



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

June 12, 2003

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. 02-211R) of the Professional Medical Conduct Administrative Review Board in the above referenced matter. This Determination and Order shall be deemed effective upon receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

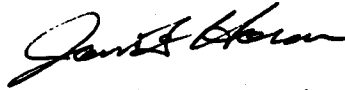
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified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

Office of Professional Medical Conduct
New York State Department of Health
Hedley Park Place
433 River Street-Fourth Floor
Troy, New York 12180

If your license or registration certificate is lost, misplaced or its whereabouts is otherwise unknown, you shall submit an affidavit to that effect. If subsequently you locate the requested items, they must then be delivered to the Office of Professional Medical Conduct in the manner noted above.

This exhausts all administrative remedies in this matter [PHL §230-c(5)].

Sincerely,

A handwritten signature in black ink, appearing to read "James F. Horan".

James F. Horan, Acting Director
Bureau of Adjudication

JFH: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. 02-211R

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 and a remand for further proceedings, a BPMC Committee rendered Initial and Supplemental Determinations that found the Respondent committed professional misconduct. In the Supplemental Determination, the Committee voted to revoke's the Respondent's New York Medical License (License). In this proceeding pursuant to N.Y. Pub. Health Law § 230-c(4)(a)(McKinney Supp. 2003), the parties request that the ARB annul or modify that penalty. After considering the parties' briefs, the hearing record and the record on remand, the ARB modifies the Committee's Determination to hold the Respondent practiced fraudulently, willfully filed a false report and engaged in conduct that evidenced moral unfitness by submitting false applications to two hospitals. We sustain the Committee's Supplemental Determination to revoke the Respondent's License, but we modify the reasoning for the revocation.

The Proceeding To This Point

The Petitioner charged 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 Determinations 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 showed no physical or mental impairment and after the Respondent served two years actual suspension. The Committee rendered their Initial Determination on June 26, 2002.

On July 8, 2002, the Petitioner requested Administrative Review. The Petitioner requested that the ARB overrule the Committee and find that the evidence supported a conclusion that the Respondent made knowing and intentional misrepresentations on all three

Applications. The Petitioner requested that the ARB sustain fraud and moral unfitness charges and additional false filing charges concerning the Applications. The Petitioner also asked that the ARB overturn the Committee and revoke the Respondent's License. In the alternative, the Petitioner asked that if the ARB chose against revocation, that the ARB correct the legally unauthorized penalty that the Committee voted in this case.

The Respondent also challenged the Committee's Determination by alleging error by the Committee's Administrative Officer in admitting certain evidence and misconduct by the Petitioner's attorney. The Respondent also alleged racial discrimination against him by Beth Israel. The Respondent requested exoneration from the ARB and he requested that the ARB revoke the license of the Petitioner's attorney.

After considering the record and the parties' briefs, the ARB remanded the matter to the Committee for further proceedings. We held that the Committee imposed a penalty a.) without legal authorization under Pub. Health Law § 230-a, b.) without allowing for the full Evaluation process under Pub. Health Law § 230(7) and c.) without a full record for making a penalty determination. We also noted that Administrative Review by the ARB could address the Committee's Determination alone, as we lack any authority to take action against the Petitioner's counsel's license to practice law.

In the Initial Review, we found that 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. The Petitioner's counsel pointed out in her initial brief that 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". On the Initial Review in this case, the ARB held that the Committee ordered the Respondent's suspension for an "unknowable" time period, until the Respondent suffers no impairment. The ARB held the suspension equally indefinite, because the Committee specified no procedure to judge how the Respondent could demonstrate that he no longer suffered an impairment.

The ARB found that 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 should have designated an Evaluation physician pursuant to the statute, allowed the Respondent the opportunity to obtain a

separate Evaluation and then made the Determination whether the Respondent suffers any impairment and what action to take concerning the impairment.

We also concluded that the Committee 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 have caused the Committee to question their earlier judgement on the Respondent's credibility. The results from the Evaluation could also have resulted in a change in the sanction that the Committee could impose in this case, if the Committee determined that the Respondent suffered from any impairment.

The ARB remanded this matter to the Committee to complete the Evaluation process under § 230(7) and to then render a final Determination. We gave either party the opportunity to request review over that Supplemental Determination under Pub. Health Law § 230-c. In making the remand, the ARB made no judgement on what penalty the Committee should impose. We limited our review to only those issues that we discussed in our Remand Order.

The Case On Remand

The Committee rendered a Supplemental Determination on January 10, 2003. The Supplemental Determination showed that the Committee held a hearing on remand in October 2002. The Respondent failed to attend the hearing in person, but participated by conference call, until the Committee found the Respondent belligerent and disruptive. The Committee then terminated the call and offered the Respondent the opportunity to present evidence and argument in writing. The Petitioner placed in evidence material about the Rush Behavioral Health assessment program in Chicago, Illinois. The Respondent eventually submitted an October 19,

2002 letter stating that he would have no objection to an examination, if there were grounds for it. On October 23, 2002, the Committee ordered the Respondent to submit to an examination at Rush no later than December 9, 2002. Three weeks later the Respondent submitted a letter objecting to undergoing an examination in a facility outside New York State. The Committee convened in December 2002, after Rush indicated that the Respondent failed to contact Rush to schedule the ordered examination. The Committee then proceeded to conduct deliberations and render their Supplemental Determination.

In their Supplemental Determination, the Committee found that the Respondent violated the Committee's October 2002 Order to undergo the examination at Rush. The Committee found the violation willful and flagrant and found that the violation alone constituted professional misconduct. The Committee then reconsidered their ruling in the Initial Determination that the Respondent testified credibly at the hearing. Upon reconsideration, the Committee rejected the Respondent's explanations for his answers. The Committee found instead that the Respondent misrepresented and concealed information on the Applications in order to mislead. The Committee repeated so much of their initial Determination that found the Respondent willfully filed a false application with Beth Israel. The Committee reversed their earlier conclusion and held that the Respondent committed fraud in filing the Beth Israel Application. The Committee also found the Respondent guilty for engaging in conduct that evidenced moral unfitness. The Committee stated that the Respondent refuses to recognize or submit to a higher authority than himself regarding medical practice. The Committee concluded that the Respondent committed egregious conduct in flagrantly ignoring the professional oversight system and the Committee concluded that the conduct demanded the most serious and considered response. The Committee voted to revoke the Respondent's License.

The Respondent then requested Administrative Review on the Committee's Supplemental Determination. As a brief, the Respondent submitted the post-hearing brief from the original

hearing. That brief alleged that the Respondent failed to receive his due process right to cross-examination. The brief argued further that the Respondent made no false answer on the Woodhull Application, that the Petitioner acted in bad faith in charging a false answer on the State Education Department Application and that the Petitioner failed to prove the charge alleging a false application to Beth Israel.

The Petitioner asked that the ARB affirm the Committee's Determination that the Respondent engaged in fraudulent conduct and willfully filed a false report in the Beth Israel Application and that the Respondent engaged in conduct that evidenced moral unfitness. The Petitioner asked in addition that the ARB overrule the Committee and hold that the Respondent engaged in fraud and willfully filed a false report in the Woodhull Application. As for penalty, the Petitioner asked the ARB to affirm the Committee's Determination to revoke the Respondent's License.

Final Review Determination

After reviewing the entire record, we reject the Respondent's procedural challenge to the initial hearing. We also clarify some confusion we note between the Factual Allegations and the misconduct specifications in the Statement of Charges. We affirm the Committee's Determination that the Respondent practiced fraudulently and willfully filed a false report in filing the Beth Israel Application. We overturn the Committee and we sustain the charges that the Respondent practiced fraudulently and willfully filed a false report in filing the Woodhull Applications. We affirm the Committee's Determination that the Respondent engaged in conduct that evidenced moral unfitness, but we modify the reasoning for sustaining that charge. We affirm the Committee's Determination to revoke the Respondent's License, but we modify the reasoning for the revocation.

Procedural Issue: The Respondent argued that the hearing process denied him due process because he failed to receive the opportunity for cross-examination. Under N.Y. Pub. Health Law § 230-c(4)(c), the ARB holds the authority to remand a matter to the Committee for further proceedings. We considered the Respondent's procedural challenge as a request for a remand. We find no reason to make a further remand in this matter. The Petitioner called one witness at the hearing, Antoine Silva, Esq., and the Respondent's hearing counsel received the opportunity to cross-examine Mr. Silva [Hearing Transcript pages 45-82]. The Respondent's brief argued that the Petitioner's reliance on hearsay documents denied the Respondent a chance to confront the Respondent's accusers. The Respondent's brief concedes, however, that the Respondent could have requested a subpoena for any witness the Respondent wished to confront [Respondent's Brief page 11]. The Respondent failed to call such witnesses.

Clarifying The Charges: Before we move to discussing the proof on the charges, the ARB will discuss some confusion we encountered with the Petitioner's Statement of Charges [Petitioner's Hearing Exhibit 1]. The Statement of Charges in a BPMC Proceeding contains two sections: a.) Factual Allegations that set out the facts the Petitioner intends to prove and b.) Specifications of Misconduct that specify the sections from the Educ. Law that the alleged factual conduct supposedly violated. Each Specification lists the Educ. Law provision at issue and the paragraphs from the Factual Allegations that relate to the Specification. In this case,

- Factual Allegation 1 and 1.a relate to the Woodhull Application,
- Factual Allegation 2 and 2.a relate to the Education Department Application, and,
- Factual Allegation 3 and 3.a relate to the Beth Israel Allegation.

The Specifications of Charges, however, make no reference to Paragraphs 1, 1.a, 2, 2.a, 3, and 3.a, but refer instead to Paragraphs A, A.1, B, B.1, C and C.1.

The Respondent made no objection to the Statement of Charges coming into evidence [February 19, 2002 Pre-Hearing Conference, page 6] and the Respondent's Brief contains no complaint about the inconsistencies in the Statement of Charges. The Respondent has, therefore, waived any objection that the Statement of Charges failed to provide adequate notice about the charges.

The ARB interpreted the Misconduct Specification references to Paragraph A and A.1 to actually mean Paragraph 1 and 1.A, concerning the Woodhull Application. We interpreted the Misconduct Specification references to B and B.1 to actually mean Paragraphs 2 and 2.a, concerning the State Education Department Application. We interpreted the Misconduct Specification references to Paragraphs C and C.1 to actually mean 3 and 3.a, concerning the Beth Israel Application. We conclude that the Committee interpreted the Statement of Charges in the same way. The Committee's Original Determination, at the 21st unnumbered page, states that the Committee sustained only the Misconduct Specification alleging willfully filing a false report, arising from the Factual Allegations C and C.1. Under our interpretation, that would mean allegations 3 and 3.a, concerning the Beth Israel Application. On the previous page in the Committee's Original Determination, the Committee stated specifically that they found that the Respondent filed a false report in submitting the Beth Israel Application.

Proof On The Charges: 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. 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 Applications and that the Respondent denied the Woodhull termination in the Education Department Application and the Beth Israel Application.

In their Original Determination, the Committee concluded that the Respondent's conduct amounted to only willfully filing a false report for the Beth Israel Application. The Committee concluded that the Respondent knowingly falsified the Application. The Committee rejected the charges that the knowing falsification constituted fraud or evidenced moral unfitness. The Committee's Initial Determination found no misconduct arising from the false answers on the Education Department and the Woodhull Applications. As relevant on this review, the Committee dismissed the Woodhull charges in reliance on the Respondent's explanation for his false answer on the Application. The Committee found the Respondent's testimony candid, forthright and direct.

At the same time as the Committee relied on the Respondent's testimony in dismissing charges, the Committee also found the Respondent's testimony disturbing and puzzling, found the Respondent's behavior overwrought and observed the Respondent losing self-control on several occasions. The Respondent's hearing conduct resulted in the Committee's Determination to send the Respondent for an Evaluation and in the ARB Remand Order. The Respondent's refusal to participate in the Evaluation resulted in the Committee's change in their conclusions about the Respondent's intent to deceive, in the Committee's Determination to sustain the fraud charge concerning the Beth Israel Application and in the finding that the Respondent engaged in conduct that evidenced moral unfitness.

The ARB holds that the Respondent's refusal to comply with the Committee's Evaluation Order closes the factual record in the hearing. We will make no further remand to give the Respondent a further opportunity. We noted, in our Initial Determination remanding this matter, that the Respondent's conduct at the hearing provided the Committee sufficient grounds for ordering an Evaluation. The refusal brings us back to the Committee's Initial Determination, without any evidence that that the Respondent's false answers on the Applications may have resulted from impairment or confusion.

We affirm the Committee's Determination that the Respondent practiced fraudulently and willfully filed a false report in submitting the Beth Israel Application. We overturn the Committee and hold that the Respondent practiced fraudulently and willfully filed a false report in submitting the Woodhull Application. The Committee's Findings of Fact demonstrate that the Respondent made false answers on those two Applications. We infer from the record that the Respondent made the answers willfully and with the intent to deceive. The Committee initially found the Respondent's explanations credible, but we have noted above that the Committee's comments on the Respondent's mental state at the hearing call into doubt the Committee's judgement on the Respondent's credibility and lead us to give no deference to the Committee's earlier judgement. We also conclude that the false Applications evidenced moral unfitness in medical practice. The Committee's Supplementary Determination indicated that the Committee had sustained a moral unfitness charge, but the Committee seemed to have based that finding in part on the Respondent's failure to cooperate in the Evaluation. The Statement of Charges contained no charge alleging failure to comply with the Evaluation Order. We modify the Committee's Determination to make clear that the Respondent evidenced moral unfitness in submitting the Woodhull and Beth Israel Applications.

Penalty: In their Supplementary Determination, the Committee voted to revoke the Respondent's License, but the Committee seemed to base that Determination in large part on the Respondent's refusal to comply with the Evaluation Order. We modify the Committee's Determination in that we reject using the refusal to comply as a grounds for penalty, because the Statement of Charges contained no allegation concerning refusing to comply with the Evaluation. We conclude that the Respondent's deliberate false answers on the Woodhull and Beth Israel Applications betrayed the public trust in the medical profession and demonstrated the Respondent's unfitness to continue to hold a medical license in New York State.

ORDER

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

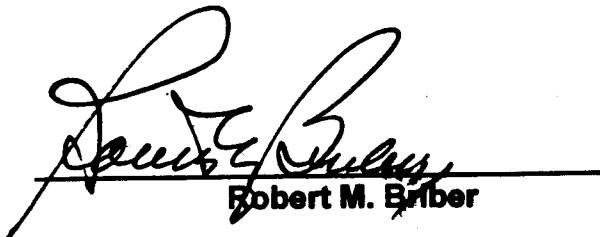
1. The ARB affirms the Committee's Determination that the Respondent practiced fraudulently, willfully filed false reports and engaged in conduct that evidenced moral unfitness, but we modify the Committee's reasoning for sustaining the charges and we sustain additional charges, as we have noted in the Determination.
2. We affirm the Committee's Supplemental Determination to revoke the Respondent's License, but we substitute our own reasoning for the revocation.

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: May 29, 2003



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: June 3, 2003

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

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: 05/29, 2003

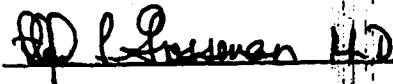
A handwritten signature in black ink, appearing to read "Winston S. Price", written over a horizontal line.

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: May 28, 2003

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Stanley L Grossman, M.D.

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: May 27, 2003

A handwritten signature in cursive script that reads "Therese G. Lynch, M.D." with a horizontal line underneath the signature.

Therese G. Lynch, M.D.