



# 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.  
*Commissioner*

Dennis P. Whalen  
*Executive Deputy Commissioner*

October 4, 2000

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

Mr. Robert Bogan, Esq.  
Mr. Paul Robert Maher, Esq.  
New York State Department of Health  
Hedley Building  
433 River Street, 4<sup>th</sup> Floor  
Troy, N.Y. 12180

John Aretakis, Esq.  
353 East 54<sup>th</sup> Street  
New York, N.Y. 10022

Jane Williams Wuchinich, M.D.  
P.O. Box 350  
118 Heart Butte Road  
East Glacier, Montana 59434

### **RE: In the Matter of Jane Williams Wuchinich, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 00-273) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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  
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,

A handwritten signature in black ink, appearing to read "Tyrone T. Butler". The signature is written in a cursive style with a large initial 'T'.

Tyrone T. Butler, Director  
Bureau of Adjudication

TTB: sc  
Enclosure

**COPY**

IN THE MATTER  
OF  
JANE WILLIAMS WUCHINICH, M.D.

DETERMINATION  
AND  
ORDER  
BPMC-00-273

A Commissioner's Order and Notice of Hearing dated, August 28, 2000, and a Statement of Charges dated August 28, 2000, were served upon the Respondent, **JANE WILLIAMS WUCHINICH, M.D.**

**GERALD WEINBERGER, M.D.**, Chairperson, **TERESA S. BRIGGS, M.D., Ph.D.** and **NANCY MACINTYRE, R.N., 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. **MICHAEL P. MCDERMOTT, ESQ.**, Administrative Law Judge, served as the Administrative Officer.

A hearing was held on September 20, 2000, at the Offices of the New York State Department of Health, Hedley Park Place, 433 River Street, Troy, New York. The Department appeared by **HENRY M. GREENBERG, ESQ.**, General Counsel, by **ROBERT BOGAN, ESQ.**, and **PAUL ROBERT MAHER, ESQ.**, of Counsel. The Respondent appeared in person and was represented by **JOHN ARETAKIS, ESQ.**, 353 East 54<sup>th</sup> Street, New York, New York 10022.

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 case, 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 Section 6530(9)(b) and (d). A copy of the Commissioner's Order, Notice of Hearing and the Statement of Charges are attached to this Determination and Order as Appendix 1.

**WITNESSES**

For the Petitioner

None

For Respondent:

Jane Williams Wuchinich, M.D., the Respondent

## FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers in parentheses refer to transcript page numbers or exhibits. These citations represent 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 unless otherwise specified.

1. **JANE WILLIAMS WUCHINICH, M.D.**, the Respondent, was authorized to practice medicine in New York State on August 2, 1972, by the issuance of license number 113157 by the New York State Education Department. (Pet's Ex. 4).
2. On March 17, 1997, the Wyoming Board of Medicine (hereinafter "Wyoming Board"), by a "Consent Decree and Order", (hereinafter "Wyoming Order"), required that the Respondent abstain from the use of alcohol, marijuana, cocaine, stimulants, narcotics, sedatives, tranquilizers, and all other mind altering or potentially addictive drugs, medications or gasses; not use any controlled substance, narcotic or addicting drug which has been prescribed for or acquired by her husband, any other family member or any other person; not write prescriptions of any drug legally classified as a narcotic, addicting or scheduled drug for herself or her parents, spouse or children; and submit to urinalysis, blood and/or saliva testing, based on a positive urine sample

collected from Respondent on November 2, 1995, positive for Phentermine hydrochloride (Fastin) a Schedule IV controlled substance. (Pet's Ex. 5).

3. On June 28, 2000, the Wyoming Board, by an "Amendment to Consent Decree and Order" (hereinafter "Wyoming Amendment"), continued the terms of the Wyoming Order described in Finding of Fact No. 2 above; required Respondent not to prescribe any medications of any kind for any member of her family; to undergo an evaluation for psychoactive substance abuse disorder within ninety (90) days; as well as comply with any and all recommendations for evaluation, treatment and/or monitoring, based on Respondent's use of Tramadol without permission of the Wyoming Board as required by the March 17, 1997 Wyoming Order, in that she tested positive for Tramadol in August and September 1999, and January and February 2000, and that she prescribed Tramadol for her daughter and then used a portion of that prescription for herself. (Pet's Ex. 6).
  
4. By ORDER, dated August 28, 2000, "**ANTONIA C. NOVELLO, M.D., M.P.H.**, Commissioner of the New York State Department of Health, after an investigation, upon the recommendation of a committee on professional medical conduct of the State Board for Professional Medical Conduct, and upon the Statement of Charges attached hereto and made a part hereof, has determined that **JANE WILLIAMS WUCHINICH, M.D.**, has been disciplined by a duly authorized professional disciplinary agency of another jurisdiction, the Wyoming Board of Medicine, for acts which if committed in New York

State, would have constituted an imminent danger to the health of the people and it appears prejudicial to the interests of the people to delay action.”

The Commissioner “ORDERED, pursuant to N.Y. Public Health Law Section 230(12)(b), that effective immediately, **JANE WILLIAMS WUCHINICH, M.D.**, Respondent, shall not practice medicine in the State of New York. This Order shall remain in effect unless modified or vacated by the Commissioner of Health pursuant to N.Y. Public Health Law Section 230(12).” (Pet’s Ex.1).

### **HEARING COMMITTEE CONCLUSIONS**

The Hearing Committee concludes that the conduct resulting in the Wyoming Board’s disciplinary action against Respondent would constitute misconduct under the laws of New York State.

### **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 reason of having had 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 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 evidence in this case indicates that the Respondent has a history of drug abuse. She was the subject of a restoration proceeding which resulted in the restoration of her license to practice medicine in New York State in 1990.

On March 17, 1997, she entered into a "Consent Decree and Order" with the Wyoming Board of Medicine relative to her use and prescribing of alcohol and controlled substances. (See Finding of Fact No. 2).

On June 28, 2000, the Wyoming Board of Medicine issued an amendment to the March 17, 1997 "Consent Decree and Order", based on the Respondent having violated terms of the March 17, 1997 "Consent Decree and Order".

The Respondent testified that she is scheduled to enter the Rush Institute in Chicago, Illinois on October 2, 2000, for evaluation and treatment.

Based on the evidence in this case, the Hearing Committee determines unanimously (3-0) that the Respondent's license to practice medicine in New York State should be **SUSPENDED** until such time as the Respondent makes a showing to the satisfaction of a

committee of professional medical conduct of the State Board for Professional Medical Conduct that she is not incapacitated for the active practice of medicine provided, however, that the committee may impose reasonable conditions on the licensee, if it determined that due to the nature and extent of the licensee's former incapacity such conditions are necessary to protect the health of the people.

### ORDER

#### **IT IS HEREBY ORDERED:**

1. The Respondent's license to practice medicine in New York State is **SUSPENDED** until such time as she makes a showing to the satisfaction of a committee of professional medical conduct of the State Board for Professional Medical Conduct that she is not incapacitated for the active practice of medicine provided, however, that the committee may impose reasonable conditions on the licensee, if it determined that due to the nature and extent of the licensee's former incapacity such conditions are necessary to protect the health of the people.

2. This ORDER shall be effective upon service on the Respondent or the Respondent's attorney by personal service or certified or registered mail.

DATED: Oct. 2, 2000  
ARDSLEY, New York

  
GERALD WEINBERGER, M.D.  
Chairperson

TERESA S. BRIGGS, M.D., Ph.D.  
NANCY MACINTYRE, R.N., Ph.D.

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

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IN THE MATTER  
OF  
JANE WILLIAMS WUCHINICH, M.D.

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COMMISSIONER'S  
ORDER  
AND  
NOTICE OF  
HEARING

TO: **Jane Williams Wuchinich, M.D.**  
P.O. Box 350  
118 Heart Butte Road  
East Glacier, Montana 59434

The undersigned, Antonia C. Novello, M.D., M.P.H., Commissioner of the New York State Department of Health, after an investigation, upon the recommendation of a committee on professional medical conduct of the State Board for Professional Medical Conduct, and upon the Statement of Charges attached hereto and made a part hereof, has determined that **Jane Williams Wuchinich, M.D.**, has been disciplined by a duly authorized professional disciplinary agency of another jurisdiction, the Wyoming Board of Medicine, for acts which if committed in New York state, would have constituted an imminent danger to the health of the people and it appears prejudicial to the interests of the people to delay action.

It is therefore,

ORDERED, pursuant to N.Y. Public Health Law Section 230(12)(b), that effective immediately, **Jane Williams Wuchinich, M.D.**, Respondent, shall not practice medicine in the State of New York. This Order shall remain in effect unless modified or vacated by the Commissioner of Health pursuant to N.Y. Public Health Law Section 230(12).

PLEASE TAKE NOTICE that a hearing will be held pursuant to the provisions of N.Y. Public Health Law Section 230, and N.Y. State Admin. Proc. Act Sections 301-307 and 401. The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on the 20<sup>th</sup> day of September, 2000, at 10:00 am in the forenoon at Hedley Park Place, 5<sup>th</sup> Floor, 433 River Street, Troy, New York 12180, and at such other adjourned dates, times, and places as the committee may direct. The Respondent may file an answer to the Statement of Charges with the below-named attorney for the Department of Health.



At the hearing, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the hearing will be made and the witnesses at the hearing will be sworn and examined. The Respondent shall appear in person at the hearing and may be represented by counsel. The Respondent has the right to produce witnesses and evidence on her behalf, to issue or have subpoenas issued on her behalf for the production of witnesses and documents, and to cross-examine witnesses and examine evidence produced against her. Such evidence or sworn testimony shall be 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 which would show that 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. A summary of the Department of Health Hearing Rules is enclosed. 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 hearing will proceed whether or not the Respondent appears at the hearing. Scheduled hearing dates are considered dates certain and, therefore, adjournment requests are not routinely granted. Requests for adjournments must be made in writing to the Administrative Law Judge's Office, Hedley Park Place, 433 River Street, 5<sup>th</sup> Floor, Troy, New York 12180, (518-402-0751), upon notice to the attorney for the Department of Health whose name appears below, and at least five days prior to the scheduled hearing date. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation.

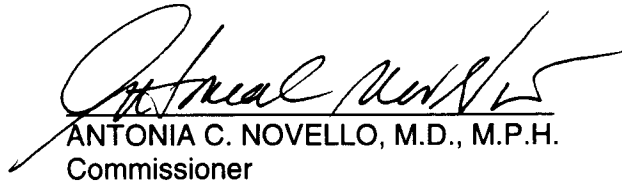
At the conclusion of the hearing, the committee shall make findings of fact, conclusions concerning the charges sustained or dismissed, and, in the event any of the charges are sustained, a determination of the penalty or sanction to be imposed or appropriate action to be taken. Such determination may be reviewed by the Administrative Review Board for Professional Medical Conduct.

THESE PROCEEDINGS MAY RESULT IN A  
DETERMINATION THAT YOUR LICENSE TO  
PRACTICE MEDICINE IN NEW YORK STATE

BE REVOKED OR SUSPENDED, AND/OR THAT  
YOU MAY BE FINED OR SUBJECT TO OTHER  
SANCTIONS SET FORTH IN NEW YORK PUBLIC  
HEALTH LAW SECTION 230-a. YOU ARE  
URGED TO OBTAIN AN ATTORNEY IN THIS  
MATTER.

DATED: Albany, New York

8/28, 2000



ANTONIA C. NOVELLO, M.D., M.P.H.  
Commissioner

Inquiries should be addressed to:

Robert Bogan  
Assistant Counsel  
Office of Professional Medical Conduct  
433 River Street - Suite 303  
Troy, New York 12180  
(518) 402-0820

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

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<b>IN THE MATTER</b>	<b>STATEMENT</b>
<b>OF</b>	<b>OF</b>
<b>JANE WILLIAMS WUCHINICH, M.D.</b>	<b>CHARGES</b>

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JANE WILLIAMS WUCHINICH, M.D., the Respondent, was authorized to practice medicine in New York state on August 2, 1972, by the issuance of license number 113157 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A.        On or about March 17, 1997, the Wyoming Board of Medicine (hereinafter "Wyoming Board"), by a Consent Decree and Order (hereinafter "Wyoming Order"), required that Respondent abstain from the use of alcohol, marijuana, cocaine, stimulants, narcotics, sedatives, tranquilizers, and all other mind altering or potentially addictive drugs, medications or gasses, not use any controlled substance, narcotic or addicting drug which has been prescribed for or acquired by her husband, any other family member or any other person, not write prescriptions of any drug legally classified as a narcotic, addicting or scheduled drug to herself or her parents, spouse or children, and submit to urinalysis, blood and/or saliva testing, based on a positive urine sample collected from Respondent on November 2, 1995, positive for Phentermine hydrochloride (Fastin) a Schedule IV controlled substance.

B.        On or about June 28, 2000, the Wyoming Board, by an Amendment to Consent Decree and Order (hereinafter "Wyoming Amendment"), continued the terms of the Wyoming Order described in Paragraph A above, required Respondent not to prescribe any medications of any kind for any member of her family, to undergo an evaluation for psychoactive substance abuse disorder within ninety (90) days, as well as comply with any and all recommendations for evaluation, treatment and/or monitoring, based on Respondent's use of Tramadol without permission of the Wyoming Board as

required by the Wyoming Order described in Paragraph A above, that she tested positive for Tramadol in August and September 1999, and January and February 2000, and that she prescribed Tramadol for her daughter and then used a portion of that prescription for herself.

C. The conduct resulting in the Wyoming Board's disciplinary action 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(2) (practicing the profession fraudulently);
2. New York Education Law §6530(8) (being a habitual user of narcotics, barbiturates, amphetamines, hallucinogens, or other drugs having similar effects);
3. New York Education Law §6530(16) (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); and/or
5. New York Education Law §6530(29) (violating a term of probation or condition or limitation imposed on the licensee pursuant to section two hundred thirty of the public health law).

### **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, in that Petitioner charges:

1. The facts in paragraphs A, B and/or C.

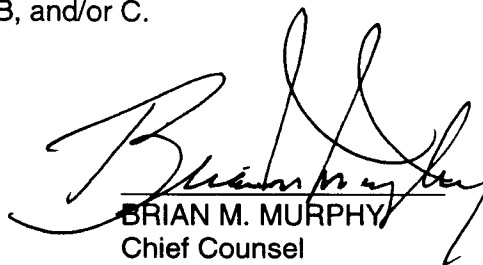


**SECOND SPECIFICATION**

Respondent violated New York Education Law §6530(9)(d) by reason of having had 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 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, B, and/or C.

DATED: *August 28*, 2000  
Albany, New York



**BRIAN M. MURPHY**  
Chief Counsel  
Bureau of Professional Medical  
Conduct

SUMMARY OF DEPARTMENT OF HEALTH HEARING RULES

(Pursuant to Section 301 SAPA)

The following items are addressed by the Uniform Hearing Procedures Rules of the New York State Department of Health:

Applicability

Definitions

Notice of Hearing

Adjournment

Answer or Responsive Pleading

Amendment of Pleadings

Service of Papers

Discovery

Hearing Officer/Pre-Hearing Conference

Pre-Hearing Conference

Stipulations and Consent Orders

The Hearing

Hearing Officer's Report

Exceptions

Final Determination and Order

Waiver of Rules

Time Frames

Disqualification for Bias

The exact wording of the rules is found at 10 NYCRR Part 51 of Volume 10 of the New York Code of Rules and Regulations. Each of the above items may be summarized as following:

51.1 Applicability. These regulations apply to most hearings conducted by the Department of Health.

51.2 Definitions.

1. "Commissioner" means Commissioner of the New York State Department of Health.
2. "CPLR" means Civil Practice Law and Rules.
3. "Department" means New York State Department of Health.
4. "Hearing Officer" means the person appointed to preside at the hearing or the person designated as administrative officer pursuant to Public Health Law Section 230.
5. "Party" means all persons designated as petitioner, respondent or intervenor.
6. "Report" means the Hearing Officer's summary of the proceeding and written recommendation or the findings, conclusions and determination of the hearing committee pursuant to Public Health Law Section 230.

51.3 The Department's Notice of Hearing and/or Statement of Charges should be served at least 15 days prior to the first hearing date, specify time, place and date(s) and should contain the basis for the proceeding. Pursuant to Public Health Law §230, the Notice of Hearing must, additionally, specify that the licensee shall file a written answer.

51.4 Adjournment. Only the Hearing Officer may grant an adjournment and only after he/she has consulted with both parties. In hearings pursuant to Public Health Law Section 230, an adjournment on the initial day may be granted by the hearing committee.

51.5 Answer or Responsive Pleading. A party may serve an answer or response to the allegations of the Department. In matters governed by PHL §230, the licensee is required to file a written answer to each of the charges and allegations of the Department. Under the law, any charge or allegation which is not so answered shall be deemed admitted.

51.6 Amendment to Pleadings. A party may usually amend papers if no substantial prejudice results by leave of the Hearing Officer.

51.7 Service of Papers. Except for the Notice of Hearing and/or Statement of Charges, all papers may be served by ordinary mail.

51.8 Disclosure. Generally, there is no disclosure of any kind and the Hearing Officer cannot require it, unless all parties agree. If agreed to, the Hearing Officer will ensure all parties proceed in accordance with their agreement. However, in a hearing in which revocation of a license or permit is sought or possible, a party may demand in writing that another party disclose the names of witnesses, document or other evidence such other party intends to offer at the hearing. A demand for such disclosure must be served at least 10 days prior to the first scheduled hearing date. Disclosure or a statement that the party has nothing to disclose must be made at least 7 days before the first scheduled hearing date. A party that determines to present witnesses or evidence not previously disclosed must supplement its disclosure as soon as is practicable. The Hearing Officer may, upon good cause shown, modify the times for demands for and response to disclosure or allow a party not to disclose or limit, condition or regulate the use of information disclosed and may preclude the introduction of evidence not disclosed pursuant to a demand.

51.9 Hearing Officer. He/she presides over the hearing and has the authority to ensure it is conducted in an orderly fashion. He/she may also order the parties to meet before the hearing to discuss the procedure. He/she does not have the authority to remove testimony from the transcript and/or dismiss charges unless authorized by delegation.

51.10 Stipulation and Consent and Surrender Orders. At any

time prior to a final order, parties may resolve all or any issues by stipulation. An order issued pursuant to a stipulation has the same force and effect as one issued after hearing.

51.11 The Hearing. A party may have an attorney represent him or her. Failure to appear may result in an adverse ruling. A hearing may be combined with or separated from another hearing depending on whether such action will result in delay, cost or prejudice. While the rules of evidence as applied in a courtroom are not observed, witnesses must be sworn or give an affirmation and each party has the right to present its case and to cross-examine. The Department has broad discretion to place documents into evidence. A record of the proceeding must be made. In enforcement cases, the Department has the burden of proof and of going forward. In matters relating to neglect or abuse of patients under Public Health Law Section 2803-d, the Hearing Officer may not compel disclosure of the identity of the person making the report or who provided information in the investigation of the report.

Complaints relating to Public health Law Section 230 may not be introduced into evidence by either party and their production cannot be required by the Hearing Officer.

Claims that a hearing has been unreasonably delayed is treated as an affirmative defense (Section 51.5) or as part of the claimant's case. The burden of going forward and of proof are on the claimant.

A verbatim record of the proceeding shall be made by any means determined by the Department. The record shall include notice of hearing and any statement of charges, responsive pleadings, motions, rulings, transcript or recording, exhibits, stipulations, briefs, any objections filed, any decision, determination, opinion, order or report rendered.

51.12 Hearing Officer or Hearing Committee Report. The report or determination should be submitted within 60 days of completion of the hearing.

51.13 Filing of Exceptions. Within 30 days of the date of a copy of the report of the Hearing Officer and proposed order any party may submit exceptions to said report and proposed order

to the Supervising Administrative Law Judge. On notice of all parties, a party may request, before the expiration of the exception period, the Supervising Law Judge to extend the exception period. All parties have the opportunity to state their position on the extension on the record. Extensions may be granted on good cause shown; however, they are not granted to allow a party to respond to exceptions already filed. Pursuant to PHL 230(c), a notice of request for review of the Hearing Committee determination must be served upon the ARB within 14 days of service of the determination. All parties have 30 days thereafter to submit briefs and 7 days from service of a brief to submit a reply.


51.14 Final Determination Order. The hearing process ends when an order is issued by the Commissioner or his designee or the appropriate board of council. The order should state a basis for the decision. Each party receives a copy of the order.

51.15 Waiver of Rules. These rules and regulations may be dispensed with by agreement and/or consent.

51.16 Establishment, Construction, Rate Hearings. Hearings involving any of these issues have time limits concerning the issuance of notices of hearing of 365 days of receipt by the Department of a request for hearing.

51.17 Disqualification for Bias. Bias shall disqualify a Hearing Officer and/or a committee member in hearings governed by Public Health Law Section 230. The party seeking disqualification must submit to the hearing officer an affidavit pursuant to SAPA Section 303. Mere allegations are insufficient. The Hearing Officer rules on the request.

DATED: Albany, New York  
March 20, 1997

  
HENRY M. GREENBERG  
General Counsel