



# 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

*Public*

Dennis P. Whalen  
Executive Deputy Commissioner

March 2, 2006

## CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Richard B. Manis, M.D.  
2434 Buena Vista Drive  
Huntington, West Virginia 25704-9596

Robert Bogan, Esq.  
NYS Department of Health  
Office of Professional Medical Conduct  
433 River Street – Suite 303  
Troy, New York 12180

**RE: In the Matter of Richard B. Manis, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 06-46) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), and §230-c subdivisions 1 through 5, (McKinney Supp. 1992), "the ~~determination of a committee on professional medical conduct may be reviewed by the~~ Administrative Review Board for professional medical conduct." Either the Respondent or the Department may seek a review of a committee determination.

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


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

James F. Horan, Esq., Administrative Law Judge  
New York State Department of Health  
Bureau of Adjudication  
Hedley Park Place  
433 River Street, Fifth Floor  
Troy, New York 12180

The parties shall have 30 days from the notice of appeal in which to file their briefs to the Administrative Review Board. Six copies of all papers must also be sent to the attention of Mr. Horan at the above address and one copy to the other party. The stipulated record in this matter shall consist of the official hearing transcript(s) and all documents in evidence.

Parties will be notified by mail of the Administrative Review Board's Determination and Order.

Sincerely,

A handwritten signature in cursive script that reads "Sean D. O'Brien". The signature is written in black ink and is positioned above the printed name and title.

Sean D. O'Brien, Director  
Bureau of Adjudication

SDO:djh

Enclosure

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

**COPY**

DETERMINATION

AND

ORDER

BPMC NO. 06-46

IN THE MATTER  
OF  
**RICHARD B. MANIS, M.D.**

A Notice of Referral Proceeding and Statement of Charges, both dated November 4, 2005, were served upon the Respondent, **RICHARD B. MANIS, M.D.** **PETER KOENIG, SR.**, Chairperson, **AIRLIE CAMERON, M.D., M.P.H.** and **JAMES G. EGNATCHIK, M.D.**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to Section 230(10)(e) of the Public Health Law. **STEPHEN L. FRY, ESQ.**, Administrative Law Judge, served as the Administrative Officer.

A hearing was held on February 23, 2006, at the Offices of the New York State Department of Health, Hedley Park Place, 433 River Street, Troy, New York. The Department appeared by **DONALD P. BERENS, JR., ESQ.**, General Counsel, by **ROBERT BOGAN, ESQ.**, of Counsel. The Respondent appeared pro se.

Evidence was received and transcripts of these proceedings were made.

After consideration of the entire record, the Hearing Committee issues this Determination and Order.

**STATEMENT OF CASE**

This case was brought pursuant to Public Health Law Section 230(10)(p). The statute provides for an expedited hearing where a licensee is charged solely with a violation of Education Law Section 6530(9). In such cases, a licensee is charged with misconduct based upon a prior criminal conviction in New York or another jurisdiction, or upon a prior administrative adjudication regarding conduct 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 Sections 6530(9)(b) and (d), based upon actions constituting violations of subdivisions (3) and (5). A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order as Appendix 1.

**WITNESSES**

For the Petitioner:	None
For the Respondent:	Respondent

**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. **RICHARD B. MANIS, M.D.**, the Respondent, was authorized to practice medicine in New York State on August 6, 1989, by the issuance of license number 179555 by the New York State Education Department. (Ex. 4)
2. On February 14, 2005, the Missouri State Board of Registration for the Healing Arts ("the Missouri Board") issued a document entitled "Findings of Fact, Conclusion of Law and Disciplinary Order", wherein a Public Reprimand was issued against Respondent based upon findings of the Missouri Administrative Hearings Commission ("the Commission"). The decision of the Commission found, among other things, that Respondent had committed acts of negligence and incompetence in his performance of several orthopedic surgeries. (Ex. 5)

#### HEARING COMMITTEE CONCLUSIONS

The hearing Committee concludes that the conduct resulting in the Missouri Board's disciplinary actions against Respondent would constitute misconduct under the laws of New York State, pursuant to New York Education Law §6530(9)(b) and (d), in that the conduct would have constituted misconduct in New York, had it been committed here, under:

- New York Education Law §6530(3) (practicing with negligence on more than one occasion);
- New York Education Law §6530(5) (practicing with incompetence on more than one occasion);

**VOTE OF THE HEARING COMMITTEE**

**SPECIFICATIONS**

**FIRST SPECIFICATION**

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

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

**SECOND SPECIFICATION**

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

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

**HEARING COMMITTEE DETERMINATION**

The record in this case establishes that Respondent was publicly reprimanded by the Missouri Board for the commission of acts of negligence and incompetence in his performance of several orthopedic surgeries. This administration of discipline constitutes misconduct in New York State, as set forth above, so the only issue to be addressed in this proceeding is the penalty to be imposed against Respondent for this misconduct. (Public Health Law Section 230(10)(p))

The Hearing Committee concludes that the appropriate penalty to be imposed in this state, as recommended by the Department, is a Censure and Reprimand. (Public Health Law §230-a(1)) The bases for this conclusion are that this penalty is commensurate with the penalty imposed by the State of Missouri, which undertook an extensive evaluation of the medical evidence involved in the cases at issue, and that the conduct that led to the Missouri findings occurred in 1999 or earlier. Respondent has since that time had, as far as this record reveals, an unblemished record. Respondent produced documentation demonstrating the satisfactory nature of his practice since 1999, including awards from his employer (a VA medical center) and letters of reference from a number of colleagues. (Ex.'s A-H) The Hearing Committee concludes that no more stringent penalty is necessary to protect the residents of New York State.

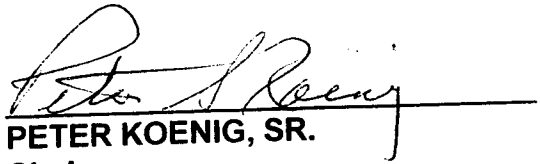
**ORDER**

**IT IS HEREBY ORDERED THAT:**

1. A **CENSURE AND REPRIMAND** is hereby imposed against **RICHARD B. MANIS, M.D.**

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

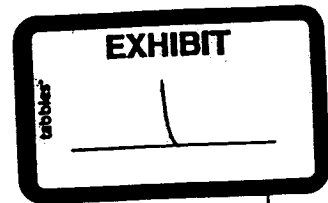
**DATED: Dewitt, New York**  
2-28-06, 2006

  
**PETER KOENIG, SR.**  
Chairperson

**AIRLIE CAMERON, M.D., M.P.H.**  
**JAMES G. EGNATCHIK, M.D.**



# APPENDIX 1



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

IN THE MATTER  
OF  
RICHARD B. MANIS, M.D.  
CO-05-03-1637-A

NOTICE OF  
REFERRAL  
PROCEEDING

TO: RICHARD B. MANIS, M.D.  
2434 Buena Vista Drive  
Huntington, WV 25704-9596

RICHARD B. MANIS, M.D.  
Veterans Administration Hospital  
Huntington, WV 25704

**PLEASE TAKE NOTICE THAT:**

An adjudicatory proceeding will be held pursuant to the provisions of New York Public Health Law § 230(10)(p) and New York State Administrative Procedure 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 20<sup>th</sup> day of December 2005, at 10:00 in the forenoon of that day at the Hedley Park Place, 5<sup>th</sup> Floor, 433 River Street, Troy, New York 12180.

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

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

If you intend to present sworn testimony, the number of witnesses and an estimate of the time necessary for their direct examination must be submitted to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Hedley Park Place, 5<sup>th</sup> Floor, 433 River Street, Troy, New York, ATTENTION: HON. SEAN O' BRIEN, DIRECTOR, BUREAU OF ADJUDICATION, (hereinafter "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before December 12, 2005.


Pursuant to the provisions of New York 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 December 12, 2005, 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  
*November 4*, 2005

  
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  
RICHARD B. MANIS, M.D.  
CO-05-03-1637-A

STATEMENT  
OF  
CHARGES

RICHARD B. MANIS, M.D., the Respondent, was authorized to practice medicine in New York state on August 6, 1989, by the issuance of license number 179555 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A. On or about February 14, 2005, the State of Missouri, State Board of Registration for the Healing Arts (hereinafter "Missouri Board"), by a Findings of Fact, Conclusions of Law and Disciplinary Order (hereinafter "Missouri Order"), Publicly Reprimanded Respondent's license to practice medicine, based on incompetence and repeated negligence.

B. The conduct resulting in the Missouri Board 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(3) (negligence on more than one occasion);

and/or

2. New York Education Law §6530(5) (incompetence on more than one occasion).

**SPECIFICATIONS**  
**FIRST SPECIFICATION**

Respondent violated New York Education Law §6530(9)(b) by having been found guilty of improper professional practice or professional misconduct by a duly 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 Paragraph A and/or B.

**SECOND SPECIFICATION**

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

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

DATED: *Nov. 4*, 2005  
Albany, New York

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