



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

September 12, 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 Professional Medical Conduct Administrative Review Board in the above referenced matter. This Determination and Order shall be deemed effective upon receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

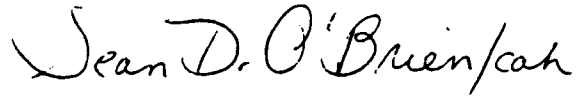
Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified mail or in person** to:

Office of Professional Medical Conduct
New York State Department of Health
Hedley Park Place
433 River Street-Fourth Floor
Troy, New York 12180

If your license or registration certificate is lost, misplaced or its whereabouts is otherwise unknown, you shall submit an affidavit to that effect. If subsequently you locate the requested items, they must then be delivered to the Office of Professional Medical Conduct in the manner noted above.

This exhausts all administrative remedies in this matter [PHL §230-c(5)].

Sincerely,

Handwritten signature of Sean D. O'Brien in cursive script, followed by the initials "/cah".

Sean D. O'Brien, Director
Bureau of Adjudication

SDO:cah

Enclosure

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

In the Matter of

William DeTorres, III, M.D. (Respondent)

Administrative Review Board (ARB)

**A proceeding to review a Determination by a
Committee (Committee) from the Board for
Professional Medical Conduct (BPMC)**

Determination and Order No. 03-75

COPY

**Before ARB Members Grossman, Lynch, Pellman, Price and Briber
Administrative Law Judge James F. Horan drafted the Determination**

For the Department of Health (Petitioner):

Anthony M. Benigno, Esq.

For the Respondent:

Thomas E. Myers, Esq.

After a hearing below, a BPMC Committee found that the Respondent violated a prior disciplinary probation and that the Respondent committed additional misconduct. The Committee voted to suspend the Respondent's License to practice medicine in New York State (License), to stay the suspension for all but one month, to place the Respondent on probation for thirty-five months and to fine the Respondent \$10,000.00. In this proceeding pursuant to N.Y. Pub. Health Law § 230-c (4)(a)(McKinney 2003), the Respondent has asked the ARB to reduce the penalty against the Respondent and the Petitioner has asked the ARB to overturn the Committee and to revoke the Respondent's License. After considering the hearing record and the parties' review submissions, we affirm the Committee's Determination to fine the Respondent, to place the Respondent on actual suspension and to place the Respondent on probation. We modify the Committee's Determination and vote to: place the Respondent on actual suspension for three months, place the Respondent on probation for thirty-three months and add an additional probation term.

Committee Determination on the Charges

The Petitioner commenced the proceeding, pursuant to N.Y. Pub. Health Law 230(19), by filing charges with BPMC alleging that the Respondent violated certain terms under a probation order and by committing professional misconduct that violated N. Y. Educ. Law §§ 6530(2), 6530(14) & 6530(20-21) (McKinney Supp. 2003). The Petitioner alleged that the Respondent made intentional misrepresentations, failed to disclose prior disciplinary actions, willfully filed a false report and engaged in conduct that evidenced moral unfitness. A hearing on the charges ensued before the Committee that rendered the Determination now on review.

The evidence at the hearing demonstrated that the Respondent entered into a Consent Decree with the Office for Professional Medical Conduct in September 1998. The Consent Decree placed the Respondent on probation and the probation terms barred the Respondent from examining or treating female patients without a chaperone present. The Respondent also entered a Consent Order and Stipulation with the State of Michigan Board of Medicine in December 1999. The Michigan Stipulation placed the Respondent on indefinite probation for lack of good moral character and failure to report the New York Consent Decree to Michigan in a timely manner.

The Committee determined that the Respondent violated probation under the Consent Decree by engaging in inappropriate behavior toward a chaperone (whom the record identifies as Chaperone B) and by failing to comply with probationary terms that required a chaperone's presence during examinations or treatments. The Committee also determined that the Respondent's behavior toward Chaperone B evidenced moral unfitness in practice. The Committee found that the Respondent willfully filed a false report by failing to report the Michigan Stipulation on an application for staff re-appointment at the Claxton-Hepburn Medical Center.

The Committee voted to suspend the Respondent's License for three years, with all but one month stayed. The Committee placed the Respondent on probation for three years, under the terms that appear at Appendix I to the Committee's Determination. The terms require that the Respondent treat and examine females only with a chaperone present. That requirement applies

at all the Respondent's work sites, including a hospital. The Committee also fined the Respondent \$10,000.00. The Committee found the Respondent's behavior toward Chaperone B inexcusable, but found mitigating factors that caused the Committee to reject license revocation as a penalty. The Committee noted that neither the issues underlying this proceeding nor the issues underlying the Consent Decree involved patient care. The Committee stated that the one-month actual suspension represented an attempt to strike a balance between the need to impose punishment for his actions and the need to allow the Respondent to continue to serve a medically underserved area.

Review History and Issues

The Committee rendered their Determination on March 24, 2003. This proceeding commenced on April 3, 2003, when the ARB received the Petitioner's Notice requesting a Review. The Respondent also filed a Review Notice on April 10, 2003. The record for review contained the Committee's Determination, the hearing record, the Petitioner's brief and response brief and the Respondent's brief and response brief. The record closed when the ARB received the last response brief on May 13, 2003.

The Petitioner argues that the Committee imposed an inappropriate penalty in a case in which the Respondent engaged in conduct that evidenced moral unfitness, violated probation and willfully filed a false report. The Petitioner argues that the Respondent has demonstrated through his actions that further probation will fail to deter the Respondent from committing aberrant behavior. The Petitioner argues that the Respondent's conduct toward Chaperone B, standing alone, warrants license revocation.

The Respondent asks that the ARB reject as inappropriate the Petitioner's request that the ARB overturn the Committee and revoke the Respondent's License. The Respondent argues that

the Committee based their findings on sexual harassment on complaints by disgruntled former employees, rather than on patient care. The Respondent requests further that the ARB eliminate the chaperone requirement for the Respondent's hospital practice. The Respondent argues that no evidence at the hearing involved improper conduct toward a hospital patient or employee and that compliance with such a requirement would prove virtually impossible. The Respondent also argues that he has already served an actual suspension and five years probation and the Respondent characterizes the three additional years on probation as excessive.

Determination

The ARB has considered the record and the parties' briefs. We affirm the Committee's Determination that the Respondent committed professional misconduct. We modify the Committee's Determination by adding more time on actual suspension and by adding an additional requirement for probation.

The Respondent made no challenge to the Committee's Determination that the Respondent willfully filed a false report with Claxton-Hepburn Medical Center. The Committee's Determination, at page 10, also noted that the Respondent either admitted or failed to dispute probation violation allegations. The Respondent's brief did, however, challenge the testimony by Chaperones A and B. We note first that the Committee found that the Respondent's behavior toward Chaperone A failed to amount to professional misconduct or probation violations, so those findings made no impact in the Committee's Determination on penalty. The Committee did find serious misconduct and probation violations in the conduct toward Chaperone B. The Respondent pointed out the Committee found Chaperone B possessed possible bias. The Committee's Determination, however, also found Chaperone B a credible

witness and found corroboration for the Chaperone's testimony. The Committee found the Respondent self-serving and unwilling to accept responsibility for his actions. We consider the Respondent's challenge to the findings on the behavior toward Chaperone B as a challenge to the Committee's Determination on credibility and a request that the ARB substitute our judgement on credibility. The ARB defers to the Committee in their judgement on credibility, as the Committee received the opportunity to observe the witnesses first hand. We affirm the Committee's findings and the Committee's conclusion that the Respondent's behavior toward Chaperone B evidenced moral unfitness in practice and violated the probation under the Consent Decree.

We reject the Petitioner's request that we overturn the Committee and revoke the Respondent's License. We also reject the Respondent's argument that the Committee imposed an overly harsh and impossible to implement penalty. We reject revocation as a penalty, because the Respondent's misconduct involved no patient care and because no probation violation by the Respondent resulted in harm to a patient. Also, the Michigan disciplinary action that the Respondent failed to report involved Michigan's response to the New York Consent Decree. Claxton-Hepburn Medical Center already knew about the Consent Decree, so the Respondent concealed no conduct from the Medical Center. Although the probation violations resulted in no harm, the violations in the aggregate amounted to serious misconduct.

We agree with the Committee that the Respondent should spend actual time on suspension due to the behavior toward Chaperone B and due to the probation violations. We disagree with the Committee that one month constitutes a sufficient actual suspension. We overturn the Committee and place the Respondent on actual suspension for three months, with credit for the one month, which the Respondent has served already under the Committee's

Determination. The Respondent shall serve the remaining two months on suspension beginning immediately upon this Determination's effective date.

We also agree that the Respondent should serve additional time on probation. We place the Respondent on probation for thirty-three months, under the conditions from the Committee's Determination, with one modification. During the time on probation, the Respondent shall complete a course on boundary violations, which the Respondent selects and that OPMC approves. We reject the Respondent's argument that the Respondent has served sufficient time on probation already. The Respondent has violated probation repeatedly and has refused to accept responsibility for his actions. The Consent Decree and the behavior toward B also show repeated improper behavior toward the Respondent's female employees. In the Consent Decree, OPMC disciplined the Respondent for masturbating in the presence of a female employee. In the present case, the Respondent asked Chaperone B to watch him masturbate, touched the Chaperone's breast without consent, kissed the Chaperone without consent and engaged in other inappropriate behavior. The Respondent must demonstrate that he can practice without using his position to engage in inappropriate conduct. Until the Respondent can demonstrate that he can do so for thirty-three months, he should continue to practice with chaperones in all practice settings in which he will see female patients. We also agree with the Committee that the Respondent should pay a \$10,000.00 fine for his willful misconduct.

ORDER

NOW, with this Determination as our basis, the ARB renders the following **ORDER**:

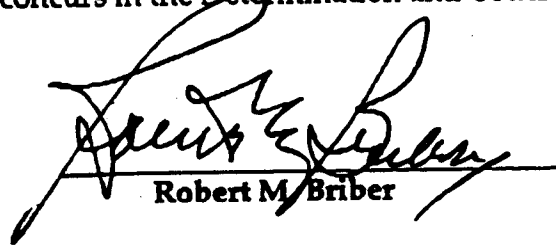
1. The ARB affirms the Committee's Determination that the Respondent committed professional misconduct.
2. The ARB affirms the Committee's Determination to suspend the Respondent's License for three years, to stay the suspension and to place the Respondent on probation during the stayed suspension.
3. The ARB modifies the penalty the Committee imposed by staying the suspension for thirty-three months rather than thirty-five months.
4. The ARB modifies the probation terms to add the requirement that the Respondent complete successfully a course on boundary violations, as we provide in our Determination.
5. The ARB affirms the Committee's Determination to fine the Respondent \$10,000.00.

Robert M. Briber
Thea Graves Pellman
Winston S. Price, M.D.
Stanley L. Grossman, M.D.
Therese G. Lynch, M.D.

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

Robert M. Briber, an ARB Member, concurs in the Determination and Order in the Matter of Dr. DeTorres.

Dated: August 6, 2003

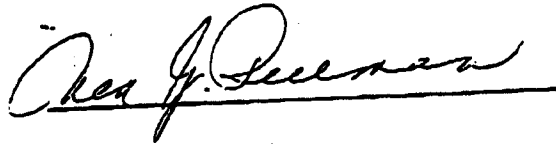


Robert M. Briber

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

Thea Graves Pellman, an ARB Member concurs in the Determination and Order in the
Matter of Dr. DeTorres.

Dated: August 5, 2003



Thea Graves Pellman

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

Winston S. Price, M.D., an ARB Member concurs in the Determination and Order in the Matter of

Dr. DeTorres.

Dated: 09/02, 2003

A handwritten signature in cursive script, appearing to read "Winston S. Price", is written over a horizontal line.

Winston S. Price, M.D.

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

Stanley L. Grossman, an ARB Member concurs in the Determination and Order in the Matter of Dr. DeTorres.

Dated: August 3, 2003

Stanley L. Grossman M.D.

Stanley L Grossman, M.D.

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

Therese G. Lynch, M.D., an ARB Member concurs in the Determination and Order in the Matter of Dr. DeTorres.

Dated: August 4, 2003

Therese G. Lynch M.D.

Therese G. Lynch, M.D.