



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 4, 1999

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Masao Mitsui, M.D.  
9 Briarwood Road  
Jersey City, New Jersey 07305

Daniel Guenzburger, Esq.  
NYS Department of Health  
Metropolitan Regional Office  
5 Penn Plaza – 6<sup>th</sup> Floor  
New York, New York 10001

**RE: In the Matter of Masao Mitsui, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 99-82) 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.

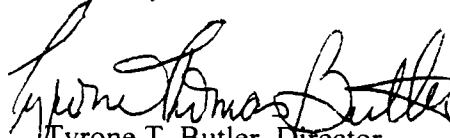
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified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

Matsao Mitsui, MD., a/k/a George Wang,  
a/k/a Cheng Wang (Respondent)

Administrative Review Board (ARB)

Determination and Order No. 99-82

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

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

For the Department of Health (Petitioner): Daniel Guenzburger, Esq.  
For the Respondent: Pro Se

After a hearing below, a BPMC Committee determined that the Respondent committed professional misconduct, by prescribing addictive medications without medical indication, for his own financial gain, and by fabricating records to hide his illicit conduct. The Committee voted to revoke the Respondent's License to practice medicine in New York State. In this proceeding pursuant to N.Y. Pub. Health Law § 230-c (4)(a)(McKinney's Supp. 1999), the Respondent asks the ARB to modify the Committee's Determination by limiting the sanction to a suspension. After considering the record and submissions by the Respondent and Petitioner, we affirm the Committee's Determination in full.

**Committee Determination on the Charges**

The Petitioner commenced the proceeding by filing charges with BPMC alleging that the Respondent committed professional misconduct as defined under N. Y. Educ. Law §§ 6530(9)(a)(ii) & 6530(9)(c) (McKinney Supp. 1999) due to:

- the Respondent's conviction for committing a crime under Federal Law, and.
- a guilty finding against the Respondent for violating a state statute, by engaging in conduct that would constitute misconduct.

An expedited hearing (Direct Referral Proceeding) ensued pursuant to N.Y. Pub. Health Law §230(10)(p)(McKinney Supp. 1998). In such a Direct Referral Proceeding, the statute limits the Committee to determining the nature and severity for the penalty to impose against the licensee. Matter of Wolkoff v. Chassin, 89 N.Y.2d 250 (1996).

In addition to the charges in the Direct Referral Proceeding, the Petitioner also charged that the Respondent committed professional misconduct under N. Y. Educ. Law §§6530(2-3), 6530(5), 6530(21), 6530(28) & 6530(32) (McKinney Supp.) by:

- practicing medicine fraudulently,
- practicing medicine with negligence on more than one occasion,
- practicing medicine with incompetence on more than one occasion,
- willfully filing a false report,
- failing to respond to a written request by the Health Department for medical records, and,
- failing to maintain records that reflect patient care accurately.

These charges related to the care the Respondent provided to six persons, whom the record identifies as Patients A through F. The Committee conducted that hearing pursuant to N. Y. Pub. Health Law 230(10)(e)(McKinney Supp. 1999), at the same time as the Direct Referral Proceeding. Following the hearings, the Committee rendered the Determination now on review.

As to the Direct Referral Proceeding, the Committee sustained charges that the Respondent violated N. Y. Educ. Law §§ 6530(9)(a)(ii) & 6530(9)(c) (McKinney Supp. 1999), by engaging in conduct that resulted in determinations that the Respondent had violated state and Federal laws. The Committee found that, in 1995, the former Department of Social Services

(DSS)<sup>1</sup> excluded the Respondent from participating as a provider in the Medicaid Program, following an adjudicatory hearing before an Administrative Law Judge (ALJ). The DSS Decision found that the Respondent provided unacceptable medical services, including ordering excessive tests and submitting false claims. In addition to the exclusion, DSS ordered the Respondent to pay restitution amounting to Seven Hundred Twenty Nine Thousand Eight Hundred Eighty One Dollars (\$729,881.00). As to the Federal charge, the Committee determined that the Respondent entered a guilty plea in the United States District Court for the Southern District of New York, in September 1997, to aiding and abetting acquisition of a controlled substance, a Class E Felony. Federal Judge Thomas P. Greisa sentenced the Respondent to three years on probation, ordered that the Respondent surrender his Drug Enforcement Administration (DEA) certificate and his New York State triplicate prescription books and fined the Respondent One Thousand Dollars (\$1000.00).

As to the other charges, the Committee determined further that the Respondent practiced medicine fraudulently, practiced with negligence and incompetence on more than one occasion, and willfully filed false reports. The Committee dismissed charges that the Respondent failed to maintain adequate records and failed to comply with a Health Department record request. The Committee found that the Respondent wrote prescriptions in other patients' names for Percocet, that the Respondent sold to Patient A. The Committee also found that the Respondent wrote prescriptions for Patient B for Percocet and Percodan, without an adequate examination and diagnosed Patient B as suffering from a herniated disk, without adequate physical findings. The Committee found further that the Respondent wrote prescriptions for Percocet for Patients C, D, E and F, without medical indication and that the Respondent fabricated records for Patients C, D, E and F, to cover up his illegal prescribing practices. Percocet and Percodan are highly addictive narcotics, indicated for severe pain when a patient fails to respond to less potent analgesics. In reaching their findings on these charges, the Committee credited testimony by Patient B, an

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<sup>1</sup> The New York Legislature dissolved DSS in 1997 and transferred its functions to other agencies (1997 Laws of New York, Chap. 436).

undercover DEA Agent, and Robert Shimm, M.D., the Petitioner's medical expert. The Committee rejected testimony by the Respondent and his receptionist. The Committee characterized the Respondent's testimony as defiant, manipulative and non-forthcoming.

After the Committee voted on the charges, the Committee's Administrative Officer provided the Committee with copies of prior Health Department Disciplinary Orders involving the Respondent. In those cases, CS-94-64 and BPMC 96-302, the Respondent signed a stipulation with the Department's Controlled Substances Bureau, in which the Respondent admitted to dispensing controlled substances improperly, and a stipulation with BPMC, in which the Respondent admitted that the dispensing violations constituted professional misconduct.

As a sanction, the Committee voted to revoke the Respondent's License. The Committee concluded that the Respondent prescribed controlled substances illegally and in enormous quantities, for his own personal financial gain. The Committee also concluded that that Respondent lacked remorse or insight into his wrongdoing and that the Respondent had failed to heed wake up calls he received following the earlier Health Department Disciplinary case and the DSS Proceeding. The Committee also voted to fine the Respondent Seventy Thousand Dollars (\$70,000.00) and broke the penalty down as Ten Thousand Dollars (\$10,000.00) each for the criminal conviction, the conduct that resulted in the DSS sanction and the fraud and negligent treatment involving each Patient B through F.

### **Review History and Issues**

The Committee rendered their Determination on April 23, 1999. This proceeding commenced on May 26, 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 letter requesting review and the Petitioner's response. The record closed when the ARB received the response on June 3, 1999.

The Respondent asks that the ARB reduce the sanction in this case to a suspension. He argues that he committed no wrongs recently, that he constitutes no danger to society and that he will never repeat his mistakes. He notes that Federal Judge Greisa recommended against revoking the Respondent's License. The Respondent contends that he can cure conditions that other physicians can't and that his acupuncture skills can cure diseases and save lives without medicine. In response, the Petitioner argues that the Committee rendered an appropriate sanction for the reasons the Committee stated at pages 15-17 in their Determination.

### **Determination**

All ARB Members have participated in this case, considered the record and considered the parties' briefs. We vote unanimously to sustain the Committee Determination as to the charges and the penalty.

We reject the Respondent's attempt to minimize his wrongdoing. He entered a guilty plea in Federal Court to aiding Patient A in acquiring controlled substances illegally. The records from the DSS proceeding and the latest BPMC proceeding also demonstrated that the Respondent prescribed controlled substances without medical indication and that he fabricated records to hide his illegal prescribing practices. We hold that the credible evidence in the record proves that the Respondent engaged in extensive, repeated and serious wrongdoing. With all due respect to Judge Greisa, we also reject the Judge's recommendation that we impose a sanction less severe than revocation. Four legal proceedings during this decade have established that the Respondent prescribes potentially addictive medications without medical indication. Despite disciplinary actions against the Respondent by DSS and the Health Department, the Respondent has continued in his improper conduct. The penalties from those earlier actions failed to deter the Respondent from the improper dispensing and prescribing practices, that formed the basis for the

Federal criminal charges and the misconduct charges involving Patients A through F. We conclude that if we allowed the Respondent to continue to practice medicine, the Respondent would continue to dispense and prescribe improperly.

The Committee found that Percodan and Percocet are addictive medications, subject frequently to diversion and illicit use, such as by heroin addicts experiencing withdrawal symptoms. The Respondent's conduct facilitates such diversion and illicit use. The Respondent also fabricated records to cover his illegal activities. We conclude that the Respondent has contributed to the public health menace that results from controlled substance abuse and that the Respondent's fraudulent conduct demonstrates that he lacks the integrity necessary to practice medicine in New York State. We also sustain the fine the Committee imposed. We hold that a fine constitutes a proper sanction for a Respondent who benefited financially from his misconduct. We note that the Respondent has failed to this point to pay any restitution under the DSS penalty. We find it disconcerting that the authorities have experienced no success to this point in collecting an ongoing debt the Respondent owes for his prior misconduct.



**ORDER**

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

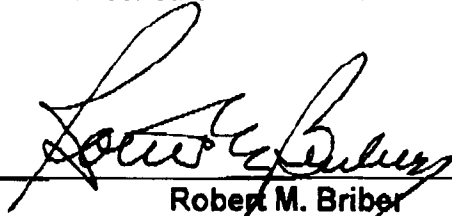
1. The ARB **AFFIRMS** the Committee's Determination that the Respondent committed professional misconduct.
  
2. The ARB **AFFIRMS** the Committee's Determination revoking the Respondent's License to practice medicine in New York State and fining the Respondent.

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

**In the Matter of Matsao Mitsui, M.D.**

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

Dated: 7/26/99



Robert M. Briber

**In the Matter of Matsao Mitsui, M.D.**

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

**Dated: July 26, 1999**

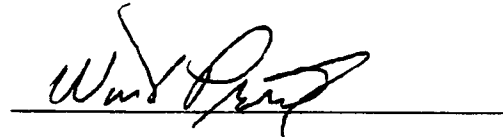
  
Sumner Shapiro



**In the Matter of Matsao Mitsui, M.D.**

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

Dated: 7/28, 1999

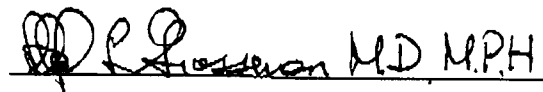
A handwritten signature in cursive script, appearing to read "Winston S. Price", is written over a horizontal line.

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

**In the Matter of Mitsao Mitsui, M.D.**

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

Dated: July 26, 1999

 Stanley L. Grossman MD M.P.H.

**Stanley L. Grossman, M.D.**

**In the Matter of Matsuo Mitsui, M.D.**

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

Dated: July 24, 1999



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