



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*

May 5, 1998

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Steve Fondulis, Esq.  
NYS Department of Health  
5 Penn Plaza - Sixth Floor  
New York, New York 10001

Mitchell D. Claire, P.A.  
66435 Desert View Avenue  
Hot Springs, California 92240

**RECEIVED**

**MAY 05 1998**

**RE: In the Matter of Mitchell D. Claire, P.A.**

**OFFICE OF PROFESSIONAL  
MEDICAL CONDUCT**

Dear Parties:

Enclosed please find the Determination and Order (No. 98-81) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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.

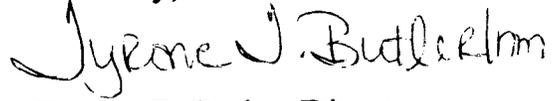
The notice of review served on the Administrative Review Board should be forwarded to:

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". The signature is written in a cursive style with a large initial 'T' and 'B'.

Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:nm  
Enclosure

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

COPY

-----X  
IN THE MATTER :  
OF :  
MITCHELL D. CLAIRE, P.A. :  
-----X

DETERMINATION  
AND  
ORDER

BPMC-98-81

A Notice of Referral Proceeding and Statement of Charges, both dated February 27, 1998, were served upon the Respondent, Mitchell D. Claire, M.D. **CHARLOTTE S. BUCHANAN, ESQ. (Chair), FRANK E. IAQUINTA, M.D., and ARTHUR J. SEGAL, M.D.,** 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. **LARRY G. STORCH, ESQ., ADMINISTRATIVE LAW JUDGE,** served as the Administrative Officer. The Department of Health appeared by Steve Fondulis, Esq., Associate Counsel. The Respondent failed to appear in person and was not represented by counsel. A hearing was held on April 22, 1998. Evidence was received and witnesses sworn and heard and transcripts of these proceedings were made.

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

### STATEMENT OF CASE

This case was brought pursuant to Public Health Law Section 230(10)(p). The statute provides for an expedited hearing where a licensee is charged solely with a violation of Education Law §6530(9). In such cases, a licensee is charged with misconduct based upon a prior criminal conviction in New York or another jurisdiction, or upon a prior administrative adjudication regarding conduct which would amount to professional misconduct, if committed in New York. The scope of an expedited hearing is limited to a determination of the nature and severity of the penalty to be imposed upon the licensee.

In the instant case, Respondent is charged with professional misconduct pursuant to Education Law §6530(9)(d) [having disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the disciplinary action would, if committed in New York state, constitute professional misconduct under the laws of this state]. A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order in Appendix I.

### FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers in parentheses 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.

1. Mitchell D. Claire, P.A. (hereinafter, "Respondent"), was authorized to practice medicine as a physician assistant in New York State on June 25, 1984 by the issuance of license number 002410 by the New York State Education Department. (Pet. Ex. #2).

2. On May 5, 1997, the Physician Assistant Examining Committee, Medical Board of California (hereinafter the "California Board") issued an Order adopting a Stipulation of Settlement and Disciplinary Order as its decision against Respondent wherein Respondent admitted to having committed various acts of professional misconduct. Pursuant to this Order, Respondent's California Physician Assistant License No. PA-12917 was revoked. The revocation was stayed and Respondent was placed on probation. This Stipulation of Settlement and Disciplinary Order followed a February 5, 1997 Interim Suspension Order of the California Office of Administrative Hearings which suspended Respondent's license to practice as a physician assistant in the state of California pending a full hearing. (Pet. Ex. #3).

3. In the Ordered Stipulation of Settlement and Disciplinary Order, Respondent admitted the truth of each and every allegation of the Accusation and First Supplemental Accusation which charged him with misconduct in California. More particularly, Respondent admitted that:

a. He was subject to disciplinary action on the grounds of unprofessional conduct in that he has used

and/or administered to himself a controlled substance or dangerous drug in a manner as to be dangerous or injurious to himself or to any other person or to the public, or to the extent that such impairs his ability to practice medicine safely.

b. From December 1993 to approximately May 1994, Respondent was employed at Cathedral City Family Medical Clinic. During that time, his work habits and general behavior appeared erratic. He failed to appear on scheduled shifts and often his whereabouts were unknown. On occasion, he was found asleep at his worksite.

c. During and between approximately August 1992 and May 1993, Respondent admitted to his girlfriend that he was using cocaine and injecting Demerol. He showed his girlfriend "track marks" resulting from injections on both of his arms.

d. On or about September 12, 1996, Respondent was found to be in possession of methamphetamine, amphetamine and diazepam, all without prescription.

e. During Respondent's work as a physician assistant for Urgent Care, during the two month period prior to his arrest on September 12, 1996 he was observed displaying decreased alertness, confusion, irritability and was quarrelsome with the Administrator and staff.

f. On or about and in between October 7 through October 18, 1996, Respondent's conduct at work (at Urgent Care) showed difficulty thinking, illegible charts,

quarrelsome demeanor and slurred speech.

(Pet. Ex. #3).

#### CONCLUSIONS OF LAW

The following conclusions were made pursuant to the Findings of Fact listed above. All conclusions resulted from a unanimous vote of the Hearing Committee unless noted otherwise.

The Committee concluded that the Department has sustained its burden of proof in this matter. The preponderance of the evidence demonstrates that the Respondent was disciplined by the California Board in May, 1997. Moreover, the conduct which Respondent admitted as part of the settlement would, if committed in New York, have constituted professional misconduct under the laws of New York state. More specifically, Respondent's conduct would constitute professional misconduct in violation of New York Education Law §6530(7) [practicing the profession while impaired by alcohol, drugs, physical disability or mental disability]; §6530(8) [being a habitual abuser of alcohol, or being dependent on or a habitual user of narcotics, barbiturates, amphetamines, hallucinogens or other drugs having similar effects], and §6530(16) [a willful or grossly negligent failure to comply with substantial provisions of federal, state, or local laws, rules, or regulations governing the practice of medicine]. Accordingly, the Hearing Committee voted to sustain the Specification of professional misconduct set forth in the Statement of Charges.

### DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determined that Respondent's license to practice medicine in New York State should be revoked. This determination was reached upon due consideration of the full spectrum of penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties.

The evidence demonstrates that Respondent is addicted to drugs and that his addiction impaired him for practice as a physician assistant. Such a condition warrants a significant sanction. The Hearing Committee takes note of the fact that the California Board chose to stay its revocation of Respondent's license and place him on probation. However, this Committee has an independent responsibility to determine the appropriate sanction to impose on Respondent's New York physician assistant registration for his misconduct.

Respondent failed to appear at the hearing, despite personal service. He presented no mitigating evidence regarding the status of his recovery, if any. Moreover, the fact that Respondent is not currently registered in New York and does not reside here makes a term of supervised probation impossible. Under the circumstances, revocation is the only sanction which will adequately protect the public. In the event that Respondent ever wishes to regain his New York registration, he will have the opportunity to demonstrate that he has been in recovery for a

significant period of time, and is no longer impaired for the practice of medicine as a physician assistant.

**ORDER**

Based upon the foregoing, **IT IS HEREBY ORDERED THAT:**

1. The Specification of professional misconduct, as set forth in the Statement of Charges (Petitioner's Exhibit # 1) is **SUSTAINED;**

2. Respondent's registration to practice medicine as a physician assistant in New York State be and hereby is **REVOKED;**

3. This Determination and Order shall be effective upon service. Service shall be either by certified mail upon Respondent at Respondent's last known address and such service shall be effective upon receipt or seven days after mailing by certified mail, whichever is earlier, or by personal service and such service shall be effective upon receipt.

**DATED: Troy, New York**  
*April 30, 1998*

*Charlotte S. Buchanan*  
**CHARLOTTE S. BUCHANAN, ESQ. (CHAIR)**

FRANK E. IAQUINTA, M.D.  
ARTHUR J. SEGAL, M.D.

TO: Steve Fondulis, Esq.  
Associate Counsel  
New York State Department of Health  
5 Penn Plaza - 6th Floor  
New York, New York 10001

Mitchell D. Claire, P.A.  
66435 Desert View Avenue  
Hot Springs, California 92240

**APPENDIX I**

11

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

IN THE MATTER  
OF  
MITCHELL D. CLAIRE, P.A.

NOTICE OF  
REFERRAL  
PROCEEDING

TO: Mitchell D. Claire, P.A.  
66435 Desert View Ave.  
Hot Springs, Ca 92240

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law §§230(10)(p) (McKinney Supp. 1998) and N.Y. State Admin. Proc. Act §§301-307 and 401 (McKinney 1984 and Supp. 1998). The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on March 31, 1998 at 10:00 a.m., at the offices of the New York State Department of Health, 5 Penn Plaza, Sixth Floor, New York, New York 10001.

At the proceeding, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the proceeding will be made and the witnesses at the proceeding will be sworn and examined.

You may appear in person at the proceeding and may be represented by counsel. You may produce evidence or sworn testimony on your behalf. Such evidence or sworn testimony shall be strictly limited to evidence and testimony relating to the nature and severity of the penalty to be imposed upon the licensee. Where the charges are based on the conviction of state law crimes in other jurisdictions, evidence may be offered which would show that the conviction would not be a crime in New York State. The Committee also may limit the number of witnesses whose testimony will be received, as well as the length of time any witness will be permitted to testify.

If you intend to present sworn testimony, the number of witnesses and an estimate of the time necessary for their direct examination must be submitted to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Hedley Park Place, 433 River Street, Fifth Floor South, Troy, NY 12180, ATTENTION: HON. TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION (Telephone: (518-402-0748), (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, no later than twenty days prior to the scheduled date of the Referral Proceeding, as indicated above.

Pursuant to the provisions of N.Y. Pub. Health Law §230(10)(c), you shall file a written answer to each of the charges and allegations in the Statement of Charges not less than ten days prior to the date of the hearing. Any charge or allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such answer. The answer shall be filed with the Bureau of Adjudication, at the address indicated above, and a copy shall be forwarded to the attorney for the Department of Health whose name appears below. You may file a written brief and affidavits with the Committee. Six copies of all papers you submit must be filed with the Bureau of Adjudication at the address indicated above, no later than fourteen days prior to the scheduled date of the Referral Proceeding, and a copy of all papers must be served on the same date on the Department of Health attorney indicated below. Pursuant to §301(5) of the State Administrative Procedure Act, the Department, upon reasonable notice, will provide at no charge a qualified interpreter of the deaf to interpret the proceedings to, and the testimony of, any deaf person. Pursuant to the terms of N.Y. State Admin. Proc. Act §401 (McKinney Supp. 1998) and 10 N.Y.C.R.R. §51.8(b), the Petitioner hereby demands disclosure of the evidence that the Respondent intends to introduce at the hearing, including the names of witnesses, a list of and copies of documentary evidence and a description of physical or other evidence which cannot be photocopied.

The proceeding may be held whether or not you appear. Please note that

requests for adjournments must be made in writing to the Bureau of Adjudication, at the address indicated above, with a copy of the request to the attorney for the Department of Health, whose name appears below, at least five days prior to the scheduled date of the proceeding. Adjournment requests are not routinely granted. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation. Failure to obtain an attorney within a reasonable period of time prior to the proceeding will not be grounds for an adjournment.

The Committee will make a written report of its findings, conclusions as to guilt, and a determination. Such determination may be reviewed by the administrative review board for professional medical conduct.

SINCE THESE PROCEEDINGS MAY RESULT IN A DETERMINATION THAT SUSPENDS OR REVOKES YOUR LICENSE TO PRACTICE MEDICINE IN NEW YORK STATE AND/OR IMPOSES A FINE FOR EACH OFFENSE CHARGED, YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: New York, New York  
February 27, 1998



ROY NEMERSON  
Deputy Counsel  
Bureau of Professional  
Medical Conduct

**Inquiries should be addressed to:**

**STEVE FONDULIS, ESQ.  
Associate Counsel  
NYS Department of Health  
Division of Legal Affairs  
5 Penn Plaza, Suite 601  
New York, New York 10001  
(212) 613-2624**

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

IN THE MATTER  
OF  
MITCHELL D. CLAIRE, P.A.

STATEMENT  
OF  
CHARGES

Mitchell D. Claire, P.A. , the Respondent, was authorized to practice medicine in New York State, as a physician assistant, on or about June 25, 1984, by the issuance of license number 002410 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

- A. On or about May 5, 1997, the Physician Assistant Examining Committee, Medical Board of California issued an Order adopting a Stipulation of Settlement and Disciplinary Order as its decision against Respondent wherein Respondent admitted to having committed various acts of professional misconduct. Pursuant to said Order, Respondent's California Physician Assistant License No. PA-12917 was revoked. The revocation was stayed and Respondent was placed on probation. This Stipulation of Settlement and Disciplinary Order followed a February 5, 1997 interim Suspension Order of the California Office of Administrative Hearings which suspended Respondent's license to practice as a physician assistant in the state of California pending a full hearing. In said Ordered Stipulation of Settlement and Disciplinary Order, Respondent admitted the truth of each and every allegation of the Accusation and First Supplemental Accusation No. 1E-94-40557, which charged him with misconduct in California. More particularly, he admitted that :

1. He was subject to disciplinary action on the grounds of unprofessional conduct in that he has used and/or administered to himself a controlled substance or dangerous drug in a manner as to be dangerous or injurious to himself or to any other person or to the public, or to the extent that such impairs his ability to practice medicine safely.
2. From December 1993 to approximately 1994, respondent was employed at Cathedral City Family Medical Clinic. During that time, his work habits and general behavior appeared erratic. He failed to appear on scheduled shifts and often his whereabouts were unknown. On occasion, he was found asleep at his worksite.
3. During and between approximately August 1992 and May 1993, respondent admitted to his girlfriend, a chiropractor, that he was using Cocaine and injecting Demerol. He showed his girlfriend his "track marks" resulting from injections on both of his arms.
4. On or about September 12, 1996 he was in possession of methamphetamine, amphetamine and diazepam, all without prescription.
5. At respondent's work as a physician assistant for Urgent Care , during the two month period prior to his arrest on September 12, 1996, he was observed displaying decreased alertness,

confusion, irritability and he was quarrelsome with the Administrator and staff.

6. On or about and in between October 7, through October 18, 1996, respondent's conduct at work ( at Urgent Care) showed difficulty thinking, illegible charts, quarrelsome demeanor and slurred speech.

### **SPECIFICATION OF CHARGES**

#### **SPECIFICATION**

#### **HAVING HAD DISCIPLINARY ACTION TAKEN**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(9)(d)(McKinney Supp. 1998) by having his or her license to practice medicine revoked, suspended or having other disciplinary action taken, or having his or her application for a license refused, revoked or suspended or having voluntarily or otherwise surrendered his or her license after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation, suspension or other disciplinary action involving the license or refusal, revocation or suspension of an application for a license or the surrender of the license would, if committed in New York state, constitute professional misconduct under the laws of New York state (namely N.Y.

Educ. Law §6530(7), 6530(8) and 6530(16) [McKinney Supp. 1998] )as alleged in the facts of the following:

1. The facts in paragraphs A, A(1), A(2), A(3), A(4), A(5),and A(6).

DATED: February 27, 1998  
New York, New York



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**ROY NEMERSON**  
Deputy Counsel  
Bureau of Professional  
Medical Conduct