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

September 21, 1999

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

Stuart G. Selkin, M.D.
6 Tuxedo Drive
Melville, New York 11747

Anthony Z. Scher, Esq.
Wood & Scher
The Harwood Building
Scarsdale, New York 10583

RE: In the Matter of Stuart G. Selkin, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 99-122) of the Professional Medical Conduct Administrative Review Board in the above referenced matter. This Determination and Order shall be deemed effective upon receipt **or** seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

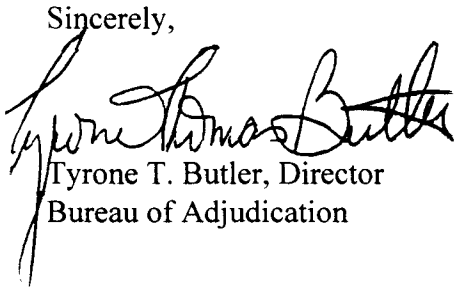
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified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

Office of Professional Medical Conduct
New York State Department of Health
Hedley Park Place
433 River Street-Fourth Floor
Troy, New York 12180

If your license or registration certificate is lost, misplaced or its whereabouts is otherwise unknown, you shall submit an affidavit to that effect. If subsequently you locate the requested items, they must then be delivered to the Office of Professional Medical Conduct in the manner noted above.

This exhausts all administrative remedies in this matter [PHL §230-c(5)].

Sincerely,



Tyrone T. Butler, Director
Bureau of Adjudication

TTB:mla
Enclosure

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

In the Matter of	
Stuart G. Selkin, M.D. (Respondent)	**Administrative Review Board (ARB)**
A proceeding to review a Determination by a Committee (Committee) from the Board for Professional Medical Conduct (BPMC)	**Determination and Order No. 99-122**

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

For the Department of Health (Petitioner): **Denise Lepicier, Esq.**
For the Respondent: **Anthony Z. Scher, Esq.**

After a hearing below, a BPMC Committee sustained charges that the Respondent committed professional misconduct, voted to fine the Respondent and voted to revoke his License to practice medicine in New York State (License). In this proceeding pursuant to N.Y. Pub. Health Law § 230-c (4)(a)(McKinney's Supp. 1999), the Petitioner asks the ARB to modify the Determination by sustaining additional charges. The Respondent requests that we overturn the Committee's Determination, that the Respondent engaged in conduct that evidenced moral unfitness by participating in consensual sexual relationships with patients. After considering the record and briefs from the parties, we modify the Committee's Determination to correct certain errors, we sustain the moral unfitness charges, but modify the grounds for sustaining the charges and we sustain one additional charge that the Respondent failed to respond to a request for medical records. We sustain the Determination ordering the Respondent to pay a fine, but we overturn the revocation order. We vote to suspend the Respondent's License for two years, to stay the suspension for all but three months and to place the Respondent on probation for three years.

Committee Determination on the Charges

The Petitioner commenced the proceeding by filing charges with BPMC alleging that the Respondent violated N. Y. Educ. Law §§ 6530(2-6), 6530(20), 6530(24), 6530(26), 6530(28), 6530(32-33) & 6530(35)(McKinney Supp. 1999) by committing professional misconduct under the following specifications:

- practicing medicine fraudulently,
- practicing medicine with negligence on more than one occasion,
- practicing medicine with gross negligence,
- practicing medicine with incompetence on more than one occasion,
- practicing medicine with gross incompetence,
- engaging in conduct that evidences moral unfitness,
- accepting and performing professional responsibilities that the licensee knows he lacks the competence to perform,
- performing professional services without proper authorization,
- failing to respond to a request for records,
- failing to maintain accurate patient records,
- failing to exercise appropriate supervision over persons who may practice only under a licensee's supervision, and,
- ordering excessive tests or treatments unwarranted by a patient's condition.

The moral unfitness charges related to allegations that the Respondent engaged in sexual relationships with four patients, E through H. The other charges arose from the ambulatory surgery and anesthesia care for four other patients, A through D. The record refers to the Patients

by letters to protect patient privacy. A hearing on the charges ensued before a BPMC Committee, who rendered subsequently the Determination now under review.

The Committee sustained charges that the Respondent engaged in conduct that evidenced moral unfitness in medical practice, upon finding that the Respondent, a non-psychiatrist physician, engaged in consensual sexual relationships with Patients E and G. The Committee dismissed moral unfitness charges arising from the Respondent's consensual sexual relationships with Patients F and H. The Committee also sustained charges that the Respondent practiced with negligence on more than one occasion and failed to maintain accurate records, upon finding that the Respondent failed to perform and/or record adequate histories, examinations, findings, diagnoses and procedures on Patients A and C. The Committee dismissed all other charges.

The Committee voted to fine the Respondent Ten Thousand Dollars ($10,000.00) each for practicing with negligence on more than one occasion and for failing to maintain adequate records. The Committee voted to revoke the Respondent's License for the conduct that evidenced moral unfitness. The Committee noted that a long-standing consensus within the medical profession considers sexual relations between patients and physicians unethical. The Committee rejected the defense that the Patients consented to the relationships, by concluding that there can be no consent to per se unethical acts. The Committee found that a physician must remain objective in treating a patient and must avoid unnecessary complications in that relationship. The Committee concluded that the Respondent's predilection to engage in sexual relationships with patients demonstrated his moral unfitness to practice medicine.

Review History and Issues

The Committee rendered their Determination on June 4, 1999. This proceeding commenced 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 the Respondent's response brief. The record closed when the ARB received the response brief on July 21, 1999.

The Petitioner requested no modification in the Committee's Determination as to the penalty, but did request that the ARB modify the Determination on the charges, by sustaining additional misconduct charges and by correcting certain errors that appear in the Determination. As to the negligence charges, the Petitioner argued that the Committee failed to apply the law and the facts correctly when they dismissed charges that the Respondent 1.) failed to supervise adequately anesthesia administration to Patients A, C and D, and 2.) failed to diagnose and treat adequately Patient B's condition. As to the moral unfitness charges, the Petitioner argued that the Committee confused facts in evidence in making their findings and conclusions concerning Patients F and G. The Petitioner asks that the ARB correct those errors and, with those corrections as a basis, that we sustain a further moral unfitness charge relating to the Respondent's conduct with Patient F. As to the charges alleging failure to reply to a request for records, the Petitioner contends once again that the Committee erred in applying the facts and the law and the Petitioner requests that the ARB overrule the Committee and sustain those allegations.

In reply to the Petitioner, the Respondent argues that the Committee made proper findings from the evidence in dismissing the negligence charges at issue here. The Respondent contends further that the ARB lacks the authority to reassess and amend the Committee's factual findings and conclusions in the manner that the Petitioner requests. As to the Committee's Determination to sustain the moral unfitness charges concerning Patients E and G, the Respondent argues that the Committee erred in concluding that long-term consensus in the medical profession condemned consensual sexual relationships between patients and non-psychiatrist physicians. The Respondent contends that the American Medical Association adopted standards condemning such conduct only in 1991, after the time that the Respondent concluded his relationship with Patient E. The Respondent argues further that a prior determination in a physician disciplinary case stands for the proposition that a consensual relationship between a patient and a non-psychiatrist physician constitutes moral unfitness only with compelling and unusually exacerbating circumstances present. The Respondent requests that the ARB overrule the Committee's determination sustaining the moral unfitness charges or in the alternative that the ARB modify and reduce the revocation penalty.

Determination

All ARB members have participated in this case and have considered the record and the parties' briefs. We affirm the Committee's Determination dismissing charges that the Respondent practiced fraudulently, practiced with gross negligence, practiced with gross incompetence, practiced with incompetence on more than one occasion and performed excessive tests. The Petitioner made no challenge to those conclusions by the Committee. We also affirm the Committee's Determination sustaining charges that the Respondent practiced with negligence on more than one occasion and failed to maintain accurate records in treating Patients A and C.

The Respondent made no challenge to those findings. As to the contested findings, we reject the Respondent's request that we sustain negligence charges concerning care for Patients A through D. As to the arguments that the Committee erred in making certain findings concerning Patients F and G, we agree with the Petitioner that the Committee made findings contrary to and without support in the record. We amend the Determination at Findings of Fact 3 and 89 to correct those errors. Following those corrections, we overturn the Committee and sustain the charge that the Respondent committed professional misconduct by failing to respond to a request for records for Patient F. We affirm the Committee's Determination dismissing the other failing to respond charges. We affirm the Determination that the Respondent engaged in conduct evidencing moral unfitness, but we modify those findings to hold that the Respondent engaged in such conduct with Patients E and F, rather than Patients E and G. We affirm the Committee's Determination to fine the Respondent for his misconduct, but we overturn the Determination revoking the Respondent's License. We vote to suspend the Respondent from practice for two years, stay the suspension for all but three months and to place the Respondent on probation for three years following the suspension.

The Negligence Charges: The Petitioner requested that the ARB overturn the Committee and sustain four additional allegations that the Respondent practiced with negligence. Three of those allegations charged that the Respondent failed to provide adequate supervision for a Certified Registered Nurse Anesthetist (CRNA) who provided anesthesia to Patients A, C and D. Under N. Y. Educ. Law § 6530(3) (McKinney Supp. 1998), negligence means a failure to practice medicine according to accepted standards, Spero v. Board of Regents,158 A.D.2d 763, 551 N.Y.S.2d 352 (Third Dept. 1990). The Committee found that the Respondent provided appropriate supervision for the CRNA (see Committee Findings of Fact 23, 65, 77). The Committee based that finding on testimony by the Respondent's medical expert Dr. Paul

Goldiner, that the Respondent provided appropriate supervision within accepted standards (see Hearing Transcripts pages 1788-1790).

The Petitioner challenged the Committee's Findings by contending that the Committee erred in applying the correct standard for negligence. We disagree. Although Dr. Goldiner testified, that in the ideal situation, only an anesthesiologist would do anesthesia, Dr. Goldiner also stated that such ideal situation differed from the standard in New York State at that time. Dr. Goldiner testified clearly that the Respondent acted appropriately within accepted standards for supervising anesthesia to Patients A, C and D (see Hearing Transcript page 1789). The Petitioner also challenged the Committee's findings because other evidence in the record contradicted the opinion that Dr. Goldiner expressed. Such other evidence merely created a factual issue for the Committee to resolve. The Committee resolved that issue by finding Dr. Goldiner a more credible expert than the Petitioner's expert Dr. Marvin Matz.The ARB owes the Committee deference in their role as fact finder on credibility issues and we see no reason to overturn the Committee's Determination on the experts' credibility. The Committee stated the reasons for their credibility findings in their Determination at pages 25 –26 and the Committee acted within their role as fact finder and consistently with the evidence in making those findings.

The Respondent also asked that we overturn the Committee's Determination to dismiss the allegation that the Respondent failed to diagnose and treat adequately Patient B's condition. The Committee's Findings of Fact at 32-39 stated that a 1990 examination revealed a mass in the Patient's neck, but a 1992 examination by a physician other than the Respondent detected no mass or abnormality. The Petitioner argues that the Committee's Findings of Fact 32 to 33 establish negligence, by rejecting the defenses the Respondent offered to the charge. We disagree. We see nothing in Findings 32-33 on which to base a negligence finding. A physician practicing according to accepted standards can still misdiagnose a condition.

Errors in the Committee's Determination: The Petitioner contends that several clearly erroneous findings appear in the Committee's Determination concerning the treatment dates for Patients F and G. The ARB concludes that those treatment dates make a difference in the Committee's Determination both as to the moral unfitness charges and as to the charges that the Respondent refused to respond to a request for medical records. We will address the contentions about those errors prior to reviewing the Committee's Determination on the moral unfitness and refusal to comply charges.

The Respondent's brief argues that the ARB may review and overturn a Committee's Determination only as to guilt on the charges and penalty, but that the ARB lacks authority to overturn a Committee's findings or conclusions. We disagree. The ARB has amended or deleted clearly erroneous findings and conclusions from Committee Determinations in previous cases and the courts have upheld ARB authority to overrule such a Determination, when other testimony or evidence from the record provides a basis for that action, Matter of Brigham v. DeBuono, 288 A.D.2d 870, 644 N.Y.S.2d 413 (Third Dept. 1996). We choose to exercise that authority in this case.

At Finding of Fact 3, the Committee stated that the Respondent conceded to having sexual relations with Patient G, H and I. We note first that the Statement of Charges contained no allegations concerning a sexual relationship with Patient I. The Committee cited as the basis for Finding 3, the Respondent's testimony at Transcript pages 162-165. In that testimony, the Respondent conceded to relationships with Patients F, G and H. We amend Finding 3 to make the reference to Patients F, G and H rather than Patients G, H and I.

As to the treatment dates for Patients F and G, the Committee's Finding of Fact 81 stated that the Respondent conceded to a relationship with Patient F that began in later 1990 and that he had treated Patient F until early 1990. As the evidence to support that Finding, the Committee cited to the Respondent's testimony at pages 163-164 in the hearing transcript. The Respondent

provided the same testimony at transcript page 107. The Committee's Determination at Findings 83-86 found that the Respondent engaged in a sexual relationship with Patient G. The Committee based those Findings in part on a letter the Respondent sent to Office of Professional Medical Conduct (OPMC) Investigator John Flynn in 1994 (Hearing Exhibit 17). In that letter, the Respondent refused to provide the Investigator with records for Patients F and G and informed the Investigator about the Respondent's involvement with the two Patients as follows:

> *"In one instance, my personal and professional involvement ended more than eight years ago. As per the law, I no longer maintain her records. In the other instance, my personal involvement consisted of dating a single woman who was my patient at the time.... I have not seen her personally since 1991; nor professionally since late 1992"*

In Finding of Fact 89, the Committee stated that Exhibit 17 indicated that 1.) the Respondent engaged in an affair with Patient F that ended eight years or more before the 1994 letter and that 2.) the Respondent saw Patient G professionally until 1992. That Finding conflicts with the Committee's Finding 81, that indicated that the Respondent testified to an affair with Patient F in 1990. Further, the Finding conflicts with testimony by Dr. Tano Carbonaro, an OPMC Medical Coordinator, who testified that the Respondent told Dr. Carbonaro that the Respondent last treated Patient F in 1991-1992 (Hearing Transcript page 996). The Finding also conflicts with the Respondent's testimony at Transcript page 117, at which the Respondent indicated that the Respondent conducted his affair with Patient G in 1990-1991, but treated her in the late 70's or early 80's. In addition, the Finding conflicts with the Respondent's testimony at Transcript page 127, at which the Respondent indicated that he refused to provide Patient G's records to Investigator Flynn, because the statutory period for retaining the records had ended.

From the evidence, we conclude that the Respondent last provided treatment to Patient G in or about 1986 and that the Respondent last provided treatment to Patient F in 1991-1992 (see Transcript pages 117, 127, 996; Exhibit 17, second page). We conclude that the Respondent engaged in a sexual relationship with Patient F in 1990, during the time that the Respondent treated her as a patient (see Transcript page 996; Exhibit 17, page 2). The Committee's clearly

erroneous Finding 89 apparently resulted from misreading the Patient references in Exhibit 17. We amend the Committee's Finding 89 to read:

"89. By letter dated December 29, 1994, Respondent replied: as to Patient G, he no longer had the records because the doctor/patient relationship ended 8+years prior; as to Patient F, he saw her as a patient until 1992, and offered no justification to refuse production of those records other than they involved a personal relationship he had with Patient F. (Exhibit 17; Tr 117, 127, 163-164, 996). "

With those amendments, we turn now to reviewing the Committee's Determination on the refusal to respond and the moral unfitness charges.

Refusal To Respond: The Petitioner argues that Committee erred in dismissing Misconduct Specification 26, that charged the Respondent with violating N. Y. Educ. Law § 6530(28) (McKinney Supp. 1999). That statute defines professional misconduct to include failing to respond within thirty days to written communications from the Department of Health with respect to an inquiry or complaint about the licensee's professional misconduct. The Petitioner alleged that the Respondent violated the statute by refusing to respond to requests for medical records for Patients F, G and I and for a March 7, 1992 Patient sign-in book.

As to the refusal to respond to the request for the Patient sign-in book, the Committee found that the 1.) Respondent testified to loosing the sign-in book during an office move and 2.) no evidence established that the sign-in book qualified as a medical record (Findings of Fact 97-98). We note that the Petitioner's brief failed to point to any evidence from the hearing that disputed the Respondent's testimony about losing the book. We affirm the Committee's Determination to dismiss the charge concerning the sign-in book.

As to the records for Patient I, the Committee found that the OPMC asked the Respondent for the records in 1995, that the Respondent told OPMC that he last treated Patient I in 1989, that the law required a physician to retain medical records for six years and that the Respondent informed OPMC that he no longer had the records for Patient I. We note that the Petitioner's brief cited to no evidence in the record to dispute the Respondent's testimony that he

no longer possessed the records. We note further that no legal obligation required the Respondent to retain those records at the time he received the OPMC request in 1995. We affirm the Committee's Determination to dismiss the charge concerning Patient I's medical records.

As to the records for Patient G, we have concluded that the Respondent last provided treatment to the Patient in or around 1986. The Respondent also indicated that, at the time the Health Department first requested the records in 1994, the Respondent answered in a letter stating that he no longer maintained the record (Exhibit 17). The Petitioner's brief cited to no evidence to contradict the Respondent's letter. No statute required the Respondent to retain the records by the time the Department made the first request in 1994 (Hearing Transcript page 1009). We vote, therefore, to dismiss the charge that the Respondent's failure to provide the records for Patient G constituted professional misconduct.

As to the records for Patient F, we have concluded that the Respondent treated the Patient until 1992. The Respondent admitted to treating the Patient until 1990. Under either our conclusion or the Respondent's admission, the law required the Respondent to retain the records for Patient F up to and beyond the date that the Respondent received the first request for the records from the Department of Health in 1994 (Hearing Transcript page 1009). By letter on December 29, 1994, the Respondent refused to comply with the Department's request for the records. We hold that such refusal constituted professional misconduct. We overturn the Committee and we sustain the charge that the Respondent's refusal to comply with the request for Patient F's medical records violated N. Y. Educ. Law § 6530(28)(McKinney Supp.1999).

Moral Unfitness Charges: The Respondent conceded that he engaged in a sexual relationship with Patient E while he treated the Patient. We have concluded that the Respondent also engaged in a sexual relationship with Patient F while the Respondent treated the Patient. The Respondent has challenged the Committee's findings that a long-standing consensus within the

medical profession considers sexual relationships between physicians and patients unethical. The Respondent argues that the condemnation on sexual relationships between patients and non-psychiatrist physicians dates only from American Medical Association (AMA) Guidelines from November 1991. We reject that challenge. In their conclusions, at Determination pages 29-30, the Committee listed sources pre-dating the 1991 AMA Guidelines, including the Hippocratic Oath, that condemn physician-patient sexual relationships. The ARB has also ruled previously that a consensual sexual relationship between a patient and a non-psychiatrist physician can constitute conduct that evidences moral unfitness in practicing medicine, Matter of Miller, ARB 98-99.

We hold that the Respondent's repeated sexual relationships with Patients E and F, while he treated the Patients, evidenced moral unfitness. We affirm the Committee's Determination to sustain the moral unfitness charge concerning the relationship with Patient E. We overturn the Committee's Determination and we sustain the moral unfitness charge concerning the relationship with Patient F.

The Committee found that the Respondent conducted a sexual relationship with Patient H two or three years after he ceased treating the Patient. We have concluded that the Respondent conducted a sexual relationship with Patient G four to five years after ceasing to treat that Patient. We share the Committee's concern about sexual relationships that stem from professional relationships. We find insufficient information in this record, however, to determine whether the Respondent's relationships with Patients G and H, years following treatment, evidenced moral unfitness. We affirm the Committee's Determination to dismiss the moral unfitness charges relating to the Respondent's sexual relationship with Patient H. We overturn the Committee and dismiss the moral unfitness charges concerning the Respondent's sexual relationship with Patient G.

Penalty: The Committee fined the Respondent Twenty Thousand Dollars ($20,000.00) for negligence on more than one occasion and failing to maintain accurate records in treating Patients A and C. The Respondent made no challenge to the negligence and record keeping findings and made no request for a reduction in the fine. In addition to the negligence and record keeping charges, the ARB has also sustained a charge that the Respondent failed to comply with a Health Department request for Patient F's medical record. The ARB concludes that the Committee acted appropriately and consistently with the record in imposing the fine.

The Committee voted to revoke the Respondent's License solely due to their finding that the Respondent engaged in sexual relationships with two patients. After reviewing the Committee's Determination and the record and after much discussion, the ARB concluded unanimously that the Respondent's conduct deserves condemnation, but we found mitigating factors in the record that resulted in our Determination to overturn the revocation penalty. We found the Respondent forthcoming about the relationships and we found no aggravating information in the record from any other sources We concluded that a penalty less severe than revocation would provide a sufficient sanction for the Respondent's conduct and would provide appropriate protection for the public health. We voted unanimously to suspend the Respondent's License for two years. The ARB voted 4-1 to stay that penalty in part and to require the Respondent the serve some other part on actual suspension. The dissenting member felt that the Respondent should serve the full two years on suspension. The four-member majority split on how long a period the Respondent should serve on actual suspension. Three members voted to stay the suspension for all but three months. The fourth member voted to stay the suspension for all but six months. The three members constituted an absolute majority of the ARB. The ARB voted 5-0 to place the Respondent on probation for three years following the actual suspension. The probation terms appear in the Appendix to this report.

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 practiced medicine with negligence on more than one occasion and failed to maintain accurate records in treating Patients A and C.

2. The ARB **AMENDS** the Committee's Determination to amend Findings of Fact 3 and 89, to correct certain errors relating to Patients F, G, and I, as we indicate in our Determination.

3. The ARB **AFFIRMS** the Committee's Determination that the Respondent engaged in conduct that evidenced moral unfitness, but we **MODIFY** the Determination to hold that the conduct evidencing moral unfitness involved Patients E and F, rather than Patients E and G.

4. The ARB **OVERRULES** the Committee's Determination dismissing the charge the Respondent failed to produce medical records for Patient F. We **SUSTAIN** the charge that the Respondent committed professional misconduct by failing to produce medical records for Patient F.

5. The ARB **SUSTAINS** the Committee's Determination dismissing the other charges alleging failure to comply with a request for medical records.

6. The ARB **SUSTAINS** the Committee's Determination to fine the Respondent Twenty Thousand Dollars ($20,000.00).

7. The ARB **OVERRULES** the Committee's Determination to revoke the Respondent's License.

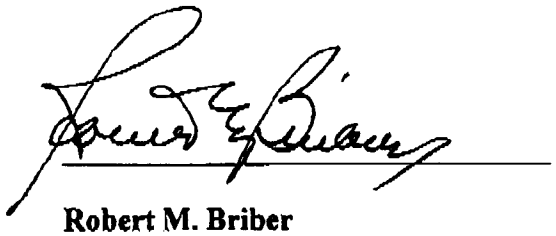
8. The ARB **SUSPENDS** from practice for two years, **STAYS** the suspension for all but three months, and **PLACES** the Respondent on probation for three years, following the suspension, under terms that appear in the Appendix to this Determination.

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

In the Matter of Stuart G. Selkin, M.D.

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

Dated: Sept. 10, **1999**



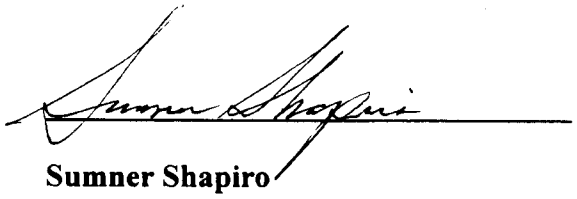
Robert M. Briber

FROM : Sylvia and Bob Briber PHONE NO. : 518 377 0469 Sep. 12 1999 02:50PM P1

In the Matter of Stuart G. Selkin, M.D.

Sumner Shapiro, an ARB Member concurs in part and dissents in part from the Determination and Order in the Matter of Dr. Selkin.

Dated: Sept. 10, **1999**



Sumner Shapiro

In the Matter of Stuart G. Selkin, M.D.

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

Dated: Sept 10 1, **1999**

Winston S. Price, M.D.

In the Matter of Stuart G. Selkin, M.D.

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

Dated: September 10, **1999**

S L Grossman M.D.

Stanley L Grossman, M.D.

In the Matter of Stuart G. Selkin, M.D.

Therese G. Lynch, M.D., an ARB Member concurs in part and dissents in part from the Determination and Order in the Matter of Dr. Selkin.

Dated: Sept 10, **1999**

Therese G Lynch MD

Therese G. Lynch, M.D.

APPENDIX

Probation Terms

1. Respondent 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 and obligations imposed by law and by his profession.

2. Respondent shall submit written notification to the New York State Department of Health addressed to the Director, Office of Professional Medical Conduct (OPMC), Corning Tower Building, 4th Floor, Empire State Plaza, Albany, New York 12237; said notice is to include a full description of any employment and practice, professional and residential addresses and telephone numbers within or without New York State, and any and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty days of each action.

3. Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of Respondent's compliance with the terms of this Order. Respondent shall personally meet with a person designated by the Director of OPMC as requested by the Director.

4. Any civil penalty not paid by the date prescribed herein shall be subject to all provisions of law relating to debt collection by New York State. This includes but is not limited to the imposition of interest, late payment charges and collection fees; referral to the New York State Department of Taxation and Finance for collection; and non-renewal of permits or licenses [Tax Law section 171(27)]; State Finance Law section 18; CPLR section 5001; Executive Law section 32].

5. The period of probation shall be tolled during periods in which Respondent is not engaged in the active practice of medicine in New York State. Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in or intends to leave the active practice of medicine in New York State for a period of thirty (30) consecutive days or more. Respondent shall then notify the Director again prior to any change in that status. The period of probation shall resume and any terms of probation which were not fulfilled shall be fulfilled upon Respondent's return to practice in New York State.

6. Respondent's professional performance may be reviewed by the Director of OPMC. This review may include, but shall not be limited to, a review of office records, patient records and/or hospital charts, interviews with or periodic visits with Respondent and his/her staff at practice locations or OPMC offices.

7. Respondent shall maintain legible and complete medical records that accurately reflect the evaluation and treatment of patients. The medical records shall contain all information required by State rules and regulations regarding controlled substances.

8. Respondent shall comply with all terms, conditions, restrictions, limitations and penalties to which he or she is subject pursuant to the Order and shall assume and bear all costs related to compliance. Upon receipt of evidence of noncompliance with, or any violation of these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding and/or any such other proceeding against Respondent as may be authorized pursuant to the law.