



# 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., Dr.P.H.  
*Commissioner*

Dennis P. Whalen  
*Executive Deputy Commissioner*

August 1, 2002

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

Sheldon Capp, M.D.  
15686 Loch Marie Lane  
Delray Beach, Florida 33446

Paul Robert Mahar, Esq.  
NYS Department of Health  
Hedley Building, 1<sup>st</sup> Flr.  
433 River Street  
Troy, New York 12180

**RE: In the Matter of Sheldon Capp, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 02-106) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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:djh

Enclosure

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

**COPY**

**In the Matter of**

**Sheldon Capp, M.D. (Respondent)**

**Administrative Review Board (ARB)**

**Determination and Order No. 02-106**

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

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

**For the Department of Health (Petitioner): Paul Robert Maher, Esq.  
For the Respondent: Pro Se**

In this proceeding pursuant to N.Y. Pub. Health Law § 230-c (4)(a)(McKinney's 2002), the Respondent asks the ARB to nullify or modify a Determination by a BPMC Committee that revoked the Respondent's License to practice medicine in New York State (License). The Committee found that the Respondent's multiple Federal felony convictions for fraud and false claims constituted professional misconduct. After considering the review submissions from each party, the ARB affirms 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 violated N. Y. Educ. Law § 6530(9)(a)(ii)(McKinney Supp. 2002) due to the Respondent's conviction for a crime under Federal Law. The Petitioner's Statement of Charges [Petitioner Hearing Exhibit 1] alleged the Respondent's conviction for Health Care Fraud and False Claims. An expedited hearing (Direct Referral Proceeding) ensued pursuant to N.Y. Pub. Health Law §230(10)(p)(McKinney 2002), before a BPMC Committee, which rendered the Determination now on review. In the Direct Referral Proceeding, the statute limits the Committee to determining the nature and severity for the penalty to impose against the licensee, see In the Matter of Wolkoff v. Chassin, 89 N.Y.2d 250 (1996).

The evidence before the Committee showed the Respondent's conviction in the United States District Court for the District of Connecticut for four counts of Health Care Fraud and eighteen counts of False Claims. The Court sentenced the Respondent to serve thirty months on probation, to begin with nine months home confinement and to pay a \$22,000.00 fine and a \$2,200.00 special assessment.

The Committee found that the Respondent's conviction for multiple felonies constituted professional misconduct under N. Y. Educ. Law § 6530(9)(a)(ii) and the Committee voted to revoke the Respondent's License. The Committee noted that the Respondent failed to appear at the New York disciplinary hearing and that the Respondent offered no evidence on mitigation, rehabilitation, contrition or any other factor that could serve as a reason for rejecting revocation as a penalty. The Committee also noted that the Respondent had violated terms under his Federal probation. The Committee found that the Respondent failed to learn from his mistakes and the Committee determined that they could not trust the Respondent to reform his behavior.

#### **Review History and Issues**

The Committee rendered their Determination on April 8, 2002. This proceeding commenced on April 23, 2002, 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 brief. The record closed when the ARB received the response brief on May 29, 2002.

The Respondent submitted no brief, but instead submitted copies of various letters, including some character references, and some letters by the Respondent himself denying his guilt on the fraud charges and the Federal probation violation. In response, the Petitioner argues that the Respondent's submission provides no basis on which to overturn the Committee and that the submission constitutes material from outside the hearing record.

### Determination

The ARB has considered the record and the parties' submissions. The ARB sees no reason to overturn the Committee's Determination on the charges or on the penalty. The Respondent's submission essentially challenges his Federal conviction and the finding on the probation violation. The conviction and the finding, however, bind the ARB and the Committee. The Committee and the ARB lack any authority to overturn a Federal conviction or a Federal Court's finding about the probation violation.

On penalty, the Respondent has failed to offer any response to the Committee's reasoning for revoking the License, other than to continue his challenge to the conviction and findings. The ARB holds that the Respondent's multiple felony convictions for fraud and false claims supported the Committee's conclusion that the Committee could not trust the Respondent. We hold that the probation violation supported the Committee's conclusion that the Respondent has failed to learn from his mistakes. License revocation constitutes the appropriate penalty for a physician who has used his License to commit fraud. The Respondent's failure to learn from his mistakes makes him a risk to repeat those mistakes and that risk provides a further reason to support the Committee's Determination.

**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 to revoke the Respondent's License.

Robert M. Briber  
Thea Graves Pellman  
Winston S. Price, M.D.  
Stanley L. Grossman, M.D.  
Therese G. Lynch, M.D.

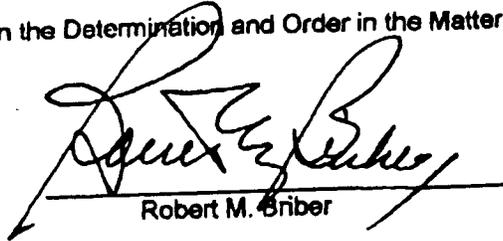
FAX NO. :

FROM : Briber

In the Matter of Sheldon Capp, M.D.

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

Dated July 9, 2002

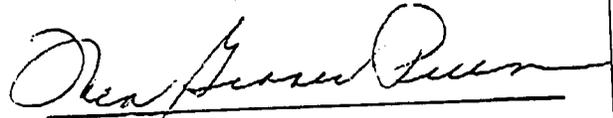


Robert M. Briber

In the Matter of Sheldon Capp, M.D.

Thea Graves Pellman, an ARB Member concurs in the Determination and Order in the  
Matter of Dr. Capp.

Dated: 7/8, 2002



Thea Graves Pellman

**In the Matter of Sheldon Capp, M.D.**

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

Matter of Dr. Capp.

Dated: July 12, 2002

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

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

**In the Matter of Sheldon Capp, M.D.**

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

Dated: July 16, 2002

Therese G. Lynch M.D.

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

In the Matter of Sheldon Capp, M.D.

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

Matter of Dr. Capp.

Dated: 07/12/02, 2002

A handwritten signature in black ink, appearing to read "S. L. Grossman M.D.", is written over a horizontal line.

Stanley L. Grossman, M.D.