



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

June 26, 2002

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Jude Mulvey, Esq.
NYS Department of Health
ESP-Corning Tower-Room 2509
Albany, New York 12237-0032

Carmen Shang, Esq.
Rubin & Shang
112 State Street
Albany, New York 12207

Silas Zuttah, M.D.
21 Jean Place
Edison, New Jersey 08820

RE: In the Matter of Silas H. Zuttah, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 02-211) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the 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.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), and §230-c subdivisions 1 through 5, (McKinney Supp. 1992), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the licensee or the Department may seek a review of a committee determination.

All notices of review must be served, by certified mail, upon the Administrative Review Board and the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

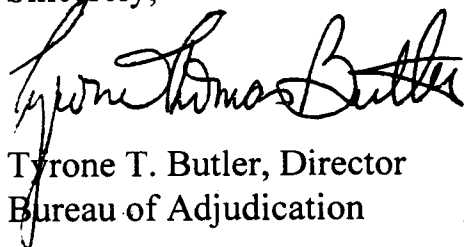
The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Hedley Park Place
433 River Street, Fifth Floor
Troy, New York 12180

The parties shall have 30 days from the notice of appeal in which to file their briefs to the Administrative Review Board. Six copies of all papers must also be sent to the attention of Mr. Horan at the above address and one copy to the other party. The stipulated record in this matter shall consist of the official hearing transcript(s) and all documents in evidence.

Parties will be notified by mail of the Administrative Review Board's Determination and Order.

Sincerely,



Tyrone T. Butler, Director
Bureau of Adjudication

TTB:cah
Enclosure

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

**IN THE MATTER
OF
SILAS H. ZUTTAH, M.D.**

DETERMINATION

AND

ORDER

BPMC #02-211

COPY

ROBERT A. MENOTTI, M.D., Chairperson, NANCY MACINTYRE, R.N., PH.D.,
and **MARGERY SMITH, M.D.**, duly designated members of the State Board for Professional
Medical Conduct, appointed by the Commissioner of Health of the State of New York pursuant
to Section 230(1) of the Public Health Law, served as the Hearing Committee in this matter
pursuant to Sections 230(1)(e) and 230(12) of the Public Health Law. **SUSAN F. WEBER ,**
ESQ., served as Administrative Officer for the Hearing Committee.

After consideration of the entire record, the Hearing Committee submits this
determination.

STATEMENT OF CHARGES

The Statement of Charges essentially charges the Respondent with professional misconduct by reason of having practiced the profession of medicine fraudulently within the meaning of Education Law Section 6530 (2), willfully making a false report within the meaning of Education Law Section 6530 (21), and with conduct in the practice of medicine that evidences moral unfitness under Education Law Section 6530 (20). The charges stem from Respondent's answers to two hospital applications and his failure to advise the New York State Education Department that he had been terminated from Woodhull Hospital.

The charges are more specifically set forth in the Statement of Charges, a copy of which is attached hereto and made a part of this Determination and Order.

SUMMARY OF PROCEEDINGS

Notice of Hearing Date:	November 6, 2001
Scheduled Hearing Date:	January 18, 2002 (Adjourned)
Prehearing Conference:	February 18, 2002
Hearing Dates:	February 25, 2002 March 28, 2002 April 8, 2002
Intrahearing Conference:	May 1, 2002
Post-Hearing Briefs Received:	May 10, 2002
Deliberations:	May 17, 2002

Place of Hearing:

NYS Department of Health
433 River St.
5th Floor Hearing Room
Troy, NY 12180

Petitioner Appeared By:

Donald P. Berens, Jr.,
General Counsel
NYS Department of Health
By: Jude Mulvey, Esq.
Assistant Counsel
Corning Tower – Room 2509
Empire State Plaza
Albany, NY 12237-0032

Respondent Appeared By:

Carmen Shang, Esq.
Rubin & Shang
112 State St.
Albany, NY 12207

WITNESSES

For the Petitioner:

Anton Silva, Esq.

For the Respondent:

Silas H. Zuttah, MD

FINDINGS OF FACT

Numbers in parenthesis refer to transcript pages or exhibits and denote evidence that the Hearing Committee found persuasive in determining a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence. All Hearing Committee findings were unanimous.

GENERAL FINDINGS

1. Respondent was licensed to practice medicine in New York State on February 18, 1983, by the issuance of license number 153216 by the New York State Education Department [Exh. 1].¹

2. Respondent was served with a Notice of Hearing and Statement of Charges, noticing Respondent for a hearing on January 18, 2002 before the State Board for Professional Medical Conduct pursuant to Public Health Law § 230 [Exh. 2]. Respondent acknowledged service [Tr. 18].

3. The Statement of Charges alleged that Respondent practiced the profession of medicine fraudulently, willfully filed false reports and committed conduct evidencing moral unfitness [Exh. 1]. The charges stemmed in part from Respondent's answers to questions regarding his Medicaid eligibility.

¹ Unless otherwise indicated, citations are to Exhibits in evidence ("Exh.") or to the hearing transcript ("Tr.").

THE MEDICAID EXCLUSION

4. Respondent was excluded from the Medicaid program effective April 13, 1990 for two years [Exhs. 4, 12; Tr. 36, 44]. Respondent was provided notice of the exclusion via a “Notice of Action Under the Medical Assistance Program pursuant to 18 NYCRR 515.6(b)”. ([Exh. 4] “Notice of Action”).

5. The Notice of Action advised Respondent that, following an audit of his Medicaid billings:

THE NEW YORK STATE DEPARTMENT OF SOCIAL
SERVICES HAS DETERMINED TO SEEK RESTITUTION
AND EXCLUDE YOU FROM THE MEDICAL ASSISTANCE
PROGRAM [Exh. 4 (capitals in original)].

6. This determination was based upon a finding that Respondent engaged in the submission of false claims, unacceptable record keeping and provision of excessive services [Exh. 4, p. 1]

7. Respondent conceded that he was provided notice of the exclusion [Tr. 208].

8. Respondent admitted that he was excluded from Medicaid in 1990 [Tr. 103, 207-208].

9. Respondent admitted that his name is on a list known as the PVR-92, also called the Medicaid exclusion list [Tr. 47-48, 105].

10. The Notice of Agency Action was affirmed following a hearing that commenced in 1990 and finally concluded in 1994 (“the DSS hearing”) [Exh. 7]. Respondent fully participated in and was represented by Mr. Shang at this hearing [Exh. 7; Tr. 213-214].
11. The DSS decision found that Respondent’s two-year exclusion was fully justified based upon “the pervasiveness and nature of the record keeping and billing violations and the substantial monetary loss to the program resulting” from Respondent’s conduct. [Exh. 7, p. 25].²
12. Respondent appealed the DSS decision to the New York State Supreme Court, Appellate Division, Third Department based, in part, upon the audit methodology used as well as the penalty imposed. The Appellate Division affirmed the DSS decision (Zuttah v. Wing, 243 AD2d 765 [1997]).
13. Respondent applied for reinstatement to Medicaid in 1999 [Tr. 210]. Medicaid denied his application due to his “failure to address the nature of the audit, the nature of excessive ordering of unnecessary services and the fact that he lacked a service location” [Exh. 24].

² The DSS decision reduced the restitution figure from \$69,105.00 to \$63,453.00 [Exhs. 4, 7].

THE WOODHULL HOSPITAL APPLICATION

14. On October 1, 1991, Respondent submitted an employment application to Woodhull Medical and Mental Health Center (“Woodhull Hospital”) for the position of per diem attending Emergency Room physician [Exh. 6, pp 3, 37-39].

15. In applying for the Woodhull position, Respondent discussed his Medicaid exclusion and the ongoing litigation concerning it with the interviewing personnel at Woodhull Associates and the doctor in charge of the emergency room there. [Tr.109-111,122-123, 201-203]

16. On October 1, 1991, when Respondent submitted the Woodhull application, he had already received the Notice of Agency Action excluding him from the Medicaid program and had completed several days of hearing in the DSS proceeding [Exh. 7; Tr. 214, 223-224]. Those days were September 17, October 30, November 2 and 27, 1990 and February 4 and May 21, 1991 [Exh. 7]. The next scheduled hearing date in the DSS matter was October 24, 1991, less than one month away. [Exh. 7].

17. The Woodhull application asked Respondent:

Are you presently or have you ever been restricted or suspended from participation in any federal, state or other reimbursement program? [Exh. 6, p. 3].

18. Despite having discussed his Medicaid excluded status with Woodhull's interviewing personnel, Respondent answered the question "No". [Tr. 110] He then signed and dated this page of the application [Exh. 6, p. 3]. Respondent also signed and/or dated other pages of the application [Exh. 6, p. 47, 48, 49, 50, 51, 52].
19. Respondent's application was approved by the Emergency Medicine Department on October 15, 1991 and immediately referred to the Credentialing Committee [Exh. 6, p. 50]
20. On or about October 18, 1991, and after Respondent's application was forwarded to the Credentials Committee, Respondent was notified by Carlos Loran, Executive Director of Woodhull, that:

It has been brought to our attention that you are currently listed by the NYS Department of Social Services as being excluded from the Medicaid program... Kindly furnish my office with your written statement as to the circumstances which lead to your being listed. If you are currently in the process of appealing the decision, this should also be included in your statement [Exh. 6, p. 6].
21. Respondent is listed on PVR 292 dated September 27, 1991 [Exh. 14]. Persons identified on the list "are not authorized to order or prescribe services reimbursed by Medicaid" [Exh. 14].

22. Respondent answered Carlos Loran's inquiry with a letter from his attorney which stated that Respondent was currently excluded from the Medicaid program but that it was hoped that the exclusion would be reversed following the pending DSS hearing [Exh. 6, p. 4].
23. Thereafter, Respondent continued his employment with Woodhull, which apparently "waived" Respondent's excluded status with Medicaid [Tr.202-203].
24. Woodhull Hospital is administered by the City of New York Health and Hospital Corporation ("HHC") and is subject to the administrative directives of HHC. HHC is also associated with Woodhull Associates, P.C., the agency which employs physicians to work at Woodhull Hospital [Tr. 245-246].
25. Sometime prior to June 29, 1993, HHC determined that it would no longer employ physicians who were excluded from the Medicaid program [Exhs. F, G, H]. In order to maintain their employment, the excluded providers were instructed to settle their cases with DSS. [Exh. H]. Failure to obtain settlement would result in the subject physician's termination from Woodhull [Exhs. 6, pg. 10; H, and F].

26. In June, 1993, Respondent was advised that:

...Medical Associates of Woodhull, P.C. was instructed by the Health and Hospitals Corporation to immediately terminate the services of physicians excluded from the Medicaid program [Exh. F].

Cyril Alcee, Executive Vice President of Woodhull Associates counseled Respondent that he had "obtained a waiver of the termination order until July 31, 1993" [Exh. F (emphasis supplied)]. The waiver of the termination order was conditioned upon Respondent's settlement of the DSS case by July 31, 1993, or his employment would be terminated that date [Exh. F].

27. Respondent did not reach a settlement with DSS³ [Exh. 8; Tr. 250, 258].

28. Respondent was terminated from Woodhull effective July 26, 1993 [Tr. 259], due to his previous exclusion from Medicaid [Exhs. F, H].

29. Woodhull did not inform the Department of Health about Respondent's termination. The Department of Health learned about the termination and attendant facts sometime after June 2000 [Tr. 283].

³ The reason no settlement was reached is not material here. However, Respondent claimed that DSS was seeking reimbursement for the entire amount claimed, while Respondent had already repaid approximately \$60K of the \$69K sought.

30. Although the June 29, 1993 Alcee letter [Exh.F] refers to a “waiver”, no written waiver was ever produced by Respondent or his counsel, and a diligent search of State records concerning the DSS case and settlement did not result in production of a waiver.
31. Antone Silva, an attorney currently employed by the New York State Department of Health, Bureau of Medicaid Law, and previously employed by New York State DSS Bureau of Medicaid Management Review, provided testimony for the Department. [Tr. 30]. At the time that the DSS Bureau of Medicaid Management was transferred to the Department of Health, Mr. Silva’s title was Deputy Counsel [Tr. 32].
32. Mr. Silva reviewed the DSS Medicaid file concerning Respondent, and explained that an exclusion from the Medicaid program could be waived via a Stipulation of Settlement . If in existence, a stipulation would be memorialized and signed by the physician and DSS counsel [Tr. 35]. There was no such stipulation in Respondent’s file [Tr. 35].
33. Mr. Silva stated that an exclusion could also be waived “under compelling circumstances” if, in the judgment of the senior audit staff, it was found that the exclusion was not warranted [Tr. 37-38]. If such a determination was reached, the waiver would be memorialized and the provider removed from the excluded provider list [Tr. 38]. He added that if a waiver had occurred, there would have been no reason for the DSS hearing case to continue. [Tr. 39].

34. There was no memorialization of a waiver in Respondent's DSS file [Tr. 38, 40-41]. Respondent was not removed from the excluded provider list [Exhs. 12-17]. Respondent's case proceeded to hearing and was upheld. [Exh. 7].
35. Respondent admitted he does not have anything in writing attesting to the existence of any alleged waiver [Tr. 264]. He admitted that there is no mention of any alleged waiver in his application for re-enrollment to Medicaid [Tr. 268].

THE NEW YORK STATE REGISTRATION

36. On or about December 7, 1994, Respondent filed a registration application with the New York State Education Department. Respondent answered "no" to the following question:
- Since you last registered has any hospital or licensed facility restricted or terminated your professional training, employment or privileges, or have you voluntarily or involuntarily resigned or withdrawn from such association to avoid imposition of such action due to professional misconduct, unprofessional conduct, incompetence or negligence? [Exh. 3]
37. Since his last registration period, Respondent's professional employment and/or privileges at Woodhull had been terminated [Exhs. 3, 6; Tr. 259]

THE BETH ISRAEL MEDICAL CENTER APPLICATION

38. On or about December 21, 1999, Respondent filed an Employment Application for Attending Privileges with Beth Israel Medical Center (“Beth Israel”) [Exh. 26]. The application asks: “Have you ever been sanctioned, suspended, terminated or fined by Medicare, Medicaid or any other third-party payment programs, including managed care organizations?” Respondent’s application shows a mark in the “no” bullet [Exh. 5, p. 5].

39. The application also asks, “Have your medical/dental staff appointment/employment status or clinical privileges in any hospital or health care facility ever been denied, revoked, suspended, restricted, reduced, limited, placed on probation, not renewed, voluntarily relinquished, discontinued or otherwise changed, including any leaves of absence?” Respondent’s application shows a mark in the “no” bullet [Exh. 5, p. 5].

40. At the time Respondent completed the application, he had been excluded from Medicaid and fined over \$60,000, appealed and lost his appeal of the exclusion in 1997, lost his position at Woodhull as a result of his exclusion, and been denied re-enrollment to Medicaid earlier in 1999. [Exh. 7, 24].

41. Respondent informed Donald B. Chalfin, M.D.M.S., Director of Beth Israel Surgical Critical Care Unit, with whom he interviewed for the Beth Israel position in November, 1999, that he was currently excluded from Medicaid and that the case was on appeal [Tr. 172-173, 301-303].
42. Respondent applied for the surgical ICU position, as opposed to any other position, because there would be no billing of Medicaid or Medicare or any other insurance for the work he performed. [Tr. 173]
43. Respondent was provided an Application for Medical Staff Privileges which was completed and dated on or about December 17, 1999 [Tr. 383; Exh. 5, pp. 5-6, 108, 47, 54-60, Exh. 26].
44. Dr. Chalfin sent Respondent to Continuum Health Partners, Inc., in Manhattan, in December to complete additional paperwork [Tr. 174-175, 383]. Continuum Health Partners, Inc. is the parent organization that administers several hospitals, including Beth-Israel [Exh. 25]. The Human Resources Department is located in Manhattan [Exh. 25].
45. Respondent completed additional documentation at the Human Resources Department, including an emergency notification form [Tr. 171, 174, 176-177; Exh. L].
46. Respondent was hired to "moonlight" at Beth Israel [Exh. 5, p. 7, 8, 109].

47. In February 1999, Respondent was counseled by Donald Chalfin, M.D. regarding complaints by house staff and nurses “on multiple occasions” [Exh. 5, p. 8]. Dr. Chalfin met with Respondent again on March 9, 2000, to discuss, among other things, his lack of accountability and accessibility during his shifts, his inability to work closely and collaboratively with the SICU house staff and his inability to be proactive and familiar with “the pertinent and pressing clinical issues concerning all patients under care of the SICU team” [Exh. 5, p. 7]. On or about May 3, 2000, a recommendation was made that Respondent be removed from the SICU schedule and rotation [Exh. 5, p. 8].
48. By letter dated May 4, 2000, Respondent was advised that “effective immediately, your services will no longer be required in the SICU at Beth Israel” [Exh. 5, pp. 9, 50]. Respondent was advised of the decision and its basis in a telephone conversation with Dr. Chalfin that day [Exh. 5, p. 50].
49. Following receipt of Respondent’s application, Professional Information Exchange (“PIX”), a company which provides credentialing services for Beth Israel [Tr. 71], conducted a verification probe which again raised the issue about Respondent’s Medicaid status and also revealed that, as of March 8, 2000, Respondent’s application was “incomplete” [Exh. 5, p. 61-62]. Respondent was notified by letter dated March 14, 2000, that his application packet lacked a copy of his primary malpractice insurance certificate, a Health Evaluation form, and three letters of reference [Exh. 5, p. 85]. A comparison of Exhibit 26 and Exhibit 27 reveals that portion “F” is missing from Respondent’s application. Portion “F” is entitled “Health Status Evaluation” [Ex. 27].

50. On or about March 9, 2000, PIX wrote to the Records Access Office in Albany, New York, for information regarding the sanction taken against Respondent [Exh. 5, p. 66]. The request was repeated by letter dated April 25, 2000 [Exh. 5, p. 67]
51. By letter dated May 25, 2000, Respondent was informed that his application for attending privileges at Beth Israel was deemed withdrawn based upon the fact that he had been “relieved of [his] duties as a per diem physician in the SICU” and “lack of full disclosure on your application regarding restriction of your practice by Medicaid” [Exh. 5, p. 10].

DISCUSSION

1. THE WOODHULL HOSPITAL APPLICATION

The Hearing Committee carefully considered all the evidence in the record concerning the issue of Dr. Zuttah’s application to Woodhull in October, 1991. The application and interview process was taking place during the pendency of the DSS hearings, and there was some natural confusion over the exact status of the Medicaid exclusion during this period. Evidence establishes that Dr. Zuttah referred Woodhull personnel to Shang & Rubin for precise and accurate information about the status of the Medicaid matter.

The per diem attending emergency room physician position Dr. Zuttah sought was one in which neither he nor Woodhull would be billing Medicaid for his services. Rather, his services would be billed under the chief of service, Dr. Williams. Had Respondent sought another position and tried to hide his Medicaid status, and had Medicaid been billed for Respondent’s services, then Respondent’s exclusion would have immediately come to light. In addition, DSS regularly provided

to all hospitals a list of excluded providers, and this list included Dr. Zuttah's name. Thus any falsehood would have come to light immediately.

Respondent's answer to the question regarding whether he had been restricted or suspended from a state or federal reimbursement program is one of the bases for the first and fourth specifications of fraud and filing a false report, respectively. Respondent testified that, because the case was ongoing and under appeal, he refused to answer the question "yes", that he had been suspended from Medicaid. He referred Woodhull to his attorney for a full explanation. In response to Woodhull's October 18th letter of inquiry regarding his Medicaid exclusion, Dr. Zuttah's attorneys responded by letter dated October 30, 1991, opining that the decision excluding Respondent from the Medicaid program was not yet final and his name should not be included on the PRV (excluded providers) list. There were other communications between the attorneys and Woodhull concerning Respondent's Medicaid status. This clearly refutes the idea that Respondent was hiding his Medicaid difficulties from Woodhull.

For all these reasons, therefore, it is not reasonable to believe that Respondent attempted to deceive when he applied for the Woodhull position.

The Respondent's testimony regarding the Woodhull matter was forthright and direct. He seemed to understand the questions and clearly recall the information asked about. He openly responded to the questions with clarity and conviction.

The Committee finds it entirely credible that the Respondent candidly discussed his currently pending Medicaid difficulties with Woodhull interviewers and his prospective supervisor in the emergency room, and that he refused to acknowledge his Medicaid suspension in writing based upon what he believed were good legal and ethical grounds. Accusations had been made, wrongly in his mind, but the hearings to resolve them had not yet concluded. His understanding of the precise situation at the time he answered the subject question could have been unclear.

There was a lot of discussion in this case concerning whether there was a DSS "waiver" of Respondent's excluded status, or whether the "waiver" referred to in correspondence was a general waiver granted Woodhull to hire certain excluded physicians to ease their personnel problems, or whether the "waiver" was Woodhull's (or HHC's) own method of employing Medicaid-excluded physicians to work in its inner city hospitals. Much hearing time was devoted to attempting to find a written waiver and to characterizing the missing or non-existent waiver negatively one way or the other. The Hearing Committee finds that the waiver or lack thereof is not germane here. Respondent continued his employment at Woodhull, and Medicaid recouped almost all the reimbursement it had sought from him, until July 31, 1993. Termination resulted from the decision by HHC to no longer employ excluded Medicaid providers in any capacity, and Respondent's failure to reach an agreeable settlement of the DSS matter.

The Committee finds there was no attempt by Respondent to deceive in the Woodhull application process. Similarly, there is no need to determine whether Respondent did or did not sign Exhibit 3 page 6. The Committee finds there was no attempt to deceive.

2. THE NEW YORK STATE REGISTRATION

In December, 1994, Respondent filed a registration application with the NYS Education Department. The application includes a question concerning whether the applicant had been terminated from employment or privileges because of misconduct since s/he had last registered. Respondent answered this question in the negative.

The State contends that Respondent should have answered the question in the affirmative, because he had been terminated from Woodhull in 1993 after failing to settle with DSS or resolve his Medicaid exclusion. Since the Medicaid exclusion was founded in misconduct, Petitioner reasons, the Woodhull termination was the result of misconduct.

The Committee does not agree. Woodhull knew about the Medicaid exclusion from the beginning of Respondent's employment. Respondent had discussed the situation with his Woodhull interviewers. Respondent's counsel had corresponded with the hospital about it. If Woodhull was concerned about the underlying cause of the exclusion, it could have refused to hire Respondent or fired him anytime during the intervening period, but they did not. When they did let him go, they specified that it was because he had not settled with Medicaid and therefore continued to be an excluded provider, no longer eligible for employment at Woodhull, under the recent HHC policy change. The Committee finds that the Woodhull termination was the result of Respondent's failure to resolve his Medicaid exclusion, rather than the conduct underlying the exclusion. Therefore, Respondent need not have revealed the Woodhull termination when he re-registered with the State of New York in 1994.

3. THE BETH ISRAEL MEDICAL CENTER APPLICATION

At the time Respondent applied for the Beth Israel position, in December 1999, he had been excluded from the Medicaid program since 1990, had been fined and had reimbursed DSS for over \$60,000, appealed and lost his appeal, and been denied re-enrollment. He had been terminated by Woodhull because of the Medicaid exclusion. His medical career had suffered severely as a result of the Medicaid status. He had been forced to find employment in other states and in the Virgin Islands.

The Beth Israel application asks: "Have you ever been sanctioned, suspended, terminated or fined by Medicare, Medicaid or any other third-party payment programs, including managed care organizations?" Respondent answered "no". [Exh. 5, p. 5, question 15]. The application also asks whether the applicant had his or her employment status or clinical privileges in any hospital or health care facility revoked or otherwise changed, and Respondent answered "no".

[Exh. 5, p. 5, question 9].

Respondent testified, and the Committee found his testimony credible, that he candidly discussed his Medicaid situation with Donald Chalfin, MD, head of the surgical ICU, one of those with whom Respondent interviewed for the “moonlighting” position. He made no attempt to hide his status from those with whom he would be working. However, when he made his formal application for the position through Continuum Health Partners in Manhattan, he falsely reported that he had never been sanctioned, suspended, terminated or fined by Medicaid, and that he had not had his employment status at a hospital suspended or otherwise changed.

It cannot be said that Respondent was confused about his Medicaid status at this point. The fact that he revealed his Medicaid exclusion status to Dr. Chalfin cannot excuse the fact that he falsely reported it on the application form. Had Respondent properly answered the question by marking “yes”, he was asked to “submit details on a separate sheet.” This he could easily have done. Similarly, had he revealed the Woodhull termination, he could also have explained that.

The Committee carefully considered Respondent’s testimony regarding the signatures and handwriting on the documents (see “Respondent’s Testimony” below), and examined the documents in evidence to ascertain whether Respondent’s contention could be sustained. The Committee was not persuaded that the documents had been falsified or had not been filled out and signed by the Respondent. The only conclusion the Committee was able to reach was that Respondent had knowingly falsified the application form.

Because the Committee believed Respondent’s testimony concerning his discussions with Dr. Chalfin about his Medicaid exclusion, the Committee did not find the Respondent acted with an intent to deceive. It found only that he was unwilling or could not bring himself to admit the facts of the Medicaid exclusion and resulting Woodhull termination on the application form. Thus in making the Beth Israel application in December of 1999, Respondent filed a false document.

VOTE OF THE HEARING COMMITTEE

Based on the foregoing Findings of Fact, the Hearing Committee voted unanimously as follows:

1. The FIRST, SECOND and THIRD SPECIFICATIONS, charging the Respondent with practicing the profession of medicine fraudulently, based upon the allegations contained in paragraphs A and A-1, B and B-1 and C and C-1, are NOT SUSTAINED.
2. The FOURTH and FIFTH SPECIFICATIONS, charging the Respondent with willfully filing a false report, based on the allegations in paragraphs A and A-1 and B and B-1, are NOT SUSTAINED.
3. The SIXTH SPECIFICATION, charging the Respondent with willfully filing a false report, based on the allegations in paragraphs C and C-1, is SUSTAINED.
4. The SEVENTH SPECIFICATION, charging the Respondent with moral unfitness, is NOT SUSTAINED.

RESPONDENT'S TESTIMONY

Respondent's testimony was, for the most part, straight-forward and credible, but disturbing and puzzling. The Respondent claimed that he was confused as to his Medicaid provider status in October 1991, when confronted with the question on page 3 of Exhibit 6 questioning such eligibility [Tr. 23, 122]. He told the Committee: "...I refused to mark [the question] yes. And I explained why.

And there was a clause in the question I refused to answer yes.” [Tr. 110]. At other times, he denied ever seeing and/or providing the answer to the subject question [Tr. 113, 116]. He stated that not only did he not sign page 3 of Exhibit 6, but that much of Exhibit 6 constituted forged and/or altered documents: “...people have cut out documents, letterheads and pasted them onto some other and come up with all kinds of bizarre documents with my name” [Tr. 231].

Similarly, Respondent claimed that his certified employment record from Beth Israel was replete with “irregularities” as well as forgeries [Tr. 159, 333]. Respondent asserted that “someone else is behind this, putting my signatures and marking little yes and no’s and packing them together” [Tr. 241]. Respondent contended that the third page of Exhibit 21, his application to Little Falls Hospital, was forged because it was dated July of 1997 rather than 1998 [Tr. 237-239, 241, 327-328, 360]. Respondent refused to consider that that page of the application could have been merely misdated [Tr. 363]. He denied that this part of the application could have been part of a generic application filed with hospitals by his physician referral firm [Tr. 297-298, 300-301, 333].

While Respondent conceded that his signature changed over the years and could be affected by the time of the day, how cramped his hand felt and what he was doing at the time [Tr. 229], he continued to question whether the documents had been altered, contending that the State manufactured evidence [Tr. 244]. Most documents Respondent questioned were not important to establishing the State’s case; there was no strategic reason to challenge many of the pages or forms, which were often parts of his applications which had nothing to do with the charges. The Respondent’s denial of filling them out or signing them appeared to have no basis in reality. He offered no explanation for their alleged falsification. (It should be noted that the admissibility of these documents had not been challenged when they were offered at the pre-hearing conference.) Respondent called no witnesses to corroborate any of his unusual claims.

The Hearing Committee had the opportunity to observe the Respondent closely over the three full days of hearings in this matter. During approximately eighteen hours of hearings, the Committee observed a variety of disturbing behaviors which raised concerns about the Respondent's state of mind. Respondent has spent the past twelve years of his life dealing with legal and employment problems stemming from the 1990 Medicaid exclusion. This intelligent, Harvard-trained board certified physician's promising surgical career has been seriously damaged, so some amount of anger and frustration is understandable. However, his frequent overwrought behavior was clearly not in his best interests. He seemed unable to take the counsel of his attorney, or to aid in his own defense. He was obviously losing self-control on several occasions. Numerous breaks were necessary to provide time for the Respondent to regain control and give his attorney an opportunity to counsel him.

Respondent claimed that Donald Chalfin, M.D. of Beth Israel "had vowed to destroy me" [Tr. 176] and implied that the alleged forgeries may have been motivated by Dr. Chalfin's destructive intent [Tr. 232, 388]. He argued that Chalfin's memos in the Beth Israel file were manufactured and did not reflect events which had taken place. Respondent said he found his work schedules for March, 2000, which showed he did not work on the days Chalfin's memo reported they had met and discussed Respondent's performance [Tr. 388]. He appeared to blame Dr. Chalfin for all his troubles. During the March 28th hearing, Respondent rose to his feet and angrily accused the State's attorney of, in effect, falsifying documents to bring the charges against him. This outburst, entirely unprovoked by the State's attorney --it was during direct examination-- was especially disturbing to the Hearing Committee. It was necessary for the Hearing Officer to admonish the Respondent [Tr. 181-182]. Again on April 8th, during redirect examination by his own attorney, the Respondent became enraged at the State's attorney, stating "...She struck me hard to make the charge stick *as though she knows Chalfin or has some personal interest in the case.*" [Tr.

384] Again, the Administrative Law Judge had to intervene and call a recess. The Committee wondered whether these instances were evidence of paranoid ideation.

Positions taken by Respondent often seemed out of touch with reality. He argued that his Medicaid exclusion was in fact a two-year suspension. While using semantics in this strained fashion may have made him believe that he had not actually been terminated from Medicaid or helped him accept the situation, the facts were otherwise. His attorney explained that Respondent had been told many times but could not understand that he continued to be excluded from Medicaid unless and until he was re-enrolled after re-application. [Tr. 209-211, 212]

At some points in the questioning, Respondent was unable to understand or follow the questions asked. He seemed unable to grasp the importance or lack of importance of many issues. Eventually his attorney asked him to repeat each question that was asked to determine whether Respondent understood it.

Especially troubling was a series of exchanges concerning handwritten documents in evidence as part of hospital records. [Tr. 238 - 242]. In light of Respondent's position that many documents were not his handwriting or not his signature, an attempt was made to find a document not in evidence for the Petitioner that Respondent could identify as his handwriting and signature. The State had an application from Little Falls Hospital, where Respondent had worked in late 1998 and early 1999, and offered it only as a sample of Respondent's writing [Ex.21]. Respondent became fixated upon the date of one page of the document, July 31, 1997, a time when he said he had never heard of Little Falls, had just returned to the US from St. Croix, and was studying for his surgical boards. Therefore, he said, the signature could not be his, and the document -- which was not relevant to the case other than as a possible handwriting sample, was a forgery, part of the plot to destroy him. He later identified numerous pages in the document as authentic, thus leaving us all

wondering why he would make such a dramatic point about the odd date, for which there were several possible logical explanations.

It may be significant that among the documents Respondent did not submit for the Beth Israel application in 1999 was his Health Status Report. Based on its exposure to Respondent over the several days of this hearing, and upon re-reading the transcripts for deliberations, the Committee is concerned about his mental health. Consequently, as a precaution for Respondent's sake and for the sake of the public, the Committee has determined that Respondent should undergo a physical examination and comprehensive psychiatric and psychological examination as a condition of his suspension and prior to any subsequent reauthorization to practice medicine. The purpose of these examinations, which must include the Minnesota Multiphasic Personality Inventory (MMPI), is to rule out any pathology which would interfere with the Respondent's capacity to practice medicine.

The Hearing Committee believes that these conditions are clearly called for by the foregoing examples from the hearing, and are authorized by Section 230.7 of the Public Health Law.

DETERMINATION AS TO PENALTY

The Hearing Committee unanimously determines that the Respondent's license to practice medicine in the State of New York should be suspended for a period of two years from the date of this Determination and Order, based on its finding that Respondent willfully filed a false document, the Beth Israel application. Respondent's candor when discussing his Medicaid difficulties with

interviewers should have carried over and informed his behavior in filling out the application. The Committee believes that a two year suspension is the appropriate penalty for Respondent's attempt to slide by without fully acknowledging and dealing with the Medicaid exclusion and the Woodhull termination.

The Hearing Committee is concerned that Respondent's judgment may be significantly impaired, based upon Respondent's behavior and thought processes evident during the hearing. As more fully described above, Committee believes it in the best interests of the citizens of New York and in the best interests of the Respondent, that he undergo a thorough psychological and psychiatric examination, including the use of the MMPI, to rule out the existence of a pathology which would interfere with the practice of medicine. This examination shall be a condition of such suspension. Respondent's suspension shall terminate and he may resume the practice of medicine only after a finding or determination that he is not physically or mentally impaired, and after the expiration of two years.

ORDER

Based upon the foregoing, **IT IS HEREBY ORDERED THAT:**

1. Respondent's license to practice medicine in the State of New York is **SUSPENDED FOR TWO YEARS FROM THE DATE OF THIS ORDER;**

IT IS FURTHER HEREBY ORDERED THAT:

2. Respondent undergo a medical and psychological and psychiatric examination, including the use of the MMPI, pursuant to Section 230.7 of the Public Health Law and that such examination results in a finding that Respondent is not impaired by a physical or mental disability as a condition of resuming practice of medicine in the State of New York following such SUSPENSION.

DATED: Clinton, New York
June 20, 2002



**ROBERT A. MENOTTI, M.D.,
(CHAIRPERSON)**

**MARGERY SMITH, M.D.
NANCY MACINTYRE, R.N., PH.D.**

APPENDIX I

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

IN THE MATTER
OF
SILAS H. ZUTTAH

NOTICE
OF
HEARING

TO: Silas Zuttah, M.D.
21 Jean Place
Edison, New Jersey 08820

PLEASE TAKE NOTICE:

A hearing will be held pursuant to the provisions of N.Y. Pub. Health Law Section 230 and N.Y. State Admin. Proc. Act Sections 301-307 and 401. The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on the 18th of January, 2002, at 10:00 in the forenoon of that day at the Office of Professional Medical Conduct, Hedley Building, 433 River Street, Troy, New York 12180 and at such other adjourned dates, times and places as the committee may direct.

At the hearing, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the hearing will be made and the witnesses at the hearing will be sworn and examined. You shall appear in person at the hearing and may be represented by counsel. You have the right to produce witnesses and evidence on your behalf, to issue or have subpoenas issued on your behalf in

EXHIBIT

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1/18/02

order to require the production of witnesses and documents and you may cross-examine witnesses and examine evidence produced against you. A summary of the Department of Health Hearing Rules is enclosed.


The hearing will proceed whether or not you appear at the hearing. Please note that requests for adjournments must be made in writing and by telephone to the Bureau of Adjudication, Hedley Park Place, 5th Floor, 433 River Street, Troy, New York 12180, (518-402-0748), upon notice to the attorney for the Department of Health whose name appears below, and at least five days prior to the scheduled hearing date. Adjournment requests are not routinely granted as scheduled dates are considered dates certain. Claims of court engagement will require detailed Affidavits of Actual Engagement. Claims of illness will require medical documentation.

Pursuant to the provisions of N.Y. Pub. Health Law Section 230(10)(c) you shall file a written answer to each of the Charges and Allegations in the Statement of Charges no later than ten days prior to the date of the hearing. Any Charge and Allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such answer. The answer shall be filed with the Bureau of Adjudication, at the address indicated above, and a copy shall be forwarded to the attorney for the Department of Health whose name appears below. Pursuant to Section 301(5) of the State Administrative Procedure Act, the Department, upon reasonable notice, will provide at no charge a qualified interpreter of the deaf to interpret the proceedings to, and the testimony of, any deaf person.

At the conclusion of the hearing, the committee shall make findings of fact, conclusions concerning the charges sustained or dismissed, and, in the event any of the charges are sustained, a determination of the penalty to be imposed or appropriate action to be taken. Such determination may be reviewed by the administrative review board for professional medical conduct.

THESE PROCEEDINGS MAY RESULT IN A DETERMINATION THAT YOUR LICENSE TO PRACTICE MEDICINE IN NEW YORK STATE BE REVOKED OR SUSPENDED, AND/OR THAT YOU BE FINED OR SUBJECT TO THE OTHER SANCTIONS SET OUT IN NEW YORK PUBLIC HEALTH LAW SECTION 230-a. YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: Albany, New York
November 6, 2001


PETER D. VAN BUREN
Deputy Counsel

Inquiries should be directed to: Jude Brearton Mulvey
Assistant Counsel
Division of Legal Affairs
Bureau of Professional
Medical Conduct
Corning Tower Building
Room 2509
Empire State Plaza
Albany, New York 12237-0032
(518) 486-1841

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

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IN THE MATTER	:	STATEMENT
OF	:	OF
SILAS H. ZUTTAH, M.D.	:	CHARGES

-----X

Silas H. Zuttah, M.D., Respondent, was authorized to practice medicine in New York State on February 18, 1983, by the issuance of license number 153216 by the New York State Education Department.

FACTUAL ALLEGATIONS

1. Respondent, on or about October 1, 1991, filed an Application for Appointment to the Medical Staff at Woodhull Medical and Mental Health Center ("Woodhull").

- a. Respondent answered "no" to the question "Are you presently or have you ever been restricted or suspended from participation in any federal, state or other reimbursement program?", when, in fact, Respondent was excluded from the Medical Assistance Program (Medicaid) on or about March 29, 1990 based upon a finding that he had engaged in submission of false claims, unacceptable bookkeeping and/or furnishing or ordering excessive services, and Respondent knew

such facts.

2. Respondent, on or about December 7, 1994 filed a Registration Application for the period January 1, 1995 through August 31, 1997 with the New York State Education Department.

a. Respondent answered "no" to the question "Since you last registered has any hospital or licensed facility restricted or terminated your professional training, employment or privileges, or have you voluntarily or involuntarily resigned or withdrawn from such association to avoid imposition of such action due to professional misconduct, unprofessional conduct, incompetence or negligence?", when, in fact, Respondent was terminated from Woodhull on or about July 26, 1993 for professional misconduct and/or unprofessional conduct, and Respondent knew such facts.

3. Respondent on or about December 17, 1999 filed an Employment Application for Attending Privileges with Beth Israel Hospital ("Beth Israel").

a. Respondent answered "no" to the question "Have you ever been sanctioned, suspended, terminated or fined by Medicare, Medicaid or any other

third-party payment programs, including managed care organizations?", when, in fact, Respondent was excluded from the Medical Assistance Program (Medicaid) on or about March 29, 1990 based upon a finding that the had engaged in submission of false claims, unacceptable bookkeeping and/or furnishing or ordering excessive services, and Respondent knew such facts.

SPECIFICATIONS OF MISCONDUCT

FIRST THROUGH THIRD SPECIFICATIONS
PRACTICING THE PROFESSION FRAUDULENTLY

Respondent is charged with practicing the profession fraudulently within the meaning of Education Law § 6530(2) in that Petitioner charges:

1. The facts in paragraphs A and A.1.
2. The facts in paragraphs B and B.1.
3. The facts in paragraphs C and C.1.

FOURTH THROUGH SIXTH SPECIFICATIONS
WILLFULLY FILING A FALSE REPORT

Respondent is charged with willfully making or filing a false report within the meaning of Education Law § 6530(21) in that Petitioner charges:

4. The facts in paragraphs A and A.1.
5. The facts in paragraphs B and B.1.
6. The facts in paragraphs C and C.1.

SEVENTH SPECIFICATION

MORAL UNFITNESS

Respondent is charged with conduct in the practice of medicine which evidences moral unfitness within the meaning of Education Law § 6530(20) in that Petitioner charges:

7. The facts in paragraphs A and A.1, B and B.1 and/or C and C.1.

DATED: *November 6*, 2001
Albany, New York

Peter D. Van Buren
PETER D. VAN BUREN
Deputy Counsel
Bureau of Professional
Medical Conduct