



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

March 20, 2006

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Magda Lee Binion, M.D.

Redacted Address

Wilfred T. Friedman, Esq.

Friedman & Mahdavian

The Bar Building

36 West 44th Street- Suite 816

New York, New York 10036

Robert Bogan, Esq.

NYS Department of Health

433 River Street- Suite 303

Troy, New York 12180

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

Dear Parties:

Enclosed please find the Determination and Order (No. 02-332) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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,

Redacted Signature

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

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)**

Second Motion To Reconsider

COPY

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

**For the Petitioner: Robert Bogan, Esq.
For the Respondent: Wilfred T. Friedman, Esq.**

The Respondent's attorney has submitted a December 19, 2005 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 operated by the government or holding a license under Public Health Law Article 28 (Motion). The ARB rejected a similar motion by the Respondent's prior attorney in 2003. For the reasons we note below, we vote 4-1 to deny the Motion to reconsider this case.

Background

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. 2006). 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 (Facility Limitation). 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. In addition to the penalty that the ARB imposed against the Respondent's New York License, in a separate action, the United States Department of Health and Human Services (HHS) took disciplinary action against the Respondent arising from the criminal convictions. The 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.

In the Respondent's initial motion to reconsider, the Respondent's prior attorney argued that the Facility Limitation and the HHS exclusion amounted in effect to a revocation, because no Article 28 facility would hire a physician precluded from participation in Medicare/Medicaid and because the Respondent, an anesthesiologist, could not practice her specialty outside a hospital setting. The Respondent noted that the Committee and the ARB both rejected revocation as a penalty and the Respondent stated that she sought reconsideration in the case to allow the ARB to correct the unforeseen impact of the Facility Limitation order.

The ARB rejected that initial motion. We noted that we imposed the Facility 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 provided the ARB with no greater trust in the Respondent than we held previously. We saw no other mechanism that would allow the Respondent to continue in practice without holding responsibility over billing. The HHS exclusion letter indicated a possibility for the Respondent's reinstatement. The ARB noted that, at such time as the Respondent gains reinstatement from HHS, she will be able to practice under the Facility Limitation.

The Present Motion

In this motion, the Respondent asks for further reconsideration following the ARB Determination in the Matter of Elliot Heller, M.D., ARB # 03-337A. In that case, the ARB placed a Facility Limitation on Dr. Heller's medical license as well. The ARB granted a motion to reconsider that case after the Facility Limitation and another Medicaid/Medicare exclusion left Dr. Heller unable to obtain employment as a physician. After reconsidering the penalty, the ARB voted to change the Facility Limitation to a Billing Limitation that would allow Dr. Heller to work in a private practice setting, but would ban Dr. Heller from billing. The revised penalty also placed Dr. Heller on probation for five years and ordered that he complete five hundred hours non-medical community service.

The Respondent reminds the ARB that both the Committee and the ARB concluded that the Respondent's conduct did not warrant license revocation. The Respondent also notes that the ARB placed the Facility Limitation on the Respondent's License on the ARB's own motion,

with neither party knowing that the Facility Limitation might result from the ARB review. The Respondent's Motion indicates that she would accept the Billing Limitation in order to be able to practice as an anesthesiologist.

Determination

The ARB votes 4-1 to deny the Motion. We have already reconsidered this case once and considered the arguments by the Respondent's prior counsel about the unintended results from the penalty the ARB imposed. The passage in time since the prior motion to reconsider has resulted in no change in the ARB majority's opinion about the Respondent's criminal activity. The passage in time and the Respondent's time away from practice does raise our concerns about the Respondent's fitness to return to practice, especially in an unregulated setting such as a private physician's office. Further, the Motion offers no new information about the Respondent's situation.

ORDER

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

The ARB denies the Motion to Re-Open this case.

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 Magda Lee Binion, M.D.

Robert M. Briber, an ARB Member, took part in the Determination and Order in the Matter of Dr. Binion.

Dated: March 14, 2006

Redacted Signature


Robert M. Briber

In the Matter of Magda Lee Binion, M.D.

Thea Graves Pellman, an ARB Member took part in the Determination and Order in the Matter of Dr. Binion.

Dated: March 14, 2006

Redacted Signature

Thea Graves Pellman

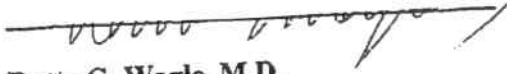
In the Matter of Magda Lee Binlon, M.D.

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

Matter of Dr. Binlon.

Dated: 3/16, 2003

Redacted Signature


Datta G. Wagle, M.D.

In the Matter of Magda Lee Binion, M.D.

Stanley L. Grossman, an ARB Member took part in the Determination and Order in the Matter of Dr. Binion.

Dated: March 14, 2006

Redacted Signature

Stanley L Grossman, M.D.

In the Matter of Magda Lee Binion, M.D.

Therese G. Lynch, M.D., an ARB Member took part in the Determination and Order in the Matter of Dr. Binion.

Dated: March 14, 2006

Redacted Signature

Therese G. Lynch, M.D.