



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., Dr.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

PUBLIC

March 24, 2003

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Anthony M. Benigno, Esq.
NYS Department of Health
ESP-Corning Tower-Room 2509
Albany, New York 12237-0032

Thomas E. Myers, Esq.
Bond, Schoeneck & King, LLP
One Lincoln Center
Syracuse, New York 13202-1355

William DeTorres, III, M.D.
219 Mansion Street
Ogdensburg, New York 13669

RE: In the Matter of William DeTorres, III, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 03-75) 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,


Tyrone T. Butler, Director
Bureau of Adjudication

TTB:cah
Enclosure

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

COPY

IN THE MATTER
OF
WILLIAM DeTORRES, III, M.D.

DETERMINATION
AND
ORDER
BPMC # 03- 75

DAVID T. LYON, M.D., Chairperson, RICHARD F. KASULKE, M.D. and PETER S. KOENIG, SR., 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 Section 230(10)(e) and (19) of the Public Health Law. JEFFREY ARMON, ESQ., served as Administrative Law Judge for the Hearing Committee. After consideration of the entire record, the Hearing Committee submits this Determination.

SUMMARY OF PROCEEDINGS

Notice of Violation of Probation:	May 22, 2002
Date of Prehearing Conference:	June 19, 2002
Dates of Hearing:	June 26, July 31, September 25-6, December 18, 2002
Department of Health appeared by:	DONALD P. BERENS, JR., ESQ. General Counsel, NYS Department of Health BY: ANTHONY M. BENIGNO, ESQ. NYS Department of Health Corning Tower, Room 2509 Albany, New York 12237
Representative for Respondent :	THOMAS E. MYERS, ESQ. Bond, Schoeneck & King, LLP One Lincoln Center Syracuse, New York 13202-1355

Witnesses for the Department of Health:

Patient C / Chaperone A
Anthony Perna, M.D.
Chaperone B
Renee Palmer
Colleen Heron
Michael Babala

Witnesses for the Respondent:

Peppy McBride
Susan Cornelison, L.P.N.
William Cornelison
Nancy Merkley, N.P.
Michael Seidman, M.D.
Lorraine Kabot
Diane LaRock, R.N.
Charlotte Russell-Rheome, L.P.N.
Beverly Bush
Melchior Buscemi, M.D.
Dawn Wells, R.N.
William DeTorres, III, M.D. (Respondent)

Final submissions/Close of Record:

January 21, 2003

Deliberations held:

January 29, 2003

NOTE: 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. All Hearing Committee findings were unanimous unless otherwise specified.

Petitioner's Exhibits are designated by Numbers.

Respondent's exhibits are designated by Letters.

T

T = Transcript

A copy of the Notice of Violation of Probation (Ex. 1) is attached to this Determination and Order as Appendix II.

LEGAL ISSUES

A motion by the Department to amend the alleged violations of probation related to Respondent's treatment of Patient G to include the patient's hospital stays of May 15-19, 1999 and February 10-13, 2001 was granted by the Administrative Law Judge on June 19, 2002. A subsequent motion to amend the alleged violations to include all female patients treated by Respondent at the Claxton-Hepburn Medical Center in Ogdensburg, New York (hereinafter "Hospital") from September 1, 1998 through August 31, 2001 was denied based on the ALJ's determination that such an amendment was untimely requested and would be substantially prejudicial to Respondent (ALJ Exhibit 3).

The alleged violation of probation set forth in Paragraph 2 relating to an office visit by Patient F on September 7, 1999 was withdrawn by the Department.

FINDINGS OF FACT

1. The Respondent was authorized to practice medicine in New York State on or about October 1, 1991 by the issuance of license number 187115 by the New York State Education Department. (Ex. 28)

2. By a Consent Agreement and Order entered into by the New York State Board for Professional Medical Conduct and Respondent, and effective September 1, 1998, (BPMC# 98-198), Respondent agreed to not contest two specifications of professional misconduct as set forth in a Statement of Charges dated August 17, 1998. Respondent was alleged to have engaged in two acts constituting conduct in the practice of medicine evidencing moral unfitness. By entering into said Order, Respondent agreed to a penalty of a Censure and Reprimand, a fine of ten thousand dollars (\$10,00.00) and a three year period of probation. (Ex. 14)

3. The terms of probation included requirements that Respondent, in the course of practicing medicine in New York State, examine and treat female patients only in the presence of a chaperone. The chaperone was required to be "a female licensed or registered health care professional or other health care worker, not a family member, personal friend, or in a professional relationship with Respondent which could pose a conflict with the chaperone's responsibilities". The proposed chaperone was subject to written approval of the Director of OPMC. Respondent was required to provide the chaperone with a copy of the Consent Order and all attachments and to have the proposed chaperone execute an acknowledgement of her responsibilities as chaperone. Those responsibilities included confirmation of her presence at each and every examination and treatment of a female patient in both the patient record and in a separate log to be submitted on a quarterly basis to OPMC. (Ex. 14, "Exhibit B")

4. Respondent failed to provide a copy of the Order and all of its attachments to Chaperone A and B. (T. 35, 144, 686-9)

5. Respondent failed to cause the approved chaperone to acknowledge her presence in the record of Patient A for office visits of September 8, 1998, September 28, 1998, and August 16, 2000. (Ex. 5, pp. 2-7)

6. Respondent failed to cause the approved chaperone to acknowledge her presence in the record of Patient B for an office visit on December 3, 1998. (Ex. 6, p.20)

7. On July 23, 1999 there was no approved chaperone present for the office visit of Patient C (Patient C is also identified as Chaperone A). (Ex. 7, p.3)

8. On December 6, 1999 there was no approved chaperone present for the office visit of Patient D. (Ex. 8, page 13)

9. Respondent failed to cause the approved chaperone to acknowledge her presence in the record for office visits of Patient E on September 15, 1998 and September 25, 1998 (Ex. 9, pp. 33, 35)

10. Respondent failed to cause the approved chaperone to acknowledge her presence in the record of Patient G for an office visit on November 22, 1999, and during hospital stays on February 10-13, 2001 and May 15-19, 1999 at Claxton-Hepburn Medical Center. (Ex. 11, pp. 18, 35, 40)

11. Respondent failed to cause the approved chaperone to acknowledge her presence in the record of Patient H for an office visit on December 16, 1999. (Ex. 12, p. 19)

12. Respondent failed to cause the approved chaperone to acknowledge her presence in the record of Patient I for an office visit on April 3, 2001. (Ex. 13, p.15)

13. During the period of his probation, Respondent informed the chaperones and female patients that a chaperone was not necessary when a female patient had a family member or friend in the examination room. Respondent examined and treated female patients on a regular basis without an approved chaperone being present when they were accompanied by a family member or friend. (Ex. 15-26; T. 35-9)

14. During the period of his probation, Respondent informed the chaperones and female patients that the Order allowed for the patients to refuse having a chaperone present during the examination and treatment. Respondent examined and treated female patients on a regular basis without an approved chaperone being present after the patient refused having a chaperone present during the examination and treatment. (Ex. 15-26; T. at 35-9)

15. Respondent, on several occasions during the period of his probation, entered the examination room and began the examination and treatment of female patients prior to the chaperone entering the examination room. (T. at 43-5, 277-8, 1070-1)

16. Respondent, on several occasions during the period of his probation, completed his examination and treatment of female patients before the chaperone could join him in the examination room. (T. 45-6, 278, 1063)

17. Respondent entered into a Consent Order and Stipulation with the State of Michigan Board of Medicine, effective on or about December 24, 1999, by which the state of Michigan sanctioned Respondent's medical license by placing him on probation for an indefinite period of time based upon a lack of good moral character and on the failure to timely report the 1998 New York action to the state of Michigan. (Ex. 4)

18. On February 26, 1999, Respondent submitted an application for reappointment to the medical/dental staff of the Hospital. In response to the question, "Since your last application for employment or reappointment: are you currently or have you been the subject of any professional misconduct proceedings in New York or any other state involving your licensure, board certification, medical society membership or potential disciplinary sanctions?", Respondent answered "yes". (Ex. 3, p.36, Ex. 3A, p. 36, Ex. 3B, p. 8)

19. On February 6, 2001, Respondent submitted an application for reappointment to the medical/dental staff of the Hospital. In response to the question, "Since your last application for employment or reappointment: are you currently or have you been the subject of any professional misconduct proceedings in New York or any other state involving your licensure, board certification, medical society membership or potential disciplinary sanctions?", Respondent answered "no". (Ex. 3, p.47, Ex. 3A, p.47, Ex. 3C, p.7)

20. A letter initiating contact between the OPMC's physician monitoring programs and Respondent (hereinafter referred to as the "hello" letter), dated September 10, 1998 or 10 days after the effective date of the Order, was sent by the OPMC to the Respondent. The letter, in part, stated that the Order allowed Respondent to treat female patients only in the presence of a chaperone. Respondent was directed to select and submit the name(s) of chosen practice chaperone(s), for review and approval by OPMC, as soon as possible. (Ex. O; T. 1154-8)

21. "Third Party Confirmation and Acknowledgement" forms were signed by Chaperone A on September 30, 1998 and by Chaperone B on October 29, 1999, whereby they each agreed to act as third party chaperones during Respondent's period of probation. Although both Chaperones were employees of Respondent, they were approved by the OPMC to serve in that capacity. (Ex. B, C, R)

22. On or about September 10, 1998, the Director of Performance Improvements at the Hospital contacted the Department's case coordinator responsible for monitoring Respondent's compliance with the conditions of probation to inquire as to the Hospital's responsibility concerning Respondent's probation requirements. The case coordinator indicated that the Hospital could choose whatever arrangement it wanted and that he would contact the Hospital to provide further information following an interview with the Respondent scheduled for October, 1998. There is no record that the case coordinator did, in fact, provide any further information to the Hospital and he had no recollection of doing so. (Ex. 33; T.1159-63, 1192-4)

23. On or about September 21, 1998, an employee of the Respondent contacted the case coordinator by telephone to discuss procedures to follow should a patient refuse to have a chaperone present when being examined by Respondent. The employee wrote a note that, in such cases, the patient's refusal should be documented. The case coordinator had no recollection of the conversation and there is no documentation as to any answer he may have provided to the employee of Respondent. (Ex. O, P; T. 1163-5, 1195-6)

24. On October 5, 1998, Respondent appeared for an interview with the case coordinator and an OPMC Medical Director to review the Terms of Probation. The subject of the right of a patient to refuse a chaperone or to substitute a friend or family member for the presence of a chaperone was not raised by either the Respondent or representatives of the Department at that meeting. (T. 1002-4, 1169-73)

25. Chaperone A prepared daily patient logs of female patients covering the period September 1, 1998 through October, 1999. Chaperone B prepared daily patient logs of female patients for the period ending December, 1999 through June 15, 2001. The logs were submitted to the case coordinator on a quarterly basis. (Ex. 15-25; T. 740-2, 746-7, 1174, 1202-3)

26. The patient logs submitted by both Chaperone A and B from September, 1998 through June 15, 2001, as well as patient logs submitted by a third chaperone for the period of June 18 through August 31, 2001, indicated that some female patients were refusing to have a chaperone present and that other female patients were accompanied by friends or family members instead of by the approved chaperone when being treated by Respondent. (Ex. 15-26)

27. During the three year period of Respondent's probation, no representative of the Department ever notified Respondent, the chaperones or any other employee to advise that the chaperoning procedures being followed and reported in the patient logs were inappropriate or not in compliance with Respondent's Terms of Probation as set out in the Consent Order (BPMC # 98-198). (T. 78, 354-6, 742-4, 900, 1107, 1204-9)

28. During the course of Chaperone A's employment, Respondent engaged in conduct with her which included the making of sexual comments and/or sexual advances toward her, requesting that she remain in the office after all other staff members had left, requesting that she accompany him for a car ride and reducing her work hours after she did not respond positively to his comments and requests. (T. 50-6)

29. During the course of Chaperone B's employment, Respondent engaged in conduct with her which included:

- a. offering her a chance to make up missed work time by meeting him after work where they could just cuddle and kiss (T. 285-6);
- b. during a telephone conversation that took place in or about November, 2000, requesting "pillow talk" (T. at 286-7, 414);
- c. touching Chaperone B's breast without her consent while she was on the phone with a patient at work (T.289);
- d. kissing her on three occasions at work without her consent (T.290-1);
- e. inviting her to go with him to a medical conference where they could stay in bed together (T. at 293-4);
- f. stating to Chaperone B that, before he could prescribe a diet medication for her, he would have to see her without her clothes on (T. at 295-6);
- g. suggesting to Chaperone B that maybe they could watch adult movies together on his new satellite system (T. 298-9);
- h. asking Chaperone B on June 15, 2001 while in his medical office if she would watch him "explode" (masturbate). Respondent repeated this request a second time before Chaperone B could leave the medical office. (T. at 300-1, 306)

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.

The Hearing Committee concluded that the Department established by a preponderance of the evidence that Respondent had violated certain terms of his probation, as set out in BPMC #98-198. Specific terms violated were #1 (requirement to conform to moral and professional standards of conduct and obligations imposed by law and his profession) and #8 (failure to examine and treat female patients only in the presence of a chaperone and to confirm the chaperone's presence at each and every

examination and treatment of a female patient).

DISCUSSION

A number of the allegations of probation violations were either admitted to by Respondent or were not disputed. Respondent admitted to not providing the chaperones with a copy of the entire Consent Order. It was not disputed that the chaperones failed to make a note in each patient record whenever they accompanied a female patient. While Respondent contended that his actions did not cause the chaperone to fail to sign-off in each patient record as required, the Committee felt that he could not escape his responsibilities by blaming the chaperones for their omissions. Respondent had the ultimate responsibility to ensure that the chaperones properly carried out their duties and, if necessary, he should have reviewed all patient records to make certain that the chaperones had acknowledged their presence. There was also no disagreement by Respondent with the allegation that a chaperone was not present when he examined and treated Patient G during her hospitalizations.

The Respondent characterized these deviations from the Terms of Probation as “technical” or “human error”. The Committee determined that Respondent had, in fact, violated those Terms based on Respondent’s admissions and on the patient records in evidence. The significance placed on these violations by the Committee is addressed in the “Determination of Penalty” discussion, below.

Similarly, Respondent examined and treated numerous female patients without a chaperone being present, in clear violation of the Consent Order. These patients were instead either accompanied by a friend or family member or were unaccompanied after a refusal to permit a chaperone in an examination room. The Committee also concluded that, on an undetermined number of occasions, Respondent either began and/or completed an examination of a female patient before a chaperone entered the room. A requirement that “Respondent shall, in the course of practicing medicine in New York State, examine and treat any female patient only in presence of a chaperone.” was considered to be clear and unambiguous. The fact that many patients were being seen by Respondent in a manner not authorized by the Terms of Probation was communicated to the Department on a continuous basis by the quarterly chaperone reports. The failure of the Department to take any action as a result for the entire

three year period of probation was a factor considered by the Committee in its determination of an appropriate penalty.

The Committee determined that the Department met its burden of proof and demonstrated that the misrepresentation that the Terms of Probation permitted patients to either refuse a chaperone or to substitute a family member or friend as a replacement was intentional. Respondent had the responsibility to clarify the provisions of any of the Terms which were unclear. The Committee felt it significant that Respondent confirmed that he did not ask for clarification of any of the requirements of the Consent Order when he presented for the October 5, 1998 interview to review the Terms of Probation. If, as alleged, an employee had been orally informed only two weeks earlier by someone with the OPMC that a refusal or substitution was permissible, it would be expected that the Respondent would verify that information when personally interviewed by the case coordinator and Medical Director.

It was further concluded that Respondent intentionally misrepresented that he had not been the subject of professional misconduct proceedings when he submitted his February 6, 2001 application for reappointment to the Hospital. The Committee believed that the question on the application was clear and not confusing and that Respondent should have known to report the Michigan disciplinary action. The fact that the Michigan action was based on Respondent's New York Consent Agreement and Order, of which both the New York Board and the Hospital were obviously already aware, was considered in determining the limited significance of this violation of Respondent's conditions of probation. It was presumed that no further action would have been taken had he properly reported the out-of-state disciplinary action. Respondent was also found to have willfully made or filed a false report, in violation of Section 6530(21) of the Education Law, but not Section 6530(14) of said statute because he did ultimately disclose the Michigan disciplinary action to the Hospital.

The Committee considered Chaperone A to be a credible witness, but believed her testimony to be general and somewhat vague. Her recollection of Respondent's inappropriate conduct was inexact. She testified that Respondent's actions made her feel "uncomfortable", but she did not state that she ever spoke with him about her concerns. The Committee members believed that the actions complained of may have occurred, but did not consider them to rise to a level that would constitute professional misconduct and a violation of the Terms of Probation.

Chaperone B was seen as a credible witness, notwithstanding possible bias based on the fact that she was represented in a civil suit pending against Respondent by the same attorney who represented the employee associated with the alleged misconduct which led to the 1998 Consent Agreement and Order. This conclusion was supported by the fact that Chaperone B's testimony concerning the telephone conversation with Respondent, during which he requested "pillow talk", was corroborated by both her friend, who listened in on Chaperone B's telephone, and by Respondent's office manager and girlfriend at that time, who overheard the conversation at the residence she shared with him. It was noted that Respondent's relationship with the office manager/girlfriend had ended, suggesting that her testimony could also have been biased against him; however the Committee considered her testimony about the telephone conversation she overheard to be credible and consistent with the other two witnesses. The Committee went on to reason that Chaperone B's overall testimony concerning Respondent was made more believable because her statements about the telephone call were credible and concluded that Respondent's improper actions occurred substantially in accordance with her testimony.

Certain allegations of Respondent's misconduct, such as his touching Chaperone B's hair while she was on a telephone with a patient and requesting that she meet him in the office after work hours, were not seen as constituting professional misconduct. Other allegations examined individually may not have been so significant as to be viewed as misconduct either. However, taken in the aggregate, the Committee determined that Respondent's pattern of behavior with Chaperone B was significant enough so as to demonstrate professional misconduct and a violation of his Terms of Probation.

The Committee members felt that Respondent exhibited signs of a victim mentality and an unwillingness to accept responsibility for his actions. His conduct demonstrated a disrespect for the hearing process and his testimony was seen as acerbic and self-serving. Respondent presented with the impression that he believed that his medical license afforded him greater latitude and credibility than others. His attempt to explain the circumstances of the situation which resulted in the 1998 disciplinary action made it obvious that he never accepted the fact that he had been placed on probation and was required to comply with certain requirements and restrictions.

DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determined that Respondent's license to practice medicine in New York should be suspended for an additional three year period, all but one month of said suspension to be stayed, and that he be placed on probation in accordance with the Terms of Probation set forth in Appendix I during the three year period. Included in the Terms of Probation are requirements that Respondent examine and treat all female patients only in the presence of an approved chaperone. This requirement shall apply to all sites of his practice: office, hospital, clinic or any other location. Any female patient who refuses a chaperone or attempts to substitute another person shall not be examined or treated by Respondent but shall be referred to another appropriate health care provider. A fine of \$10,000 (ten thousand dollars) was also imposed as a penalty for both failing to comply with the terms of the 1998 Consent Order and for his behavior toward Chaperone B.

Several of Respondent's violations could arguably be referred to as 'minor' or "technical" violations. However, the Committee considered that they collectively added up to something more significant. His personal interpretation of the Terms of Probation demonstrated an attempt to shade the truth of the reasons for being placed on probation and an unwillingness to comply with requirements which he considered to be burdensome. There was also motivation to not comply since referral of female patients who refused to have the approved chaperone present to another provider would have a financial impact on his practice. The Respondent had no authority to interpret the requirements of his probation as he saw fit.

Respondent's treatment of Chaperone B was inexcusable; however, there were a number of mitigating factors which caused the Committee to reject license revocation as the most appropriate penalty in this particular case. Most obvious is the fact that in this matter, as well as in the earlier incident leading to the Consent Order, patient care was not an issue. Respondent would appear to have difficulty maintaining professional relationships with his employees and he must acknowledge that he will have to separate personal and professional matters to avoid future problems. It was undisputed that he is highly competent from a purely medical skills standpoint; however Respondent will not become a

successful physician until he accepts the fact that he must modify his personal behavior to establish a more professional office atmosphere. The Committee also considered the evidence of the positive impact of Respondent's practice in the Ogdensburg area as a mitigating factor. The actual suspension from practice for a one month period was an attempt to strike a balance between the need to impose a meaningful punishment for his actions and the need to not deprive a medically underserved region of his medical skills for an extended period.

Also of great significance in mitigating the severity of the penalty was the performance of the OPMC in monitoring Respondent's probation. It was far from satisfying and was the cause of great concern to the Committee. Even if the language of the Terms of Probation was clear in the ordinary sense, the Department had a duty to answer legitimate inquiries from Respondent, his staff and staff of the Hospital in a timely manner. The case coordinator did not dispute that he did not answer the Hospital's question as to its responsibilities concerning Respondent's probation. It must be pointed out that the original Notice of Violations of Probation made no mention of any violations related to Respondent's hospital practice; it can reasonably be inferred that OPMC did not initially consider his hospital practice to be within the scope of the Terms of Probation.

Along the same lines, the case coordinator admitted to having not reviewed the chaperone logs for the entire three year period of Respondent's probation. It is possible that the fact that Respondent was not examining and treating all female patients only when accompanied by an approved chaperone would not have even been discovered had the allegations of his inappropriate conduct with the chaperones not surfaced. Such a possibility makes a mockery of the contention that the chaperone requirement was imposed to protect his female patients. It was also observed that there was no suggestion that Respondent acted improperly with any female patient during that three year period. The Terms of Probation are similar to those imposed by the 1998 Consent Order because of the impression that a fresh start for all parties would be appropriate.

RECOMMENDATIONS

The Committee had suggestions for continued use of the chaperone requirement so as to make it a more meaningful and effective condition of probation. In this case, neither chaperone reported Respondent's noncompliance even though required to do so by the Third Party Confirmation and Acknowledgement they each signed. The Department needs to address this inherent conflict with relying on employees of a licensee as chaperones. It is apparent that in most instances, particularly in rural settings, the only individuals available to act as a chaperone would be an employee of a physician. The potential conflict for a chaperone to report her employer as being in violation of probationary conditions makes greater oversight by the OPMC a necessity. This undoubtedly would create a greater burden for the Department; however the alternative is to reduce the opportunity to discover noncompliance and to make the chaperone requirement meaningless as a mechanism to protect the public. It is noted that language in Respondent's Terms of Probation included the requirement that "the chaperone...shall not be a family member, personal friend, or be in a professional relationship which could pose a conflict with the chaperone's responsibilities." This problem of potential conflicts of interest was apparent to the Department. Nonetheless, the two employees of Respondent were approved by the Director of OPMC to act as chaperones.

The Committee also believed that it would be beneficial for a representative of OPMC to speak directly with a proposed chaperone to reinforce the reasons for the chaperone requirement and the related responsibilities. The case coordinator should accurately document all contacts with individuals required to practice with a chaperone and should provide written confirmation of any discussions of the interpretation of probationary terms. In the case at hand, there was a concern that the chaperones did not always document a complete list of all female patients seen by Respondent on a particular day. At least one personal visit during the period of probation to a licensee's office to review compliance with the chaperoning requirements was not considered by the Committee to be an unreasonable requirement. Hopefully, strengthening enforcement of this condition of probation would prevent the reoccurrence of those types of situations which were at the heart of this proceeding.

ORDER

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

1. The Determination that the Respondent violated the Terms of Probation imposed by BPMC #98-198, as set forth in the Notice of Violation of Probation (Ex. 1), dated May 22, 2002 is **SUSTAINED**; and

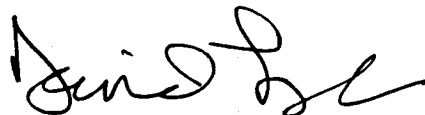
2. Respondent's license to practice medicine shall be **SUSPENDED** for a period of **THREE YEARS, THIRTY-FIVE (35) MONTHS** of said period of suspension to be **STAYED**, and Respondent shall be placed on **PROBATION** and shall comply during the period of the stayed suspension of his license with all Terms of Probation as set forth in Appendix I, attached hereto and made a part of this Determination and Order; and

3. A **CIVIL PENALTY** of **TEN THOUSAND DOLLARS (\$10,000)** be imposed upon Respondent, such penalty to be payable in full within thirty (30) days of the effective date of this Order. Payment shall be submitted to:

Bureau of Accounts Management
New York State Department of Health
Empire State Plaza
Corning Tower, Room 1258
Albany, New York 12237; and

4. This Order shall be effective upon service on the Respondent or his attorney by personal service or by certified or registered mail.

DATED: Troy, New York
3/17, 2003



DAVID T. LYON, M.D. Chairperson

RICHARD F. KASULKE, M.D.
PETER S. KOENIG, SR.

TO: Anthony M. Benigno, Esq.
New York State Department of Health
Bureau of Professional Medical Conduct
Corning Tower, Room 2509
Empire State Plaza
Albany, New York 12237-0032

Thomas E. Myers, Esq.
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One Lincoln Center
Syracuse, New York 13202-1355

William DeTorres, III, M.D.
219 Mansion Street
Ogdensburg, New York 13669

APPENDIX I

Terms of Probation

1. Respondent shall conduct himself in all ways in a manner befitting his professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his profession.

2. Respondent shall submit written notification to the New York State Department of Health addressed to the Director, Office of Professional Medical Conduct (OPMC), Hedley Park Place, 4th Floor, 433 River Street, Troy, New York 12180-2299; said notice is to include a full description of any employment and practice, professional and residential addresses and telephone numbers within or without New York State, and any and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty days of each action.

3. Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of Respondent's compliance with the terms of this Order. Respondent shall personally meet with a person designated by the Director of OPMC as requested by the Director.

4. Any civil penalty not paid by the date prescribed herein shall be subject to all provisions of law relating to debt collection by New York State. This includes but is not limited to the imposition of interest, late payment charges and collection fees; referral to the New York State Department of Taxation and Finance for collection; and non-renewal of permits or licenses [Tax Law section 171(27); State Finance Law section 18; CPLR section 5001; Executive Law section 32].

5. The period of probation shall be tolled during periods in which Respondent is not engaged in the active practice of medicine in New York State. Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in or intends to leave the active practice of medicine in New York State for a period of thirty (30) consecutive days or more. Respondent shall then notify the Director again prior to any change in that status. The period of probation shall resume and any terms of probation which were not fulfilled shall be fulfilled upon Respondent's return to practice in New York State.

6. Respondent's professional performance may be reviewed by the Director of OPMC. This review may include, but shall not be limited to, a review of office records, patient records and/or hospital charts, interviews with or periodic visits with Respondent and his/her staff at practice locations or OPMC offices.

7. Respondent shall maintain legible and complete medical records which accurately reflect the evaluation and treatment of patients. The medical records shall contain all information required by State rules and regulations regarding controlled substances.

8. Respondent shall, in the course of practicing medicine in New York State, examine and/ treat any female patient only in the presence of a chaperone. The chaperone shall be a female licensed or registered health care professional or other health care worker, shall not be a family member, personal friend, or be in a professional relationship with Respondent which could pose a conflict with the chaperone's responsibilities. The chaperone shall be proposed by Respondent and subject to the written approval of the Director of OPMC.

- a. The chaperoning requirement of this Paragraph shall apply to all sites of Respondent's practice including, but not limited to, office, hospital, and clinic locations.

- b. Any female patient who refuses the accompaniment of a chaperone or who attempts to substitute another person for the presence of an approved chaperone shall not be examined or treated by Respondent, but shall be referred to another appropriate health care provider.
- c. Prior to the approval of any individual as chaperone, Respondent shall cause the proposed chaperone to execute and submit to the Director of OPMC an acknowledgment of her agreement to undertake all of the responsibilities of the role of chaperone. Said acknowledgment shall be made upon a form provided by and acceptable to the Director. Respondent shall provide the chaperone with a copy of the Order and all of its attachments and shall, without fail, cause the approved chaperone to:
- i. Report quarterly to OPMC regarding her chaperoning of Respondent's practice.
 - ii. Report within 24 hours any failure of Respondent to comply with this Order, including, but not limited to, any failure by Respondent to have the chaperone present when required, any sexually suggestive or otherwise inappropriate comments by Respondent to any patient, and any actions of a sexual nature by Respondent in the presence of any patient.
 - iii. Confirm the chaperone's presence at each and every examination and treatment of a female patient by Respondent, by placing her name, title and date in the patient record for each and every visit, and by maintaining a separate log, kept in her own possession, listing the patient name and date of visit for each and every patient visit chaperoned.
 - iv. Provide copies of the log described in paragraph iii, above, to OPMC at least quarterly and also immediately upon the Director's request.

9. Respondent shall comply with all terms, conditions, restrictions, limitations and penalties to which he is subject pursuant to the Order and shall assume and bear all costs related to compliance. Upon receipt of evidence of noncompliance with, or any violation of these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding and/or any such other proceeding against Respondent as may be authorized pursuant to the law.

APPENDIX II



**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., Dr. P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

May 22, 2002

William DeTorres, III, M.D.
219 Mansion Street
Ogdensburg, NY 13669

Re: Notice of Violation of Probation
License No. 187115

Dear Dr. DeTorres:

As the Director of the Office of Professional Medical Conduct of the New York State Department of Health, I have conducted an investigation and determined that you have violated the terms of probation imposed upon you by Order BMC No.98-198. My determination that you have violated the terms of your probation is based on the following:

1. Paragraph 8 of the terms of probation required that, "Respondent shall provide the chaperone with a copy of the order and all of its attachments..." Respondent failed to provide a copy of the order and all of its attachments to chaperone A and B.
2. Paragraph 8(c) of the terms of probation required that, "Respondent... shall, without fail, cause the approved chaperone to, confirm the chaperone's presence at each and every examination and treatment of a female patient by Respondent, by placing her name, title and date in the patient record for each and every visit,..." The Office of Professional Medical Conduct inspected various patient records pursuant to requests made on November 23, 2001 and April 19, 2002. Out of 14 records inspected nine records contained deficiencies as follows:

Patient A: Respondent failed to cause the approved chaperone to acknowledge her presence in the record for office visits of September 8, 1998, September 28, 1998, and August 16, 2000;

Patient B: Respondent failed to cause the approved chaperone to acknowledge her presence in the record for an office visit on December 3, 1998;

Patient C: on July 23, 1999 there was no approved chaperone present for the office visit;

Patient D: on December 6, 1999 there was no approved chaperone present for the office visit;

Patient E: Respondent failed to cause the approved chaperone to acknowledge her presence in the record for office visits on September 15, 1998 and September 25, 1998;

Patient F: Respondent failed to cause the approved chaperone to acknowledge her presence in the record for an office visit on September 7, 1999;

Patient G: Respondent failed to cause the approved chaperone to acknowledge her presence in the record for an office visit on November 22, 1999; *Respondent failed to have approved chaperone present during examination and treatment of Pt. G from about 2/10-2/13/01 and from about 5/15-5/19/99 at Hepburn Medical Center.*

Patient H: Respondent failed to cause the approved chaperone to acknowledge her presence in the record for an office visit on December 16, 1999;

Patient I: Respondent failed to cause the approved chaperone to acknowledge her presence in the record for an office visit on April 3, 2001.

3. Paragraph 8 of the terms of probation stated, "Respondent shall, in the course of practicing medicine in New York State, examine and treat any female only in the presence of the chaperone... The chaperone shall be proposed by Respondent and subject to the written approval of the Director of OPMC."

(i) Respondent informed the chaperones and female patients that a chaperone was not necessary when a female patient had a family member or friend in the examination room. Respondent saw many female patients on a regular basis without a chaperone being present when they were accompanied by a family member or friend.

(ii) Respondent informed the chaperones and female patients that the order allowed for the patients to refuse that a chaperone be present during the examination. Respondent saw many female patients without a chaperone being present after the patient refused to allow the chaperone in the room.

(iii) Respondent would on a regular basis enter the examination room and begin the examination of female patients prior to the chaperone entering the examination room. On many occasions Respondent completed the examination before the chaperone could enter the room.

4. Paragraph 1 of the terms of probation required that, "Respondent shall conduct himself in all ways befitting his professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his profession." Respondent failed to conform to moral and professional standards of conduct imposed by law by violating the following sections of New York State Education Law which define professional misconduct:

(a) §6530 (2), Practicing the profession fraudulently:

(i) Respondent intentionally misrepresented to the chaperones and female patients that the terms of his probation allowed patients to refuse having a chaperone present during the examination and treatment of female patients;

(ii) Respondent intentionally misrepresented to the chaperones and female patients that the terms of probation allowed family members or friends to replace the chaperone during the examination and treatment of female patients;

(iii) Respondent submitted an application for reappointment to Hepburn Medical Center, Ogdensburg, New York, on February 26, 1999. On February 6, 2001 Respondent submitted an application for reappointment to Hepburn Medical Center. On page 7, under the heading of Professional sanctions, question four, "Since your last application for appointment or reappointment: are you currently or have you been the subject of any professional misconduct proceedings in New York or any other state involving your licensure, board certification, medical society membership or potential disciplinary sanctions?" Respondent answered "no." On December 24, 1999 the state of Michigan, Bureau of Health Services, sanctioned Respondent's medical license by placing him on probation for an indefinite period of time based upon a lack of good moral character and on the failure to report the New York action to the state of Michigan.

(b) § 6530 (14), a violation of § 2805 (k) of the public health law:

by failing to disclose to Hepburn Medical Center the Michigan disciplinary action.

(c) § 6530 (21), willfully making or filing a false report, required by law or by the Department of Health or the Education Department:

by failing to disclose to Hepburn Medical Center the Michigan disciplinary action.

(d) § 6530 (20), conduct in the practice of medicine which evidences moral unfitness to practice medicine, by:

(i) Respondent engaged in a pattern of behavior towards chaperone A which evidences moral unfitness to practice medicine. From on or about September 1999 through and including approximately February 2000 some of the acts include, but are not limited to:

- on numerous occasions making sexual comments and/or sexual advances toward chaperone A;**
- on numerous occasions trying to get chaperone A into the office**

when no one else was around;

- asking chaperone A to get into his car and go for a ride;
- reducing chaperone A's hours to part time after she did not respond to his sexual advances.

(ii) Respondent engaged in a pattern of behavior towards chaperone B which evidences moral unfitness to practice medicine. From on or about December 1999 through and including June 15, 2001 some of the acts include, but are not limited to:

- On June 15, 2001 Respondent offered chaperone B free medication and medical care for her and her family if she watched him "explode" (masturbate);
- Respondent offered chaperone B to excuse her missed time from work in exchange for sexual favors or meeting with him after work;
- Respondent contacted chaperone B at home and requested "pillow talk";
- Respondent grabbed chaperone B from behind and touched her breast while she was on the phone with a patient at work;
- Respondent, on more than one occasion, attempted to have chaperone B kiss him;
- Respondent made many requests to chaperone B to meet him in the office after work;
- Respondent invited chaperone B to attend a medical conference outside of New York State where they could stay in bed and play and sip on Pina Coladas;
- Respondent told chaperone B they could just cuddle and touch without sex;
- Respondent touched chaperone B's hand and hair while she was on the phone with a patient;
- Respondent offered to write chaperone B a prescription for diet medication if she showed him what she looked like undressed;
- Respondent asked chaperone B to go for a ride or go upstairs after work;
- Respondent discussed with chaperone B the pornography channels on his satellite and suggested that they should watch it together.

By this letter, I am initiating a violation of probation proceeding against you pursuant to New York Public Health Law § 230(19).

Be advised that if you do not dispute the facts forming the basis of my determination within 20 days of the date of this letter, I shall submit this matter to a committee on professional conduct for its review and determination. If within 20 days of the date of this letter, you dispute in writing the facts forming the basis of my determination, you shall be afforded a hearing before a committee on professional conduct. You have the right to such a hearing and may be represented by counsel.

A stenographic record of this hearing will be made. The committee, after providing you an opportunity to be heard, shall determine whether you have violated probation and, if so, shall impose an appropriate penalty as defined in New York State Public Health Law § 230-a. In determining the appropriate penalty, the committee shall consider both the violation of probation and the prior adjudication of misconduct. The chairperson of the committee shall issue an order adopting the decision of the committee on professional conduct. This order may be reviewed by the Administrative Review Board of the State Board for Professional Medical Conduct.

Since this violation of probation proceeding may result in a determination that your license to practice medicine in New York be revoked, I urge you to consult with an attorney.

Very truly yours,



**Dennis J. Graziano
Director
Office of Professional Medical Conduct**