



STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Antonia C. Novello, M.D., M.P.H., Dr.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

March 16, 2001

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Jennifer Daniels, M.D.
3100 South Salina Street
Syracuse, New York 13205

Kevin P. Donovan, Associate Counsel
NYS Department of Health
ESP-Corning Tower-Room 2509
Albany, New York 12237

Jennifer Daniels, M.D.
256 West Newell Street
Syracuse, New York 13205

RE: In the Matter of Jennifer Daniels, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 01-68) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine together with the registration certificate. Delivery shall be by either certified mail or in person to:

Office of Professional Medical Conduct
New York State Department of Health
Hedley Park Place
433 River Street - Fourth Floor
Troy, New York 12180

If your license or registration certificate is lost, misplaced or its whereabouts is otherwise unknown, you shall submit an affidavit to that effect. If subsequently you locate the requested items, they must then be delivered to the Office of Professional Medical Conduct in the manner noted above.

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

Request for review of the Committee's determination by the Administrative Review Board stays penalties other than suspension or revocation until final determination by that Board. Summary orders are not stayed by Administrative Review Board reviews.

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

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

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

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

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

Sincerely,

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' and 'B'.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:cah
Enclosure

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

COPY

DETERMINATION

AND

ORDER

BPMC 01-68

IN THE MATTER
OF
JENNIFER DANIELS, M.D.

Arsenio Agopovich, M.D. Chairperson, Teresa S. Briggs, M.D, Ph.D. and John D. Tarrant, duly designated members of the State Board for Professional Medical Conduct, appointed by the Commissioner of Health of the State of New York pursuant to Section 230(1) of the Public Health Law, served as the Hearing Committee in this matter pursuant to Sections 230(1)(e) and 230(12) of the Public Health Law. Attorney Susan F. Weber served as Administrative Officer for the Hearing Committee.

The Department of Health was represented at the Hearing by Kevin P. Donovan, Associate counsel. Respondent Jennifer Daniels, M.D., represented herself.

Evidence was received, witnesses were sworn or affirmed and were heard, and transcripts were made of the proceedings. After consideration of the entire record, the Hearing Committee submits this determination.

STATEMENT OF CHARGES

The Statement of Charges charges the Respondent with professional misconduct by reason of failure to comply with two orders issued pursuant to Public Health Law Section 230.10 (a) on two separate occasions requiring her to submit to a comprehensive review of her medical

records.

The charges are more specifically set forth in the Statement of Charges, a copy of which is attached hereto and made a part of this Determination and Order as Appendix 1.

SUMMARY OF PROCEEDINGS

Commissioner's Order and Notice of Hearing Date:	November 22, 2000
Prehearing Conference:	January 18, 2001
Hearing Date:	January 18, 2001
Post-hearing Motions Received:	January 25, 2001 January 30, 2001
Ruling on Motions Issued:	February 2, 2001
Deliberation Date:	February 20, 2001
Place of Hearing:	NYS Department of Health Hedley Building 433 River St. Troy, NY 12180
Petitioner Appeared By:	Donald P. Berens, Jr., Esq. General Counsel NYS Department of Health By: Kevin P. Donovan, Esq. Associate Counsel
Respondent Appeared By:	Pro Se

WITNESSES

For the Petitioner:	Alan LaFlore Anita Harrison
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Pauline Frazier

David Brittain, M.D.

For the Respondent:

Jennifer Daniels, M.D.

FINDINGS OF FACT

Numbers in parenthesis refer to transcript pages or exhibits, and they denote evidence that the Hearing Committee found persuasive in determining a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence. All Hearing Committee findings in this case were unanimous.

GENERAL FINDINGS

1. On November 16, 1999, a committee of the State Board for Professional Medical conduct recommended that the Director of the Office of Professional Medical Conduct (OPMC) conduct a comprehensive review of patient records and/or office record of the Respondent. The Director of OPMC issued a comprehensive review order dated December 31, 1999. (Ex.1)
2. By letter dated December 31, 1999, OPMC notified Respondent that a comprehensive review order had been issued pursuant to Public Health Law 230(10)(a)(iv), sent her a copy of the order and notified her that failure to comply with the order would constitute professional misconduct as defined in NY Education Law 6530(15) and would result in a recommendation of prosecution for misconduct. (Ex.4; T.41-43, 49-50)
3. Respondent failed to comply with the order. (Ex. 5, 6, 7; T.50)

4. On June 22, 2000, a second committee of the State Board for Professional Medical Conduct recommended that the Director of OPMC conduct a comprehensive review of patient records and/or office records of the Respondent. The Director of OPMC issued a comprehensive review order dated June 22, 2000. (Ex. 8, 9; T.51)
5. By letter dated June 29, 2000, Respondent was notified that a comprehensive review order had been issued pursuant to Public Health Law 230(10)(a)(iv), was sent a copy of the order, and was notified that failure to comply with the order would constitute professional misconduct and may result in prosecution for such misconduct. (Ex.9, T. 32, 43, 53)
6. On June 30, 2000, Respondent stated to OPMC personnel that she would not comply with the comprehensive review order. (T. 33-34)
7. On July 7, 2000, in a telephone call Respondent placed to OPMC personnel, Respondent agreed that the comprehensive review would occur on July 20, 2000. (T. 44)
8. By letter dated July 10, 2000, Respondent canceled the comprehensive review scheduled for July 20, 2000. (Ex. 10; T. 55, 92)
9. By telephone with OPMC personnel, Respondent agreed to a comprehensive review on August 3, 2000. (T. 56)
10. On August 3, 2000, a lawyer acting on behalf of Respondent canceled the comprehensive review scheduled for that same date. (Ex. 15; T 61)
11. On October 6, 2000, Respondent and OPMC agreed to certain conditions under which a

comprehensive review would occur. (Ex. 17; T. 62, 88)

12. Respondent did not set another date for the comprehensive review. (T. 64-65)

13. On October 12, 2000, Respondent stated to OPMC that she would not submit to a comprehensive review. (Ex. 18, T. 95)

DISCUSSION

Respondent is a forty-three year old woman licensed to practice medicine in the State of New York. She is a graduate of University of Pennsylvania Medical School and is a Board certified family practitioner. She also holds an M.B.A. in health care administration from the Wharton School. Respondent graduated cum laude in 1979 from Harvard-Radcliffe College, where she majored in biology. Respondent has received many honors and awards for her scholarship and her community service over the years. (Ex. K) In 1990, Respondent opened a solo family practice in an under-served area of Syracuse, New York. (Ex. K, T. 123-127)

Evidence in the record establishes that, on December 31, 1999, the Director of the Office of Professional Medical Conduct, acting on a complaint and after recommendation by an Investigation Committee of the New York State Board for Professional Medical Conduct, issued an order for a comprehensive review of Respondent's patient records. This recommendation was based upon Respondent's care of one patient over several visits; the Investigation Committee determined that Respondent's care of this patient constituted a "pattern of inappropriate medical practice" justifying a comprehensive review of patient and office records. (Ex. 4, T. 48) When Respondent disputed the accuracy of referring to her treatment of one patient as a pattern, OPMC staff presented the facts to a second independent panel which determined that the treatment in question constituted a single incident of negligence or incompetence. The Director issued a second

order requiring Respondent to submit to a comprehensive review of patient and office records. (Ex. 9)

Respondent objected to the comprehensive review on two grounds.¹ First, she asserted that the initial order was invalid because the treatment she rendered the patient concerning whom the complaint was made was, in fact, effective and consequently the State had no factual or legal basis for ordering the comprehensive review. (Ex.18, T. 19) Second, she stated that the comprehensive review would be too invasive of the privacy of her patients² and too burdensome to her solo medical practice. Respondent testified that, as a solo practitioner, her time on her day off was occupied with "sterilizing instruments, cleaning, landscaping, doing the bookkeeping, mailing correspondence... and other associated work with the office." (T. 136) By letter dated September 22, 2000, Respondent notified her patients that she was closing her practice to turn her full attention to the OPMC investigation (Ex. C, T. 140). In August, 2000, Respondent consulted a psychiatrist whose Certificate of Professional Care, dated 10/21/00, states, "It [sic] medically necessary that this pt. remain on medical leave from private practice thru Feb. 14, 2001. Signed: Dr. S. . Reyes, M.D." (Ex. M)

Testimony from OPMC staff in the Syracuse office, shows that extraordinary efforts were made to accommodate the Respondent's concerns about the confidentiality of her patients, her

¹ At the Pre-hearing Conference immediately prior to the Hearing, Respondent submitted ten motions to dismiss. Judge Weber set a briefing schedule and instructed Respondent to support her allegations with legal argument. (T.171-173) Annexed as Appendix 2 is Judge Weber's ruling on the motions to dismiss. Following the ruling, Respondent sought an opportunity to reply to Petitioner's brief. A telephone conference was convened to hear argument; Respondent argued that Petitioner's brief was longer than allowed and that Petitioner had made statements concerning care of a patient, to which Respondent should be allowed to respond. The judge ruled that patient care is not relevant to this proceeding and therefore no reply would be permitted.

² The panel notes that Respondent violated patient confidentiality by distributing personal identifying information about the patient in the index case to her supporters. (Ex. 18)

own reputation, and the smooth functioning of her medical practice. It was agreed that there would not be a review of her appointment book and telephone log, as is customary, because of Respondent's concern about personal privacy; that the investigators would copy any relevant documents at either Respondent's office or, if she preferred, at the Department of Health office, in which case Respondent's representative could accompany them; and that the comprehensive review would take place on a day and time of Respondent's choosing, when her office would be closed to patients. (Ex.17) These accommodations were unusual and demonstrate the extent to which Petitioner endeavored to allay Respondent's concerns so that she would voluntarily submit to the comprehensive review.³ (T. 63-65) Even so, Respondent refused to permit a comprehensive review to take place. (T. 95-96)

Petitioner's authority to order a comprehensive review under the circumstances here presented is clear and unequivocal. Respondent's obligation to submit to such review as a condition to licensing is also clear and unequivocal, and has been affirmed by the Supreme Court, Onondaga County, in an Article 78 proceeding brought by Respondent. (Ex. 20) Yet Respondent has delayed by every means possible, including retaining and then firing five or six different attorneys over the course of this case. The allegations made in Respondent's presentation that Petitioner's actions are motivated by bias against her as a practitioner of alternative medicine, a woman doctor, an African-American, a community activist, are hardly credible but, in any event, like the issue of patient care, these allegations are not before this panel.

The panel unanimously determines that the Petitioner has met its burden of proof, and that

³ The panel thinks Petitioner bears some responsibility for the delay in obtaining the comprehensive review of Respondent's patient records. There was testimony that a subpoena is employed if records for a single patient are sought and not turned over in a timely manner. It is suggested that an appropriate and more economical step in a case such as this might be to obtain an administrative warrant for the comprehensive review.

no credible evidence has been offered in opposition.

VOTE OF THE HEARING COMMITTEE

The Hearing Committee votes unanimously as follows:

Paragraphs A, B, C, D, E, F, G, H, I, J, K, L, and M ARE SUSTAINED.

DETERMINATION OF THE HEARING COMMITTEE AS TO PENALTY

The Hearing Committee unanimously determines that the public safety requires Respondent submit to the comprehensive medical review twice ordered by OPMC as a condition to practicing medicine in the State of New York.

Respondent's excuses for failing to comply with the comprehensive review order -- that there is no reason for OPMC to question her care of any patient and that a comprehensive review is too burdensome -- do not withstand rational scrutiny. A person of Respondent's fine background, excellent education, and obvious intellectual gifts must understand the process of governmental regulation of medical practice. Her vigorous resistance to such oversight can't help but raise the question of what must the Respondent be hiding? All Petitioner's efforts to smooth the way for compliance with the orders has been useless, all the concessions have been in vain. Respondent has evaded proper State oversight since the initial comprehensive review order in December, 1999. Uncounted staff time and effort, not to mention public funds, have been wasted in over a year of attempting to obtain Respondent's compliance with the reasonable and valid requirements of the Public Health Law.

The panel determines that Respondent's license to practice medicine should be suspended,

and that such suspension should continue until sixty days after Respondent's patient care and office records have been subjected to a full and complete comprehensive review, including examination of her appointment book and telephone log, as is customary in a comprehensive review. The panel is not inclined to assess a fine, merely because the level of fine appropriate to compensate in any way for the waste of resources Respondent's actions have caused, would be well beyond her means and would constitute an extreme hardship.

ORDER

Based upon the foregoing, IT IS HEREBY ORDERED THAT:

1. The license to practice medicine of Respondent JENNIFER DANIELS, M.D., is hereby SUSPENDED, and
2. Such suspension shall continue in full force and effect until 60 days after Respondent has fully and completely complied with the order of June 22, 2000 for a comprehensive review of patient and office records of Respondent.

This Order shall take effect immediately.

Dated: TROY, New York

March 15, 2001



Arsenio Agopovich, M.D., (Chairperson)

Teresa Briggs, M.D.

John D. Torrant

APPENDIX I

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

-----X
IN THE MATTER : STATEMENT
OF : OF
JENNIFER DANIELS, M.D. : CHARGES
-----X

JENNIFER DANIELS, M.D., the Respondent, was authorized to practice medicine in New York State on or about March 29, 1989, by the issuance of license number 177799 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. On November 16, 1999, a committee of the State Board for Professional Medical Conduct recommended that the Director of the Office of Professional Medical Conduct (OPMC) conduct a comprehensive review of patient records and/or office records of the Respondent. The Director of OPMC issued a comprehensive review order dated December 31, 1999.
- B. By a letter dated December 31, 1999, Respondent was notified by OPMC that a comprehensive review order had been ordered pursuant to Public Health Law 230 (10)(a)(iv), was sent a copy of the order, and was notified that failure to comply with the order would constitute professional misconduct as defined in N.Y. Education Law 6530(15) and would result in a recommendation of prosecution for such misconduct.
- C. Respondent failed to comply with the order.

- D. On June 22, 2000, a second committee of the State Board for Professional Medical Conduct recommended that the Director of OPMC conduct a comprehensive review of patient records and/or office records of the Respondent. The Director of OPMC issued a comprehensive review order dated June 22, 2000.
- E. By a letter dated June 29, 2000, Respondent was notified that a comprehensive review order had been issued pursuant to Public Health Law 230 (10)(a)(iv), was sent a copy of the order, and was notified that failure to comply with the order would constitute professional misconduct and may result in a prosecution for such misconduct.
- F. On June 30, 2000, Respondent stated to OPMC personnel that she would not comply with the comprehensive review order.
- G. On July 7, 2000, in a telephone call Respondent placed to OPMC personnel, Respondent agreed that the comprehensive review would occur on July 20, 2000.
- H. In a letter dated July 10, 2000, Respondent canceled the comprehensive review.
- I. On July 19, 2000, in a telephone call Respondent placed to OPMC personnel, Respondent agreed that the comprehensive review would occur on August 3, 2000.
- J. On August 3, 2000, a lawyer acting for Respondent canceled the comprehensive review scheduled for August 3, 2000, in a letter that same date.

- K. A lawyer for Respondent then asked for agreement that OPMC would comply with certain conditions concerning the comprehensive review, and set forth those conditions in a letter dated October 6, 2000. Those conditions were accepted with attached clarifications, also dated October 6, 2000.
- L. Respondent did not set another date for the comprehensive review.
- M. On October 12, 2000, Respondent stated to OPMC personnel that she would not permit a CMR to occur.


SPECIFICATIONS OF MISCONDUCT
FIRST AND SECOND SPECIFICATIONS
FAILURE TO COMPLY WITH AN ORDER FOR
A COMPREHENSIVE REVIEW OF MEDICAL RECORDS

The Respondent is charged with failure to comply with an order issued pursuant to paragraph (a) of subdivision ten of section two hundred thirty of the public health law (a comprehensive review of patient and/or office records of the licensee) within the meaning of New York Educ. Law Section 6530 (15) in that Petitioner charges:

1. The facts of paragraphs A, B and C.
2. The facts of paragraphs A, B, C, D, E, F, G, H, I, J, K, L and/or M.

November 23, 2000

Albany, New York


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

APPENDIX II



STATE OF NEW YORK DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Antonia C. Novello, M.D., M.P.H., Dr. P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

February 2, 2001

Jennifer Daniels, MD
3100 South Salina Street
Syracuse, NY 13205

Kevin P. Donovan, Associate Counsel
Bureau of Professional Medical Conduct
NYS Department of Health
Room 2509 Corning Tower
Empire State Plaza
Albany, NY 12237-0032

Re: Matter of Jennifer Daniels, MD

Dear Dr. Daniels and Mr. Donovan:

I have received and considered Respondent's motions and supporting law brief dated January 25, 2001, and Petitioner's letter and memorandum in opposition to the motions, dated January 30, 2001, and make the following ruling.

First, I note that, in deference to Respondent's pro se status, considerable courtesy has been extended to her in this matter. My instructions to Respondent concerning the ten listed motions were that she should choose from among them those relevant to this proceeding that she could support with facts and law. She should provide her written argument and legal support in writing to me, copy to counsel for Petitioner, on January 26, 2001. Motions not so supported would be deemed waived. The papers were not received until January 27. Petitioner's response was due February 5th.

Respondent has raised four new issues, numbers 11, 12, 13 and 14, and has not supported any of them in her brief. She has raised issues already ruled upon during the hearing or precluded from consideration here by Justice Murphy in the Article 78 decision (Petitioner's Exhibit 20). Point II of the brief asks that Respondent's Answer be accepted. Petitioner raised no objection to the late Answer, which was accepted into evidence as Respondent's Exhibit Q, so this issue is moot.

Respondent's request for a copy of the patient complaint which apparently gave rise to the investigation is denied. The Public Health Law (Section 230[11][a]) mandates that such complaints remain confidential, with the exception of situations where the complainant testifies at

the hearing. (Lombardo v. DeBuono, 233 AD 2d 789 [Third Dept. 1998]) In such cases, the respondent is entitled to the complaint to prepare for cross-examination. That is not the situation here.

Even if Respondent were entitled to the complainant's complaint, that document would not be admissible in this proceeding on the grounds of relevance. The issue before the Hearing Committee in this matter is NOT Respondent's care and treatment of any of her patients. It is not whether adequate grounds existed upon which Petitioner issued the Comprehensive Review Orders. The only issue before this Hearing Committee is Respondent's compliance with the Comprehensive Review Orders issued by the Department of Health.

The State's authority to regulate the practice of medicine to protect public health is clear. Petitioner's authority to order, and a physician's obligation to comply with, a review of patient records is also well settled. The time for Respondent to raise her arguments and present her proof concerning the quality of care she rendered and the alleged bias of the State in seeking to investigate her, would be AFTER the comprehensive review, IF AND WHEN the Department of Health determines that there are grounds upon which to charge misconduct in patient care. At this point, the Department has only said it needs to look.

It may be that the facts Respondent alleges regarding her treatment and Patient KM's behavior might well persuade the State's auditors that there are no grounds to charge Respondent with misconduct. But this determination must await a comprehensive review of patient records, which Petitioner has determined is warranted based upon the facts before it.

Respondent's motions are in all respects denied.



Susan F. Weber

Administrative Law Judge