



**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

March 25, 2004

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Rebecca Lee Carley, M.D.
9 Sutherland Road
Hicksville, New York 11801

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

PUBLIC

**RE: In the Matter of Rebecca Lee Roczen, M.D.
a/k/a Rebecca Lee Carley, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 03-179) 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.

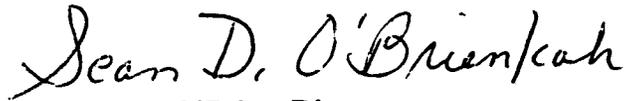
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified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

Handwritten signature of Sean D. O'Brien in cursive script.

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

**Rebecca Lee Roczen, M.D.,
a/k/a Rebecca Lee Carley, M.D.
(Respondent)**

Administrative Review Board (ARB)

Determination and Order No. 03-179

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

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 suspended the Respondent's License to practice medicine in New York State (License), ordered the Respondent to undergo an evaluation and enter treatment and provided for a stay in the suspension, with probation, if the Respondent satisfied certain conditions. In this proceeding pursuant to N.Y. Pub. Health Law §230-c (4)(a)(McKinney 2004), the Petitioner asks the ARB to nullify that Determination and revoke the Respondent's License and the Respondent challenges the ARB's jurisdiction. After considering the hearing record and the parties' review submissions, we reject the Respondent's challenge to our jurisdiction and we overrule the penalty the Committee ordered. We conclude that the Respondent suffers a delusional impairment that leaves her unfit to practice medicine and we vote 5-0 to revoke her 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 sustained the charges that the Respondent suffers from a disorder that impairs her ability to practice and that the Respondent had practiced while impaired. The Committee found that the Respondent:

- suffers from a delusional disorder with the presence of narcissistic and borderline personality traits;
- believes her husband sodomized her son as part of a satanic ritual because the Respondent does not vaccinate and because she cures children with autism;
- believes the government is pursuing all those who oppose vaccination, in collusion with the drug industry;
- suffers delusions of persecution and grandiosity;
- holds a rigid and restricted approach to her perception and interpretation of reality;
- has displayed belligerent and agitated conduct in dealing with the Nassau County Police Department and Department of Social Services concerning her son, who currently lives in foster care;
- exhibited erratic and emotionally unstable conduct during a rehabilitation residency at Nassau University Medical Center; and;
- exhibited inappropriate and bizarre behavior during the BPMC hearing.

The Committee concluded that the Respondent's delusions interfere with her medical practice and that the Respondent's continuing, persistent impairment render the Respondent unsafe to practice medicine.

In reaching their findings and conclusions, the Committee found credible testimony by the Petitioner's expert witnesses, Zev Labins, M.D., a psychiatrist, and Diane Deachan, Ph.D., a psychologist. The Committee also found credible testimony by Nassau County Police Officer Peter Ellision, who testified about the Respondent's agitated and belligerent behavior toward the Nassau County Police and Nassau County Social Services. The Committee also found credible testimony by the Respondent's witness, Lyn D. Weiss, M.D., who supervised the Respondent at the rehabilitation residency. The Committee noted that, although the Respondent called Dr. Weiss, her testimony supported the findings by Dr. Labins and Dr. Deachan. The Committee found irrelevant the testimony by the Respondent's witness Arnold Gore, a consumer advocate for promoting consumer health alternatives. The Committee rejected testimony by the Respondent's witness, Dr. Monty N. Weinstein. The Committee found that testimony evasive and argumentative, found that Dr. Weinstein offered minimal factual evidence and found the opinions Dr. Weinstein expressed outside the scope of his expertise. The Committee also rejected the Respondent's testimony. The Committee found that testimony self-serving, confusing and evasive. The Committee also noted that the Respondent attempted continually to re-litigate the Nassau County Family Court child custody case that went against the Respondent.

As a penalty, the Committee voted to suspend the Respondent's License for five years. In addition, the Committee ordered the Respondent to undergo an in-depth psychiatric evaluation by a board-certified psychiatrist and to engage in the therapy that the psychiatrist proposes for as long as the psychiatrist deems necessary. The Committee's Order provides that if, the Respondent completes one full year of therapy successfully and her treating psychiatrist deems the Respondent fit to practice, the remaining suspension will become stayed and the Respondent will be on probation under the terms that appear as Appendix II to the Committee's Determination. The probation terms include a practice supervisor.

The Committee rendered their Determination on July 9, 2003. The Petitioner then filed a Notice on July 14, 2003 requesting this review, to challenge the penalty the Committee imposed.

Review History and Issues

The record for review contained the Committee's Determination, the hearing record, the Petitioner's brief and the Respondent's submissions challenging jurisdiction, requesting a further administrative hearing and replying to the Petitioner's brief. The record closed when the ARB received the reply to the Petitioner's brief on August 21, 2003.

The Petitioner asks that the ARB overturn the Committee and revoke the Respondent's License. The Petitioner argues that the penalty provisions in Pub. Health Law § 230-a contain no authorization for ordering an in-depth psychiatric evaluation and no provision allowing a Committee to order a respondent to engage in therapy. The Petitioner argues further that the sanction the Committee imposed fails to protect the public, because the Respondent can regain her License automatically after five years, without any evaluation, monitoring or therapy. The Petitioner also argues that no sanction can compel the Respondent to participate in treatment and that no findings by the Committee show the Respondent as receptive to treatment.

The Respondent submitted a document under the title "Special Appearance BPMC Order" (Special Appearance) on July 18, 2003. The Special Appearance disputed the ARB's jurisdiction and asked for a ruling prior to filing papers and prior to "forced evaluation and/or treatment". The Administrative Officer for the ARB, Judge Horan, responded to the Special Appearance through a letter to the parties indicating that either party could file an ARB review notice within fourteen days from a Committee Determination. The Administrative Officer's letter indicated that the Petitioner appeared to have filed a review notice in a timely fashion, but the

letter indicated that the Respondent could raise that issue with the ARB as part of any response to the Petitioner's brief. The Respondent then filed a document under the title "Judicial Notice". The Judicial Notice demanded a hearing before the full "Licensing Bureau of the State of New York." In an August 5, 2003 letter, the Administrative Officer replied to both parties that, as far as the Administrative Officer knew, no such body as the "Licensing Bureau of the State of New York" existed. The Administrative Officer also noted that Special Appearance and the Judicial Notice made reference to the Uniform Commercial Code and to Federal judicial decisions concerning such agencies as the National Labor Relations Board. The Administrative Officer indicated that the procedures for ARB reviews appeared at Pub. Health Law § 230-c. The Administrative Officer provided information on where to find both the text for that statute and copies of recent ARB Determinations.

The Respondent replied to the August 5th letter by returning the letter with the following hand-printed message over the letter's text:

"YOUR OFFER OF CONTRACT IS HEREBY REJECTED AND RETURNED TO YOU IN FULL ACCORD WITH REGULATION Z TRUTH IN LENDING. ANY FURTHER CORRESPONDENCE FROM THE SIGNERS, AGENTS OR ASSIGNS MUST BE SIGNED UNDER PENALTY OF PERJURY. IF YOU ARE REPRESENTING ME, YOU ARE HEREBY FIRED!

REBECCA L. CARLEY

BY: ...

... with power of attorney in fact"

The Petitioner submitted a letter to the ARB on August 21, 2003 indicating that the Respondent had returned to the Petitioner the copy of the Petitioner's brief that the Petitioner had served on the Respondent. On the front page on the brief's cover letter and on the brief, the Respondent hand-printed a message with text similar to the message in response to Judge Horan's August 5th letter to the Respondent. The Respondent made no submission commenting on the Committee's Determination or on the Petitioner's request to modify the penalty.

Determination

The ARB has considered the record and the parties' submissions. We affirm the Committee's Determination that the Respondent suffers a psychiatric condition that impairs the ability to practice medicine and that the Respondent has practiced medicine while impaired by mental disability. Neither party challenged the Committee's Determination on the charges. We reject the Respondent's procedural challenges to the ARB proceeding. We overturn the Committee's Determination to suspend the Respondent's License and to order the Respondent to undergo evaluation and treatment. The ARB votes to revoke the Respondent's License.

The Respondent's Special Appearance BPMC Order questioned the Jurisdiction in this case. Under Pub. Health Law § 230-c(4)(a), either party in a BPMC proceeding may seek review of a Committee's Determination by filing a review notice within fourteen days of service of the Determination. The ARB may decide whether a party served a notice within a timely manner, Weg v. DeBuono, 269 A.D.2d 683, 703 N.Y.S.2d 301 (3rd Dept. 2000). In this case, the Committee's Determination went to the parties by mail on July 9, 2003. The Respondent mailed the Special Appearance BPMC Order to the ARB on July 19, 2003, ten days from the date of the mailing of the Committee's Determination. The Respondent, therefore, must have received the Committee's Determination and the Respondent's review notice within fourteen days from the date of service of the review notice. The ARB holds that the Petitioner made timely service to commence the review and that the ARB possesses jurisdiction to consider this review.

The Respondent also submitted the Judicial Notice demanding a hearing before the full "Licensing Bureau of the State of New York." As the Administrative Officer for the ARB

indicated already to the Respondent, no such body as the Licensing Bureau of the State of New York holds jurisdiction to review BPMC Determinations. The only provisions for administrative review, in Pub. Health Law § 230-c(4)(a), vest the review authority in the ARB, under the procedures that the ARB has followed in this case. The Judicial Notice cited three cases as the authority for the Respondent's demand for the full hearing, Nestle Ice Cream v. N.L.R.B., 46 F.3d 578 (6th Cir. 1995); In Re Worker's Refund, 46 F.3d 813 (Cir.) ; and Watson v. Memphis, 373 U.S. 526 (1964). No case that the Respondent cited in fact establishes that the Respondent holds any right to a hearing on the current charges before any body other than a BPMC Committee or the ARB or under any procedures other than those in Pub. Law §§ 230(10) and 230-c(4)(a)¹.

We turn now to reviewing the penalty the Committee imposed. In this case, the Committee suspended the Respondent's License for five years and ordered an evaluation and treatment, but provided for a stay in the suspension and probation, if the Respondent undergoes treatment for one year and the Respondent's treating psychiatrist deems the Respondent fit to practice. The Respondent's brief challenged that penalty as unauthorized under Pub. Health Law § 230-a. We agree. In Matter of Hason v. Dept. of Health, 296 A.D.2d 818, 744 N.Y.S.2d 86 (3rd Dept. 2002), the ARB suspended the a respondent's medical license for one year certain and for so long thereafter, until the Respondent could prove his fitness to return to practice. The New York Supreme Court Appellate Division for the Third Judicial Department overturned that Determination and found that the ARB imposed an unauthorized penalty, by imposing an indefinite suspension. The Court found no authority under Pub. Health Law § 230-a(2) for

¹ The first two cases, Nestle and Worker's Refund, dealt with proceedings under the National Labor Relations Act and the Minnesota Worker's Compensation Law respectively and the third case, the U. S. Supreme Court decision in Watson, dealt with desegregating public parks.

indefinite suspensions. The ARB holds that the Committee in this case also imposed an unauthorized, indefinite suspension. Although the Committee stated that they suspended the Respondent for five years, the Committee's Order provided for a stay and probation, if the Respondent completed at least one year under treatment, which the Committee did not specify, and if the Respondent's treating physician deemed the Respondent fit to practice. We find the conditions for granting a stay in this case as indefinite and unauthorized as the provisions in Hason for judging fitness to return to practice.

Under Pub. Health Law § 230-a(2), a Committee or the ARB may impose a suspension for a fixed time or may impose a suspension until a respondent completes treatment. The Petitioner argues against any fixed suspension or suspension until completing treatment and describes such penalties as insufficient to protect the public. We agree that the facts in this case make suspension in any form an inappropriate penalty in this case. Under a fixed time suspension, a Respondent regains an active license when the fixed time passes, without regard to whether the Respondent has regained the fitness to practice. As for a suspension until completing treatment, a Committee or the ARB should only impose such a penalty if some assurance appears in the hearing record that a respondent will comply with treatment and receive a benefit from the treatment. As the Petitioner's brief points, the Committee's Determination contains no findings to establish the Respondent's willingness to enter treatment or even the Respondent's acknowledgement that she requires treatment in any form. The Respondent's Special Appearance asked for a ruling on jurisdiction before the Respondent had to undergo "forced psychiatric treatment and/or evaluation."

The Committee's majority determined that the Respondent suffers from a delusional disorder that impairs the Respondent's ability to practice medicine. The Committee found further

that the Respondent's impairment involves a rigid thinking pattern that extends to her professional life and renders her incapable to exercise open-minded judgement required to evaluate and diagnose medical disorders and arrive at appropriate conclusions regarding optimal therapy. The ARB concludes that the Respondent's impairment makes her unfit for medical practice and could place patients at risk. We conclude further that the Respondent fails to acknowledge her impairment or the need to obtain treatment. We see no alternative means to protect the public other than revoking 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 overturns the Committee's Determination to suspend the Respondent's License.
3. The ARB revokes the Respondent's License.

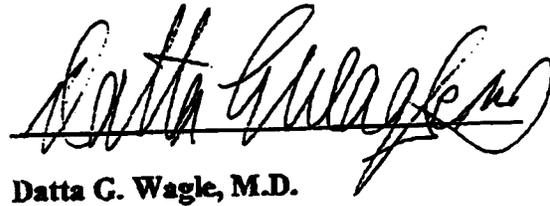
Robert M. Briber
Thea Graves Pellman
Datta G. Wagle, M.D.
Stanley L. Grossman, M.D.
Therese G. Lynch, M.D.

In the Matter of Rebecca Lee Roczen, M.D., a/k/a Rebecca Lee Carley, M.D.

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

Matter of Dr. Roczen/Carley.

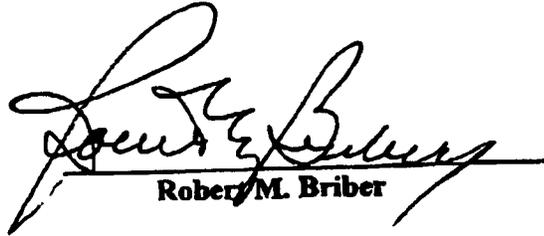
Dated: 3/23/, 2004


Datta G. Wagle, M.D.

In the Matter of Rebecca Lee Roczen, M.D., a/k/a Rebecca Lee Carley, M.D.

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

Dated: March 23, 2004



Robert M. Briber

In the Matter of Rebecca Lee Roczen, M.D., a/k/a Rebecca Lee Carley, M.D.

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

Matter of Dr. Roczen/Carley.

Dated: March 19, 2004

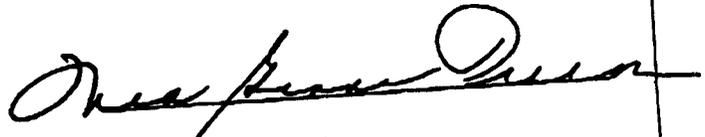
Stanley L. Grossman M.D.

Stanley L. Grossman, M.D.

In the Matter of Rebecca Lee Roczen, M.D., a/k/a Rebecca Lee Carley, M.D.

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

Dated: 3/18, 2004



Thea Graves Pellman

03/18/04 13:01 THE WISCONSIN
In the Matter of Rebecca Lee Roczen, M.D., a/k/a Rebecca Lee Carley, M.D.

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

Dated: March 18, 2004.



Therese G. Lynch, M.D.