

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

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IN THE MATTER  
OF  
ROBERT JOSEPH RANKEL, M.D.

MODIFICATION  
ORDER  
BPMC No. #03-259

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Upon the proposed Application for a Modification Order of **ROBERT JOSEPH RANKEL, M.D.**, (Respondent), that is made a part of this Modification Order, it is agreed and

ORDERED, that the attached Application and its terms are adopted and it is further

ORDERED, that this Modification Order shall be effective upon issuance by the Board, either by mailing, by first class mail, a copy of the Modification Order to Respondent at the address in the attached Application or by certified mail to Respondent's attorney or upon transmission via facsimile to Respondent or Respondent's attorney, whichever is earliest.

SO ORDERED.

DATED: 7-10-2009

Redacted Signature

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

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

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IN THE MATTER  
OF  
ROBERT JOSEPH RANKEL, M.D.

---

APPLICATION FOR  
MODIFICATION ORDER

**ROBERT JOSEPH RANKEL, M.D.**, (Respondent) being duly sworn deposes and says:

That on or about May 18, 1979, I was licensed to practice as a physician in the State of New York, having been issued license number 138127 by the New York State Education Department.

My current address : Redacted Address

I am currently subject to Determination and Order BPMC #03-259, (hereinafter "Original Order"), annexed hereto, made a part, hereof, and marked as Exhibit 1, that was issued on September 25, 2003.

I apply, hereby, to the State Board for Professional Medical Conduct for a Modification Order (hereinafter "Modification Order"), modifying the Original Order, as follows: to delete the paragraph in the Original Order that states:

"2. The Respondent is hereby placed on PROBATION for a period of TWO (2) YEARS, to commence upon Respondent's return to New York State to practice, should he do so in the future. The terms of probation are detailed below."

and to delete all of paragraph "3," that contains the terms of Respondent's probation.

substituting for paragraph "2:"

" 2. Respondent shall never practice medicine in New York state as a physician, activate his registration to practice medicine as a physician in New York state or seek to reapply for a license to practice medicine as a physician in New York state."

The Modification Order to be issued will not constitute a new disciplinary action against me, but will substitute the proposed language for the above described language in the Original Order.

I make this Application of my own free will and accord and not under duress, compulsion or restraint, and seek the anticipated benefit of the requested Modification. In consideration of the value to me of the acceptance of the Board of this Application, I knowingly waive the right to contest the Original Order or the Modification Order for which I apply, both administratively and judicially, and ask that the Board grant this Application.

I understand and agree that the attorney for the Bureau of Professional Medical Conduct, the Director of the Office of Professional Medical Conduct, and the Chair of the State Board for Professional Medical Conduct each retain complete discretion to either enter into the proposed Agreement and Modification 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.

AFFIRMED:

DATED: 20 JUNE 2009

Redacted Signature

ROBERT JOSEPH KANKEL, M.D.  
Respondent

The undersigned agree to the attached Application of Respondent and to the proposed penalty based on the terms and conditions thereof.

DATE: 6 July 2009

Redacted Signature

ROBERT BOGAN  
Associate Counsel  
Bureau of Professional Medical Conduct

DATE: 7/10/09

Redacted Signature

KEITH W. SERVIS  
Director  
Office of Professional Medical Conduct

EXHIBIT 2



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 29, 2003

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Robert Joseph Rankel, M.D.

Redacted Address

Robert Bogan, Esq.  
Paul Robert Maher, Esq.  
NYS Department of Health  
Hedley Park Place  
1<sup>st</sup> Floor Annex  
433 River Street  
Troy, New York 12180

**RE: In the Matter of Robert Joseph Rankel, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 03-259) 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.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), and §230-c subdivisions 1 through 5, (McKinney Supp. 1992), "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.

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

Sean D. O'Brien, Director  
Bureau of Adjudication

SDO:djh

Enclosure

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

**COPY**

DETERMINATION  
AND  
ORDER

BPMC #03-259

IN THE MATTER  
OF  
**ROBERT JOSEPH RANKEL, M.D.**

A Notice of Referral Proceeding and Statement of Charges, both dated August 1, 2003, were served upon the Respondent, **ROBERT JOSEPH RANKEL, M.D.** **STEVEN V. GRABIEC, M.D.**, Chairperson, **STEVEN PINSKY, M.D.** and **WILLIAM W. WALENCE, PH.D.**, 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. **STEPHEN L. FRY, ESQ.**, Administrative Law Judge, served as the Administrative Officer.

A hearing was held on September 17, 2003, at the Offices of the New York State Department of Health, Hedley Park Place, 433 River Street, Troy, New York. The Department appeared by **DONALD P. BERENS, JR., ESQ.**, General Counsel, by **ROBERT BOGAN, ESQ.** and **PAUL ROBERT MAHER, ESQ.**, of Counsel. The Respondent, although duly notified of the hearing, did not appear or present any evidence.

Evidence was received 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 Section 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, the Respondent is charged with professional misconduct pursuant to Education Law Sections 6530(9)(b) and (d), based upon actions constituting violations of subdivision (4) (gross negligence). A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order as Appendix 1.

### WITNESSES

For the Petitioner:

None

For the Respondent:

None

### FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers below in parentheses refer to exhibits, denoted by the prefix "Ex.". These citations refer to 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. All Hearing Committee findings were unanimous.

1. ROBERT JOSEPH RANKEL, M.D., the Respondent, was authorized to practice medicine in New York State on May 18, 1979, by the issuance of license number 138127 by the New York State Education Department (Ex. 4).
2. On March 31, 2003, Respondent entered into a consent agreement with the Arizona Medical Board (hereinafter "the Arizona Board"), wherein he consented to the entering of findings that, during an abdominal laparoscopic procedure at which he was assisting, he had aggressively inserted a lateral trocar into the patient's deflated peritoneum, rather than into her insufflated abdominal cavity, that the patient suffered a wound to the abdominal aorta as a result, and that Respondent's violation of the standard of care constituted "gross negligence, repeated negligence or negligence resulting in harm to or the death of a patient". Respondent was issued a letter of reprimand by the Arizona Board (Ex. 5).

#### **HEARING COMMITTEE CONCLUSIONS**

The hearing Committee concludes that the conduct resulting in the Arizona Board's disciplinary actions against Respondent would constitute misconduct under the laws of New York State, pursuant to New York Education Law §6530(4) (gross negligence).

## **VOTE OF THE HEARING COMMITTEE**

### **SPECIFICATIONS**

#### **FIRST SPECIFICATION**

Respondent violated New York Education Law §6530(9)(b) by having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York state, constitute professional misconduct under the laws of New York state.

**VOTE: SUSTAINED (3-0)**

#### **SECOND SPECIFICATION**

Respondent violated New York Education Law §6530(9)(d) by having had disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the disciplinary action would, if committed in New York state, constitute professional misconduct under the laws of New York state.

**VOTE: SUSTAINED (3-0)**

### **HEARING COMMITTEE DETERMINATION**

The record in this case indicates that, as noted above, Respondent entered into a consent agreement with the Arizona Board wherein he consented to the entering of findings that, during an abdominal laparoscopic procedure at which he was assisting, he had aggressively inserted a lateral trocar into the patient's deflated peritoneum, rather than into her insufflated abdominal cavity, that the patient suffered a wound to the abdominal aorta as a result, and that Respondent's violation of the standard of care constituted "gross

negligence, repeated negligence or negligence resulting in harm to or the death of a patient". Respondent was issued a letter of reprimand by the Arizona Board.

The Hearing Committee concludes that the entering of the Arizona Board's findings and discipline constitutes misconduct in New York State, in that the underlying conduct, had it been committed in this state, would have constituted misconduct here. Specifically, the forceful insertion of a lateral trocar into a deflated abdomen constitutes one act of gross negligence.

Accordingly, the only remaining issue that can be decided at this proceeding is the appropriate penalty to be imposed for this misconduct. The Hearing Committee concludes, in the absence of any evidence on the subject presented on behalf of Respondent, that the appropriate penalties (from among those listed in Public Health Law §230-a) are the issuance of a Censure and Reprimand, the imposition of a two-year period of probation should Respondent return to New York State to practice, and the imposition of a requirement that, before practicing in New York State, Respondent successfully complete a continuing education course that includes laparoscopic abdominal surgery. The Hearing Committee feels this discipline is the minimum necessary under the circumstances to significantly lessen the likelihood that that Respondent might, in New York State, repeat an act of negligence as egregious as that cited in the Arizona Consent Agreement.

## ORDER

### IT IS HEREBY ORDERED THAT:

1. A **CENSURE AND REPRIMAND** are hereby issued against the New York medical license of **ROBERT JOSEPH RANKEL, M.D.**
2. The Respondent is hereby placed on **PROBATION** for a period of **TWO (2) YEARS**, to commence upon Respondent's return to New York State to practice, should he do so in the future. The terms of probation are detailed below.
3. The terms of Respondent's probation are as follows:
  - A). Prior to resuming practice in New York, Respondent must provide thirty (30) days prior written notice concerning his intention to the New York State Office of Professional Medical Conduct ("OPMC"). This notice should be sent by registered or certified mail, return receipt requested, to the Board, addressed to the Director, Office of Professional Medical Conduct, Hedley Park Place, 433 River Street - Fourth Floor, Troy, New York 12180-2299. Said notice is to include a full description of any employment and practice since the date of this hearing, as well as a listing of professional and residential addresses and telephone numbers within or without New York State. The notification must also list any and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility since the date of this hearing.
  - B). A requirement is hereby imposed that Respondent successfully complete a course of training that includes laparoscopic abdominal surgery, to be approved by the Board, through its Office of Professional Medical Conduct (see address above), before he can commence practice in this state.
  - C). Respondent shall conduct himself in all ways in a manner befitting his professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his profession. Respondent acknowledges that if he commits professional misconduct as enumerated in New York State Education Law sections 6530 or 6531, those acts shall be deemed to be a violation of probation and that an action may be taken against Respondent's license pursuant to New York State Public Health Law 230(19).
  - D). Within thirty days of each such action or event during the probationary period, Respondent shall submit written notification to OPMC of all changes in employment and practice, professional and residential addresses and telephone numbers within or without New York State, and any and all

- investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility.
- E). Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of his compliance with the terms of this Order. Respondent shall personally meet with a person designated by the Director of OPMC as requested by the Director.
  - F). The period of probation shall be tolled during periods in which Respondent is not engaged in the active practice of medicine in New York State. Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in or intends to leave the active practice of medicine in New York State for a period of thirty (30) consecutive days or more. Respondent shall then notify the Director again prior to any change in that status. The period of probation shall resume and any terms of probation that were not fulfilled shall be fulfilled upon Respondent's return to practice in New York State.
  - G). Respondent's professional performance may be reviewed by the Director of OPMC. This review may include, but shall not be limited to, a review of office records, patient records and/or hospital charts, interviews with or periodic visits with Respondent and his/her staff at practice locations or OPMC offices.
  - H). Respondent shall maintain legible and complete medical records that accurately reflect the evaluation and treatment of patients.
  - I). Respondent shall comply with all terms, conditions, restrictions, limitations and penalties to which he or she is subject pursuant to the Order and shall assume and bear all costs related to compliance. Upon receipt of evidence of noncompliance with, or any violation of these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding and/or any such other proceeding against Respondent as may be authorized pursuant to the law.

This ORDER shall be effective upon service on the Respondent pursuant to Public Health Law section 230(10)(h).

DATED: Niagara Falls, New York  
9/25/, 2003

Redacted Signature

STEVEN V. GRABIEC, M.D.  
Chairperson

STEVEN PINSKY, M.D.  
WILLIAM W. WALENCE, PH.D.

# APPENDIX 1

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



IN THE MATTER  
OF  
ROBERT JOSEPH RANKEL, M.D.  
CO-03-05-2275-A

NOTICE OF  
REFERRAL  
PROCEEDING

TO: ROBERT JOSEPH RANKEL, M.D.  
Redacted Address

**PLEASE TAKE NOTICE THAT:**

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law § 230(10)(p) and N.Y. State Admin. Proc. Act Sections 301-307 and 401. The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 17<sup>th</sup> day of September 2003, at 10:00 in the forenoon of that day at the Hedley Park Place, 5<sup>th</sup> Floor, 433 River Street, Troy, New York 12180.

At the proceeding, evidence will be received concerning the allegations set forth in the attached Statement of Charges. A stenographic record of the proceeding will be made and the witnesses at the proceeding will be sworn and examined.

You may appear in person at the proceeding and may be represented by counsel. You may produce evidence or sworn testimony on your behalf. Such evidence or sworn testimony shall be strictly limited to evidence and testimony relating to the nature and severity of the penalty to be imposed upon the licensee. Where the charges are based on the conviction of state law crimes in other jurisdictions, evidence may be offered that would show that the conviction would not be a crime in New York state. The Committee also may limit the number of witnesses whose testimony will be received, as well as the length of time any witness will be permitted to testify.

If you intend to present sworn testimony, the number of witnesses and an estimate of the time necessary for their direct examination must be submitted to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Hedley Park Place, 5<sup>th</sup> Floor, 433 River Street, Troy, New York, ATTENTION: HON. JAMES F. HORAN, ACTING DIRECTOR, BUREAU OF ADJUDICATION, (hereinafter

"Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before September 8, 2003.

Pursuant to the provisions of N.Y. Public Health Law §230(10)(p), you shall file a written answer to each of the Charges and Allegations in the Statement of Charges no later than ten days prior to the hearing. Any Charge of Allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such an answer. The answer shall be filed with the Bureau of Adjudication, at the address indicated above, and a copy shall be forwarded to the attorney for the Department of Health whose name appears below. You may file a brief and affidavits with the Committee. Six copies of all such papers you wish to submit must be filed with the Bureau of Adjudication at the address indicated above on or before September 8, 2003, and a copy of all papers must be served on the same date on the Department of Health attorney indicated below. Pursuant to Section 301(5) of the State Administrative Procedure Act, the Department, upon reasonable notice, will provide at no charge a qualified interpreter of the deaf to interpret the proceedings to, and the testimony of, any deaf person.

The proceeding may be held whether or not you appear. Please note that requests for adjournments must be made in writing to the Bureau of Adjudication, at the address indicated above, with a copy of the request to the attorney for the Department of Health, whose name appears below, at least five days prior to the scheduled date of the proceeding. Adjournment requests are not routinely granted. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation. Failure to obtain an attorney within a reasonable period of time prior to the proceeding will not be grounds for an adjournment.

The Committee will make a written report of its findings, conclusions as to guilt, and a determination. Such determination may be reviewed by the Administrative Review Board for Professional Medical Conduct.

**SINCE THESE PROCEEDINGS MAY RESULT IN A DETERMINATION THAT SUSPENDS OR REVOKES YOUR LICENSE TO PRACTICE MEDICINE IN NEW YORK STATE AND/OR IMPOSES A FINE FOR EACH OFFENSE CHARGED, YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER.**

DATED: Albany, New York

*August 1, 2003*

Redacted Signature

PETER D. VAN BUREN

Deputy Counsel

Bureau of Professional Medical Conduct

Inquiries should be addressed to:

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

STATE OF NEW YORK

DEPARTMENT OF HEALTH

STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER

OF

ROBERT JOSEPH RANKEL, M.D.  
CO-03-05-2275-A

STATEMENT

OF

CHARGES

ROBERT JOSEPH RANKEL, M.D., the Respondent, was authorized to practice medicine in New York state on May 18, 1979, by the issuance of license number 138127 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A On or about March 31, 2003, the Arizona Board of Medical Examiners (hereinafter "Arizona Board"), by a Consent Agreement For Letter of Reprimand (hereinafter "Arizona Agreement"), issued Respondent a Letter of Reprimand and placed him on one (1) year probation with terms and conditions, based on gross negligence, repeated negligence or negligence resulting in harm to or the death of a patient and conduct or practice which is or might be harmful or dangerous to the health of the patient or to the public.

B. The conduct resulting in the Arizona Board disciplinary actions against Respondent would constitute misconduct under the laws of New York State, pursuant to the following sections of New York State law:

1. New York Education Law §6530(4) (gross negligence on one occasion).

**SPECIFICATIONS**

**FIRST SPECIFICATION**

Respondent violated New York Education Law §6530(9)(b) by having been found guilty of improper professional practice or professional misconduct by a duly professional disciplinary agency of another state where the conduct upon which the finding was based would, if

committed in New York state, constitute professional misconduct under the laws of New York state, in that Petitioner charges:

1. The facts in Paragraphs A and/or B.

**SECOND SPECIFICATION**

Respondent violated New York Education Law §6530(9)(d) by having disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the disciplinary action would, if committed in New York state, constitute professional misconduct under the laws of New York state, in that Petitioner charges:

2. The facts in Paragraphs A and/or B.

DATED: *August 1*, 2003  
Albany, New York

Redacted Signature

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