



STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Public

March 9, 2007

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Augustin Enoch Marshall, R.P.A.
2888 South Beck Drive
Tuscon, Arizona 85730

Joseph F. Ruchala, Esq.
230 Hilton Avenue – Suite 201
Hempstead, New York 11550

Leni Sabina Klaimitz, Esq.
NYS Department of Health
Bureau of Professional Medical Conduct
90 Church Street – 4th Floor
New York, New York 10007

RE: In the Matter of Augustin Enoch Marshall, R.P.A.

Dear Parties:

Enclosed please find the Determination and Order (No. 07-54) 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 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.

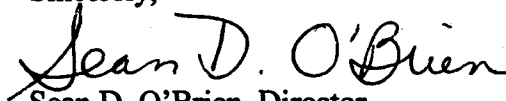
The notice of review served on the Administrative Review Board should be forwarded to:

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,


Sean D. O'Brien, Director
Bureau of Adjudication

SDO:cah

Enclosure

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

COPY

IN THE MATTER:

:HEARING COMMITTEE

OF

:DETERMINATION

AUGUSTIN ENOCH MARSHALL, R.P.A.

:AND ORDER

X BPMC NO. 07-54

JERRY WAISMAN, M.D., CHAIRPERSON, MANGALA RAJAN, M.D.

and THOMAS P. LEMME, R.P.A.-C, duly designated members of the State Board of Professional Medical Conduct, appointed by the Commissioner of Health of the State of New York pursuant to Section 230 (1) of the Public Health Law, served as the Hearing Committee in this matter pursuant to Sections 230 (10) (e) and 230 (12) of the Public Health Law. STEPHEN BERMAS, ESQ., Administrative Law Judge, served as Administrative Officer for the Hearing Committee.

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

SUMMARY OF THE PROCEEDINGS

Notice of Hearing dated:	November 6, 2006
Statement of Charges dated:	October 10, 2006
Hearing Date:	January 18, 2007
Deliberation Date:	February 9, 2007

Place of Hearing:

NYS Department of Health

90 Church Street

Room 4-E-09

New York, New York 10007-2919

Petitioner Appeared By:

Leni Sabina Klaimitz, Esq.

Assisstant Counsel

Bureau of Professional Medical Conduct

NYS Department of Health

Respondent Appeared By:

Joseph Ruchala, Esq.

STATEMENT OF CHARGES

The Statement of Charges has been received in evidence as Petitioner's Exhibit 1 and attached hereto as Appendix A. The Statement of Charges alleges two specifications of moral unfitness to practice medicine.

FINDINGS OF FACT

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. All findings are unanimous.

JURISDICTIONAL FINDINGS

1. The Notice of Hearing, Statement of Charges and Uniform Hearing Procedures were duly served on Respondent (Pet. Ex. 1).
2. The parties have stipulated to the fact that Augustin Enoch Marshall, R.P.A., the Respondent, is licensed as a physician assistant by the State of New York and that no jurisdictional issues are presented in this matter. (T. 89-90).

FINDINGS PERTINENT TO COWORKER A

3. Coworker A is a certified substance abuse counselor who was employed by Beth Israel Medical Center from 1998 through 2004. In November 1999 her assignment was to the inpatient detoxification unit of 9 Bernstein, where Respondent worked as a physician assistant. (T. 13-15).
4. Respondent and Coworker A had a professional relationship, with no socializing outside of the workplace. Occasionally they would engage in conversation during smoking breaks together, but never shared meals during the course of the workday, or otherwise. (T. 15-16).

5. On the morning of November 9, 1999, Coworker A was seated on a rolling chair in the nurses' station of 9 Bernstein making entries in a patient's chart. It was a quiet time on the floor with virtually all of the patients engaged in scheduled activities. As she wrote with her left hand Coworker A felt a hand between her left arm and her left breast, with the hand on the side of her left breast. When Coworker A turned around she saw that it was the Respondent's hand. He was also seated in a rolling chair. (T. 17-18, 24-25).

6. Coworker A confronted Respondent. Respondent then removed his hand and stated that he was touching Coworker A's shoulder and placed his hand there. (T. 18-19).

7. Another male coworker observed that Coworker A was upset and inquired as to her welfare. When Coworker A explained what had happened, he escorted her to the office of their supervisor, Ben Figueris, where Coworker A recounted what had just transpired. (T. 19-20).

8. Thereafter, Coworker A was interviewed by hospital personnel. Respondent continued to work at Beth Israel Medical Center, but was not assigned to the same floor as Coworker A for a long time thereafter. (T. 20-21).

FINDINGS PERTINENT TO PHYSICIAN ASSISTANT STUDENT B

9. Physician Assistant (PA) Student B attended the physician assistant program at Drexel University in Philadelphia from which she was awarded a masters degree in health science in 2005. She is a certified physician assistant and is licensed to practice in the State of Virginia, where she currently resides. (T. 28-29, 53).

10. As part of her training, PA Student B was required by Drexel University to participate in specialty rotations. PA Student B was assigned to the psychiatry emergency department of Beth Israel Medical Center for a rotation beginning in July 2004. After discovering that there was a great deal of “downtime” in that department, PA Student B approached Bill Toler, the coordinator for PA students at the hospital, for suggestions as to productively using her time. Mr. Toler directed her to Respondent as someone who could assist in her training. (T. 30-32, 54, 64).

11. A pattern developed whereby PA Student B would page Respondent when she was not occupied with other tasks and, if he was amenable, they would see patients together or PA Student B would see patients and they would review her findings. They worked together in this manner approximately three out of five workdays of the week, sometimes joined by another female physician assistant student. (T. 32-35).

12. PA Student B regarded Respondent as her mentor. His credentials as a physician assistant commanded her respect. Respondent and PA Student B had a professional relationship and did not socialize outside of the workday. They shared lunch on two occasions during their workday. (T. 33-34, 36).

13. During the course of one such lunch, PA Student B mentioned that she had undergone breast augmentation surgery. (T. 36).

14. At the same lunch, Respondent volunteered to PA Student B that he and his wife had brought each other to orgasm merely by kissing and inquired as to whether PA Student B and her husband had experienced this. PA Student B responded that they sometimes held hands while falling asleep. She felt uncomfortable with the conversation and excused herself to return to the hospital. (T. 36).

15. On August 18, 2004, Respondent and PA Student B met in the hospital library. Respondent complimented PA Student B on her feet and toes, saying that they were pretty. At one point, Respondent told PA Student B that she had large breasts. Respondent then reached out with a cupped right hand across to PA Student B's right breast, leaned in to kiss her on the lips and as he did so asked if he could touch her breast. There was no opportunity for PA Student B to respond before Respondent kissed her lips and touched her breast with his hand. PA Student B's focus was on getting away and she pushed Respondent so that he stumbled and she was able to exit the library and leave the hospital. (T. 40-45, 65, 67).

16. PA Student B did not give Respondent permission to touch her breast, nor did she indicate that this would be welcomed. She had not had any physical contact with Respondent during the ten to fifteen times they had worked together prior to the incident of August 18, 2004. (T. 46, 49, 52, 64).

17. Several days later PA Student B told her husband what had transpired and reported what had occurred to a number of personnel at the hospital and to administrators at Drexel University. An investigation by Beth Israel Medical Center ensued during which Respondent was interviewed by Mr. Toler, the chief physician assistant, and stated that nothing had happened. Respondent refused to cooperate with further interviews at the hospital and resigned. At no time did Respondent assert to hospital personnel that he had been given permission by PA Student B to touch her breast. (Pet. Ex. 2; T. 45, 47-49, 71-75, 79-80, 86-87).

18. Respondent was eventually contacted by an investigator with the New York State Department of Health and had an extensive telephone interview. Respondent denied touching the breast of PA Student B and did not offer the explanation of a consensual touching. (T. 75-76).

CONCLUSION OF LAW

Respondent is found to have engaged in professional misconduct within the meaning of N.Y. Education Law Section 6530 (20) by reason of engaging in conduct that evidences moral unfitness to practice as charged in the FIRST and SECOND Specifications of Charges, and as set forth in Findings of Fact No. 3 through 18, supra.

DISCUSSION:

The Hearing Committee found that Coworker A and Physician Assistant B were credible witnesses. Because of Respondent relating different versions at different times of what occurred, the Hearing Committee determined that he was not a credible witness.

The Hearing Committee gave due consideration to the full spectrum of penalties available pursuant to statute including revocation, suspension and/or probation, censure and reprimand, the imposition of monetary penalties and dismissal in the interest of justice.

There were no charges or evidence indicating any similar incidents involving the Respondent during his fourteen year tenure as a Physician Assistant. Although the two Specifications are serious, they appear to be isolated incidents and not part of an ongoing pattern of behavior which would have justified a revocation. The Committee concluded

that suspension and sexual harassment training was the appropriate penalty for Respondent.

Furthermore, although there were no clinical complaints or charges brought against Respondent, in light of his prolonged absence from the Physician Assistant field, the Hearing Committee decided that his reinstatement should be conditioned upon his certification as a fully qualified Physician Assistant.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Hearing Committee determines and orders that Respondent's license to practice medicine as a Physician Assistant be suspended to December 31, 2009.
2. The Respondent shall successfully complete a Preventing Sexual Harassment training course. The course shall be proposed by the Respondent and is subject to prior written approval by the Petitioner's Office of Professional Medical Conduct (NYS Department of Health, Office of Professional Conduct, 433 River Street, Troy, NY 12180). Also, the Respondent shall successfully complete the certification process of the National Committee on Certification of Physician Assistants. Both the course and the certification process must be successfully completed no later than the final day of the Respondent's suspension.

3. This Order shall be effective upon service on the Respondent in accordance with the requirements of Public Health Law Section 230 (10)(h).

**Dated: New York, New York
March 8, 2007**


JERRY WAISMAN, M.D.
Chairperson

MANGALA RAJAN, M.D.
THOMAS P. LEMME, RPA-C

TO:

Augustin Enoch Marshall
Respondent
2888 South Beck Drive
Tuscon, Arizona 85730

Joseph F. Ruchala, Esq.
Attorney for Respondent
230 Hilton Avenue, Suite 201
Hempstead, NY 11550

Leni Sabina Klaimitz, Esq.
Attorney for Petitioner
Assistant Counsel
NYS Department of Health
Bureau of Professional Medical Conduct
90 Church Street
New York, NY 10007

APPENDIX A

IN THE MATTER OF AUGUSTIN ENOCH MARSHALL R.P.A.

- against-

Plaintiff(s)

Defendant(s)

Index No.

AFFIDAVIT OF SERVICE

NOTICE OF HEARING: STATEMENT
CHARGES, HEARING REG.

STATE OF ~~NEW YORK~~ COUNTY OF ~~NEW YORK~~ ss:
ARIZONA PIMA

TO THIS ACTION AND IS OVER THE AGE OF EIGHTEEN YEARS AND RESIDES IN THE STATE OF ~~NEW YORK~~ ARIZONA
(date, time & address)

That on 11/13/06 - 11:31 AM - 2880 S. Beck, Tucson, AZ 85730
deponent served the within notice of hearing; sttement of charges, hearing reg. on
AUGUSTIN ENOCH MARSHALL R.P.A. therein named,

INDIVIDUAL

A

by delivering a true copy of each to said personally; deponent knew the person so served to be the person described as said person therein. (S) He identified (her) himself as such.

CORPORATION

B

a (domestic) (foreign) corporation by delivering thereat a true copy of each to personally, deponent knew said corporation so served to be the corporation described in legal papers and knew said individual to be thereof

SUITABLE AGE PERSON

C

by delivering thereat a true copy of each to a person of suitable age and discretion. Said premises is recipient's (actual place of business) (dwelling house) (usual place of abode) within the state. (S) He identified (her) himself as of recipient

AFFIXING TO DOOR, ETC.

D

by affixing a true copy of each to the door of said premises, which is recipient's (actual place of business) (dwelling house) (usual place of abode) within the state. Deponent was unable, with due diligence to find recipient or a person of suitable age and discretion, thereat, having called there on the dates below:

MAILING USE WITH C or D

Deponent also enclosed a copy of same in a postpaid sealed wrapper properly addressed to the above recipient at and deposited said wrapper in (a post office) official depository under exclusive care and custody of the United States Postal Service within New York State.

Deponent further states that he describes the person actually served as follows
Sex M Skin Color BR Hair Color Grey Age (Approx.) 55 Height (Approx.) 5'10" Weight (Approx.) 160

MILITARY SERVICE

Above person has asked, whether the recipient (s) was (were) in the military service of the State of New York or the United States and received a negative reply. Upon information and belief based upon the conversation and observation as aforesaid deponent avers that the recipient (s) is (are) not in the military service of the State of New York or the United States as that term is defined in the statutes of the State of New York or the Federal Soldiers and Sailors Civil Relief Act.

That at the time of such service deponent knew the person (s) so served as aforesaid to be the same person (s) mentioned and described as the defendant(s) in this action.

Priscilla C. Dominguez
DATE 11/13/06
ACCOUNTER OF RECORDING AND M.S.B.

USE IN NYC CIVIL CT.

The language required by NYCRR 2900.2(e). (f) & (h) was set forth on the face of said summons (es).

Sworn to before me on the

Priscilla C. Dominguez
Notary Public - State of Arizona
NO. 01F-A478422
Qualified to Receive Oaths
My Comm. Exp. Dec. 21, 2007
Commission Expires Sept. 26, 2009



OFFICIAL SEAL
PRISCILLA C. DOMINGUEZ
NOTARY PUBLIC-ARIZONA
PIMA COUNTY

Carl Kyle
LICENSE No.

①

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

IN THE MATTER
OF
AUGUSTIN ENOCH MARSHALL, R.P.A.

NOTICE
OF
HEARING

TO: Augustin Enoch Marshall, R.P.A.
2888 South Beck Drive
Tucson, Arizona 85730-3620

PLEASE TAKE NOTICE:

A hearing will be held pursuant to the provisions of N.Y. Pub. Health Law §230 and N.Y. State Admin. Proc. Act §§301-307 and 401. The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on December 11 and 12, 2006, at 10:00 a.m., at the Offices of the New York State Department of Health, 90 Church Street, 4th Floor, New York, New York 10007, and at such other adjourned dates, times and places as the committee may direct.

At the hearing, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the hearing will be made and the witnesses at the hearing will be sworn and examined. You shall appear in person at the hearing and may be represented by counsel. You have the right to produce witnesses and evidence on your behalf, to issue or have subpoenas issued on your behalf in order to require the production of witnesses and documents, and you may cross-examine witnesses and examine evidence produced against you. A summary of the Department of Health Hearing Rules is enclosed.

The hearing will proceed whether or not you appear at the hearing. Please note that requests for adjournments must be made in writing and by telephone 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. SEAN D. O'BRIEN, DIRECTOR, BUREAU OF

ADJUDICATION, (henceforth "Bureau of Adjudication"), (Telephone: (518-402-0748), upon notice to the attorney for the Department of Health whose name appears below, and at least five days prior to the scheduled hearing date.

Adjournment requests are not routinely granted as scheduled dates are considered dates certain. Claims of court engagement will require detailed Affidavits of Actual Engagement. Claims of illness will require medical documentation.

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. 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 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.

At the conclusion of the hearing, the committee shall make findings of fact, conclusions concerning the charges sustained or dismissed, and in the event any of the charges are sustained, a determination of the penalty to be imposed or appropriate action to be taken. Such determination may be reviewed by the Administrative Review Board for Professional Medical Conduct.

THESE PROCEEDINGS MAY RESULT IN A

DETERMINATION THAT YOUR LICENSE TO PRACTICE
MEDICINE IN NEW YORK STATE BE REVOKED OR
SUSPENDED, AND/OR THAT YOU BE FINED OR
SUBJECT TO OTHER SANCTIONS SET OUT IN NEW
YORK PUBLIC HEALTH LAW §§230-a. YOU ARE URGED
TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS
MATTER.

DATED: New York, New York
November 6, 2006



Roy Nemerson
Deputy Counsel
Bureau of Professional
Medical Conduct

Inquiries should be directed to: Leni S. Klaimitz
Attorney
Bureau of Professional Medical Conduct
90 Church Street, 4th Floor
New York, New York 10007
(212) 417-4436

IN THE MATTER

OF

AUGUSTIN ENOCH MARSHALL, M.D.

STATEMENT

OF

CHARGES

Augustin Enoch Marshall, R.P.A., the Respondent, was authorized to practice as a physician assistant in New York State on or about November 2, 1990, by the issuance of license number 004155 by the New York State Education Department. Respondent is currently authorized to practice as a physician assistant through May 31, 2007. Respondent was employed as a physician assistant in the Department of Medicine of Beth Israel Medical Center, located at First Avenue at 16th Street, New York, New York 10003, from on or about June 2, 1994, through on or about September 1, 2004.

FACTUAL ALLEGATIONS

- A. On or about November 9, 1999, at Beth Israel Medical Center, Respondent purposely engaged in unwanted and unsolicited physical contact with Co-worker A (whose identity is set forth in the annexed Appendix).
- B. On or about August 18, 2004, at Beth Israel Medical Center, Respondent made inappropriate comments about Physician Assistant Student B's body and purposely engaged in unwanted and unsolicited physical contact with Physician Assistant Student B (whose identity is set forth in the annexed Appendix). Physician Assistant Student B was performing a psychiatry rotation at Beth Israel Medical Center at the time.

SPECIFICATION OF CHARGES

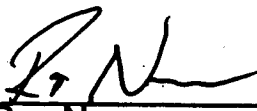
FIRST AND SECOND SPECIFICATIONS

MORAL UNFITNESS

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(20) by engaging in conduct in the practice of the profession of medicine that evidences moral unfitness to practice as alleged in the facts of the following:

1. Paragraph A.
2. Paragraph B.

DATE: October 10, 2006
New York, New York



Roy Nemerson
Deputy Counsel
Bureau of Professional Medical Conduct