

August 16, 2013

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Michael G. Bass, Esq.
NYS Department of Health
ESP-Corning Tower-Room 2512
Albany, New York 12237

Byron Haroldo Rodas, R.P.A.
REDACTED

Byron Haroldo Rodas, R.P.A.
St. Francis Hospital
241 North Road
Poughkeepsie, New York 12601

Eoin McDonagh, Esq.
36 South Pearl Street
Albany, New York 12207

RE: In the Matter of Byron Haroldo Rodas, R.P.A.

Dear Parties:

Enclosed please find the Determination and Order (No. 13-248) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

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

Office of Professional Medical Conduct
New York State Department of Health
Office of Professional Medical Conduct
Riverview Center
150 Broadway - Suite 355
Albany, New York 12204

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), (McKinney Supp. 2013) and §230-c subdivisions 1 through 5, (McKinney Supp. 2013), "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., Chief Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Riverview Center
150 Broadway – Suite 510
Albany, New York 12204

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,

REDACTED

James F. Horan
Chief Administrative Law Judge
Bureau of Adjudication

JFH:cah
Enclosure

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

COPY

-----X
IN THE MATTER : DETERMINATION
OF : AND
BYRON HAROLDO RODAS, R.P.A. : ORDER
CO-13-02-0624-A :
-----X BPMC #13-248

A Commissioner's Order, Notice of Referral Proceeding and Statement of Charges, dated April 22, 2013, were served upon the Respondent, Byron Haroldo Rodas, R.P.A. AIRLIE A.C. CAMERON, M.D., M.P.H. (Chair), MARY E. RAPPAZZO, M.D., and GAIL S. HOMICK HERRLING, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to Section 230(10)(e) of the Public Health Law. LARRY G. STORCH, ESQ., ADMINISTRATIVE LAW JUDGE, served as the Administrative Officer. The Department of Health appeared by Michael G. Bass, Esq., Assistant Counsel. The Respondent appeared by Eoin McDonagh, Esq. A hearing was held on July 24, 2013. Evidence was received and witnesses sworn and heard and transcripts of these proceedings were made.

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

STATEMENT OF CASE

This case was brought pursuant to Public Health Law Section 230(10)(p). The statute provides for an expedited hearing where a licensee is charged solely with a violation of Education Law §6530(9). In such cases, a licensee is charged with misconduct based upon a prior criminal conviction in New York or another jurisdiction, or upon a prior administrative adjudication regarding conduct which would amount to professional misconduct, if committed in New York. The scope of an expedited hearing is limited to a determination of the nature and severity of the penalty to be imposed upon the licensee.

In the instant case, Respondent is charged with professional misconduct pursuant to Education Law §6530(9)(a)(i) [conviction of committing an act constituting a crime under New York law]. Respondent is also charged with professional misconduct pursuant to Education Law §6530(2) [practicing the profession fraudulently]. A copy of the Statement of Charges is attached to this Determination and Order in Appendix I.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers in parentheses refer to transcript page numbers or exhibits. These citations represent evidence found persuasive by the Hearing Committee in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence.

1. Byron Haroldo Rodas, R.P.A., (hereinafter "Respondent") was authorized to practice as a physician assistant in New York State on March 21, 1995 by the issuance of license number 005074 by the New York State Education Department. (Exhibit #3).

2. On or about October 6, 2011, in Dutchess County, New York, Respondent was charged with predatory assault against a child, as well as, criminal sexual act in the first degree (both felonies), and endangering the welfare of a child (a misdemeanor). Respondent was subsequently arraigned in Dutchess County Court. (Exhibit #6).

3. On or about February 5, 2012, Respondent prepared and/or submitted to the New York State Education Department a Registration Renewal Document, wherein he falsely answered "No" to the question "Since your last registration application, 3. Are

criminal charges pending against you in any court?" (Exhibit #7).

4. On or about July 11, 2012, in the Dutchess County court, State of New York, Respondent pled guilty to Course of Sexual conduct against a Child in the Second Degree (a felony), in violation of New York State Penal Law §130.80. On or about November 1, 2012, Respondent was placed on one (1) year of interim probation. (Exhibit #4; Exhibit #5).

5. If Respondent successfully complies with all terms and conditions of the interim probation, Respondent will be allowed to change his guilty plea to Endangering the Welfare of a Child (a misdemeanor), and will be finally sentenced to three years' probation, less time served. Failure to complete the terms and conditions of probation will result in the imposition of a prison term of up to seven years, followed by up to 5 years of supervised release. (Exhibit #5).

6. In pleading guilty, Respondent admitted that during the period July 14, 1999 through June 22, 2006, he engaged in a continuing course of conduct involving 2 or more acts of sexual contact with his daughter, who was less than 13 years old at the time. This conduct included touching the child's vagina for purposes of his own sexual gratification. (Exhibit #5, pp. 16-18).

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 evidence established that Respondent was convicted of committing a crime under New York State law. Therefore, he is guilty of professional misconduct in violation of Education Law §6530(9)(a)(i). Therefore, the Hearing Committee voted to sustain the First Specification of professional misconduct set forth in the Statement of Charges.

The evidence also established that Respondent falsely answered "No" on his registration renewal, when asked whether any criminal charges were pending against him. At the time Respondent submitted the renewal, he had already been charged with multiple felonies. At the hearing, Respondent tried to argue that his false answer was merely an oversight, as he completed the application in a rote fashion. The Hearing Committee found it far more likely that Respondent was seeking to hide the fact that he was facing criminal charges, in order to preserve his ability to practice as a physician assistant. Making a material misrepresentation on the renewal application constitutes the fraudulent practice of the profession, in violation of Education Law §6530(2). As a result, the Hearing

Committee voted to sustain the Second Specification of professional misconduct.

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 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.

Respondent is guilty of sexual abuse of a child - a particularly heinous crime. At the hearing, Respondent sought to minimize his crime, suggesting that he pled guilty to what he described as innocent behavior because he was pressured to plead guilty by prosecutors who threatened him with lies from their witnesses. Of course, Respondent presented no objective evidence which might support such claims.

However, the plea minutes (Exhibit #4) tell a very different story. The presiding judge extensively questioned Respondent as to the nature and terms of his plea, and ascertained that Respondent had not been pressured or coerced in any fashion. Respondent admitted to engaging in sexual contact

with his daughter, who was less than 13 years old at the time. Lastly, when asked by the Judge whether he was pleading guilty because he is guilty, Respondent answered "Yes". (Exhibit #4, p. 18). Respondent's criminal conduct alone warrants revocation.

Respondent is also guilty of fraud. He actively sought to hide the fact that he was facing criminal charges when filing his registration renewal. He violated the ethical standards of the profession in a failed attempt to preserve his career. This unethical behavior by itself provides an independent ground for revocation.

It is clear from his behavior at the hearing that Respondent still has not accepted responsibility for the consequence of his actions. Given the enormity of his breach of the moral and ethical standards of the profession reflected by his behavior, revocation is the only appropriate sanction in this case.

ORDER

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

1. The First and Second Specifications of professional misconduct, as set forth in the Statement of Charges (Exhibit # 1) are SUSTAINED;
2. Respondent's license to practice medicine as a physician assistant in New York State be and hereby is REVOKED;
3. This Determination and Order shall be effective upon service. Service shall be either by certified mail upon Respondent at Respondent's last known address and such service shall be effective upon receipt or seven days after mailing by certified mail, whichever is earlier, or by personal service and such service shall be effective upon receipt.

DATED: Tupper Lake, New York
August 14, 2013

REDACTED

AIRLIE A.C. CAMERON, M.D., M.P.H. (CHAIR)

MARY E. RAPPAZZO, M.D.
GAIL HOMICK HERRLING

TO: Michael G. Bass, Esq.
Assistant Counsel
New York State Department of Health
Corning Tower - Room 2512
Albany, New York 12237

Byron Haroldo Rodas, R.P.A.
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Byron Haroldo Rodas, R.P.A.
St. Francis Hospital
241 North Road
Poughkeepsie, New York 12601

Eoin McDonagh, Esq.
36 South Pearl Street
Albany, NY 12207

APPENDIX I

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

IN THE MATTER
OF
BYRON HAROLDO RODAS, R.P.A.
CO-13-02-0624-A

STATEMENT
OF
CHARGES

BYRON HAROLDO RODAS, R.P.A., the Respondent, was authorized to practice as a physician assistant in New York state on March 21, 1995, by the issuance of license number 005074 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about July 11, 2012, in the Dutchess County Court, State of New York, Respondent pled guilty to Course of Sexual Conduct against a Child in the Second Degree, in violation of New York State Penal Law Section 130.80, a felony. On or about November 1, 2012, in the Dutchess County Court, State of New York, Respondent was sentenced to one (1) year of Interim probation.

B. On or about October 6, 2011, in Dutchess County, New York, Respondent was charged with Predatory Assault against a Child, Criminal Sexual Act in the First Degree (both felonies) and Endangering the Welfare of a Child (a misdemeanor), and arraigned in Dutchess County Court.

C. On or about February 5, 2012, Respondent prepared and/or submitted to the New York State, Education Department, a Registration Renewal Document, wherein he falsely answered "No" to the question "Since your last registration application, 3. Are criminal charges pending against you in any court?"

SPECIFICATIONS

FIRST SPECIFICATION

Respondent violated New York Education Law Section 6530(9)(a)(i) by being convicted of committing an act constituting a crime under New York state law, in that Petitioner charges:

1. The facts in Paragraph A.

SECOND SPECIFICATION

Respondent violated New York Education Law Section 6530(2) by practicing the profession fraudulently, in that Petitioner charges:

2. The facts in Paragraphs B and C.

DATED: *April 22*, 2013
Albany, New York

REDACTED

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