



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**

January 15, 2003

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

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

Jude Brearton 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

**RE: In the Matter of Silas H. Zuttah, Esq.**

Dear Parties:

Enclosed please find the Supplemental Final Determination and Order (No. 02-211) of the Hearing Committee in the above referenced matter. This Supplemental Final 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.

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 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.

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.

Request for review of the Committee's determination by the Administrative Review Board stays penalties other than suspension or revocation until final determination by that Board. Summary orders are not stayed by Administrative Review Board reviews.

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 Supplemental Final Determination and Order.

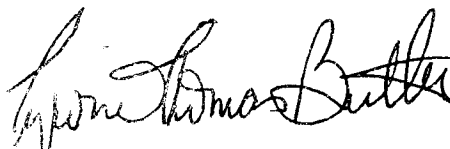
The notice of review served on the Administrative Review Board should be forwarded to:

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,

A handwritten signature in cursive script that reads "Tyrone T. Butler". The signature is written in black ink and is positioned above the typed name.

Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:djh  
Enclosure

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

**COPY**

SUPPLEMENTAL

FINAL

DETERMINATION

AND

ORDER No. 02-211

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

**ROBERT A. MENOTTI, M.D., Chairperson, and MARGERY SMITH, M.D.**  
and **NANCY MACINTYRE, R.N., PH.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 Section 230(10)(e) of the Public Health Law.

**SUSAN F. WEBER, ESQ.**, Administrative Law Judge, served as Administrative  
Officer for the Hearing Committee.

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

**SUMMARY OF PROCEEDINGS**

**The Initial Hearing**

This matter first came to the Hearing Committee by Notice of Hearing dated  
November 6, 2001, which charged Respondent Silas H. Zuttah, M.D., with professional  
misconduct, having practiced medicine fraudulently, willfully making a false statement,  
and conduct in the practice of medicine evidencing moral unfitness. The charges were all

related to responses Dr. Zuttah gave to registration and employment application questions.

The Department, represented by Assistant Counsel Jude Brearton Mulvey, called one fact witness. The Respondent, who was represented by attorney Carmen Shang, testified on his own behalf. The hearing lasted three days. The Committee deliberated and sustained one specification of medical misconduct concerning the willful filing of a false report. Based upon that misconduct, the Committee suspended Respondent's license for a period of two years.

However, Respondent's erratic, sometimes belligerent behavior during the hearing had raised serious concerns about his mental and emotional stability and his ability to understand and respond rationally to the charges. The Committee ordered Respondent to undergo a mental evaluation, the contents of which the Committee prescribed, during his two-year suspension, to rule out the presence of pathology which would interfere with the practice of medicine. This Determination and Order was issued June 20, 2002. (Dept. Exhibit 1)

#### **The ARB Determination and Order**

Both parties appealed the Committee's Determination and Order. The Administrative Review Board ("ARB") nullified the penalty as essentially indeterminate. Respondent could not resume medical practice until he demonstrated freedom from impairment, and the ARB felt that the Determination and Order had not set forth a way to establish that the Respondent was free from impairment. Further, the ARB found that the mental evaluation was not a legally authorized condition of suspension under Matter of Hason v. Dept. of Health, 295 AD 2d 818 (3<sup>rd</sup> Dept. 2002), reported following the

Committee's Determination and Order. The ARB stated that the Committee had the authority to order a mental evaluation during the hearing process, but that it must follow the procedure set forth in Public Health Law Section 230 (7). That is, that the Respondent and Petitioner must be heard on the need for such an evaluation and have the opportunity to recommend a physician or facility to perform the evaluation. Finally, the ARB said, absent the proper Section 230(7) process, the Committee's determination was premature. The ARB sent the matter back to the Committee for further proceedings consistent with this September 25, 2002 determination. (Dept. Exhibit 2)

### **THE PUBLIC HEALTH LAW SECTION 230(7) HEARING**

The Committee convened the Section 230 (7) hearing at 10:00 AM on October 11<sup>th</sup>, 2002, upon notice to Respondent<sup>1</sup>. The Notice of Hearing, personally served on Respondent on October 4, 2002, states the purpose of the hearing and offers Respondent the opportunity to attend and/or present written evidence on the subject of whether he was impaired by alcohol, drugs, physical or mental disability. (Dept. Exhibit 5)

Because the Respondent was not in attendance at the appointed time, the Committee waited until 10:20 AM to commence the proceeding. Shortly thereafter, the Committee received a telephone message stating that Respondent was unable to attend. The Committee returned the call, and a conference call was arranged to allow Respondent to participate in the hearing by telephone, which he did.<sup>2</sup> In addition, Respondent was given until October 21, 2002, to make suggestions in writing of physicians to conduct any

---

<sup>1</sup> Before the ARB and in the Section 230(7) Hearing, Respondent appeared *pro se*.

<sup>2</sup> At some point during the proceeding, Respondent became belligerent and disruptive. Despite admonishments from the Chair and the ALJ, he refused to participate calmly and the call with him was terminated after his opportunity to present evidence and argument in writing was explained.

exams ordered, and to submit any other materials regarding the need for such evaluation prior to the Committee's deliberations. The Committee Chair's letter dated October 11, 2002, reiterating all these matters is annexed as ALJ Exhibit 1.

The Department of Health offered several documents into evidence, including the Committee's June 20, 2002 Determination and Order (Dept. Ex.1), the ARB Determination and Order (Dept. Ex. 2), certain pages from the original hearing transcript documenting Respondent's erratic behavior (Dept. Ex. 3), information from Rush Behavioral Health, Chicago, Illinois, regarding its multidisciplinary assessment program (Dept. Ex. 4), Affidavit of Personal Service of the Section 230(7) Hearing Notice (Dept. Ex. 5). The proceeding was then adjourned, leaving the record open pending receipt of Respondent's submissions, if any.

Dr. Zuttah responded by letter dated October 19, 2002, stating that he "will not object to any such a medical exam if there is grounds for it." (ALJ Exhibit 2)

On October 23, 2002, the Committee considered the evidence, deliberated, and unanimously determined that there was reason to believe that the Respondent might be impaired by alcohol, drugs, or a physical or mental disability. The Committee ordered Respondent to submit to an evaluation by Rush Behavioral Health Center, to commence no later than December 9, 2002. (ALJ Exhibit 3) The Order was personally served upon Respondent on November 6, 2002 (Affidavits of Service, ALJ Ex. 4), together with a cover letter from DOH Attorney Mulvey providing specific information regarding the Rush evaluation and how to arrange an appointment.

Three weeks later, in a letter addressed to Committee Chair Menotti but faxed to the Office of Professional Medical Conduct, Respondent objected to the Rush evaluation

and offered to be examined at a NYS facility "...unless you have special arrangements with the Rush Memorial Hospital in the State of Illinois by which such outcome of the exam is expected ..." (ALJ Ex. 5)

By letter dated November 25, 2002, sent overnight mail to Respondent, Attorney Mulvey responded to this letter, reminding Dr. Zuttah of the Order and its December 9<sup>th</sup> deadline, and again providing the name and telephone number of Carl Malin at Rush, to schedule the ordered evaluation. (ALJ Exhibit 6)

By letter dated December 13, 2002, upon notice to the Respondent, the Department of Health petitioned the Administrative Law Judge to reconvene the Committee. Enclosed was the affidavit of Carl Malin at Rush establishing that Respondent had failed to contact Rush for the ordered evaluation. (Letter Petition and proofs of mailing to Respondent are annexed as ALJ Exhibit 7.) Respondent received the letter petition on December 17, 2002. (Proof of service by Registered Mail and by Federal Express on December 17, 2002, are annexed as ALJ Exhibit 8.)

After allowing one week for a response from Dr. Zuttah and receiving none, the Administrative Law Judge granted the petition and reconvened the Committee for final deliberations.

## **DISCUSSION**

The Committee reconvened to deliberate by telephone conference on December 30, 2002. The issues before the Committee were: whether the Respondent had violated the October 25<sup>th</sup> 2002, Order, and a reconsideration of the Committee's June 20, 2002 Determination and Order, as prescribed by the ARB.



The Committee finds that Respondent willfully and flagrantly violated its October 25, 2002 Order, having neither contacted Carl Malin or anyone else to arrange the evaluation at Rush nor submitted himself for the evaluation. The Respondent had received several communications inviting compliance, including the discussion with the Committee during the Section 230(7) Hearing, the follow-up letter from Committee Chair Menotti, the Order and accompanying correspondence from Attorney Mulvey, and a later letter dated November 5, 2002 from Attorney Mulvey encouraging his compliance with the Committee's Order. (ALJ Exhibit 9) Despite this, Respondent defied the Committee and the entire medical oversight process established under the law. This failure to comply with the lawful Order of the Committee is, in and of itself, professional misconduct.

The ARB had intended that the Committee employ the results of the Respondent's comprehensive evaluation in re-assessing the evidence before it, notably on the issue of Respondent's credibility. The ARB also stated that the evaluation "could also result in a change in the sanction that the Committee could impose ..." (Exhibit 2 pg.6)

Respondent's lack of cooperation in the entire process, therefore, is most unfortunate. However, that lack of cooperation is, itself, evidence against Respondent. Without the results of the comprehensive evaluation, the Committee cannot say whether Respondent in fact suffers from a mental or physical impairment, although the Committee did determine, after the Section 230(7) hearing, that there was reason to believe that Dr. Zuttah is impaired. Dr. Zuttah's failure to submit to the evaluation as ordered, prevents the Committee, and the process, from benefiting from the evidence that the evaluation would provide.

Respondent may not, however, benefit from his violation of the Order, to the detriment of the people of this state. The Committee, following the ARB's direction, reconsiders its June 20, 2002 Determination and Order in light of the new evidence before it resulting from the Section 230(7) process.

### **RECONSIDERATION**

The Committee has reconsidered its findings of June 20, 2002, and has determined that Respondent's testimony was not "straightforward and credible", as it had seemed at the time, but rather was designed to evade responsibility for his actions. The Committee further finds that Respondent knowingly misrepresented and concealed the facts in order to mislead when he responded as he did to the questions on the employment applications and the State registration forms. The Committee now rejects, as not credible, Respondent's explanations for the answers he gave. Respondent's careful parsing, hair-splitting, and confusion now appear feigned. Respondent's lack of honesty and candor now seem stark, in light of his subsequent behavior.

The unfortunate but inescapable conclusion the Committee draws from the evidence in this case is that Respondent does not recognize and will not submit to any authority higher than he himself, regarding the practice of medicine. This manifest attitude constitutes moral unfitness. His egregious conduct in flagrantly ignoring the professional oversight system in the Public Health Law, and prescribed by the ARB in the instant case, demands the most serious and considered response.

The Committee votes unanimously as follows:

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

#### **PENALTY**

Respondent's deliberate and willful disregard of the Committee's October 23<sup>rd</sup>, 2002, Order to undergo a mental evaluation, issued pursuant to the ARB's Determination and Order, and after the Section 230 (7) hearing that the ARB instructed be held, is grounds for revocation. In addition, though, the evaluation was Respondent's opportunity to demonstrate his cooperation with and acknowledgement of the Department of Health's legitimate oversight of the practice of medicine, in the public interest. However, his actions make it clear that Respondent recognizes no legitimate authority over the exercise of his medical privileges.

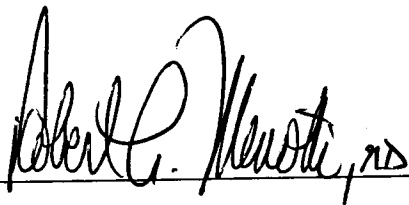
In its Determination and Order of June 20, 2002, this Committee essentially gave Respondent the benefit of the doubt when it determined that he did not intend to deceive when he answered incorrectly certain factual questions about his prior medical practice. The Committee, at that time, did not believe that the Respondent's behavior constituted a pattern of misconduct or rose to the level of moral unfitness such as to require the penalty of revocation. When Respondent's prior conduct is viewed in light of his behavior during the Section 230(7) process and his ignoring the Order, the Committee now unanimously determines that Respondent's conduct clearly evidences moral unfitness and that Respondent's license to practice medicine in the State of New York should be revoked.

#### **ORDER**

Based upon the foregoing, it is hereby **ORDERED THAT:**

1. Respondent's license to practice medicine in the State of New York is **REVOKED;**
2. This **ORDER** shall be effective immediately upon service upon Respondent.

Dated: 1-10-03  
Clinton, NY



---

**Robert A. Menotti, M.D.**  
**Chair**

**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 18<sup>th</sup> 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  
1  
1/12/02

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

-----X

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