



**New York State Board for Professional Medical Conduct**

Corning Tower • Empire State Plaza • Albany, NY 12237 • (518) 474-8357

Barbara A. DeBuono, M.D., M.P.H.  
Commissioner of Health

Charles J. Vacanti, M.D.  
Chair

March 4, 1996

**CERTIFIED MAIL-RETURN RECEIPT REQUESTED**

Daniel James Dunphy, P.A.  
345 West Portal Avenue  
San Francisco, California 94127

RE: License No. 001437

Effective Date: 03/11/96

Dear Mr. Dunphy:

Enclosed please find Order #BPMC 96-39 of the New York State Board for Professional Medical Conduct. This Order and any penalty provided therein goes into effect upon receipt of this letter or seven (7) days after the date of this letter, whichever is earlier.

If the penalty imposed by the Order is a surrender, revocation or suspension of this license, you are required to deliver to the Board the license and registration within five (5) days of receipt of the Order.

Board for Professional Medical Conduct  
New York State Department of Health  
Empire State Plaza  
Tower Building-Room 438  
Albany, New York 12237-0756

Sincerely,

Charles Vacanti, M.D.  
Chair  
Board for Professional Medical Conduct

Enclosure

cc: Paul Stein, Esq.

**IN THE MATTER  
OF  
DANIEL JAMES DUNPHY, P.A.**

CONSENT  
ORDER  
BPMC #96-39


Upon the application of DANIEL JAMES DUNPHY, P.A.  
(Respondent) for Consent Order, which application is made a part  
hereof, it is

ORDERED, that the application and the provisions thereof are  
hereby adopted and so ORDERED, and it is further

ORDERED, that this order shall take effect as of the date of  
the personal service of this order upon Respondent, upon receipt  
by Respondent of this order via certified mail, or seven days  
after mailing of this order by certified mail, whichever is  
earliest.

SO ORDERED.

DATED: 29 February 1996

  
CHARLES J. VACANTI, M.D.  
Chairperson  
State Board for Professional  
Medical Conduct



physician assistant in New York State.

I hereby make this Application to the State Board for Professional Medical Conduct (the Board) and request that it be granted.

I understand that, in the event that this Application is not granted by the Board, nothing contained herein shall be binding upon me or construed to be an admission of any act of misconduct alleged or charged against me, such Application shall not be used against me in any way and shall be kept in strict confidence during the pendency of the professional misconduct disciplinary proceeding; and such denial by the Board shall be made without prejudice to the continuance of any disciplinary proceeding and the final determination by the Board pursuant to the provisions of the Public Health Law.

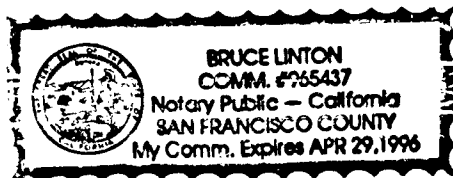
I agree that, in the event the Board grants my Application, as set forth herein, an order of the Chairperson of the Board shall be issued in accordance with same.

I am making this Application of my own free will and accord and not under duress, compulsion or restraint of any kind or manner.

  
DANIEL JAMES DUNPHY, P.A.  
Respondent

Sworn to before me this  
20th day of FEBRUARY, 1996.

  
NOTARY PUBLIC




**IN THE MATTER  
OF  
DANIEL JAMES DUNPHY, P.A.**

APPLICATION  
FOR  
CONSENT ORDER

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

DATE:

2/20/96

  
DANIEL JAMES DUNPHY, P.A.  
Respondent


DATE:

None

Attorney for Respondent

DATE:

2-22-96

  
PAUL STEIN  
Associate Counsel  
Bureau of Professional  
Medical Conduct


DATE:

2/28/96

  
ANNE SAILE  
Acting Director  
Office of Professional Medical  
Conduct

DATE:

29 February 1996

  
CHARLES J. VACANTI, M.D.  
Chairperson  
State Board for Professional  
Medical Conduct

**IN THE MATTER**  
**OF**  
**DANIEL JAMES DUNPHY, P.A.**

STATEMENT  
OF  
CHARGES

DANIEL JAMES DUNPHY, P.A., the Respondent, was authorized to practice as a physician assistant in New York State on July 11, 1980 by the issuance of license number 1437 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

- A. 1. On or about April 27, 1995, the Physician Assistant Examining Committee, Medical Board of California (hereinafter referred to as "the California Board") adopted a Stipulation dated December 22, 1994 as its decision in the matter of the Accusation (Case No. D-5354, License # PA-11184) against Respondent filed by the California Board on or about August 16, 1993. The Stipulation states, inter alia that:

"Respondent stipulates and agrees that there are grounds for disciplinary action against him, pursuant to Business and Professions Code section 3527. Respondent specifically acknowledges that he was not in 1989 or 1990 a licensed acupuncturist in California, and that the physician by whom he was employed produced literature which described respondent as 'Daniel Dunphy, P.A., O.M.D.,' and advertised the availability of respondent to perform acupuncture. Respondent further acknowledges that in 1989 and 1990 he used a device known as the 'Interro Hololinguistic Processor' in his treatment of patient K.T., when that device was neither an approved device pursuant to the California Food, Drug and Cosmetic law (Health and Safety Code section 26000 et seq.) nor a device which was exempt from the requirement of state approval pursuant to the provisions of Health and Safety Code section 26670. At the time he used it, respondent was unaware of the status of the device, and acknowledges and recognized that use of such a device, when there is not the required approval, constitutes a departure from

the standard of care of a physician assistant in California."

2. The Stipulation and Order revoked Respondent's license to practice as a physician assistant in the State of California, stayed the revocation, and placed Respondent on probation for three years on various terms and conditions, including, inter alia, that:

- "(c) Respondent shall not, in the course of his practice as a physician assistant, use any device for diagnosis or treatment of a patient, unless such device has either been approved pursuant to the California Food, Drug and Cosmetic law, or is statutorily exempt therefrom;
- "(d) Respondent shall not perform acupuncture in the course of his practice as a physician assistant except under the supervision of a physician who either specializes in acupuncture or includes acupuncture as a part of his usual and customary practice;
- "(e) Respondent shall not represent himself, nor permit himself to be represented by his employer, as an expert in the field of acupuncture, or as a doctor of oriental medicine, or by any words or phrases of similar import, unless he is licensed in California as an acupuncturist. In the event that respondent obtains an acupuncture license in California during the period of the probation, this condition (e), and condition (d) above, shall have no continuing legal effect on probation."

#### SPECIFICATION OF CHARGES

##### FIRST SPECIFICATION

**HAVING HAD DISCIPLINARY ACTION TAKEN BY A DULY AUTHORIZED  
PROFESSIONAL DISCIPLINARY AGENCY OF ANOTHER STATE**

Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law sec. 6530(9)(d) (McKinney Supp. 1985), in that he had his license to practice medicine revoked, suspended or had other disciplinary action taken after a disciplinary action was instituted by a duly authorized professional disciplinary agency of

another state, where the conduct resulting in the revocation, suspension or other disciplinary action involving the license would, if committed in New York state, constitute professional misconduct under the laws of New York state, namely:

Practicing the profession fraudulently or beyond its authorized scope (N.Y. Educ. Law sec. 6530 (2) (McKinney Supp. 1995)); and/or

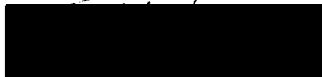
Practicing the profession with negligence on more than one occasion (N.Y. Educ. Law sec. 6530 (3) (McKinney Supp. 1995)); and/or

Practicing or offering to practice beyond the scope permitted by law (N.Y. Educ. Law sec. 6530 (24) (McKinney Supp. 1995)).

as Petitioner specifically alleges:

1. The facts in Paragraph A1 and A2.

Dated: New York, New York  
January 25, 1996

  
ROY NEMERSON  
Deputy Counsel  
Bureau of Professional  
Medical Conduct

:



EXHIBIT "B"

TERMS OF PROBATION

1. DANIEL JAMES DUNPHY, P.A., during the period of probation, 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 imposed by law and by his profession.
2. Respondent shall submit written notification to the New York State Department of Health (NYSDOH), addressed to the Director, Office of Professional Medical Conduct, New York State Department of Health, Corning Tower Building, 4th Floor, Empire State Plaza, Albany, New York 12237 of any employment and practice, of Respondent's residence and telephone number, and of any change in Respondent's employment, practice, residence, or telephone number within or without the State of New York.
3. Respondent shall submit written proof from the Division of Professional Licensing Services (DPLS), New York State Education Department (NYSED), that Respondent has paid all registration fees due and owing to the NYSED and Respondent shall cooperate with and submit whatever papers are requested by DPLS in regard to said registration fees, said proof from DPLS to be submitted by Respondent to the New York State Department of Health, addressed to the Director, Office of Professional Medical Conduct, as aforesaid, within the first three months of the period of probation.
4. Respondent shall submit written proof to the NYSDOH, addressed to the Director, Office of Professional Medical Conduct, as aforesaid, that 1) Respondent is currently registered with the NYSED, unless Respondent submits written proof that Respondent has advised DPLS, NYSED, that Respondent is not engaging in the practice of Respondent's profession in the State of New York and does not desire to register, and that 2) Respondent has paid any fines which may have previously been imposed upon Respondent by the Board or by the Board of Regents; said proof of the above to be submitted no later than the first two months of the period of probation.
5. Respondent shall comply with all terms, conditions, restrictions, and penalties to which he is subject pursuant to the order of the Board.
6. Any civil penalty not paid by the date prescribed herein shall be subject to all provisions of law relating to debt collection by the State of New York. This includes but is 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).