



STATE OF NEW YORK DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Dennis P. Whalen
Executive Deputy Commissioner

July 6, 1999

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Leslie Eisenberg, Esq.
NYS Department of Health
5 Penn Plaza – Sixth Floor
New York, New York 10001

Monroe Harris, D.O.
165-15 71st Avenue
Flushing, New York 11365

Nathan L. Dembin, Esq.
Edward J. Yun, Esq.
225 Broadway
Suite 1400
New York, New York 10007

Monroe Harris, D.O.
262-04 Hungry Harbor Road
Rosedale, New York 11432

RE: In the Matter of Monroe Harris, D.O.

Dear Parties:

Enclosed please find the Determination and Order (No. 99-31) 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.

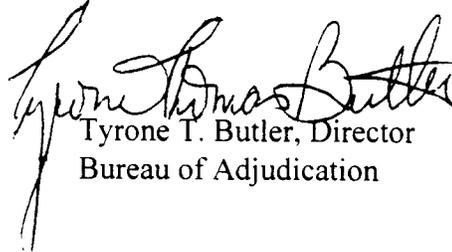
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified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

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

COPY

In the Matter of

Monroe Harris, MD. (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. 99-31

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

For the Department of Health (Petitioner): Leslie Eisenberg, Esq.

For the Respondent:

Edward J. Yun & Nathan L. Dembin, Esqs.

After a hearing below, a BPMC Committee voted to revoke the Respondent's License to practice medicine in New York State, upon determining that the Respondent committed professional misconduct in treating two patients and in providing false answers on applications to health care facilities and to the State Education Department (SED). In this proceeding pursuant to N.Y. Pub. Health Law § 230-c (4)(a)(McKinney's Supp. 1999), the Respondent asks the ARB to nullify or modify the Committee's Determination on six grounds, including error by the Committee and their Administrative Officer and insufficient evidence to support the charges or the penalty. After considering the hearing record and briefs from the parties, the ARB holds that 1.) the evidence supports the Determination that the Respondent committed professional misconduct and that 2.) the Committee's findings and conclusions support their Determination to revoke the Respondent's License.

Committee Determination on the Charges

The Petitioner commenced the proceeding by filing charges with BPMC alleging that the Respondent violated N. Y. Educ. Law §§ 6530(2-3), 6530(5), 6530(20-21) & 6530(32) (McKinney Supp. 1999) by committing professional misconduct under the following specifications:

- practicing medicine fraudulently.
- practicing medicine with negligence on more than one occasion.
- practicing medicine with incompetence on more than one occasion.
- engaging in conduct that evidences moral unfitness.
- willfully making or filing false reports, and,
- failing to maintain accurate records.

The fraud, false reporting and moral unfitness charges arose from the answers the Respondent provided on applications for staff reappointment to three hospitals and on the Respondent's application to SED for license registration renewal. The negligence, incompetence and inaccurate record charges related to the treatment the Respondent provided for three persons, Patients A through C, for weight reduction. A BPMC Committee considered those charges at a hearing pursuant to N. Y. Pub. Health Law § 230(10)(McKinney Supp. 1999) and rendered the Determination now on review.

The record demonstrates that in December 1992, the Respondent entered a Stipulation with the Commissioner of Health, in which the Respondent admitted to violating Public Health Law Article 33, pertaining to dispensing controlled substances. In September 1994, the Respondent entered a Stipulation with BPMC in which he admitted that the Article 33 violations also constituted professional misconduct under the Education Law. The BPMC Stipulation

placed the Respondent's medical practice on probation. Subsequently, the Respondent completed applications to renew staff privileges at three hospitals. Those applications contained questions about whether the Health Department or BPMC had investigated or disciplined the Respondent.

The Committee sustained charges that the Respondent practiced fraudulently and willfully filed false reports, by giving false answers on the applications to the hospitals. The Committee found that the Respondent denied on some applications that the Health Department or BPMC specifically had investigated the Respondent and that the Respondent denied on other applications that the Health Department or BPMC had disciplined the Respondent. The Committee found that the Respondent gave those answers even though the Respondent knew that the Health Department and BPMC specifically had investigated the Respondent and disciplined him for violating provisions in Public Health Law Article 33, relating to controlled substances.

In 1995, one of the three hospitals, Catholic Medical Center of Brooklyn-Queens learned that the Respondent had answered falsely on that hospital's renewal application. Catholic Medical Center denied the Respondent reappointment, after conducting a hearing at which he Respondent testified. In November 1996, the Respondent submitted an application to SED to renew his License registration. That application included a question as to whether any hospital had restricted or terminated the Respondent's privileges. The Committee found that Respondent also answered falsely on the SED application, when he denied that any hospital had terminated his privileges. The Committee found that the Respondent knew when he answered that application that Catholic Medical Center had terminated the Respondent's privileges, due to his false statements on the application to that hospital.

The Committee found implausible the testimony by a psychologist that the Respondent's false answers might have resulted from a learning disorder that the Respondent suffers. The

Committee noted that the Respondent had testified at the hearing into his termination at Catholic Medical Center. The Committee found that in that testimony, the Respondent blamed many outside factors for his false answers, but never raised his learning disorder as an excuse. The Committee concluded that the Respondent misrepresented his status and disciplinary history falsely on the hospital and SED applications knowingly and with intent to mislead. The Committee dismissed the charges that the Respondent's fraudulent answers evidenced moral unfitness.

As to patient care issues, the Committee dismissed all charges involving the treatment for Patient B. The Committee sustained charges that the Respondent practiced with negligence and incompetence and failed to maintain accurate records in treating Patients A and C. As to Patient A, the Committee determined that the Respondent failed to:

- take and/or note an adequate history;
- perform and/or note an adequate physical examination;
- treat the Patient appropriately for weight loss, including prescribing the controlled substance Didrex inappropriately for weight loss;
- monitor the Patient appropriately; and
- maintain a medical record that reflects the Patient's care and treatment accurately.

As to the care for Patient C, the Committee determined that the Respondent failed to:

- take and/or note an adequate history;
- perform and/or note an adequate examination;
- monitor the Patient appropriately during treatment; and
- maintain records reflecting the Patient's care and treatment accurately.

The Committee also determined that the Respondent prescribed Didrex and other appetite suppressing controlled substances for Patient C despite contraindications, such as the coronary arterial disease the Patient suffered, which required two angioplasties. The Committee determined that the Respondent's care for Patient C fell far below acceptable medical practice.

The Committee voted to revoke the Respondent's License. The Committee concluded that the Respondent's care for the Patients at issue in this case represented the Respondent's care for his entire medical practice. The Committee also concluded that the Respondent represented a poor candidate for retraining due to his shortcomings, his age and his attitude. The Committee also considered the Respondent's prior Public Health Law violations in assessing the penalty to impose.

Review History and Issues

The Committee rendered their Determination on February 10, 1999. This proceeding commenced on March 1, 1999 when the ARB received the Respondent's Notice requesting a Review. The record for review contained the Committee's Determination, the hearing record, the Respondent's brief and the Petitioner's response. The record closed when the ARB received the response brief on April 13, 1999.

The Respondent asked the ARB to nullify the Committee's Determination and to impose a less severe sanction. The Respondent raised six points for review, which we summarize below.

1. The medical care at issue here occurred during the Respondent's prior probation following the Article 33 violations and the Stipulations. The Committee erred in finding that the care fell below acceptable standards, because The Office for

Professional Medical Conduct's (OPMC) Probation Unit reviewed and approved the treatment and records for Patients A-C.

2. The Respondent conformed to acceptable medical standards in providing the care at issue.
3. The Respondent lacked the requisite intent to misrepresent or conceal facts in answering the applications at issue.
4. The Respondent suffers from a learning disability that prevented him from understanding the application questions fully.
5. Multiple errors at the hearing require reversal for a more appropriate sanction.
6. The Committee erred in revoking the Respondent's License despite the mitigating factors in the record.

The Respondent asked the ARB to impose a less severe penalty, that emphasizes rehabilitation, meaningful probation and appropriate monitoring.

The Petitioner disputes the Respondent's allegations that the OPMC Probation Unit ever approved the Respondent's treatment for Patients A and C and the Petitioner disputes the Respondent's allegations that any reversible error occurred at the hearing. As to the Respondent's allegations concerning the findings on medical care, false answers and the Respondent's learning disability, the Petitioner contends that the Respondent attempts to reargue the findings and credibility determinations by the Committee. As to the sanction, the Petitioner argues that the Respondent's repeated fraudulent conduct provides sufficient grounds on which to revoke the Respondent's License.

Determination

All ARB Members participated in this case and considered the record and the parties' briefs. We vote 5-0 to affirm the Committee's Determination dismissing all charges concerning the care for Patient B and we vote 4-1 to affirm the Committee's Determination dismissing the charges that the Respondent's false answers on the applications evidenced moral unfitness. The Petitioner challenged neither dismissal by the Committee. On the moral unfitness charges, Dr. Lynch would have overturned the Committee and sustained the charges even without a challenge by the Petitioner, because she found the Committee's Determination inconsistent with their findings that the Respondent made knowing, intentional misrepresentations on repeated applications. The ARB votes unanimously to affirm the Committee's Determination that the Respondent's care for Patients A and C and his answers on the applications constituted professional misconduct. We also agree with the Committee that revocation provides the appropriate remedy for the Respondent's misconduct, although we modify their reasoning in part. We discuss below the issues the Respondent raised on review.

Care for Patients A and C: The Respondent's Point 1 alleged that the Committee erred in finding misconduct in treatment for the Patients, because the OPMC Probation Unit had approved that treatment. The Petitioner took issue with whether the Probation Unit actually approved the care. We find the Respondent's argument on that issue without merit. Under N. Y. Pub. Health Law § 230 (McKinney Supp. 1999), BMC Committees, rather than OPMC staff, make determinations as to whether a physician has committed misconduct. No BMC Committee dismissed charges relating to the care the Respondent provided to Patients A and C.

The Respondent also argued that he relied to his detriment on the OPMC Probation Unit's approval for his practice, so that OPMC violated equity and due process by now bringing a proceeding against him. We find no merit to that argument either, see Matter of Binenfeld v. N. Y. S. Dept. of Health, 226 A.D.2d 935, 640 N.Y.S.2d 924 (Third Dept. 1996).

The Respondent also challenged the proceeding by arguing that, if the Respondent committed misconduct during probation, then N. Y. Pub. Health Law § 230(19)(McKinney Supp. 1999) obligated the Petitioner to proceed against the Respondent in an action for violating probation, rather than in this proceeding de novo pursuant to N. Y. Pub. Health Law § 230(10)(McKinney Supp.1999). In Matter of Kite v. DeBuono 233 A.D.2d 783, 650 N.Y.S.2d 384 (Third Dept. 1996), the Third Department rejected a challenge to an ARB revocation order, from a physician who argued that OPMC proceeded against him improperly in a probation violation hearing, rather than under a medical misconduct theory in a de novo hearing. In rejecting Dr. Kite's challenge, the Third Department found that the charges advised Dr. Kite clearly about the issues at the hearing and that the hearing focused on those issues. In the proceeding against the Respondent, the charges show clearly that the Petitioner moves pursuant to N. Y. Pub. Health Law § 230(10) (McKinney Supp. 1998) and the misconduct specifications under N. Y. Educ. Law §§ 6530(2-3), 6530(5), 6530(20-21) & 6530(32) (McKinney Supp. 1999). The ARB holds that the Respondent had notice as to those charges, a chance to defend against them and that the evidence at the hearing addressed those specifications.

The Respondent's Point 2 argued that the Respondent treated Patients A and C according to accepted medical standards, because expert testimony at the hearing established that the Respondent practiced according to accepted standards and because no patients complained about the care they received from the Respondent. The Respondent also argued that the OPMC Probation Unit approved the treatment. We have already rejected the defense involving the OPMC Probation Unit. As to the expert testimony, the Respondent did present testimony that he practiced according to accepted standards. Other evidence in the record, however, supported the findings and conclusions by the Committee, that the Respondent practiced with negligence and incompetence in treating Patients A and C and that the Respondent maintained inaccurate records for Patients A and C. The contrary testimony in the record from the Respondent and his other witnesses created a question of fact for the Committee to resolve as the fact finder. We owe the fact finders deference in making their judgement on credibility and we see no reason to overturn their judgement here.

Fraud and False Report Charges: In his Points 3 & 4, the Respondent argues that he lacked the intent to make misrepresentations or conceal facts and he argues that he misunderstood the questions on the Applications due to his learning disability. In order to sustain a charge that a licensee practiced medicine fraudulently, a hearing committee must find that (1) a licensee made a false representation, whether by words, conduct or by concealing that which the licensee should have disclosed, (2) the licensee knew the representation was false, and (3) the licensee intended to mislead through the false representation. Sherman v. Board of Regents, 24 A.D.2d 315, 266 N.Y.S.2d 39 (Third Dept. 1966), affd., 19 N.Y.2d 679, 278 N.Y.S.2d 870 (1967). A committee may infer the licensee's knowledge and intent properly from facts that such committee finds, but the committee must state specifically the inferences it draws regarding knowledge and intent. Choudhry v. Sobol, 170 A.D.2d 893, 566 N.Y.S.2d 723 (Third Dept. 1991). To prove willfully filing a false report, a committee must establish that a licensee made or filed a false statement willfully, which requires a knowing or deliberate act. Matter of Brestin v. Comm. of Educ., 116 A.D.2d 357, 501 N.Y.S.2d 923 (Third Dept. 1986). Merely making or filing a false report, without intent or knowledge about the falsity fails to constitute professional misconduct. Matter of Brestin v. Comm. of Educ., (supra). A committee may reject a licensee's explanation for erroneous reports (such as resulting from inadvertence or carelessness) and draw the inference that the licensee intended or was aware of the misrepresentation, with other evidence as the basis. Matter of Brestin v. Comm. of Educ., (supra). The Committee may also reject expert testimony that a Respondent's false answers resulted from a medical condition the Respondent suffers. Matter of Saldanha v. DeBuono, __ A.D.2d __, 681 N.Y.S.2d 874 (Third Dept. 1998). We hold that the evidence before the Committee below supported their Determination on both the fraud and the false report charges.

The Committee found that the Respondent answered falsely on 1990, 1992 and 1994 applications to Catholic Medical Center, a 1991 application to Deepdale General Hospital, a 1994 application to Little Neck Community Hospital and a 1996 application to SED. The Committee rejected a learning disability as an excuse for the false answers. The Committee found that the Respondent had graduated from Medical School, received certification in two specialties and practiced for thirty-three years. The Committee found implausible the

Respondent's contention that the application questions confused the Respondent or that the Respondent misunderstood the questions. The Committee also reviewed the Respondent's testimony from the hearing concerning his privileges at Catholic Medical Center [Petitioner Hearing Exhibit 17]. In that testimony, the Respondent offered several excuses for the false answers he gave on his applications to the Medical Center, but at no time mentioned a learning disability as an excuse. From this evidence, the Committee inferred that the Respondent knew he answered falsely and intended to mislead by those false statements. We hold that the false statements on all the applications provided the Committee with preponderant evidence that the Respondent practiced fraudulently and that he filed false reports. Those applications provided the Committee sufficient evidence to draw their inferences concerning the Respondent's intent and the Committee acted within their authority as a fact finder to reject the testimony by the Respondent and his expert, who offered other explanations for the false answers.

Penalty: In his Points 5 & 6, the Respondent challenged the revocation penalty the Committee imposed. The Respondent alleged the following errors require a reduction in the penalty:

- a.) the Committee reviewed a medical chart for a patient other than Patients A - C.
- b.) the Committee's Administrative Officer excluded from evidence the Respondent's lie detector test results,
- c.) the Committee erred in concluding that the Respondent fails to recognize his shortcomings and that the Respondent makes a poor candidate for retraining,
- d.) the Committee erred in determining that the Respondent's age and attitude made the Respondent a bad candidate for retraining, and,
- e.) the Committee ignored mitigating factors when they imposed the penalty against the Respondent.

We find no merit in any ground that the Respondent raises.

Some information that the Respondent offered into evidence as the record for Patient A actually pertained to a different patient. When the Committee questioned the Respondent about this information, the Respondent explained the mistake and provided that patient's entire chart to the Committee [see Petitioner's Brief page 6]. The Respondent now cites that as error against the

Committee. The Respondent's brief argues that the Committee's Determination at page 22 demonstrated that the Committee considered that patient record and concluded that record represented the Respondent's practice. We hold that the Committee's Determination indicates otherwise. The Determination at page 22 states:

"Although this case was limited to the consideration of the Respondent's treatment of three patients, the Hearing Committee is convinced that they are representative of the Respondent's medical practice."

We conclude that such statement demonstrates that the Committee limited their consideration to only the three patients at issue in this hearing, A – C. We conclude further that such statement disproves the Respondent's contention that the Committee considered the other patient record in reaching their Determination.

The Respondent argued next that the Committee Administrative Officer's refusal to admit lie detector results form error sufficient to nullify the Committee's penalty. The ARB holds that the Courts provide the proper forum to determine whether the lie detector result's exclusion constitutes error sufficient to nullify the Committee's penalty determination. We direct the Respondent to raise that issue with the courts.

The Respondent next two points allege that the Committee erred by concluding that the Respondent presented as a poor candidate for retraining due to, his age and his attitude and his failure to recognize his shortcomings. The Respondent contends that age means nothing when considering retraining, that no findings addressed the Respondent's attitude and that the Respondent proved he can learn by overcoming his learning disability and by completing probation successfully.

We agree that age means nothing when judging a person's capability for rehabilitation. We also agree, however, with the Committee's other conclusions and we agree with the Committee that the evidence in the record demonstrates that the Respondent presents as an

unacceptable candidate for retraining. First, the Respondent's fraudulent conduct demonstrates that he lacks integrity. We have held previously that no retraining or re-education program can aid a physician who lacks integrity, see Matter of Bezar v. DeBuono, 240 A.D.2d 978, 659 N.Y.S.2d 547 (Third Dept. 1997). Further, the Respondent previously served probation for professional misconduct. That penalty failed to deter the Respondent from the present misconduct, which again involved prescribing controlled substances in an improper manner. We view such prior misconduct as an aggravating rather than a mitigating factor in assessing fitness for retraining. In addition, the Respondent refused to accept responsibilities for his mistakes, such as blaming both his false answers and his poor medical record keeping, in part, on his secretary [Catholic Medical Center Hearing Transcript, Petitioner Exhibit 17; Committee Finding of Fact 35]. Finally, the Respondent showed no insights into his deficiencies as a physician. He treated Patient A with appetite suppressants for nine years and Patient C for seventeen years. Both Patients gained weight, yet the Respondent failed to discontinue the treatments. Despite the weight gains, the Respondent never performed blood tests on either Patient A or Patient C [Findings 32 & 50], although accepted medical practice required that the Respondent perform blood tests on patients before prescribing appetite suppressants [Finding 23]. The Respondent testified that he never performed lab tests due to expense and because the tests are for research [Finding 32].

As a final ground for challenging the penalty, the Respondent alleged error because the Committee failed to consider mitigating factors in the case, including no harm to any patients from the care the Respondent rendered. Although the proof revealed no actual patient harm, the record did reveal that the Respondent placed his patients at risk, by prescribing controlled substances without regard to contraindications. As other mitigating factors, the Respondent

raised issues that the Committee and the ARB have rejected already, such as the contention that the OPMC Probation Unit approved the care the Respondent provided. The ARB sees no mitigating factors in this record to outweigh the Respondent's misconduct. The Respondent's repeated fraudulent conduct, standing alone, provided sufficient grounds to revoke the Respondent's License. The record also demonstrates that the Respondent provided sub-standard medical care and that the Respondent failed to learn from a prior disciplinary proceeding. We affirm the Committee Determination 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.

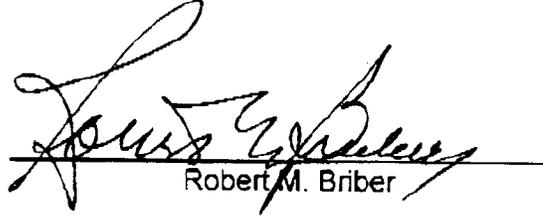
2. The ARB **AFFIRMS** the Committee's Determination revoking the Respondent's License.

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

In the Matter of Monroe Harris, M.D.

Robert M. Briber, an ARB Member, concurs in the Determination and Order in the Matter of Dr. Harris.

Dated: June 30, 1999

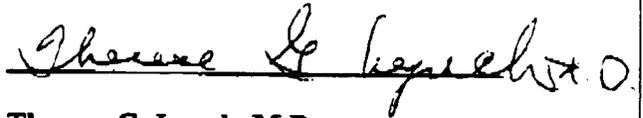


Robert M. Briber

In the Matter of Monroe Harris, M.D.

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

Dated: June 29, 1999

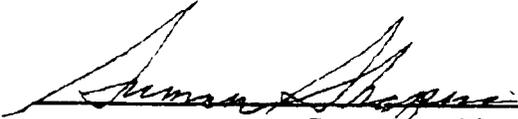


Therese G. Lynch, M.D.

In the Matter of Monroe Harris, M.D.

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

Dated: June 29, 1999

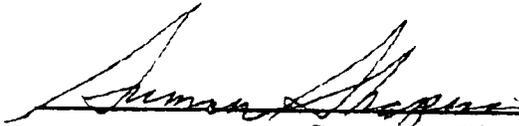


Sumner Shapiro

In the Matter of Monroe Harris, M.D.

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

Dated: June 29, 1999



Sumner Shapiro

In the Matter of Monroe Harris, M.D.

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

Dated: July 1, 1999

Stanley L. Grossman M.D. MPH

Stanley L Grossman, M.D.

In the Matter of Monroe Harris, M.D.

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

Dated: 7/2/99, 1999


Winston S. Price, M.D.