



# 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*

Dennis P. Whalen  
*Executive Deputy Commissioner*

April 5, 2000

## **CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Robert Bogan, Esq.  
Paul Robert Maher, Esq.  
NYS Department of Health  
Hedley Park Place  
433 River Street – Fourth Floor  
Troy, New York 12180

Gerald P. Douglas, Esq.  
1022 East 82<sup>nd</sup> Street  
Brooklyn, New York 11236

Fred Albert Harry, R.P.A.  
1628 Lincoln Place, Apt. 4H  
Brooklyn, New York 11233-5136

### **RE: In the Matter of Fred Albert Harry, R.P.A.**

Dear Parties:

Enclosed please find the Determination and Order (No. 00-99) 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.

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.

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.

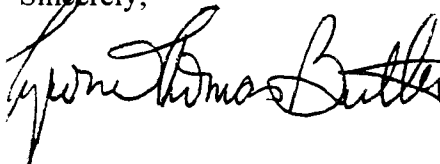
The notice of review served on the Administrative Review Board should be forwarded to:

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, appearing to read "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

DECISION

AND

ORDER

BPMC-00-99

IN THE MATTER  
OF  
FRED ALBERT HARRY, R.P.A.

A Notice of Referral Proceeding and Statement of Charges, both dated January 28, 2000, were served upon the Respondent, **FRED ALBERT HARRY, R.P.A.**

**WILLIAM MAJOR, M.D.**, Chairperson, **HOWARD SOHNEN, M.D.** and **MR. JOHN TORRANT**, 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. **MICHAEL P. MCDERMOTT, ESQ.**, Administrative Law Judge, served as the Administrative Officer.

A hearing was held on March 22, 2000, at the Offices of the New York State Department of Health, Hedley Park Place, 433 River Street, Troy, New York. The Department appeared by **HENRY M. GREENBERG, ESQ.**, General Counsel, by **ROBERT BOGAN, ESQ.**, and **PAUL ROBERT MAHER, ESQ.**, of Counsel. The Respondent appeared in person and was represented by **BERKMAN, HENOCH, PETERSEN & PEDDY, P.C.**, Garden City Plaza, Garden City, New York 11530-2112 by **GERALD P. DOUGLAS, ESQ.**, of Counsel.

Evidence was received and transcripts of these proceeding 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 Section 6530(9). In such case, 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, the Respondent is charged with professional misconduct pursuant to Education Law Section 6530(9)(a)(i). A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order as Appendix I.

**WITNESSES**

For the Petitioner:

None

For the Respondent:

1. Fred Albert Harry, R.P.A., the Respondent
2. Cathy Ann Boyke

## FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers in parenthesis refer to transcript page number 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. All Hearing Committee findings were unanimous unless otherwise stated.

1. **FRED ALBERT HARRY, R.P.A.**, the Respondent, was authorized to practice as a Physician Assistant in New York state on February 8, 1996, by the issuance of license number 005377 by the New York State Education Department. (Pet's. Ex. 3)
2. On August 11, 1997, in the Criminal Court of the City of New York, Kings County, New York, Respondent was found guilty of Attempted Assault 3<sup>rd</sup>, a misdemeanor, in violation of §120.00 and §110.06 of the Penal Law of the State of New York. On January 29, 1998, he was sentenced to one (1) year probation and sixty (60) days of Community Service. (Pet's. Ex. 4 and 5)

## VOTE OF THE HEARING COMMITTEE

### SPECIFICATION

Respondent is charged with professional misconduct by reason of his having violated New York Education Law §6530(9)(a)(i) by reason of having been convicted of committing an act constituting a crime under New York state Law.

VOTE: SUSTAINED (3-0)

## HEARING COMMITTEE DELIBERATION

The record in this case indicates that the Respondent was found guilty of Attempted Assault in the 3<sup>rd</sup> degree, a misdemeanor.

There were some mitigating factors which the Hearing Committee took into consideration:

- The attempted assault charge resulted from an altercation between the Respondent and another man involving the Respondent's ex-girlfriend and have absolutely nothing to do with the Respondent's practice as a Physician Assistant.
- The charges against the Respondent do not reflect on his competence as a Physician Assistant.
- The instant charges are the only charges against the Respondent in an otherwise unblemished record.
- The Hearing Committee is convinced that the Respondent is truly contrite and regrets his actions which he feels has brought shame on himself and his family.
- The Hearing Committee is convinced that the Respondent will not repeat such conduct.

The Hearing Committee determines unanimously (3-0) that, in the interest of justice, no action should be taken against the Respondent's Physician Assistant license.

ORDER

**IT IS HEREBY ORDERED THAT:**

1. No action should be taken against the Respondent's New York State Physician Assistant license.
2. This **ORDER** shall be effective upon service on the Respondent or the Respondent's attorney by personal or by certified or registered mail.

**DATED:** , New York

Mar. 31, 2000

  
WILLIAM MAJOR, M.D., Chairperson

**HOWARD SOHNEN, M.D.  
MR. JOHN TORRANT**

APPENDIX I



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

**IN THE MATTER  
OF  
FRED ALBERT HARRY, P.A.**

NOTICE  
OF  
REFERRAL  
PROCEEDING

TO: FRED ALBERT HARRY, P.A.  
1628 Lincoln Place, Apt. 4H  
Brooklyn, New York 11233-5136

**PLEASE TAKE NOTICE THAT:**

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law Section 230(10)(p) and N.Y. State Admin. Proc. Act Sections 301-307 and 401. The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 22nd day of March, 2000 at 10:00 in the forenoon of that day at the Hedley Park Place, 5th Floor, 433 River Street, Troy, New York 12180.

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, 5th Floor, 433 River Street, Troy, New York 12180, ATTENTION: HON. TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION, (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before March 13, 2000.

Pursuant to the provisions of N.Y. Public Health Law §230(10)(p), you shall file a written answer to each of the Charges and Allegations in the Statement of Charges no later than ten days prior to 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 an 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 brief and affidavits with the Committee. Six copies of all such papers you wish to submit must be filed with the Bureau of Adjudication at the address indicated above on or before March 13, 2000 and a copy of all papers must be served on the same date on the Department of Health attorney indicated below. Pursuant to Section 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.

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: Albany, New York  
*January 28*, 2000



PETER D. VAN BUREN  
Deputy Counsel  
Bureau of Professional  
Medical Conduct

Inquiries should be addressed to:

Robert Bogan  
Assistant Counsel  
Office of Professional Medical Conduct  
433 River Street  
Suite 303  
Troy, NY 12180  
(518)402-0820

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

-----X

IN THE MATTER	STATEMENT
OF	OF
FRED ALBERT HARRY, R.P.A.	CHARGES

-----X

FRED ALBERT HARRY, R.P.A., the Respondent, was authorized to practice medicine in New York state on February 8, 1996, by the issuance of license number 005377 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A. On or about August 11, 1998, in the Criminal Court of the City of New York, Kings County, New York, Respondent was found guilty of Attempted Assault 3rd, a misdemeanor, in violation of §120.00 and §110.06 of the Penal Law of the State of New York and on or about September 26, 1998, was sentenced to one (1) year probation.

**SPECIFICATION**

Respondent is charged with professional misconduct by reason of his having violated New York Education Law §6530(9)(a)(i) by reason of having been convicted of committing an act constituting a crime under New York state law, in that the Petitioner charges:

1. The facts in paragraph A.

DATED: *Jan 28*, 2000  
Albany, New York



PETER D. VAN BUREN  
Deputy Counsel  
Bureau of Professional  
Medical Conduct