

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

IN THE MATTER

OF

MARY ANN DUKE, M.D.
CO-05-01-0320-A

COMMISSIONER'S
SUMMARY
ORDER

TO: MARY ANN DUKE, M.D.
10220 Democracy Blvd.
Potomac, MD 20854-4438

The undersigned, Antonia C. Novello, M.D., M.P.H., Dr. P.H., Commissioner of Health, pursuant to N.Y. Public Health Law §230, upon the recommendation of a committee on Professional Medical Conduct of the State Board for Professional Medical Conduct, has determined that the duly authorized professional disciplinary agency of another jurisdiction, the State of Maryland, Board of Physician Quality Assurance, (hereinafter "Maryland Board") has made a finding substantially equivalent to a finding that the practice of medicine by **MARY ANN DUKE, M.D.**, Respondent, licensed to practice medicine in New York state on July 14, 1986, by license number 166948, in that jurisdiction, constitutes an imminent danger to the health, safety, and welfare of its people, as is more fully set forth in documents of the State of Maryland, attached hereto, as "Appendix A," and made a part hereof.

It is, therefore:

ORDERED, pursuant to N.Y. Public Health Law Section 230(12)(b), that effective immediately, **MARY ANN DUKE, M.D.**, Respondent, shall not practice medicine in the state of New York or in any other jurisdiction where that practice is dependent on a valid New York state license to practice medicine.

Any practice of medicine in the state of New York or in any other jurisdiction where that practice is dependent on a valid New York state license to practice medicine in violation of this Commissioner's Summary Order shall constitute Professional Misconduct within the meaning of N.Y. Educ. Law §6530 and may constitute unauthorized medical practice, a felony defined by N.Y. Educ. Law §6512.

This Order shall remain in effect until the final conclusion of a hearing that shall commence within thirty (30) days after the final conclusion of the disciplinary proceeding in the state of Maryland. The hearing will be held pursuant to the provisions of NY. Pub. Health Law §230, and N.Y. State Admin. Proc. Act §301-307 and 401. The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct, on a date and at a location to be set forth in a written Notice of Referral Proceeding, together with a Statement of Charges, to be provided to Respondent after the final conclusion of the Maryland proceeding. Said written Notice may be provided in person, by mail or by other means. If Respondent wishes to be provided said written notice at an address other than those set forth above, Respondent shall so notify, in writing, both the attorney whose name is set forth on this Order and the Director of the Office of Professional Medical Conduct, at the addresses set forth below.

Respondent shall notify the Director of the Office of Professional Medical Conduct, New York State Department of Health, 433 River Street, Suite 303, Troy, NY 12180-2299 via Certified Mail, Return Receipt Requested, of the final conclusion of the Maryland proceeding, immediately upon such conclusion.

THESE PROCEEDINGS MAY RESULT IN A
DETERMINATION THAT YOUR LICENSE TO
PRACTICE MEDICINE IN NEW YORK STATE BE
REVOKED OR SUSPENDED AND/OR THAT YOU
BE FINED OR SUBJECT TO OTHER SANCTIONS
SET FORTH IN NEW YORK PUBLIC HEALTH LAW
SECTION 230-A. YOU ARE URGED TO OBTAIN AN
ATTORNEY FOR THIS MATTER.

DATE: Albany, New York

March 10, 2005



ANTONIA C. NOVELLO, M.D., M.P.H., Dr. P. H.
Commissioner

Inquires should be addressed to:

Robert Bogan
Associate Counsel
Office of Professional Medical Conduct
433 River Street – Suite 303
Troy, New York 12180
(518) 402-0828

IN THE MATTER OF
MARY ANN DUKE, M.D.

Respondent

License Number: D38796

* * * * *

* BEFORE THE
* MARYLAND BOARD OF
* PHYSICIANS
* Case Number: 2004-0390

**ORDER FOR SUMMARY SUSPENSION
OF LICENSE TO PRACTICE MEDICINE**

The Maryland Board of Physicians (the "Board") hereby **SUMMARILY SUSPENDS** the license of Mary Ann Duke, (the "Respondent") (D.O.B. 06/06/61), License Number D38796, to practice medicine in the State of Maryland. The Board takes such action pursuant to its authority under Md. State Gov't Code Ann. § 10-226(c)(2003) concluding that the public health, safety or welfare imperatively requires emergency action.

INVESTIGATIVE FINDINGS

Based on information received by, and made known to the Board, and the investigatory information obtained by, received by and made known to and available to the Board and the Office of the Attorney General, including the instances described below, the Board has reason to believe that the following facts are true:¹

1. At all times relevant hereto, the Respondent was and is licensed to practice medicine in the State of Maryland. The Respondent was

¹ The statements regarding the Respondent's conduct are intended to provide the Respondent with notice of the basis of the suspension and the charges. They are not intended as, and do not necessarily represent a complete description of the evidence, either documentary or testimonial, to be offered against the Respondent in connection with this matter.

originally licensed to practice medicine on July 31, 1989 and was issued license number D38796. The Respondent also holds inactive licenses in Virginia, the District of Columbia and New York state.

2. At the time of the incidents described herein, the Respondent maintained an office for the practice of ophthalmology located at 10220 Democracy Boulevard, Potomac, Maryland 20854.² As of October 2003, the Respondent was granted privileges at the Johns Hopkins Wilmer Eye Institute at Green Spring.
3. On November 16, 2004, Board staff received an anonymous complaint that, *inter alia*, the Respondent had recently treated patients after consuming alcohol. Prior to receiving the November 16, 2004 complaint, the Board had been aware of the Respondent as a result her resignation of privileges at Suburban Hospital effective December 9, 2003.
4. On November 16, 2004, the Board's investigation of the complaint continued concerning the Respondent, the results of which are set forth below.
5. On September 9, 2002, the Respondent was reported by a Suburban Hospital staff member to have arrived almost one (1) hour late for two (2) cataract surgeries that had been scheduled for 7:40 a.m. The Respondent's colleagues also reported that the Respondent smelled of alcohol. The Respondent completed the surgeries without incident. As a result of this incident, the Respondent was referred by hospital authorities

² The Respondent's office adjoins her home.

to the Physician Rehabilitation Committee ("PRC") of the Medical and Chirurgical Faculty of Maryland ("Med-Chi").

6. Med-Chi PRC staff thereafter reported to Suburban Hospital authorities that the Respondent had denied drinking alcohol before the surgeries. The Respondent described her drinking to PRC staff as "light," and that she drinks approximately one (1) or two (2) glasses of wine once or twice a week.
7. Med-Chi PRC concluded that, based on interviews with the Respondent, some of her colleagues, boyfriend and boyfriend's father, there was no information to suggest that she had a drinking problem and that the plan was to allow her to "self-moderate."
8. On May 3, 2003 at 8:26 p.m., Montgomery County police responded to a 911 call from the Respondent's home from a woman "breathing heavily saying, 'He's beating me up.'" According to the police report, when police entered the Respondent's home, they found her naked and sitting on the floor, "screaming wildly" into the telephone. The Respondent's nine-month old baby was found crying on the floor several feet from the Respondent. There was no one else in the house. After the officers provided the Respondent with a coat, she "stormed into the kitchen" and made a telephone call to an unidentified person. The Respondent "screamed" "in a rage" into the telephone for several minutes. The reporting officer heard the Respondent repeat several times during the call that she will "kill them all." After the Respondent completed the call, the officers handcuffed her.

The Respondent "continued to scream in a rage" stating, "If you keep me from my kids, I'll kill myself."

9. The reporting officer, who had responded to calls at the Respondent's home in the past, had observed her to be severely intoxicated on those occasions, but had not previously heard her speak of killing and/or suicide.³ The officer completed a Petition for Emergency Evaluation and accompanied the Respondent to Suburban Hospital.
10. On May 3, 2002 at 9:45 p.m., the Respondent arrived at Suburban Hospital in restraints and was reported to be "combative, yelling profanities at EMS/police/nurse." During her psycho-social assessment, the Respondent admitted that she drank alcohol (two (2) drinks every night) and had had three (3) drinks that evening. The Respondent refused to submit to a breathalyzer test or blood sample upon admission; however, a urine sample indicated that her alcohol level was 0.22. The Respondent's assessment was stopped until her blood alcohol was below 0.1.
11. On the morning of May 4, 2003, the Respondent was discharged from Suburban Hospital. The discharge note states that the Respondent was "very apologetic...promises no more alcohol, wants to go back to children."

³ Montgomery County police had previously responded to calls from the Respondent's home on the evenings of April 21, 2001 and September 24, 2001. On April 21, 2001 the Respondent was reported to be intoxicated. On September 24, 2001, the Respondent was reported to be unconscious after falling down her steps after drinking and taking a sleeping medication.

12. In June 2003, the Med-Chi PRC received an anonymous report that the Respondent had a serious drinking problem and needed help. The PRC thereafter made several attempts to contact the Respondent.
13. In August 2003, the Respondent responded to the PRC's request for a meeting. She was accompanied by the grandfather of her youngest child. According to the PRC report of the meeting, the Respondent "steadfastly denied that she had a substance abuse problem, but did tell us that she was seeing a Dr. Salerian⁴ for stress related issues."
14. According to the PRC, the Respondent "initially agreed to sign [an advocacy] contract, but balked at the length of time for monitoring and toxicology screening protocol."⁵ The Respondent resisted the PRC's suggestion that she undergo an independent evaluation, but in September 2003 agreed to see Ellen McDaniel, M.D.
15. Effective October 16, 2003, the Respondent was granted temporary privileges at the Johns Hopkins Hospital Wilmer Eye Institute. The Respondent had requested staff privileges to conduct various types of ophthalmological surgeries, including cataract and laser surgery. Effective November 3, 2003, the Respondent's appointment became permanent.
16. On November 3, 2003, Dr. McDaniel issued her report of her assessment of the Respondent. Dr. McDaniel reported, *inter alia*, that the Respondent acknowledged binge drinking for the past couple of years, typically after a "big argument" with her ex-husband or with her current boyfriend. Dr.

⁴ Dr. Alen Salerian is a psychiatrist.

⁵ The Respondent had not signed an Advocacy Contract as of March 2004.

McDaniel provided the following initial diagnosis of the Respondent:
Bipolar II disorder, with hypomania, r/o Bipolar I Disorder; r/o
antidepressant-induced mania; alcohol abuse.

17. Dr. McDaniel concluded, in pertinent part:

[The Respondent]'s behavior and mental status findings strongly suggest the presence of a hypomanic episode in a Bipolar Disorder....[The Respondent] has been under an extraordinary amount of stress for the past several years, which certainly could have contributed (as well as was increased by) the onset of the Bipolar Disorder....[The Respondent] is clearly a very talented individual who has accomplished a lot on her own. She is dedicated to her children and to her work but could lose both if her mental illness is not brought under control...I recommend life-long contact with a psychiatrist for medication management and counseling/crisis intervention as needed...At the present time, [the Respondent] needs intensive intervention. The disorder does impact her judgment. I have no evidence that her illness has impacted her professional work but it has the potential to do so.

18. Dr. McDaniel referred the Respondent for psychiatric treatment.
19. On the morning of December 8, 2003, the Respondent was scheduled for two (2) surgeries at Suburban Hospital. The pre-op nurses observed that the Respondent appeared to be unsteady and had a smell of alcohol about her.
20. The Respondent was confronted by hospital officials. She denied drinking alcohol or using drugs other than a glass of wine the previous evening.
21. After canceling the surgeries, the Respondent submitted to a blood test for alcohol and a urine screen for drugs.
22. The results of the Respondent's blood alcohol test was 0.085. Her urine screen was positive for benzodiazepines and opiates, specifically hydrocodone, hydromorphone and oxycodone.

23. When hospital authorities advised the Respondent of the results of her blood alcohol test, the Respondent continued to deny alcohol use and asserted that the hospital had "rigged" the test.
24. On December 9, 2003, the Respondent resigned her privileges at Suburban Hospital.
25. On December 31, 2003, the Respondent met with the Med-Chi PRC Director who urged her to undergo an inpatient evaluation. The Respondent resisted this suggestion.
26. In January 2004, the Respondent was admitted to a substance abuse treatment facility for detoxification and rehabilitation.
27. The Respondent discontinued treatment at the treatment facility two (2) or three (3) days after her admission.
28. On August 15, 2004, the Respondent sought admission to Father Martin's Ashley ("Ashley"), a substance abuse treatment facility.
29. On September 11, 2004, the Respondent was discharged from Ashley.
30. During September and October 2004, the Respondent's then office manager⁶ observed the Respondent drinking wine before and after treating patients in her Potomac office. On one occasion, the office manager observed the Respondent drinking wine after she had dilated a patient's pupils. On another occasion, the Respondent left her office in between patients to "run some errands." The office manager discovered that the Respondent had bought wine, which she drank during the

⁶ The office manager left the Respondent's employ in November 2004 because of her concern regarding the Respondent's sobriety.

remainder of her working day. On several occasions, the office manager cancelled patients' appointments because of her concern regarding the Respondent's sobriety.

31. Following the Respondent's discharge from Ashley, the office manager found empty bottles of vanilla extract⁷ in the Respondent's trash.
32. On November 2, 2004, the Respondent's boyfriend telephoned the office manager and requested that she come to his house to assist him with the Respondent. The office manager found the Respondent lying unconscious on the bathroom floor. The Respondent was taken by ambulance to Suburban Hospital.
33. On the morning of November 3, 2004, the Respondent telephoned the office manager from the hospital and asked her to come and pick her up. The office manager refused. Later that morning, the Respondent called the office manager and informed her that she was on her way to the office. That day, the office manager called the pharmacists in the area to cancel prescriptions, including those for Ativan, that the Respondent had called in for herself and in the name of the grandfather of her youngest child.⁸
34. On or around November 9, 2004, Patient A⁹ presented to the Respondent's Potomac office with an eye infection. Patient A had been a

⁷ Vanilla extract has a 35% alcohol content.

⁸ Board staff contacted one of the local pharmacists and confirmed that the Respondent had called in prescription for Ativan for herself and her youngest child's grandfather. The pharmacist reported that the Respondent had asked whether the pharmacist was going to contact the Board. The pharmacist also confirmed that the office manager had contacted her to cancel the prescriptions.

⁹ To ensure confidentiality, patient names are not used in this Order. The Respondent may obtain the identity of the patients referred to in this Order by contacting the administrative prosecutor.

patient of the Respondent for approximately five (5) years. When Patient A arrived at the Respondent's office, there were at least two (2) other patients in the waiting room, including young children.

35. Patient A observed that the Respondent's appearance was different than that in previous visits; the Respondent's face was puffy, her pupils were dilated and she had lost weight. The Respondent was not steady on her feet and could hardly walk. When the Respondent attempted to sit on a stool, she missed the stool and fell to the floor.

36. When Patient A asked the Respondent what was wrong, the Respondent began crying uncontrollably about her children and other personal matters. Patient A was unable to calm the Respondent.

37. Patient A, who is a nurse, tried to convince the Respondent not to treat the other patients, particularly the children; however, the Respondent did not want to cancel the patients' appointments.

38. The Respondent invited Patient A into her home. Patient A observed the Respondent swaying from wall to wall. Upon entering the Respondent's kitchen, Patient A observed the Respondent drink a miniature bottle of wine in one swallow.

39. The Respondent spoke of committing suicide on at least four (4) occasions in Patient A's presence. Patient A was finally able to convince the Respondent not to treat the waiting patients and to contact a friend to come over and stay with her.

40. On November 10, 2004 at approximately 3:30 p.m., the Respondent was apprehended by a Montgomery County police officer after the officer observed the Respondent drive her car onto the front lawn of a home on Democracy Boulevard and then drive eastbound in the westbound lane of traffic. The Respondent also attempted to ram the officer's cruiser. The Respondent was reported to be incoherent and was unable to tell the police officer what had happened or where she was. The Respondent refused to take a breathalyzer test, but the officer reported that she registered a .05 blood alcohol just by placing the breathalyzer near her mouth. The Respondent was transported by ambulance to Shady Grove Hospital.

41. On or around November 18, 2004, Patient B, a law school student,¹⁰ presented to the Respondent's Potomac office for an eye examination. Patient B was accompanied by his girlfriend. While waiting for his appointment, Patient B heard the Respondent use profanity while speaking on the telephone. After dilating Patient B's pupils, the Respondent excused herself to use the restroom and was gone for approximately ten (10) minutes. Prior to going to the restroom, the Respondent had been brusque and agitated. When she returned, she appeared to be placid and calm and had a "goofy" smile. The Respondent lost her train of thought throughout the visit, and referred to Patient B's girlfriend as the patient. The Respondent misquoted the price of contact

¹⁰ Patient B's age is unknown because the Respondent was unable to locate his file when served a subpoena for patient records by the Board.

lenses to Patient B, stating that the price for one (1) pair was \$500 and the price for two (2) pair was \$250.

42. On November 23, 2004, in furtherance of the Board investigation, Board staff served the Respondent at her Potomac office with several subpoenas for appointment logs, sign-in sheets and patient records. Board staff smelled alcohol on the Respondent's breath and confronted her on several occasions. The Respondent responded, "no alcohol on board," and that the smell was Listerine.

43. Board staff warned the Respondent that it is a violation of the Maryland Medical Practice Act to treat patients under the influence of alcohol and the Respondent shook her head in agreement. She nonetheless continued to treat patients. Board staff observed the Respondent exiting a treating room on several occasions to ask her new office manager¹¹ what she (the Respondent) was doing. The office manager replied that she was dilating the patient's pupils.

44. When Board staff compared the Respondent's appointment logs with patient records, it was unclear whether one (1) patient had in fact been seen by the Respondent a week earlier because there was no entry in her record on the date of her appointment. The Respondent said she would "take care of it" and began writing in the patient's medical record.

45. Throughout the November 23, 2004 visit, Board staff observed that the Respondent's hands were shaking and that she was unsteady on her feet,

¹¹The Respondent hired a new office manager shortly after her former office manager quit earlier in November 2004.

taking small cautious steps from side to side so as not to lose her balance, and tripping when she tried to walk to the facsimile machine.

46. On the afternoon of November 23, 2004, the Respondent presented to Shady Grove Hospital for various blood tests. Her blood alcohol level at that time was 79 mg/dl.

CONCLUSIONS OF LAW

Based on the foregoing investigative facts, the Board concludes that the public health, safety or welfare imperatively require emergency action in this case, pursuant to Md. State Gov't Code Ann. § 10-266(c)(2)(2003).

ORDER

It is this _____ day of November 2004, by a majority of the quorum of the Board:

ORDERED that pursuant to the authority vested by Md. State Gov't Code Ann. §10-226(c)(2), the Respondent's license to practice medicine in the State of Maryland be and hereby is **SUMMARILY SUSPENDED**; and be it further

ORDERED that a post-deprivation hearing in accordance with Code Md. Regs. tit. 10, § 32.02.05.B(7) C, D and E on the Summary Suspension has been scheduled for December 15, 2004 at 11:00 a.m., at the Maryland Board of Physicians, Room 108-109, 4201 Patterson Avenue, Baltimore, Maryland 21215-0095; and be it further

ORDERED that at the conclusion of the **SUMMARY SUSPENSION** hearing held before the Board, the Respondent, if dissatisfied with the result of the hearing, may request within ten (10) days an evidentiary hearing, such hearing to be held within thirty (30) days of the request, before an Administrative Law Judge at the Office of Administrative Hearings, Administrative Law Building, 11101 Gilroy Road, Hunt Valley, Maryland 21031-1301; and be it further

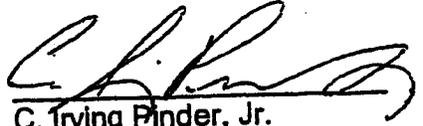
ORDERED that on presentation of this Order, the Respondent **SHALL SURRENDER** to the Board's investigator the following items:

- (1) her original Maryland License D38796;
- (2) her current renewal certificate;
- (3) DEA Certificate of Registration BD1945724;
- (4) Maryland Controlled Dangerous Substance Registration M29517;
- (5) All controlled dangerous substances in her possession and/or practice;
- (6) All Medical Assistance prescription forms;
- (7) All prescription forms and pads in her possession and/or practice; and
- (8) Any and all prescription pads on which her name and DEA number are imprinted; and be it further

ORDERED that a copy of this Order of Summary Suspension shall be filed with the Board in accordance with Md. Health Occ. Code Ann. § 14-407(2000); and be it further

ORDERED that this is a Final Order of the Board and, as such, is a
PUBLIC DOCUMENT pursuant to Md. State Gov't Code Ann. § 10-611 et seq.

11/30/04
Date


C. Irving Pinder, Jr.
Executive Director
Maryland Board of Physicians