



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

June 3, 2002

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Robert Bogan, Esq.
Paul Robert Maher, Esq.
NYS Department of Health
Hedley Building-4th Floor
433 River Street
Troy, New York 12180

William Douglas Daniel, M.D.
62 S. Kanawha Street
Buckhannon, West Virginia 26201

RE: In the Matter of Willaim Douglas Daniel, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 02-186) 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), 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.

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.

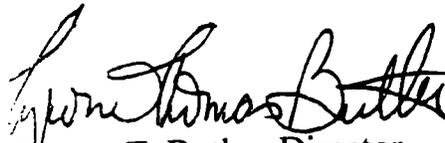
The notice of review served on the Administrative Review Board should be forwarded to:

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,



Tyrone T. Butler, Director
Bureau of Adjudication

TTB:cah
Enclosure

COPY

IN THE MATTER
OF
WILLIAM DOUGLAS DANIEL, M.D.

DETERMINATION
AND
ORDER

BPMC #02-186

A hearing was held on May 22, 2002, at the offices of the New York State Department of Health ("the Petitioner"). A Notice of Referral Proceeding and a Statement of Charges, both dated March 28, 2002, were served upon the Respondent, **William Douglas Daniel, M.D.** Ernst A. Kopp, M.D., Chairperson, **Sheldon Gaylin, M.D.**, and **Ms. Claudia Gabriel**, 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. **John Wiley, Esq.**, Administrative Law Judge, served as the Administrative Officer.

The Petitioner appeared by **Donald P. Berens, Jr., Esq.**, General Counsel, by **Robert Bogan, Esq.**, and **Paul Robert Maher, Esq.**, of Counsel. The Respondent did not appear at the hearing, either in person or by counsel.

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 when 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 State or another jurisdiction, or upon a prior administrative adjudication regarding conduct that 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 Section 6530(9)(b) and (d). Copies of the Notice of Referral Proceeding and the Statement of Charges are 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. William Douglas Daniel, M.D., the Respondent, was authorized to practice medicine in New York State on January 8, 1987, by the issuance of license number 169069 by the New York State Education Department (Petitioner's Ex. 4).

2. On May 17, 2001, the West Virginia Board of Medicine ("West Virginia Board") by an Order ("West Virginia Order I"), placed the Respondent's West Virginia license to practice medicine in probationary status for one year. The terms of probation

were that the Respondent practice only with a supervising physician, that a nurse be present whenever the Respondent examines a female patient, and that he attend the Colorado Personalized Education for Physicians ("CPEP"). West Virginia Order I found that the Respondent had performed breast and vaginal examinations in an unnecessarily prolonged and painful manner, had failed to document breast examinations, and had caused patients' breasts to be exposed unnecessarily. (Petitioner's Ex. 5).

3. On September 14, 2001, the West Virginia Board, by an Order ("West Virginia Order II"), suspended the Respondent's license to practice medicine, required him to attend CPEP, and required him to submit to the West Virginia Board an assessment of his skills. West Virginia Order II was issued because of the Respondent's failure to comply with the provision of West Virginia Order I requiring attendance at CPEP and with directions from the West Virginia Board regarding West Virginia Order I. (Petitioner's Ex. 5).

HEARING COMMITTEE CONCLUSIONS

The Hearing Committee concludes that the conduct of the Respondent would constitute professional misconduct under the laws of New York State, had the conduct occurred in New York State, pursuant to:

- New York Education Law Section 6530(3) - "Practicing the profession with negligence on more than one occasion;"
- New York Education Law Section 6530(15) - "Failure to comply with an order issued [by the board];"
- New York Education Law Section 6530(20) - "Conduct in the practice of medicine which evidences moral unfitness to practice medicine;"
- New York Education Law Section 6530(31) - "Willfully harassing, abusing, or intimidating a patient either physically or verbally;" and,

- New York Education Law Section 6530(32) - "Failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient. Unless otherwise provided by law, all patient records must be retained for at least six years. Obstetrical records and records of minor patients must be retained for at least six years, and until one year after the minor patient reaches the age of eighteen years;"

The Statement of Charges also contended that the Respondent's conduct, had it occurred in New York State, would have violated New York Education Law Section 6530(16) ("A willful or grossly negligent failure to comply with substantial provisions of federal, state, or local laws, rules, or regulations governing the practice of medicine;"). There is no indication in the Statement of Charges as to the statute, rule or regulation being referenced in this charge. The Hearing Committee, therefore, declines to affirm this charge.

VOTE OF THE HEARING COMMITTEE

FIRST AND SECOND SPECIFICATIONS

"Respondent violated New York Education Law Section 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)

THIRD AND FOURTH SPECIFICATIONS

"Respondent violated New York Education Law Section 6530(9)(d) by having his license to practice medicine suspended or having other disciplinary action taken by a duly licensed 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)

HEARING COMMITTEE DETERMINATION

The Respondent did not appear at the hearing. Petitioner's Exhibits 2 and 3 demonstrate that the Respondent was served with notice of these proceedings in a legally sufficient manner. The Administrative Law Judge ruled that the hearing could proceed without the presence of the Respondent.

The Respondent submitted by mail a package of documents for inclusion in the hearing record. The Administrative Law Judge ruled that the Respondent's April 18, 2002, cover letter and his Credentials were admitted as Respondent's Ex. A, but that the rest of the documents, marked as Respondent's Ex. B for Identification, were not admitted into evidence. The reason given by the Administrative Law Judge for declining to accept Respondent's Ex. B into evidence was that these documents were offered for the purpose of proving that the West Virginia Board had erred in its findings against the Respondent in the two West Virginia Orders, and that Public Health Law Section 230(10)(p) precludes consideration of such an argument in this type of hearing. In other words, the Hearing Committee, in a hearing held pursuant to Public Health Law Section 230(10)(p), must accept as accurate the findings of the other state's disciplinary decision.

The findings in West Virginia Order I disclose that the Respondent treated his patients in a manner that was totally indifferent to their dignity. When examining female patients, he left their breasts exposed for periods of time substantially in excess of the amount of time necessary to examine their breasts. The Respondent also performed examinations on patients so roughly that he caused unnecessary pain. In some cases, the pain was so bad that it caused the patient to cry and, on the following day, to have

soreness and marks on her body. The Respondent appeared during these examinations to be unconcerned about this rough treatment and the pain that he was causing. West Virginia Order I also found that breast and vaginal examinations performed by the Respondent were unnecessarily lengthy.

Because the Respondent did not appear at the hearing, there is no evidence in the hearing record of mitigation, rehabilitation or contrition. Given the failure of the Respondent to comply with the requirements of the West Virginia Board regarding reeducation that led to West Virginia Order II, and given the Respondent's denial in Respondent's Ex. A of any wrongdoing, it is clear that the Respondent has not been rehabilitated and is not inclined to accept any criticism of or supervision over his practice.

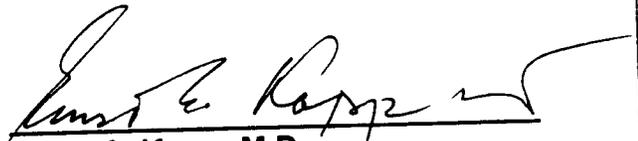
The Petitioner recommended that the Respondent's license to practice medicine be revoked; the hearing record contains no reason to deny this recommendation.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Respondent's license to practice medicine is revoked.
2. This Order shall be effective upon service on the Respondent by personal service or by certified or registered mail.

DATED: Loudonville, New York
May 29th, 2002


Ernst A. Kopp, M.D.
Chairperson

Sheldon Gaylin, M.D.
Claudia Gabriel

APPENDIX I

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

IN THE MATTER
OF
WILLIAM DOUGLAS DANIEL, M.D.
CO-01-11-5623-A

NOTICE OF
REFERRAL
PROCEEDING

TO: WILLIAM DOUGLAS DANIEL, M.D.
62 S. Kanawha Street
Buckhannon. WV 26201

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 22nd day of May 2002, at 10:00 in the forenoon of that day at the Hedley Park Place, 5th 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, 5th Floor, 433 River Street, Troy, New York, ATTENTION: HON.

TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION, (hereinafter "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before May 2, 2002.

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 May 2, 2002, 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
March 28, 2002



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
WILLIAM DOUGLAS DANIEL, M.D.
CO-01-11-5623-A

STATEMENT
OF
CHARGES

WILLIAM DOUGLAS DANIEL, M.D., the Respondent, was authorized to practice medicine in New York state on January 9, 1987, by the issuance of license number 169069 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about May 17, 2001, the West Virginia Board of Medicine (hereinafter "West Virginia Board"), by an Order (hereinafter "West Virginia Order I"), placed Respondent's West Virginia license to practice medicine in a probationary status for one (1) year, during that probationary period he may practice only with a supervising physician, that a nurse be present at all times he is conducting an examination of any female patient, and that he attend the Colorado Personalized Education for Physicians (CPEP), based upon performing breast and vaginal examinations in a prolonged and painful manner, failing to document breast examinations, and causing patients' breasts to be unnecessarily exposed.

B. On or about September 14, 2001, the West Virginia Board by an Order (hereinafter "West Virginia Order II"), SUSPENDED Respondent's license to practice medicine and surgery, required that he attend CPEP, and cause an assessment of his skills, to be submitted to the West Virginia Board, based upon his refusal and failure to comply with provisions of West Virginia Order I, and with directions from the West Virginia Board with regard to West Virginia Order I.

C. The conduct resulting in the West Virginia 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(3) (negligence on more than one occasion);
2. New York Education Law §6530(15) (failure to comply with an order of the board);
3. New York Education Law §6530(16) (willful or grossly negligent failure to comply with federal, state, or local laws, rules, or regulations, governing the practice of medicine);
4. New York Education Law §6530(20) (moral unfitness);
5. New York Education Law §6530(31) (willfully, harassing, abusing or intimidating a patient physically); and/or
6. New York Education Law §6530 (32) (failure to maintain a record for each patient that accurately reflects treatment of the patient).

SPECIFICATIONS
FIRST AND SECOND SPECIFICATIONS

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, in that Petitioner charges:

1. The facts in Paragraphs A and/or C; and/or
2. The facts in Paragraphs B and/or C.

THIRD AND FOURTH SPECIFICATIONS

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

3. The facts in Paragraphs A and/or C; and/or

4. The facts in Paragraphs B and/or C.

DATED: *March 28*, 2002
Albany, New York

Peter D. Van Buren

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