



# STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower

The Governor Nelson A. Rockefeller Empire State Plaza

Albany, New York 12237

Barbara A. DeBuono, M.D., M.P.H.  
*Commissioner*

Karen Schimke  
*Executive Deputy Commissioner*

March 17, 1995

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

RECEIVED

MAR 17 1995

OFFICE OF PROFESSIONAL  
MEDICAL CONDUCT

Willard Randolph Van Nostrand III, M.D.  
3737 Calle Cortez  
Tucson, Arizona 85716

Marcia E. Kaplan  
Associate Counsel  
NYS Department of Health  
Bureau of Professional Medical Conduct  
5 Penn Plaza-Sixth Floor  
New York, New York 10001

**RE: In the Matter of Willard Randolph Van Nostrand III, M.D.**

Effective Date: 03/24/95  
Dear Dr. Van Nostrand and Ms. Kaplan:

Enclosed please find the Determination and Order (No. 95-60) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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  
Corning Tower - Fourth Floor (Room 438)  
Empire State Plaza  
Albany, New York 12237

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 all action until final determination by that Board. Summary orders are not stayed by Administrative Review Board reviews.

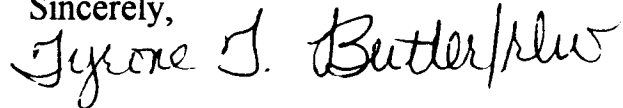
All notices of review must be served, by **certified mail**, upon the Administrative Review Board **and** the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

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  
Empire State Plaza  
Corning Tower, Room 2503  
Albany, New York 12237-0030

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,  
Handwritten signature of Tyrone T. Butler in cursive script.

Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:nm  
Enclosure

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

**IN THE MATTER  
OF  
WILLARD RANDOLPH VAN NOSTRAND III, M.D.**

**DETERMINATION  
AND  
ORDER**

BPMC-95-60

**THOMAS SINATRA, M.D.**, (Chair), **EDWARD ZAINO, M.D.** and **KENNETH KOWALD** duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to §230 of the Public Health Law of the State of New York.

**MARC P. ZYLBERBERG, ESQ.**, **ADMINISTRATIVE LAW JUDGE**, served as the Administrative Officer.

The Department of Health appeared by **MARCIA E. KAPLAN, ESQ.**, Associate Counsel.

Respondent, **WILLARD RANDOLPH VAN NOSTRAND III, M.D.**, failed to appear personally at the hearing and was not represented by counsel. However he did submit a response, dated February 14, 1994 (should be 1995), to a Notice of Referral Proceeding and a Statement of Charges, both dated January 4, 1995.

A hearing was held on March 1, 1995. Evidence was received and examined. A Transcript of the proceedings was made. After consideration of the record, the Hearing Committee issues this Determination and Order, pursuant to the Public Health Law and the Education Law of the State of New York.

## STATEMENT OF CASE

The State Board for Professional Medical Conduct is a duly authorized professional disciplinary agency of the State of New York. (§230 et seq. of the Public Health Law of the State of New York [hereinafter P.H.L.])

This case, brought pursuant to P.H.L. §230(10)(p), is also referred to as an "expedited hearing". The scope of an expedited hearing is strictly limited to evidence or sworn testimony relating to the nature and severity of the penalty to be imposed on the licensee<sup>1</sup> (Respondent).

WILLARD RANDOLPH VAN NOSTRAND III, M.D., (hereinafter "Respondent") is charged with professional misconduct within the meaning of §6530(9)(b) of the Education Law of the State of New York (hereinafter Education Law), to wit: "professional misconduct ... by reason of having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state ..." (Petitioner's Exhibit # 1 and §6530[9][b] of the Education Law).

In order to find that Respondent committed professional misconduct, the Hearing Committee, pursuant to §6530(9)(b) of the Education Law, must determine:

(1) whether Respondent was found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state and

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<sup>1</sup> P.H.L. §230(10)(p), fifth sentence.

(2) whether Respondent's conduct on which the findings were based would, if committed in New York State, constitute professional misconduct under the laws of New York State.

A copy of the Statement of Charges is attached to this Determination and Order as Appendix I.

### **FINDINGS OF FACT**

The following Findings of Fact were made after a review of the entire record in this matter. These facts represent evidence found persuasive by the Hearing Committee in arriving at a particular finding. Unless otherwise noted, all Findings and Conclusions herein were unanimous. The State, who has the burden of proof, was required to prove its case by a preponderance of the evidence. All Findings of Fact made by the Hearing Committee were established by at least a preponderance of the evidence.

1. Respondent was authorized to practice medicine in New York State on February 19, 1976 by the issuance of license number 126342 by the New York State Education Department (Petitioner's Exhibits # 1 and # 2A)<sup>2</sup>.

2. The Respondent is not currently registered with the New York State Education Department to practice medicine (Petitioner's Exhibit # 2B).

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<sup>2</sup> refers to exhibits in evidence submitted by the New York State Department of Health (Petitioner's Exhibit) or by Dr. Willard Randolph Van Nostrand III (Respondent's Exhibit).

3. Frank J. Miller, a private process server, personally served Respondent with a Notice of Referral Proceeding and a Statement of Charges on February 4, 1995 (Petitioner's Exhibit # 1B).

4. Respondent acknowledged receipt of the aforesaid Notice of Referral Proceeding and Statement of Charges and did not contest service of same (Respondent's Exhibit # A).

5. The Board of Medical Examiners of the State of Arizona, (hereinafter "Arizona Board") is a state agency charged with regulating the practice of medicine pursuant to the laws of the State of Arizona (Petitioner's Exhibit # 3 and # 4).

6. On January 28, 1994, the Arizona Board found and concluded that Respondent's conduct, in respect to seven (7) patients, was unprofessional pursuant to various Arizona Laws (Petitioner's Exhibit # 3).

7. The Arizona Board's findings of fact and conclusions of law were extensive and the Hearing Committee accepts the findings and conclusions of the Arizona Board and adopts same as its own Findings of Fact. The Arizona findings and conclusions is annexed hereto as appendix II and is incorporated herein (Petitioner's Exhibit # 3).

8. As a result of the above findings and conclusions, the Arizona Board censured Dr. Willard Randolph Van Nostrand III and assessed a civil penalty of \$2,000, to be paid within one year (Petitioner's Exhibit # 3).

## **CONCLUSIONS OF LAW**

The Hearing Committee makes the following conclusions, pursuant to the Findings of Fact listed above. All conclusions resulted from a unanimous vote of the Hearing Committee.

The Hearing Committee concludes that the Charge of "HAVING BEEN FOUND GUILTY OF MISCONDUCT IN ANOTHER STATE" from the FIRST SPECIFICATION of the Statement of Charges dated January 4, 1995 is SUSTAINED.

The Hearing Committee concludes that the Department of Health has shown by a preponderance of the evidence that Respondent was found guilty of improper professional practice and of professional misconduct by the State of Arizona and his conduct in Arizona would constitute professional misconduct under the laws of New York State. The Department of Health has met its burden of proof.

### **I Service of Charges and of Notice of Referral Proceeding.**

P.H.L. §230(10)(d) requires that the Charges and Notice of Hearing be served on the licensee personally, at least twenty (20) days before the Hearing. If personal service cannot be made, due diligence must be shown and certified under oath. After due diligence has been certified, then, the Charges and Notice of Hearing must be served by registered or certified mail to the licensee's last known address, at least fifteen (15) days before the Hearing.



From the affidavit submitted, personal service of the Notice of Referral Proceeding and the Statement of Charges on Respondent was proper and timely. In addition, Respondent submitted a response, dated February 14, 1994(sic), to the Charges with no objection to service.

Jurisdiction over the Respondent was obtained pursuant to P.H.L. §230(10)(d) and pursuant to §6502(5) of the Education Law

**Professional Misconduct under §6530(9)(b) of the Education Law.**

The Arizona Board of Medicine is a duly authorized professional disciplinary agency. In 1994, said Arizona Board found Respondent guilty of violating Arizona Statutes and said violations warranted disciplinary action by the Arizona Board.

Taking the findings of the Arizona Board as true, the Hearing Committee finds that the record establishes that Respondent falsely and fraudulently billed Medicare and Blue Cross/Blue Shield for services he did not provide. Respondent also charged fees for services he did not provide, failed to maintain adequate and appropriate records and gave experimental treatment without adhering to generally accepted experimental criteria and standards.

The Respondent deviated from accepted standards of medical care in his practice in the State of Arizona.

The Hearing Committee finds that Respondent's conduct, if committed in New York State, constitutes professional misconduct under §6530 of the Education Law as follows:

(1) professional misconduct by reason of practicing the profession fraudulently or beyond its authorized scope<sup>3</sup>; and

(2) failing to maintain records which accurately reflect the evaluation and treatment of the patients<sup>4</sup>.

Therefore, Respondent has committed professional misconduct pursuant to §6530(9)(b) of the Education Law.

### **DETERMINATION**

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determines that Respondent's license to practice medicine in New York State should be REVOKED.

This determination is reached after due and careful consideration of the full spectrum of penalties available pursuant to P.H.L. §230-a, including:

(1) Censure and reprimand; (2) Suspension of the license, wholly or partially; (3) Limitations of the license; (4) Revocation of license; (5) Annulment of license or registration; (6) Limitations; (7) the imposition of monetary penalties; (8) a course of education or training; (9) performance of public service and (10) probation.

Since Respondent did not appear at this proceeding, he was not subject to direct or cross-examination nor to questions from the Hearing Committee in this proceeding. The Committee is bound by the documentary evidence presented.

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<sup>3</sup> Education Law §6530(2).

<sup>4</sup> Education Law §6530(32).

The record clearly establishes that Respondent committed significant violations of Arizona Laws. Respondent's lack of integrity, character and moral fitness is evident in his course of conduct.

The submission by Respondent does not give an adequate excuse or shed any different light on the charges brought in Arizona or in New York. (Respondent's Exhibit # A).

The Hearing Committee concludes that if this case had been held in New York, on the facts presented, the pattern of over billing, the equivalent of Medicare fraud and the lack of adequate medical records would have resulted in a unanimous vote for revocation of Respondent's license.

The Hearing Committee considers Respondent's misconduct to be very serious. With a concern for the health and welfare of patients in New York State, as well as our taxpayers, the Hearing Committee determines that revocation of Respondent's license is the appropriate sanction to impose under the circumstances.

A review of other possible sanctions or penalties, as indicated above, was made by the Hearing Committee. However, since Respondent does not practice in New York<sup>5</sup>, no other penalty seemed appropriate, feasible or workable under the circumstances.

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<sup>5</sup>Respondent has resided and practiced in Arizona for over twenty (20) years and has not indicated a desire to practice in New York in the future (Respondent's Exhibit # A).

## **ORDER**

Based on the foregoing, **IT IS HEREBY ORDERED THAT:**

1. The Specification of professional misconduct contained within the Statement of Charges (Petitioner's Exhibit # 1) is **SUSTAINED**, and
2. Respondent's license to practice medicine in the State of New York is hereby **REVOKED**.

**DATED:** Albany, New York  
March 16, 1995

  
\_\_\_\_\_  
**THOMAS SINATRA, M.D., (Chair)**

**EDWARD ZAINO, M.D.  
KENNETH KOWALD**

To: Willard Randolph Van Nostrand III, M.D.  
3737 Calle Cortez  
Tucson, AZ 85716

Marcia E. Kaplan  
Associate Counsel,  
New York State Department of Health  
Bureau of Professional Medical Conduct  
5 Penn Plaza, 6th Floor  
New York, New York 10001

## **A P P E N D I X   I**

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

-----X

IN THE MATTER : STATEMENT  
OF : OF  
WILLARD RANDOLPH VAN NOSTRAND III, M.D. : CHARGES

-----X

WILLARD RANDOLPH VAN NOSTRAND III, M.D., the Respondent, was authorized to practice medicine in New York State on February 19, 1976 by the issuance of license number 126342 by the New York State Education Department. The Respondent is not currently registered with the New York State Education Department to practice medicine.

**FIRST SPECIFICATION**

**HAVING BEEN FOUND GUILTY OF  
MISCONDUCT IN ANOTHER STATE**

1. Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law Sec. 6530(9)(b) (McKinney Supp. 1994) in that he has 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, specifically:

On or about January 28, 1994, the Arizona Board of Medical Examiners (Arizona Board) censured Respondent and ordered him to pay a civil penalty of \$2000 upon finding him guilty of improper professional practice with respect to patients E.M., A.B., N.L., L.R., J.O., R.G., and M.S. as more fully set forth in its Findings of Fact, Conclusions of Law, and Order for Decree of Censure and Civil Penalty, and upon finding him in violation of Arizona law, as follows: failing or refusing to maintain adequate records on a patient or failing or refusing to make such records promptly available to another physician upon request and receipt of proper authorization, in violation of A.R.S. Sec. 32-1401(24)(e); charging a fee for services not rendered or dividing a professional fee for patient referrals among health care providers or health care institutions or between these providers and institutions or a contractual arrangement which has the same effect in violation of A.R.S. Sec. 32-1401(24)(u); charging or collecting a clearly unreasonable fee in violation of A.R.S. Sec. 32-1401(24)(w); knowingly making any false or fraudulent statement, written or oral, in connection with the practice of medicine or if applying for privileges or renewing an application for privileges at a health care institution, in violation of A.R.S. Sec. 32-1401(24)(t); the use of experimental forms of diagnosis and treatment without adequate informed consent, and without conforming to generally accepted experimental criteria, including protocols, detailed records, periodic analysis of results and periodic review by a medical peer review committee as approved by the federal food and drug administration or its successor agency, in violation of A.R.S. Sec. 32-1401(24)(y).

These acts, if committed within New York State, would constitute professional misconduct under N.Y. Educ. Law Sec. 6530(2) (practicing the

profession fraudulently), Sec. 6530(3)  
(practicing the profession with negligence on  
more than one occasion), and/or Sec. 6530(32)  
(failing to maintain a record for each patient  
which accurately reflects the evaluation and  
treatment of the patient.)

DATED: NEW YORK, NEW YORK

January 4, 1995



CHRIS STERN HYMAN  
Counsel  
Bureau of Professional  
Medical Conduct



## **A P P E N D I X   I I**

# ARIZONA BOARD OF MEDICAL EXAMINERS

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WILLIAM F. HOLSEY, M.D.  
VICE CHAIRMAN

BURTON N. DRUCKER  
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1651 East Morten, Suite 210 • Phoenix, Arizona 85020  
Telephone (602) 255-3751  
FAX (602) 255-1848

DOUGLAS N. CERF  
EXECUTIVE DIRECTOR

MARK R. SPEICHER  
ASSISTANT DIRECTOR  
FOR LICENSURE AND  
ADMINISTRATION



## STATE OF ARIZONA

### BOARD OF MEDICAL EXAMINERS

AUGUST 18, 1994


I, **MARK R. SPEICHER**, Executive Director of the Board of Medical  
Examiners of the State of Arizona, hereby certify that the annexed document,  
to wit:

FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND ORDER FOR DECREE  
OF CENSURE AND CIVIL  
PENALTY  
JANUARY 28, 1994



is a true copy of the original document as it appears on the records and in  
the files of this Board. In the Matter of **WILLARD RANDOLPH VAN  
NOSTRAND, M.D.** holder of License No. **7028** For the Practice of Medicine in  
the State of Arizona.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and  
caused the seal of the Board of Medical Examiners of the State of Arizona to be  
affixed, the day and year first above written.

  
\_\_\_\_\_  
MARK R. SPEICHER  
Executive Director

[S E A L]

# ARIZONA BOARD OF MEDICAL EXAMINERS

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EXECUTIVE DIRECTOR

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ASSISTANT DIRECTOR  
FOR LICENSURE AND  
ADMINISTRATION



STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
EMPIRE STATE PLAZA

ALBANY, NY 12237

\*\*\*\*\*

Physician:	WILLARD RANDOLPH VAN NOSTRAND, M.D.
License:	7028
Date Issued:	07/01/1972
Licensed by:	ENDORSEMENT, NATIONAL BOARDS
Date of Birth:	11/04/1945
Medical School:	STATE UNIVERSITY OF NEW YORK AT BUFFALO SCHOOL OF MEDICINE BUFFALO, NEW YORK
Graduation year:	05/28/1971
License Status:	Active
License Expires:	01/01/1995

This is to certify that the above-named physician is licensed to practice medicine in Arizona. There are Board actions regarding this physician.

\*\*\*\*\*

For Bureau use  
Verification Division

Date: 08-17-1994

To expedite the Board's verification process, the above format is the standard format prepared for physicians licensed by this agency. Any Board actions regarding this licensee are attached to this form. If you have any further questions, please contact our office.

BEFORE THE BOARD OF MEDICAL EXAMINERS  
OF THE STATE OF ARIZONA

In the Matter of	)	
	)	
<b>WILLARD VAN NOSTRAND, M.D.</b>	)	<b>FINDINGS OF FACT,</b>
	)	<b>CONCLUSIONS OF LAW,</b>
	)	<b>AND ORDER FOR DECREE</b>
Holder of License No. 7028	)	<b>OF CENSURE AND CIVIL</b>
For the Practice of Medicine	)	<b>PENALTY</b>
In the State of Arizona.	)	
_____	)	

WILLARD VAN NOSTRAND, M.D. appeared before the Arizona Board of Medical Examiners ("Board") for an Informal Interview on January 28, 1994. Based upon the information presented, the Board adopted the following Findings of Fact, Conclusions of Law, and Order for Decree of Censure and Civil Penalty:

**FINDINGS OF FACT**

1. The Board of Medical Examiners of the State of Arizona is the duly constituted authority for the regulation and control of the practice of medicine in the State of Arizona.

2. WILLARD VAN NOSTRAND, M.D., is the holder of License No. 7028 for the practice of medicine in the State of Arizona.

**PATIENT E.M.**

3. Patient E.M., a 49 year-old female, was injured in an accident in 1988. When she was referred by an internist to Dr. VAN NOSTRAND for evaluation and treatment, the referral note dated May 31, 1991, stated that the patient had myofascial, upper motor neuron syndrome. The referring physician recommended treatment twice a week for six weeks.

4. Dr. VAN NOSTRAND first saw the patient at his AquaTraction facility on July 1, 1991. The facility, which is a covered, heated pool with a hydraulic chair lift, is located adjacent to Dr. VAN NOSTRAND's home in a

residential neighborhood. "AquaTraction" is an apparatus and method patented by Dr. VAN NOSTRAND, described in the United States Patent abstract as follows:

A method for producing mild, symmetrical (or asymmetrical) traction on lumbar intervertebral discs and sacroiliac joints. A patient is supported in water in a spa for approximately 30 minutes by means of an annular floatation device engaging undersides of the patient's arms a predetermined distance from the patient's armpits, the spa being sufficiently deep that the patient's feet cannot touch the bottom. A submerged, symmetrical weight belt is supported on the patient's hips, the buoyant weight of the belt being in the range from approximately 10-20 pounds. The temperature of water in the spa is maintained in the range from approximately 88-94 degrees F. Preferably, the patient remains relatively motionless in the spa for a warm up/relaxation period of approximately 5-10 minutes, followed by a sequence of slow extension and flexion exercise of the patient's back, following by a plurality of side bends.

According to Dr. VAN NOSTRAND's records for the July 1 visit, the patient received 40 minutes of pool therapy with two lbs. of weight on each ankle. The patient was billed as follows for that visit:

AquaTraction Therapy -	
Pool Therapy first 30 minutes	\$ 80.00
Pool Therapy next 15 minutes	\$ 17.00
Pool Therapy last 15 minutes	\$ 17.00
Physical Medicine	
Therapeutic Exercises 30 minutes	\$ 46.00
Neuromuscular Reeducation 30 minutes	\$ 46.00
Physical Medicine Treatment 30 minutes	\$ 54.00
Other Service - Whirlpool	<u>\$ 36.00</u>
TOTAL	\$296.00

For that same visit, the patient was also billed as follows:

Initial History and Physical	\$109.00
Extensive Consultation	<u>\$148.00</u>
TOTAL	\$257.00

According to the patient, Dr. VAN NOSTRAND interviewed her at the initial visit, but did not perform a physical examination then or at anytime. The patient also stated that she was in the pool less than 20 minutes.

5. For the patient's second visit, on July 16, 1991, the patient had only one session in the pool. Nevertheless, Dr. VAN NOSTRAND's records show 60 minutes of therapy in the "a.m." and either 40 or 60 minutes in the "p.m.". The patient made only one visit on that date. The amount of weights used is not indicated. The patient was billed as follows:

Pool Therapy (a.m.) first 30 minutes	\$ 80.00
Pool Therapy next 15 minutes	\$ 17.00
Pool Therapy last 15 minutes	\$ 17.00
Pool Therapy (p.m.) first 30 minutes	\$ 80.00
Pool Therapy next 15 minutes	\$ 17.00
Pool Therapy next 15 minutes	\$ 17.00
Therapeutic Exercise 30 minutes	\$ 46.00
Neuromuscular Reeducation 30 minutes	\$ 46.00
Physical Medical Treatment 30 minutes	\$ 54.00
Educational service	\$ 27.00
Whirlpool	\$ 36.00
Brief consultative follow-up visit	<u>\$ 58.00</u>
TOTAL	\$495.00

According to the patient, Dr. VAN NOSTRAND was on the premises, but did not meet with her. She also stated that she was in the pool about 25 minutes.

6. For the third visit, on July 18, 1991, Dr. VAN NOSTRAND's records indicated that the patient received 60 minutes of therapy with 2 lbs. of weights per ankle:

Pool Therapy (a.m.) first 30 minutes	\$ 80.00
Pool Therapy next 15 minutes	\$ 17.00
Pool Therapy last 15 minutes	\$ 17.00

Therapeutic Exercise 30 minutes	\$ 46.00
Neuromuscular Reeducation 30 minutes	\$ 46.00
Educational service	\$ 27.00
Medical conference by physician w/patient 25 minutes	<u>\$ 50.00</u>
TOTAL	\$283.00

According to the patient, she was in the pool only about 30 minutes.

7. Although the patient did not see Dr. VAN NOSTRAND on July 24, 1991, she was billed as follows for that date:

Telephone conversation	\$ 50.00
Insurance report	\$ 50.00
Medical conference "by physician"	<u>\$ 50.00</u>
TOTAL	\$150.00

8. For the patient's fourth visit, on July 25, 1991, Dr. VAN NOSTRAND's records list 60 minutes of therapy with 2 lbs. of weight per ankle. The patient was billed as follows:

Pool Therapy first 30 minutes	\$ 80.00
Pool Therapy next 15 minutes	\$ 17.00
Pool Therapy last 15 minutes	\$ 17.00
Therapeutic Exercise 30 minutes	\$ 46.00
Neuromuscular Reeducation 30 minutes	\$ 46.00
Brief Consultative Follow-up	<u>\$ 58.00</u>
TOTAL	\$264.00

According to the patient, she was in the pool about 45 minutes and did not see Dr. VAN NOSTRAND.

9. For the patient's fifth and last visit, on August 6, 1991, Dr. VAN NOSTRAND's records again list 60 minutes of therapy with 2 lbs. of weight per ankle. The patient was billed as follows:

Pool Therapy first 30 minutes	\$ 80.00
Pool Therapy next 15 minutes	\$ 17.00
Pool Therapy last 15 minutes	\$ 17.00
Therapeutic Exercise 30 minutes	\$ 46.00
Neuromuscular Reeducation 30 minutes	\$ 46.00
Physical Medical Treatment 30 minutes	
Educational Service	\$ 27.00

Whirlpool	\$ 36.00
Brief Consultative Follow-up	<u>\$ 58.00</u>
TOTAL	\$381.00

According to the patient, she was in the pool about 45 minutes and Dr. VAN NOSTRAND was not present at any time during that visit.

10. For August 24, 1991, the patient was billed as follows:

Telephone consultation	\$ 50.00
Narrative letter	\$ 50.00
Medical conference with physician	<u>\$ 50.00</u>
	\$150.00

The patient did not see Dr. VAN NOSTRAND on that date.

11. Dr. VAN NOSTRAND's total billing to the patient was \$2,276.00.

According to the patient, neither Dr. VAN NOSTRAND or his staff gave her exercises to do at any time. Dr. VAN NOSTRAND's records for the patient consist of correspondence and four brief AquaTraction Questionnaire forms. The forms list questions about the patient's amount of pain, stress, and stiffness upon entry into and exit from the "spa". There are also spaces for entry of water temperature, minutes of therapy, weights used, color of laser pool lights and music selections. On the reverse side of one form, Dr. VAN NOSTRAND wrote notes of the patient's history. The front sides of the forms contain brief notes which are illegible in part.

#### PATIENT A.B.

12. Patient A.B., a 52 year-old female, was seen at Dr. VAN NOSTRAND's AquaTraction facility on numerous occasions between July 22, 1991 and November 21, 1991. A bill was prepared for the date of each visit listing codes and fees for multiple services performed on each date. The services listed consisted of pool treatment, therapy, and reports. On September



12, 1991, the billing ledger card entry for each visit was "adjusted" upward as follows:

<u>Date</u>	<u>Amount of Original Bill</u>	<u>9/12/91 "Adjusted" Ledger Entry</u>
7/22/91	\$ 195.00	\$ 767.00
7/24/91	127.50	653.00
7/29/91	140.00	457.00
8/02/91	140.00	507.00
8/04/91	115.00	457.00
8/06/91	140.00	457.00
8/12/91	140.00	411.00
8/15/91	140.00	521.00
8/19/91	127.50	454.00
8/23/91	<u>140.00</u>	<u>461.00</u>

On November 14, 1991, Medicare was billed \$3,990.00 and \$2,549.00, and \$2,691.00 on November 21, 1991.

#### PATIENT N.L.

13. Patient N.L., a 39 year-old female, was seen at Dr. VAN NOSTRAND's AquaTraction facility beginning February 1, 1991 for approximately 11 treatments. The billing sheets dated as of the date of each visit list codes and services performed. The bills for fees for services performed each visit differ from charges listed on the ledger cards by as much as 100%. Dr. VAN NOSTRAND's records were scanty, incomplete, and did not reflect the performance of all services for which the patient was billed.

#### PATIENT L.R.

14. Patient L.R., a 28 year-old female was first seen by Dr. VAN NOSTRAND at his AquaTraction facility on December 31, 1990. Between approximately April 3, 1991 and May 17, 1991, the patient was billed for multiple treatments per visit when she was not given multiple treatments. The duration of the treatments originally written on the record for visits on April 10, 1991 and

May 17, 1991, was subsequently altered with "white-out". On May 30, 1992, Dr. VAN NOSTRAND changed the patient for an interval history and physical which is not noted in his records as being performed.

**PATIENT J.O.**

15. Patient J.O., a 26 year-old male, was seen by Dr. VAN NOSTRAND at the AquaTraction facility on August 26, 1991. Dr. VAN NOSTRAND's only record concerning physical examination consists of one line. There are no records for care or treatment performed after October 9, 1991. Nevertheless, Dr. VAN NOSTRAND's billing ledger entries show that on February 13, 1992, an entry was made for \$390 for services on December 6, 1991 and for \$150 for services performed on December 20, 1991. On February 13, 1992, Dr. VAN NOSTRAND billed Medicare \$540. Dr. VAN NOSTRAND also billed Blue Cross/Blue Shield for \$490 for services rendered December 6, 1991.

**PATIENT R.G.**

16. Patient R.G., a 36 year-old male, was first seen by Dr. VAN NOSTRAND on January 7, 1991. There is no record of physical examination performed or a family history or past history taken.

**PATIENT M.S.**

17. Patient M.S., a 34 year-old male, was first examined by Dr. VAN NOSTRAND on July 1, 1991. There is no record of physical examination performed or history taken. The bills for fees for services performed each visit differ from charges listed on the ledger cards by as much as 400%.

18. The treatment of the foregoing patients was deemed experimental by Dr. VAN NOSTRAND and did not conform to generally accepted experimental criteria, including protocols, detailed records, periodic analysis of results and

periodic review by a medical peer review committee as approved by the Food and Drug Administration or its successor agency.

### **CONCLUSIONS OF LAW**

1. The Board of Medical Examiners of the State of Arizona possesses jurisdiction over the subject matter hereof and over WILLARD VAN NOSTRAND, M.D.

2. The conduct and circumstances described above constitute unprofessional conduct pursuant to A.R.S. §32-1401(24)(e) (failing or refusing to maintain adequate records on a patient or failing or refusing to make such records promptly available to another physician upon request and receipt of proper authorization).

3. The conduct and circumstances described above constitute unprofessional conduct pursuant to A.R.S. §32-1401(24)(u) (charging a fee for services not rendered or dividing a professional fee for patient referrals among health care providers or health care institutions or between these providers and institutions or a contractual arrangement which has the same effect).

4. The conduct and circumstances described above constitute unprofessional conduct pursuant to A.R.S. §32-1401(24)(w) (charging or collecting a clearly unreasonable fee. In determining the reasonableness of a fee, the fee customarily charged in the state for similar services shall be considered in light of modifying factors, such as the time required, the complexity of the service and the skill requisite to perform the service properly. This subdivision does not apply if there is a clear written contract for a fixed fee between the physician and the patient which has been entered into prior to the provision of service).

5. The conduct and circumstances described above constitute unprofessional conduct pursuant to A.R.S. §32-1401(24)(t) (knowingly making any false or fraudulent statement, written or oral, in connection with the practice of medicine or if applying for privileges or renewing an application for privileges at a health care institution).

6. The conduct and circumstances described above constitute unprofessional conduct pursuant to A.R.S. §32-1401(24)(y) (the use of experimental forms of diagnosis and treatment without adequate informed patient consent, and without conforming to generally accepted experimental criteria, including protocols, detailed records, periodic analysis of results and periodic review by a medical peer review committee as approved by the federal food and drug administration or its successor agency).

#### ORDER


Based upon the foregoing Findings of Fact and Conclusions of Law, IT IS HEREBY ORDERED as follows:

1. WILLARD VAN NOSTRAND, M.D. is hereby censured.
2. Within one (1) year from the date of this Order, WILLARD VAN NOSTRAND, M.D. shall pay a civil penalty of \$2,000 to the Arizona Board of Medical Examiners.

DATED this 28th day of January, 1994.

BOARD OF MEDICAL EXAMINERS  
OF THE STATE OF ARIZONA

[ S E A L ]

By   
DOUGLAS N. CERF  
Executive Director