



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

January 3, 2001

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Richard Zahnleuter, Esq.
NYS Department of Health
433 River Street
Hedley Building – 5th Floor
Troy, New York 12180

Mitchell Grant Siller, M.D.
3408 Fulton Avenue
Oceanside, New York 11572

Peter J. Millock, Esq. & Daniel Hurteau, Esq.
Nixon Peabody, LLP
Omni Plaza
30 South Pearl Street – Suite 900
Albany, New York 12207

RE: In the Matter of Mitchell Grant Siller, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 00-256) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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,

A handwritten signature in black ink that reads "Tyone T. Butler". The signature is written in a cursive style with a large initial 'T'.

Tyone T. Butler, Director
Bureau of Adjudication

TTB:cah

Enclosure

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

COPY

In the Matter of

**Mitchell Grant Siller, M.D., et al
(Respondent)**

Administrative Review Board (ARB)

Determination and Order No. 00-256

**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):

Richard J. Zahnleuter, Esq.

For the Respondents:

Peter J. Millock, Daniel J. Hurteau, Esqs.

In this proceeding pursuant to N.Y. Pub. Health Law § 230-c (4)(a)(McKinney's Supp. 2000), the parties ask the ARB to modify a BPMC Committee Determination that limited the Respondent's New York medical license (License) to permit practice in a medical facility only and ordered the Respondent to divest his ownership in four related medical businesses. The Respondent asks that the ARB revoke the Respondent's License, revoke the certificates for the business entities and fine the Respondent. The Petitioner argues that the Respondent violated a prior disciplinary probation, violated a statute and committed fraud. The Respondent asks that the ARB overturn two findings by the Committee that the Respondent engaged in willful and knowing intent to deceive and the Respondent asks that the ARB remove the limitation to facility only practice. After reviewing the record and the submissions by the parties, we vote 3-2 to overturn the Committee's Determination that the Respondent knowingly concealed changes in his employment and 5-0 to affirm the Committee's remaining Determination that the Respondent committed professional misconduct. We vote 5-0 to affirm the limitation on the Respondent's practice and the divestment order, but we modify the wording in imposing the conditions.

Committee Determination on the Charges

This proceeding concerns charges against the Respondent, Dr. Siller, individually and against four business entities in which the Respondent owns shares or holds a partnership interest:

- Mitchell Grant Siller, Physician, P.C. (Siller P.C.),
- Village Medical Services, P.C. (Village),
- Medford East Medical Associates (Medford), and,
- Aesculapeus Medical Group, LLP (Aesculapeus).

The Petitioner commenced the proceeding by filing charges with BPMC alleging that the Respondent violated N. Y. Educ. Law §§ 6530(2-6), 6530(9)(c), 6530(11), 6530(16), 6530(19-21), 6530(29) & 6530(22) (McKinney Supp. 2000) by:

- practicing the profession fraudulently and beyond its scope,
- practicing the profession with negligence on more than one occasion,
- practicing the profession with gross negligence,
- practicing the profession with incompetence on more than one occasion,
- practicing the profession with gross incompetence,
- engaging in conduct that resulted in a criminal conviction under state law,
- aiding or abetting an unlicensed person to perform activities that require a license,
- willful or grossly negligent failure to comply with substantial provisions in state law governing medical practice,
- permitting a person to share in professional fees,
- engaging in conduct in practice that evidences moral unfitness,
- willfully making or filing a false report required by law,
- violating probation or a condition on a license, and,
- failing to maintain accurate patient records.

The charges involved the Respondent's conduct under a 1995 Consent Order, his application to participate as a medical provider before the New York Worker's Compensation Board (WCB)

and certain forms he submitted to the WCB. A hearing on the charges ensued before the BPMC Committee that rendered the Determination now on review.

The evidence indicated that the Respondent entered into a 1995 Consent Order to settle charges stemming from a misdemeanor conviction for Driving While Intoxicated and allegations concerning inappropriate conduct with a patient outside the office. Under the Consent Order, the Respondent received a two-year License suspension, stayed in full, and five years on probation. The probation terms included sobriety, therapy and practice monitors and urine screenings. On the current charges, the Committee determined that the Respondent:

- knowingly and willfully attempted to deceive the WCB when he failed to inform the WCB about the stayed license suspension under the Consent Order when the Respondent filled out an application for a worker's compensation rating,
- knowingly and willfully attempted to deceive the WCB when the Respondent signed twenty-one WCB forms that listed the Respondent incorrectly as the attending physician in providing care to patients at issue in the forms,
- knowingly and willfully attempted to deceive the Office for Professional Medical Conduct (OPMC) by failing to inform OPMC about changes in the Respondent's employment at Village and Medford, and,
- failing to conform to professional and moral obligations when he failed to inform OPMC about criminal charges that the Respondent filed a false report for signing the twenty-one WCB forms.

The Committee found that the Respondent settled the criminal charges by pleading guilty to disorderly conduct. The Committee also found that the Respondent's attorney in the criminal case advised the Respondent against informing anyone about the criminal charges. The Committee concluded that the Respondent's action constituted professional misconduct under the following specifications:

- practicing fraudulently,
- willful failure to comply with state law governing medical practice,
- engaging in conduct that evidences moral unfitness in medical practice,

- willfully making or filing false report, and,
- violating probation.

The Committee dismissed all other misconduct specifications.

The Committee found the Respondent's conduct serious but they noted several mitigating factors in the case, such as the Respondent's medical competence, his compliance with the sobriety monitoring under the Consent Order, stressful factors in the Respondent's life and the blame that others shared for some conduct at issue here. The Committee voiced concern, however, that the Respondent practices without supervision and accountability and that the Respondent's unsupervised activities have again resulted in disciplinary action against his License. The Committee voted to limit the Respondent's License to prohibit the Respondent from practice in an independent, unsupervised, private practice. The Committee restricted the Respondent to practice in a facility holding an operating certificate pursuant to Public Health Law Article 28. The Committee also directed that the Respondent divest himself of all professional corporations. The Committee stated that the Respondent's misconduct arose from his actions personally, so the Committee declined to take action against Siller, P.C., Village, Medford or Aesculapeus.

Review History and Issues

The Committee rendered their Determination on October 4, 2000. This proceeding commenced on October 18, 2000, when the ARB received the Petitioner's Notice requesting a Review. The record for review contained the Committee's Determination, the hearing record, the Petitioner's brief and response brief and the Respondent's brief and response brief. The record closed when the ARB received the Respondent's response brief electronically on November 30, 2000.

The Petitioner asks the ARB to overturn the Committee's Determination on penalty and challenges the factors the Committee found mitigating. The Petitioner requests that the

Committee revoke the Respondent's License, fine the Respondent \$2,430.30, revoke the certificates of incorporation for Siller, P.C., Village and Medford and revoke the partnership registration for Aesculapeus. The Petitioner states that the fine amount corresponds to the amount of money for which the Respondent submitted the WCB forms, for which the Respondent has failed to make restitution. The Petitioner argues that the Committee's findings confirm significant, intentional and repeated misconduct. The Petitioner also argues that the Committee imposed a non-workable license limitation and a non-workable divestment order. As to the limitation, the Petitioner argues that the limitation will leave an unknown hospital to monitor the Respondent rather than the Physician Monitoring Program within OPMC. As to the order that the Respondent divest himself from professional corporation or partnership holdings, the Petitioner argues that there may be no interest in purchasing the Respondent's medical businesses. The Petitioner notes that probation following the Consent Order has failed to deter the Respondent from further misconduct.

The Respondent requests that the ARB modify the Committee's Determination on both the charges and the penalty. The Respondent argues that no evidence exists that the Respondent signed the WCB forms with intent to deceive or attempted to deceive OPMC about his business activities and the Respondent asks the ARB to overturn those findings. As to the penalty, the Respondent asks the ARB to remove the limitation to practice in an Article 28 facility only. The Respondent argues that the limitation would prevent him from serving his patients and that such a limitation usually results from a concern about the care that a physician renders. The Respondent contends that the Committee expressed concern over the Respondent's business practices only and found no areas for concern in the Respondent's care for patients. The Respondent also contends that the limitation will provide no supervision over those business

practices. The Respondent recommends that the ARB allow him to continue to serve his private patients by removing the Article 28 limitation and placing restrictions on the Respondent's private medical and business practices.

Determination

The ARB has considered the record and the parties' briefs. We affirm the Committee's Determination that the Respondent committed professional misconduct, including the Determination that the Respondent knowing and intentionally attempted to deceive the WCB when he signed the twenty-one WCB forms. We overturn the Committee's Determination and dismiss the charge that the Respondent knowingly and willfully attempted to deceive OPMC about his changes in employment at Village and Medford. We affirm the Committee's Determination to limit the Respondent to practice in a medical facility, but we modify the language on the limitation. We affirm the Committee's limitation directing the Respondent to divest himself from ownership in any professional corporations or partnerships, but we modify the language on the limitation. We reject the Petitioner's request that we fine the Respondent or revoke the certificates of incorporation or partnership authorizations for the related business entities.

The WCB Forms: The Respondent argued that no evidence showed that the Respondent was aware that it was improper to sign the WCB forms as attending physician and no evidence showed that the Respondent intended to mislead anyone by signing the forms. The Respondent testified that he believed it appropriate to sign the forms so that two physicians in Aesculapeus, Drs. Jan and Pirraglia, could receive reimbursement from Worker's Compensation for treating

twenty-one patients. The Respondent signed the forms over a two-month period because Dr. Jan or Dr. Pirraglia lacked the Worker's Compensation rating that the Respondent held. The Committee used their conclusion that the Respondent intended to deceive the WCB as the basis, in part, for their Determination that the Respondent practiced fraudulently and willfully filed a false report.

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), aff'd, 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).

In Finding of Fact (FF) 34, the Committee found that the Respondent never saw any Worker's Compensation patients. At FF 35, the Committee found that the Respondent signed twenty-one WCB forms attesting that he treated the patients whom Drs. Jan and Parraglia treated. Under their second conclusion, at page 14 in their Determination, the Committee noted that the Respondent signed the forms despite the cautions "Affirmed Under Penalty of Perjury" and "This Form Must Be Signed Personally By The Attending Doctor". The Committee found the Respondent non-credible in his testimony that he failed to realize he could not sign the forms. The ARB owes the Committee as fact finder deference in their judgement on credibility and the Committee could reject the Respondent's explanation for his misconduct. The evidence demonstrated that the Respondent signed as attending physician for twenty-one patients the Respondent never attended. We infer from the facts that the Respondent submitted knowingly false information to the WCB to deceive the WCB into believing the Respondent provided that care because the Respondent, rather than Drs. Jan or Parraglia, held the Worker's Compensation rating necessary to bill the WCB for compensation for services. We affirm the Committee's Determination on the WCB forms.

Employment Changes: The Committee found that the Respondent changed employment by incorporating Village on July 28, 1995 and Medford on July 18, 1997. The Committee concluded that the Respondent should have reported both employment changes to OPMC. The Committee found further that the Respondent made his practice monitor and therapy monitor aware about Village. The Committee also found that the Respondent informed OPMC and his practice monitor about Medford on October 1, 1997, two and one-half months after signing the incorporation documents. The Committee determined that the Respondent failed to report these

changes as a knowing, willful and intentional attempt to mislead or deceive. The Respondent challenges that Determination.

By a 3-2, we overturn the Determination that the failure to report the Village and Medford incorporations constituted a knowing or willful intent to deceive. Dr. Price, Dr. Lynch and Mr. Briber hold that the record fails to prove intent to conceal or deceive, because the Respondent did inform his monitors about Village and because he informed one monitor and OPMC about Medford, although belatedly. Dr. Grossman and Ms. Pellman would affirm the Committee's Determination on that issue.

Penalty: The ARB has affirmed that the Respondent willfully intended to deceive by submitting the WCB forms listing the Respondent as attending physician. We also sustain the Committee's Determination that the Respondent:

- knowingly and willfully attempted to deceive the WCB when he failed to inform the WCB about the stayed license suspension under the Consent Order when the Respondent filled out an application for a worker's compensation rating, and,
- failed to conform to professional and moral obligations when he failed to inform OPMC about criminal charges that the Respondent filed a false report for signing the twenty-one WCB forms.

Neither party challenged the Committee's Determination on those issues. Although the Respondent's attorney told him to inform no one about the criminal charges, the Respondent bore the responsibility to inform OPMC and his attorney's advice presented no defense to the charge. As we note below, the attorney's advice does provide some mitigation in considering the penalty. We find the Committee's findings and conclusions consistent with their Determination that the Respondent's conduct amounted to:

- practicing fraudulently,
- willful failure to comply with state law governing medical practice,
- engaging in conduct that evidences moral unfitness in medical practice,

- willfully making or filing false report, and,
- violating probation.

We hold that such acts constitute serious misconduct and warrant a severe penalty.

We reject the Petitioner's request that we revoke the Respondent's License. We agree with the Committee that factors in this case mitigate against revocation. No evidence in this case called into question the Respondent's ability to provide competent, acceptable patient care. Although the Respondent engaged in prior misconduct that resulted in the Consent Decree, the evidence shows no repeat in the misconduct at issue in the earlier proceeding, that involved alcohol abuse and improper conduct with a patient. The Respondent also withheld the information on the criminal charges from OPMC on his attorney's advice. We also find that the Committee has fashioned a sanction that will reduce the likelihood for further mistakes by the Respondent, while allowing a competent physician to continue providing patient care.

We affirm the Committee Determination to remove the Respondent from private practice and to require the Respondent to divest himself from ownership in any related businesses. We modify the wording in that limitation. We limit the Respondent's License to prohibit his private practice and to restrict his practice to a medical facility holding a government issued operating certificate (such as a certificate pursuant to Public Health Law Article 28) or operated by a state or federal agency (such as the United States Veteran's Administration). We agree with the Committee that the Respondent's recent problems arose from the business relationships that the Respondent entered. In a government licensed or operated facility, there will be supervision over the Respondent's practice due to regulations under which the facility operates. We see no need for a practice monitor, as no evidence called into question the Respondent's competence. We also affirm the Committee's Determination to require the Respondent to divest his ownership from the related business entities, but again we modify the wording in the limitation. We direct the Respondent to divest himself from all present or future holdings as a partner in a medical partnership or as a shareholder in a professional corporation, whether as a sole shareholder or as a shareholder with others.

The Respondent had challenged the health facility limitation as inappropriate, arguing that such limitations address problems with physicians who require supervision due to providing poor medical care. Although we have used a limitation on facility only practice as a penalty to address poor medical care, Matter of Minielly v. Comm. of Health 222 A.D. 2d 750, 634 N.Y.S. 2d 856 (Third Dept. 1995), we have also employed the facility only practice limitation when the misconduct at issue involved issues in billing, Matter of Sternberg v. Admin. Rev. Bd. for Prof. Med. Cond., 235 A.D.2d 945, 652 N.Y.S.2d 855 (3rd Dept. 1997), lv. denied 90 N.Y.2d 809(1997). In Sternberg, the Appellate Division for the Third Department affirmed an ARB limitation to a facility only practice, for a physician who provided and billed for unnecessary procedures and services for the physician's financial gain. The Court stated that the:

"...limitation is quite appropriate; it effectively minimizes the risk of future, similar transgressions, while maximizing the benefit to both the petitioner and the public, by allowing him to continue practicing the profession"

The Petitioner challenged the divestment order as unworkable, arguing that there may be no interest by physicians to invest in the Respondent businesses. We find no merit in that argument. The Committee found that the Respondent has already instructed his accountant to dissolve Village (FF 23).

The Petitioner requested that we revoke the certificates of incorporation for Siller, PC, Medford and Village and revoke the partnership certificate for Aesculapeus. We disagree with the statements by the Petitioner and the Committee that the penalty against the Respondent constitutes no action against the business entities. We hold that the divestment order constitutes appropriate action concerning the business entities. We also hold that the License limitation and the divestment order constitute an appropriate penalty for the Respondent's misconduct and we decline the Respondent's request that we add a fine to the penalty.

ORDER

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

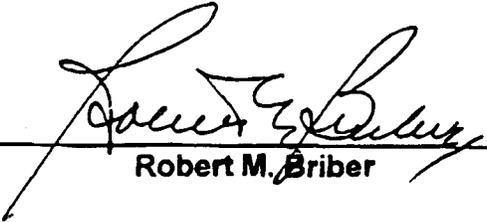
1. The ARB **AFFIRMS** the Committee's Determination that the Respondent committed professional misconduct.
2. The ARB **MODIFIES** the Determination, **OVERTURNS** the Committee and by a 3-2 vote **DISMISSES** the charge that the Respondent knowingly withheld, with intent to deceive, information about changes in the Respondent's employment.
3. The ARB **AFFIRMS** in the Committee's Determination to limit the Respondent's License and to order the Respondent to divest his ownership in the related business entities, but we **MODIFY** the language in the limitation and the divestment order as our Determination provides.

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

In the Matter of Mitchell Grant Siller, M.D.

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

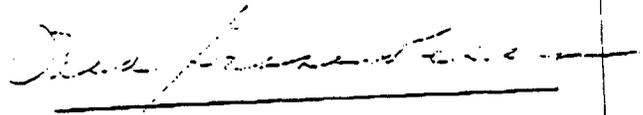
Dated December 13, 2000


Robert M. Briber

In the Matter of Mitchell Grant Siller, M.D.

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

Dated: 12/28, 2000



Thea Graves Pellman

In the Matter of Mitchell Grant Siller, M.D.

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

Dated: 12/15, 2000

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 Mitchell Grant Siller, M.D.

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

Dated: December 15, 2000

A handwritten signature in cursive script, appearing to read "Stanley L. Grossman", is written above a horizontal line.

Stanley L. Grossman, M.D.

In the Matter of Mitchell Grant Siller, M.D.

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

Dated: December 12, 2000

A handwritten signature in cursive script that reads "Therese G. Lynch, M.D." with a circular flourish at the end.

Therese G. Lynch, M.D.



**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

October 4, 2000

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Richard Zahnleuter, Esq.
NYS Department of Health
Hedley Building, 5th Floor
433 River Street
Troy, N.Y. 12180

Mitchell Grant Siller
3408 Fulton Avenue
Oceanside, N.Y. 11572

Daniel Hurteau, Esq.
Nixon Peabody, LLP
Omni Plaza
30 South Pearl Street
Suite 900
Albany, N.Y. 12207

RE: In the Matter of Mitchell Grant Siller, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 00-256) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), and §230-c subdivisions 1 through 5, (McKinney Supp. 1992), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the licensee or the Department may seek a review of a committee determination.

All notices of review must be served, by certified mail, upon the Administrative Review Board and the adverse party within fourteen (14) days of service and receipt of the enclosed

Determination and Order.

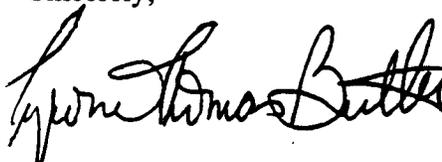
The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Hedley Park Place
433 River Street, Fifth Floor
Troy, New York 12180

The parties shall have 30 days from the notice of appeal in which to file their briefs to the Administrative Review Board. Six copies of all papers must also be sent to the attention of Mr. Horan at the above address and one copy to the other party. The stipulated record in this matter shall consist of the official hearing transcript(s) and all documents in evidence.

Parties will be notified by mail of the Administrative Review Board's Determination and Order.

Sincerely,



Tyrone T. Butler, Director
Bureau of Adjudication

TTB:sc
Enclosure

**IN THE MATTER
OF
MITCHELL GRANT SILLER, M.D.
AND
MITCHELL GRANT SILLER, PHYSICIAN, P.C.
AND
VILLAGE MEDICAL SERVICES, P.C.
AND
MEDFORD EAST MEDICAL ASSOCIATES, P.C.
AND
AESCULAPEUS MEDICAL GROUP, LLP**

DETERMINATION

AND

ORDER

BPMC - 00-256

MR. IRVING S. CAPLAN, Chairperson, **ROGER M. OSKVIG, M.D.** and **JOSEPH E. GEARY, M.D.**, duly designated members of the State Board for Professional Medical Conduct, appointed by the Commissioner of Health of the State of New York pursuant to Section 230(1) of the Public Health Law, served as the Hearing Committee in this matter pursuant to Section 230(10)(e) of the Public Health Law. **MICHAEL P. MCDERMOTT, ESQ.**, Administrative Law Judge, served as the Administrative Officer for the Hearing Committee.

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

SUMMARY OF PROCEEDINGS

Notice of Hearing and Statement of Charges:	April 10, 2000
Amended Statement of Charges	July 17, 2000 (in evidence)
Pre-Hearing Conference:	June 22, 2000
Hearing Dates:	July 27, 2000 August 3, 2000 August 4, 2000
Place of Hearing:	NYS Department of Health Hedley Park Place 433 River Street Troy, New York 12180
Date of Deliberations:	September 8, 2000
Petitioner appeared by:	Henry M. Greenberg, General Counsel NYS Department of Health by: Richard Zahnleuter, Esq., of Counsel
Respondent appeared by:	Nixon Peabody, LLP Omni Plaza 30 South Pearl Street Suite 900 Albany, New York 12207 by: Daniel Hurteau, Esq., of Counsel

WITNESSES

For the Petitioner:

1. Sheila J. Bradwell
2. Miguel Fustero, M.D.
(by telephone)
3. Ronald Cohen, PH.D.
(by telephone)

For the Respondent:

1. Miguel Fustero, M.D.
(by telephone)
2. James Frazer, Esq.
3. Mitchell Grant Siller,
M.D., the Respondent
4. Ronald Cohen, PH.D.
(by telephone)
5. Renee Ross, C.S.W.,
MSW

STATEMENT OF CHARGES

Essentially, the Amended Statement of Charges charges the Respondent with:

- Practicing The Profession Fraudulently or Beyond Its Authorized Scope.
- Negligence on More Than One Occasion.
- Gross Negligence.
- Incompetence on More Than One Occasion.
- Gross Incompetence.
- Having Been Found Guilty In an Adjudicatory Proceeding of Violating a State Statue.
- Permitting, Aiding, or Abetting an Unlicensed Person to Perform Activities Requiring a License.
- Willful or Grossly Negligent Failure to Comply with Substantial Provisions of State Law Governing The Practice of Medicine.
- Permitting Any Person to Share in The Fees for Professional Services.
- Conduct in The Practice of Medicine Which Evidences Moral Unfitness to Practice Medicine.
- Willfully Making or Filing a False Report Required By Law.

- Violating Any Term of Probation or Condition or Limitation Imposed on the Licensee, and
- Failing to Maintain a Record for Each Patient Which Accurately Reflects The Evaluation and Treatment of the Patient.

The charges are more specifically set forth in the Amended Statement of Charges, a copy of which is attached hereto and made part hereof.

FINDINGS OF FACT

Numbers in parenthesis refer to transcript page numbers or exhibits. These citations represent evidence found persuasive by the Hearing Committee in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence. All Hearing Committee findings were unanimous unless otherwise specified.

GENERAL FINDINGS

1. MITCHELL GRANT SILLER, M.D., the Respondent, was authorized to practice medicine in New York State on October 15, 1984, by the issuance of license number 160541 by the New York State Education Department. (Pet's Exs. 8 and 56).
2. MITCHELL GRANT SILLER, PHYSICIAN, P.C., also a Respondent, is a professional service corporation that was authorized to practice medicine in New York State on June 10, 1994 by the New York State Department of State. (Pet's Ex. 7).

3. VILLAGE MEDICAL SERVICES, P.C., also a Respondent, is a professional service corporation that was authorized to practice medicine in New York State on November 28, 1995 by the New York State Department of State. (Pet's Ex. 14).
4. MEDFORD EAST MEDICAL ASSOCIATES, P.C., also a Respondent, is a professional service corporation that was authorized to practice medicine in New York State on August 15, 1997 by the New York State Department of State. (Pet's Ex. 22).
5. AESCULAPEUS MEDICAL GROUP, LLP, also a Respondent, is a professional partnership that was authorized to practice medicine in New York State on March 18, 1997 by the New York State Department of State. (Pet's Ex. 57).
6. Since June of 1994, Dr. Siller has maintained a professional service corporation under the name Mitchell Grant Siller, Physician, P.C. located at 176 North Village Avenue, Rockville Center, New York. (Pet's Ex. 7; Tr. 218)
7. On July 6, 1995, Dr. Siller submitted an Application for a Consent Order to the New York State Board for Professional Medical Conduct to resolve a Statement of Charges stemming from a misdemeanor conviction for Driving While Intoxicated and allegations of inappropriate contact with a patient outside of the office. (Pet's Ex. 8; Tr. 204).

8. On July 14, 1995, Dr. Siller submitted an application to the New York Workers' Compensation Board for authorization to render medical care to persons suffering work-related injury or illness. Question #13 on the application inquired "Have you ever had a New York State Professional License suspended or revoke?" Dr. Siller answered "No." (Pet's Ex. 10; Tr. 213-214).
9. When Dr. Siller submitted his application to the New York Workers' Compensation Board, he had not yet received a response from the Board for Professional Medical Conduct on his Application for a Consent Order nor had he been served with a copy of the fully executed Consent Order. (Tr. 214).
10. Dr. Siller's Application for a Consent Order was approved on July 18, 1995. Under terms of the Order, his license to practice medicine was suspended for two (2) years, suspension stayed, and he was placed on probation for a period of five (5) years. (Pet's Ex. 8).
11. By letter dated March 19, 1996 the Workers' Compensation Board notified Dr. Siller that his application had been approved with an effective date of March 19, 1996. (Pet's Ex. 11).
12. When Dr. Siller filed his application with the Workers' Compensation Board on July 14, 1995, he knew that suspension of his medical license was imminent. The Order of a stayed suspension was approved on July 18, 1995. Dr. Siller had a period of approximately seven (7) months, July 18, 1995 to March 19, 1996, to correct his

misleading response to Question #13 on his Workers' Compensation application. He failed to do so.

13. Dr. Siller's application to the Workers' Compensation Board for an authorization number was not a change in his employment or practice. (Pet's Ex. 10).
14. Under the terms of the Consent Order, Dr. Siller was to report to a sobriety monitor, Elliot Cohen, M.D., a therapy monitor, Ronald Cohen, Ph.D., and a practice monitor, Miguel Fustero, M.D. (Tr. 32, 33, 204, 205, 206, 207, 208).
15. Over the course of his probation, Dr. Siller was always cooperative and compliant in providing urine samples to the sobriety monitor. (Resp's Ex. AAA).
16. Every urine sample taken by the sobriety monitor was negative for both controlled substances and alcohol. (Resp's Ex. AAA).
17. Dr. Siller was essentially cooperative and compliant in his therapy monitoring session, but he did not disclose the issues relating to the Workers' Compensation claims as he should have done. (Tr. 125-126, 277).
18. Dr. Siller was essentially cooperative and compliant in providing his practice monitor with patient files and information requested, but he did not disclose the issues relating to the Workers' Compensation claims as he should have done. (Tr. 102-103).

19. On November 28, 1995, Dr. Siller incorporated a professional service corporation under the name Village Medical Services, P.C., located at 200 North Village Avenue, Rockville Center, New York. (Pet's Ex. 14; Tr. 216).
20. Incorporating Village Medical Services, P.C. changed Dr. Siller's employment by virtue of being an officer of that corporation. (Pet's Ex. 14).
21. Dr. Fustero, the practice monitor, was aware that Village Medical Services, P.C. existed and reviewed medical charts of patients at that location. (Tr. 101-102, 110-111, 218-220, 232, 351-353).
22. Dr. Ronald Cohen, the therapy monitor, was aware that Village Medical Services, P.C. existed. (Tr. 283).
23. Dr. Siller no longer sees patients at 200 North Village Avenue and has instructed his accountant to dissolve Village Medical Services, P.C. (Tr. 297-299).
24. On March 18, 1997, Dr. Siller registered a limited liability partnership, with Dr. Siller and Dr. Thomas Jan as partners, under the name Aesculapeus Medical Group, LLP, located at 176 North Village Avenue, Rockville Center, New York. (Pet's Ex. 57; Tr. 20-221).
25. Establishment of Aesculapeus Medical Group, LLP was not a change in Dr. Siller's employment or practice. (Pet's Ex. 57).

26. Dr. Siller told Dr. Fustero that Dr. Jan had joined him in practice and Dr. Fustero met Dr. Jan at 176 North Village Avenue (Tr. 102, 24, 322).
27. Dr. Ronald Cohen was aware that Dr. Jan had joined Dr. Siller as a colleague or partner. (Tr. 224, 276, 277, 283).
28. A sign was placed outside of the office at 176 North Village Avenue, which stated "Aesculapeus Medical Group, Dr. Mitchell Siller and Dr. Thomas Jan". (Tr. 23, 372, 373).
29. On July 1, 1997, Dr. Siller signed an agreement with Medicare Inc. wherein the corporation would provide management, consulting services, marketing, billing collections, and administrative services and report transcription to Drs. Siller and Jan. (Pet's Ex. 41).
30. On July 18, 1997, Dr. Siller signed documents to effectuate the formation of Medford East Medical Associates, P.C., a separate corporation primarily for Workers' Compensation patients, to be located in Medford, New York. The certificate of incorporation was filed on August 15, 1997. (Pet's Ex. 22; Tr. 170, 226-29).
31. Although Dr. Siller had second thoughts a day or two after signing the July 1, 1997 agreement, he nevertheless signed the certificate of incorporation for the creation of Medford East Medical Associates, P.C. on July 18, 1997. (Pet's Ex. 2; Tr. 29-231).

32. Incorporating Medford East Medical Associates, P.C. changed Dr. Siller's employment by virtue of being an officer of that corporation. (Pet's Ex. 13, pp. 24-25, Ex. 22, Tr. 340).
33. On October 1, 1998, Dr. Siller informed Ms. Bradwell (OPMC) and Dr. Fustero that he had a brief association with Medford East Medical Associates, P.C. (Pet's Ex. 30; Tr. 243).
34. Dr. Siller never saw Workers' Compensation patients at any time at any location. (Tr. 237).
35. Dr. Siller signed twenty-one (21) C-4 Workers' Compensation forms over a two month period for patients he did not treat, but were treated by Drs. Jan and Pirraglia through Medford East Medical Associates, P.C. (Pet's Exs. 43-55; Tr. 233-234, 238, 327-328, 350).
36. Before signing the C-4 forms, Dr. Siller reviewed the patient charts and discussed treatment with Drs. Jan and Pirraglia to make certain the treatment was performed and appropriate. (Tr. 234, 235, 236, 237). (Hearing Committee Vote: (2-1)).
37. Dr. Siller was the payee on at least ten (10) of the Workers' Compensation checks. (Pet's Ex. 43, 45, 46, 47, 51, 53).

38. Dr. Siller was investigated for and eventually charged with a Class E Felony in relation to his signing the C-4 forms, for allegedly filing a false statement. (Pet's Ex. 31; Tr. 185).
39. Dr. Siller was advised by his attorney, James Frazer, Esq., from the time Dr. Siller was aware of a criminal investigation until an eventual disposition of the charges, not to tell anyone that he was under investigation and/or had been charged for filing a false statement. (Tr. 172, 173, 242).
40. On December 7, 1998, the charge against Dr. Siller was reduced, through negotiations with the District Attorney, to a violation for Disorderly Conduct. (Pet's Ex. 31; Tr. 168-169, 185, 245).
41. The allocution was for Disorderly Conduct only, and Dr. Siller did not allocute to intentional nor fraudulent activity. (Resp's Exs. BBB and CCC).
42. Dr. Siller made restitution to the insurance companies for four (4) of the C-4 claims which he signed and which resulted in the charges against him. (Resp's Ex. VV; Tr. 169-171, 245).
43. Dr. Siller did not conduct a comprehensive review to determine if similar payments should be made to insurance companies corresponding to any other patients, and Dr. Siller did not volunteer to make payments corresponding to any patients who were not included in the plea bargain negotiations. (Tr. (8/3/2000) 34, 40-41).

44. During the period, March 1, 1999 and August 31, 1999, Dr. Siller met with his psychopharmacologist/therapist, Dr. Ronald Cohen, on at least two (2) occasions concerning evaluation of Dr. Siller's psychological condition. Dr. Siller failed to disclose his guilty plea and conviction or any of the underlying related aspects of his practice, leading Dr. Cohen to represent to the Office of Professional Medical Conduct that Dr. Siller "continues to demonstrate motivation & conscientiousness personally & professionally." (Pet's Exs. 33 and 34; Resp's Ex. WW, #27; Tr. (8/3/2000) 87, 111-112).

45. Dr. Ronald Cohen would not have made such a representation to the Office of Professional Medical Conduct if Dr. Siller had disclosed his guilty plea and conviction.

Moreover, Dr. Cohen thought that Dr. Siller should have confided in him about the guilty plea and conviction, and considered Dr. Siller's failure to do so a "deficit". (Tr. (8/3/2000), 112-126).

46. During the period March 1, 1999 and October 31, 1999, Dr. Siller met with his practice monitor, Dr. Fustero, on at least three (3) occasions concerning evaluation of Dr. Siller's medical practice. Dr. Siller failed to disclose his guilty plea and conviction or any of the underlying related aspects of his practice, leading the practice monitor to represent to the Office of Professional Medical Conduct that Dr. Siller "is doing very well in all aspects of his professional and personal" "endeavors" or "life". (Pet's Exs. 35, 36, 37, 58; Tr. (7/27/2000) 97-98, 109).

CONCLUSIONS OF THE HEARING COMMITTEE

1. AS TO DR. SILLERS APPLICATION TO THE WORKERS' COMPENSATION BOARD:

- a) On July 6, 1995, Dr. Siller submitted an Application for a Consent Order to the New York State Board for Professional Medical Conduct to resolve a Statement of Charges stemming from a misdemeanor conviction for Driving While Intoxicated and allegations of inappropriate contact with a patient outside of the office.

On July 14, 1995, Dr. Siller submitted an application to the New York Workers' Compensation Board for authorization to render medical care to persons suffering work-related injury or illness. Question #13 on the application inquired "Have you ever had a New York State Professional License suspended or revoked?" Dr. Siller answered "No".

Dr. Siller's Application for a Consent Order was approved on July 18, 1995. Under terms of the Order, his license to practice medicine was suspended for two (2) years, suspension stayed, and he was placed on probation for a period of five (5) years.

By letter dated March 19, 1996 the Workers' Compensation Board notified Dr. Siller that his application had been approved with an effective date of March 19, 1996.

When Dr. Siller filed his application with the Workers' Compensation Board on July 14, 1995, he knew that suspension of his medical license was imminent. The Order of a stayed suspension was approved on July 18, 1995. Dr. Siller had a period of approximately seven (7) months, July 18, 1995 to March 19, 1996, to correct his misleading response to Question #13 on his Workers' Compensation application. He failed to do so, evidencing a knowing, willful and intentional attempt to deceive or mislead.

2. **AS TO DR. SILLER'S SIGNING OF WORKERS' COMPENSATION C-4 FORMS:**

During the period July 14, 1997 through September 24, 1997, Dr. Siller signed and submitted a total of twenty-one (21) C-4 forms as the attending physician even though he knew full well that other physicians who were not authorized to treat Workers' Compensation patients actually treated the patients. He signed the C-4 forms despite the caution, "Affirmed Under Penalty of Perjury" and "This Form Must Be Signed Personally By The Attending Doctor****".

The claim by Dr. Siller that he did not realize that he could not sign the C-4 forms, and that he was relying on the advice of his administrators is just not credible.

Given the noted cautions and directions on the C-4 forms, Dr. Siller cannot claim that he acted in good faith when he signed the forms.

The Hearing Committee concludes that Dr. Siller knowingly, willfully and intentionally attempted to mislead or deceive the Workers' Compensation Board when he signed the twenty-one (21) C-4 forms.

It should also be noted that despite Dr. Siller's claims that he never received any fees in connection with Workers' Compensation patients, Dr. Siller was the payee on at least ten (10) of the Workers' Compensation checks.

3. **AS TO CHANGES IN DR. SILLER'S EMPLOYMENT OR PRACTICE:**

- a) Dr. Siller's application to and subsequent approval by the Workers' Compensation Board for authorization to treat Workers' Compensation patients was not a change in employment or practice, and he was not required to report it to OPMC.
- b) The establishment of Aesculapeus Medical Group, LLP was not a change in Dr. Siller's employment or practice, and he was not required to report it to OPMC.
- c) On November 28, 1995, Dr. Siller incorporated a professional service corporation under the name Village Medical Services, P.C. This was a change of employment which Dr. Siller should have reported to OPMC, but he failed to do so. It should be noted in mitigation however, that Dr. Siller's practice monitor and his therapy monitor were aware of Village Medical Services existence.

- d) On July 18, 1997, Dr. Siller signed documents to effectuate the formation of Medford East Medical Associates, P.C., a separate corporation primarily for Workers' Compensation patients. The certificate of incorporation was filed on August 15, 1997. This was an change of employment which Dr. Siller failed to report to OPMC until October 1, 1987 when he informed Ms. Bradwell and Dr. Fustero that he had a brief association with Medford East Medical Associates, P.C.

It should be noted that Dr. Siller was investigated and subsequently arrested on December 7, 1998 for submitting the Workers' Compensation C-4 forms in connection with his association with Medford East Medical Associates, P.C.

The Hearing Committee concludes that there was a change in Dr. Siller's employment relative to Village Medical Services, P.C. and Medford East Medical Associates, P.C. and that his failure to report these changes to OPMC was a knowing, willful and intentional attempt to mislead or deceive.

4. **AS TO DR. SILLER'S FAILURE TO DISCLOSE HIS CONVICTION:**

Dr. Siller was investigated for and eventually arrested and charged with a Class E Felony in relation to his signing the C-4 forms, for allegedly filing a false statement.

Dr. Siller was advised by his attorney, James Frazer, Esq., from the time he was aware of a criminal investigation until an eventual disposition of the charges, not to tell

anyone that he was under investigation and/or had been charged for filing a false statement.

On December 7, 1998, the charge was reduced, through negotiations with the District Attorney, to a violation for Disorderly Conduct.

Dr. Siller made restitution to the insurance companies for four (4) of the C-4 claims which he signed and which resulted in the charges against him. However, Dr. Siller did not conduct a comprehensive review to determine if similar payments should be made to insurance companies corresponding to any other patients, and Dr. Siller did not volunteer to make payments corresponding to any patients who were not included in the plea bargain negotiations.

Dr. Siller concealed this incident from his practice monitor, his therapy monitor and his probation monitor.

While it can be argued that Dr. Siller was just following his attorney's advice and indeed there is nothing in the terms of probation specifically stating that such an incident must be reported, the terms of probation do provide;

1. "MITCHELL SILLER, M.D., during the period of probation, 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 imposed by law and by his/her profession."

Dr. Siller was obviously in violation of this term of probation and he had a moral obligation to report it.

The Hearing Committee notes this incident in its conclusions to further illustrate Dr. Siller's failure to conform fully to moral and professional standards.

VOTE OF THE HEARING COMMITTEE

(All Votes Were Unanimous Unless Otherwise Specified)

SPECIFICATIONS OF CHARGES

FIRST SPECIFICATION

Respondents are charged with **PRACTICING THE PROFESSION FRAUDULENTLY OR BEYOND ITS AUTHORIZED SCOPE**, in violation of New York Education Law §6530(2).

SUSTAINED as to those charges specified in paragraphs QQ through DDD of the Amended Statement of Charges.

NOT SUSTAINED as to any other charges.

SECOND SPECIFICATION

Respondents are charged with professional misconduct by reason of **PRACTICING THE PROFESSION WITH NEGLIGENCE ON MORE THAN ONE OCCASION**, in violation of New York State Education Law §6530(3).

NOT SUSTAINED as to any of the charges.

THIRD SPECIFICATION

Respondents are charged with professional misconduct by reason of **PRACTICING THE PROFESSION WITH GROSS NEGLIGENCE ON A PARTICULAR OCCASION**, in violation of New York Education Law §6530(4).

NOT SUSTAINED as to any of the charges.

FOURTH SPECIFICATION

Respondents are charged with professional misconduct by reason of **PRACTICING THE PROFESSION WITH INCOMPETENCE ON MORE THAN ONE OCCASION**, in violation of New York Education Law §6530(5).

NOT SUSTAINED as to any of the charges.

FIFTH SPECIFICATION

Respondents are charged with professional misconduct by reason of **PRACTICING THE PROFESSION WITH GROSS INCOMPETENCE**, in violation of New York Education Law §6530(6).

NOT SUSTAINED as to any of the charges.

SIXTH SPECIFICATION

Respondent Dr. Siller is charged with **HAVING BEEN FOUND GUILTY IN AN ADJUDICATORY PROCEEDING OF VIOLATING A STATE STATUTE**, in violation of New York Education Law §6530(9)(c).

WITHDRAWN

SEVEN SPECIFICATION

Respondents are charged with **PERMITTING, AIDING OR ABETTING AN UNLICENSED PERSON TO PRFORM ACTIVITIES REQUIRING A LICENSE**, in violation of New York Education Law §6530(11).

NOT SUSTAINED

NOTE: The individuals involved were not "UNLICENSED PERSONS".

They were NOT authorized to do Workers' Compensation cases.

EIGHTH SPECIFICATION

Respondents are charged with **WILLFUL OR GROSSLY NEGLIGENT FAILURE TO COMPLY WITH SUBSTANTIAL PROVISIONS OF STATE LAWS GOVERNING THE PRACTICE OF MEDICINE**, in violation of New York Education Law §6530(16).
SUSTAINED as to all of the charges specified except for those in paragraph OO which was withdrawn.

NINTH SPECIFICATION

Respondents are charged with **PERMITTING ANY PERSON TO SHARE IN THE FEES FOR PROFESSIONAL SERVICES**, in violation of New York Education Law §6530(19).
NOT SUSTAINED as to any of the charges.

TENTH SPECIFICATION

Respondents are charged with **CONDUCT IN THE PRACTICE OF MEDICINE WHICH EVIDENCES MORAL UNFITNESS TO PRACTICE MEDICINE**, in violation of New York Education Law §6530(20).
SUSTAINED as to those charges specified in paragraphs QQ through DDD of the Amended Statement of Charges.
NOT SUSTAINED as to any other charges.

ELEVENTH SPECIFICATION

Respondents are charged with **WILLFULLY MAKING OR FILING A FALSE REPORT REQUIRED BY LAW**, in violation of New York Education Law §6530(21).

SUSTAINED as to all of the charges specified in the Amended Statement of Charges.

TWELFTH SPECIFICATION

Respondent Dr. Siller is charged with **VIOLATING ANY TERM OF PROBATION OR CONDITION OR LIMITATION IMPOSED ON THE LICENSEE**, in violation of New York Education Law §6530(29).

SUSTAINED as to those charges specified in paragraphs BB, GGG, and III of the Amended Statement of Charges.

NOT SUSTAINED as to any other charges.

THIRTEENTH SPECIFICATION

Respondents are charged with professional misconduct by reason of **FAILING TO MAINTAIN A RECORD FOR EACH PATIENT WHICH ACCURATELY REFLECTS THE EVALUATION AND TREATMENT OF THE PATIENT**, in violation of New York Education Law §6530(32).

NOT SUSTAINED as to any of the charges.

DETERMINATION OF THE HEARING COMMITTEE

There are some mitigating factors in the record which the Hearing Committee has taken into consideration in determining the nature and severity of the penalty to be imposed upon the Respondent.

- The evidence indicates that Dr. Siller is a competent, caring physician.
- Dr. Siller is a relatively young man, he is 45 years old, and with proper supervision he could still make a positive contribution to society.
- The evidence indicates that Dr. Siller has fully complied with the terms of his probation relative to his sobriety. All urine tests have been negative and he continues his involvement with AA.
- There have been some very stressful factors in Dr. Siller's life during the period of his probation, i.e., the breakup of his marriage; his only child being moved out of state; and his twin brother's serious illness.
- His attorney testified that he advised Dr. Siller to not tell anyone that he was under investigation and/or had been charged with filing a false statement.
- Even though he did not report the changes in his employment directly to OPMC, the changes were known to some extent to his practice monitor and therapy monitor.
- Although OPMC approved Dr. Siller's monitors, OPMC failed to adequately inform the monitors of their duties; the type of discipline imposed on Dr. Siller; and the specific conduct which was the subject of the July 18, 1995 Consent Order. Also, OPMC did not adequately provide for a practice monitor for the final seven (7) months of Dr. Siller's probation, during which time OPMC has charged that multiple instances of misconduct occurred.

Even taking into consideration these mitigation factors, the Hearing Committee is still concerned about Dr. Siller's serious misconduct. Currently, Dr. Siller has no hospital affiliations, he is, so to speak, out there without any supervision or accountability which he so obviously needs. It is those unsupervised activities that have again caused Dr. Siller's license to be disciplined.

After due consideration of the full spectrum of penalties available pursuant to statute, including revocation, the Hearing Committee determines unanimously, (3-0), that Dr. Siller should be prohibited from engaging in the independent, unsupervised, private practice of medicine. Further, his medical practice should be restricted to employment in an Article 28 institution, approved by OPMC, where his practice can be supervised as part of the ongoing quality program of the institution. Also, Dr. Siller must divest himself of all professional corporations, whether sole or in partnership with others.

Since it was Dr. Siller's personal misconduct which is the basis of this case, the Hearing Committee declines to take any action regarding the other named Respondents.

ORDER

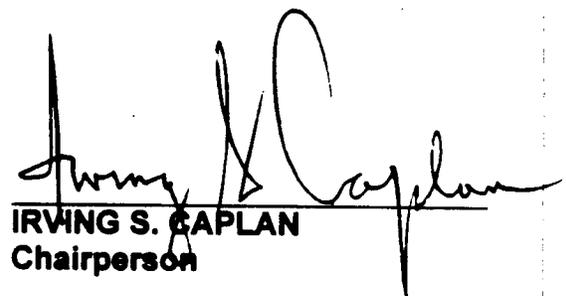
IT IS HEREBY ORDERED THAT:

1. Dr. Siller's license to practice medicine in the State of New York is hereby **LIMITED** as follows:

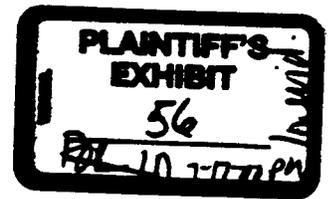
- a) Dr. Siller is prohibited from engaging in the independent, unsupervised, private practice of medicine.
 - b) Dr. Siller's medical practice shall be restricted to employment in an Article 28 institution, approved by OPMC, where his practice can be supervised as part of the ongoing quality program of the institution.
 - c) Dr. Siller shall divest himself of all professional corporations, whether sole or in partnership with others.
2. No action shall be taken against the other named Respondents in this case.
 3. This **ORDER** shall be effective upon service on the Respondent or the Respondent's attorney by personal service or by certified or registered mail.

DATED: OCT. 2, 2000

, New York


IRVING S. CAPLAN
Chairperson

ROGER M. OSKVIC, M.D.
JOSEPH E. GEARY, M.D.



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

IN THE MATTER
OF
MITCHELL GRANT SILLER, M.D.
AND
MITCHELL GRANT SILLER, PHYSICIAN, P.C.
AND
VILLAGE MEDICAL SERVICES, P.C.
AND
MEDFORD EAST MEDICAL ASSOCIATES, P.C.
AND
AESCULAPEUS MEDICAL GROUP, LLP

AMENDED
STATEMENT
OF
CHARGES

MITCHELL GRANT SILLER, M.D., the Respondent, was authorized to practice medicine in New York State on October 15, 1984, by the issuance of license number 160541 by the New York State Education Department. Dr. Mitchell's current address, upon information and belief, is 3408 Fulton Avenue, Oceanside, NY 11572.

MITCHELL GRANT SILLER, M.D., is subject to the jurisdiction of the State Board for Professional Medical Conduct, pursuant to the prehearing and hearing procedures of Title II-A of Article 2 of the New York Public Health Law.

MITCHELL GRANT SILLER, PHYSICIAN, P.C., also a Respondent, is a professional service corporation that was authorized to practice medicine in New York State on or about June 10, 1994 by the New York State Department of State.

VILLAGE MEDICAL SERVICES, P.C., also a Respondent, is a professional service corporation that was authorized to practice medicine in New York State on or about November 28, 1995 by the New York State Department of State.

MEDFORD EAST MEDICAL ASSOCIATES, P.C., also a Respondent, is a professional service corporation that was authorized to practice medicine in New York State on or about August 15, 1997 by the New York State Department of State.

AESCUAPEUS MEDICAL GROUP, LLP, also a Respondent, is a registered limited liability partnership that was authorized to practice medicine in New York State on or about March 18, 1997 by the New York State Department of State.

MITCHELL GRANT SILLER, PHYSICIAN, P.C., VILLAGE MEDICAL SERVICES, P.C., MEDFORD EAST MEDICAL ASSOCIATES, P.C., and AESCUAPEUS MEDICAL GROUP, LLP are subject to the jurisdiction of the State Board for Professional Medical Conduct, and the prehearing and hearing procedures of Title II-A of Article 2 of the New York Public Health Law, pursuant to Section 1503(d) of the New York Business Corporation Law.

ALLEGATIONS

A. A professional service corporation may be organized by one or more individuals who are authorized by law to render the same professional service, pursuant to Section 1503(a) of the New York Business Corporation Law.

B. No professional service corporation may render professional services except through individuals authorized by law to render such professional services, pursuant to Section 1504(a) of the New York Business Corporation Law.

C. No individual may be a shareholder, director or officer of a professional service corporation unless that individual is authorized by law to practice the same profession as the professional service corporation, pursuant to Sections 1507 and 1508 of the New York Business Corporation Law.

D. Any transfer of authority from such a qualified individual to a person ineligible to be a shareholder, director or officer is void, pursuant to Section 1507 of the New York Business Corporation Law.

E. The individuals who are the original shareholders, directors and officers of a professional service corporation must be identified by name and address on the certificate of incorporation of the professional service corporation, and the certificate of incorporation must identify the profession to be practiced by the professional service corporation, pursuant to Section 1503(b)(i) of the New York Business Corporation Law.

F. Each shareholder, employee, or agent of a professional service corporation is "personally and fully liable and accountable for any negligent or wrongful act or misconduct committed by him or by any person under his direct supervision and control while rendering professional services" on behalf of a professional service corporation, pursuant to Section 1505(a) of the New York Business Corporation Law.

G. Each "report, diagnosis, prognosis, and prescription made or issued" by a corporation practicing medicine "shall bear the signature of one or more physicians ... who are in responsible charge of such report, diagnosis, prognosis or prescription," pursuant to Section 1504(c) of the Business Corporation Law.

H. On or about June 10, 1994, a certificate of incorporation for Mitchell Grant Siller, Physician, P.C., a professional service corporation organized to practice medicine in compliance with Section 1503(a) of the New York Business Corporation Law, was filed with the New York State Department of State.

I. Dr. Siller was the physician who, in compliance with Sections 1503(a) and 1504(a) of the New York Business Corporation Law, was the original shareholder, director and officer of Mitchell Grant Siller, Physician, P.C.

J. Dr. Siller remains an owner of Mitchell Grant Siller, Physician, P.C., but pursuant to Sections 1503(a) and 1504(a) of the New York Business Corporation Law, Mitchell Grant Siller, Physician, P.C., may only continue to render professional services for as long as Dr. Siller is licensed to render such professional services.

K. On or about July 6, 1995, Dr. Siller submitted to the New York State Board for Professional Medical Conduct an Application for Consent Order concerning pending charges of misconduct and agreeing to a penalty involving suspension and

probation.

L. On or about July 14, 1995, Dr. Siller submitted to the New York Workers' Compensation Board an application for authorization to render medical care to persons suffering work-related injury or illness. In response to the question, "Have you ever had a New York State Professional License suspended or revoked," Dr. Siller answered, "No." In addition, as part of the application, Dr. Siller agreed "to timely file ... complete and accurate reports of the treatment rendered to compensation claimants," and he stated that "the foregoing answers are true to the best of his ... knowledge and belief"

M. On or about July 18, 1995, the Board for Professional Medical Conduct granted Dr. Siller's application for a Consent Order.

N. On or about July 31, 1995, Consent Order #95-153 concerning Dr. Siller became effective.

O. Pursuant to the terms of the July 31, 1995 Consent Order and the July 6, 1995 Application for Consent Order, Dr. Siller expressly admitted that he "engaged in sexual conduct" with a patient, and Dr. Siller expressly did not contest the charge that "On or about July 17, 1992, [Dr. Siller] told [the patient] she could pick up some diet aids he had been prescribing for her at the Garden City Hotel on Long Island where he was staying. When she arrived, he took her up to his room, put her on the bed, and against her will, masturbated on her."

P. In addition, pursuant to the terms of the July 31, 1995 Consent Order, Dr. Siller expressly admitted that he was guilty of misconduct under Section 6530(9)(a)(i) of the New York Education Law; namely, having been convicted of a crime. Specifically, Dr. Siller expressly admitted that "On or about March 25, 1993, in District Court, Nassau County, First District, Criminal Part 5, [Dr. Siller] pleaded guilty to misdemeanor charges of violating [sections] 1192.2 of the Vehicle and Traffic Law (Driving While Intoxicated) and 511.1 (Unlicensed Operation of a Motor Vehicle). [Dr. Siller] was fined \$500.00, his [driver's] license was revoked and he was sentenced to three (3) years probation [as a

driver].”

Q. The July 31, 1995 Consent Order imposed the following penalties, as set forth in Dr. Siller’s July 6, 1995 Application for Consent Order:

1. “My license to practice medicine in the State of New York shall be suspended for a period of two (2) years and such suspension shall be stayed.

2. I shall be placed on probation with practice monitoring for a period of five (5) years [to expire July 30, 2000] subject to the Terms of Probation attached hereto”

R. Term of Probation #1 was that Dr. Siller “shall conduct himself ... in all ways in a manner befitting his ... professional status and shall conform fully to the moral and professional standards of conduct imposed by law and by his ... profession.”

S. Term of Probation #2 was that Dr. Siller “shall submit written notification to the New York State Department of Health ... of any employment and practice ... and of any change in [Dr. Siller’s] employment, practice”

T. Term of probation #8 was, among other things, that Dr. Siller “will maintain legible and complete medical records which accurately reflect evaluation and treatment of patients.”

U. Term of Probation #9(c) was that Dr. Siller’s “practice shall be monitored by a licensed physician who shall review [Dr. Siller’s] professional performance and practice and who: ... c. Shall meet [regularly] ... with [Dr. Siller] to discuss his practice and ... evaluate whether [Dr. Siller’s] practice conforms with generally accepted standards of medical care”

V. Term of Probation #10(b) was that Dr. Siller “shall continue in both individual and group therapy with therapists approved by OPMC.”

W. Term of Probation #13 was that “upon receipt of evidence of noncompliance with, or any violation of these terms, the Director of the Office of Professional Medical Conduct and/or the Board may initiate a violation of probation proceeding and/or such other proceeding against [Dr. Siller] as may be authorized

pursuant to the Public
Health Law.”

X. Dr. Siller never notified the New York Workers Compensation Board that, contrary to his July 14, 1995 application to the New York Workers' Compensation Board for authorization to render medical care to persons suffering work-related injury or illness, he had been suspended pursuant to his July 6, 1995 Application for Consent Order and the July 31, 1995 Consent Order.

Y. On or about August 28, 1995, Dr. Siller signed a certificate of incorporation for Village Medical Services, P.C., which was a professional service corporation organized to practice medicine in compliance with Section 1503(a) of the New York Business Corporation Law, and on or about November 28, 1995, the New York State Department of State filed the certificate of incorporation.

Z. Dr. Siller was the physician who, in compliance with Sections 1503(a) and 1504(a) of the New York Business Corporation Law, was the original shareholder, director and officer of Village Medical Services, P.C.

AA. Dr. Siller remains an owner of Village Medical Services, P.C., but pursuant to Sections 1503(a) and 1504(a) of the New York Business Corporation Law, Village Medical Services, P.C., may only continue to render professional services for as long as Dr. Siller is licensed to render such professional services.

BB. On or about October 13, 1995, Dr. Siller met with a representative of the Office of Professional Medical Conduct and declared in writing “I reviewed the terms of my probation ... was given an opportunity to discuss the terms of probation and my compliance with those terms. To the best of my knowledge, I have been in compliance with the terms of probation,” yet contrary to Probation Term #2 concerning notification of any change in employment and practice, Dr. Siller failed to reveal that he applied to the New York Workers' Compensation Board for authorization to render medical care to persons suffering work-related injury or illness and he failed to disclose that he established Village Medical Services, P.C.

CC. In or about the period between September 1, 1995 and November 30, 1995, Dr. Siller met with his practice monitor, and contrary to Probation Term #9(c) concerning evaluation of whether Dr. Siller's practice conforms with generally accepted standards of medical care, Dr. Siller failed to reveal that he applied to the New York Workers' Compensation Board for authorization to render medical care to persons suffering work-related injury or illness and he failed to disclose that he established Village Medical Services, P.C.

DD. On or about December 27, 1995, the New York Workers' Compensation Board approved Dr. Siller's July 14, 1995 application and granted Dr. Siller authorization to render medical care to persons suffering work-related injury or illness.

EE. On or about August 14, 1996, Dr. Siller met with a representative of the Office of Professional Medical Conduct and declared in writing "I reviewed the terms of my probation ... was given an opportunity to discuss the terms of probation and my compliance with those terms. To the best of my knowledge, I have been in compliance with the terms of probation," yet contrary to Probation Term #2 concerning notification of any change in employment and practice, Dr. Siller failed to reveal that he applied for and received authorization from the New York Workers' Compensation Board to render medical care to persons suffering work-related injury or illness and he failed to disclose that he established Village Medical Services, P.C.

EE (supp.). On or about March 6, 1997, Dr. Siller signed a certificate of registration for Aesculapeus Medical Group, LLP, which was a registered limited liability partnership organized to practice medicine in compliance with Section 121-1500(a) of the New York Partnership Law, and on or about March 18, 1997, the New York State Department of State filed the certificate of registration.

FF. On or about June 11, 1997, Dr. Siller met with a representative of the Office of Professional Medical Conduct and declared in writing "I reviewed the terms of my probation ... was given an opportunity to discuss the terms of probation and my compliance with those terms. To the best of my knowledge, I have been in compliance

with the terms of probation," yet contrary to Probation Term #2 concerning notification of any change in employment and practice, Dr. Siller failed to reveal that he received authorization from the New York Workers' Compensation Board to render medical care to persons suffering work-related injury or illness and he failed to disclose that he established Village Medical Services, P.C., and that he established Aesculapeus Medical Group, LLP.

GG. On or about July 18, 1997, Dr. Siller signed a certificate of incorporation for Medford East Medical Associates, P.C., which was a professional service corporation organized to practice medicine in compliance with Section 1503(a) of the New York Business Corporation Law, and on or about August 15, 1997, the New York State Department of State filed the certificate of incorporation.

HH. Dr. Siller was one of two physicians who, in compliance with Sections 1503(a) and 1504(a) of the New York Business Corporation Law, was an original shareholder, director and officer of Medford East Medical Associates, P.C.

II. Dr. Siller remains an owner of Medford East Medical Associates, P.C., but pursuant to Sections 1503(a) and 1504(a) of the New York Business Corporation Law, Medford East Medical Associates, P.C., may only continue to render professional services as such for as long as Dr. Siller is licensed to render such professional services.

JJ. On or about July 1, 1997, Dr. Siller and Medford East Medical Associates, P.C., entered into a management services agreement with a corporation named **Medicore, Inc.**, and a layperson, LP#1¹.

KK. Under this July 1, 1997 agreement, Medford East Medical Associates, P.C., delegated to Medicore, Inc., and LP#1 the responsibility to handle "all billing and collection on all Medical, Physical Therapy, Chiropractic, Physiotherapy, Massage

¹To preserve privacy throughout this document, laypersons (LP) and physicians (MD) are referred to by numerical designation, and patients are referred to by letter designation (PATIENT). An Appendix is attached hereto for appropriate recipients.

Therapy, Modalities, Pain Management, Psychological and Bio-feedback, Exercise Physiology, X-ray and all Diagnostic or Testing procedures," pursuant to paragraph First of the July 1, 1997 agreement.

LL. In exchange for such billing services, Dr. Siller and Medford East Medical Associates, P.C., agreed to pay Medicare, Inc., and LP#1 25% of the "revenue" collected by Dr. Siller and Medford East Medical Associates, P.C., pursuant to paragraph Second of the July 1, 1997 agreement.

MM. Beginning on or about July 1, 1997, Dr. Siller relinquished to Medicare, Inc., and LP#1 all oversight, involvement, and participation in the management, supervisory, and administrative operations of Medford East Medical Associates, P.C.,

NN. Dr. Siller, contrary to Sections 1503(a) and 1504(a) of the New York Business Corporation Law, allowed Medicare, Inc., and LP#1 to carry on indefinitely the business of Medford East Medical Associates, P.C., with Dr. Siller remaining an owner of Medford East Medical Associates, P.C., in name only.

OO. Beginning on or about July 1, 1997, Dr. Siller and Medford East Medical Associates, Inc., through Medicare, Inc., and LP#1, employed unlicensed persons to provide physical therapy services to persons suffering work-related injury or illness.

PP. Pursuant to Section 1505(a) of the New York Business Corporation Law, Dr. Siller is "personally and fully liable and accountable for any negligent or wrongful act or misconduct" committed by Medford East Medical Associates, P.C., while rendering professional services on behalf of Medford East Medical Associates, P.C.

QQ. On or about August 18, 1997, with respect to Patient A, Dr. Siller exercised the privileges associated with his Workers' Compensation Board Authorization No. (160541-9) and signed three Workers' Compensation Board "Attending Doctor's Report and Carrier/Employer Billing Forms" ("C-4" forms). On the C-4 forms, Dr. Siller expressly "affirmed under penalty of perjury," acknowledged that "any person who wilfully makes a false statement or representation on this form shall be guilty of a misdemeanor," and represented that he was "the attending doctor," pursuant

WITHDRAWN BY
PET. SILLER
6/28/2000

to instructions #3 and #8 of the C-4 forms, with regard to certain described medical services provided to Patient A on or about July 14, 1997, July 18, 1997 (one C-4 form), and July 18, 1997 (another C-4 form), totaling a billable amount of \$1,276.09.

RR. On or about August 18, 1997, with respect to Patient B, Dr. Siller exercised the privileges associated with his Workers' Compensation Board Authorization No. and signed a C-4 form. On the C-4 form, Dr. Siller expressly "affirmed under penalty of perjury," acknowledged that "any person who wilfully makes a false statement or representation on this form shall be guilty of a misdemeanor," and represented that he was "the attending doctor," pursuant to instructions #3 and #8 of the C-4 form, with regard to certain described medical services provided to Patient B on or about July 23, 1997, totaling a billable amount of \$211.56.

SS. On or about August 18, 1997, with respect to Patient C, Dr. Siller exercised the privileges associated with his Workers' Compensation Board Authorization No. and signed a C-4 form. On the C-4 form, Dr. Siller expressly "affirmed under penalty of perjury," acknowledged that "any person who wilfully makes a false statement or representation on this form shall be guilty of a misdemeanor," and represented that he was "the attending doctor," pursuant to instructions #3 and #8 of the C-4 form, with regard to certain described medical services provided to Patient C on or about July 7, 1997, totaling a billable amount of \$154.30.

TT. On or about August 20, 1997, with respect to Patient A, Dr. Siller exercised the privileges associated with his Workers' Compensation Board Authorization No. and signed three C-4 forms. On the C-4 forms, Dr. Siller expressly "affirmed under penalty of perjury," acknowledged that "any person who wilfully makes a false statement or representation on this form shall be guilty of a misdemeanor," and represented that he was "the attending doctor," pursuant to instructions #3 and #8 of the C-4 forms, with regard to certain described medical services provided to Patient A on or about August 4, 1997, August 11, 1997, and August 18, 1997, totaling a billable amount of \$147.78

UU. On or about August 20, 1997, with respect to Patient C, Dr. Siller exercised the privileges associated with his Workers' Compensation Board Authorization No. and signed a C-4 form. On the C-4 form, Dr. Siller expressly "affirmed under penalty of perjury," acknowledged that "any person who wilfully makes a false statement or representation on this form shall be guilty of a misdemeanor," and represented that he was "the attending doctor," pursuant to instructions #3 and #8 of the C-4 form, with regard to certain described medical services provided to Patient C on or about August 4, 1997, totaling a billable amount of \$135.15.

VV. On or about September 5, 1997, with respect to Patient A, Dr. Siller exercised the privileges associated with his Workers' Compensation Board Authorization No. and signed two C-4 forms. On the C-4 forms, Dr. Siller expressly "affirmed under penalty of perjury," acknowledged that "any person who wilfully makes a false statement or representation on this form shall be guilty of a misdemeanor," and represented that he was "the attending doctor," pursuant to instructions #3 and #8 of the C-4 forms, with regard to certain described medical services provided to Patient A on or about August 26, 1997 and September 2, 1997, totaling a billable amount of \$322.50.

WW. On or about September 5, 1997, with respect to Patient D, Dr. Siller exercised the privileges associated with his Workers' Compensation Board Authorization No. and signed four C-4 forms. On the C-4 forms, Dr. Siller expressly "affirmed under penalty of perjury," acknowledged that "any person who wilfully makes a false statement or representation on this form shall be guilty of a misdemeanor," and represented that he was "the attending doctor," pursuant to instructions #3 and #8 of the C-4 forms, with regard to certain described medical services provided to Patient D on or about August 15, 1997, August 22, 1997 (one C-4 form), August 22, 1997 (another C-4 form), August 29, 1997, totaling a billable amount of \$1,460.50.

XX. On or about September 5, 1997, with respect to Patient E, Dr. Siller exercised the privileges associated with his Workers' Compensation Board

Authorization No. and signed a C-4 form. On the C-4 form, Dr. Siller expressly "affirmed under penalty of perjury," acknowledged that "any person who wilfully makes a false statement or representation on this form shall be guilty of a misdemeanor," and represented that he was "the attending doctor," pursuant to instructions #3 and #8 of the C-4 form, with regard to certain described medical services provided to Patient E on or about August 29, 1997, totaling a billable amount of \$154.30.

YY. On or about September 10, 1997, with respect to Patient A, Dr. Siller exercised the privileges associated with his Workers' Compensation Board Authorization No. and signed a C-4 form. On the C-4 form, Dr. Siller expressly "affirmed under penalty of perjury," acknowledged that "any person who wilfully makes a false statement or representation on this form shall be guilty of a misdemeanor," and represented that he was "the attending doctor," pursuant to instructions #3 and #8 of the C-4 form, with regard to certain described medical services provided to Patient A on or about September 9, 1997, totaling a billable amount of \$106.52.

ZZ. On or about September 15, 1997, with respect to Patient F, Dr. Siller exercised the privileges associated with his Workers' Compensation Board Authorization No. and signed a C-4 form. On the C-4 form, Dr. Siller expressly "affirmed under penalty of perjury," acknowledged that "any person who wilfully makes a false statement or representation on this form shall be guilty of a misdemeanor," and represented that he was "the attending doctor," pursuant to instructions #3 and #8 of the C-4 form, with regard to certain described medical services provided to Patient F on or about September 10, 1997, totaling a billable amount of \$211.55.

AAA. On or about September 15, 1997, with respect to Patient G, Dr. Siller exercised the privileges associated with his Workers' Compensation Board Authorization No. and signed a C-4 form. On the C-4 form, Dr. Siller expressly "affirmed under penalty of perjury," acknowledged that "any person who wilfully makes a false statement or representation on this form shall be guilty of a misdemeanor," and represented that he was "the attending doctor," pursuant to instructions #3 and #8 of

the C-4 form, with regard to certain described medical services provided to Patient G on or about September 12, 1997, totaling a billable amount of \$154.30.

BBB. On or about September 19, 1997, with respect to Patient E, Dr. Siller exercised the privileges associated with his Workers' Compensation Board Authorization No. and signed a C-4 form. On the C-4 form, Dr. Siller expressly "affirmed under penalty of perjury," acknowledged that "any person who wilfully makes a false statement or representation on this form shall be guilty of a misdemeanor," and represented that he was "the attending doctor," pursuant to instructions #3 and #8 of the C-4 form, with regard to certain described medical services provided to Patient E on or about September 5, 1997 (one C-4 form), September 5, 1997 (a second C-4 form), September 5, 1997 (a third C-4 form), and September 5, 1997 (a fourth C-4 form), totaling a billable amount of \$1,169.56.

CCC. On or about September 24, 1997, with respect to Patient D, Dr. Siller exercised the privileges associated with his Workers' Compensation Board Authorization No. and signed a C-4 form. On the C-4 form, Dr. Siller expressly "affirmed under penalty of perjury," acknowledged that "any person who wilfully makes a false statement or representation on this form shall be guilty of a misdemeanor," and represented that he was "the attending doctor," pursuant to instructions #3 and #8 of the C-4 form, with regard to certain described medical services provided to Patient D on or about September 16, 1997, totaling a billable amount of \$85.76.

DDD. Contrary to Dr. Siller's attestations on these C-4 forms, Dr. Siller was not the attending doctor on the specified dates of service for Patients A, B, C, D, E, F, and G, and, further, the attending doctor was MD#1, who was not authorized by the Workers' Compensation Board until on or about October 16, 1997 to render medical care to persons suffering work-related injury or illness.

EEE. In or about the period between June 1, 1997 and November 30, 1997, Dr. Siller met with his practice monitor at least two times, and contrary to Probation Term #9(c) concerning evaluation of whether Dr. Siller's practice conforms with generally

accepted standards of medical care, Dr. Siller failed to disclose Dr. Siller's establishment of Medford East Medical Associates, P.C. Dr. Siller's related exercise of privileges at the Medford East location associated with his Workers' Compensation Board Authorization No. and Dr. Siller's related attestations on certain C-4 forms that he was the "attending doctor" for patients at the Medford East location, leading the practice monitor to represent to the Office of Professional Medical Conduct that Dr. Siller "is doing excellent in all phases of professional and personal life."

FFF. In or about the period between June 1, 1997 and November 30, 1997, Dr. Siller met with his psychopharmacologist/therapist at least two times, and contrary to Probation Term #10(b) concerning evaluation of Dr. Siller's psychological condition, Dr. Siller failed to disclose Dr. Siller's exercise of privileges at the Medford East location associated with his Workers' Compensation Board Authorization No. and Dr. Siller's related attestations on certain C-4 forms that he was the "attending doctor" for patients at the Medford East location, leading the psychopharmacologist/therapist to represent to the Office of Professional Medical Conduct that Dr. Siller "remains steadfast in his commitment to therapy. He is able to examine his own behavior and accountability both professionally and personally quite well."

GGG. On or about June 18, 1998, Dr. Siller was asked by a representative of the Office of Professional Medical Conduct to complete, certify and return a "Data Sheet" that asked for, among other things, "all practice address(es) and phone numbers(s)," yet contrary to Terms of Probation #1 and #2, Dr. Siller failed to report to a representative of the Office of Professional Medical Conduct his Medford East Medical Associates, P.C., and Aesculapeus Medical Group, LLP, address and phone number, and Dr. Siller failed to complete, certify and return the "Data Sheet," until October 1, 1998, which was the same day that Dr. Siller was interviewed by a representative of the Workers' Compensation Board on a variety of practice-related topics, including, but not limited to: Dr. Siller's establishment of Medford East Medical Associates, P.C.; Dr. Siller's related exercise of privileges at the Medford East location associated with his

Workers' Compensation Board Authorization No.; and Dr. Siller's related attestations on certain C-4 forms that he was the "attending doctor" for patients at the Medford East location.

HHH. On or about December 7, 1998, Dr. Siller was arrested and charged in District Court of the County of Suffolk with fraudulent practices under Section 114 of the Workers' Compensation Law and Section 176 of the Penal Law, to wit, "on or about and between 7/14/97 to 9/10/97 ... [Dr. Siller] did knowingly and with intent to defraud prepared and caused to be presented a State of New York Workers' Compensation Board Attending Doctor's Report (C-4 form), with knowledge and belief that it will be presented to an insurer knowing that it contained materially false information."

III. In or about the period between December 1, 1998 and February 28, 1999, Dr. Siller met with his practice monitor, and contrary to Probation Term #9(c) concerning evaluation of whether Dr. Siller's practice conforms with generally accepted standards of medical care, Dr. Siller failed to disclose: Dr. Siller's arrest for preparing and causing to be presented fraudulent C-4 forms.

JJJ. On or about May 26, 1999, Dr. Siller pled guilty to, and was convicted of, a reduced charge under Section 240.20(7) of the New York Penal Law concerning the aforementioned C-4 forms.

KKK. In or about the period between March 1, 1999 and August 31, 1999, Dr. Siller met with his psychopharmacologist/therapist at least two times, and contrary to Probation Term #10(b) concerning evaluation of Dr. Siller's psychological condition, Dr. Siller failed to disclose Dr. Siller's guilty plea and conviction for preparing and causing to be presented fraudulent C-4 forms or any of the underlying related aspects of his practice, leading the psychopharmacologist/therapist to represent to the Office of Professional Medical Conduct that Dr. Siller "continues to demonstrate motivation & conscientiousness personally & professionally."

LLL. In or about the period between March 1, 1999 and October 31, 1999, Dr. Siller met with his practice monitor at least three times, and contrary to Probation Term

#9(c) concerning evaluation of whether Dr. Siller's practice conforms with generally accepted standards of medical care, Dr. Siller failed to disclose Dr. Siller's guilty plea and conviction for preparing and causing to be presented fraudulent C-4 forms or any of the underlying related aspects of his practice, leading the practice monitor to represent to the Office of Professional Medical Conduct that Dr. Siller "is doing very well in all aspects of his professional and personal" "endeavors" or "life."

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

Respondents are charged with **PRACTICING THE PROFESSION FRAUDULENTLY OR BEYOND ITS AUTHORIZED SCOPE**, in violation of New York Education Law §6530(2) in that Petitioner charges:

1. The allegations in paragraphs A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, AA, BB, CC, DD, EE, FF, GG, HH, II, JJ, KK, LL, MM, NN, OO, PP, QQ, RR, SS, TT, UU, VV, WW, XX, YY, ZZ, AAA, BBB, CCC, DDD, EEE, FFF, GGG, HHH, III, JJJ, KKK, and LLL.

SECOND SPECIFICATION

Respondents are charged with professional misconduct by reason of **PRACTICING THE PROFESSION WITH NEGLIGENCE ON MORE THAN ONE OCCASION**, in violation of New York Education Law §6530(3) in that Petitioner charges:

1. The factual allegations in paragraphs QQ, RR, SS, TT, UU, VV, WW, XX, YY, ZZ, AAA, BBB, CCC, and DDD.

THIRD SPECIFICATION

Respondents are charged with professional misconduct by reason of **PRACTICING THE PROFESSION WITH GROSS NEGLIGENCE ON A PARTICULAR OCCASION**, in violation of New York Education Law §6530(4) in that Petitioner charges:

1. The factual allegations in paragraphs QQ, RR, SS, TT, UU, VV, WW, XX, YY, ZZ, AAA, BBB, CCC, and DDD.

FOURTH SPECIFICATION

Respondents are charged with professional misconduct by reason of **PRACTICING THE PROFESSION WITH INCOMPETENCE ON MORE THAN ONE OCCASION**, in violation of New York Education Law §6530(5) in that Petitioner charges:

1. The factual allegations in paragraphs QQ, RR, SS, TT, UU, VV, WW, XX, YY, ZZ, AAA, BBB, CCC, and DDD.

FIFTH SPECIFICATION

Respondents are charged with professional misconduct by reason of **PRACTICING THE PROFESSION WITH GROSS INCOMPETENCE**, in violation of New York Education Law §6530(6) in that Petitioner charges:

1. The factual allegations in paragraphs QQ, RR, SS, TT, UU, VV, WW, XX, YY, ZZ, AAA, BBB, CCC, and DDD.

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7/16/2000

SIXTH SPECIFICATION

Respondent Dr Siller is charged with **HAVING BEEN FOUND GUILTY IN AN ADJUDICATORY PROCEEDING OF VIOLATING A STATE STATUTE**, in violation of New York Education Law §6530(9)(c) in that Petitioner charges:

1. The allegations in paragraphs HHH and JJJ.

SEVENTH SPECIFICATION

Respondents are charged with **PERMITTING, AIDING OR ABETTING AN UNLICENSED PERSON TO PERFORM ACTIVITIES REQUIRING A LICENSE**, in violation of New York Education Law §6530(11) in that Petitioner charges:

1. The allegations in paragraphs OO, PP, QQ, RR, SS, TT, UU, VV, WW, XX, YY, ZZ, AAA, BBB, CCC, and DDD.

EIGHTH SPECIFICATION

Respondents are charged with **WILLFUL OR GROSSLY NEGLIGENT FAILURE TO COMPLY WITH SUBSTANTIAL PROVISIONS OF STATE LAWS GOVERNING THE PRACTICE OF MEDICINE**, in violation of New York Education Law §6530(16) in that Petitioner charges:

1. The allegations in paragraphs OO, PP, QQ, RR, SS, TT, UU, VV, WW, XX, YY, ZZ, AAA, BBB, CCC, and DDD.

NINTH SPECIFICATION

Respondents are charged with **PERMITTING ANY PERSON TO SHARE IN THE FEES FOR PROFESSIONAL SERVICES**, in violation of New York Education Law §6530(19) in that Petitioner charges:

1. The allegations in paragraphs A, B, C, D, E, F, G, GG, HH, II, JJ, KK, and LL.

TENTH SPECIFICATION

Respondents are charged with **CONDUCT IN THE PRACTICE OF MEDICINE WHICH EVIDENCES MORAL UNFITNESS TO PRACTICE MEDICINE**, in violation of New York Education Law §6530(20) in that Petitioner charges:

1. The allegations in paragraphs A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, AA, BB, CC, DD, EE, EE (supp), FF, GG, HH, II, JJ, KK, LL, MM, NN, OO, PP, QQ, RR, SS, TT, UU, VV, WW, XX, YY, ZZ, AAA, BBB, CCC, DDD, EEE, FFF, GGG, HHH, III, JJJ, KKK, and LLL.

ELEVENTH SPECIFICATION

Respondents are charged with **WILLFULLY MAKING OR FILING A FALSE REPORT REQUIRED BY LAW**, in violation of New York Education Law §6530(21) in that Petitioner charges:

1. The allegations in paragraphs QQ, RR, SS, TT, UU, VV, WW, XX, YY, ZZ, AAA, BBB, CCC, and DDD.

TWELFTH SPECIFICATION

Respondent Dr. Siller is charged with **VIOLATING ANY TERM OF PROBATION OR CONDITION OR LIMITATION IMPOSED ON THE LICENSEE**, in violation of New York Education Law §6530(29) in that Petitioner charges:

1. The allegations in paragraphs K, L, M, N, O, P, Q, R, S, T, U, V, W, X, BB, CC, EE, EE (supp), FF, JJ, KK, LL, MM, NN, OO, PP, QQ, RR, SS, TT, UU, VV, WW, XX, YY, ZZ, AAA, BBB, CCC, DDD, EEE, FFF, GGG, HHH, III, JJJ, KKK, and LLL.

THIRTEENTH SPECIFICATION

Respondents are charged with professional misconduct by reason of **FAILING TO MAINTAIN A RECORD FOR EACH PATIENT WHICH ACCURATELY REFLECTS THE EVALUATION AND TREATMENT OF THE PATIENT**, in violation of New York Education Law §6530(32) in that Petitioner charges:

1. The factual allegations in paragraphs QQ, RR, SS, TT, UU, VV, WW, XX, YY, ZZ, AAA, BBB, CCC, and DDD.

DATED: _____, 2000
Albany, New York

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