



STATE OF NEW YORK  
DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Barbara A. DeBuono, M.D., M.P.H.  
*Commissioner*

Dennis P. Whalen  
*Executive Deputy Commissioner*

December 11, 1997

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Michele Y. Tong, Esq.  
David W. Smith, Esq.  
NYS Department of Health  
5 Penn Plaza - Sixth Floor  
New York, New York 10001

Daniel Despen, R.P.A.  
6 Gerard Avenue  
Malverne, New York 11565

Martin Cohen, Esq.  
357 Grand Street  
New York, New York 10002

**RE: In the Matter of Daniel Despen, R.P.A.**

Dear Parties:

Enclosed please find the Determination and Order (No. 97-303) 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.

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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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.

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.

Request for review of the Committee's determination by the Administrative Review Board stays penalties **other than suspension or revocation** until final determination by that Board. Summary orders are not stayed by Administrative Review Board reviews.

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.

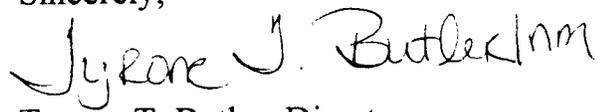
The notice of review served on the Administrative Review Board should be forwarded to:

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,

A handwritten signature in black ink that reads "Tyrone T. Butler" followed by a large, stylized initial "nm".

Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:nm  
Enclosure

COPY

**IN THE MATTER**

**-OF-**

**DANIEL DESPEN, R.P.A.**

**DECISION**  
**AND ORDER**  
**OF THE**  
**HEARING**  
**COMMITTEE**

**BPMC ORDER**  
**NO. 97-303**

This matter was commenced by a Notice of Hearing and Statement of Charges, both dated October 7, 1997 which were served upon DANIEL DESPEN, R.P.A., (Registered Physician's Assistant). Mr. Despen will hereinafter be referred to as "Respondent". STANLEY GITLOW, M.D., Chairperson, STEVEN M. LAPIDUS, M.D., and MICHAEL A. GONZALEZ, R.P.A., duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to Section 230(10)(e) of the Public Health Law. JONATHAN M. BRANDES, ESQ., Administrative Law Judge, served as the Administrative Officer. A hearing was held on November 10, 1997 at Five Penn Plaza, New York, New York. The State Board For Professional Medical Conduct (hereinafter referred to as "Petitioner") appeared by HENRY M. GREENBERG, ESQ., General Counsel, by MICHELE Y. TONG, ESQ., Assistant Counsel and DAVID W. SMITH, ESQ., Associate Counsel, Bureau of Professional Medical Conduct. Respondent appeared in person and by MARTIN COHEN, ESQ. Evidence was received. A transcript of these proceedings was made.

After consideration of the entire record, the Hearing Committee issues this Decision and Order.

## **PRELIMINARY STATEMENT**

This case was brought pursuant to Public Health Law Section 230(10)(p). This statute provides for an expedited hearing where a licensee is charged solely with a violation of Section 6530(9) of the Education Law. In such cases, a licensee is charged with misconduct based upon prior professional disciplinary action or criminal conviction. The scope of this expedited hearing is limited to a determination of the nature and severity of the penalty to be imposed by this state upon the licensee based solely upon the record of the previous conviction or discipline.

In the instant case, Respondent is charged with professional misconduct pursuant to the New York State Education Law, Section 6530 (9)(a)(ii) (having been convicted of a crime under federal law). The allegations in this proceeding and the underlying events are more particularly set forth in the Notice of Referral Proceeding and Statement of Charges, a copy of which is attached to this Decision and Order as Appendix One.

## **FINDINGS OF FACT**

The Committee adopts the factual statements set forth on page one of the Statement of Charges (Appendix One) as its findings of fact and incorporates them herein.

**CONCLUSIONS**  
**WITH REGARD TO**  
**FACTUAL ALLEGATIONS**  
**SPECIFICATIONS AND PENALTY**

Petitioner herein has proven by a preponderance of the evidence that Respondent was found guilty of a crime under federal law. Therefore, the Factual Allegations and Specifications in this proceeding are sustained. The Committee now turns its attention to what penalty to impose.

Respondent testified and the entire panel including, a Physicians Assistant felt disturbed by the absence of any apparent dedication for the caring arts and the disinterest in any attempt to improve his professional knowledge or his clinical capacity. The feeling of the panel was not generic regarding Physician' s Assistants but rather that there was, in this instance, no evidence of a "saving grace." That is, the respondent lacked ethical stature AND professional usefulness as a Physician's Assistant's" to his patients.

The Committee notes that Respondent did not submit false billings in the underlying acts. However, Respondent admits he knew inaccurate billings were being submitted for him. He neither reported the wrong doing nor left the facility. The Committee finds Respondent to have shrugged off his responsibility in the theft that led to his conviction. Likewise, he Committee finds Respondent to have shrugged off his responsibility in the practice of his profession.

Therefore, the Committee finds that Respondent's license to practice as a Registered Physician's Assistant in this state shall be revoked.

**ORDER**

WHEREFORE, Based upon the preceding facts and conclusions,

It is hereby **ORDERED** that:

1. The Factual allegations in the Statement of Charges (Appendix One) are **SUSTAINED**;

Furthermore, it is hereby **ORDERED** that;

2. The Specifications of Misconduct contained within the Statement of Charges (Appendix One) are **SUSTAINED**;

Furthermore, it is hereby **ORDERED** that;

3. The license of Respondent to practice as a Registered Physician's Assistant in the state of New York is hereby **REVOKED**;

Furthermore, it is hereby **ORDERED** that;

4. This order shall take effect **UPON RECEIPT or SEVEN (7) DAYS** after mailing of this order by Certified Mail.

**Dated:**  
**New York, New York**

Dec 8, 1997

  
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**STANLEY GITLOW, M.D., Chairperson**

**STEVEN M. LAPIDUS, M.D.**  
**MICHAEL A. GONZALEZ, RPA.**

TO:

**MICHELE Y. TONG, ESQ.**, Assistant Counsel  
**DAVID W. SMITH, ESQ.**, Associate Counsel  
Bureau of Professional Medical Conduct  
5 Penn Plaza  
New York, New York 10001

**DANIEL DESPEN, R.P.A.**  
6 Gerard Avenue  
Malverne, New York 11565

**MARTIN COHEN, ESQ.**  
357 Grand Street  
New York, New York 10002

**APPENDIX ONE**

IN THE MATTER  
OF  
DANIEL DESPEN, R.P.A.

STATEMENT  
OF  
CHARGES

DANIEL DESPEN, R.P.A., the Respondent, was authorized to practice medicine in New York State on or about November 17, 1978, by the issuance of certificate number 001042 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

- A. On or about August 6, 1996, Respondent pleaded guilty to one count of Conspiracy to Commit Medicaid Fraud and Mail Fraud in violation of Title 18 United States Code, Section 371.
1. Thereafter, Respondent was sentenced to probation term of three years and 300 hours of community service.

**SPECIFICATION**

**CRIMINAL CONVICTION (Federal)**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(9)(a)(ii)(McKinney Supp. 1997) by having been convicted of committing an act constituting a crime under federal law as alleged in the facts of the following:

1. Paragraphs A and A1.

DATED: June 1, 1997  
New York, New York



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ROY NEMERSON  
Deputy Counsel  
Bureau of Professional  
Medical Conduct