



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 1, 2002

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

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 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.

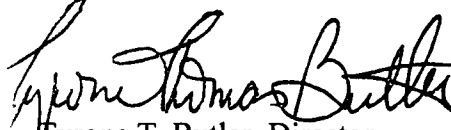
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified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



Tyrone T. Butler, Director
Bureau of Adjudication

TTB:cah
Enclosure

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

In the Matter of

Silas H. Zuttah, M.D. (Respondent)

**A proceeding to review a Determination by a
Committee (Committee) from the Board for
Professional Medical Conduct (BPMC)**

Administrative Review Board (ARB)

Determination and Order No. 02-211

COPY

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

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

**Jude Mulvey, Esq.
Pro Se**

After a hearing below, a BPMC Committee found the Respondent committed professional misconduct, by filing a false report on an application for hospital privileges. The Committee voted to suspend the Respondent's New York Medical License (License) for at least two years, and ordered that he Respondent undergo a physical and psychiatric evaluation (Evaluation). Under the Determination, the Respondent's suspension could continue after the initial two years, until such time as the Respondent can prove he suffers no mental or physical impairments that would affect medical practice. In this proceeding pursuant to N.Y. Pub. Health Law § 230-c (4)(a)(McKinney 2002), the parties request that the ARB annul or modify that penalty. After considering the parties' briefs and the hearing record, the ARB annuls the penalty the Committee imposed and finds such penalty premature, incomplete and without legal authorization. We remand to the Committee for further proceedings consistent with this Determination.

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(2) & 6530(20-21)(McKinney Supp. 2002) by committing professional misconduct under the following specifications:

- practicing medicine fraudulently,
- engaging in conduct that evidences moral unfitness, and,
- willfully filing a false report.

The charges related to answers on applications that the Respondent submitted for staff appointment, license registration and attending privileges. The Respondent denied any misconduct and a hearing followed before the Committee that rendered the Determination now on review.

The Committee found that the Medical Assistance Program (Medicaid) excluded the Respondent by notice on April 13, 1990 for submitting false claims, providing excessive services and maintaining unacceptable records. A hearing before the former Department of Social Services (DSS) affirmed that Exclusion in 1994¹. The New York Supreme Court Appellate Division also affirmed the Exclusion in 1997². The Committee also found that Medicaid refused to reinstate the Respondent to Medicaid participation in 1999. The Committee also found that Woodhull Hospital terminated the Respondent's employment in 1993, due to the Medicaid Exclusion. Following the Exclusion, the Respondent made three applications at issue here: 1.) an application for staff membership at Woodhull Hospital in 1991, 2.) an application for License registration to the New State Education Department in 1994, and, 3.) an application for privileges at Beth Israel Medical Center in 1999. The Committee found that the Respondent denied any exclusion from Medicaid or any Federal program in the Woodhull and Beth Israel

¹ The New York Legislature dissolved DSS in 1997 and transferred its functions to other agencies, including the Department of Health (1997 Laws of New York, Chap. 436).

² Zuttah v. Wing, 243 A.D.2d 765 (3rd Dept. 1997).

Applications and that the Respondent denied the Woodhull termination in the Education Department Application and the Beth Israel Application.

The Committee concluded that the Respondent willfully filed a false report in making the Beth Israel Application. The Committee, however, found no intent to deceive in making the Beth Israel Application and dismissed the fraud and moral unfitness charges relating to that Application. The Committee dismissed all charges relating to the Woodhull and Education Department Applications. The Committee found no attempt to deceive in the Woodhull Application due to confusion over the Respondent's exact Medicaid status after the initial Exclusion notice. As to the Education Department Application, the Committee found no intent to deceive by the Respondent in refusing to mention the Woodhull termination. The Committee found that the Education Department Application referred to termination for misconduct and that the Woodhull termination resulted from the Respondent's failure to resolve his prior Medicaid exclusion.

In making their findings, the Committee found the Respondent's testimony straightforward in most instances, but the Committee also noted a variety of disturbing behavior and loss of control by the Respondent. The Committee also indicated that the Respondent seemed out of touch with reality. The Committee expressed concern for the Respondent's mental health.

The Committee voted to suspend the Respondent's License for two years for the false filing on the Beth Israel Application. Due to their concern over the Respondent's health, the Committee ordered the Respondent to undergo an evaluation (Evaluation) pursuant to N.Y. Pub. Health Law § 230(7). The Committee made the Evaluation a condition of the suspension and provided that the suspension would terminate and the Respondent could return to practice only after a finding that shows no physical or mental impairment and after the Respondent serves two years actual suspension.

Review History and Issues

The Committee rendered their Determination on June 26, 2002. This proceeding commenced on July 8, 2002, when the ARB received the Petitioner'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 brief. The record closed when the ARB received the Petitioner's brief on August 9, 2002.

The Respondent argues error by the Committee's Administrative Officer in admitting certain evidence and misconduct by the Petitioner's attorney. The Respondent also alleges racial discrimination against him by Beth Israel. He requests exoneration from the ARB and he requests that the ARB revoke the license of the Petitioner's attorney.

The Petitioner requests that the ARB overrule the Committee and find that the evidence supports a conclusion that the Respondent made knowing and intentional misrepresentations on all three Applications. The Petitioner requests that the ARB sustain fraud and moral unfitness charges and additional false filing charges concerning the Applications. The Petitioner also asks that the ARB overturn the Committee and revoke the Respondent's License. In the alternative, the Petitioner asks that if the ARB chooses against revocation, that the ARB correct the legally unauthorized penalty that the Committee voted in this case.

Determination

The ARB has considered the record and the parties' briefs. In this review, the ARB addresses the Committee's Determination alone, as we lack any authority to take action against the Petitioner's counsel's license to practice law. As to the Determination by the Committee, we vote unanimously to nullify the penalty the Committee voted and to remand this case for further

proceedings pursuant to Pub. Health Law § 230-c(4)(b). We hold that the Committee imposed a penalty without legal authorization under Pub. Health Law § 230-a, without allowing for the full Evaluation process under Pub. Health Law § 230(7) and without a full record for making a penalty determination.

The Committee voted to suspend the Respondent for an indefinite term of at least two years, or perhaps longer, until a finding that the Respondent suffers no physical or mental impairment from practice. As the Petitioner's counsel points out in her brief, the New York Supreme Court Appellate Division recently annulled a similar indefinite suspension which the ARB imposed in Matter of Hason v. Dept. of Health, 295 A.D.2d 818, 744 N.Y.S.2d 86 (3rd Dept. 2002). The Court in Hason ruled that Pub. Health Law § 230-a (2) allows for a suspension for a definite period, such as two years, or until a licensee satisfies a condition, such as completing retraining or therapy. The Hason Court found, however, that the ARB could not impose a penalty "until a licensee demonstrates fitness" because that time period was "unknowable". The ARB holds that the Committee in this case has ordered the suspension for an "unknowable" time period, until the Respondent suffers no impairment. The ARB holds the suspension equally indefinite, because the Committee specified no procedure to judge how the Respondent could demonstrate that he suffers no impairment.

The Committee ordered the Evaluation under Pub. Health Law § 230(7). That statute does allow the Hearing Committee to order a respondent at a hearing to undergo an Evaluation. The ARB holds that the Committee acted under that authority and with sufficient support from the record in ordering the Evaluation. We hold, however, that the Committee failed to follow all the statutory procedures relating to Evaluations. The statute provides that:

"A committee on professional conduct, on notice to the licensee and after affording the licensee, the office of professional medical conduct, and their attorneys an opportunity to be

heard, shall have the authority to direct a licensee to submit to a medical or psychiatric examination when the committee has reason to believe the licensee may be impaired by alcohol, drugs, physical disability or mental disability. The committee, with the advice of the licensee and the office of professional medical conduct, shall designate the physician who will conduct the examination. The results of the examination shall be provided by the examining physician to the committee, the licensee, and the office of professional medical conduct. The licensee may also obtain a physician to conduct an examination the results of which shall be provided to the committee and the office of professional medical conduct."

The Committee failed to designate a physician to conduct the Evaluation, with the advice of the Respondent and Petitioner. The Committee also failed to provide the Respondent an opportunity to submit an evaluation from a different physician. The Committee must designate an Evaluation physician pursuant to the statute, allow the Respondent the opportunity to obtain a separate Evaluation and then make the Determination whether the Respondent suffers any impairment and what action to take concerning the impairment.

The Committee also rendered a Determination prematurely. The Committee lacked a full record without the Evaluation. The Committee based their factual findings in part on the testimony by the Respondent. The results from the Evaluation process could lead the Committee to question their earlier judgement on the Respondent's credibility. The results from the Evaluation could also result in a change in the sanction that the Committee could impose in this case, if the Committee determines that the Respondent suffers from any impairment.

The ARB remands this matter to the Committee to complete the Evaluation process under § 230(7) and to then render a final Determination. When the Committee renders that Determination, either party will have the opportunity to request review under Pub. Health Law § 230-c or, if neither party requests review, the Respondent may challenge the Determination in the courts. In making this remand, the ARB makes no judgement on what penalty the Committee should impose. We limited our review to only those issues that we discussed above.

ORDER

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

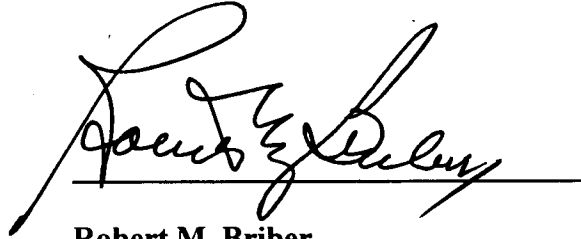
The ARB annuls the penalty the Committee imposed and we remand to the Committee for the Committee to render a Determination after they have received the Evaluation that the Committee ordered pursuant to N.Y. Pub. Health Law § 230(7).

Robert M. Briber
Thea Graves Pellman
Winston S. Price, M.D.
Stanley L. Grossman, M.D.
Therese G. Lynch, M.D.

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

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

Dated: Sept 27, 2002

A handwritten signature in cursive script, appearing to read "Robert M. Briber", is written over a horizontal line.

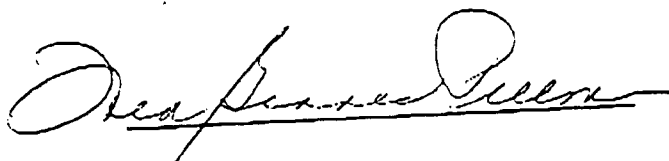
Robert M. Briber

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

Thea Graves Pellman, an ARB Member concurs in the Determination and Order in the

Matter of Dr. Zuttah.

Dated: 9/25, 2002



Thea Graves Pellman

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

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

Dated: Sept 25, 2002

A handwritten signature in black ink, appearing to read "Winston S. Price", is written over a horizontal line.

Winston S. Price, M.D.

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

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

Dated: September 25, 2002



Stanley L Grossman, M.D.

09/25/02 10:05 AM 7/1009/10000

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

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

Dated: Sept. 25, 2002

Therese G. Lynch M.D.

Therese G. Lynch, M.D.