



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

August 31, 1999

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr. Robert Bogan, Esq.
New York State Department of Health
Corning Tower – Room 2503
Empire State Plaza
Albany, New York 12237-0032

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

Mr. Paul Maher, Esq.
New York State Department of Health
Corning Tower – Room 2503
Empire State Plaza
Albany, New York 12237-0032

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

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

Dear Parties:

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

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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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.

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 Determination and Order.

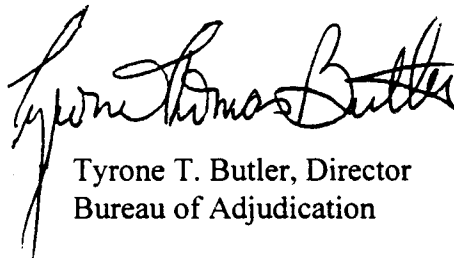
The notice of review served on the Administrative Review Board should be forwarded to:

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:mla
Enclosure

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

DETERMINATION

AND

ORDER

ORDER #99-221

IN THE MATTER

OF

MICHAEL A. SOLOMON, M.D.

COPY

A Notice of Referral Proceedings and Statement of Charges, both dated June 23, 1999, were served upon the Respondent, **MICHAEL A. SOLOMON, M.D.**

DAVID T. LYON, M.D., Chairperson, **HRUSIKESH PARIDA, M.D.** and **KAREN WOLF, R.P.A.**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to Section 230(10)(e) of the Public Health Law. **MICHAEL P. MCDERMOTT, ESQ.**, Administrative Law Judge, served as the Administrative Officer.

A hearing was held on August 19, 1999, at the Offices of the New York State Department of Health, Hedley Park Place, 433 River Street, Troy, New York. The Department appeared by **HENRY M GREENBERG, ESQ.**, General Counsel, by **ROBERT BOGAN, ESQ.**, and **PAUL R. MAHER, ESQ.**, of Counsel. The Respondent appeared in person on his own behalf.

Evidence was received and transcripts of these proceedings were made.

After consideration of the entire record, the Hearing Committee issues this Determination and Order.

STATEMENT OF CASE

This case was brought pursuant to Public Health Law Section 230(10)(p). The statute provides for an expedited hearing where a licensee is charged solely with a violation of Education Law Section 6530(9). In such a case, a licensee is charged with misconduct based upon a prior criminal conviction in New York or another jurisdiction, or upon a prior administrative adjudication regarding conduct which would amount to professional misconduct, if committed in New York. The scope of an expedited hearing is limited to a determination of the nature and severity of the penalty to be imposed upon the licensee.

In the instant case, the Respondent is charged with professional misconduct pursuant to Education Law Section 6530(9)(c). A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order as Appendix 1.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers in parenthesis refer to transcript page numbers or exhibits. These citations represent evidence found persuasive by the Hearing Committee in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence. All Hearing Committee findings were unanimous unless otherwise stated.

1. **MICHAEL A. SOLOMON, M.D.**, the Respondent, was authorized to practice medicine in New York State on October 10, 1974 by the issuance of license number 166131 by the New York State Education Department (Pet's. Ex. 4).

2. On January 22, 1997, the Respondent was found guilty after an adjudicatory proceeding by the New York State Department of Social Services (hereinafter "DSS"), of committing unacceptable practices as defined in 18 NYCRR §518.2(b)(1) ("False Claims"), and 18 NYCRR §518.3 ("Failure to document medical basis and need for services ordered").

DSS found that the Respondent submitted false claims, and failed to maintain records that fully disclosed the necessity for, and the nature and extent of, services that he ordered; he did not comply with 18 NYCRR §540.7(a) which requires physicians to maintain complete, legible records in English for each patient treated; he ordered hundreds of services, including prescription medications, laboratory blood tests, durable medical equipment and ambulance services, without documenting a medical basis and specific need; and he over billed for services he did not provide (Pet's. Ex. 5).

3. Based upon the DSS finding that the Respondent engaged in unacceptable practice, and pursuant to 18 NYCRR §515.3(a), DSS excluded the Respondent from the Medicaid program for a two year period. No appeal is pending (Pet's. Ex. 5).

HEARING COMMITTEE CONCLUSIONS

The Hearing Committee concludes that the conduct which resulted in the DSS disciplinary action against the Respondent constitutes misconduct under the laws of New York State.

VOTE OF THE HEARING COMMITTEE

SPECIFICATION

The Respondent is guilty of violating New York Education Law §6530(9)(c) by reason of having been found guilty in an adjudicatory proceeding of violating a state or federal statute or regulation, pursuant to a final decision or determination, and when no appeal is pending, or after resolution of the proceeding by stipulation or agreement, and when the violation would constitute professional misconduct pursuant to this section.

VOTE: SUSTAINED (3-0)

HEARING COMMITTEE DETERMINATION

In the Decision After Hearing, #95-T01-7818, dated January 17, 1999, (Pet's. Ex. 5, p. 16), the Administrative Law Judge reports:

"The Appellant argued that because the Department did not prove he intentionally filed false claims, fraud has not been shown. (Transcript, pages 78-81.) The Department did not charge and does not need to prove fraud. The Department has

charged that the Appellant violated Department regulations and engaged in specifically enumerated unacceptable practices."

The Hearing Committee determines that although fraud was not an issue in the DSS case, the report does raise some medical practice issues which must be considered in determining penalty.

Given the nature of the Respondent's medical practice, his exclusion from the Medicaid Program for a period of two years was a significant penalty.

The Hearing Committee determines that an appropriate penalty in this instant case would be a **SIX MONTH ACTUAL SUSPENSION** of the Respondent's license to practice medicine. Thereafter, the Respondent's license to practice medicine should be **LIMITED**. He should be prohibited from engaging in the independent, unsupervised, private practice of medicine. His medical practice should be restricted to employment in an Article 28 Institution where his practice can be supervised as part of the ongoing quality program of the institution.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Respondent's license to practice medicine in New York State is hereby **SUSPENDED** for a period of six (6) months.

2. After the six (6) months **SUSPENSION** period, the Respondent's license to practice medicine in New York State is hereby **LIMITED** as follows:
 - a. The Respondent is prohibited from engaging in the independent, unsupervised, private practice of medicine.
 - b. The Respondent's medical practice shall be restricted to employment in an Article 28 Institution where his practice can be supervised as part of the ongoing quality program of the institution.
3. This Order shall be effective upon service on the Respondent or the Respondent's attorney by personal service or by certified or registered mail.

DATED: **SCHENECTADY, NEW YORK**

8/25/99



DAVID T. LYON, M.D.
Chairperson

HRUSIKESH PARIDA, M.D.
KAREN WOLF, R.P.A.

APPENDIX ONE

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

-----X

IN THE MATTER : STATEMENT
OF : OF
MICHAEL A. SOLOMON, M.D. : CHARGES

-----X

MICHAEL A. SOLOMON, M.D., the Respondent, was authorized to practice medicine in New York State on October 10, 1974 by the issuance of license number 122161 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about January 22, 1997, the Respondent was found guilty by the New York State Department of Social Services (hereinafter "DSS"), after an adjudicatory proceeding, of committing unacceptable practices as defined in 18 NYCRR §515.2(b)(1) ("False Claims"), and 18 NYCRR §518.3 ("Failure to document medical basis and need for services ordered). DSS found that Respondent submitted false claims, and failed to maintain records that fully disclosed the necessity for, and the nature and extent of, services that Respondent ordered; did not comply with 18 NYCRR §540.7(a) which requires physicians to maintain complete, legible records in English for each patient treated; ordered hundreds of services, including prescription medications, laboratory blood tests, durable medical equipment and ambulance

services, without documenting a medical basis and specific need; and over billed for services he did not provide.

B. Based upon the DSS finding that Respondent engaged in unacceptable practice, and pursuant to 18 NYCRR §515.3(a), DSS excluded the Respondent from the Medicaid program for a two year period. No appeal is pending.

C. The conduct resulting in the DSS disciplinary action against Respondent constitutes misconduct under the laws of New York State, pursuant to the following sections of New York State Law:

1. New York Education Law §6530(2) (practicing the profession fraudulently);

2. New York Education Law §6530(16) (willful or grossly negligent failure to comply with substantive provisions of federal, state or local rules governing the practice of medicine);

3. New York Education Law §6530(21) (willfully making or filing a false report);

4. New York Education Law §6530(32) (failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient); and/or


5. New York Education Law §6530(35) (ordering excessive tests or treatment not warranted by the condition of the patient).

SPECIFICATIONS

Respondent is guilty of violating New York Education Law §6530(9)(c) by reason of having been found guilty in an adjudicatory proceeding of violating a state or federal statute or regulation, pursuant to a final decision or determination, and when no appeal is pending, or after resolution of the proceeding by stipulation or agreement, and when the violation would constitute professional misconduct pursuant to this section in that Petitioner charges the following:

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

DATED: *June 23*, 1999
Albany, New York


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