



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**

October 24, 2003

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Paul R. Maher, Esq.  
NYS Department of Health  
Hedley Park Place  
433 River Street - 4<sup>th</sup> Floor  
Troy, New York 12180

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

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

Dear Parties:

Enclosed please find the Determination and Order (No. 99-273A) 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.

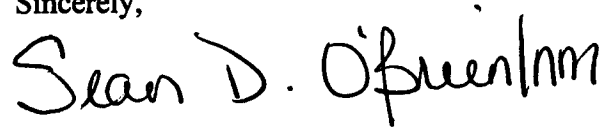
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified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

Sean D. O'Brien, Director  
Bureau of Adjudication

SDO: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. 99-273A**

**Before ARB Members Grossman, Lynch, Pellman and Briber<sup>1</sup>  
Administrative Law Judge James F. Horan drafted the Determination**

**For the Department of Health (Petitioner):**

**Paul R. Maher, Esq.**

**For the Respondent:**

**Pro Se**

In this proceeding pursuant to N.Y. Pub. Health Law §230-c (4)(a)(McKinney's Supp. 2003), the ARB considers the appropriate sanction to impose against the Respondent's New York medical license (License), due to the Respondent's mental illness history. After a hearing and review below, the ARB suspended the Respondent's 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 remitted the case to the ARB (Remittur Order), with the provision that the ARB could consider additional evidence concerning the Respondent's current mental status. After a remand for a hearing on that current status, the ARB now votes to place a permanent practice restriction on the Respondent's License and to place the Respondent on five years probation, under the terms that will appear in the Appendix to this Determination.

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<sup>1</sup> ARB Member Datta Wagle, M.D., was unable to participate in this case. The ARB proceeded to consider the case with a four member quorum, see *Matter of Wolkoff v. Chassin*, 89 NY2d 250 (1996).

### The Case Prior To The Remittur Order

The Petitioner commenced the case by filing charges with BPMC alleging that the Respondent violated N. Y. Educ. Law § 6530(9)(d) (McKinney Supp. 2003) 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. 2003). An expedited hearing (Direct Referral Proceeding) ensued pursuant to N.Y. Pub. Health Law §230(10)(p)(McKinney Supp. 2003), before a BPMC Committee, which rendered the Determination which the ARB now reviews. In 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 § 6530(9)(d)(McKinney Supp. 2003).

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.

Following the Committee's Determination, the Respondent requested administrative review and alleged error by the Committee for failing to accept Mr. Molko's testimony. The Respondent also alleged 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 alleged 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 argued that the Committee's actions violated the provisions from the Americans With Disabilities Act (ADA) that seek to reintegrate the disabled into society. The Respondent also argued against any sanction, but in the alternative he requested that the ARB modify the Committee's sanction to probation, with a prohibition on solo practice.

After considering the Respondent's brief and a response from the Petitioner, the ARB determined that the Respondent's mental illness history provided grounds upon which to take disciplinary action against the Respondent's License. The ARB found, however, that the question on sanction concerned whether the Respondent's impairment continued and what steps to take to protect the public if the impairment continued. The ARB agreed with the Committee that the

Respondent lacked the fitness to return to practice immediately, but we disagreed that revocation constituted either the appropriate penalty to address the Respondent's condition or constituted a non-punitive sanction in this case.

In overturning the Committee's Order, we held that, in addition to considering the California findings on the Respondent's unwillingness to seek treatment, we could also consider any information available concerning the Respondent's condition since he left California. That information revealed that the Respondent had entered treatment in Florida, which included psychotropic medication and psychotherapy [Respondent Exhibit B]. The ARB found that seeking such treatment demonstrated a great change from the Respondent's behavior that resulted in the application denial by California. We concluded that a penalty less severe than revocation might 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 agreed with the Committee, however, that the Respondent had provided unconvincing evidence concerning his current fitness to return to practice and that 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 contradicted the testimony by the Respondent's witness, who suggested practice with supervision. We also concluded that practice in a non-solo setting, such as a group practice or partnership, provided no real supervision. We held that 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 held that we preferred to see the Respondent continue in treatment for an additional period. We voted to suspend the Respondent's New York License for one year certain

and for such time thereafter until the Respondent could demonstrate to a BPMC Committee the Respondent's fitness to return to practice.

### Proceedings After The Remittur Order

Following the Initial ARB Determination, the Respondent challenged the Determination before the New York Supreme Court Appellate Division for the Third Department. On June 27, 2002, the Third Department affirmed the ARB Determination that the Respondent's mental illness history made the Respondent liable for disciplinary action under N. Y. Educ. Law § 6530(9)(d)<sup>2</sup>. The Court, however, overturned so much of the penalty that suspended the Respondent's License until the Respondent could demonstrate his fitness to practice to a BPMC Committee. The Court found those terms an impermissible, indefinite suspension without authorization under N. Y. Pub. Health Law § 230-a. The Court remitted the case to the ARB with instructions to impose a new penalty and the Court provided that the ARB could, in our discretion, consider additional evidence or testimony concerning the Respondent's current mental status.

After reviewing the Remittur Order, the ARB remanded the case on September 11, 2002, for the original Committee to conduct further proceedings. In our initial review in the matter, the ARB decided upon the indefinite suspension because we found that the Respondent provided unconvincing evidence concerning his current fitness to return to practice. The ARB found that the Respondent made encouraging progress through treatment in Florida, but we preferred to see the Respondent continue in treatment for an additional period. The Appellate Division's Order

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<sup>2</sup> Matter of Hason v. Dept. of Health, 296 A.D.2d 818, 744 N.Y.S.2d 86 (3<sup>rd</sup> Dept. 2002).

permitted the ARB to consider additional information about the Respondent's condition, but the ARB lacked procedures for conducting hearings or receiving new testimony. Under N.Y. Pub. Health Law §230-c (4)(a)(McKinney's Supp. 2002), however, the ARB may remand to the Hearing Committee for further proceedings. We held that a remand to the Hearing Committee would provide the proper forum for the Committee to receive additional evidence or testimony regarding the Respondent's current mental status.

The Hearing Committee received additional submissions from both parties and by Order on March 5, 2003, the Committee referred the Respondent for a psychiatric evaluation by Melvin Steinhardt, M.D. The Committee's Order also provided for the Respondent to obtain his own evaluation. On July 7, 2003, the Committee rendered a Supplemental Determination that contained additional findings of fact and a new recommendation on penalty. The Committee based their findings and recommendations on an October 3, 2002 letter from Robert M. Perovich, the Respondent's treating psychiatrist, a report from David Zakin, Ph.D. and Raymond J. Friedman, M.D., Ph.D. and the evaluation by Dr. Steinhardt. The Perovich letter indicated that the Respondent remained in remission for Recurrent Major Depression, remained on Zoloft and remained in and remained committed to psychiatric and psychological treatment. The Zakin/Friedman Report found the Respondent safe to practice medicine on a psychological basis as long as the Respondent remains in ongoing psychological treatment. The Steinhardt Evaluation found the Respondent in remission from recurrent, Major Depressive Disorder and concluded that the Respondent could practice safely in the context of continuing psychiatric treatment and medication, along with monitoring in practice for several years. The Committee recommended that the Respondent could return to medical practice if he remained on appropriate



medication and continued with psychotherapy. The Committee also recommended a monitor on the Respondent's practice for three years.

Following the Committee's Supplemental Determination, the Respondent submitted an August 5, 2003 letter that indicated that the Respondent could arrange to continue psychotherapy and anti-depressant drug management without monitoring. The Respondent argued that he deserves a clean License. The Petitioner indicated that they would make no further submission to the ARB.

### **Determination**

The ARB votes 4-0 to place a permanent limitation on the Respondent's License to restrict his practice to a facility that operates under a government license, such as a facility holding a license under Public Health Law Article 28, or a facility that the government operates, such as a Veteran's Administration Hospital. We also vote to place the Respondent on probation for five years, under the terms that appear as the Appendix to this Determination.

The ARB agrees with the Committee that the information before the Committee concerning the Respondent's current condition demonstrates that the Respondent can return to practice safely if the Respondent remains on appropriate medication and remains in psychotherapy. We reject the Respondent's request that we leave the Respondent to put in place an emergency plan in the event the Respondent becomes ill again. We conclude that this Determination should set out steps to assure that the Respondent will remain in proper treatment. The five-year probation will require quarterly reports concerning whether the Respondent remains in compliance with treatment and medication. The License restriction will assure that the

Respondent practices in a structured setting, with statutory or regulatory requirements on supervision and quality assurance. The limitation will relieve the Respondent from responsibility for billing or practice management. We also see a need for oversight on the Respondent's practice, because the Respondent has provided no patient care for an extended time period. The five-year probation will commence at such time as the Respondent returns to medical practice in New York State.

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**ORDER**

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

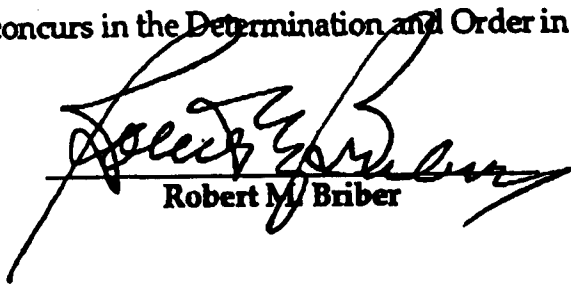
1. The ARB limits the Respondent's License as we explained in our Determination.
2. The ARB places the Respondent on probation for five years, to commence at such time as the Respondent returns to medical practice in New York, under the terms that appear as the Appendix to this Determination.

**Robert M. Briber**  
**Thea Graves Pellman**  
**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: October 20, 2003

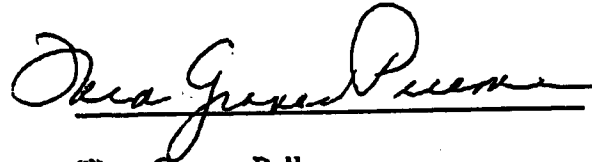


Robert M. Briber

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

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

**Dated: Oct 21, 2003**

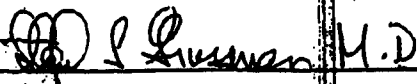
A handwritten signature in cursive script, reading "Thea Graves Pellman", written over a horizontal line.

**Thea Graves Pellman**

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: October 22, 2003

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: October 20, 2003**



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

# **Appendix**

## **Terms of Probation**

- 1. Respondent shall conduct himself in all ways in a manner befitting his professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his profession.**
  
- 2. Respondent shall submit written notification to the New York State Department of Health addressed to the Director, Office of Professional Medical Conduct (OPMC), 433 River St.-4<sup>th</sup> Floor, Troy, NY 12180, said notice is to include a full description of any employment and practice, professional and residential addresses and telephone numbers within or without New York State, and any and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty days of each action.**
  
- 3. Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of Respondent's compliance with the terms of this Order. Respondent shall personally meet with a person designated by the Director of OPMC as requested by the Director.**
  
- 4. The period of probation shall be tolled during periods in which Respondent is not engaged in the active practice of medicine in New York State. Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in or intends to leave the active practice of medicine in New York State for a period of**



thirty (30) consecutive days or more. Respondent shall then notify the Director again prior to any change in that status. The period of probation shall resume and any terms of probation which were not fulfilled shall be fulfilled upon Respondent's return to practice in New York State.

5. Respondent's professional performance may be reviewed by the Director of OPMC. This review may include, but shall not be limited to, a review of office records, patient records and/or hospital charts, interviews with or periodic visits with Respondent and his/her staff at practice locations or OPMC offices.

6. Respondent shall cause to be submitted quarterly reports to the Director to demonstrate that the Respondent's remains in appropriate treatment and continues on appropriate medication.

7. Respondent shall maintain legible and complete medical records which accurately reflect the evaluation and treatment of patients. The medical records shall contain all information required by State rules and regulations regarding controlled substances.

8. Respondent shall comply with all terms, conditions, restrictions, limitations and penalties to which he is subject pursuant to the Order and shall assume and bear all costs related to compliance. Upon receipt of evidence of noncompliance with, or any violation of these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding and/or any such other proceeding against Respondent as may be authorized pursuant to the law.