



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 20, 1996

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

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

John Thomas Roesch, Esq.  
611 Newbridge Road  
East Meadow, New York 11554

John David Coderre, R.P.A.  
29-20 200th Street  
Bayside, New York 11360-2360

**RE: In the Matter of John David Coderre, R.P.A.**

Dear Ms. Bresler, Mr. Roesch and Mr. Coderre:

Enclosed please find the Determination and Order (No.96-181) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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 that reads "Tyrone T. Butler/nm". The signature is written in a cursive style with a vertical line at the end of the name.

Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:nm

Enclosure

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

COPY

IN THE MATTER  
OF

JOHN DAVID CODERRE, R.P.A.

Administrative Review from a Determination by a Hearing  
Committee on Professional Medical Conduct

ADMINISTRATIVE  
REVIEW BOARD  
DETERMINATION  
ARB NO. 96-181

The Respondent requests pursuant to New York Public Health Law (PUB.H.L.) §230-c(4)(a) (McKinney's Supp 1996), that the Administrative Review Board for Professional Medical Conduct (Board) review and overturn an August 1, 1996 Determination by a Hearing Committee on Professional Medical Conduct (Committee), which found that the Respondent **John David Coderre, R.P.A.** (Respondent) had committed professional misconduct and which revoked the Respondent's registration to practice as a Physician Assistant in New York State. The New York State Department of Health (Petitioner) requests that the Board modify the Committee's penalty to include a fine in addition to the revocation. After reviewing the record in this case and conducting Deliberations on October 18, 1996, Board Members **ROBERT M. BRIBER, SUMNER SHAPIRO, WINSTON S. PRICE, M.D.**<sup>1</sup>, **EDWARD C. SINNOTT, M.D.** and **WILLIAM A. STEWART, M.D.** vote to sustain the Committee's Determination that the Respondent committed professional misconduct in violation of N.Y. Education Law (EDUC. L.) §6530 (McKinney's Supp 1996) and we sustain the Committee's Penalty revoking the Respondent's registration. We reject the Petitioner's request that we impose a fine against the Respondent in addition to the revocation.

Administrative Law Judge **JAMES F. HORAN** served as the Board's Administrative Officer and drafted this Determination.

**JOHN T. ROESCH, ESQ.** represented the Respondent.

**ROY NEMERSON, ESQ.** (Deputy Counsel, NYS Department of Health) represented the

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<sup>1</sup> Dr. Price participated in the Deliberations by telephone.

Petitioner

**COMMITTEE DETERMINATION ON THE CHARGES**

PUB.H.L. §230(7) authorizes three member panels from the State Board for Professional Medical Conduct (BPMC) to conduct disciplinary proceedings to determine whether physician assistants have committed professional misconduct in violation of EDUC. L. §6530. The Petitioner filed charges with BPMC alleging that the Respondent:

- violated EDUC. L. §6530(32) by willfully harassing or abusing patients, either physically or verbally;
- violated EDUC.L. §6530(20) by engaging in conduct in practice which evidences moral unfitness; and,
- violated EDUC.L. §6530(2) by engaging in fraudulent practice.

The charges involved the Respondent's conduct toward five patients at the Substance Abuse Alternative Clinic (Clinic) at the Nassau County Medical Center, where the Respondent worked. The record identifies the Patients by the initials A to D and F, to protect their privacy. The Petitioner withdrew all charges relating to a sixth person, Patient E, on the first hearing day.

Three BPMC Members, **Gerald Brody, M.D. (Chair), Alvin Rudorfer, D.O. and Trena DeFranco** comprised the Committee who conducted the hearing in the matter and who rendered the Determination which the Board now reviews. Administrative Law Judge **Jane B. Levin** served as the Committee's Administrative Officer. The evidence at the hearing included testimony by the Respondent and by Patients A, B, D and F, as well as other witnesses. The Committee determined that the Respondent :

- conducted himself with moral unfitness in his actions toward all five Patients;
- sexually abused Patients A, C, D and F;
- sexually harassed Patients B and C; and,

- committed fraud in practicing medicine, by knowingly touching Patient F's thighs and breasts for no legitimate medical purpose.

The Committee stated that all the Patients who testified acknowledged their chemical dependency problems. The Committee found the Patient-witnesses testified credibly, due to the level of detail the witnesses provided, the corroborating testimony from other witnesses and the descriptions by the witnesses of similar behavior by the Respondent towards the Patients. The Committee found the Respondent's testimony less credible and filled with inconsistencies and implausible explanations for the issues which the Patient-witnesses raised.

The Committee voted to revoke the Respondent's registration to practice as a Physician Assistant in New York State. The Committee found the Patients in this case to be particularly vulnerable because they perceive themselves to be at the mercy of the medical professionals who could alter their medication. The Committee found the Respondent's behavior to be even more egregious in light of that situation.

### **REVIEW HISTORY AND ISSUES**

The Board received the Respondent's Review Notice on August 14, 1996. The Notice stayed the Committee's penalty automatically, pending this Determination from the Board (PUB.H.L. §230-c[4][a]). The Record for review contained the Committee's Determination, the hearing transcripts and exhibits, the Respondent's brief and reply letter and the Petitioner's reply brief. The Respondent mailed his brief on September 17, 1996. The Board received the Petitioner's reply brief on September 23, 1996 and the Petitioner's sur reply letter on October 1, 1996. The Board usually refuses to review sur replies, but we accepted the Respondent's letter, because the Petitioner used his reply brief to request, for the first time, that the Board increase the Committee's Penalty by adding a fine.

In his extensive brief, the Respondent raises procedural issues, challenges the Committee's Determination on credibility and on the charges and challenges the basis on which the Committee arrived at their Penalty. On the procedural matters, the Respondent argues that:

- the lack of discovery and inspection and the Clinic's refusal to provide the Respondent

- with records hampered the Respondent in preparing a defense;
- Patients A, C, D and F failed to make timely complaints; and
  - the Committee's Administrative Officer allowed the Committee to hear statements that were prejudicial to the Respondent.

On the Committee's Findings, the Respondent argues that:

- none of the Patient-witnesses were credible;
- the Patients and other witnesses for the Petitioner were under the control of persons at the Clinic;
- the incidents with Patients A, B, C, D and F do not involve similar complaints;
- the Board must consider each incident separately;
- even if the Board accepts the facts as the Committee found them, the Respondent's misconduct with the Patients was not willful due to the short time frames involved in the incidents; and
- even if the Board accepted the facts as the Committee found them, the Respondent's conduct did not amount to professional misconduct.

As to the Committee's Penalty Determination, the Respondent repeats many of the arguments which we summarized above. The Respondent also argues that the Committee based their harsh penalty on their mistaken belief that the Respondent could coerce clinic members. The Respondent argues that the Penalty must fit each act and that the Board must consider each act separately because the Petitioner's charges did not allege a conspiracy.

The Petitioner urges the Board to sustain the Determination, which the Committee based on the overwhelming evidence and on their finding that the Respondent lacked credibility. The Petitioner also urges that, in addition to the Committee's Penalty, the Board impose a Ten Thousand Dollar (\$10,000.00) fine against the Respondent in each case in which the Respondent molested a patient.

In reply, after repeating several arguments from his brief, the Respondent challenges the Petitioner's request for a fine, arguing that the Respondent is penniless and that the flimsy evidence in the case gives no support for an additional sanction.

## **THE BOARD'S REVIEW AUTHORITY**

New York Public Health Law (PHL) §230(10)(i), §230-c(1) and §230-c(4)(b) provide that the Review Board shall review:

- whether or not a hearing committee determination and penalty are consistent with the hearing committee's findings of fact and conclusions of law; and
- whether or not the penalty is appropriate and within the scope of penalties permitted by PHL §230-a.

Public Health Law §230-c(4)(b) permits the Review Board to remand a case to the Hearing Committee for further consideration. Public Health Law §230-c(4)(c) provides that the Review Board's Determinations shall be based upon a majority concurrence of the Review Board.

The Review Board may substitute our judgement for that of the Hearing Committee, in deciding upon a penalty **Matter of Bogdan v. Med. Conduct Bd.** 195 AD 2d 86, 606 NYS 2d 381 (Third Dept. 1993), in determining guilt on the charges, **Matter of Spartalis v. State Bd. for Prof. Med. Conduct** 205 AD 2d 940, 613 NYS 2d 759 (Third Dept. 1994), and in determining credibility **Matter of Minielly v. Comm. of Health** 222 AD 2d 750, 634 NYS 2d 856 (Third Dept. 1995).

## **THE BOARD'S DETERMINATION**

The Board has considered the record below and the parties' briefs. First, we note that the Respondent's procedural complaints raise legal issues which fall beyond the Board's authority. We leave the Courts to resolve those matters. Next, the Board sustains the Committee's Determination finding the Respondent guilty of willful harassment or abuse, fraud and moral unfitness. The record supports the Committee's factual findings and conclusions, and, the findings and conclusions support the Committee's Determination on the charges. Finally, Board sustains the Committee's Penalty revoking the Respondent's registration to practice as a Physician Assistant, because the Penalty is consistent with the Committee's Determination that the Respondent sexually abused or harassed five patients.

The Board rejects the Respondent's challenge to the Committee's Determination to credit the

testimony by the Patient-witnesses and those who corroborated their testimony. The Committee as the fact finder possesses the authority to decide credibility issues. The Board owes that decision great deference, because the Committee observed the witnesses first hand. The fact that other evidence may conflict with the testimony by the Patient-witnesses in this case does not invalidate the Committee's Determination finding those witnesses credible. The conflicting evidence merely raises factual issues for the Committee to resolve. The Committee specified the reasons for their findings on credibility at pages 10-11 in their Determination and Order and the Board sees no reason to overturn those findings.

The evidence, which the Committee cites as the basis for their Fact Findings, supports those Findings and the Committee's Findings support their Determination on the charges. We note that the Committee relied on no testimony from Patient A in making their findings in her case, because the Patient testified by phone and did not undergo cross-examination. We also note that Patient C died prior to the hearing. In both cases the Committee based their findings, in part, on hearsay such as complaints which the Patients made to other persons about the Respondent's conduct. Hearsay is admissible in BPMC Hearings.

The Respondent argues that even if the Board accepts the Committee's Factual Findings, that the Respondent committed no professional misconduct. The Board finds no merit in that argument. We find that the Respondent acted willfully in harassing and/or abusing the five patients. We find that willful means that the Respondent acted intentionally. The record here indicates clearly that the Respondent acted intentionally in harassing and abusing the Patients. The time frame during which the conduct occurred has no bearing on whether the Respondent acted willfully. The Board finds further that the Respondents contact with and statements to these Patients constituted abuse and/or harassment, that the Respondent's actions evidenced moral unfitness in practice and that the Respondent committed fraud in practice when he touched Patient's F's thighs and breasts during an examination for no legitimate medical purpose.

The Board sustains the Committee's Determination revoking the Respondent's registration to practice as a Physician Assistant in New York State. The record proves that the Respondent used his position as a health care provider to abuse and/or harass vulnerable patients for the Respondent's sexual gratification. The Board finds that the Respondent acted reprehensibly in preying upon these Patients

and we find that we can protect those Patients and the other citizens in New York only by removing the Respondent from practice. We reject the Respondent's contention that we must consider each case separately when considering a penalty. Although sexually abusing one patient constitutes sufficient grounds to revoke the Respondent's registration, the Board and Committee can certainly consider a pattern of behavior as an aggravating factor in determining what sanction we must impose to protect the public. Even though the Board may consider these cases jointly in considering a penalty, we find after reviewing the evidence in this matter, that the Respondent's conduct towards Patient A or Patient C or Patient D or Patient F, standing alone, would provide sufficient grounds to revoke the Respondent's registration.

Finally, we find that revocation will provide a sufficient remedy to protect the public from future harm by the Respondent, so we reject the Petitioner's request that we add a fine to the Committee's Penalty.

**ORDER**

**NOW**, based upon this Determination, the Review Board issues the following **ORDER**:

1. The Board sustains the Hearing Committee's August 1, 1996 Determination finding the Respondent guilty for professional misconduct.
  
2. The Board sustains the Hearing Committee's penalty revoking the Respondent's Registration to practice as a Physician Assistant in New York State.

**ROBERT M. BRIBER**

**SUMNER SHAPIRO**

**WINSTON S. PRICE, M.D.**

**EDWARD SINNOTT, M.D.**

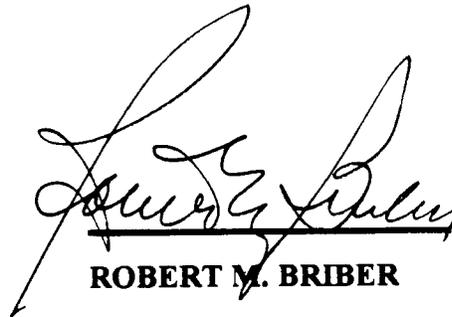
**WILLIAM A. STEWART, M.D.**

**IN THE MATTER OF JOHN DAVID CODERRE R.P.A.**

**ROBERT M. BRIBER**, a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Mr. Coderre.

**DATED: Schenectady, New York**

12/13, 1996



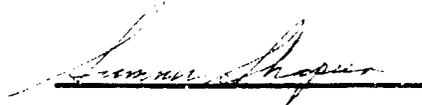
**ROBERT M. BRIBER**

IN THE MATTER OF JOHN DAVID CODERRE R.P.A.

SUMNER SHAPIRO, a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Mr Coderre

DATED: Delmar, New York

Dec 6, 1996

A handwritten signature in cursive script, appearing to read "Sumner Shapiro", is written over a solid horizontal line.

SUMNER SHAPIRO

**IN THE MATTER OF JOHN DAVID CODERRE, R.P.A.**

**EDWARD C. SINNOTT, M.D.**, a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Mr. Coderre

**DATED: Roslyn, New York**

June 13, 1996

A handwritten signature in cursive script, appearing to read "Ed C. Sinnott", written over a horizontal line. The signature is positioned to the right of the date.

**EDWARD C. SINNOTT, M.D.**

IN THE MATTER OF JOHN DAVID CODERRE, R.P.A.

WILLIAM A. STEWART, M.D., a member of the Administrative Review Board for Professional Medical Conduct, concurs in the Determination and Order in the Matter of Mr Coderre

DATED: Syracuse, New York

16 Dec, 1996



WILLIAM A. STEWART, M.D.