



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**

June 12, 2003

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Paul Robert Maher, Esq.  
NYS Department of Health  
433 River Street  
Troy, New York 12180

Thomas R. Hession, Esq.  
Hession & Bekoff  
29 Roslyn Road  
Mineola, New York 11501

Magda Lee Binion, M.D.

Redacted Address

**RE: In the Matter of Magda Lee Binion, M.D.**

Dear Parties:

Enclosed please find the Determination of the Professional Medical Conduct Administrative Review Board in the Respondent's motion to reopen the proceedings.

Sincerely,

Redacted Signature

James F. Horan, Acting Director  
Bureau of Adjudication

JFH:cah  
Enclosure

**STATE OF NEW YORK : DEPARTMENT OF HEALTH  
ADMINISTRATIVE REVIEW BOARD FOR PROFESSIONAL MEDICAL CONDUCT**

**In the Matter of**

**Magda Lee Binion, 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)**

**Motion To Reopen**

**ORIGINAL**

**Before ARB Members Grossman, Lynch, Pellman, Price and Briber  
Administrative Law Judge James F. Horan drafted the Determination**

The Respondent's attorney has submitted an April 11, 2003 letter requesting that the ARB reopen this matter and reconsider our decision to limit the Respondent's Medical License to practice in a medical facility holding a license under Public Health Law Article 28. For the reasons we note below, we deny the motion to reopen this case.

The United States District Court for the Southern District of New York convicted the Respondent, on seven counts involving Conspiracy, Health Care Fraud and Mail Fraud. The conviction resulted from an insurance billing scheme that involved the Respondent. After a hearing before a BPMC Committee, the Committee found that the conviction for the Federal felonies made the Respondent liable for disciplinary action pursuant to N. Y. Educ. Law § 6530(9)(a)(ii). The Committee voted to suspend the Respondent from medical practice for one year and to stay all but three months of the suspension.

Upon a request from the Petitioner, the ARB reviewed that Committee Determination pursuant to N.Y. Pub. Health Law § 230-c(4)(a)(McKinney Supp. 2003). The ARB modified the Committee's Penalty and voted to limit the Respondent's License, pursuant to N.Y. Pub. Health Law § 230-a(6), to restrict the Respondent to practice in a health facility that holds a license under N.Y. Pub. Health Law Article 28 or that the government operates, such as a Veteran's

Administration facility. We limited the Respondent's License in that way after concluding that the penalty in this matter should include some legally binding mechanism to relieve the Respondent from any responsibility for billing.

The Respondent has moved to reopen because the United States Department of Health and Human Services (HHS) Inspector General's Office precluded the Respondent from eligibility to participate in Medicare, Medicaid and all Federal Health programs for ten years, commencing on May 21, 2002. The Respondent's Motion to Reopen attached a letter from HHS that indicated that the Respondent could request a hearing to challenge the exclusion. The Respondent's attorney argued that the License limitation and the exclusion amount in effect to a revocation and that the Committee and the ARB both rejected revocation as a penalty in this case. The Respondent stated that she sought to reopen the case to allow the ARB to correct the unforeseen impact of our limitation order.

We reject the Respondent's request that we reopen the matter to reconsider our prior Determination. We imposed the License limitation to remove the Respondent from billing responsibility, because the Respondent's misconduct arose from the Respondent's participation in an illegal billing scheme. The HHS exclusion provides the ARB with no greater trust in the Respondent than we held previously. We can conceive no other mechanism that will allow the Respondent to continue in practice without holding responsibility over billing. The HHS exclusion letter indicates a possibility for the Respondent's reinstatement. At such time as the Respondent gains reinstatement from HHS, she will be able to practice under the limited License.

Dated: May 30, 2003

Redacted Signature



**Robert M. Briber**

Dated: May 30, 2003

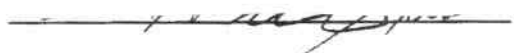
Redacted Signature



**Thea Graves Pellman**

Dated: JUNE 03, 2003

Redacted Signature



**Winston S. Price, M.D.**

Dated: May 30, 2003

Redacted Signature

**Stanley L Grossman, M.D.**

Dated: May 30, 2003

Redacted Signature



**Therese G. Lynch, M.D.**