



# STATE OF NEW YORK DEPARTMENT OF HEALTH

433 River Street, Suite 303 Troy, New York 12180-2299

Richard F. Daines, M.D.  
*Commissioner*

Wendy E. Saunders  
*Chief of Staff*

February 13, 2009

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Reed Craig Moskowitz, M.D.

Redacted Address

Michael S. Kelton, Esq.  
Abrams, Fensterman  
630 Third Avenue  
5<sup>th</sup> Floor  
New York, New York 10017

Ann Gayle, Esq.  
NYS Department of Health  
90 Church Street - 4<sup>th</sup> Floor  
New York, New York 10007

**RE: In the Matter of Reed Craig Moskowitz, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 09-21) 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  
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), (McKinney Supp. 2007) and §230-c subdivisions 1 through 5, (McKinney Supp. 2007), "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,

Redacted Signature

James F. Horan, Acting Director  
Bureau of Adjudication

JFH:cah

Enclosure

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

**IN THE MATTER  
OF  
REED CRAIG MOSKOWITZ, M.D.,  
Respondent**

**DETERMINATION  
AND  
ORDER**

BPMC #09-21

**COPY**

A Notice of Hearing dated March 27, 2008, was served upon the Respondent, **REED CRAIG MOSKOWITZ, M.D.**, and an Amended Statement of Charges was admitted in evidence on July 22, 2008. **FRED S. LEVINSON, M.D., (Chair), SHELDON GAYLIN, M.D. and WILLIAM MCCAFFERTY, ESQ.** duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee (hereinafter the Committee) in this matter pursuant to Section 230(10)(e) of the Public Health Law. **JEFFREY KIMMER, ADMINISTRATIVE LAW JUDGE**, served as the Administrative Officer. The Department of Health appeared by Ann Gayle, Esq., Associate Counsel. The Respondent appeared by Michael S. Kelton, Esq. Evidence was received and witnesses sworn and heard and transcripts of these proceedings were made.

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

### **PROCEDURAL HISTORY**

Date of Notice of Hearing:	March 27, 2008
Amended Statement of Charges:	July 22, 2008
Dates of Hearing:	May 1, 2008 June 13, 2008 June 27, 2008 July 22, 2008 September 26, 2008
Date of Deliberation:	December 5, 2008

### **STATEMENT OF CASE**

The Amended Statement of Charges alleged the Respondent violated the following six categories of professional misconduct: gross negligence, negligence on more than one occasion, engaging in sexual conduct with a patient, abusing a patient, moral unfitness and the fraudulent practice of medicine. A copy of the Amended Statement of Charges is attached to this Determination and Order and made a part thereof as Appendix I.

### **FINDINGS OF FACT**

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

Committee were established by at least a preponderance of the evidence. Having heard testimony and considered evidence presented by the Department of Health and the Respondent respectively, the Committee hereby makes the following findings of fact.

1. Reed Craig Moskowitz, M.D., (hereinafter " Respondent"), was authorized to practice medicine in New York State on or about July 1, 1972 by the issuance of license number 112448 by the New York State Education Department. (Ex. 2)
2. Once a physician-patient relationship is established between a psychiatrist and a patient, it never ends. (T. 316, 566).
3. It is inappropriate for a psychiatrist to have contact of a sexual nature with his patient. (T. 353, 357, 360)

#### **PATIENT A**

4. From on or about December 1983 into the Spring of 1994, the Respondent treated Patient A at his office providing medical treatment for Patient A's depression as her psychiatrist. (T. 32-33, 470-71)
5. During the course of the Respondent's treatment of Patient A from approximately 1984 to 1992, the Respondent engaged in physical contact with Patient A of a sexual nature including hugs, kisses and fondling. (T. 53, 59-67, 74)
6. During the course of the Respondent's treatment of Patient A from approximately 1992 to 1994, the Respondent engaged in physical contact with Patient A of a sexual nature, including fondling, sexual intercourse and oral sex. (T. 75-84, 87-88, 98)

**PATIENT B:**

7. From on or about June 1992 until late 1993 or early 1994, the Respondent treated Patient B, initially via telephone and subsequently at his office, providing medical treatment as her psychiatrist. (T. 181, 183, Ex. 7)
8. During the course of the Respondent's treatment of Patient B, the Respondent engaged in physical contact with Patient B of a sexual nature which included kissing, hugging, fondling and sexual intercourse. (T. 194, 197-198, 200-202, 254-255, 266-267)
9. Subsequent to the termination of the psychiatrist-patient relationship, the Respondent engaged in physical contact with Patient B which included having sexual intercourse at Patient B's apartment and at the Respondent's home. When Patient B became pregnant by Respondent, Patient B had an abortion which the Respondent paid for. (T. 198, 202, 204, 207, 208, 210-213, 254, 266)
10. On one or more occasions when the Respondent had sexual relations with Patient B at her apartment, he would bring and smoke marijuana at Patient B's apartment. (T. 203-204, 299-301)

**NYU HOSPITAL APPLICATION**

11. On or about May 31, 2007, the Respondent submitted an application for hospital credentialing to NYU Hospital Center which he knew contained false information. (T. 584-600; Exs. 3, 9, I & J, ALJ 1)

12. On or about June 24, 2005, the Respondent submitted an application for hospital credentialing to NYU Hospital Center which he knew contained false information. (T. 532-533, 541-543; Exs. 4, 9, I & J, ALJ 1.)

### **INSURANCE APPLICATION**

13. On June 27, 2008, the Respondent, with the intent to deceive the Board of Professional Medical Conduct, offered into evidence an application for insurance, which was intentionally altered. (T. 498-502, 532-539; Exs. 9, I & J)

### **CONCLUSIONS**

The Committee found the following factual allegations were proven by a preponderance of the evidence. (The numbers in parentheses following the allegation represent the finding of fact that supports the allegation.)

**Paragraph A.:** (2, 3, and 4);

**Paragraph B.:** (5);

**Paragraph B.1.:** (6);

**Paragraph B.2.a:** (7);

**Paragraph B.2.b.:** (8);

**Paragraph B.2.c.:** (7);

**Paragraph B.2.d.:** (7);

**Paragraph C.1.:** (11);

**Paragraph C.2:** (12);

**Paragraph D.:** (13)

Based on their findings that the above noted allegations were proven by a preponderance of the evidence, the Committee voted to sustain the following specifications: (The paragraph following the specification denotes the allegation proven from the Statement of Charges which supports sustaining the specification.)

### **ENGAGING IN PHYSICAL CONTACT OF A SEXUAL NATURE WITH A PATIENT**

**First and Second Specifications:** Paragraphs A., B., B.1., B.2.a. and B.2.c.;

### **NEGLIGENCE ON MORE THAN ONE OCCASION**

**Third Specification:** Paragraphs A., B., B.1., B.2.a.-d.;

### **GROSS NEGLIGENCE**

**Fourth and Fifth Specifications:** Paragraphs A., B., B.1., B.2.a.-d.;

### **MORAL UNFITNESS**

**Sixth and Seventh Specification:** Paragraphs A., B., B.1., B.2.a.-d.;

### **ABUSING A PATIENT**

**Eighth and Ninth Specifications:** Paragraphs A., B., B.1., B.2.a.-d.;

### **FRAUD IN THE PRACTICE OF MEDICINE**

**Tenth through Twelfth Specifications:** Paragraphs C.1, C.2 and D.

## **DISCUSSION**

Respondent was charged with conduct that fell within the six categorical professional misconduct within the meaning of Education Law §6530. This statute sets forth numerous forms of conduct that constitute professional misconduct. During the course of its deliberations on these charges, the Committee consulted a memorandum prepared by 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, among other conduct, gross negligence, negligence, and fraud in the practice of medicine.

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

**Negligence** is the failure to exercise the care that would be exercised by a reasonably prudent licensee under the circumstances.

**Gross Negligence** is the failure to exercise the care that would be exercised by a reasonably prudent physician under the circumstances, and which failure is manifested by conduct that is egregious or conspicuously bad.

**Fraudulent Practice of the Profession** is an intentional misrepresentation or concealment of a known fact. An individual's knowledge that he/she is making a misrepresentation or concealing a known 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 Committee unanimously concluded, by a preponderance of the evidence, that all of the specifications of professional misconduct should be sustained. The rationale for the Committee's conclusions is set forth below.

### **PATIENTS A & B:**

The Committee found both Patient A and Patient B to be credible. They both testified in a forthright manner and the degree of detail they provided in their testimony regarding and surrounding their sexual relationship with the Respondent was convincing and compelling.

In the case of Patient A, such details of the relationship included her description of the couch in the Respondent's office and that it opened up into a bed; that the Respondent asked her to get fitted for a diaphragm; the description of how the closet light was left on with the door slightly ajar; and the Respondent complaining about Patient A's makeup staining his shirt.

In the case of Patient B, her testimony included detailed accounts of how the Respondent asked her to get tested for HIV; an awkward incident where they inadvertently met friends of the Respondent's in a movie queue; a description of the Respondent's house; Patient B's pregnancy and the Respondent's paying for her abortion. Both witnesses were more believable than the Respondent.

The Respondent introduced evidence relating to physical characteristics of his penis, specifically that he had melanosis, which causes areas of his penis to have a dark pigmentation. Neither Patient A nor Patient B noted this physical characteristic in their testimony. Notwithstanding that, the Committee found the both patients' testimony to be credible.

The Committee found the Respondent at times to be evasive or not forthright in his answers. When asked if he always jogged at the beginning of the day or at the end of the day he answered "no". But then asked when did he jog, he answered at the beginning or end of the day (T. 547, 584).

When questioned about why he did not provide the OPMC in December 2004 with notes he had relating to his treatment of Patient B, he testified that because the OPMC had requested his "complete medical record" for Patient B, and he only had "notes" and not "a complete record" he did not provide the OPMC with the notes he had relating to Patient B (T. 556-561). It is just not believable that the Respondent did not know the OPMC was requesting any records the Respondent had pertaining to Patient B.

When asked a straightforward question of whether details of his penis are clearer in a photograph taken of it in a well-lit room as opposed to what could be seen in a dimly-lit room, the Respondent said "no" (T. 573). That answer was deemed not credible.

Both patients' subsequent psychiatrists testified that both Patients A and B respectively, had a firm grasp on reality and know the difference between dreams and fantasies as opposed to reality. The subsequent treating psychiatrists also testified that both were truthful and honest and that neither was psychotic.

Patient A's subsequent treating psychiatrist, who has been treating Patient A for the last five years, testified that Patient A's reality testing is perfectly intact, there is no blurring of fantasy and reality on her part and that she is very truthful and honest. He also testified that Patient A is not delusional or psychotic.

Patient B's subsequent treating psychiatrist who treated Patient B for several years, did agree that Patient B has a diagnosis of borderline personality disorder, but notwithstanding that diagnosis, her reality testing was intact. She was completely truthful, nor did she have any antisocial or sociopathic behavior traits, and she is not psychotic.

The Respondent presented Dr. Martin Williams, a Psychologist. Dr. Williams' testimony was based on his review of the transcript of Patients A and B's testimony, the testimony of the Department's expert, the Respondent's testimony and his notes on Patient B. He has never met either Patient A or Patient B.

He testified that he had no knowledge whether either patients' complaints were true or false, has no personal knowledge of either patient and cannot state whether either patient has borderline personality disorder. His testimony was deemed to be superfluous by the Committee.

### **NYU APPLICATION**

The Committee concluded that in both instances relating to the submission of an application for credentialing of NYU Hospital, the Respondent knowingly submitted a document containing false information.

The application posed the question of whether there was a pending investigation of the Respondent by the State OPMC. At the time that these applications were submitted, the Respondent knew he was under investigation by the NYS Office of Professional Medical Conduct.

The Committee inferred from the plain language of the application that the Respondent knew his answer on both applications to the question in Roman numeral paragraph XII was false when he answered it. The Committee found that Respondent's explanation that it was a mistake on his part to be not credible and his conduct was fraudulent.

## INSURANCE APPLICATION

In the course of the hearing the Respondent submitted in evidence copies of two separate applications for medical malpractice insurance: one for 2006 and one for 2007.

These insurance applications were purportedly introduced to support the Respondent's claim that his inaccurate responses in the NYU Hospital Credentialing questionnaire were oversights and not deliberate false submissions. On both of these insurance applications the Respondent answered "yes" to questions of whether he was a subject of an investigation by a government agency, and whether he was aware of an incident which may give rise to a claim or suit. On both insurance applications the page containing these questions has a series of questions, and to the left of each question are two pre-printed and check-off boxes labelled "yes" and "no" for the applicant to indicate a yes or no answer.

On the 2006 insurance application that the Respondent submitted in evidence, the pre-printed "no" box and the word "no" was initially either completely crossed out or "whited out," and then rewritten in the application by hand.

The Department then submitted in evidence a copy of the relevant page of the **same 2006** insurance application that it had obtained. However, the Department's version differed from what the Respondent had offered in evidence in that on the very same page both the pre-printed "no" check-off box and the word "no" are completely blacked out for the two questions noted, and were not rewritten.

When questioned about the discrepancy between his version of the 2006 insurance application and the one the Department had obtained, he testified under oath that he had not altered his version of the application after getting a copy from the insurance carrier. The Committee found his answer

incredible. The Committee concluded that the Respondent upon receipt of a copy of the 2006 insurance application had printed a "no" box and "no" next to the pertinent questions to make it appear he initially answered them correctly and did not first answer "no" and then change his answer to accurately reflect the facts. The Committee concluded his intent was to deceive the Board.

The fact that he accurately answered the questions relating to his being investigated on the insurance applications did not bolster the Respondent's claim that his erroneous responses on the NYU Hospital Credentialing applications were inadvertent. The two types of documents are very different. A false answer on the credentialing application would result in the Respondent being denied privileges and affiliation at NYU Hospital, an institution to which he testified he does not admit any patients. On the other hand, a false answer to a question on the malpractice insurance application could result in a denial of coverage for a suit against the Respondent with the resultant personal out-of-pocket financial impact.

The Committee concluded that Respondent gave false testimony at an BPMC proceeding with intent to deceive the Board. His appearance at the hearing was within the purview of the practice of medicine. This amounted to the fraudulent practice of medicine.

### **PENALTY**

The Committee feels that the Respondent has violated the public trust which was bestowed upon him when he was granted a license to practice medicine in this State. It is the possession of a medical license and the trust associated with that license that permits patients to present themselves before that physician in the most vulnerable ways imaginable. This is especially true in the psychiatrist-patient setting.

It was by virtue of his medical license that Respondent gained the trust of Patients A and B. It was their confidence in Respondent's position as their psychiatrist that led them to open up and reveal to Respondent their innermost selves. Respondent abused his position of trust and authority, using the intimate knowledge provided to him by Patients A and B for his own gain and pleasure, rather than as an aid to treat and heal his patients.

The Committee has a responsibility to protect the patients of the State. The issue before this Committee is to choose a penalty that offers the best protection to the patient public of the State. The Committee finds that the Respondent has committed sufficiently egregious misconduct that is worthy of the revocation of his medical license.

The Committee concluded that the only way to ensure the future safety of patients is to revoke Respondent's medical license. Anything other than that sanction would risk a recurrence of this behavior. The public should not bear that risk.

The Committee concludes that the Respondent's conduct in this matter has violated the public trust with regards to Patients A and B, by his filing of false hospital accreditation applications and his proffering of an altered insurance application as authentic.

**ORDER**

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

1. The **First through Twelfth Specifications** of professional misconduct, as set forth in the Amended Statement of Charges (Appendix I, attached hereto and made a part of this Determination and Order) are **SUSTAINED**;
2. The Respondent's license to practice medicine in New York State is **REVOKED**.

**DATED: Port St. Lucie, Florida**

*February 11*, 2009

Redacted Signature

~~FRED S. LEVINSON, M.D. (Chair)~~

**SHELDON GAYLIN, M.D.  
WILLIAM MC CAFFERTY, ESQ**

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## APPENDIX I

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

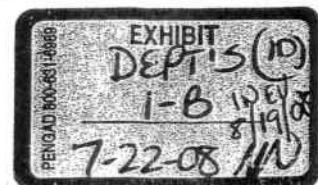
IN THE MATTER  
OF  
REED CRAIG MOSKOWITZ, M.D.

AMENDED  
STATEMENT OF  
CHARGES

REED CRAIG MOSKOWITZ, M.D., the Respondent, was authorized to practice medicine in New York State on or about July 1, 1972, by the issuance of license number 112448 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

- A. Respondent, a Psychiatrist, treated Patient A, d.o.b. 8/18/60, at his office, which was located at 26 East 93<sup>rd</sup> Street, New York, New York, and then at his office, which was relocated to 17 East 96<sup>th</sup> Street, New York, New York, from approximately December 1983 to April 1994.
- In the course of ongoing psychotherapy, Respondent acted inappropriately toward Patient A by engaging in inappropriate sexual behavior with her from approximately 1984 to 1992, and by engaging in more explicit inappropriate sexual activity with her from approximately 1992 to 1994. The inappropriate sexual behavior and activity included, but was not limited to, kissing, hugging, fondling, oral sex, and sexual intercourse.
- B. Respondent, a Psychiatrist, treated Patient B, d.o.b. 7/30/57, at his office, located at 17 East 96<sup>th</sup> Street, New York, New York, for several years beginning in 1992.
1. In the course of ongoing psychotherapy, Respondent acted inappropriately toward Patient B by engaging in inappropriate sexual behavior and activity with Patient B which included, but



was not limited to kissing, hugging, fondling, and sexual intercourse.

2. When formal therapy between Respondent and Patient B ended, Respondent acted inappropriately toward Patient B as follows:

- a. Respondent and Patient B continued their sexual relationship at Patient B's home.
- b. Respondent would bring marijuana to Patient B's home to smoke it.
- c. On one occasion, Respondent brought Patient B to his home where they engaged in sexual activity.
- d. When Patient B became pregnant by Respondent, Respondent reimbursed Patient B for her abortion.

C. With the intention of deceiving New York University Medical Center:

1. Respondent, on or about May 31, 2007, in his Hospital Credentialing Information Application to NYU Hospitals Center, knowingly and intentionally falsely answered "No" to the question which read, "Have any of the entities described in column I below taken any of the actions listed in column II?"
  - a. Column I included "Government Agency, including: ... Office of Professional Medical Conduct, ... Department of Health..."
  - b. Column II included "... Pending Investigation ..."
2. Respondent, on or about June 24, 2005, in his Hospital Credentialing Information Application to NYU Hospitals Center, knowingly and intentionally falsely answered "No" to the question which read, "Have any of the entities described in column I below

taken any of the actions listed in column II?"

- a. Column I included "Government Agency, including: ...  
Office of Professional Medical Conduct, ... Department  
of Health..."
- b. Column II included "... Pending Investigation ..."

- D. On June 27, 2008, Respondent submitted Respondent's Exhibit I to the Board for Professional Medical Conduct, a document he knowingly and intentionally falsely altered with the intention of deceiving the Board for Professional Medical Conduct.

### **SPECIFICATION OF CHARGES**

#### **FIRST AND SECOND SPECIFICATIONS**

#### **ENGAGING IN SEXUAL CONDUCT WITH A PATIENT**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law 6530(44) by engaging in physical contact of a sexual nature with a patient, as alleged in the facts of:

1. Paragraph A.
2. Paragraphs B, B1, B2, B2a, and/or B2c.

#### **THIRD SPECIFICATION**

#### **NEGLIGENCE ON MORE THAN ONE OCCASION**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(3) by practicing the profession of medicine with negligence on more than one occasion as alleged in the facts of two or more of the

following:

3. Paragraphs A and/or B and B1, B2, and B2a-d.

#### **FOURTH AND FIFTH SPECIFICATIONS**

##### **GROSS NEGLIGENCE**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(4) by practicing the profession of medicine with gross negligence as alleged in the facts of the following:

4. Paragraph A.
5. Paragraphs B and B1, B2, and B2a-d.

#### **SIXTH AND SEVENTH SPECIFICATIONS**

##### **MORAL UNFITNESS**

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

6. Paragraph A.
7. Paragraphs B and B1, B2, and B2a-d.

#### **EIGHTH AND NINTH SPECIFICATIONS**

##### **WILLFULLY HARASSING, ABUSING OR INTIMIDATING A PATIENT**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(31) by willfully harassing, abusing, or intimidating a

patient either physically or verbally, as alleged in the facts of:

8. Paragraph A.
9. Paragraphs B and B1, B2, and B2a-c.

**TENTH THROUGH TWELFTH SPECIFICATIONS**  
**FRAUDULENT PRACTICE**

Respondent is charged with committing professional misconduct as defined by N.Y. Educ. Law §6530(2) by practicing the profession of medicine fraudulently as alleged in the facts of the following:

10. Paragraph C, C1, and C1a and b.
11. Paragraph C, C2, and C2a and b.
12. Paragraph D.

DATE: July 22, 2008  
New York, New York

Redacted Signature

\_\_\_\_\_  
Roy Nemerson  
Deputy Counsel  
Bureau of Professional Medical Conduct