



*New York State Board for Professional Medical Conduct*

433 River Street, Suite 303 • Troy, New York 12180-2299 • (518) 402-0863

*Richard F. Daines, M.D.*  
*Commissioner*  
*NYS Department of Health*  
*James W. Clyne, Jr.*  
*Executive Deputy Commissioner*  
*Keith W. Servis, Director*  
*Office of Professional Medical Conduct*

*Kendrick A. Sears, M.D.*  
*Chair*  
*Carmela Torrelli*  
*Vice Chair*  
*Katherine A. Hawkins, M.D., J.D.*  
*Executive Secretary*

September 24, 2009

***CERTIFIED MAIL-RETURN RECEIPT REQUESTED***

Jenny M. Daniel, R.P.A

Redacted Address

Re: License No. 011328

Dear Ms. Daniel:

Enclosed is a copy of BPMC #09-179 of the New York State Board for Professional Medical Conduct. This order and any penalty provided therein goes into effect October 1, 2009.

**If the penalty imposed by this Order is a surrender, revocation or suspension, you are required to deliver your license and registration within five (5) days of receipt of this Order** and return it to the Office of Professional Medical Conduct, New York State Department of Health, 433 River Street, Suite 303, Troy, NY 12180-2299

Sincerely,

Redacted Signature

Katherine A. Hawkins, M.D., J.D.  
Executive Secretary  
Board for Professional Medical Conduct

Enclosure

cc: Lawrence Kobak, Esq.  
Abrams, Fensterman, Fensterman, Eisman,  
Greenberg, Formato and Einiger, LLP  
Suite 107  
111 Marcus Avenue  
Lake Success, New York 11042

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

IN THE MATTER  
OF  
JENNY M. DANIEL, R.P.A.

CONSENT  
ORDER

#09-179

Upon the application of (Respondent) JENNY M. DANIEL, R.P.A. in the attached Consent Agreement and Order, which is made a part of this Consent Order, it is

ORDERED, that the Consent Agreement, and its terms, are adopted and it is further

ORDERED, that this Consent Order shall be effective upon issuance by the Board, either

- by mailing of a copy of this Consent Order, either by first class mail to Respondent at the address in the attached Consent Agreement or by certified mail to Respondent's attorney, OR
- upon facsimile transmission to Respondent or Respondent's attorney, whichever is first.

SO ORDERED.

DATE: 9/23/09

Redacted Signature

KENDRICK A. SEARS, M.D.  
Chair  
State Board for Professional Medical Conduct

**IN THE MATTER  
OF  
JENNY M. DANIEL, R.P.A.**

**CONSENT  
AGREEMENT  
AND  
ORDER**

JENNY M. DANIEL, R.P.A., represents that all of the following statements are true:

That on or about July 18, 2006, I was authorized to practice as a registered physician assistant in the State of New York, and issued Registration Number 011328 (hereafter "license") by the New York State Education Department.

My current address is \_\_\_\_\_ Redacted Address \_\_\_\_\_, and I will advise the Director of the Office of Professional Medical Conduct of any change of address.

I understand that the New York State Board for Professional Medical Conduct (Board) has charged me with one specification of professional misconduct.

A copy of the Statement of Charges, marked as Exhibit "A", is attached to and part of this Consent Agreement.

I do not contest the First Specification, Being An Habitual User, in full satisfaction of the charges against me, and agree to the following penalty:

Pursuant to N.Y. Pub. Health Law § 230-a(2), my license to practice as a registered physician assistant in New York State shall be suspended for two years, with the suspension stayed. Pursuant to N.Y. Pub. Health Law § 230-a(9), I shall be placed on probation for five years, subject to the terms set forth in attached Exhibit "B".

I further agree that the Consent Order shall impose the following conditions:

That Respondent shall remain in continuous compliance with all requirements of N.Y. Educ Law § 6502, including but not limited to the requirements that a licensee shall register and continue to be registered with the New York State Education Department (except during periods of actual suspension) and that a licensee shall pay all registration fees. Respondent shall not exercise the option provided in N.Y. Educ. Law § 6502(4) to avoid registration and payment of fees. This condition shall take effect 120 days after the Consent Order's effective date and will continue so long as Respondent remains a licensee in New York State; and

That Respondent shall cooperate fully with the Office of Professional Medical Conduct (OPMC) in its administration and enforcement of this Consent Order and in its investigations of matters concerning Respondent. Respondent shall respond in a timely manner to all OPMC requests for written periodic verification of Respondent's compliance with this Consent Order. Respondent shall meet with a person designated by the Director of OPMC, as directed.

Respondent shall respond promptly and provide all documents and information within Respondent's control, as directed. This condition shall take effect upon the Board's issuance of the Consent Order and will continue so long as Respondent remains licensed in New York State.

I stipulate that my failure to comply with any conditions of this Consent Order shall constitute misconduct as defined by N.Y. Educ. Law § 6530(29).

I agree that, if I am charged with professional misconduct in future, this Consent Agreement and Order **shall** be admitted into evidence in that proceeding.

I ask the Board to adopt this Consent Agreement.

I understand that if the Board does not adopt this Consent Agreement, none of its terms shall bind me or constitute an admission of any of the acts of alleged misconduct; this Consent Agreement shall not be used against me in any way and shall be kept in strict confidence; and the Board's denial shall be without prejudice to the pending disciplinary proceeding and the Board's final determination pursuant to N.Y. Pub. Health Law.

I agree that, if the Board adopts this Consent Agreement, the Chair of the Board shall issue a Consent Order in accordance with its terms. I agree that this Consent Order shall take effect upon its issuance by the Board, either by mailing of a copy of the Consent Order by first class mail to me at the address in this Consent Agreement, or to my attorney by certified mail, OR upon facsimile transmission to me or my attorney, whichever is first. The Consent Order, this agreement, and all attached Exhibits shall be public documents, with only patient identities, if any, redacted. As public documents, they may be posted on the Department's website.

I stipulate that the proposed sanction and Consent Order are authorized by N.Y. Pub. Health Law §§ 230 and 230-a, and that the Board and OPMC have the requisite powers to carry out all included terms. I ask the Board to adopt this Consent Agreement of my own free will and not under duress, compulsion or restraint. In consideration of the value to me of the Board's adoption of this Consent Agreement, allowing me to resolve this matter without the various risks and burdens of a hearing on the merits, I knowingly waive my right to contest the

Consent Order for which I apply, whether administratively or judicially, I agree to be bound by the Consent Order, and I ask that the Board adopt this Consent Agreement.

I understand and agree that the attorney for the Department, the Director of OPMC and the Chair of the Board each retain complete discretion either to enter into the proposed agreement and Consent Order, based upon my application, or to decline to do so. I further understand and agree that no prior or separate written or oral communication can limit that discretion.

Redacted Signature

DATE 8/12/09

JENNY M. DANIEL, R.P.A.  
RESPONDENT

The undersigned agree to Respondent's attached Consent Agreement and to its proposed penalty, terms and conditions.

DATE: 8/13/09

Redacted Signature

LAWRENCE F. KOBAK, ESQ.  
Attorney for Respondent

DATE: Aug. 20, 2009

Redacted Signature

MARCIA E. KAPLAN  
Associate Counsel  
Bureau of Professional Medical Conduct

DATE: 9/23/09

Redacted Signature

KEITH W. SERVIS  
Director  
Office of Professional Medical Conduct

EXHIBIT "A"

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

IN THE MATTER  
OF  
JENNIE M. DANIEL, R.P.A.

STATEMENT  
OF  
CHARGES

JENNIE M. DANIEL, R.P.A., the Respondent, was authorized to practice as a physician assistant in New York State on or about December 5, 2006, by the issuance of registration number 011328 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

- A. During periods in or before April 2008, Respondent was dependent on or a habitual user of Fentanyl, a narcotic, which she obtained by diversion.

**SPECIFICATION OF CHARGES**

**FIRST SPECIFICATION**

**BEING AN HABITUAL USER**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(8) by being a habitual abuser of alcohol, or being dependent on or a habitual user of narcotics, barbiturates, amphetamines, hallucinogens, or other drugs having similar effects, or having a psychiatric condition which impairs the licensee's ability to practice as alleged in the facts of the following:

1. Paragraph A.

DATE:

~~June~~ <sup>July 21</sup>, 2009  
New York, New York



ROY NEMERSON  
Deputy Counsel  
Bureau of Professional Medical Conduct

## EXHIBIT "B"

### **Terms of Probation**

1. Respondent's conduct shall conform to moral and professional standards of conduct and governing law. Any act of professional misconduct by Respondent as defined by N.Y. Educ. Law §§ 6530 or 6531 shall constitute a violation of probation and may subject Respondent to an action pursuant to N.Y. Pub. Health Law § 230(19).
2. Respondent shall maintain active registration of Respondent's license (except during periods of actual suspension) with the New York State Education Department Division of Professional Licensing Services, and shall pay all registration fees.
3. Respondent shall provide the Director, Office of Professional Medical Conduct (OPMC), Hedley Park Place, 433 River Street Suite 303, Troy, New York 12180-2299 with the following information, in writing, and ensure that this information is kept current: a full description of Respondent's employment and practice; all professional and residential addresses and telephone numbers within and outside New York State; and all investigations, arrests, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility. Respondent shall notify OPMC, in writing, within 30 days of any additions to or changes in the required information.
4. Respondent shall cooperate fully with, and respond in a timely manner to, OPMC requests to provide written periodic verification of Respondent's compliance with the terms of this Consent Order. Upon the Director of OPMC's request, Respondent shall meet in person with the Director's designee.
5. Respondent's failure to pay any monetary penalty by the prescribed date shall subject Respondent to all provisions of law relating to debt collection by New York State, including but 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 § 171(27); State Finance Law § 18; CPLR § 5001; Executive Law § 32].
6. The probation period shall toll when Respondent is not engaged in active practice as a physician assistant in New York State for a period of 30 consecutive days or more. Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in, or intends to leave, active practice as a physician assistant in New York State for a consecutive 30 day period. Respondent shall then notify the Director again at least 14 days before returning to active practice. Upon Respondent's return to active practice in New York State, the probation period shall resume and Respondent shall fulfill any unfulfilled probation terms and such additional requirements as the Director may impose as reasonably relate to the matters set forth in Exhibit "A", or as are necessary to protect the public health.

7. The Director of OPMC may review Respondent's professional performance. This review may include but shall not be limited to: a review of office records, patient records, hospital charts, and/or electronic records; and interviews with or periodic visits with Respondent and staff at practice locations or OPMC offices.
8. Respondent shall remain drug and alcohol free.
9. Respondent shall remain active in self-help groups such as, but not limited to, Narcotics Anonymous, Alcoholics Anonymous and Caduceus.
10. Respondent shall notify all treating physicians of Respondent's history of substance abuse. Respondent shall advise OPMC of any controlled or mood-altering substance given or prescribed by treating physicians.
11. Respondent shall practice only when monitored by qualified health care professional monitors: a Sobriety Monitor, a Practice Supervisor and a Therapist. All monitors shall be proposed by Respondent and approved, in writing, by the Director of OPMC before Respondent may practice after the effective date of this Consent Order. Within 7 days of learning the approved monitor is no longer willing or able to serve, Respondent shall submit the name of a proposed successor to the Director of OPMC. Monitors shall not be family members or personal friends or be in professional relationships that would pose a conflict with monitoring responsibilities. All monitors shall execute acknowledgment forms provided by OPMC certifying familiarity with Respondent's history of substance abuse, with this Consent Order and its terms, and acknowledging a willingness to comply with the monitor's reporting responsibilities regarding Respondent's compliance with the terms of this Consent Order.
  - a. Respondent shall ensure that the monitors are familiar with Respondent's history of substance abuse and with the terms of this Consent Order. Respondent shall cause the monitors to report any deviation from compliance with the terms of this Consent Order to OPMC. Respondent shall cause the monitors to submit required reports on a timely basis.
  - b. Respondent shall submit to random, unannounced observed blood, breath and/or urine screens for the presence of drugs and alcohol (hereafter "drug screen"), when requested by a monitor. The monitoring shall be on a random, unannounced, directly-observed, 7-day-a-week, 24-hour-a-day basis. Respondent shall report for a drug screen within 4 hours of being contacted by a monitor. Monitors shall report to OPMC immediately if Respondent refuses or delays a test or if a test is positive for alcohol, or any other unauthorized drug or substance. Respondent shall avoid all substances that may cause positive urine drug screens, such as poppy seeds, mouthwash or cough medicine. Any positive test result shall constitute a violation of the terms of this Consent Order.
  - c. Respondent shall meet regularly with a Sobriety Monitor. During the first 12 months of monitoring, the Sobriety Monitor shall obtain drug screens at a frequency of no less than 6 times per month. If Respondent is compliant throughout the first 12-month period, subsequent drug screens shall be obtained at a frequency to be proposed by the Sobriety Monitor and approved by OPMC. The Sobriety Monitor shall submit quarterly reports to OPMC certifying Respondent's sobriety or lack of sobriety. These reports are to

include forensically valid results of all drug screens performed and an assessment of self-help group (e.g., AA/NA/Caduceus) attendance and 12-step progress.

- d. Respondent shall practice only when supervised by a licensed physician (hereafter "Practice Supervisor"). The Practice Supervisor shall be on-site at all locations, unless determined otherwise by the Director of OPMC, and shall be in a position to regularly observe and assess Respondent's practice. The Practice Supervisor shall oversee Respondent's compliance with the terms of practice imposed by the Consent Order and Respondent's prescribing, administering, dispensing, inventorying, wasting and disposal of controlled substances. The Practice Supervisor shall report to OPMC immediately any suspected impairment, inappropriate behavior, questionable practice, possible misconduct, or violation by Respondent of any of the terms of this Consent Order. The Practice Supervisor shall submit quarterly reports to OPMC regarding the quality of Respondent's practice as a physician assistant and prescribing practices, any unexplained absences from work, and certifying Respondent's compliance or detailing Respondent's failure to comply with each term imposed.
  - e. Respondent shall engage and continue in therapy with a treating health care professional (hereafter "Therapist"). Respondent shall cause the Therapist to submit a proposed treatment plan and quarterly reports to OPMC certifying whether Respondent is in compliance with the treatment plan. OPMC, at its discretion, may provide information or documentation from its investigative files concerning Respondent to Respondent's Therapist. The Therapist shall report to OPMC immediately if Respondent leaves treatment against medical advice or displays any symptoms of a suspected or actual relapse.
12. At the direction of the Director of OPMC, Respondent shall submit to evaluations by a board-certified psychiatrist, licensed mental health practitioner or other health care professional or program designated by the Director (hereafter "Evaluator.") Respondent shall provide the Evaluator with a copy of this Consent Order and copies of all previous treatment records. OPMC, at its discretion, may provide information or documentation from its investigative files concerning Respondent to Respondent's Evaluator. The Evaluator shall report to the Director regarding Respondent's condition and fitness or incapacity to practice. Respondent shall comply with all treatment recommendations based upon the evaluation; failure to comply with such treatment recommendations shall constitute professional misconduct.
  13. Respondent shall enroll, or continue enrollment, in the Committee for Physician Health (CPH) and shall engage in a contract with CPH that defines the terms, conditions and duration of Respondent's recovery program. Respondent shall comply with the contract. Respondent shall give written authorization for CPH to provide the Director of OPMC with all information or documentation requested by OPMC to determine whether Respondent is in compliance with the contract and with this Consent Order, including full access to all records maintained by CPH will respect to Respondent.

- a. Respondent shall cause CPH to report to OPMC promptly if Respondent refuses to comply with the contract, refuses to submit to treatment or if Respondent's impairment is not substantially alleviated by treatment.
  - b. Respondent shall cause CPH to report immediately to OPMC if Respondent is regarded at any time to be an imminent danger to the public.
14. Respondent shall adhere to federal and state guidelines and professional standards of care with respect to infection control practices. Respondent shall ensure education, training and oversight of all office personnel involved in medical care, with respect to these practices.
15. Respondent shall maintain complete and legible medical records that accurately reflect the evaluation and treatment of patients and contain all information required by State rules and regulations concerning controlled substances.
16. Respondent shall enroll in and complete a continuing education program, as directed by the Director of OPMC. This program shall be pre-approved by the Director and shall be completed within the first 90 days of the probation period.
17. Respondent shall comply with this Consent Order and all its terms, and shall bear all associated compliance costs. Upon receiving evidence of noncompliance with, or a violation of, these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding, and/or any other such proceeding authorized by law, against Respondent.