts 01020

RE: In the Matter of Annette Winter, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 05-22) 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.

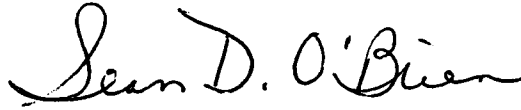
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified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

Annette Winter, 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. 05-22

(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 Maher, Esq.
Pro Se**

The Respondent holds a medical license in Massachusetts in addition to her license to practice medicine in New York (License). In this proceeding pursuant to N.Y. Pub. Health Law §230-c(4)(a)(McKinney 2005), the ARB considers the sanction to impose against the Respondent's License, following the decision by Massachusetts to suspend the Respondent's license in that state due to mental impairment. After a hearing below, a BPMC Committee voted to suspend the Respondent's License for one year. On review, the Petitioner requests that the ARB overturn the Committee and revoke the Respondent's License. After reviewing the hearing record and the Petitioner's brief (the Respondent failed to file any brief in this proceeding), the ARB votes to modify the Committee's Determination and to suspend the Respondent's License until such time as the Respondent completes the suspension against her License in Massachusetts.

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) by committing professional misconduct because:

- the duly authorized professional disciplinary agency from another state, Massachusetts, 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 Massachusetts would constitute misconduct if committed in New York, under the following specification: practicing the profession while impaired by alcohol, drugs, physical disability or mental disability, a violation under N.Y. Educ. Law § 6530(7). An expedited hearing (Direct Referral Proceeding) ensued pursuant to N.Y. Pub. Health Law §230(10)(p)(McKinney Supp. 2005), before the BPMC Committee that 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). The Respondent failed to appear at the Direct Referral Proceeding.

The evidence at the hearing demonstrated that the Massachusetts Board of Registration of Medicine (Massachusetts Board) suspended indefinitely the Respondent's right to renew her Massachusetts license due to impairment by mental disease. The Massachusetts Board Order [Hearing Exhibit 8] listed several acts of delusional behavior by the Respondent.

The Committee concluded that the Respondent's impairment would constitute grounds for discipline against her License pursuant to Educ. Law §§ 6530(7), 6530(9)(b) & 6530(9)(d). The Committee rejected the Petitioner's request that the Committee revoke the Respondent's

License. The Committee questioned whether the Respondent received the Notice of Hearing and Statement of Charges, due to unsuccessful attempts to serve the Respondent. The Committee questioned whether the Respondent's mental health crisis could also have compromised the Respondent's ability to respond competently to the charges. The Committee stated they preferred to suspend the Respondent's License until the Respondent could provide proof concerning her mental competence to practice medicine. The Committee stated further, however, that they lacked the authority under Pub. Health Law § 230-a(2) to impose such an indefinite suspension. The Committee concluded that a one-year suspension provided the only penalty available under the law that would balance public protection and protect the Respondent's rights.

Review History and Issues

The Committee rendered their Determination on February 3, 2005. This proceeding commenced on February 4, 2005, when the ARB received the Petitioner's Notice requesting a Review. The record for review contained the Committee's Determination, the hearing record and the Petitioner's brief. The Respondent made no review submission. The record closed when the ARB received the Petitioner's brief on March 1, 2005.

The Petitioner argued that notice to the Respondent about the proceeding should have produced no impact upon the Committee's Determination, because the Committee's Administrative Officer informed the Committee that the Petitioner's efforts to serve the Respondent complied with the requirements under New York Law. The Petitioner argued further that the penalty the Committee imposed fails to protect the public. The Petitioner noted that previous decisions have found revocation a suitable penalty for mental impairment, Pisanont v.

NYS Bd. for Prof. Med. Cond., 266 A.D.2d 592, (3rd Dept. 1999); Moran v. Chassin, 225 A.d.2d 814 (3rd Dept. 1996). The Petitioner asks that the ARB revoke the Respondent's License.

Determination

The ARB has considered the record and the parties' briefs. The ARB affirms the Committee's Determination that the Respondent's mental impairment provided grounds for disciplinary action against her License. We overturn the Committee's Determination to suspend the Respondent's License for one year. We suspend the Respondent's License until such time as the Respondent completes the suspension under the Massachusetts Order.

We agree with the Petitioner that the concern over notice to the Respondent should play no part in assessing a penalty in this case. The Administrative Officer determined that the Petitioner made sufficient effort to serve the Respondent. The Respondent bears the responsibility to provide the licensing authorities in this state with information about her current address. The problem with service in this case resulted from the Respondent's failure to comply with her responsibility, rather than a failure by the Petitioner to make a due diligence effort to serve the Respondent.

In addition, we agree with the Petitioner that a one-year suspension constitutes an inappropriate penalty in this case. Under that sanction, the Respondent could return to practice in New York automatically, with no practice restriction. The ARB overturns the Committee and votes to suspend the Respondent's License until she completes the suspension under the Massachusetts Board Order. This sanction will assure that the Respondent receives no incentive to return to New York to practice prior to the time that the Respondent has established her fitness to return to practice in Massachusetts.

ORDER

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

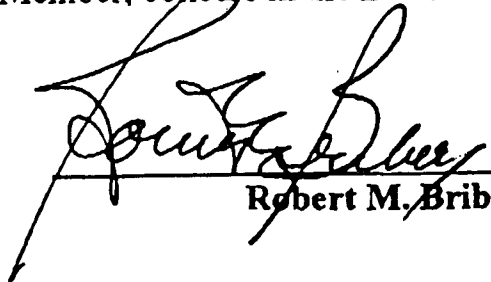
1. The ARB affirms the Committee's Determination that the Respondent committed professional misconduct.
2. The ARB overturns the Committee's Determination to suspend the Respondent's License for one year.
3. The ARB modifies the Committee's Determination to suspend the Respondent until such time as the Respondent completes the suspension against her Massachusetts medical 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 Annette Winter, M.D.

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

Dated: 6/12/2005



Robert M. Briber

In the Matter of Annette Winter, M.D.

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

Dated: June 10, 2005

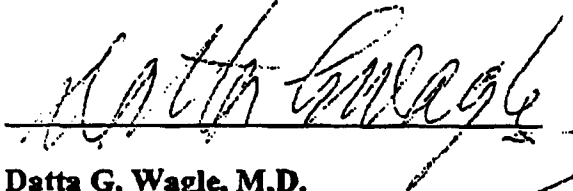
A handwritten signature in cursive script that reads "Thea Graves Pellman". The signature is written in black ink and is positioned above a horizontal line.

Thea Graves Pellman

In the Matter of Annette Winter, M.D.

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

Dated: 6/5/, 2005


Datta G. Wagle, M.D.

In the Matter of Annette Winter, M.D.

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

Dated: June 9, 2005

Stanley L. Grossman M.D.

Stanley L. Grossman, M.D.

In the Matter of Annette Winter, M.D.

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

Dated: June 8, 2005

Therese G Lynch M.D.

Therese G. Lynch, M.D.