



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*

July 28, 1998

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Michael A. Hiser, Esq.  
NYS Department of Health  
Corning Tower Room 2503  
Empire State Plaza  
Albany, New York 12237

Terrence O'Rourke, RPA  
148 Erwin Street  
Boonville, New York 13309

**RE: In the Matter of Terrence O'Rourke, RPA**

Dear Parties:

Enclosed please find the Determination and Order (No. 98-156) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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,

Handwritten signature of Tyrone T. Butler in cursive script, followed by the initials 'nm'.

Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:nm  
Enclosure

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

**IN THE MATTER  
OF  
TERRENCE O'ROURKE, R.P.A.**

**COPY**  
**DETERMINATION  
AND  
ORDER**

BPMC-98-156

**JOSEPH G. CHANATRY, M.D.**, Chairperson, **WILLIAM K. MAJOR, JR., M.D.**, and **MICHAEL J. BROWN, R.P.A.**, duly designated members of the State Board for 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(1)(e) and 230(12) of the Public Health Law. **CHRISTINE C. TRASKOS, ESQ.**, served as Administrative Officer for the Hearing Committee. The Department of Health appeared by **HENRY M. GREENBERG, General Counsel**, **MICHAEL A. HISER ESQ.**, Associate Counsel, of Counsel. The Respondent appeared in person and was not represented by counsel. Evidence was received, witnesses sworn and heard, and transcripts of these proceedings were made.

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

**STATEMENT OF CHARGES**

The accompanying Amended Statement of Charges allege nineteen (19) specifications of professional misconduct, including allegations of obtaining the license fraudulently, fraudulent practice, wilful harassment, abuse and intimidation, moral unfitness, and willfully making a false report. The charges are more specifically set forth in the Amended Statement of Charges, a copy

of which is attached hereto and made a part of this Determination and Order.

### **SUMMARY OF PROCEEDINGS**

Notice of Hearing Date:	March 24, 1998
Pre-Hearing Conference:	April 16, 1998
Hearing Dates:	April 21, 1998 May 21, 1998 May 22, 1998
Received Petitioner's Proposed Findings of Fact, Conclusions of Law:	June 11, 1998
Received Respondent's Proposed Findings of Fact, Conclusions of Law:	June 15, 1998
Deliberation Dates:	June 17, 1998 June 26, 1998
Place of Hearing:	Hampton Inn 417 - 7th North Street Syracuse, New York

### **WITNESSES**

For the Petitioner:	Terrence O'Rourke, R.P.A. Carol Ann Sessa Melinda Wittwer Nurse KS Patient A Patient B Patient D Frank H. Boehm, Jr., M.D. Leslie Fisher Kenneth Wrigley, R.P.A.
For the Respondent:	Terrence O'Rourke, R.P.A. Beverly Price Catherine Doolittle Linda Chaput Janet Egnew Theresa Pohoreskey

## FINDINGS OF FACT

Numbers in parenthesis refer to transcript pages or exhibits, and they denote evidence that the Hearing Committee found persuasive in determining a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the evidence cited.

## GENERAL FINDINGS

1. Terrence P. O'Rourke, the Respondent was licensed as an R.P.A. in New York State on November 5, 1984 by the issuance of license number 002614 by the New York State Education Department. Respondent is currently registered with the New York State Education Department to practice as an R.P.A. for the period November 1, 1997 through October 31, 2000 with an address of 148 Erwin Street, Boonville, New York 13309. (Pet.'s Exs. 1, 2)

## PATIENT A

2. Respondent provided medical care to Patient A, a female patient 22 years old, on or about January 24, 1996, at Arden Hill Hospital, 4 Harriman Drive, Goshen, New York 10294. Respondent performed an unchaperoned physical examination of Patient A (Pet.'s. Ex. 10, O'Rourke, T. 23, Patient A, T. 191)
3. The policy at Arden Hill at that time was for chaperones to be present at such examinations. Although the respondent stated that he was told to conduct an unchaperoned examination, he presented no evidence of that. (Patient A, T. 192)
4. Respondent performed a physical examination of Patient A as part of the patient's becoming

employed at Arden Hill as an interning mental health worker. (Patient A, T. 181-182)

5. Respondent, during the course of his physical examination of Patient A, touched the patient's abdomen while at the same time telling her, "It is so nice to feel a thin girl". The patient replied to Respondent, "Are you feeling me or examining me?" (Patient A, T. 189)
6. Respondent, during the course of his physical examination of Patient A, told her how "pretty" he thought she was. (Patient A, T. 185)
7. Respondent, during the course of his physical examination of Patient A, positioned himself so that his hips were touching the insides of the patient's thighs. (Patient A, T. 186)
8. Respondent, following the examination, entered the examination room without warning while Patient A was in the process of getting dressed, then remained until she requested that he leave. The patient during this time held her clothes up in front of her. (Patient A, T. 194-95)

#### **PATIENT B**

9. Respondent provided medical care to Patient B, a female patient 29 years old when first treated, from on or about June 7, 1994 through on or about August 8, 1995, at Respondent's office at Boonville Area Family Practice, 175 Main Street, Boonville, New York 13309 (hereinafter "the Boonville office"). Pet.'s Ex. 11)
10. Respondent's receptionist during the time he owned the Boonville clinic, Melinda Wittwer, was not aware of any policy in the office for having chaperons accompany female patients

when they were being examined by Respondent. Respondent never asked Ms. Wittwer to act as a chaperon in that time (Wittwer, T. 25, 105)

11. Respondent conducted many unchaperoned examinations of female patients when he worked in Boonville. (Wittwer, T. 105)
12. Respondent conducted multiple unchaperoned physical examinations of Patient B. (Wittwer, T. 106-107, Patient B, T. 214)
13. After Rome Medical Group took over the Respondent's Boonville practice in or about August 1994, Rome Medical Group did have a policy of having chaperons present in a room when a female patient was being examined. Respondent did not adhere to that policy. Neither did Respondent ever ask Ms. Wittwer to chaperone an examination. (Wittwer, T. 107-108, 113-114)
14. During the examinations of Patient B, on at least 3 or 4 occasions, Respondent rubbed the patient's breasts through her shirt. (Patient B, T. 214-15)
15. Respondent rubbed Patient B's buttocks with his hands. (Patient B, T. 215-16, O'Rourke, T. 379)

#### **PATIENT D**

16. Respondent provided medical care to Patient D, a female patient with DOB 7/13/68, at the St. Elizabeth Hospital in Utica, New York (hereafter, "St. Elizabeth Hospital"), on or about July 6, 1990. (Pet.'s Ex. 14)



17. Both Respondent and Patient D were employed by St. Elizabeth Hospital at the time Respondent treated Patient D. (Patient D, T. 76-7; O'Rourke, T. 25-26)
18. Respondent performed an unchaperoned examination of Patient D for a rash on her neck on or about July 6, 1990. The patient's rash was located right below her chin to the top of her chest area. (Patient D, T. 79-80)
19. Respondent initially felt the patients back and then said "You didn't take off your bra and underwear." The patient declined to do so. Thereafter, the Respondent tried pulling the patient's panties down around her buttocks area. The patient stopped him. The Respondent also tried to pull the patient's bra straps down. She stopped him. (Patient D, T. 80)
20. During the course of the examination, Respondent rubbed the patient's back down to the top of her buttocks with his ungloved hands. (Patient D, T. 83)
21. The patient felt that he was inappropriate in the way that Respondent was touching her. (Patient D, T. 96)
22. Beginning approximately March 1992, both Respondent and Patient D were employed by the Slocum-Dickson Medical Group. (Patient D, T. 83)

#### **NURSE KS FACTS**

23. KS was an RN who was originally licensed in 1979. Between then and 1993, when she retired due to a back disability, she had been continuously employed in the field of nursing. In 1992, KS was employed at Faxton Hospital as a senior staff nurse of the medical/surgical/orthopedic floor. (KS T. 116-118)

24. Respondent occasionally worked on the premises of Faxton Hospital, 1676 Sunset Avenue, Utica, New York 13502, in the summer of 1992. (KS, T. 119-120)
25. KS had come into contact with the Respondent at her time at Faxton, when Respondent was an R.P.A. working for Frank Boehm, M.D. Sometimes Respondent would come in with Dr. Boehm, and sometimes without Dr. Boehm. (KS, T. 119)
26. KS's relationship with Respondent at the time was professional. She was there to do rounds with him if needed; help him with procedures; show him things that needed to be done in the charts; answer questions on patient conditions. She had no relationship with him outside the hospital. (KS, T. 120-21)
27. In the summer of 1992, an event occurred when Respondent was sitting next to KS when she was on the telephone with someone else. Respondent went to get up, and KS noticed that he had missed an order. She reached back to catch his attention, and tapped him on the arm to point to the order. The next thing she knew, he had her left hand and was trying to put it down the front of his pants. It definitely felt like Respondent was trying to push her hand down his pants. KS did not think it was conceivable that Respondent was blocking her hand. (KS, T. 121, 125, 126)
28. KS was stunned and shocked when this happened. (KS, T. 121)
29. KS spoke to Respondent's employer, Dr. Boehm, about this as soon as the opportunity arose. She did not speak to him immediately because she just wanted to put the whole incident behind her. (KS, T. 128)

**MISDEMEANOR CONVICTIONS OF 1967, 1968 AND 1975**

30. Respondent, on or about September 25, 1967, was found guilty of indecent exposure of person, a misdemeanor, in the City of Columbia, State of South Carolina. (O'Rourke, T. 26-27)
  
31. Respondent, on or about February 2, 1968, was found guilty of indecent exposure of person and possession of an unlawful weapon, a misdemeanor, in the City of Columbia, State of South Carolina. (O'Rourke, T. 27-28)
  
32. Respondent, on or about May or June 1975, was found guilty of the charge of indecent exposure, a misdemeanor, in the City of Nashville, State of Tennessee. (Pet's. Ex. 5; O'Rourke, T. 30-31)
  
33. Respondent's initial application for licensure as a physician's assistant in New York State in 1984 asked the question:  

Have you ever been convicted of a crime (felony or misdemeanor)?

(Pet's. Ex. 18; O'Rourke, T. 32)
  
34. Respondent was aware that he had previously been found guilty of a misdemeanor on multiple occasions. Nonetheless, Respondent intentionally and falsely answered "No" to the question. (O'Rourke, T. 33, 355)
  
35. Respondent did this because he was convinced that if he disclosed these facts, he would not be allowed to be licensed in New York State. (O'Rourke, T. 18-19)
  
36. Respondent, on or about February 20, 1992, submitted an application for employment with

the Slocum-Dickson Medical Group. The application contained the question:

Since reaching age 18, have you ever been convicted of a misdemeanor or felony? (Note: convictions will not necessarily bar you from employment, but are reviewed as related to the relevancy of the job applied for.) (Pet's. Ex. 7)

37. Respondent was aware that he had previously been found guilty of a misdemeanor on multiple occasions. Respondent nonetheless intentionally and falsely answered "No" to the question on the Slocum-Dickson application. (O'Rourke, T. 35)
38. Respondent did this because he felt the application was "not a confidential document". (O'Rourke, T. 35)
39. Respondent, on or about September 29, 1992, submitted an application for membership to the medical staff of St. Luke's Hospital, Newburgh, New York which contained the question:  
Have you ever been convicted of a felony or misdemeanor?  
(Pet's. Ex. 9)
40. Respondent was aware that he had previously been found guilty of a misdemeanor on multiple occasions. (O'Rourke, T. 31)
41. Nonetheless, Respondent intentionally and falsely answered "No" to the question on the St. Luke's hospital application. (O'Rourke, T. 35)

#### **RESIGNATION/TERMINATION FROM SLOCUM-DICKSON**

42. Respondent, on August 20, 1992, resigned as an R.P.A. with the Slocum-Dickson Medical

Group, under threat of termination from such employment. (Pet's. Ex. 8)

43. This action occurred after Respondent had been made aware of allegations that Respondent had engaged in sexual misconduct and/or harassment of female patients and staff. Respondent was made aware of these allegations in a meeting with Frank Boehm, M.D., and the Administrator of Slocum-Dickson. (Boehm T. 152-3)
44. Respondent admitted that assertions that he sexually harassed a staff member (Patient D) and other patients "could be considered a reason" that he left employment with Slocum-Dickson. (O'Rourke T. 401)
45. Respondent applied for membership to the medical staff of St. Luke's hospital, Newburgh, New York by application dated on or about September 29, 1992. (Pet's. Ex. 9)
46. The application to the St. Luke's Medical staff also contained the question:

Have you ever resigned or withdrawn association or privileges in order to avoid the imposition of disciplinary measures?

(Pet's. Ex. 9)
47. Respondent also answered "No" to this question. (Pet's. Ex. 9)
48. Again, Respondent's answer of "No" to this question was false, since he had also submitted a resignation letter to Slocum-Dickson Medical Group on August 20, 1992. By his own admission, allegations of sexual harassment of patients "could be considered a reason" that he resigned. He thus resigned at least in part to avoid disciplinary measures. (O'Rourke T. 401)

## MEDI-SCRIPT ISSUE

49. Respondent became employed at the St. Luke's Hospital in the Fall of 1992. There he worked in the emergency room with physician Anthony R. Ruvo, M.D. Respondent worked perhaps one shift at another facility with C. Keith Yager, M.D. (O'Rourke, T. 46-47, 51-52)
50. In February 1993, Slocum-Dickson Medical Group representatives received pre-printed prescriptions from a company known as Medi-Script that were pre-printed with Respondent's name at the top and the names of physicians Anthony R. Ruvo, M.D. and C. Keith Yager, M.D. (Sessa, T. 64)
51. The prescriptions were printed with the name and address of Respondent and Drs. Ruvo and Yager given as practicing from the Slocum-Dickson Medical Group in Utica, New York. (Pet's. Ex. 6)
52. Neither Dr. Ruvo nor Dr. Yager had ever been affiliated with Slocum-Dickson Medical Group. Also, Respondent had no affiliation with Slocum-Dickson in February 1993. (Sessa, T. 67-68)
53. When received by Slocum-Dickson, these pre-printed prescription pads had the Respondent's name at the top, followed by the names of Drs. Ruvo and Yager. Having the R.P.A.'s name at the top was unusual. (Sessa, T. 70-71)
54. Respondent admitted to ordering the prescriptions. (O'Rourke, T. 53)
55. It was highly unusual for Medi-Script to make a mistake on a prescription pad. In fact, in approximately 11 years, the Director of Physician Services at Slocum-Dickson was not

aware of Medi-Scripts making a mistake on a prescription. (Sessa, T. 68-69)

### 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 Hearing Committee concluded that the following Factual Allegations should be sustained. The citations in parenthesis refer to the Findings of Fact which support each Factual Allegation:

Paragraph A:	(2-4)
Paragraph A.1:	(5)
Paragraph A.2:	(6)
Paragraph A.3:	(7)
Paragraph A.4:	(8)
Paragraph B:	(9)
Paragraph B.1:	(12-14)
Paragraph B.2:	(15) except with respect to during the course of multiple unchaperoned physical examinations
Paragraph D:	(16,17, 22) except with respect to subsequent conduct toward her
Paragraph D.1	(18-21)
Paragraph D.2:	Withdrawn
Paragraph E:	(23-29)
Paragraph F:	(30-32)
Paragraph F.1:	(33-35)
Paragraph F.2:	(36-38)
Paragraph F.3 :	(39-41)
Paragraph G:	(42-44)
Paragraph G.2:	(45-48)

The Hearing Committee further concluded that the following Factual Allegations **should not be sustained**:

Paragraph C

Paragraph C.1

Paragraph G.1

Paragraph H

The Hearing Committee further concluded that the following Specifications **should be sustained**. The citations in parenthesis refer to the Factual Allegations which support each specification:

#### **OBTAINING THE LICENSE FRAUDULENTLY**

First Specification: (Paragraph F and F.1)

#### **FRAUDULENT PRACTICE**

Third Specification: (Paragraphs F, F.2 and F.3)

Fourth Specification: (Paragraphs G and G.2)

#### **WILFUL HARASSMENT, ABUSE AND INTIMIDATION**

Sixth Specification: (Paragraphs A, A.1, A.2, A.3 and A.4)

Seventh Specification: (Paragraphs B, B.1 and B.2)

Ninth Specification: (Paragraphs D and D.1)



**MORAL UNFITNESS**

- Tenth Specification: (Paragraphs A, A.1, A.2 A.3, and A.4)  
Eleventh Specification: (Paragraphs B, B.1, and B.2)  
Thirteenth Specification: (Paragraphs D and D.1)  
Fourteenth Specification: (Paragraph E)  
Fifteenth Specification: (Paragraphs F, F.1, F.2, and F.3)  
Sixteenth Specification (Paragraph G and G.2)

**WILFULLY MAKING A FALSE REPORT**

- Eighteenth Specification: (Paragraphs F. F.1, F.2 and F.3)  
Nineteenth Specification: (Paragraph G and G.2)

The Hearing Committee further concluded that the following Specifications should not be sustained:

- Second Specification  
Fifth Specification  
Eighth Specification  
Twelfth Specification  
Seventeenth Specification

**DISCUSSION**

Respondent is charged with nineteen (19) specifications alleging professional misconduct within the meaning of Education Law Section 6530. This statute sets forth numerous forms of

conduct which constitute professional misconduct, but do not provide definitions of the various types of misconduct. During the course of its deliberations on these charges, the Hearing Committee consulted a memorandum prepared by the General Counsel for the Department of Health. This document, entitled "Definitions of Professional Misconduct Under the New York Education Law", sets forth suggested definitions for gross negligence, negligence, gross incompetence, incompetence and fraudulent practice of medicine.

The following definitions were utilized by the Hearing Committee during its deliberations:

Fraudulent practice is the intentional misrepresentation or concealment of a known fact, made in some connection with the practice of medicine. An individual's knowledge that he/she is making a misrepresentation or concealing a know fact with the intention to mislead may properly be inferred from certain facts.

Using the above-referenced definitions as a framework for its deliberations, the Hearing Committee concluded, by a preponderance of the evidence, that fourteen (14) of the nineteen (19) specifications of professional misconduct should be sustained. The rationale for the Committee's conclusions regarding each specification of misconduct is set forth below.

At the outset of deliberations, the Hearing Committee made a determination as to the credibility of the witnesses presented by the parties. With respect to the Petitioner's witnesses, the Hearing Committee found Patient A to be a very credible witness whose description of her examination by Respondent was objective and believable. The Hearing Committee also finds the testimony of Patient B to be credible. They note that she was emotionally jarred by these events and often cried on the witness stand. The Hearing Committee also found Patient D to provide a believable account of her examination by Respondent. Nurse K.S. was found to be credible as well as knowledgeable and experienced as a nurse.

The Hearing Committee further found Kenneth Wrigley, a Registered Physician Assistant

employed at St. Joseph's Hospital and Chemung County Nursing Facility, both in Elmira, New York, to be very credible. (Pet. Ex. 15) They found that he had thoroughly reviewed the evidence and applied his professional knowledge with good judgment. The Hearing Committee readily accepts his expertise in the areas that it was called for. They also found Frank H. Boehm, Jr., M.D., Respondent's former supervisor, to be a very candid witness. The Hearing Committee believes that Dr. Boehm personally liked Respondent and felt his abilities as a physician assistant to be acceptable. They note however, that Dr. Boehm indicated that he was troubled by the complaints he had heard and would not again hire Respondent as his employee. (T. 169-172, 179) Melinda Wittwer, the receptionist at the Boonville Area Family Practice in 1993 testified that Respondent did not use chaperones when examining patients there. (T. 105-108) The Hearing Committee found her to be a credible, matter of fact witness who had nothing to gain from her testimony. Finally, Carol Ann Sessa, the director of physician services at Slocum-Dickson Medical group testified with respect to the printed prescription pads from Mediscripts. (T. 62) The Hearing Committee again found that this witness would have no reason to fabricate her testimony.

With respect to Respondent, he offered the testimony of his former mother-in-law, Beverly Price as well as four former patients. All witnesses attested to Respondent's good character and that they had no complaints about his professional skills. (T. 318, 369,372, 425 and 430) The Hearing Committee found all of these witnesses to be credible, but they were not able to testify with respect to the charges at hand. With respect to Respondent, the Hearing Committee finds that he was not credible or reasonable in defense of his actions. The Hearing Committee further finds it difficult to believe that three patients and one nurse misperceived Respondent's actions. They believe that Respondent has shaded the truth and has not provided legitimate or persuasive answers. As a result, Respondent's testimony was given little credibility.

#### **PATIENT A**

Respondent is charged with inappropriately touching and making inappropriate remarks to Patient A during a physical examination. Respondent explained that this 22 year old Patient was

making deprecating remarks like she was "falling apart" and that his comments were meant only to bolster a more positive attitude in her and relax her. (T. 357-358) He stated that he was not conscious of where he was standing during the exam and that he knocked on the door and re-entered the examination room only to emphasize that she follow-up with an orthopedic surgeon. Respondent further stated that Patient A never indicated to him that he was crossing any boundaries with her. (T. 359-360, Resp.'s brief, Sixth Specification )

Mr. Wrigley testified that Respondent's comments to Patient A were contrary to accepted standards of practice and there is no practical information to be gained by them . (T. 262- 263) He also testified that Respondent's positioning himself so that his hips were touching the insides of Patient A's thighs was likewise inappropriate. (T.265) Mr. Wrigley also testified that Respondent violated the patient's privacy by returning to the examination room without warning. (T. 267) The Hearing Committee does not find Respondent's explanation to be persuasive and they concur with Mr. Wrigley's opinion. They note that after Respondent commented that it was so nice to feel a "thin girl", Patient A expressed her concerns and said, "Are you feeling me or are you examining me?" (T. 189) They further believed that it was logical for Patient A to resist the Babinski test on her feet because of the inappropriateness that had transpired up to that point.

The Hearing Committee concludes that all charges relating to Patient A are sustained as well as the Sixth and Tenth Specifications.

### **PATIENT B**

Respondent is charged with rubbing the patient's breasts through her shirt during multiple unchaperoned physical exams and also with rubbing Patient B's buttocks with his hands without medical justification. Mr. Wrigley testified that to do a thorough breast exam, you need to see the breasts and be able to palpate them without clothing. (T. 283-284) He concluded that no information of medical significance can be gained by someone rubbing a female patient's breasts through her clothing and this was contrary to accepted standards of practice. (T. 284-285) He further stated that no information of medical significance can be gained by rubbing a female patient's

buttocks through her clothing. (T. 286)

Respondent described Patient B as a problematic patient who was seen a total of 93 times at his Boonville office between June 7, 1994 and September 21, 1995 for a lot of minor complaints. (T. 377-378; Resp.'s brief, Seventh Specification) He denied rubbing her breast and doesn't recall ever performing a breast exam on her. (T. 378) Respondent acknowledges that he hugged and put his arm around Patient B. He also admits that he patted her on the butt as she left the office like ball players do as a friendly show of affection. ( T. 379, 381)

As previously discussed, the Hearing Committee found Patient B to be a credible witness who was emphatic that Respondent had acted inappropriately. They concur with Mr. Wrigley that rubbing the patient's breast through her clothing had no medical justification. They further find Respondent's admitted post examination patting on the buttocks to constitute an inappropriate touching of a patient. Therefore, the Seventh and Eleventh Specifications are sustained.

### PATIENT C

The Hearing Committee finds that there was insufficient evidence to sustain any charges with respect to Patient C as the patient did not appear at the hearing and there was no opportunity for Respondent or the Hearing Committee to question her about the allegations she made to the Department's investigator, Leslie Fisher.

### PATIENT D

Paragraph D.1 of the Statement of Charges alleges that Respondent, in the course of performing an unchaperoned examination of Patient D for a rash on her neck, rubbed the patient's back down to the top of her buttocks with his ungloved hands, without medical justification. Patient D testified that her rash was located below her chin to the top of her chest area. (T. 79) Respondent wanted her to take off her bra and underwear but she wanted him to examine her only in front where the rash was. He tried pulling her underwear down around the buttock area and she stopped him. He came around to her front and attempted to pull her bra straps down and

she had to stop him again. (T. 80) Mr. Wrigley testified that there was no information of medical significance to be gained by rubbing the patient's back down to the top of her buttocks in evaluating a rash in the neck area. (T. 306-307) He stated that if you look at the area and see no rash, there's no reason to run your hand over that area. (T. 308)

Respondent testified that removing underclothing and examining the back area was standard for a dermatologic complaint. (T. 396) He also stated that it was appropriate to feel the skin with an ungloved hand to determine texture, raised areas, temperature etc. as part of a dermatological exam. (Resp.'s brief, Ninth Specification) The Hearing Committee again concurs with Mr. Wrigley's opinion. They also note that Patient D expressed her discomfort and it was appropriate for her to limit the areas of the exam. Respondent provided no explanation as to why she had to remove her underclothes. The Hearing Committee found that it was not Respondent's place to remove Patient D's clothing without asking her permission. Therefore, the Ninth and Thirteenth Specifications are sustained.

#### **NURSE K. S.**

This charges alleges that Respondent while employed at Faxton Hospital, without provocation or consent took the left hand of female co-worker, Nurse K. S. and attempted to place her hand down in the front of his pants, near his genitals. Respondent testified that he does not recall the incident. (T. 408-409) He stated however, that if Nurse K.S. had tried to tap his arm from a sitting position to call his attention to an order as per her testimony,(T. 121, 125-126) then Respondent would have reacted by reflex to protect his groin area. (T.408, Resp.'s brief, Fourteenth Specification)

As previously discussed, the Hearing Committee found Nurse K.S. to be a credible witness. They do not accept Respondent's explanation as reasonable and find that his actions here fit into his pattern of inappropriate behavior with women in the workplace. Therefore, the Fourteenth Specification is sustained.

## **CHARGE F**

Respondent is charged with giving false answers about convictions of misdemeanors on his initial application for licensure as a physician assistant in New York State as well as job applications at Slocum-Dickson Medical Group and St. Luke's Hospital (Newburgh).

Respondent stated that he did not disclose the convictions on applications as per the advice of his Tennessee attorney. (T. 18) Respondent believed that if he was truthful, his applications would go into the trash.(T. 18) He explained that he would disclose them on applications where he knew he would be fingerprinted and his record searched. He distinguished these from other applications for individuals or corporations that he believed would not be kept confidential. (T. 18-19, 35-38)

The Hearing Committee found that Respondent's testimony regarding his advice by his Tennessee attorney was hazy on the facts. The Hearing Committee notes that Respondent testified that he knew these offenses were misdemeanors. (T. 27, 29-,31) Respondent further acknowledged that answering "No" to questions asking if one had ever been convicted of a misdemeanor is a false statement. ( T. 33,35, 37-38) The Hearing Committee does not find Respondent's explanation regarding confidentiality to be a reasonable one. The Hearing Committee believes that since Respondent appears to have adequate skills (T. 170) , he should have admitted this information up front. They further believe that the convictions were old and could have easily been explained away. Therefore, the Hearing Committee sustains the First, Third, Fifteenth and Eighteenth Specifications.

## **CHARGE G**

Charge G.1 alleges that Respondent falsely answered questions about his termination from Slocum-Dickson Medical Group on a subsequent job application to St. Luke's Hospital (Newburgh). The Hearing Committee finds that there is insufficient proof, i.e. no letter of actual termination to establish that Respondent was terminated from Slocum-Dickson. Therefore, Charge G.1 is not sustained.

Charge G.2 alleges that on the aforesaid application, Respondent falsely answered

questions about resignation at Slocum-Dickson to avoid the imposition of disciplinary measures. The Hearing Committee finds that the record indicates that Respondent did indeed resign under threat of termination. (T. 170-171) The Hearing Committee rejects Respondent's explanation that he resigned because he wasn't sufficiently compensated for his services. (T. 42, 46, 400-402) They further note that even Respondent indicated that the sexual harassment allegations could have been considered a reason why he left. (T. 401) The Hearing Committee therefore, sustains Charge G.2 as well as the Fourth and Sixteenth Specifications.

#### **CHARGE H**

Respondent is charged with intentionally and falsely representing to representatives of Medi-Script Services, a prescription pad printing company, that he was affiliated as an R.P.A. with physicians C. Keith Yager, M.D. and Anthony R. Ruvo, M.D. at the Slocum Dickson Group. The Hearing Committee finds that there is insufficient proof in the record to prove any intentional wrongdoing on part of Respondent with respect to this charge, Therefore, Charge H and the Fifth and Seventeenth Specifications are not sustained.



## DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above determined by a unanimous vote that Respondent's license to practice as a physician assistant 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 Hearing Committee believes that Respondent engaged in a pattern of abusive behavior towards several patients as well as a nurse who was a co-worker. The Hearing Committee further believes that Respondent was deceitful with respect to prior criminal convictions on his license and employment applications. He continued his fraudulent activities by concealing the true reasons for leaving his job with Slocum-Dickson Medical Group.

Based upon his testimony at the hearing, the Hearing Committee sees no potential for Respondent to change his behavior in the future. They are troubled that Respondent could not understand why Patients A,B and D and Nurse K.S. reacted to him that way. The Hearing Committee further believes that Respondent failed to recognize the consequences of his actions. While his professional skills appeared adequate, the Hearing Committee does not believe that Respondent is an appropriate candidate for probation or retraining due to the nature of the misconduct involved. Therefore, under the totality of the circumstances, the Hearing Committee believes that revocation is the appropriate sanction .

**ORDER**

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

1. The First, Third, Fourth, Sixth, Seventh, Ninth, Tenth, Eleventh, Thirteenth, Fourteenth, Fifteenth, Sixteenth, Eighteenth and Nineteenth Specifications of professional misconduct contained within the Statement of Charges (Pet. Ex. 1) is **SUSTAINED**.
2. The Second, Fifth, Eighth, Twelfth and Seventeenth Specifications are **NOT SUSTAINED**
3. Respondent's license to practice as a physician assistant in New York State is **REVOKED**.
4. This Order shall be effective upon service on the Respondent or the Respondent's attorney by personal service or by certified or registered mail.

**DATED: Utica, New York**  
*July 21,* 1998

*Joseph G. Chanatry*  
\_\_\_\_\_  
**JOSEPH G. CHANATRY, M.D.**  
(Chair)

**WILLIAM K. MAJOR, Jr., M.D.**  
**MICHAEL J. BROWN, R.P.A.**

**TO: Michael A. Hiser, Esq.**  
NYS Department of Health  
Corning Tower-Room 2503  
Empire State Plaza  
Albany, New York 12237

*(Handwritten initials)*

Terrence P. O'Rourke  
148 Erwin Street  
Boonville, New York 13309

APPENDIX I

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

-----X

IN THE MATTER : FIRST AMENDED  
OF : STATEMENT OF  
TERRENCE P. O'ROURKE, R.P.A. : CHARGES

-----X

TERRENCE P. O'ROURKE, R.P.A., the Respondent, was registered as a physician's assistant in New York State on November 5, 1984 by the issuance of license number 002614 by the New York State Education Department. The Respondent is currently registered as a physician's assistant for the period November 1, 1997 through October 31, 2000, with a home address of 148 Erwin Street, Boonville, New York 13309.

**FACTUAL ALLEGATIONS**

A. Respondent provided medical care to Patient A (patients are identified in the attached Appendix), a female patient 22 years old, on or about January 24, 1996, at Arden Hill Hospital, 4 Harriman Drive, Goshen, New York, 10294. Respondent performed an unchaperoned physical examination of Patient A. Respondent's care and treatment of Patient A was contrary to generally accepted standards of practice, in that:

1. Respondent, during the course of his physical examination of Patient A, inappropriately touched the patient's abdomen while at the same time telling her, "it is so nice to feel a thin girl".

2. Respondent, during the course of his physical examination of Patient A, inappropriately told her how "pretty" he thought she was.
3. Respondent, during the course of his physical examination of Patient A, positioned himself so that his hips were touching the insides of the patient's thighs, without adequate medical justification.
4. Respondent, following the examination, inappropriately entered the examination room without warning while Patient A was in the process of getting dressed, then remained until she requested that he leave.

B. Respondent provided medical care to Patient B, a female patient 29 years old when first treated, from on or about June 7, 1994 through on or about August 8, 1995, at Respondent's office at Boonville Area Family Practice, 175 Main Street, Boonville, New York 13309 (hereinafter "the Boonville office").

Respondent's care and treatment of Patient B was contrary to generally accepted standards of practice, in that:

1. Respondent, during the course of multiple unchaperoned physical examinations of Patient B, rubbed the patient's breasts through her shirt, without medical justification.
2. Respondent, during the course of multiple unchaperoned physical examinations of Patient B, rubbed Patient B's buttocks with his hands, without medical justification.

C. Respondent provided medical care to Patient C, a female patient 28 years of age, from on or about June 6, 1995 through on or about September 21, 1995, at Respondent's Boonville office.

Respondent performed an unchaperoned physical examination of Patient C on or about July 16, 1995. Respondent's care and treatment of Patient C was contrary to generally accepted standards of practice, in that:

1. Respondent, under the pretext of performing a pap smear test on Patient C, inserted two ungloved fingers in Patient C's vagina and moved them in and out, without medical justification.
2. Respondent misrepresented to Patient C that he was performing a pap smear test when he was engaged in the conduct described in allegation C.1, above.

D. Respondent provided medical care to Patient D, a female patient with DOB 7/13/68, at the St. Elizabeth's Hospital in Utica, New York, on or about July 6, 1990. Both Respondent and Patient D were employed by St. Elizabeth's Hospital, Genessee Street, Utica, New York. Thereafter, from approximately March 1992 through August 1992, both Respondent and Patient D were employed by the Slocum-Dickson Medical Group. Respondent's care and treatment of Patient D, and his subsequent conduct toward her, were contrary to generally accepted standards of practice, in that:

1. Respondent, in the course of performing an unchaperoned examination of Patient D for a rash on her neck on or about July 6, 1990, rubbed the patient's back down to the top of her buttocks his ungloved hands, without

adequate medical justification.

2. Respondent repeatedly initiated unwelcome physical contact with, and made inappropriate verbal comments to his co-worker, Patient D, during the course of their joint employment at Slocum-Dickson in 1992, despite repeated requests by the co-worker that he stop.

E. Respondent, while working on the premises of Faxton Hospital, 1676 Sunset Avenue, Utica, New York, 13502, in the summer of 1992, without provocation or consent took the left hand of female co-worker Charge Nurse KS and attempted to place her hand down in the front of his pants, near his genitals. Respondent's conduct was contrary to generally accepted standards.

F. Respondent, on or about September 25, 1967, was found guilty of indecent exposure of person, a misdemeanor, in the City of Columbia, State of South Carolina. In addition, Respondent, on or about February 2, 1968, was found guilty of indecent exposure of person and possession of an unlawful weapon, a misdemeanor, in the City of Columbia, State of South Carolina. Finally, on June 25, 1975, Respondent was found guilty of the charge of indecent exposure, a misdemeanor, in the City of Nashville, State of Tennessee.

1. Respondent, in his initial application for licensure as a physician's assistant in New York State in 1984, intentionally and falsely answered "No" to the question:

Have you ever been convicted of a crime (felony or



misdemeanor)?

In fact, Respondent had previously been found guilty of a misdemeanor on multiple occasions.

2. Respondent, on or about February 20, 1992, submitted an application for employment with the Slocum-Dickson Medical Group, in which he intentionally and falsely answered "No" to the question:

Since reaching age 18, have you ever been convicted of a misdemeanor or felony? (Note: convictions will not necessarily bar you from employment, but are reviewed as related to the relevancy of the job applied for.)

In fact, Respondent had been found guilty of a misdemeanor on multiple occasions.

3. Respondent, on or about September 29, 1992, submitted an application for membership to the medical staff of St. Luke's Hospital, Newburgh, New York. Respondent intentionally and falsely answered "No" to the question:

Have you ever been convicted of a felony or misdemeanor?

In fact, Respondent had been found guilty of a misdemeanor on multiple occasions.

G. Respondent, on August 20, 1992, concurrently resigned his position as a R.P.A. with the Slocum-Dickson Medical Group, and was terminated from such employment, following allegations of sexual misconduct and/or harassment of female patients and staff.

1. Respondent, in his application for membership to the medical staff of St. Luke's Hospital, Newburgh, New York submitted on or about September 29, 1992, intentionally and falsely answered "No" to the question:

Have you ever had your privileges, employment, or association at any institution suspended, curtailed, restricted, or terminated?

In fact, Respondent was terminated from his employment and association with the Slocum-Dickson Medical Group on August 20, 1992.

2. Respondent, in his application for membership to the medical staff of St. Luke's Hospital, Newburgh, New York submitted on or about September 29, 1992, intentionally and falsely answered "No" to the question:

Have you ever resigned or withdrawn association or privileges in order to avoid the imposition of disciplinary measures?

In fact, Respondent submitted a letter of resignation from his employment and association with the Slocum-Dickson Medical Group dated August 20, 1992, to avoid disciplinary measures.

H. Respondent, in the Fall of 1992 after he resigned from Slocum-Dickson Medical Group, intentionally and falsely represented to representatives of Medi-Script Services, a prescription pad printing company, that he was affiliated as an R.P.A. with physicians C. Keith Yager, M.D. and Anthony R. Ruvo, M.D. at the Slocum-Dickson Group. A prescription pad with those physicians listed together with the Respondent was thereafter printed. In fact, those physicians were not as of that time nor had they ever been affiliated jointly with the Respondent or the Slocum-Dickson Medical Group.

### SPECIFICATIONS OF MISCONDUCT

#### FIRST SPECIFICATION

#### OBTAINING THE LICENSE FRAUDULENTLY

Respondent is charged with committing professional

misconduct as defined by New York Education Law §6530(1) by obtaining the license fraudulently as alleged in the facts of the following:

1. The facts in paragraph F and F.1.

#### SECOND THROUGH FIFTH SPECIFICATIONS

##### FRAUDULENT PRACTICE

Respondent is charged with committing professional misconduct as defined by New York Education Law §6530(2) by practicing the profession of medicine fraudulently as alleged in the facts of the following:

2. The facts in Paragraphs C and C.2.
3. The facts in Paragraph F and F.2 and/or F and F.3.
4. The facts in Paragraph G and G.1 and/or G and G.2.
5. The facts in Paragraph H.

#### SIXTH THROUGH NINTH SPECIFICATIONS

##### WILFUL HARASSMENT, ABUSE, AND INTIMIDATION

Respondent is charged with committing professional misconduct as defined by N.Y. Educ. Law §6530(31) by willfully harassing, abusing, or intimidating a patient(s) either physically or verbally, as alleged in the facts of the following:

6. The facts in Paragraph A and A.1, A and A.2, A and A.3, and/or A and A.4.

7. The facts in Paragraph B and B.1 and/or B and B.2.
8. The facts in Paragraph C and C.1.
9. The facts in Paragraph D and D.1.

**TENTH THROUGH NINETEENTH SPECIFICATIONS**

**MORAL UNFITNESS**

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

10. The facts in Paragraph A and A.1, A and A.2, A and A.3, and/or A and A.4.
11. The facts in Paragraph B and B.1 and/or B and B.2.
12. The facts in Paragraph C and C.1 and/or C and C.2.
13. The facts in Paragraph D and D.1 and/or D and D.2.
14. The facts in Paragraph E.
15. The facts in Paragraph F and F.1, F and F.2, and/or F and F.3.
16. The facts in Paragraph G and G.1 and/or G and G.2.
17. The facts in Paragraph H.

**EIGHTEENTH AND NINETEENTH SPECIFICATIONS**

**WILLFULLY MAKING A FALSE REPORT**

Respondent is charged with committing professional misconduct as defined by N.Y. Educ. Law §6530(21) by willfully making or filing a false report, or failing to file a report

required by law, or by the Department of Health or the Education Department, as alleged in the facts of the following:

18. The facts in Paragraph F and F.1, F and F.2, and/or F and F.3.
19. The facts in Paragraph G and G.1 and/or G and G.2.

DATED: *April 16*, 1998

Albany, New York

*Peter D. Van Buren*  
PETER D. VAN BUREN  
Deputy Counsel  
Bureau of Professional  
Medical Conduct