



STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

PUBLIC

Denise F. Whalen
Executive Deputy Commissioner

July 2, 1999

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Denise L. Quarles, Esq.
NYS Department of Health
Metropolitan Office
5 Penn Plaza – Suite 601
New York, New York 10001

Frank Albert Daniels, R.P.A.
7808 Third Avenue
Niagara Falls, New York 14304

RE: In the Matter of Frank Albert Daniels, R.P.A.

Dear Parties:

Enclosed please find the Determination and Order (No.99-149) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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.

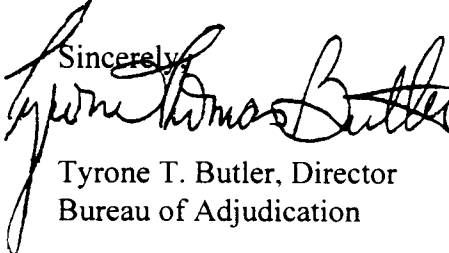
All notices of review must be served, by certified mail, upon the Administrative Review Board and the adverse party within fourteen (14) days of service and receipt of the enclosed, Determination and Order.

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,

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:mla
Enclosure

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

COPY

-----X
IN THE MATTER : DETERMINATION
OF :
FRANK ALBERT DANIELS, R.P.A. : AND
: ORDER
-----X

ORDER# 99-149

A Notice of Referral Proceeding and Statement of Charges, both dated May 4, 1999, were served upon the Respondent, Frank Albert Daniels, R.P.A. **EUGENIA HERBST (Chair), HRUSIKESH PARIDA, M.D., and JACK SCHNEE, 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. **LARRY G. STORCH, ESQ., ADMINISTRATIVE LAW JUDGE,** served as the Administrative Officer. The Department of Health appeared by Denise L. Quarles, Esq., Assistant Counsel. The Respondent failed to appear in person and was not represented by counsel. A hearing was held on June 7, 1999. Evidence was received and witnesses sworn and heard 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 §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 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, Respondent is charged with professional misconduct pursuant to Education Law §6530(9)(b) [having been found guilty of professional misconduct by a duly authorized professional disciplinary agency of another state] and §6530(9)(d) [having had disciplinary action taken by the duly authorized professional disciplinary agency of another state]. A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order in Appendix I.

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.

1. Frank Albert Daniels, R.P.A., (hereinafter, "Respondent"), was authorized to practice as a Physician's Assistant in New York State on or around March 3, 1992 by the issuance of registration number 0042~~2~~27 by the New York State Education Department. (Pet. Ex. #4).
2. On or around August 5, 1996, the Physician Assistant Examining Committee of the California Medical Board (hereinafter the "California Board") filed Accusation No. 1E-94-44022 against Respondent. The Accusation alleged that Respondent had prescribed or administered dangerous and controlled substances to himself in a manner dangerous or injurious to himself; had admitted possession of a prescription for Demerol, which he made out in a fictitious name; and had admitted stealing blank prescription pads from doctors who had employed him. Respondent also

- admitted that he was in possession of anabolic steroids (Deca-durabolin), marijuana and several blank prescriptions. (Pet. Ex. # 3).
3. Between August of 1996 and August of 1997, the California Board and the California Department of Justice made repeated, unsuccessful attempts to serve Respondent with the Accusation by certified mail. Under California Government Code § 11505(c), the aforementioned services were deemed effective. As a result, Respondent did not answer the Accusation, thereby admitting each allegation by default, enabling the California Board to take action without further hearing. On May 13, 1998, the Physician Assistant Examining Committee of the California Board issued an Order sustaining each and every allegation set forth in the Accusation and revoking Respondent's physician's assistant license. (Pet. Ex. #3).
4. Petitioner in the instant matter made repeated attempts to personally serve Respondent, without success. Petitioner also mailed a copy of the Notice of Hearing and Statement of Charges to Respondent's last known address at least fifteen days before the hearing, thereby achieving effective

substitute service pursuant to Public Health Law § 230(10)(d). (Pet. Ex. #2 and #6).

CONCLUSIONS OF LAW

The following conclusions were made pursuant to the Findings of Fact listed above. All conclusions resulted from a unanimous vote of the Hearing Committee unless noted otherwise.

The Hearing Committee concluded that the Petitioner has sustained its burden of proof in this matter. The preponderance of the evidence demonstrated that the California Board revoked Respondent's license to practice as a physician's assistant based upon findings recorded in a default judgement. The California Board found that Respondent had stolen blank prescription pads, issued a prescription for Demerol to himself using a false name, and had prescribed or administered dangerous and controlled substances to himself in a manner dangerous and injurious to himself.

The Hearing Committee concluded that Respondent's conduct, if committed in New York State, would constitute professional misconduct in violation of Education Law §6530(2) [practicing the profession fraudulently], and Education Law § 6530(16) [a willful or grossly negligent failure to comply with substantial provisions of federal, state or local laws, rules or regulations governing the practice of medicine]. Accordingly,

the Committee voted to sustain the First and Second Specifications of professional misconduct set forth in the Statement of Charges.

DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determined that Respondent's registration to practice as a physician's assistant in New York State should be revoked. This determination was reached upon due consideration of the full spectrum of penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties.

Respondent was found guilty by the California Board of offenses indicative of a serious drug problem. He has subsequently effectively dropped out of sight. By so doing, he has made it impossible for this Committee to assess whether or not he has been rehabilitated and is thus capable of safely practicing the profession. Under the circumstances, revocation is the only sanction which will adequately protect the public.

ORDER

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

1. The First and Second Specifications of professional misconduct, as set forth in the Statement of Charges (Petitioner's Exhibit # 1) are SUSTAINED;
2. Respondent's registration to practice as a physician's assistant in New York State be and hereby is REVOKED;
3. This Determination and Order shall be effective upon service. Service shall be either by certified mail upon Respondent at Respondent's last known address and such service shall be effective upon receipt or seven days after mailing by certified mail, whichever is earlier, or by personal service and such service shall be effective upon receipt.

DATED: Troy, New York

June 24 , 1999

Eugenia Herbst

EUGENIA HERBST (CHAIR)

HRUSIKESH PARIDA, M.D.
JACK SCHNEE, M.D.

TO: Denise L. Quarles, Esq.
Assistant Counsel
New York State Department of Health
5 Penn Plaza - Suite 601
New York, New York 10001

Frank Albert Daniels, R.P.A.
7808 Third Avenue
Niagara Falls, New York 14304

APPENDIX I

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

IN THE MATTER
OF
FRANK ALBERT DANIELS, R.P.A.

NOTICE OF
REFERRAL
PROCEEDING

TO: FRANK ALBERT DANIELS, R.P.A.
7808 Third Avenue
Niagara Falls, New York 14304

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law §§230(10)(p) (McKinney Supp. May 4, 1999) and N.Y. State Admin. Proc. Act §§301-307 and 401 (McKinney 1984 and Supp. May 4, 1999). The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (the "Committee") on June 7, 1999, at 10:00 a.m., at the offices of the New York State Department of Health, 5 Penn Plaza, Sixth Floor, New York, New York 10001.

At the proceeding, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. 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 which 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.

PETITIONER'S
EXHIBIT

1-24
6/7/99 R.C.

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, 433 River Street, Fifth Floor South, Troy, NY 12180, ATTENTION: HON. TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION (Telephone: (518-402-0748), (the "Bureau of Adjudication") as well as the Department of Health attorney indicated below, no later than twenty days prior to the scheduled date of the Referral Proceeding, as indicated above.


Pursuant to the provisions of N.Y. Pub. Health Law §230(10)(c), you shall file a written answer to each of the charges and allegations in the Statement of Charges not less than ten days prior to the date of the hearing. Any charge or allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such 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 written brief and affidavits with the Committee. Six copies of all papers you submit must be filed with the Bureau of Adjudication at the address indicated above, no later than fourteen days prior to the scheduled date of the Referral Proceeding, and a copy of all papers must be served on the same date on the Department of Health attorney indicated below. Pursuant to §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. Pursuant to the terms of N.Y. State Admin. Proc. Act §401 (McKinney Supp. 1999) and 10 N.Y.C.R.R. §51.8(b), the Petitioner hereby demands disclosure of the evidence that the Respondent intends to introduce at the hearing, including the names of witnesses, a list of and copies of documentary evidence and a description of physical or other evidence which cannot be photocopied.

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: New York, New York
May, 4 1999



ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct

Inquiries should be addressed to:

DENISE L. QUARLES
Attorney
NYS Department of Health
Division of Legal Affairs
5 Penn Plaza, Suite 601
New York, New York 10001
(212) 613-2615

IN THE MATTER
OF
FRANK ALBERT DANIELS, R.P.A.

STATEMENT
OF
CHARGES

FRANK ALBERT DANIELS, R.P.A., the Respondent, was authorized to practice as a Physician's Assistant in New York State on or around March 3, 1992, by the issuance of registration number 0042127 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. On or around August 5, 1996, the Physician Assistant Examining Committee (the "Committee") of the California Medical Board filed Accusation No. 1E-94-44022 against the Respondent. The Accusation alleged that the Respondent had prescribed or administered dangerous and controlled substances to himself in a manner dangerous or injurious to himself; had admitted possession of a prescription for Demerol, which he made out in a fictitious name; and had admitted stealing blank prescription pads from doctors who had employed him. The Respondent also admitted that he was in possession of Anabolic Steroids (Deca-durabolin), Marijuana and several blank prescriptions.
- B. Between August of 1996 and August of 1997, the Committee and the California Department of Justice made repeated, unsuccessful attempts to serve the Respondent with the Accusation by certified mail. Under California's Government Code §11505(c), the aforementioned services were deemed effective. As a result, the Respondent did not answer the Accusation, thereby admitting each allegation by default, enabling the Committee to take action without further hearing. On or around May 13, 1998, the Committee issued an Order finding, as fact, each and every allegation set forth in the Accusation and, therefore, revoking the Respondent's physician's assistant license.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION
HAVING BEEN FOUND GUILTY OF
PROFESSIONAL MISCONDUCT

The Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(9)(b)(McKinney Supp. 1999) 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 (namely N.Y. Educ. Law §§6530(2) and (16)) as alleged in the facts of the following:

1. Paragraphs A and B.

SECOND SPECIFICATION
HAVING HAD DISCIPLINARY ACTION TAKEN

The Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(9)(d)(McKinney Supp. 1999) by having his license to practice medicine revoked, suspended or having other disciplinary action taken, or having his application for a license refused, revoked or suspended or having voluntarily or otherwise surrendered his license after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation, suspension or other disciplinary action involving the license or refusal, revocation or suspension of an application for a license or the surrender of the license would, if committed in New York State, constitute professional misconduct under the laws of New York State (namely N.Y. Educ. Law §§6530(2) and (16)) as alleged in the facts of the following:

2. Paragraphs A and B.

DATED: May 4, 1999
New York, New York



ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct