



IN THE MATTER OF * BEFORE THE COMMISSION ON
 BARBARA A. SOLOMON, M.D. * MEDICAL DISCIPLINE OF
 * MARYLAND

* * * * *
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Upon certain information coming to the attention of the Commission on Medical Discipline of Maryland (the "Commission") pursuant to the provisions of Article 43, §130 of the Annotated Code of Maryland (recodified at §14-501 of the Health Occupations Article), the Peer Review Committees of the Baltimore County Medical Association and the Medical and Chirurgical Faculty of Maryland (the "Peer Review Committees") were requested to investigate the medical practice of Barbara A. Solomon, M.D. (the "Respondent"). After considering the various reports and recommendations submitted by the Peer Review Committees, the Commission determined to charge Respondent with violation of Article 43, §130(h)(18), "professional incompetency" (recodified at §14-504(4) of the Health Occupations Article).

Appropriate notice of the charge and the grounds on which it was based was given to Respondent by letter dated January 21, 1981, and a hearing on this charge was held on October 6 and 13, November 10, December 1 and 29, 1981, and January 5 and 12, 1982. The following members of the Commission were present at each hearing date and participated in the deliberations regarding this case: George S. Malouf, M.D.; Karl F. Mech, M.D.; Hilary T. O'Herlihy, M.D.; Chris Papadopoulos, M.D.; Ernest Scher, M.D.; and Alexander Williams, Jr., Esquire (the "Panel"). John E. Adams, M.D., participated in this case but withdrew as a Panel member prior to the continuation of the evidentiary hearing on January 12, 1982. Dr. Mech presided on each hearing date as Acting Chairman of the Commission.

Respondent was represented by Carl A. Durkee, Esquire, and Konstantine J. Prevas, Esquire, her attorneys. Thomas J. Kwiatkowski, Jr., Assistant Attorney General, presented the case against Respondent on behalf of the Commission. Either Jack C. Tranter or Ronald S. Gass, Assistant Attorneys General, was present on the various hearing dates to advise the Commission on procedural matters and rules of evidence.

On September 11, 1981, before the Commission considered the merits of the case, Respondent filed a Motion to Dismiss and a Motion to Disqualify John E. Adams, M.D. (the "Motion to Disqualify"). On September 29, 1981, the Commission considered and denied the Motion to Dismiss. On October 6, 1981, the first hearing date, the Commission considered Respondent's Motion to Disqualify Dr. Adams. Dr. Adams did not participate in the deliberations and ruling on this motion. In support of the Motion to Disqualify, Mr. Durkee offered the testimony of Mr. Prevas and Respondent. Mr. Kwiatkowski offered the testimony of Dr. Adams and Gary L. Rosenberg, M.D. in opposition to this motion. As a rebuttal witness, Mr. Durkee called Mr. Prevas. Following argument by both parties, the Commission denied Respondent's Motion to Disqualify Dr. Adams. After this ruling, Respondent again moved to dismiss, and the Commission denied that motion.

Following these preliminary matters, but prior to the presentation of the State's case by Mr. Kwiatkowski at the October 6, 1981 hearing, Respondent moved to voir dire each Commission member hearing the case to determine if he could fairly and impartially decide the case based on the evidence presented. The Commission granted this request insofar as it permitted the Commission's counsel, Mr. Tranter, to ask each Panel member if he had heard or read anything that would affect his ability to decide the case fairly and impartially based on

the evidence presented. Each member of the Panel stated that he had not heard or read anything that would affect his ability to decide the case fairly and impartially.

Following opening statements by Mr. Kwiatkowski and Mr. Durkee, Mr. Kwiatkowski called the following witnesses to testify: Philip J. Ferris, M.D.; Gary L. Rosenberg, M.D.; John W. Buckley, M.D.; Denis Franks, M.D.; and Norris L. Horwitz, M.D. Mr. Kwiatkowski also introduced into evidence the documents listed in Appendix A. At the conclusion of the testimony of the various witnesses, Mr. Kwiatkowski rested the case on behalf of the Commission.

On November 10, 1981, after the conclusion of the State's case, Respondent filed a Motion to Dismiss and a Motion to Produce the Document or Documents Entitled "Synopsis of This Case" (the "Motion to Produce"). On or about November 30, 1981, Mr. Kwiatkowski filed a Memorandum in Response and Opposition to Motion to Dismiss and Motion to Produce. At the December 1, 1981 session, the Commission denied Respondent's Motion to Dismiss. On that same date, the Commission granted Respondent's Motion to Produce, and the Synopsis of the Case (the "Synopsis") was entered into evidence as Commission's Exhibit #1. The Commission asserted, however, that the Synopsis was privileged, that it was not obligated to produce it, and that it did so as an accommodation to Respondent.

At the November 10, 1981 session, Mr. Durkee began presenting Respondent's case and called the following witnesses to testify: David H. Hollander, M.D.; Donald B. Newman, Ph.D.; Gladys Sherman; Joseph C. Orlando, M.D.; Joseph Orlando, Jr.; Walter A. Ward, Jr., M.D.; Francis J. Waickman, M.D.; Arnold Brenner, M.D.; Samuel McComb Morgan Lumpkin, M.D.; and Respondent. He also introduced into evidence the documents

listed in Appendix B. At the conclusion of the testimony of the various witnesses, Mr. Durkee rested the case on behalf of Respondent.

Before Mr. Durkee concluded his case but after the withdrawal of Dr. Adams from the Panel at the January 12, 1982 session, the Commission ordered that the Synopsis, Commission's Exhibit #1, be sealed by Mr. Gass in response to an Order and Decree (the "Ex Parte Order") issued on January 11, 1982 by Judge James H. Langrall in Unnamed Physician v. Commission on Medical Discipline et al., Circuit Court for Baltimore County, Equity No. 110645. Also in response to the Ex Parte Order, the Commission ordered the members of the Panel sequestered so that Mr. Kwiatkowski and Mr. Durkee could voir dire each Panel member individually regarding any alleged prejudice or bias that may have resulted from his receiving or reading the Synopsis at the October 6, 1981 session. Each member of the Panel reaffirmed that he could fairly and impartially decide this case. Those members of the Panel who still had copies of the Synopsis in their possession gave them to Mr. Gass who subsequently sealed them in envelopes. Following voir dire, the evidentiary hearing resumed.

Closing arguments by Mr. Kwiatkowski and Mr. Durkee were heard by the Commission on January 12, 1982, after which the hearing was adjourned.

On or about January 27, 1982, Mr. Durkee filed a Supplemental Motion to Dismiss with the Commission. On or about February 2, 1982, Mr. Kwiatkowski filed a Response and Opposition to Supplemental Motion to Dismiss. After considering these filings, the Commission denied Respondent's Supplemental Motion to Dismiss.

FINDINGS OF FACT

The Commission finds:

1. That Respondent is licensed to practice medicine in the State of Maryland.
2. That Respondent specializes in internal medicine but devotes a substantial portion of her practice to the treatment of allergy.
3. That Respondent lacks formal training and adequate knowledge in the treatment of allergy.
4. That Respondent has received some training in the subspecialty of food allergy by participating in continuing education courses devoted to that topic.
5. That Respondent inappropriately emphasizes the role of food allergy in her internal medicine practice.
6. That Respondent uses cytotoxic testing and the radioallergosorbent test (the "RAST") to determine the presence or absence of food and inhalant allergies, respectively.
7. That Respondent's reliance on the cytotoxic test and the RAST to detect the presence or absence of food or inhalant allergies to the exclusion of standard diagnostic testing is medically unacceptable because these tests have not been clinically demonstrated to be sufficiently accurate for diagnostic purposes.
8. That the cytotoxic test and the RAST are still in the investigative stages of development as diagnostic tools and provide an unreliable basis for planning treatment.
9. That Respondent did not routinely inform her patients for whom she ordered cytotoxic and RAST testing that these tests were clinically unproven and, thus, not a reliable means of diagnosing food and inhalant allergies.

10. That a review of Respondent's patient records reveals that she failed to order standard diagnostic testing for Patients A*, G, J, L, M, P, Q, and R.

11. That Respondent emphasized food allergy and such treatment modalities as digestive aids, vitamin therapy and food elimination diets to the exclusion of pursuing conventional and potentially efficacious medical treatment for Patients B, C, and H.

12. That Respondent ordered food allergy testing, digestive aids, vitamin therapy or elimination diets without clear rationale for Patients A, C, D, F, G, I, N, O, P, Q, R, S, T, and U.

13. That Respondent's medical recordkeeping practices are deficient in the following respects:

A. The medical records of Patients F, Q, and R lacked clear statements of their medical problems.

B. The medical record of Patient R lacked an adequate treatment plan.

C. The medical records of Patients M, P, and R lacked adequate or pertinent follow-up evaluations.

D. The medical records of Patients K, L, M, O, P, and R lacked complete or adequate diagnostic laboratory data.

E. The medical records of Patient F lacked appropriate integration of laboratory diagnostic data and progress notes.

F. The medical records of Patients A, B, C, F, G, I, K, L, M, N, O, P, R, and T reveal inadequate patient evaluations, investigations and treatment.

*To protect patient confidentiality, the names of the patients corresponding to the code letter designations are contained in a separate sealed Appendix D.

G. The medical records of Patients C, F, I, K, L, M, O, P, and T lacked adequate notations regarding the results of their physical examinations by Respondent.

H. The medical records of Patients B, N, and Q lacked consultation reports prepared by Respondent for use by the referring physician in order to coordinate patient care between the patient's primary care physician and Respondent, the consulting specialist.

I. The medical record of Patient B lacked any indication of what the referring or prior physicians had diagnosed or prescribed for treatment.

J. The medical records of Patients A, G, M, R, and U indicated that Respondent failed to review or countersign the physical examinations performed by physician assistants practicing in her office.

CONCLUSION OF LAW

By the unanimous vote of the members hearing this case, the Commission concludes as a matter of law that Respondent is professionally incompetent to the extent reflected in the foregoing Findings of Fact in violation of Article 43, §130(h)(18) of the Maryland Annotated Code (recodified at §14-504(4) of the Health Occupations Article).

ORDER

Upon the foregoing Findings of Fact and Conclusion of Law, it is this 15th day of June, 1982, by unanimous vote of the members of the Commission considering this case,

ORDERED that Respondent's license to practice medicine in Maryland is hereby SUSPENDED for a period of two (2) years; and be it further

ORDERED that the foregoing suspension shall be immediately STAYED with Respondent placed on PROBATION subject to the following conditions:

1. That Respondent, at her own expense, shall immediately arrange for, undertake, and successfully complete a Commission-approved re-education program in medical recordkeeping under the auspices of the Department of Family Medicine of the University of Maryland Hospital (the "Department");
2. That Respondent shall continue in the medical recordkeeping program until she has attained competency in that aspect of her practice as determined by the Department;
3. That Respondent shall arrange for the Department to notify the Commission in writing that she has satisfactorily completed this medical recordkeeping program;
4. That Respondent shall continuously upgrade her medical recordkeeping practices so that her records are adequate for a practitioner of internal medicine.
5. That during the first year of probation, Respondent shall submit to quarterly practice reviews by a reviewing committee designated and approved by the Commission. To obtain Commission approval, a reviewing committee must include a physician with a subspecialty in allergy;
6. That during the second year of probation, practice reviews may be undertaken less frequently if recommended by the reviewing committee and approved by the Commission;
7. That Respondent shall make arrangements for the reviewing committee to submit reports of the reviews to the Commission;
8. That Respondent shall order or perform cytotoxic and RAST testing only when medically indicated and fully document those indications in writing in the patient's medical record;

9. That if Respondent continues to use cytotoxic or RAST testing in her medical practice, she must inform her patients about the diagnostic limitations and potential risks and benefits of these tests and obtain their written consent, which must be made a part of the patient's medical record;

10. That prior to ordering any cytotoxic or RAST testing for any of her patients, Respondent shall provide them with a written statement clearly and accurately explaining the diagnostic limitations and potential risks and benefits of these tests;

11. That the written statement referred to in Paragraph 10 shall be submitted to the Commission for review and approval prior to being given to any of Respondent's patients;

12. That Respondent shall maintain a list of all of her patients who have consented to the use of cytotoxic or RAST testing to enable the reviewing committee to retrieve readily those patients' medical records to ensure compliance with the provisions of Paragraph 9.

13. That Respondent shall properly utilize and order standard diagnostic tests when medically indicated;

14. That Respondent shall properly document and integrate patient histories, physical examinations and laboratory diagnostic tests;


13. That Respondent shall practice medicine competently; and be it further

ORDERED that if Respondent violates any of the foregoing conditions of probation, or if a report submitted by the reviewing committee designated by the Commission indicates that she is not practicing medicine competently, or if the Department reports that Respondent is not making satisfactory progress in her re-education program, the Commission, after notification, a

hearing, and determination of violation, may withdraw the stay of the suspension of her license or may impose any other disciplinary sanction it deems appropriate; and be it further

ORDERED that two (2) years from the date of this Order, the Commission will entertain a petition for termination of Respondent's probationary status and for reinstatement of her license to practice medicine without any condition or restriction whatsoever. If the Commission determines that termination of probation and complete reinstatement would not be appropriate at that time, it may modify one or more of the conditions upon which Respondent was placed on probation; and be it further

ORDERED that a copy of this Order shall be filed with the Board of Medical Examiners in accordance with §14-507 of the Health Occupations Article of the Maryland Annotated Code.


Hilary T. O'Herlihy, M.D.
Chairman
Commission on Medical
Discipline of Maryland

APPENDIX A

STATE'S EXHIBITS

- State's Exhibit A: Copy of letter to John E. Adams, M.D., Chairman, Commission on Medical Discipline, from John W. Buckley, M.D., Chairman, Peer Review Committee, Baltimore County Medical Association, dated April 18, 1980.
- State's Exhibit #1: Copy of letter to Phillip Ferris, M.D., Chairman of the Board, Baltimore County Peer Review Committee, from J. David Nagel, M.D., dated June 1, 1979.
- State's Exhibit #2: Copy of document entitled "Baltimore County Peer Review Committee Report on Barbara Solomon, M.D.," no date.
- State's Exhibit #3: Medical record of Patient A.*
- State's Exhibit #4: Medical record of Patient B.
- State's Exhibit #5: Medical record of Patient C.
- State's Exhibit #6: Medical record of Patient D.
- State's Exhibit #7: Medical record of Patient E.
- State's Exhibit #8: Medical record of Patient F.
- State's Exhibit #9: Medical record of Patient G.
- State's Exhibit #10: Medical record of Patient H.
- State's Exhibit #11: Medical record of Patient I.
- State's Exhibit #12: Copy of letter to Christopher M. Harvey, M.D., Baltimore County Medical Association, from Gary L. Rosenberg, M.D., dated June 20, 1979.
- State's Exhibit #13: Copies of journal articles and other documents -- American Academy of Allergy: Statement by the Executive Committee, 66 J. of Allergy & Clinical Immunology (Dec., 1980); document entitled "Position Statement on Use of Radioallergosorbent Tests in Practice" (rev. Nov. 17, 1980); Adkinson, Jr., The Radioallergosorbent Test: Uses and Abuses, 65 J. Allergy & Clinical Immunology 1 (1980); Adkinson, Jr., The Radioallergosorbent Test in 1981 -- Limitations and Refinements, 67 J. Allergy & Clinical Immunology 87 (1981).
- State Exhibit #14: Copy of letter to John E. Adams, M.D., Chairman, Commission on Medical Discipline, from John Buckley, M.D., Chairman, Peer Review Committee, Baltimore County Medical Association, dated February 20, 1980.

*To protect patient confidentiality, the names of the patients corresponding to the code letter designations are contained in a separate sealed Appendix D.

APPENDIX A (cont'd)

State Exhibit #15: Copy of letter to Dr. David J. Nagle from Robert E. Stoner, M.D., dated March 19, 1980.

State's Exhibit #16: Copy of letter to John E. Adams, M.D., Chairman, Commission on Medical Discipline, from John W. Buckley, M.D., Chairman, Peer Review Committee, Baltimore County Medical Association, Inc., dated July 9, 1980.

State's Exhibit #17: Medical Record of Patient J.

State's Exhibit #18: Medical Record of Patient K.

State's Exhibit #19: Medical Record of Patient L.

State's Exhibit #20: Medical Record of Patient M.

State's Exhibit #21: Medical Record of Patient N.

State's Exhibit #22: Medical Record of Patient O.

State's Exhibit #23: Medical Record of Patient P.

State's Exhibit #24: Medical Record of Patient Q.

State's Exhibit #25: Medical Record of Patient R.

State's Exhibit #26: Medical Record of Patient S.

State's Exhibit #27: Medical Record of Patient T.

State's Exhibit #28: Note paper bearing the handwritten name of Patient T and other information.

State's Exhibit #29: Medical record of Patient U.

APPENDIX B

RESPONDENT'S EXHIBITS

- Respondent's Exhibit A: Copy of letter to John W. Buckley, M.D., Chairman, Peer Review Committee, Baltimore County Medical Association, from John E. Adams, M.D., Chairman, Commission on Medical Discipline, dated May 9, 1980.
- Respondent's Exhibit #1: Copy of newspaper article -- "Hopkins Offers New Hope for Hay Fever Sufferers," The Sun (Baltimore) (Aug. 16, 1981).
- Respondent's Exhibit #2: Copy of letter to John E. Adams, M.D., Chairman, Commission on Medical Discipline, from John W. Buckley, M.D., Chairman, Peer Review Committee, Baltimore County Medical Association, dated April 18, 1980.
- Respondent's Exhibit #3: Copy of letter to John E. Adams, M.D., Chairman, Commission on Medical Discipline, from John W. Buckley, M.D., Chairman, Peer Review Committee, Baltimore County Medical Association, Inc., dated October 30, 1980.
- Respondent's Exhibit #4: Copy of letter dated May 16, 1978 to John E. Adams, M.D., Chairman, Commission on Medical Discipline, from Christopher M. Harvey, M.D., Chairman, Peer Review, Baltimore County Medical Association, with six-page attachment dated May 9, 1978.
- Respondent's Exhibit #5: Two-page document entitled "Courses Taken in Allergy", no date.
- Respondent's Exhibit #6: Copies of several journal articles and other materials regarding food allergies and cytotoxic testing by Barbara A. Solomon, M.D.
- Respondent's Exhibit #7: Copy of journal article -- Holopainen et al., Cytotoxic Leukocyte Reaction, 89 Acta Otolaryngol 222 (1980).
- Respondent's Exhibit #8: Excerpts from American Medical Association, Physicians' Current Procedural Terminology (4th ed. 1980).
- Respondent's Exhibit #9: Copy of document entitled "1980 Position Statements of American Society of Ophthalmologic and Otolaryngologic Allergy (ASCOA)".
- Respondent's Exhibit #10: Copy of journal article -- Nelson, Effect of Preservatives and Conditions of Storage on the Potency of Allergy Extracts, 67 J. Allergy & Clinical Immunology 64 (1981).
- Respondent's Exhibit #11: Copies of journal articles -- "Antigen Absorption by the Gut", The Lancet (Sept. 30, 1978); Hemmings & Williams, Transport of Large Breakdown Products of Dietary Protein Through the Gut Wall, 19 Gut 715 (1978) -- and one-page typewritten synopsis of book regarding food allergies.

[No Respondent's Exhibits # 12 through #17.]

APPENDIX B (cont'd)

- Respondent's Exhibit #18: Copy of 1981 curriculum vitae for David H. Hollander, M.D.
- Respondent's Exhibit #19: Copy of letter to Barbara A. Solomon, M.D., from John E. Adams, M.D., Chairman, Commission on Medical Discipline, dated January 21, 1981.
- Respondent's Exhibit #20: Copy of July, 1981 curriculum vitae for Walter Averel Ward, Jr., M.D.
- Respondent's Exhibit #21: Copy of curriculum vitae for Francis J. Walckman, M.D., no date.
- Respondent's Exhibit #22: Copy of curriculum vitae for Samuel McComb Morgan Lumpkin, M.D., no date.
- Respondent's Exhibit #23: Copy of Report of the Board of Trustees of the American Medical Association (Report W) regarding allergy and immunology approved at the 1976 annual meeting in Dallas, Texas.
- Respondent's Exhibit #24: Copy of document entitled "Council of Medical Specialty Societies Health Care Delivery Committee July 28, 1981 Meeting on Allergy Procedures."
- Respondent's Exhibit #25: Copy of document entitled "A Capsule Review of the Controversy Concerning Specialty Care in Allergy," no date.
- Respondent's Exhibit #26: Copy of letter to Richard F. Wilber, M.D., Executive Vice President, from Carl A. Durkee, P.A., dated December 18, 1981.
- Respondent's Exhibit #27: Letter to Carl A. Durkee, P.A., from Richard S. Wilbur, M.D., Council of Medical Specialty Societies, dated December 22, 1981.
- Respondent's Exhibit #28: Excerpts from book -- A. Coca, Familial Nonreaginic Food-Allergy (3d ed. 1953).
- Respondent's Exhibit #29: Book -- J. Breneman, Basics of Food Allergy (1978).
- Respondent's Exhibit #30: Binder entitled "Food Allergy -- Medical Literature, Volume I, Collected and Summarized by Barbara A. Solomon, M.D." containing journal articles and other materials.
- [No Respondent's Exhibit # 31.]
- Respondent's Exhibit #32: Chart summarizing medical records of Patients F and J.*
- Respondent's Exhibit #33: Chart summarizing medical records of Patients A and B.

*To protect patient confidentiality, the names of the patients corresponding to the code letter designations are contained in a separate sealed Appendix D.

APPENDIX B (cont'd)

Respondent's Exhibit #34: Chart summarizing medical records of Patients C and D.

Respondent's Exhibit #35: Chart summarizing medical records of Patients I, H, and E.

Respondent's Exhibit #36: Chart summarizing medical records of Patients L, N, and M.

Respondent's Exhibit #37: Chart summarizing medical record of Patient G.

[Respondent's Exhibits # 38 through # 43 marked for identification only. Not admitted into evidence nor considered by the Commission in reaching its decision in this case.]

Respondent's Exhibit #44: Copy of journal article -- Trevino, Immunologic Mechanisms in the Production of Food Sensitivities, 91 Laryngoscope 1913 (1981).

Respondent's Exhibit #45: Letter to Konstantine J. Prevas, Esquire, and Carl A. Durkee, Esquire, from Jack C. Tranter, Assistant Attorney General, dated October 2, 1981.

Respondent's Exhibit #46: Untitled binder containing journal articles and other materials regarding food allergies and various medical conditions.

Respondent's Exhibit #47: Copy of discharge summary for Patient V from The Johns Hopkins Hospital and copy of laboratory results for Patient V from Sherman Laboratories, Inc.

[No Respondent's Exhibits # 48 through # 50.]

Respondent's Exhibit #51: Chart summarizing medical records of Patients O and P.

Respondent's Exhibit #52: Chart summarizing medical records of Patients T and U.

Respondent's Exhibit #53: Chart summarizing medical records of Patients Q, R, and S.

Respondent's Exhibit #54: Book -- F. Speer, Allergy of the Nervous System (1970).

Respondent's Exhibit #55: Book -- A. Coca, Familial Nonreaginic Food-Allergy (3d ed. 1953).

Respondent's Exhibit #56: Book -- A. Rowe & A. Rowe, Jr., Food Allergy: Its Manifestations and Control and the Elimination Diets (1972).

Respondent's Exhibit #57: Copy of letter to Karl F. Mech, M.D., Acting Chairman, Commission on Medical Discipline, from Carl A. Durkee, P.A., dated January 6, 1982.

APPENDIX C

COMMISSION'S EXHIBITS

Commission's Exhibit #1: Envelope containing Synopsis of Case of Barbara Solomon, M.D., sealed on January 12, 1982 at the direction of the Commission on Medical Discipline by Ronald S. Gass, Assistant Attorney General.

Commission's Exhibit #2: Copy of subpoena duces tecum directed to Barbara Solomon, M.D. signed by John E. Adams, M.D., Chairman, Commission on Medical Discipline of Maryland, dated January 22, 1981.