



***New York State Board for Professional Medical Conduct***

*433 River Street, Suite 303 • Troy, New York 12180-2299 • (518) 402-0863*

Antonia C. Novello, M.D., M.P.H.  
*Commissioner*  
*NYS Department of Health*  
Dennis P. Whalen  
*Executive Deputy Commissioner*  
*NYS Department of Health*  
Anne F. Saile, Director  
*Office of Professional Medical Conduct*

William P. Dillon, M.D.  
*Chair*

Denise M. Bolan, R.P.A.  
*Vice Chair*

Ansel R. Marks, M.D., J.D.  
*Executive Secretary*

May 16, 2000

***CERTIFIED MAIL-RETURN RECEIPT REQUESTED***

Andre Duhamel, M.D.  
88-37 186th Street  
Jamaica, NY 11423

RE: License No. 192191

Dear Dr. Duhamel:

Enclosed please find Order #BPMC 00-151 of the New York State Board for Professional Medical Conduct. This Order and any penalty provided therein goes into effect **May 16, 2000.**

If the penalty imposed by the Order is a surrender, revocation or suspension of this license, you are required to deliver to the Board the license and registration within five (5) days of receipt of the Order to Board for Professional Medical Conduct, New York State Department of Health, Hedley Park Place, Suite 303, 433 River Street, Troy, New York 12180.

Sincerely,

Ansel R. Marks, M.D., J.D.  
Executive Secretary  
Board for Professional Medical Conduct

Enclosure

cc: Robert DelGrosso, Esq.  
114 Old Country Road, Suite 616  
Mineola, NY 11501

Roy Nemerson, Esq.

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

**IN THE MATTER  
OF  
ANDRE DUHAMEL, M.D.**

**STIPULATION  
AND  
ORDER**

BPMC #00-151

STATE OF NEW YORK )  
COUNTY OF NEW YORK ) ss.:

ANDRE DUHAMEL, M.D., (Respondent) being duly sworn, deposes and says:

That on or about May 12, 1993, I was licensed to practice as a physician in the State of New York, having been issued License No. 192191 by the New York State Education Department.

My current address is 88-<sup>37</sup>~~27~~ 186<sup>th</sup> Street, Jamaica, NY 11423, and I will advise the Director of the Office of Professional Medical Conduct of any change of my address.

I stipulate that the New York State Board for Professional Medical Conduct has charged me with two specifications of professional misconduct, and that after hearing a Hearing Committee has sustained those specifications, and has imposed sanctions, all as more fully set forth in Determination and Orders Number BPMC 00-40; ARB 99-21; BPMC 99-21, annexed hereto, made a part hereof, and marked as Exhibit "A". I further stipulate that Petitioner Department of Health (Petitioner) has filed a Notice of Appeal with the Administrative Review Board of the State Board for Professional Medical Conduct (ARB), seeking further review of the sanction imposed by the Hearing Committee.

In consideration of withdrawal by Petitioner of the pending Appeal to the ARB, I stipulate to modification of the sanction imposed by the Determination and Order of the Hearing Committee, which order shall in all other respects remain in effect, as follows:

- My license to practice medicine in the State of New York shall be suspended for a period of two years, with said suspension to be entirely stayed. I shall be subject to terms of probation as set forth in Exhibit "B," attached, for a three year period, effective immediately.

I further agree that the Order for which I hereby apply shall impose the following conditions:

That, except during periods of actual suspension, Respondent shall maintain current registration of Respondent's license with the New York State Education Department Division of Professional Licensing Services, and pay all registration fees. This condition shall be in effect beginning thirty days after the effective date of the Consent Order and will continue while the licensee possesses his/her license; and

That Respondent shall fully cooperate in every respect with the Office of Professional Medical Conduct (OPMC) in its administration and enforcement of this Order and in its investigation of all matters regarding Respondent.

Respondent shall respond in a timely manner to each and every request by OPMC to provide written periodic verification of Respondent's compliance with the terms of this Order. Respondent shall meet with a person designated by the Director of OPMC as directed. Respondent shall respond promptly and provide any and all documents and information

within Respondent's control upon the direction of OPMC. This condition shall be in effect beginning upon the effective date of the Consent Order and will continue while the licensee possesses his/her license.

I hereby stipulate that any failure by me to comply with such conditions shall constitute misconduct as defined by New York State Education Law §6530(29).

I agree that in the event I am charged with professional misconduct in the future, this agreement and order shall be admitted into evidence in that proceeding.

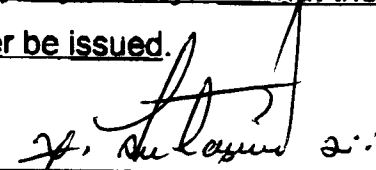
I hereby make this Application to the State Board for Professional Medical Conduct (the Board) and request that it be granted.

I understand that, in the event that this Application is not granted by the Board, nothing contained herein shall be binding upon me or construed to be an admission of any act of misconduct alleged or charged against me, such Application shall not be used against me in any way and shall be kept in strict confidence during the pendency of the professional misconduct disciplinary proceeding; and such denial by the Board shall be made without prejudice to the continuance of any disciplinary proceeding and the final determination by the Board pursuant to the provisions of the Public Health Law.

I agree that, in the event the Board grants my Application, as set forth herein, an order of the Chairperson of the Board shall be issued in accordance with same, incorporating Determination and Order Number BPMC xxxxx and Modifying it as set forth herein. I agree that such order shall be effective upon issuance by the Board, which may be accomplished by mailing, by first class mail, a copy of the Consent Order to me at the address set forth in this agreement, or to my attorney, or upon transmission via facsimile to me or my

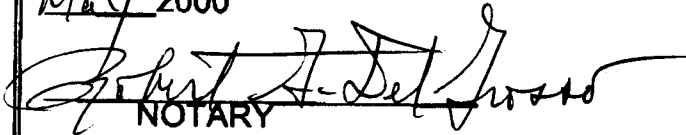
attorney, whichever is earliest.

I am making this Application of my own free will and accord and not under duress, compulsion or restraint of any kind or manner. In consideration of the value to me of the acceptance by the Board of this Application, allowing me to resolve this matter without the various risks and burdens of further litigation on the merits, I knowingly waive any right I may have to contest the Order for which I hereby apply, whether administratively or judicially, ask that the Application be granted, and agree that such final order be issued.

  
\_\_\_\_\_  
ANDRE DUFFAMEL, M.D.  
RESPONDENT

DATED May 4, 2000

Sworn to before me  
on this 4<sup>th</sup> day of  
May 2000

  
\_\_\_\_\_  
NOTARY

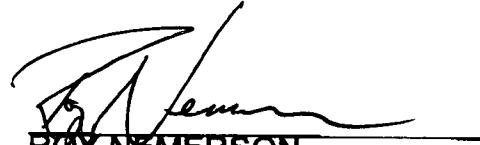
ROBERT G. DELGROSSO  
NOTARY PUBLIC, State of New York  
No. 5006142  
Qualified in Nassau County  
Commission Expires Dec. 28, 2000

The undersigned agree to the attached application of the Respondent and to the proposed penalty based on the terms and conditions thereof.


DATE: May 4, 2000

  
ROBERT DEL GROSSO, ESQ.  
Attorney for Respondent

DATE: 5/8/2000

  
ROY NEMERSON  
Deputy Counsel  
Bureau of Professional  
Medical Conduct

DATE: 5/10/00

  
ANNE F. SAILE  
Director  
Office of Professional  
Medical Conduct

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

IN THE MATTER  
OF  
ANDRE DUHAMEL, M.D.

ORDER MODIFYING  
ORDERS #  
BPMC BPMC 00-40;  
ARB 99-21; BPMC 99-21

Upon the proposed Stipulation of ANDRE DUHAMEL, M.D. (Respondent) for a consent order modifying the Determination and Order of the Hearing Committee, which Stipulation is made a part hereof, it is agreed to and

ORDERED, that the stipulation and the provisions thereof are hereby adopted and so ORDERED, and it is further

ORDERED, that this order shall be effective upon issuance by the Board, which may be accomplished by mailing, by first class mail, a copy of the Order to Respondent at the address set forth in this agreement or to Respondent's attorney by certified mail, or upon transmission via facsimile to Respondent or Respondent's attorney, whichever is earliest.

SO ORDERED.

DATED: 5/12/00



WILLIAM P. DILLON, M.D.  
Chair  
State Board for Professional  
Medical Conduct

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

COPY

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IN THE MATTER

DETERMINATION

OF

AND

ANDRE DUHAMEL, M.D.

ORDER

-----X

ORDER # 00-40

DETERMINATION AND ORDER OF THE HEARING COMMITTEE

The undersigned Hearing Committee consisting of **BENJAMIN WAINFELD, M.D.**, chairperson, **RICHARD N. ASHLEY, M.D.**, and **PETER S. KOENIG**, were duly designated and appointed by the State Board for Professional Medical Conduct. **MARY NOE** (Administrative Law Judge) served as Administrative Officer.

The hearing was conducted pursuant to the provisions of Sections 230 (10) of the New York Public Health Law and Sections 301-307 of the New York State Administrative Procedure Act to receive evidence concerning alleged violations of provisions of Section 6530 of the New York Education Law by **ANDRE DUHAMEL M.D.** (hereinafter referred to as "Respondent"). Witnesses were sworn or affirmed and examined. A stenographic record of the hearing was made. Exhibits were received in evidence and made a part of the record.

The Committee has considered the entire record in the above captioned matter and hereby renders its decision with regard to the charges of medical misconduct.

EXHIBIT "A"



## SUMMARY OF PROCEEDINGS

Hearing dates: December 13, 1999

Place of Hearing: NYS Department of Health  
5 Penn Plaza  
New York, New York

Date of Deliberation: December 13, 1998

Petitioner appeared by: Roy Nemerson, Esq.  
Associate Counsel  
NYS Department of Health

Respondent appeared: pro se

### WITNESSES

Panel's Witness: Katherine Falk, M.D.

For the Respondent:  
  
Andre Duchamel, M.D.

### SIGNIFICANT LEGAL RULINGS

The Administrative Law Judge, when requested by the Panel, provided the definitions of medical misconduct as alleged in this proceeding.

With regard to the expert testimony herein, including Respondent's, the Committee was instructed that each witness should be evaluated for possible bias and assessed according to his or her training, experience, credentials, demeanor and credibility.

## FINDINGS OF FACT

The following findings of fact were made after review of the entire record. Numbers in parenthesis (T. ) refer to transcript pages or numbers of exhibits (Ex. ) in evidence. These citations represent evidence and testimony found persuasive by the Hearing Committee in arriving at a particular finding. Evidence or testimony which conflicted with any finding of this Hearing Committee was considered and rejected. Some evidence and testimony was rejected as irrelevant. The Petitioner was required to meet the burden of proof by a preponderance of the evidence. All findings of fact made by the Hearing Committee were established by at least a preponderance of the evidence. All findings and conclusions herein were unanimous unless otherwise noted.

## PREVIOUS HISTORY

A hearing on this matter was held on December 14, 1998. A Decision and Order was rendered on January 25, 1999. After a review by the Administrative Review Board the case was remanded on April 3, 1999. The Panel ordered a psychiatric evaluation by a psychiatrist chosen by OPMC, Dr. Katherine Falk. Dr. Falk did an evaluation on June 15, 1999. A hearing was held on July 26, 1999 whereby it was determined that Dr. Falk did not do a complete evaluation. A second evaluation by Dr. Falk is dated October 22, 1999. A hearing was held on December 13, 1999.

1. Dr. Falk, testified that her initial evaluation was both incomplete and inadequate.  
(T. 111)

2. After Dr. Falk's second evaluation she testified that her diagnosis of Andre Duchamel, M.D., Respondent, was Adjustment Disorder Unspecified.(Panel's Exh. 3) In her report she indicates that "These symptoms or behaviors are clinically significant as experienced by either marked distress that is in excess of what would be expected from exposure to the stressor or significant impairment in social or occupational functioning." (T. 96, Panel Exh. 3)

3. Dr. Falk's evaluation further states that the Respondent "...does not meet the full criteria for any one specific Personality Disorder. Instead he has features of more than one Personality Disorder that together cause significant impairment in his social functioning and judgment." (Exh. 3)

4. Dr. Falk's evaluation states the Respondent "...displayed extremely poor judgment consistently throughout these proceedings. He did not tell the investigator the truth...."(Exh. 3)

5. Dr. Falk testified that she recommends the Respondent receive psychotherapy as an outpatient. (T. 97)

6. Dr. Falk stated that the basis for her recommendation for treatment is based on the Respondent's manner of handling the charges and case before the Office of Professional Medical Conduct and the limits the Respondent placed on his life, i.e. leaving his practice and staying at home. (T. 108, 109, 113, Exh. 3))

## PANEL'S DETERMINATION ON CHARGES

Paragraph A(1) is **SUSTAINED**

Paragraph B is **SUSTAINED**

## PANEL'S DETERMINATION ON SPECIFICATION

First Specification is **GUILTY**

Second Specification is **GUILTY**

## DISCUSSION

The following is a summary of the initial hearing on the charges against the Respondent. Respondent plead guilty to DWI in Court (Exh. Dept. 4) while he was represented by counsel (T. 38). Investigators of Office of Professional Medical Conduct testified that the Respondent told the Investigator at OPMC that he was never convicted of DWI (T. 14, 26, 28, 30, 33). Respondent testified at the hearing on December 14, 1998 that he said "yes" to the OPMC Investigator of whether he was convicted of DWI (T. 40).

This Panel, at the most recent hearing, addressed only the issue of Dr. Falk's evaluation and testimony as it relates to the Respondent. The Panel has considered all the testimony and evidence when deciding on the charges against the Respondent. The Panel agrees with Dr. Falk's findings that the Respondent's conduct is indicative of a personality disorder more fully described in Dr. Falk's report. (T. 105, 108, 109, 113)

The Panel agrees with Dr. Falk's recommendation for therapy. (T. 96, 97, 105, 108, 111, 113)

It is unclear whether the Respondent is intentionally misrepresenting himself or believes what he is stating is really the truth. (Panel's Exh. 5) In either of those scenarios, the Panel recognizes the serious nature of such behavior.


Although Dr. Falk had not done an evaluation for the purposes of a hearing at the Office of Professional Medical Conduct, the Panel was satisfied with her ability to conduct an evaluation based on her medical training and experience in evaluations for hospitalizations, and mentally ill. (T. 98, 99; Panel Exhibit 3)

### **DETERMINATION OF THE HEARING COMMITTEE AS TO PENALTY**

The Hearing Committee, unanimously, after giving due consideration to all the penalties available have determined that the Respondent's license to practice medicine in the state of New York should be **SUSPENDED** for two years, such suspension is stayed while the Respondent enters into a psychiatric program approved by the Office of Professional Medical Conduct. Period reports from the program should be given to OPMC and if the Respondent successfully participates in such a program, his license should be restored at the end of one year.

**DATED: New York, New York**

2/7 00

  
\_\_\_\_\_  
**BENJAMIN WAINFELD, MD**

**RICHARD ASHLEY, M.D.  
PETER S. KOENIG**

**APPENDIX ONE**

REDACTED

*FR*

**APPENDIX II**

f

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

IN THE MATTER  
OF  
ANDRE DUHAMEL, M.D.

STATEMENT  
OF  
CHARGES

ANDRE DUHAMEL, M.D., the Respondent, was authorized to practice medicine in New York State on or about May 12, 1993, by the issuance of license number 192191 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

- A. On or about November 1, 1996, in the District Court of Nassau County, Respondent pleaded guilty to one count of driving while intoxicated in violation of N.Y. Vehicle and Traffic Law §1192(3), a misdemeanor.
1. Respondent was thereafter sentenced to three years of probation and assessed a fine in the amount of five hundred dollars. In addition, Respondent's NYS Driver's License was revoked.
- B. During an interview with a New York State Department of Health investigator, Respondent deliberately and with intent to deceive stated that he had never been convicted of driving while intoxicated.

**SPECIFICATION OF CHARGES**

**FIRST SPECIFICATION**

**CRIMINAL CONVICTION (N.Y.S.)**

Respondent is charged with committing professional misconduct as defined in



N.Y. Educ. Law §6530(9)(a)(i)(McKinney Supp. 1988) by having been convicted of committing an act constituting a crime under New York state law as alleged in the facts of the following:

- 1. Paragraphs A and A1.

**SECOND SPECIFICATION**  
**FRAUDULENT PRACTICE**

Respondent is charged with committing professional misconduct as defined by N.Y. Educ. Law §6530(2)(McKinney Supp. 1988) by practicing the profession of medicine fraudulently as alleged in the facts of the following:

- 2. Paragraph B.

DATED: November 6, 1988  
New York, New York



**ROY NEMERSON**  
Deputy Counsel  
Bureau of Professional  
Medical Conduct

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

**COPY**

**In the Matter of**

**Andre Duhamel, MD. (Respondent)**

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

**Administrative Review Board (ARB)**

**Remand Order**

**ARB 99-21**

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

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

**Michele Tong, Esq.**

**For the Respondent:**

**Pro Se**

In this proceeding pursuant to N.Y. Pub. Health Law § 230-c (4)(a)(McKinney's Supp. 1999), the ARB considers whether to impose a sanction against the Respondent's New York Medical License, because the Respondent withheld information concerning his criminal conviction for Driving While Intoxicated (DWI). After a hearing below, a BPMC Committee determined that the Respondent's conduct constituted violating a New York statute and fraud in practicing medicine. The Committee voted to suspend the Respondent's License for two years and stayed the suspension on condition that the Respondent enter a psychiatric treatment program. Both parties now ask the ARB to modify that Determination. The Respondent asks that the ARB overturn the misconduct finding due to police misconduct during his criminal arrest, while the Petitioner asks the ARB to revoke the Respondent's License. After considering the record, we hold that the Committee failed to take sufficient steps to support their Determination to suspend the Respondent's License and to order him to submit to psychiatric treatment. We stay the Committee's sanction and remand to the Committee, so the Respondent can undergo a psychiatric evaluation, to determine whether he suffers from any impairment or disability.

212 200 0700 7/10/40

**Committee Determination on the Charges**

The Petitioner commenced the proceeding by filing charges with BPMC alleging that the Respondent violated:

1. N. Y. Educ. Law § 6530(9)(a)(i) (McKinney Supp. 1999) by engaging in conduct that resulted in a criminal conviction for an act constituting a crime under New York Law, and,

2. N. Y. Educ. Law § 6530(2) (McKinney Supp.) by practicing medicine fraudulently.

A hearing on those charges took place before a BPMC Committee who rendered the Determination now on review.

The Committee determined that the Respondent entered a guilty plea to DWI in Nassau County District Court in 1996. That conviction formed the basis for the Committee to determine that the Respondent committed a crime under New York Law. The Committee found further that, during a 1997 investigation by the Office for Professional Medical Conduct (OPMC), the Respondent denied any conviction for DWI, during interviews with two OPMC staff members. In making this finding, the Committee rejected testimony by the Respondent that he had admitted to the DWI conviction during the interviews. The Committee concluded that the Respondent committed fraud by denying the convictions during the interviews.

The Committee voted to suspend the Respondent's License for two years and to stay the suspension for one year, if the Respondent enters a psychiatric treatment program that OPMC approves. If the Respondent completes the program successfully, then the Committee's Order provides that the Respondent will regain his License upon request. The Committee noted that the Respondent failed to take responsibility for his acts and directed his failure to others. The

Committee noted that they had little confidence in the Respondent's ability to deal with reality and take control and responsibility for his actions.

### **Review History and Issues**

The Committee rendered their Determination on January 27, 1999. This proceeding commenced on February 8, 1999 when the ARB received the Petitioner's Notice requesting a Review. The ARB received the Respondent's review notice on February 16, 1999. The record for review contained the Committee's Determination, the hearing record, the Respondent's brief and the Petitioner's brief and reply brief. The record closed when the ARB received the reply brief on March 22, 1999.

The Respondent asks the ARB to dismiss the charge concerning the criminal conviction. He alleges abuse and misconduct by the police officers who stopped him. As to the fraud charge, the Respondent claims that he told the OPMC staff truthfully about the DWI conviction. The Respondent also argues that he suffers from no psychiatric condition and disagrees with the Committee ordering him to obtain psychiatric treatment, without first requiring that the Respondent submit to a psychiatric evaluation.

In reply to the Respondent's brief, the Petitioner contends that the Respondent submitted evidence to the ARB from outside the hearing record. The Petitioner asks that the ARB disregard that evidence. The Petitioner also contends that the Petitioner's brief merely restates his arguments from the hearing. The Petitioner argues that no basis exists to dismiss the charges that the Committee sustained.

The Petitioner's brief asks the ARB to overrule the Committee's Determination on penalty and to revoke the Respondent's License. The Petitioner argues that the Committee erred

by failing to revoke, after finding that the Respondent practiced fraudulently, failed to take responsibility for his actions and displayed an inability to deal with reality. The Petitioner argues that the Respondent's fraudulent conduct, standing alone, would provide sufficient grounds for revocation.

### **Determination**

All ARB members participated in this review and considered the record and the parties' briefs. We remand this case to the Committee, because the Committee failed to take sufficient steps to justify their Order suspending the Respondent's License and ordering the Respondent's entry into psychiatric treatment.

As a sanction for conduct that the Committee found fraudulent, the Committee suspended the Respondent's License for two years and ordered that he submit to psychiatric treatment. Nothing in the Statement of Charges, however, alleged that the Respondent practiced while impaired by a psychiatric condition. By thus imposing a sanction against a Respondent for conduct outside the specifications in the Statement of Charges, the Committee denied the Respondent due process, Matter of Dhabuwala v. State Board for Professional Medical Conduct, 225 A.D.2d 209 (1996). The Respondent received notice that he faced sanctions for fraudulent conduct and for violating a statute, but no warning that he could face a sanction for mental impairment. The record also revealed no expert testimony to establish that the Respondent suffers from any psychiatric condition or that either the Respondent's criminal or allegedly fraudulent conduct resulted from a psychiatric condition. Further, nothing in the record even suggests that a one-year psychiatric treatment program would provide any benefit to the Respondent. The Respondent's brief questioned how the Committee could order him to submit to

psychiatric treatment without sending him for a psychiatric evaluation. The Committee also failed to explain how they decided upon the suspension and treatment order as a sanction.

The Committee's Determination does state that the Respondent failed to take responsibility for his actions and that the Committee had little confidence in the Respondent's ability to deal with reality and to take control and responsibility for his actions. Apparently, the Committee based their suspension and treatment order on those conclusions. A Committee's observations about a Respondent's conduct or testimony at a hearing could lead the Committee to question the Respondent's mental condition and would justify the Committee's inquiry into that condition. The Committee in this case failed, however, to make any inquiry on the record and to seek an evaluation of the Respondent prior to imposing a sanction addressing their concern over the Respondent's mental condition.

The statute controlling BPMC hearings, at N. Y. Pub. Health Law § 230(7) (McKinney Supp.), 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."*

We hold that the Committee failed to follow those procedures in this case. We remand to the Committee and order that Respondent receive a psychiatric evaluation pursuant to that statute.

After the Respondent has completed the evaluation, the Committee shall conduct additional deliberations and consider that evaluation and any evaluation the Respondent obtained separately (if he chooses to do so). The Committee may also request additional submissions from the parties commenting on the evaluation or evaluations. The Committee should then render a

Supplemental Determination on the charges and any sanction. The Supplemental Determination should indicate whether the evaluation or evaluations have influenced the Committee in either changing their Initial Determination or leaving the Initial Determination unchanged. Either party may then seek administrative review over the Supplemental Determination or the Respondent may seek judicial review, pursuant to N. Y. Pub. Health Law § 230-c (McKinney Supp. 1999).

As we have determined that the Committee failed to take proper steps in rendering a penalty under their Initial Determination, we vote unanimously to stay that penalty until the Committee renders their Supplemental Determination.

If the Committee has any questions for the ARB concerning the procedures during this remand, the Committee should direct those questions to us in writing, with copies to both parties, in a letter from the Committee 's Administrative Officer to our Administrative Officer.

### **ORDER**

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

1. The ARB **REMANDS** this case to the Committee so the Respondent may undergo a psychiatric evaluation pursuant to N. Y. Pub. Health Law § 230(7)(McKinney Supp. 1999) and so the Committee may conduct additional proceedings pursuant to the directions in our Determination.
2. The ARB **STAYS** the penalty the Committee rendered in their initial Determination, until such time as the Committee renders their supplemental Determination.

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

**In the Matter of Andre Duhamel, M.D.**

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

**Dated: April 2, 1999**

  
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**Sumner Shapiro**



**In the Matter of Andre Duhamel, M.D.**

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

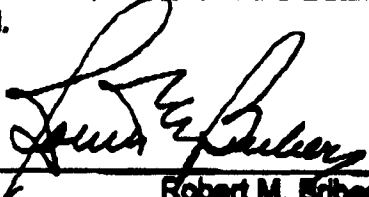
Dated: April 3, 1999

A handwritten signature in black ink, appearing to read 'W.S. Price', is written over a solid horizontal line.

**Winston S. Price, M.D.**

**In the Matter of Andre Duhamel, M.D.**

Robert M. Briber, an ARB Member, concurs in the Determination and Order in the Matter of Dr. Duhamel.  
Dated: April 2 1999



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Robert M. Briber

In the Matter of Andre Dubamel, M.D.

Stanley L. Grossman, an ARB Member concurs in the Determination and Order in the

Matter of Dr. Dubamel.

Dated: April 7, 1999

Stanley L. Grossman M.D.

Stanley L. Grossman, M.D.

**In the Matter of Andre Duhamel, M.D.**

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

**Dated: March 30, 1999**

*Therese G. Lynch M.D.*

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

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

IN THE MATTER

OF

ANDRE DUHAMEL, M.D.

ORDER # BPMC-99-21

COPY

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**DETERMINATION AND ORDER OF THE HEARING COMMITTEE**

The undersigned Hearing Committee consisting of BENJAMIN WAINFELD, M.D., chairperson, RICHARD N. ASHLEY, M.D., and PETER S. KOENIG, were duly designated and appointed by the State Board for Professional Medical Conduct. MARY NOE (Administrative Law Judge) served as Administrative Officer.

The hearing was conducted pursuant to the provisions of Sections 230 (10) of the New York Public Health Law and Sections 301-307 of the New York State Administrative Procedure Act to receive evidence concerning alleged violations of provisions of Section 6530 of the New York Education Law by ANDRE DUHAMEL M.D. (hereinafter referred to as "Respondent"). Witnesses were sworn or affirmed and examined. A stenographic record of the hearing was made. Exhibits were received in evidence and made a part of the record.

The Committee has considered the entire record in the above captioned matter and hereby renders its decision with regard to the charges of medical misconduct.

**SUMMARY OF PROCEEDINGS**

Pre-Hearing Conferences: December 10, 1998  
Hearing dates: December 14, 1998  
Place of Hearing: NYS Department of Health  
5 Penn Plaza  
New York, New York  
Date of Deliberation: December 14, 1998  
Petitioner appeared by: Michele Tong, Esq.  
Associate Counsel  
NYS Department of Health  
Respondent appeared: pro se

**WITNESSES**

For the Petitioner:

Diane Daniels  
Roger Steinhart, M.D.

For the Respondent:

Andre Duchamel, M.D.

### SIGNIFICANT LEGAL RULINGS

The Administrative Law Judge issued instructions to the Committee with regard to the definitions of medical misconduct as alleged in this proceeding. The Administrative Law Judge instructed the Panel that the fraudulent practice of medicine is the intentional misrepresentation or concealment of a known fact.

In order to sustain a charge that a licensee was engaged in the fraudulent practice of medicine, the hearing committee must find that 1. a false representation was made by the licensee, whether by words, conduct or concealment of that which should have been disclosed, 2. the licensee knew the representation was false, and 3. the licensee intended to mislead through the false representation.

With regard to the expert testimony herein, including Respondent's, the Committee was instructed that each witness should be evaluated for possible bias and assessed according to his or her training, experience, credentials, demeanor and credibility.

Inaccurate record keeping was defined as a failure to keep records which accurately reflect the evaluation and treatment of a patient. The standard applied would be whether a substitute or future physician or reviewing entity could review a given chart and be able to understand Respondent's course of treatment and basis for same.

### FINDINGS OF FACT

The following findings of fact were made after review of the entire record. Numbers in parenthesis (T. ) refer to transcript pages or numbers of exhibits (Ex. ) in evidence. These citations represent evidence and testimony found persuasive by the Hearing Committee in arriving at a particular finding. Evidence or testimony which conflicted with any finding of this Hearing Committee was considered and rejected. Some evidence and testimony was rejected as irrelevant. The Petitioner was required to meet the burden of proof by a preponderance of the evidence. All findings of fact made by the Hearing Committee were established by at least a preponderance of the evidence. All findings and conclusions herein were unanimous unless otherwise noted.

1. Andre Duchamel, M.D., Respondent, was authorized to engage in the practice of medicine in the State of New York (Exh. Dept. 3)

2. On November 1, 1996 in the District Court of Nassau County, Respondent plead guilty to driving while intoxicated (DWI) (Exh. Dept. 4)

3. Respondent testified he was represented by counsel in District Court. (T. 38)

4. Respondent testified he understood the consequences of his plea. (T. 38)

5. Department's first witness, Diane Daniels is a nurse for



Office of Professional Medical Conduct. (T. 12)

6. Ms. Daniels testified that during the course of an unrelated investigation she became aware of the Respondent's conviction for DWI. (T. 22, 23)

7. Ms. Daniels testified that on May 29, 1997 she asked the Respondent during an interview whether he had been convicted of DWI and the Respondent said no. (T. 14, 26, 28, 33)

8. Department's second witness, Dr. Roger Steinhart is the medical coordinator for the Office of Professional Medical Conduct. (T. 30)

9. Dr. Steinhart testified that Respondent was asked whether "he had ever been involved in DWI, and he said he had no DWI convictions." (T.32)

10. The Respondent testified that he told the Office of Professional Medical Conduct that he was convicted of DWI. (T 40)

11. The Respondent testified that if he was asked today if he was convicted of DWI that he would respond yes. (T 47)

## DISCUSSION

Respondent plead guilty to DWI in District Court, Nassau County (Exh. Dept. 4) while he was represented by counsel (T. 38).

Investigators of Office of Professional Medical Conduct testified that the Respondent told them he was never convicted of DWI (T. 14, 26, 28, 30, 33), yet Respondent testified that he said yes (T. 40). The Respondent's testimony is not credible. Furthermore, it is impossible to sort out the facts of the Respondent's DWI from his testimony. Respondent's testimony was confusing, convoluted and contradictory. Respondent testified to abusive behavior during his arrest such as the police prohibiting him to make a phone call T.36, making a false police report T. 11, prohibiting him from taking a blood alcohol test T. 36, "pushing him to breathe harder and harder" [for a breathalyzer test] T 35; threat of sex abuse to his wife while he was in jail T. 37. His testimony continues with two imprisonments T. 39, after his plea due to a violation of his probation because he failed to understand the terms of his probation, T. 38, his taking Donnatal with Maalox on the date of his arrest T. 43.

The Respondent fails to take responsibility for his own actions and directs his failure to others. The panel has little confidence in the Respondent's ability to deal with reality and therefore take control and responsibility for his actions.

**DETERMINATION OF THE HEARING COMMITTEE AS TO PENALTY**

The hearing Committee, in a vote of two to one, after giving due consideration to all the penalties available have determines that the Respondent's license to practice medicine in the state of New York should be SUSPENDED for two years, such suspension is stayed for one year while the Respondent enters into a psychiatric program approved by the Office of Professional Medical Conduct. Periodic reports from the program should be given to OPMC and if the Respondent successfully participates in such a program, his license should be restored at the end of one year upon request.

**SPECIFICATION OF CHARGES**

1. FIRST SPECIFICATION - sustained
2. SECOND SPECIFICATION - sustained

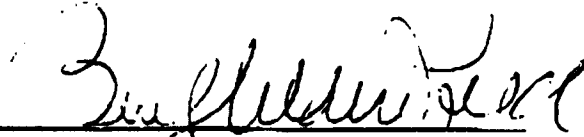
**ORDERED**

Based upon the foregoing, **IT IS ORDERED THAT:**

1. Respondent's license to practice medicine in the State of New York is SUSPENDED for two years such suspension is stayed if the Respondent enters into a psychiatric program approved by the Office of Professional Medical Conduct.

**DATED: New York, New York**

**1 25 1999**



**BENJAMIN WAINFELD, M.D.**

**Chairman**

**RICHARD N. ASHLEY, M.D.**

**PETER S. KOENING**

**TO: Andre Duhamel, M.D.  
214-18 Hillside Avenue  
Queens Village, NY 11427**

**Michele Tong, Esq.  
5 Penn Plaza - Suite 601  
New York, NY 10001**

**APPENDIX ONE**

IN THE MATTER  
OF  
ANDRE DUHAMEL, M.D.

STATEMENT  
OF  
CHARGES

ANDRE DUHAMEL, M.D., the Respondent, was authorized to practice medicine in New York State on or about May 12, 1993, by the issuance of license number 192191 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

- A. On or about November 1, 1996, in the District Court of Nassau County, Respondent pleaded guilty to one count of driving while intoxicated in violation of N.Y. Vehicle and Traffic Law §1192(3), a misdemeanor.
1. Respondent was thereafter sentenced to three years of probation and assessed a fine in the amount of five hundred dollars. In addition, Respondent's NYS Driver's License was revoked.
- B. During an interview with a New York State Department of Health investigator, Respondent deliberately and with intent to deceive stated that he had never been convicted of driving while intoxicated.

**SPECIFICATION OF CHARGES**

**FIRST SPECIFICATION**

**CRIMINAL CONVICTION (N.Y.S.)**

Respondent is charged with committing professional misconduct as defined in

N.Y. Educ. Law §6530(9)(a)(i)(McKinney Supp. 1998) by having been convicted of committing an act constituting a crime under New York state law as alleged in the facts of the following:


1. Paragraphs A and A1.

**SECOND SPECIFICATION**  
**FRAUDULENT PRACTICE**

Respondent is charged with committing professional misconduct as defined by N.Y. Educ. Law §6530(2)(McKinney Supp. 1998) by practicing the profession of medicine fraudulently as alleged in the facts of the following:

2. Paragraph B.

DATED: November 6, 1998  
New York, New York

  
ROY NEMERSON  
Deputy Counsel  
Bureau of Professional  
Medical Conduct

## EXHIBIT "B"

### Terms of Probation

1. Respondent shall conduct himself/herself in all ways in a manner befitting his/her professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his/her profession.
2. Respondent shall submit written notification to the New York State Department of Health addressed to the Director of the Office of Professional Medical Conduct, New York State Department of Health, 433 River Street, Suite 303, Troy, NY 12180-2299; said notice is to include a full description of any employment and practice, professional and residential addresses and telephone numbers within or without New York State, and any and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty days of each action.
3. Any civil penalty not paid by the date prescribed herein shall be subject to all provisions of law relating to debt collection by New York State. This includes but is not limited to the imposition of interest, late payment charges and collection fees; referral to the New York State Department of Taxation and Finance for collection; and non-renewal of permits or licenses [Tax Law section 171(27)]; State Finance Law section 18; CPLR section 5001; Executive Law section 32].
4. The period of probation shall be tolled during periods in which Respondent is not engaged in the active practice of medicine in New York State. Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in or intends to leave the active practice of medicine in New York State for a period of thirty (30) consecutive days or more. Respondent shall then notify the Director again prior to any change in that status. The period of probation shall resume and any terms of probation which were not fulfilled shall be fulfilled upon Respondent's return to practice in New York State.
5. Respondent's professional performance may be reviewed by the Director of OPMC. This review may include, but shall not be limited to, a review of office records, patient records and/or hospital charts, interviews with or periodic visits with Respondent and his/her staff at practice locations or OPMC offices.
6. Respondent shall maintain legible and complete medical records which accurately reflect the evaluation and treatment of patients. The medical records shall contain all information required by State rules and regulations regarding controlled substances.
7. Respondent shall practice only when monitored by qualified health care professional monitors (practice monitor as set forth in paragraph 10, below and therapist as set forth in paragraph 12, below) proposed by Respondent and approved, in writing, by the Director of OPMC. Monitors shall not be family members or personal friends, or be in professional relationships which would pose a conflict with monitoring responsibilities.



8. Respondent shall cause the monitors to report any deviation from compliance with the terms of this Order to OPMC. Respondent shall cause the monitors to submit required reports on a timely basis.
9. Respondent shall submit, at the request of a monitor, to random, unannounced observed blood, breath and/or urine screens for the presence of drugs/alcohol. This monitoring will be on a random, seven-days a week, twenty-four hours a day basis. Respondent shall report for a drug screen within four (4) hours of being contacted by the monitor. Respondent shall cause the monitor to report to OPMC within 24 hours if a test is refused or delayed by Respondent or a test is positive for any unauthorized substance.
10. Respondent shall practice medicine only when monitored in his/her medical practice. Respondent shall not practice medicine until a practice monitor has been approved. Respondent shall ensure that the practice monitor is in a position to regularly observe and assess Respondent's medical practice. Respondent shall cause the practice monitor to report within 24 hours any suspected impairment, inappropriate behavior, questionable medical practice or possible misconduct to OPMC.
11. Respondent shall cause the practice monitor to submit quarterly reports to OPMC regarding the quality of Respondent's medical practice, including the evaluation and treatment of patients, physical and mental condition, time and attendance or any unexplained absences from work, prescribing practices, and compliance or failure to comply with any term of probation.
12. Respondent shall engage and remain in therapy with a psychiatrist as long as the psychiatrist determines is necessary.
13. Respondent shall cause the psychiatrist to submit a proposed treatment plan and quarterly reports to OPMC certifying whether Respondent is in compliance with the treatment plan. Respondent shall cause the psychiatrist to report to OPMC within 24 hours if Respondent leaves treatment against medical advice, or displays any symptoms of impairment.
14. Respondent shall comply with any request from OPMC to obtain an independent psychiatric/chemical dependency evaluation by a health care professional proposed by the Respondent and approved, in writing, by the Director of OPMC.
15. Respondent shall comply with all terms, conditions, restrictions, limitations and penalties to which he or she is subject pursuant to the Order and shall assume and bear all costs related to compliance. Upon receipt of evidence of noncompliance with, or any violation of these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding and/or any such other proceeding against Respondent as may be authorized pursuant to the law.