



# 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.  
*Commissioner*

Dennis P. Whalen  
*Executive Deputy Commissioner*

February 18, 2000

## CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Paul R. Maher, Esq.  
NYS Department of Health  
Hedley Park Place  
433 River Street  
Fourth Floor  
Troy, New York 12180

Michael Jeffrey Hason, M.D.  
1710 NW 87<sup>th</sup> Avenue  
Plantation, Florida 33322

Michael Jeffrey hason, M.D.  
Cleveland Clinic  
3000 W. Cyprus Creek Road  
Fort Lauderdale, Florida 33309

**RE: In the Matter of Michael Jeffrey Hason, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 99-273) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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, appearing to read "Tyrone T. Butler". The signature is written in a cursive style with a large initial 'T'.

Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:nm

Enclosure

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

COPY

In the Matter of

Michael Jeffrey Hason, MD. (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. 99-273

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

For the Department of Health (Petitioner): Paul R. Maher, Esq.  
For the Respondent: Pro Se

After a hearing below, a BPMC Committee revoked the Respondent's License to practice medicine in New York, following a decision by California to deny the Respondent licensure in that state, due to his psychiatric history. In this proceeding pursuant to N.Y. Pub. Health Law §230-c (4)(a)(McKinney's Supp. 1999), the Respondent asks the ARB to nullify or modify that Determination and alleges errors in the conduct in the hearing below and in the Committee's judgement in imposing the revocation. Upon considering the hearing record and the parties' review submissions, we overturn the Committee and we vote to suspend the Respondent's License for one year certain and for so long thereafter, until the Respondent can prove his fitness to return to practice in a proceeding before a BPMC Restoration Committee.

**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)(d) (McKinney Supp. 1999-2000) by committing professional misconduct, because:

- the duly authorized professional disciplinary agency from a sister state, California, took action against the Respondent's License in that state, for,
- conduct that would constitute professional misconduct, if the Respondent had committed such conduct in New York.

The Petitioner alleged further that the Respondent's misconduct in California would constitute misconduct if committed in New York as: suffering a psychiatric condition that impairs the licensee's ability to practice medicine, a violation under N. Y. Educ. Law § 6530(8)(McKinney Supp. 1999-2000). An expedited hearing (Direct Referral Proceeding) ensued pursuant to N.Y. Pub. Health Law §230(10)(p)(McKinney Supp. 1998), before a BPMC Committee, who rendered the Determination which the ARB now reviews. In such a 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 evidence before the Committee indicated that the Medical Board of California (California Board) denied the Respondent's California licensure application due to the Respondent's psychiatric history [Petitioner Exhibit 4]. The California Board's Adopted Decision included a finding, at Paragraph XI, that Michael Meek, M.D. evaluated the Respondent and found him suffering severe depression, with an unwillingness to seek treatment. From the evidence, the BPMC Committee found the Respondent guilty for misconduct under N.Y. Educ. Law § 6520(9)(d)(McKinney Supp. 1999).

The Committee voted to revoke the Respondent's New York License. The Committee discounted testimony, on the Respondent's behalf, by Mark Molko, MSW, who worked with the Respondent for eighteen months and who testified that the Respondent could practice medicine under supervision. The Committee found that Mr. Molko lacked certification or much experience in his profession, treated no other physicians in the past and lacked familiarity with requisite duties and responsibilities in medical practice. The Committee found Mr. Molko unconvincing in his testimony about the Respondent's readiness to resume practice responsibilities. The

Committee also noted that the Respondent has had minimal patient contact in nine years since medical school. The Committee stated that their revocation order would provide a non-punitive action that would protect the public until such time as the Respondent can demonstrate his rehabilitation and readiness to resume practice

### **Review History and Issues**

The Committee rendered their Determination on November 9, 1999. This proceeding commenced on November 19, 1999 when the ARB received the Respondent's Notice requesting a Review. The record for review contained the Committee's Determination, the hearing record, the Respondent's brief and the Petitioner's response brief.

The Petitioner alleges error by the Committee for failing to accept Mr. Molko's testimony. The Respondent also alleges that the Committee decided a priori to impose the harshest sanction against the Respondent and that the Committee attempted to discredit Molko's testimony for that reason. The Respondent also alleges error by the Committee's Administrative Officer for refusing to allow the Respondent to challenge the California action and the evidence in that action from Dr. Meeks. The Respondent also argues that the Committee's actions violate the provisions from the Americans With Disabilities Act (ADA), that seek to reintegrate that disabled into society. The Respondent argues that no sanction is necessary against him, but in the alternative he requests that the ARB modify the Committee's sanction to probation, with a prohibition on solo practice.

In response, the Petitioner argues that the California Board established that the Respondent lacks the necessary qualifications to practice medicine. The Petitioner argues further that the Committee received the opportunity to observe the Respondent and his demeanor and to

reach their own conclusions about the Respondent. The Petitioner contends that the Committee imposed an appropriate penalty.

### **Determination**

The ARB has considered the record and the parties' briefs. We sustain the Committee's Determination that the evidence from the California proceeding proved the Respondent's guilt for misconduct under N. Y. Educ. Law § 6530(9)(d)(McKinney Supp. 2000). We hold that the Committee and their Administrative Officer acted appropriately in refusing to allow the Respondent to re-litigate the California Board's findings concerning the Respondent's psychiatric history. Contrary to the assertions in the Respondent's brief, the California findings established that the Respondent's condition in California would have constituted misconduct in New York as suffering from a condition that impairs the Respondent's ability to practice medicine. We hold that the Respondent's ADA claims constitute issues beyond our jurisdiction and we leave the Respondent to raise those issues in the courts.

The question before the Committee involved whether the Respondent's California impairment continued and what steps to take to protect the public if the impairment continued. We agree with the Committee that the Respondent lacks the fitness to return to practice immediately. We disagree that revocation constitutes the appropriate penalty to address the Respondent's condition and we disagree that revocation constitutes a non-punitive sanction in this case. Under our review authority, the ARB may substitute our judgement for the Committee's in determining a penalty, In the Matter of Kabnick v. Chassin, 89 N.Y.2d 828 (1996). We exercise that authority here.

We turn first to our reasons for overturning the revocation order. The California Board's Order binds the Committee and the ARB as to the factual findings concerning the Respondent's California conduct and condition. Those findings included Dr. Meek's evaluation concerning the

Respondent's unwillingness to seek treatment. The Committee and the ARB could, however, consider any information available concerning the Respondent's condition since he left California. That information revealed that the Respondent has entered treatment in Florida that included psychotropic medication and psychotherapy [Respondent Exhibit B]. Seeking such treatment demonstrates a great change from the Respondent's behavior that resulted in the application denial by California. We conclude that a penalty less severe than revocation may assist the Respondent in treatment, by encouraging the Respondent to remain in treatment with regaining active licensure in New York as a goal.

The ARB agrees with the Committee, however, that the Respondent has provided unconvincing evidence concerning his current fitness to return to practice. The Respondent's witness Mr. Molko lacked experience in treating physicians and knowledge about medical practice. In his brief, the Respondent indicated that he could practice without any sanction or with only probation, in a non-solo setting. That proposal by the Respondent contradicts the testimony by the Respondent's witness who suggested practice with supervision. We also conclude that practice in a non-solo setting, such as a group practice or partnership, provides no real supervision. We would require practice in at least a supervised setting such as an Article 28 hospital, with established supervision and quality assurance procedures, if we found the Respondent ready to return to practice.

The ARB finds the Respondent's progress in Florida encouraging, but we prefer to see the Respondent continue in treatment for an additional period. In Matter of Doreen Palmer, N. Y. D.O.H. Admin. Rev. Bd. 98-241, a case we find similar to the present one, we overruled a revocation order involving an impaired physician. In that case, we placed the physician on suspension for at least one year and for such additional time thereafter, until the physician could demonstrate to a BPMC Restoration Committee the physician's fitness to return to practice. We vote unanimously to impose a similar penalty in this case.

We suspend the Respondent's New York License for one year certain and for such time thereafter until the Respondent can demonstrate to a BPMC Committee the Respondent's fitness to return to practice. The Committee shall consider the Respondent's application for regaining his License under the terms for restoration in N. Y. Pub. Health Law § 230(13)(a)(McKinney Supp. 1999-2000), i.e. whether the Respondent remains incapacitated from practice. If the Committee restores the License, the Committee may also impose reasonable conditions on the License as provided for under N. Y. Pub. Health Law § 230(13)(a)(McKinney Supp. 1999-2000).



**ORDER**

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

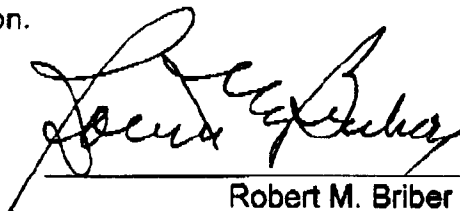
1. The ARB **AFFIRMS** the Committee's Determination that the Respondent committed professional misconduct.
  
2. The ARB **OVERTURNS** the Committee's Determination revoking the Respondent's New York License.
  
3. The ARB **SUSPENDS** the Respondent's License for one year certain and **SUSPENDS** the Respondent's License thereafter until such time as the Respondent can demonstrate his fitness to practice medicine to a BPMC Restoration Committee.

**Robert M. Briber  
Sumner Shapiro  
Winston S. Price, M.D.  
Stanley L. Grossman, M.D.  
Therese G. Lynch, M.D.**

**In the Matter of Michael Jeffrey Hason, M.D.**

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

Dated: February 12, 2000

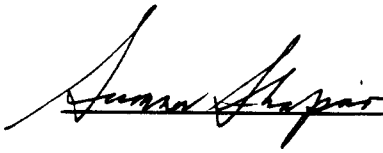
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Robert M. Briber

**In the Matter of Michael Jeffrey Hason, M.D.**

**Sumner Shapiro**, an ARB Member concurs in the Determination and Order in the Matter of Dr. Hason.

Dated: FEB 16, 2000



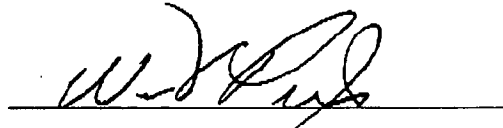
A handwritten signature in cursive script, appearing to read "Sumner Shapiro", is written over a solid horizontal line.

**Sumner Shapiro**

**In the Matter of Michael Jeffrey Hason, M.D.**

**Winston S. Price, M.D.,** an ARB Member concurs in the Determination and Order in the Matter of Dr. Hason.

Dated: 2/11, 2000


A handwritten signature in cursive script, appearing to read "W. S. Price", is written over a horizontal line.

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

**In the Matter of Michael Jeffrey Hason, M.D.**

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

**Dated: February 11, 2000**

Handwritten signature of Stanley L. Grossman, M.D. in cursive script, underlined.

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

**In the Matter of Michael Jeffrey Hason, M.D.**

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

Dated: February 12, 2000



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