



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

PUBLIC

Dennis P. Whalen
Executive Deputy Commissioner

November 2, 1999

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr. Barry Kaufman, Esq.
New York State Department of Health
Division of Legal Affairs
5 Penn Plaza – Sixth Floor
New York, New York 10001

Esther J. Obiora, Esq.
45 John Street, Suite 902
New York, New York 10038

Graciano Evans Clause, R.P.A.
164 East 42nd Street, Apt. 2
Brooklyn, New York

RE: In the Matter of Graciano Evans Clause, R.P.A.

Dear Parties:

Enclosed please find the Determination and Order (No. 99-176) of the Professional Medical Conduct Administrative Review Board in the above referenced matter. This Determination and Order shall be deemed effective upon receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

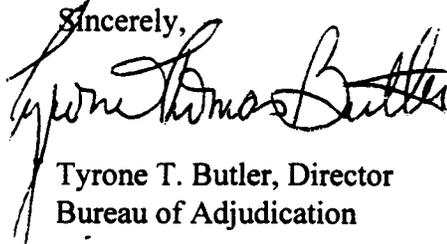
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified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

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

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

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

Sincerely,

A handwritten signature in black ink, appearing to read "Tyrone T. Butler". The signature is written in a cursive style with a large initial "T".

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:mla
Enclosure

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

COPY

In the Matter of

Graciano Evans Clause, R.P.A. (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. 99-176

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

For the Department of Health (Petitioner):

Barry Kaufman, Esq.

For the Respondent:

Esther J. Obiora, Esq.

After a hearing below, a BPMC Committee sustained charges that the Respondent-Physician's Assistant committed professional misconduct 1.) by writing prescriptions that identified his supervising physician falsely, and, 2.) by withholding or misstating information on hospital applications. The Committee voted to revoke the Respondent's License to practice as a Physician's Assistant (License). In this proceeding pursuant to N.Y. Pub. Health Law § 230-c(4)(a)(McKinney's Supp. 1999), the Respondent limits his request for administrative review to arguing that the Committee imposed a harsh penalty without support in the record. Upon reviewing that record and the briefs by both parties, the ARB sustains the Committee's Determination and we hold that the Respondent's repeated fraudulent conduct, that involved his License directly, provided more than sufficient grounds on which to revoke his License.

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), 6530(16), 6530(20) & 6530(24) (McKinney Supp. 1999) by committing professional misconduct under the following specifications:

- practicing medicine fraudulently,
- failing to abide by regulations relating to professional practice,
- engaging in conduct that evidences moral unfitness, and,
- practicing beyond the lawful scope.

As relevant on this review, the charges related to prescriptions the Respondent wrote while working at the Council Health Center (Council) and to applications for employment that the Respondent submitted to four health care facilities. A hearing on the charges ensued before the Committee that rendered the Determination now on review. The Committee sustained all the misconduct specifications relating to the prescriptions and applications. The Committee dismissed or the Petitioner withdrew allegations concerning other conduct.

As to the prescriptions, the Committee found that, during July through October 1997, the Respondent wrote 79 prescriptions at Council and used an ink pad to indicate on the prescriptions that Samuel DeLeon, M.D. supervised the Respondent. The Committee found further that:

- two physicians other than Dr. DeLeon supervised the Respondent,
- the Respondent suffered strained relations with one supervisor, Dr Orville Scott,
- the Respondent never received Dr. DeLeon's or Council's permission to use Dr. DeLeon's name,

- the Respondent issued the prescriptions knowing that he was misrepresenting facts and with the intent to deceive, and,
- the Respondent's conduct violated Health Department regulations pertaining to practice by a Physician's Assistant.

As to the applications, the Committee found that the Respondent submitted applications for employment, with an accompanying *curriculum vitae*, to four health care facilities:

- Council,
- St. Barnabas Hospital Correctional Health Services,
- Bronx Lebanon Hospital Center, and,
- the Brooklyn Hospital Center.

The Committee found that the Respondent misrepresented information or failed to disclose information in applying to each facility.

The Committee voted to revoke the Respondent's License, upon concluding that the Respondent engaged in repeated, serious and fraudulent conduct. The Committee noted that the Respondent continued his misconduct even after receiving a warning to cease.

Review History and Issues

The Committee rendered their Determination on July 30, 1999. This proceeding commenced on August 3, 1999, when the ARB received the Respondent's Notice requesting a Review. The record for review contained the Committee's Determination, the hearing record, the Respondent's brief and the Petitioner's response brief. The record closed when the ARB received the response brief on September 15, 1999.

In his review brief, the Respondent raised no challenge to the Committee's Determination on the facts and charges. The Respondent argued instead that mitigating factors showed that the Committee ordered an overly harsh penalty. In his defense concerning the prescriptions, the Respondent cited his strained relations with Dr. Scott and Dr. Scott's animosity toward the Respondent. The Respondent contended that he wrote the false prescriptions in order to obtain necessary care for his patients. In his defense concerning the applications, the Respondent indicated that he submitted a less than exhaustive *curriculum vitae* in order to obtain job interviews and that he provided the omitted information if he received specific questions during an interview. The Respondent asks that the ARB consider the mitigating information and dismiss the revocation penalty in the interests of justice.

In their response brief, the Petitioner contends that the evidence from the hearing contradicts the many arguments in the Respondent's brief and that the Respondent's brief attempts to trivialize the serious misconduct he committed. The Petitioner argues further that the Committee has considered already and rejected the arguments that the Respondent offered in his brief.

Determination

The ARB has considered the record and the parties' briefs. We affirm the Committee's determination that the Respondent committed fraud, practiced beyond lawful scope, violated regulations relating to professional practice and engaged in conduct that evidenced moral unfitness. The Respondent made no challenge to the Committee's factual findings or their conclusion to sustain the charges. We vote unanimously to affirm the Committee Determination to revoke the Respondent's License, for the reasons we discuss below.

The Respondent prepared prescriptions fraudulently by using a stamp bearing Dr. DeLeon's name, without Dr. DeLeon's permission and while other physicians supervised the Respondent. The Respondent attempted to defend that conduct by arguing that the Respondent needed to write the fraudulent prescriptions in order to obtain treatment for his patients. This defense inferred that, due to friction between the Respondent and his Supervisor, Dr. Scott, the Supervisor refused to countersign prescriptions that the Respondent wrote. The Committee considered and rejected that defense in their Determination at pages 17-19. The Committee found no evidence that Dr. Scott ever refused to countersign a prescription for the Respondent. The Committee also found that the Respondent used the DeLeon stamp even on days with the Respondent's main supervisor, Dr. Axelrod, present at Council. The Committee also expressed suspicion over why the Respondent retained the DeLeon stamp after the Respondent left the prior employment at which Dr. DeLeon supervised the Respondent. The Committee found the Respondent's excuses about the prescriptions to lack credibility. The ARB owes the Committee deference in their role as the fact-finder, as to the Committee's judgement on credibility. The Committee went into great detail in their Determination in explaining their reasons for finding the Respondent's excuses lacking in credibility. The ARB sees no reason on this record to overturn the Committee's judgement.

With respect to the fraudulent applications to four healthcare facilities, the Respondent argued the necessity to misstate or withhold information in order to obtain employment. The Respondent raised the same defense with the Committee and the Committee found the defense totally unacceptable. We agree. The application/quality assurance process at healthcare facilities operates to assure that the facilities hire or grant privileges to professionals who will provide safe and appropriate care to patients. That process must rely on the professionals' integrity to provide

full and truthful information. A Physician's Assistant must deal truthfully with healthcare facilities in the same manner the Physician's Assistant must deal with physicians, patients, government regulators and third-party payers. A Physician's Assistant who lacks integrity also lacks the fitness to practice his/her profession. The Respondent attempted to minimize his conduct by arguing that he merely submitted an incomplete *curriculum vitae*. The record indicates otherwise. The record shows that the Respondent's applications to the four healthcare facilities represented a pattern of conduct that demonstrated an attempt to mislead the facilities. The Respondent also argued that he suffered prejudice from certain testimony by an investigator, concerning statements the Respondent made about the applications. The Respondent failed to discuss how the testimony caused him prejudice. We leave the Respondent to raise that issue with the courts.

The evidence in this case proved that the Respondent engaged in continued and diverse fraudulent activity that related directly to his professional practice. The Respondent violated his professional trust and demonstrated his unfitness to continue in practice. We hold that either the fraudulent applications or the fraudulent prescriptions would, standing alone, have provided the Committee sufficient grounds on which to revoke the Respondent's License.

ORDER

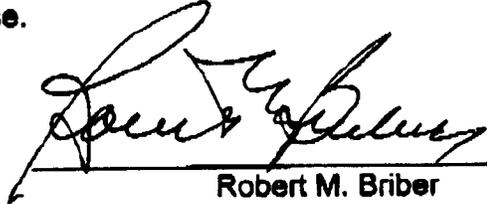
NOW, with this Determination as our basis, the ARB renders the following **ORDER**:

1. The ARB **AFFIRMS** the Committee's Determination that the Respondent committed professional misconduct.
2. The ARB **AFFIRMS** the Committee's Determination revoking the Respondent's License.

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

In the Matter of Graciano Evans Clause, R.P.A.

Robert M. Briber, an ARB Member, concurs in the Determination and
Order in the Matter of Mr. Clause.
Dated: October 26, 1999

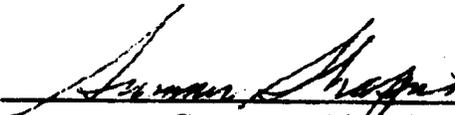


Robert M. Briber

In the Matter of Graciano Evans Clause, R.P.A.

Sumner Shapiro, an ARB Member concurs in the
Determination and Order in the Matter of Mr. Clause.

Dated: October 29, 1999



Sumner Shapiro

In the Matter of Graciano Evans Clause, R.P.A.

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

Dated: 10/30, 1999

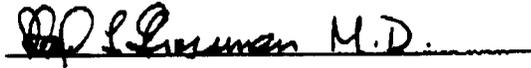
A handwritten signature in cursive script, appearing to read "Winston S. Price, M.D.", written over a horizontal line.

Winston S. Price, M.D.

In the Matter of Graciano Evans Clause, R.P.A.

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

Dated: October 27, 1999

Handwritten signature of Stanley L. Grossman, M.D. in cursive script, underlined.

Stanley L Grossman, M.D.

In the Matter of Graciano Evans Clause, R.P.A.

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

Dated: Oct 25, 1999

Therese G. Lynch M.D.

Therese G. Lynch, M.D.