

STATE MEDICAL BOARD
OF OHIO

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FILED
COMMON PLEAS COURT
FRANKLIN COUNTY, OHIO
89 NOV -3 PM 3:34
THOMAS J. CARROLL
CLERK OF COURT

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

89CV-11-7941
Case No.

In the Matter of)
James K. Blanke, D.O.,)
Respondent/Appellant,)
vs.)
The State Medical Board of Ohio,)
Appellee.)

[Hon. *Judge Deshler*]

MOTION TO SUSPEND ORDER

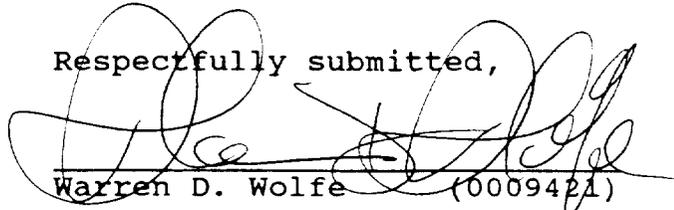
[Warren D. Wolfe (0009421)
One SeaGate, 17th Floor
P.O. Box 2088
Toledo, Ohio 43603
Telephone: (419) 247-2580
Telecopier: (419) 247-2665
Trial Counsel for Respondent/
Appellant]

Now comes James K. Blanke, D.O., the Appellant, and pursuant to Section 119.12, Ohio Revised Code, moves the court to suspend the order of the State Medical Board of Ohio (the "Board") dated October 13, 1989, and mailed October 19, 1989, because said order will create an unusual hardship for Appellant. The grounds for said motion are that the Board, relying solely on an order of the medical board of another state which did not prevent Appellant from practicing medicine at all, has revoked Appellant's right to practice for one year and has permanently barred Appellant from any surgery, when the medical board of the other state imposed a more limited restriction on Appellant's right to perform surgery

and for other reasons to be explained more fully at a hearing on this motion.

WHEREFORE, Appellant moves the court to set this motion for hearing and, thereafter, to suspend the order of the State Medical Board of Ohio.

Respectfully submitted,



Warren D. Wolfe (0009421)

Of Counsel for Respondent:

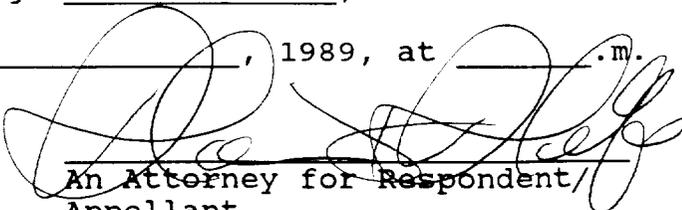
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Trial Counsel for Respondent/
Appellant

NOTICE OF HEARING

The foregoing motion will be for hearing in the Court of Common Pleas, Franklin County, Ohio, 369 South High Street, Columbus, Ohio 43215, before Judge _____, in Courtroom No. _____, on _____, _____, 1989, at _____ .m.



An Attorney for Respondent/
Appellant

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NRN

STATE OF OHIO
COUNTY OF FRANKLIN

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

In the Matter of)
)
James K. Blanke, D.O.)
20456 Danberry Lane)
Harper Woods, Michigan 48225)
Respondent/Appellant,)
)
vs.)
)
The State Medical Board of Ohio)
77 South High Street)
17th Floor)
Columbus, Ohio 43215)
Appellee.)

890
Case No. 41

[Hon.]
NOTICE OF APPEAL OF ORDER
MAILED OCTOBER 19, 1989
[Warren D. Wolfe (0009421)
One SeaGate, 17th Floor
P.O. Box 2088
Toledo, Ohio 43603
Telephone: (419) 247-2580
Telecopier: (419) 247-2665
Trial Counsel for Respondent/
Appellant]

James K. Blanke, D.O., hereby gives notice of his appeal of the order of the State Medical Board of Ohio, dated October 13, 1989, mailed October 19, 1989. A copy each of said order and the letter conveying same are attached hereto and made a part hereof.

The grounds for said appeal are:

1. The Finding of Fact that the "Findings and Conclusions of the Wisconsin Board constitute substantial, reliable, and probative evidence of Dr. Blanke's failure to conform to

minimal standards of care" in Ohio is erroneous as a matter of law.

2. The record is devoid of any reliable, probative, substantial evidence that Dr. Blanke failed to conform to the minimal standards specified by Section 4731.22(B)(6) of the Ohio Revised Code.

3. The record is devoid of any reliable, probative, substantial evidence that Dr. Blanke lacks the requisite skill and judgment to practice medicine in the State of Ohio at this time or to perform any surgery in Ohio at any time in the future and it is an abuse of discretion to so find.

4. The State Medical Board of Ohio ("Ohio Board") has no jurisdiction to impose any penalty on Dr. Blanke pursuant to the provisions of Section 4731.22(B)(22) of the Ohio Revised Code when the two incidents on which the proposed discipline is based occurred in another state more than five years before any action was taken by the Ohio Board and before the effective date of the section of the Ohio statute on which the recommended action is based.

5. The reliance of the Ohio Board in imposing discipline on Dr. Blanke based solely on the order issued by the State of Wisconsin Medical Examining Board ("Wisconsin Board") has deprived Dr. Blanke of the due process of law and is an abuse of discretion.

6. The fact that the Ohio Board imposed discipline more severe than that imposed by the Wisconsin Board without any

expert testimony before the Ohio Board and without the record containing the evidence before the Wisconsin Board is a denial of Dr. Blanke's right to due process of law, erroneous as a matter of law and an abuse of discretion.

7. It is a denial of due process and an abuse of discretion for the Ohio Board to impose discipline on Dr. Blanke based on the order of the Wisconsin Board without a provision that if the discipline of the Wisconsin Board is reversed or modified on appeal, which is pending and which the Ohio Board knew, the discipline imposed by the Ohio Board will be vacated, modified or reconsidered.

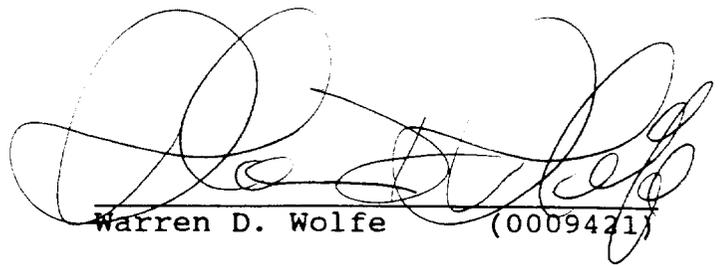
8. The record is devoid of any reliable, probative, substantial evidence that "stringent measures" are "indicated to ensure the protection of the public" or that warrants the present imposition of a one-year suspension from all practice of medicine in Ohio and to so find is an abuse of discretion.

9. To the extent that the Ohio Board concluded based on the hearing examiner's report that Dr. Blanke created "complete loss of renal function in a patient," that is contrary to the facts established by Dr. Blanke's own testimony, which facts the hearing examiner adopted and the Ohio Board approved.

10. The failure of the hearing examiner to grant Dr. Blanke a continuance during his appeal of the order of the Wisconsin Board is a denial of his right to due process of law and an abuse of discretion.

Of Counsel for Respondent:

FULLER & HENRY
One SeaGate
17th Floor
P.O. Box 2088
Toledo, Ohio 43603



Warren D. Wolfe (0009421)

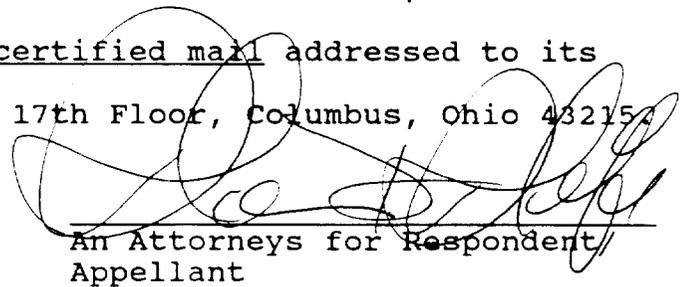
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Telephone: (419) 247-2500
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Trial Counsel for Respondent/
Appellant

INSTRUCTIONS FOR SERVICE

TO THE CLERK:

Please serve Appellee the State Medical Board of Ohio with the Notice of Appeal of Order Mailed October 19, 1989 and of the Motion to Suspend Order by certified mail addressed to its office at 77 South High Street, 17th Floor, Columbus, Ohio 43215.



An Attorneys for Respondent/
Appellant

STATE OF OHIO
THE STATE MEDICAL BOARD OF OHIO
77 SOUTH HIGH STREET
17TH FLOOR
COLUMBUS, OHIO 43215

October 13, 1989

James K. Blanke, D.O.
245 Riverdale Drive
Defiance, Ohio 43512

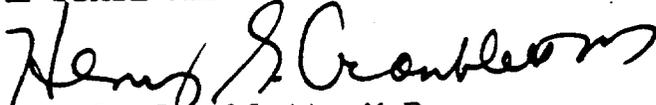
Dear Doctor Blanke:

Please find enclosed certified copies of the Entry of Order; the Report and Recommendation of Joan Irwin Fishel, Attorney Hearing Examiner, State Medical Board of Ohio; and an excerpt of the Minutes of the State Medical Board, meeting in regular session on October 11, 1989, including Motions approving the Findings of Fact and Conclusions of Law of the Attorney Hearing Examiner, and adopting an amended Order.

Section 119.12, Ohio Revised Code, may authorize an appeal from this Order. Such an appeal may be taken to the Franklin County Court of Common Pleas only.

Such an appeal setting forth the Order appealed from and the grounds of the appeal must be commenced by the filing of a Notice of Appeal with the State Medical Board of Ohio and the Franklin County Court of Common Pleas within fifteen (15) days after the mailing of this notice and in accordance with the requirements of Section 119.12 of the Ohio Revised Code.

THE STATE MEDICAL BOARD OF OHIO


Henry G. Cramblett, M.D.
Secretary

HGC:em
Enclosures

CERTIFIED MAIL NO. P 026 074 553
RETURN RECEIPT REQUESTED

cc: Warren D. Wolfe, Esq.

CERTIFIED MAIL NO. P 026 074 554
RETURN RECEIPT REQUESTED

Mailed 10/19/89

STATE OF OHIO
STATE MEDICAL BOARD

CERTIFICATION

I hereby certify that the attached copy of the Entry of Order of the State Medical Board of Ohio; attached copy of the Report and Recommendation of Joan Irwin Fishel, Attorney Hearing Examiner, State Medical Board; and attached excerpt of Minutes of the State Medical Board, meeting in regular session on October 11, 1989, including Motions approving the Findings of Fact and Conclusions of Law of the Hearing Examiner, and adopting an amended Order, constitute a true and complete copy of the Findings and Order of the State Medical Board in the matter of James K. Blanke, D.O., as it appears in the Journal of the State Medical Board of Ohio.

This certification is made by authority of the State Medical Board of Ohio and in its behalf.

(SEAL)



Henry G. Cramblett, M.D.
Secretary

October 13, 1989

Date

BEFORE THE STATE MEDICAL BOARD OF OHIO

IN THE MATTER OF

★

★

JAMES K. BLANKE, D.O.

★

ENTRY OF ORDER

This matter came on for consideration before the State Medical Board of Ohio the 11th day of October, 1989.

Upon the Report and Recommendation of Joan Irwin Fishel, Attorney Hearing Examiner, Medical Board, in this matter designated pursuant to R. C. 4731.23, a true copy of which Report and Recommendation is attached hereto and incorporated herein, and upon the modification, approval and confirmation by vote of the Board on October 11, 1989, the following Order is hereby entered on the Journal of the State Medical Board for the 11th day of October, 1989.

It is hereby ORDERED:

1. That the certificate of James K. Blanke, D.O., to practice osteopathic medicine and surgery in the State of Ohio be REVOKED. Such revocation is stayed and Dr. Blanke's certificate is hereby suspended for a minimum of one (1) year.
2. The State Medical Board of Ohio shall not consider reinstatement of Dr. Blanke's certificate unless and until all of the following minimum requirements are met:
 - a. Dr. Blanke shall submit an application for reinstatement accompanied by appropriate fees. Such application shall not be made for at least one (1) year from the effective date of this Order.
 - b. Dr. Blanke shall take and pass the SPEX examination or any similar examination which the Board may deem appropriate to assess his clinical competency.

James K. Blanke, D.O.

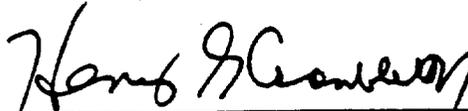
- c. In the event that Dr. Blanke has not been engaged in the active practice of medicine or surgery for a period in excess of two (2) years prior to the date of his application, the Board may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of Dr. Blanke's fitness to resume practice.
 - d. Dr. Blanke shall provide documentation of successful completion of a minimum of eight (8) weeks in an intensive retraining program related to the deficiencies found herein, such program to be approved in advance by the Board.
3. Upon reinstatement, Dr. Blanke's certificate shall be permanently limited in that he shall not be permitted to perform surgery.
4. Further, upon reinstatement Dr. Blanke's certificate shall be subject to the following probationary terms, conditions, and limitations, for a period of five (5) years:
 - a. Dr. Blanke shall obey all federal, state, and local laws, and all rules governing the practice of medicine and surgery in Ohio.
 - b. Dr. Blanke shall submit annual declarations under penalty of perjury stating whether there has been compliance with all the conditions of probation.
 - c. In the event that Dr. Blanke should leave Ohio for three (3) consecutive months, or reside or practice outside the State, Dr. Blanke must notify the State Medical Board in writing of the dates of departure and return. Periods of time spent outside the State will not apply to the reduction of the probationary period.
5. If Dr. Blanke violates the terms of this Order in any respect, the Board, after giving Dr. Blanke notice and an opportunity to be heard, may set aside the stay Order and impose the revocation of his certificate.
6. Upon successful completion of his probation, Dr. Blanke's certificate, except as limited in paragraph 3 of this Order, will be fully restored.

Page 3

James K. Blanke, D.O.

This Order shall become effective immediately upon the mailing of notification of approval by the State Medical Board of Ohio.

(SEAL)



Henry G. Cramblett, M.D.
Secretary

October 13, 1989

Date

AUG 30 1989

REPORT AND RECOMMENDATION
IN THE MATTER OF JAMES K. BLANKE, D.O.

The Matter of James K. Blanke, D.O., came on for hearing before me, Joan Irwin Fishel, Esq., Hearing Examiner for the State Medical Board of Ohio on July 31, 1989.

INTRODUCTION AND SUMMARY OF EVIDENCE

I. Basis for Hearing

- A. By letter dated April 12, 1989 (State's Exhibit #5), the State Medical Board notified James K. Blanke, D.O., that it proposed to take disciplinary action against his certificate to practice osteopathic medicine and surgery in Ohio due to the limitation placed upon his license to practice medicine in the State of Wisconsin. The Board alleged that the fact of and the basis for Wisconsin's action constituted "the limitation, revocation, or suspension by another state of a license or certificate to practice issued by the proper licensing authority of that state, the refusal to license, register, or reinstate an applicant by that authority, or the imposition of probation by that authority, for an action that would also have been a violation of this chapter, except for nonpayment of fees", as that clause is used in Section 4731.22(B)(22), Ohio Revised Code, to wit: Section 4731.22(B)(6), Ohio Revised Code.
- B. By letter received by the State Medical Board on May 3, 1989 (State's Exhibit #3), Dr. Blanke requested a hearing.

II. Appearances

- A. On behalf of the State of Ohio: Anthony J. Celebrezze, Jr., Attorney General, by Rachel L. Belenker, Assistant Attorney General
- B. On behalf of the Respondent: Warren D. Wolfe, Esq.

III. Testimony Heard

Dr. Blanke testified on his own behalf and was cross-examined by the State.

IV. Exhibits Examined

In addition to those noted above, the following exhibits were identified and admitted into evidence in this Matter:

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A. Presented by the State

1. State's Exhibit #1: May 23, 1989, letter to Attorney Wolfe from the State Medical Board scheduling the hearing for July 31, 1989.
2. State's Exhibit #2: May 4, 1989, letter to Dr. Blanke from the State Medical Board advising that a hearing initially set for May 11, 1989, was postponed pursuant to Section 119.09, Ohio Revised Code.
3. State's Exhibit #4: May 17, 1989, letter to the State Medical Board from Attorney Wolfe entering his appearance as Dr. Blanke's counsel and requesting a pre-hearing conference.
4. State's Exhibit #6: Copy of Notice of Filing Proposed Decision, dated August 1, 1988, with attached Proposed Decision of Hearing Examiner William W. Berry, dated July 29, 1988, in the Matter of James K. Blanke, D.O., before the Wisconsin Medical Examining Board.
5. State's Exhibit #7: Copy of the December 30, 1988, Order Denying Petition for Rehearing of the Wisconsin Medical Examining Board in the Matter of James K. Blanke, D.O.
6. State's Exhibit #8: Copy of the November 18, 1988, Final Decision and Order of the Wisconsin Medical Examining Board in the Matter of James K. Blanke, D.O.

B. Presented by the Respondent

1. Respondent's Exhibit A: June 23, 1989, cover letter to Attorney Hearing Examiner Fishel from Attorney Wolfe with attached motion for continuance.
2. Respondent's Exhibit B: July 7, 1989, Entry of this Hearing Examiner denying Respondent's continuance request and ruling on procedural matters.
3. Respondent's Exhibit C: State Medical Board's "Guidelines for Administrative Hearings."
4. Respondent's Exhibit D: Rules 4731-13-01 through 4731-13-26, Ohio Administrative Code.
5. Respondent's Exhibit E: Excerpt (pp. 474-580) from transcript of Dr. Blanke's Wisconsin hearing including testimony of Dr. Robert Sellers, Dr. Malcolm Scott, and Dr. John Thomas.
6. Respondent's Exhibit F: Copy of Notice of Briefing Schedule from the Circuit Court of Dane County, Wisconsin, in Blanke v. Medical Examining Board, Case No. 89 CV 625.

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V. Other Matters

This Hearing Examiner's response of May 24, 1989, to Attorney Wolfe's letter of May 17, 1989 (State's Exhibit #3), is hereby made a part of the record on the Hearing Examiner's own motion.

FINDINGS OF FACT

1. On November 18, 1988, the Wisconsin Medical Examining Board entered its Final Decision and Order limiting the license of James K. Blanke, D.O., to practice medicine in that state. Dr. Blanke was limited to performing those practices permitted to a class 1 health provider as defined by Wis. Adm. Code sec. Ins. 17.28(3)(c)(1), and he was prohibited from performing any surgical procedure other than the incision of boils and superficial abscesses or suturing of skin and superficial fascia. The Wisconsin Board found that Dr. Blanke's conduct with two of the five patients involved in the Board's allegations was unprofessional in that it tended to constitute a danger to the health, welfare, and safety of the patients.

These facts are established by State's Exhibit #8.

2. On July 29, 1988, following four days of hearings in October, 1987, Wisconsin Hearing Examiner William Berry filed his Proposed Decision, setting forth Findings of Fact, Conclusions, and a recommendation of disciplinary action against James K. Blanke, D.O. Both parties filed objections to that Proposed Decision and presented oral arguments to the Wisconsin Board. Following its review of the entire record, the Wisconsin Board adopted the Findings of Fact and Conclusions of Hearing Examiner Berry, and found as follows:
 - a. Patient N.M.: During his surgery on Patient N.M. in 1977, Dr. Blanke failed to sufficiently explore and identify the cause of a partial bowel obstruction and failed to treat the primary problem in the patient's rectosigmoid colon by performing a diverting colostomy. Dr. Blanke's conduct subjected the patient to the unacceptable risk of recurrent bowel obstruction requiring further treatment and surgery. Dr. Blanke further subjected the patient to the unacceptable risk that proper healing would not occur at the site of the anastomosis he had performed and that a fistula would develop requiring further treatment and surgery.
 - b. Patient C.M.: During his surgery on Patient C.M. in 1982, Dr. Blanke removed a viable, functioning left kidney without sufficient medical indication. By removing the left kidney, when he knew or should have known that the patient would require surgery on her right kidney for removal of stones, Dr. Blanke subjected the patient to the unacceptable risk that complication might develop during the surgery on the right kidney leaving the patient without any renal function. He further subjected the patient to the unacceptable risk that she would experience deterioration of renal function and ultimately a total loss of renal function in the right kidney as a result of either subsequent stone formation or some other disease process leaving the patient without a functioning kidney.

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The Findings and Conclusions of the Wisconsin Medical Examining Board, including but not limited to those referenced above, are fully incorporated herein by reference as findings of this Hearing Examiner.

These facts are established by State's Exhibit #8.

3. Hearing Examiner Berry had recommended that Dr. Blanke be reprimanded and ordered to attend 200 hours of medical education classes over and above those hours required by law. This was to be done within two years of the date of the Board Order. The Wisconsin Board found Hearing Examiner Berry's recommendation to be inconsistent with the seriousness of Dr. Blanke's conduct. It felt that the lack of skill and judgment demonstrated by Dr. Blanke's shocking conduct was so extreme that no amount of classroom instruction would afford any assurance that he would henceforth be a competent surgeon.

These facts are established by State's Exhibit #8.

4. At his Ohio hearing, Dr. Blanke claimed that his treatment of Patients N.M. and C.M. had not been substandard. In regards to N.M., Dr. Blanke testified that he had fully explored the rectosigmoid colon during the surgery. He had not biopsied any tissue because he had determined by sight and touch that no area of the bowel had appeared cancerous. Since he had seen no evidence of cancer, and since the bowel obstruction was partial rather than complete, Dr. Blanke had felt that a colostomy was not indicated; in his opinion the patient could go on with bouts of constipation and diarrhea and avoid the agony of a colostomy. He had also felt that his release of the adhesions in N.M.'s bowel would prevent her from developing a complete bowel obstruction.

In regards to Patient C.M., Dr. Blanke testified that he had not had difficulty in locating the kidney stone; his difficulty had been in removing it. He testified that he had attempted removal for 2-1/2 to 3 hours. The tissue had been torn and the kidney had become mushy and swollen. Dr. Blanke testified that surgery had damaged the kidney to such an extent that the risk of abscess formation or death of the kidney was high enough to justify removal. In Dr. Blanke's opinion, failure to remove the kidney would have subjected the patient to the risk of emergency surgery in subsequent weeks. He had also felt that failure to remove the damaged left kidney created the risk of infection of the right kidney.

These facts are established by the testimony of Dr. Blanke (Tr. 72-105, 107-120).

5. Expert testimony was received at the Wisconsin hearing. Dr. Pogodzinski testified that Dr. Blanke had not adequately pursued the original purpose of N.M.'s surgery, the determination of the presence or absence of carcinoma. He had also felt that, because of the incomplete bowel obstruction, a diverting colostomy had been required regardless of the presence or absence of malignancy. Without a colostomy, pressure from the bowel obstruction could cause the anastomosis to break down postoperatively.

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Dr. Jacobs and Dr. Pogodzinski testified that the removal of C.M.'s left kidney had been unnecessary. Though the kidney had been traumatized, the risk of postoperative complication was much lower than the risk created by removal. Dr. Pogodzinski had not felt that the kidney had been "devitalized"; the kidney had been viable and there had been no indication for removal.

These facts are established by State's Exhibit #6.

6. Dr. Robert Sellers, Dr. Malcolm Scott, and Dr. John Thomas testified on Dr. Blanke's behalf at the Wisconsin hearing. All three doctors came to know Dr. Blanke in 1985 after he moved to Superior, Wisconsin from Milwaukee, Wisconsin. Dr. Sellers, a family physician, had been a member of a medical group in Superior, Wisconsin which recruited and hired Dr. Blanke in 1985 to work as a general surgeon. Dr. Sellers testified that he had spoken with many people regarding Dr. Blanke's qualifications prior to hiring him and had received no negative reports. Dr. Scott was also a family physician with that medical group, but he had not participated in the recruitment or hiring of Dr. Blanke. Dr. Thomas was a retired general surgeon in Duluth, Minnesota. All three doctors had had an opportunity to observe Dr. Blanke perform surgery as part of the hospital's requirement that all physicians new to the hospital be observed and monitored for one year. All three doctors were of the opinion that Dr. Blanke had very good skills as a surgeon, but the record does not indicate that they had any knowledge of the facts regarding Dr. Blanke's care of Patients N.M. and C.M.

These facts are established by Respondent's Exhibit E.

7. From 1964 through 1985, Dr. Blanke had a private practice in general surgery in Milwaukee, Wisconsin. In 1985 he moved to Superior, Wisconsin, and continued his practice there. Dr. Blanke moved to Defiance, Ohio, in June, 1988 because of an offer he had received to work in northwest Ohio with a group of three general surgeons doing vascular surgery. In February 1989, the agreement between the group and Dr. Blanke was terminated because the Board of Trustees of Defiance Memorial Hospital had prohibited Dr. Blanke from performing surgery. Dr. Blanke has not been employed in Ohio as a physician since February of 1989.

These facts are established by the testimony of Dr. Blanke (Tr. 48-50) and Respondent's Exhibit A.

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CONCLUSIONS OF LAW

The limitation of Dr. Blanke's certificate to practice medicine and surgery in the State of Wisconsin by the Wisconsin Medical Licensing Board and the acts, conduct, and/or omissions of James K. Blanke, D.O., upon which Wisconsin's actions were based, as set forth in the above Findings of Fact, constitute the "limitation, revocation, or suspension by another state of a license or certificate to practice issued by the proper licensing authority of that state, the refusal to license, register, or reinstate an applicant by that authority, or the imposition of probation by that authority, for an action that would also have been a violation of this chapter, except for nonpayment of fees", as that clause is used in Section 4731.22(B)(22), Ohio Revised Code, to wit: Section 4731.22(B)(6), Ohio Revised Code, "a departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established."

The detailed Findings and Conclusions of the Wisconsin Board constitute substantial, reliable, and probative evidence of Dr. Blanke's failure to conform to minimal standards of care. His demonstrated lack of skill and judgment created the risk of further surgery or treatment for one patient and complete loss of renal function for another. Stringent measures are, therefore, indicated to ensure the protection of the public.

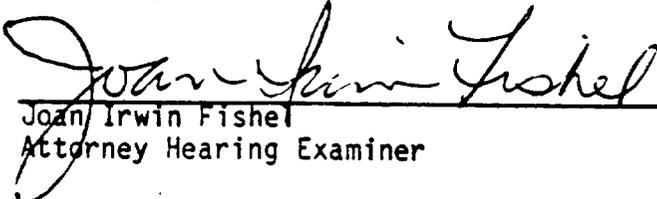
PROPOSED ORDER

It is hereby ORDERED that:

1. The certificate of James K. Blanke, D.O., to practice osteopathic medicine and surgery in the State of Ohio be REVOKED. Such revocation is stayed and Dr. Blanke's certificate is hereby suspended for a minimum of one (1) year.
2. The State Medical Board of Ohio shall not consider reinstatement of Dr. Blanke's certificate unless and until all of the following minimum requirements are met:
 - a. Dr. Blanke shall submit an application for reinstatement accompanied by appropriate fees. Such application shall not be made for at least one (1) year from the effective date of this Order.
 - b. Dr. Blake shall take and pass the SPEX examination or any similar examination which the Board may deem appropriate to assess his clinical competency.

- c. In the event that Dr. Blanke has not been engaged in the active practice of medicine or surgery for a period in excess of two (2) years prior to the date of his application, the Board may exercise its discretion under Section 4731.222, Ohio Revised Code, to require additional evidence of Dr. Blanke's fitness to resume practice.
3. Upon reinstatement, Dr. Blanke's certificate shall be permanently limited in that he shall not be permitted to perform surgery.
4. Further, upon reinstatement Dr. Blanke's certificate shall be subject to the following probationary terms, conditions, and limitations, for a period of five (5) years:
- a. Dr. Blanke shall obey all federal, state, and local laws, and all rules governing the practice of medicine and surgery in Ohio.
- b. Dr. Blanke shall submit annual declarations under penalty of perjury stating whether there has been compliance with all the conditions of probation.
- c. In the event that Dr. Blanke should leave Ohio for three (3) consecutive months, or reside or practice outside the State, Dr. Blanke must notify the State Medical Board in writing of the dates of departure and return. Periods of time spent outside the State will not apply to the reduction of the probationary period.
5. If Dr. Blanke violates the terms of this Order in any respect, the Board, after giving Dr. Blanke notice and an opportunity to be heard, may set aside the stay Order and impose the revocation of his certificate.
6. Upon successful completion of his probation, Dr. Blanke's certificate, except as limited in paragraph 3 of this Order, will be fully restored.

This Order shall become effective immediately upon the mailing of notification of approval by the State Medical Board of Ohio.


Joan Irwin Fishel
Attorney Hearing Examiner

EXCERPT FROM THE MINUTES OF OCTOBER 11, 1989

REPORTS AND RECOMMENDATIONS

Dr. O'Day advised that the Findings and Orders appearing on this day's agenda are those in the matters of Richard D. Murray, M.D.; John W. Booher, et al.; Tyler Ira Freeman, M.D.; and James K. Blanke, D.O.

Dr. O'Day asked if each member of the Board had received, read, and considered the hearing record, the proposed findings, conclusions, and orders, and any objections filed in the matters of Richard D. Murray, M.D.; John W. Booher, et al.; Tyler Ira Freeman, M.D.; and James K. Blanke, D.O.

ROLL CALL:

Dr. Cramblett	- aye
Dr. Gretter	- aye
Dr. Daniels	- aye
Dr. Stephens	- aye
Mr. Jost	- aye
Dr. Rauch	- aye
Mr. Albert	- aye
Dr. Kaplansky	- aye
Dr. Agresta	- aye
Dr. O'Day	- aye

.....
Mr. Dowling and Ms. Belenker left the meeting at this time.

REPORT AND RECOMMENDATION IN THE MATTER OF JAMES K. BLANKE, D.O.

Dr. O'Day stated that if there were no objections, the Chair would dispense with the reading of the proposed findings of fact, conclusions and order in the above matter. No objections were voiced by Board Members present.

MR. ALBERT MOVED TO APPROVE AND CONFIRM MS. FISHEL'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER IN THE MATTER OF DR. BLANKE. DR. KAPLANSKY SECONDED THE MOTION.

Dr. O'Day asked if there were any questions concerning the proposed findings of fact, conclusions, and order in the above matter.

MR. JOST MOVED THAT THE PROPOSED ORDER IN THE MATTER OF JAMES K. BLANKE, D.O., BE AMENDED TO ADD THE FOLLOWING TO PARAGRAPH #2:

- d. Dr. Blanke shall provide documentation of successful completion of a minimum of eight (8) weeks in an intensive retraining program related to the deficiencies found herein, such program to

be approved in advance by the Board.

Mr. Jost stated that this involves a series of medical cases reviewed by the Wisconsin Medical Board. In two of the cases, that Board found that Dr. Blanke used extremely poor judgment. Mr. Jost stated that he feels a penalty is appropriate, as are the Findings of Fact and Conclusions; however, under the circumstances, he is uncomfortable about suspending a physician's license for a year without requiring that physician to obtain some sort of training during that year. Mr. Jost stated that he feels there was evidence in this case that some retraining is necessary. Therefore, he proposed to amend the Order to add the training requirement.

MR. ALBERT SECONDED MR. JOST'S MOTION.

Dr. Kaplansky expressed concern that the language of the motion is not very definitive with regard to the type of training required. Mr. Jost stated that he would accept a change to make the language more specific.

Mr. Bumgarner noted that the training program would have to be approved by the Board before it could be considered as fulfillment of the requirement. It was the consensus of the Board that the language was specific enough.

A roll call vote was taken on Mr. Jost's motion:

ROLL CALL VOTE:	Dr. Cramblett	- abstain
	Dr. Gretter	- aye
	Dr. Daniels	- aye
	Dr. Stephens	- aye
	Mr. Jost	- aye
	Dr. Rauch	- abstain
	Mr. Albert	- aye
	Dr. Kaplansky	- aye
	Dr. Agresta	- aye

The motion carried.

DR. STEPHENS MOVED TO APPROVE AND CONFIRM MS. FISHEL'S PROPOSED FINDINGS OF FACT, CONCLUSIONS, AND ORDER AS AMENDED IN THE MATTER OF JAMES K. BLANKE, D.O. DR. AGRESTA SECONDED THE MOTION. A roll call vote was taken:

ROLL CALL VOTE:	Dr. Cramblett	- abstain
	Dr. Gretter	- aye
	Dr. Daniels	- aye
	Dr. Stephens	- aye
	Mr. Jost	- aye
	Dr. Rauch	- abstain
	Mr. Albert	- aye
	Dr. Kaplansky	- aye
	Dr. Agresta	- aye

The motion carried.

STATE OF OHIO
THE STATE MEDICAL BOARD
77 SOUTH HIGH STREET
17TH FLOOR
COLUMBUS OH 43215

April 12, 1989

James K. Blanke, D.O.
245 Riverdale Drive
Defiance, OH 43512

Dear Doctor Blanke:

In accordance with Chapter 119., Ohio Revised Code, you are hereby notified that the State Medical Board of Ohio intends to determine whether or not to limit, revoke, suspend, refuse to register or reinstate your certificate to practice osteopathic medicine and surgery or to reprimand or place you on probation for one or more of the following reasons:

- (1) On or about November 18, 1988, your license to practice medicine in the State of Wisconsin was limited based upon a Final Decision and Order containing Findings of Fact and Conclusions of Law which is attached hereto and fully incorporated by reference herein.

The limitation of your Wisconsin license, as alleged in the above paragraph (1), constitutes "the limitation, revocation, or suspension by another state of a license or certificate to practice issued by the proper licensing authority of that state, the refusal to license, register, or reinstate an applicant by that authority, or the imposition of probation by that authority, for an action that would also have been a violation of this chapter except for nonpayment of fees," as that clause is used in Section 4731.22(B)(22), Ohio Revised Code., to wit: Section 4731.22(B)(6), Ohio Revised Code.

Pursuant to Chapter 119, Ohio Revised Code, you are hereby advised that you are entitled to a hearing in this matter. If you wish to request such hearing, that request must be received in the offices of the State Medical Board within thirty (30) days of the time of mailing of this notice.

You are further advised that you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice before the agency, or you may present your position, arguments, or contentions in writing, and that at the hearing you may present evidence and examine witnesses appearing for or against you.

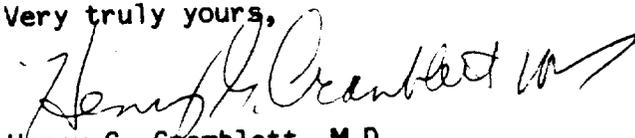
April 12, 1989

James K. Blanke, D.O.
Page Two

In the event that there is no request for such hearing received within thirty (30) days of the time of mailing of this notice, the State Medical Board may, in your absence and upon consideration of this matter, determine whether or not to limit, revoke, suspend, refuse to register or reinstate your certificate to practice osteopathic medicine and surgery or to reprimand or place you on probation.

Copies of the applicable sections are enclosed for your information.

Very truly yours,

A handwritten signature in black ink, appearing to read "Henry G. Cramblett", with a stylized flourish at the end.

Henry G. Cramblett, M.D.
Secretary

HGC:jmb
Encls.

CERTIFIED MAIL #P 746 510 060
RETURN RECEIPT REQUESTED

MAR 1987

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

JAMES K. BLANKE, D.O.,
RESPONDENT.

:
:
:
:
:
:

FINAL DECISION AND ORDER
CASE NO. LS8608071MED

The parties to this proceeding for the purposes of Wis. Stats.
sec. 227.53 are:

James K. Blanke, D.O.
P.O. Box 69
Superior, WI 54880

State of Wisconsin Medical Examining Board
1400 E. Washington Ave., Room 176
P.O. Box 8935
Madison, WI 53708-8935

Department of Regulation & Licensing
Division of Enforcement
1400 E. Washington Ave., Room 183
P.O. Box 8935
Madison, WI 53708-8935

A party aggrieved by this decision may petition the board for rehearing within twenty (20) days after service of this decision pursuant to Wis. Stats. sec. 227.49. The party to be named as respondent in the petition is James K. Blanke, D.O.

A party aggrieved by this decision who is a resident of this state may also petition for judicial review by filing the petition in the office of the clerk of the circuit court for the county where the party aggrieved resides within thirty (30) days after service of this decision. A party aggrieved by this decision who is not a resident of this state must file the petition for judicial review in the office of the Clerk of Circuit Court for Dane County. A party aggrieved must also serve the board and other parties with a copy of the petition for judicial review within thirty (30) days after service of this decision pursuant to Wis. Stats. sec. 227.53. The party to be named as respondent in the petition is James K. Blanke, D.O.

Four days of hearing were held in the above-entitled matter, from October 6, 1987, through October 9, 1987. The Respondent appeared personally and by his attorney, Steven J. Caulum, Bell, Metzner & Gierhart, S.C., 222 West Washington Avenue, P.O. Box 1807, Madison, Wisconsin 53701-1807. The Complainant appeared by Attorney Gilbert C. Lubcke, Department of Regulation and Licensing, Division of Enforcement, P.O. Box 8935, Madison, Wisconsin 53708-8935.

The hearing examiner filed his Proposed Decision on July 29, 1988, and both parties filed objections to the Proposed Decision. The parties presented oral arguments to the board in support of their respective objections on October 29, 1988, and the board decided the matter on that date.

Based upon the entire record in this matter, the Medical Examining Board makes the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. James K. Blanke, D.O., Respondent herein, P.O. Box 69, Superior, Wisconsin 54880, is a physician duly licensed and currently registered to practice medicine and surgery in the state of Wisconsin, license #14870, said license having been issued on January 15, 1964.

2. Respondent specializes in the practice of general surgery. He was Board certified in general surgery in 1979. He currently subspecializes in vascular surgery.

ON COUNT I OF THE COMPLAINT

3. On July 3, 1977, N.M., age 69, was admitted to Northwest General Hospital in Milwaukee, Wisconsin, by Dr. Wilson. She complained of abdominal pain, nausea, vomiting, diarrhea, loose and mushy to watery stools. In 1940 she had had uterine cancer which was treated by radium implants and radiation therapy.

4. On July 3, 1977, Dr. Wilson obtained a consultation from Respondent. Respondent diagnosed an incomplete bowel obstruction and recommended further evaluation to rule out carcinoma of the bowel.

5. On July 4, 1977, x-rays of the abdomen revealed a large amount of air within both the large and small intestines. The radiologist reported that in his opinion there was a clinical correlation for early bowel obstruction.

6. On July 5, 1977, an upper gastrointestinal study showed no evidence of obstruction in the area of the small bowel, however there was a delay in the transport time of the barium through the small bowel.

7. On July 8, 1977, a colon series indicated that the rectum failed to dilate in a normal manner. There was an indication of a stenotic lesion in the rectosigmoid junction measuring 8 cm. in length, compatible either with an area of colitis or diverticulitis, although a sclerotic type of subserosal carcinoma of this area could not definitely be excluded.

8. On July 8, 1977, Respondent performed a proctosigmoidoscopy with biopsy. The sigmoidoscope passed out of the rectal pouch but a thick ridge of tissue in the area of the peritoneal reflexion of the pelvic floor prevented the sigmoidoscope from going up into the sigmoid colon. Two biopsies were taken from this area, which appeared hard and friable. Respondent believed the obstruction was consistent with radiation reaction to the area. The pathologist was unable to determine if the biopsied tissue was benign or malignant.

9. On July 15, 1977, a CAT scan showed a loss of definition of the rectum with soft tissue thickening about the rectal area. The perirectal fat was partially obscured. The radiologist was of the opinion that this may be due to fibrosis about the rectum and rectal sigmoid area. There was no definite evidence of lymphadenopathy or of a mass demonstrated.

10. The abdominal x-rays, the upper gastrointestinal study, the colon series, the examination with the sigmoidoscope and the CAT scan all indicated clinically that the predominant problem was in the rectosigmoid colon and that this area was the probable primary site of the bowel obstruction.

11. On July 21, 1977, Respondent performed exploratory surgery on the patient. Respondent's original purpose in performing this surgery was to rule out carcinoma and stenosis of the sigmoid colon. During the course of the surgical procedure Respondent encountered marked adhesions and bindings, which he thought were the result of the prior radiation therapy. In attempting to release the terminal ileum, he inadvertently cut a hole in it. He believed the terminal ileum to be the source of a partial small bowel obstruction. Respondent removed the terminal ileum up to the cecum and created an anastomosis by joining the remaining portion of the terminal ileum to the side of the cecum. Respondent did not during the course of this surgical procedure or at any time thereafter further explore the area of the rectosigmoid colon to determine the nature and extent of the apparent partial bowel obstruction in this area. Respondent did not surgically intervene to address the apparent partial bowel obstruction in the area of the rectosigmoid colon. He saw no evidence of malignancy, and therefore did not think a colostomy was called for. He did not biopsy any tissue, other than the portion of the terminal ileum that had been removed.

12. The portion of the terminal ileum removed during the surgery was submitted to pathology for examination. The examination indicated metastatic adenocarcinoma of the ileum.

13. The patient did not have a return of satisfactory bowel function in the post-operative period.

14. On or about August 14, 1977, the patient developed a small bowel fistula at the site of the anastomosis.

15. On September 26, 1977, the patient elected to be transferred to Deaconess Hospital in Milwaukee, Wisconsin. While hospitalized at Deaconess Hospital she was under the care of Dr. John Hurley.

16. On September 30, 1977, Dr. Hurley performed exploratory surgery. The exploratory surgery disclosed extensive adhesions, obstruction of the small bowel, a partial large bowel obstruction secondary to sigmoid carcinoma and adhesions of the ileal cecal cutaneous fistula to the dome of the bladder. During the surgery Dr. Hurley performed a descending colostomy.

17. Respondent's conduct in providing medical care and treatment for this patient fell below the minimum standards of competence established in the profession in the following respects:

a. Respondent failed to further explore and identify the cause of the partial bowel obstruction in the area of the rectosigmoid colon indicated by the preoperative clinical data.

b. Respondent failed to treat the primary problem in the rectosigmoid colon by a diverting colostomy.

18. Respondent's conduct created the following unacceptable risks for the patient:

a. By failing to explore, identify and treat the cause of the partial bowel obstruction in the rectosigmoid colon Respondent subjected the patient to the unacceptable risk of recurrent bowel obstructions requiring further treatment and surgery.

b. By failing to explore, identify and treat the cause of the partial bowel obstruction in the rectosigmoid colon Respondent subjected the patient to the unacceptable risk that proper healing would not occur at the site of the anastomosis and that a fistula would develop requiring further treatment and surgery.

ON COUNT II OF THE COMPLAINT

19. On September 15, 1980, J.O., age 30, was admitted to Northwest General Hospital in Milwaukee, Wisconsin, by Dr. Robert Casey complaining of hypermenorrhea and pelvic pain. Dr. Casey's admitting diagnosis was hypermenorrhea, dysmenorrhea and pelvic inflammatory disease.

20. On September 16, 1980, Dr. Casey obtained a consultation from Respondent. Respondent's diagnosis was hypermenorrhea and pelvic pain. Respondent recommended a D&C and laparoscopy to rule out pelvic inflammatory disease and hydrosalpinx.

21. On September 17, 1980, Respondent performed a D&C and laparoscopy. Based upon the laparoscopy, Respondent was of the opinion that the right fallopian tube was bound down and edematous with the ovary beneath it and that the left fallopian tube showed evidence of chronic pelvic inflammatory disease with no active inflammation at the time of the procedure.

22. Specimens of uterine contents obtained from the D&C and laparoscopy submitted to pathology did not exhibit any diagnostic abnormalities.

23. On September 22, 1980, Respondent performed a bilateral salpingectomy as treatment of the patient's pelvic pain.

24. Prior to performing the bilateral salpingectomy, Respondent obtained informed consent from the patient.

25. Respondent did not perform any other surgical procedures or initiate any other medical treatment. If the patient had remained in his care, he intended to treat the patient's hypermenorrhea with a therapeutic D&C and hormone therapy.

26. The patient's complaint of hypermenorrhea and pelvic pain continued following her discharge from Northwest General Hospital on September 29, 1980.

27. On November 12, 1980, the patient was admitted to St. Michael's Hospital in Milwaukee, Wisconsin, by Dr. William Semler with a diagnosis of long-standing dysfunctional uterine bleeding. On November 13, 1980, Dr. Semler performed a total abdominal hysterectomy to resolve the dysfunctional uterine bleeding.

28. Respondent's conduct in providing medical care and treatment to this patient did not fall below the minimum standards of competence established in the profession.

ON COUNT III OF THE COMPLAINT

29. On October 22, 1979, C.T., age 44, was admitted to Northwest General Hospital in Milwaukee, Wisconsin, by Respondent with a complaint of persistent pelvic pain, backache, leukorrhea, dysmenorrhea and hypermenorrhea.

30. On October 23, 1979, Respondent, working from a preoperative diagnosis of dysmenorrhea, hypermenorrhea, and pelvic pain, performed a D&C and a cold conization of the patient's cervix. Respondent's postoperative diagnosis was dysmenorrhea, hypermenorrhea, pelvic pain, cystic cervicitis with erosion plus uterine fibroids.

31. Cervicitis is a recognized indication for performing a cold conization of the cervix. The patient had clinical evidence of cervicitis.

32. A Pap smear was not taken prior to the cold conization of the cervix, because the patient was bleeding.

33. On October 25, 1979, Respondent performed an abdominal hysterectomy.

34. Respondent's conduct in providing medical care and treatment to this patient did not fall below the minimum standards of competence established in the profession.

ON COUNT IV OF THE COMPLAINT

35. On March 30, 1982, patient C.M., age 48, was admitted to Northwest General Hospital in Milwaukee, Wisconsin, by Dr. Daniel Cichon. She complained of left abdominal pain.

36. On March 30, 1982, an x-ray of the abdomen revealed calcifications in the region of both renal pelvices.

37. On March 31, 1982, an infusion pyelogram revealed large calculi within both renal pelvices.

38. The patient had a history of hypertension and was overweight.

39. On March 31, 1982, Dr. Cichon obtained a consultation from Respondent. Respondent diagnosed bilateral renal pelvic calculi with incomplete blockage on the left and with evidence of some permanent damage bilaterally.

40. On April 6, 1982, Respondent performed surgery on the patient in an effort to remove the kidney stones from the left kidney. During the surgical procedure, Respondent had difficulty locating and removing the stone. After further unsuccessful exploration, Respondent decided that the procedure had damaged the kidney to the extent that it was not viable. Respondent removed the patient's left kidney.

41. At no time during the procedure did Respondent take x-rays or ask for consultation and assistance in locating and removing the stone.

42. The left kidney at all times prior to its removal was a viable, functioning kidney.

43. On June 7, 1982, Dr. Stephen Jacobs performed a second surgery on the patient to remove the kidney stones from the right kidney.

44. Respondent's conduct in providing medical care and treatment for this patient fell below the minimum standards of competence established in the profession in the following respect:

a. Respondent removed a viable, functioning kidney without sufficient medical indication for this procedure.

45. Respondent's conduct created the following unacceptable risks for the patient:

a. By removing a viable functioning left kidney when Respondent knew or should have known that the stones in the right kidney would also require surgical removal, he subjected the patient to the unacceptable risk that complications which might develop during the surgery on the right kidney could result in the loss of the right kidney leaving the patient without any renal function.

b. By removing a viable functioning left kidney Respondent subjected the patient to the unacceptable risk that she would experience deterioration of renal function and ultimately a total loss of renal function in the right kidney as a result of either subsequent stone formation or some other disease process leaving the patient without any functioning kidney and, therefore, without renal function.

ON COUNT V OF THE COMPLAINT

46. On September 11, 1979, J.K., age 54, was admitted to Northwest General Hospital in Milwaukee, Wisconsin, by Dr. Zussman. She complained of a leakage of urine when she coughed, laughed, sneezed or walked. She had been urinating sideways for the past year.

47. Dr. Zussman obtained a consultation from Respondent on September 12, 1979, regarding the patient's urinary complaints. Respondent's impression following his examination of the patient was that she was experiencing stress incontinence. His formal pre-operative diagnosis was cystocele, urethrocele, rectocele, and loss of perineal body. Respondent recommended an anterior, posterior repair.

48. Respondent's physical examination in conjunction with the patient's history presented to him disclosed that the patient had a mild asymptomatic rectocele.

49. Respondent's physical examination also disclosed that the patient had a small vaginal opening and a tight vaginal vault.

50. The patient had had a vaginal hysterectomy in 1965 and this fact was known to Respondent at the time of his consultation with her on September 12, 1979.

51. On September 14, 1979, Respondent performed an anterior, posterior colporrhaphy, urethroplasty and perineorrhaphy to repair the cystocele, urethrocele and rectocele.

52. At the conclusion of the surgical procedures conducted on September 14, 1979, while Respondent was packing the vagina, the vaginal mucosa tore causing bleeding. This was caused by the patient's senile vaginitis. This tearing eventually formed scar tissue which formed an obstruction in the vaginal channel.

53. On October 20, 1980, Dr. William Wendt performed vaginal reconstructive surgery in an effort to correct the vaginal obstruction.

54. The patient continued to experience stress incontinence following the surgical procedure performed by Respondent.

55. On December 7, 1982, Dr. Russell Lawson performed a Marshall-Marchetti-Krans procedure to correct the stress incontinence.

56. Respondent's conduct in providing medical care and treatment to this patient did not fall below the minimum standards of competence established in the profession.

CONCLUSIONS OF LAW

1. The Medical Examining Board has jurisdiction in this proceeding pursuant to Wis. Stats. sec. 448.02(3).

2. On Count I of the Complaint, Respondent's conduct constituted unprofessional conduct within the meaning of Wis. Stats. sec. 448.02(3) and Wis. Adm. Code sec. MED 10.02(2)(h), in that said conduct tended to constitute a danger to the health, welfare, and safety of the patient.

3. On Count II of the Complaint, Respondent's conduct did not constitute unprofessional conduct within the meaning of Wis. Stats. sec. 448.02(3) and Wis. Adm. Code sec. MED 10.02(2)(h), in that said conduct did not tend to constitute a danger to the health, welfare, and safety of the patient.

4. On Count III of the Complaint, Respondent's conduct did not constitute unprofessional conduct within the meaning of Wis. Stats. sec. 448.02(3) and Wis. Adm. Code sec. MED 10.02(2)(h), in that said conduct did not tend to constitute a danger to the health, welfare, and safety of the patient.

5. On Count IV of the Complaint, Respondent's conduct constituted unprofessional conduct within the meaning of Wis. Stats. sec. 448.02(3) and Wis. Adm. Code sec. MED 10.02(2)(h), in that said conduct tended to constitute a danger to the health, welfare, and safety of the patient.

6. On Count V of the Complaint, Respondent's conduct did not constitute unprofessional conduct within the meaning of Wis. Stats. sec. 448.02(3) and Wis. Adm. Code sec. MED 10.02(2)(h), in that said conduct did not tend to constitute a danger to the health, welfare, and safety of the patient.

7. The Medical Examining Board may, pursuant to Wis. Stats. sec. 448.02(3)(c), upon finding the Respondent guilty of unprofessional conduct, warn or reprimand Respondent, or limit, suspend or revoke any license or certificate granted by the Board to the Respondent.

ORDER

NOW, THEREFORE, IT IS ORDERED that the license of James K. Blanke, D.O., to practice medicine and surgery in the State of Wisconsin be, and hereby is, limited as follows: James K. Blanke's practice of medicine shall be limited to those practices permitted to a class 1 health provider as defined by Wis. Adm. Code sec. Ins 17.28(3)(c)1., and James K. Blanke shall thereby be prohibited from performing any surgical procedure other than incision of boils and superficial abscesses or suturing of skin and superficial fascia.

EXPLANATION OF VARIANCE

The board has adopted the hearing examiner's findings of fact and conclusions of law in their entirety with one exception. The examiner's third finding of fact states that patient N.M. was in 1940 treated for uterine cancer by hysterectomy. The parties both agree, and the record reflects, that no hysterectomy was ever performed. Reference thereto has therefore been stricken.

While adopting the examiner's findings and conclusions, the board has not adopted the examiner's recommended Order, which the board considers to be inconsistent with the seriousness of the conduct found in this case.

The examiner's order, in addition to a reprimand, would require that Dr. Blanke attend 200 hours of medical education classes, over and above the requirement set forth in Wis. Stats. sec. 448.13. In the board's opinion, the lack of skill and judgment demonstrated by respondent in this case is so extreme that no amount of classroom instruction would afford any assurance that respondent would henceforth be a competent surgeon. For respondent to have removed a viable functioning kidney from a patient merely because he was experiencing difficulty locating a kidney stone, the removal of which was the purpose of the operation, constitutes medical practice falling far below the minimum standards of the medical profession. For him to have done so when he knew or should have known that a similar operation on the patient's other kidney was required is shocking. Hardly less shocking is respondent's surgical treatment in the case of patient N.M. By his failure to explore,

identify and treat the cause of the patient's partial bowel obstruction, respondent subjected the patient to the entirely predictable risk of recurrent bowel obstructions and requirement of additional surgery; and the risk that proper healing at the site of the anastomosis that respondent performed would not occur.

In evaluating respondent's conduct in light of the accepted disciplinary objectives of rehabilitation of the licensee, deterrence of other licensees and protection of the public, the board concludes that it is appropriate and necessary to limit respondent's licensee to prohibit him from performing surgery other than the minor office procedures set forth in Wis. Adm. Code sec. Ins 17.28(3)(c)1. The objective of deterring other licensees probably has little application where, as here, the misconduct involved evinces incompetence. Similarly, one must question whether any disciplinary order by the board, no matter how creatively constructed, could be expected to rehabilitate the respondent in terms of his surgical skills if he has failed to perfect them after 30 years of practice. The board can, however, take that disciplinary action which will ensure that the misconduct found here will not be repeated by this respondent in the State of Wisconsin, and the primary objective of protecting the citizens of this state will be thereby subserved. It is so ordered.

Dated at Madison, Wisconsin, this 18th day of November, 1988.

STATE OF WISCONSIN
MEDICAL EXAMINING BOARD

by H. Mowat Waldren, Jr.
H. Mowat Waldren, Jr., M.D.
Secretary

WRA:jrb
BDLS-326