



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.  
*Commissioner*

Dennis P. Whalen  
*Executive Deputy Commissioner*

November 30, 1999

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Michael A. Solomon, M.D.  
P. O. Box 638  
Millwood, New York 10546

Michael A. Solomon, M.D.  
Suite 1B  
501 Brighton Beach Avenue  
Brooklyn, New York 11235

Paul Robert Maher, Esq.  
NYS Department of Health  
Hedley Park Place  
433 River Street-Fourth Floor  
Troy, New York 12180

**RE: In the Matter of Michael A. Solomon, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 99-221) 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.

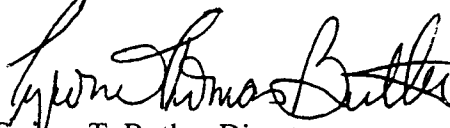
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified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

Enclosure

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

**In the Matter of**

**Michael A. Solomon, MD. (Respondent)**

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

**COPY**

**Administrative Review Board (ARB)**

**Determination and Order No. 99-221**

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

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

**Paul Robert Maher, Esq.**

**For the Respondent:**

**No Submission**

In this proceeding pursuant to N.Y. Pub. Health Law § 230-c (4)(a)(McKinney's Supp. 1999), the ARB considers the penalty to impose against the Respondent's New York Medical License (License) following a Determination that the Respondent submitted false billings to the Medicaid Program. Following a hearing below, a BPMC Committee voted to suspend the Respondent's License for six months and limited his License thereafter to practice in a hospital setting. The Petitioner asks that the ARB overrule that Determination, sustain additional misconduct charges against the Respondent and revoke the Respondent's License. The Respondent made no response to the Petitioner's request. After reviewing the record, we overturn the Committee and vote to revoke the Respondent's License.

### Committee Determination on the Charges

After the New York Legislature disbanded the former Department of Social Services, the Legislature authorized the New York Department of Health to enforce provisions in Title 18 NYCRR pertaining to the Medicaid Program (Chapter 474, Laws of 1996). The record demonstrates that the Medicaid Program determined to exclude the Respondent from the Program for two years and that the Respondent challenged that determination. Following a hearing into charges that the Respondent violated Medicaid Program regulations, Administrative Law Judge John Terepka determined that the Respondent committed unacceptable practices under Title 18 NYCRR Part 518 by 1.) submitting false claims for unfurnished or unnecessary medical services and by 2.) failing to maintain or make available records that disclosed the necessity for medical treatment. The Judge's decision also upheld the two-year exclusion from the Program. The Respondent has filed no court challenge to that decision. Following the decision in the Medicaid Proceeding, information concerning the Respondent went to the Office for Professional Medical Conduct, for a determination whether the unacceptable practices the Respondent committed also constituted professional misconduct under the Education Law.

The Petitioner subsequently began a professional misconduct proceeding, by filing charges with BPMC alleging that the Respondent committed professional misconduct under N.Y. Educ. Law § 6530(9)(c) (McKinney Supp. 1998). That statute defines professional misconduct to include acts that result in a guilty finding, in an adjudicatory proceeding, for violating a state or federal statute or regulation, when those acts would constitute professional misconduct under other specifications in the Education Law. The Petitioner charged further that the Respondent's conduct would constitute professional misconduct under N. Y. Educ. Law §§

6530(2), 6530(16), 6530(21), 6530(32) & 6530(35)(McKinney Supp. 1998), under the following specifications:

- practicing the profession fraudulently,
- willfully or grossly failing to comply with state rules governing medical practice,
- willfully making or filing a false report,
- failing to maintain patient records, and,
- ordering excessive tests or treatments unwarranted by the patient's condition.

An expedited hearing ensued pursuant to N.Y. Pub. Health Law §230(10)(p) (McKinney Supp. 1999), before a BPMC Committee, who rendered the Determination that the ARB now reviews. In such an expedited hearing, the statute limits the Committee to determining the nature and severity for the penalty to impose against the licensee, In the Matter of Wolkoff v. Chassin, 89 N.Y.2d 250 (1996).

The Committee determined that the finding that the Respondent committed unacceptable practices constituted a guilty finding in an adjudicatory proceeding for violating a regulation. The Committee determined that fraud charges played no part in the unacceptable practice findings. The Committee sustained the charge that the Respondent committed professional misconduct. The Committee concluded that the two-year exclusion from participation in the Medicaid Program represented a significant penalty. As a sanction for professional misconduct, the Committee voted to suspend the Respondent's License for six months and to limit his practice to a facility operating under a license pursuant to Public Health Law Article 28.

### **Review History and Issues**

The Committee rendered their Determination on August 31, 1999. This proceeding commenced on September 9, 1999, when the ARB received the Petitioner's Notice requesting a Review. The record for review contained the Committee's Determination, the hearing record and the Petitioner's brief. The Respondent made no submission to the ARB. The record closed when the ARB received the Petitioner's brief on October 12, 1999.

The Respondent asks that the ARB sustain charges that the Respondent's conduct also amounted to professional misconduct, in addition to constituting unacceptable practices. The Petitioner urges the ARB to find the Respondent's conduct amounted to fraud in practice, failing to comply with laws governing medical practice, filing a false report, failing to maintain adequate records and ordering excessive tests or treatments unwarranted by a patient's condition. The Respondent requests further that the ARB overrule the Committee's Determination on penalty and vote to revoke the Respondent's License. The Petitioner argues that the Respondent participated in an ongoing fraudulent scheme, disregarded rules, filed false reports and ordered numerous unnecessary tests. The Petitioner contends that the Respondent refuses to accept responsibility for his actions or to recognize the serious deficiencies in his practice.

### **Determination**

The ARB has reviewed the Committee Determination, the hearing transcript, the decision from the Medicaid Proceeding and the other material in the record. We hold that the Respondent committed professional misconduct under N. Y. Educ. Law § 6530(9)(c)(McKinney Supp. 1999), but we modify the Committee's Determination on the misconduct charges. We overturn

the Committee's Determination as to the sanction to impose for that misconduct and we vote to revoke the Respondent's License.

**Misconduct Charges:** We modify the Determination on the charges, because we hold that the Committee failed to consider all the elements under the misconduct specifications that the Petitioner charged. Under N. Y. Educ. Law § 6530(9)(c)(McKinney Supp. 1999), the Petitioner must satisfy a two tier test to prove professional misconduct. Under the first tier, the Petitioner must show that a prior adjudicatory proceeding found the Respondent guilty for violating a state or federal regulation or statute. Under the second tier, the Petitioner must show that the conduct that resulted in the guilty finding also constituted misconduct under a different specification from the Education Law.

The Committee found that the Medicaid Proceeding that resulted in the unacceptable practice findings constituted an adjudicatory proceeding that found the Respondent guilty for violating state regulations. We agree. The Committee should then have considered whether the conduct that constituted unacceptable practices also amounted to professional misconduct as the Petitioner charged. The Petitioner had alleged that the underlying conduct would also have amounted to practicing medicine fraudulently, filing false reports, ordering tests or treatments unwarranted by a patient's conditions, failing to maintain adequate records and willfully violating a statute or regulation pertaining to medical practice. The Committee considered only whether the underlying conduct amounted to fraud.

The Committee determined that fraud "was not an issue" in the Medicaid Proceeding. We agree and we reject the Petitioner's request that we hold that the Respondent's conduct constituted practicing fraudulently. The Administrative Law Judge's decision in the Medicaid Proceeding stated specifically that the Medicaid charges against the Respondent excluded any charges involving fraud [Petitioner's Exhibit 5, page 16].

Upon reviewing the record in this proceeding, the ARB holds that the Administrative Law Judge's Report from the Medicaid Proceeding provides sufficient grounds on which to establish that the Respondent's conduct constituted professional misconduct under the specifications other than fraud. The Report concluded that the Respondent:

1. failed to document a patient history or examination in certain charts,
2. failed to document a medical basis and specific need for medication the Respondent prescribed,
3. failed to document chief complaints, patients' progress or treatment plans,
4. overbilled for services,
5. failed to produce a record documenting that he saw a patient on a date for which the Respondent presented a claim,
6. ordered laboratory tests for patients without documenting a medical basis or specific need for doing so,
7. ordered durable medical equipment for patients without disclosing the orders in medical charts or without documenting a medical basis for the order, and,
8. ordered ambulette services without documenting the need for the service or in some cases even documenting the order in the medical charts.

The Administrative Law Judge described the Respondent's conduct as serious and flagrant abuses.

The ARB concludes that the numerous findings relating to medical records demonstrate that the Respondent failed to maintain records that reflected accurately patient treatment, a violation under N. Y. Educ. Law § 6530(32)(McKinney Supp. 1999). We conclude that the findings concerning overbillings and tests without documented need demonstrated that the Respondent willfully filed false reports, a violation under N. Y. Educ. Law § 6530(21) (McKinney Supp. 1999). We conclude that the findings the Respondent ordered tests without



documentation demonstrated that the Respondent ordered tests or treatments unwarranted by the patients' needs, a violation under N. Y. Educ. Law § 6530(35)(McKinney Supp. 1999). We conclude that the extensive and repeated violations under the Medicaid Program Regulations demonstrated willful or grossly negligent conduct on the Respondent's part. We conclude that such conduct amounted to willful or grossly negligent failure to comply with substantive provisions of state rules governing medical practice, a violation under N. Y. Educ. Law §6530(16) (McKinney Supp. 1999).

**Penalty:** The Respondent submitted excessive billings, he subjected patients to procedures without medical indication or to excessive procedures and he prescribed the patients medication without medical need. The ARB concludes that the Respondent committed these violations for his own enrichment. Neither the Committee nor the Administrative Law Judge in the Medicaid Proceeding found any mitigating conduct in the record. We hold that the Respondent's conduct violated the trust in the medical profession and violated the specific trust that the patients in these cases placed in the Respondent. We conclude that the Respondent's conduct proves his unfitness to practice medicine in New York State. We vote to overturn the Committee and to revoke the Respondent's License.

**ORDER**

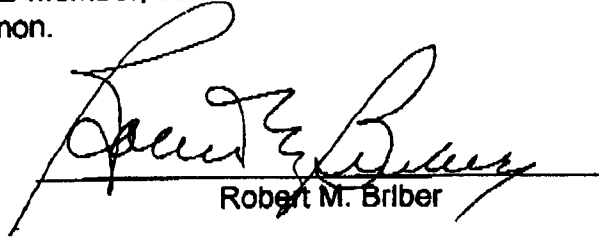
NOW, with this Determination as our basis, the ARB renders the following **ORDER**:

1. The ARB **AFFIRMS** the Committee's Determination that the Respondent committed professional misconduct.
  
2. The ARB the **OVERTURNS** the Committee's Determination to suspend and limit the Respondent's License.
  
3. The ARB **REVOKES** the Respondent's License to practice medicine in New York State.

**Robert M. Briber  
Sumner Shapiro  
Winston S. Price, M.D.  
Stanley L. Grossman, M.D.  
Therese G. Lynch, M.D.**

**In the Matter of Michael A. Solomon, M.D.**

Robert M. Briber, an ARB Member, concurs in the Determination and  
Order in the Matter of Dr. Solomon.  
Dated November 29, 1999



Robert M. Briber

**In the Matter of Michael A. Solomon, M.D.**

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

Dated: November 5, 1999

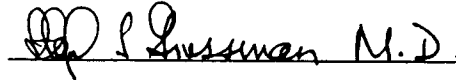
Therese G. Lynch M.D.

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

**In the Matter of Michael A. Solomon, M.D.**

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

Dated: November 12, 1999

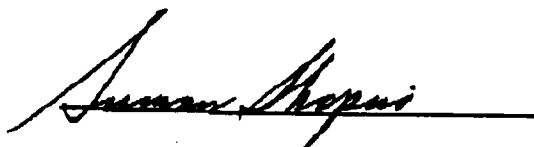
 M.D.

Stanley L Grossman, M.D.

In the Matter of Michael A. Solomon, M.D.

Sumner Shapiro, an ARB Member concurs in the Determination and Order in the Matter of Dr. Solomon.

Dated: November 8, 1999

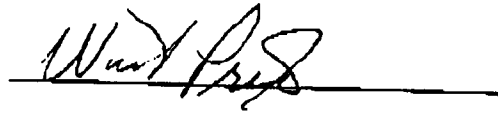
A handwritten signature in cursive script, reading "Sumner Shapiro", is written over a solid horizontal line.

Sumner Shapiro

**In the Matter of Michael A. Solomon, M.D.**

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

Dated: 11/6, 1999

A handwritten signature in cursive script, appearing to read "Winston Price", is written over a solid horizontal line.

Winston S. Price, M.D.