



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

August 7, 2002

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

David M. Connelly, M.D.
P.O. Box 230335
Montgomery, Alabama 36123

David M. Connelly, M.D.
Alabama Plastic Surgery
4146 Carmichael Court
Montgomery, Alabama 36106

Robert Bogan, Esq.
Paul Robert Mahar, Esq.
NYS Department of Health
Office of Professional Medical Conduct
Hedley Park Place, 1st Floor
Troy, New York 12180-2299

RE: In the Matter of David M. Connelly, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 02-241) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

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

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

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

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

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

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

Sincerely,

A handwritten signature in black ink, appearing to read "Tyrone T. Butler". The signature is written in a cursive style with a large initial "T".

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:dh
Enclosure

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

IN THE MATTER
OF
DAVID M. CONNELLY, M.D.

COPY
DETERMINATION

AND
ORDER

OPMC No. 02-241

A Notice of Referral Proceeding and Statement of Charges, both dated June 10, 2002, were served upon the Respondent, **DAVID M. CONNELLY, M.D.**. **SHARON KURITZKY, M.D.**, Chairperson, **JOEL H. PAULL, D.D.S., M.D., J.D.** and **MS. DEANNA KRUSENSTJERNA**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to Section 230(10)(e) of the Public Health Law. **STEPHEN L. FRY, ESQ.**, Administrative Law Judge, served as the Administrative Officer.

A hearing was held on July 18, 2002, at the Offices of the New York State Department of Health, Hedley Park Place, 433 River Street, Troy, New York. The Department appeared by **DONALD P. BERENS, JR., ESQ.**, General Counsel, by **PAUL ROBERT MAHER, ESQ.** and, **ROBERT BOGAN ESQ.**, of Counsel. The Respondent, although duly notified of the hearing, failed to appear.

Evidence was received and transcripts of these proceedings were made.

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

STATEMENT OF CASE

This case was brought pursuant to Public Health Law Section 230(10)(p). The statute provides for an expedited hearing where a licensee is charged solely with a violation of Education Law Section 6530(9). In such cases, a licensee is charged with misconduct based upon a prior criminal conviction in New York or another jurisdiction, or upon a prior administrative adjudication regarding conduct which would amount to professional misconduct, if committed in New York. The scope of an expedited hearing is limited to a determination of the nature and severity of the penalty to be imposed upon the licensee.

In the instant case, the Respondent is charged with professional misconduct pursuant to Education Law Sections 6530(9)(b) and (d), based upon actions constituting violations of subdivisions (15), (16), (20), and (28). A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order as Appendix 1.

WITNESSES

For the Petitioner:	None
For the Respondent:	None

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers below in parentheses refer to exhibits, denoted by the prefix "Ex.". These citations refer to evidence found persuasive by the Hearing Committee in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the

cited evidence. All Hearing Committee findings were unanimous unless otherwise specified.

1. **DAVID M. CONNELLY, M.D.**, the Respondent, was authorized to practice medicine in New York State on June 9, 1959, by the issuance of license number 82430 by the New York State Education Department (Ex. 4).
2. On December 28, 2001, the Medical Licensure Commission of Alabama (hereinafter "Alabama Commission"), by an Order (hereinafter "Alabama Order"), suspended Respondent's license to practice medicine, based upon his failure to appear before the Alabama State Board of Medical Examiners ("the Alabama Board") after having been formally requested, in writing, to do so, and that he thus practiced medicine in such a manner as to constitute unprofessional conduct (Ex. 5).
3. On June 13, 2002, a process server unsuccessfully attempted to personally serve Respondent with the Notice of Hearing and Statement of Charges for the instant hearing. The notarized affidavit of the process server indicates that the office at which service was attempted was vacant (Ex. 2).
4. On June 11, 2002, Mr. Robert Bogan, one of the Department's attorneys, mailed copies of the Notice of Hearing and Statement of Charges to Respondent's last two known addresses by Certified Mail Return Receipt Requested and by First Class Mail (Ex. 3). Mr. Bogan stated at the hearing that neither of these mailings had, as of that time, been returned to the Department as undelivered.

SERVICE

Before the merits of this case are discussed, the question of service must be addressed. Pursuant to §230(10)(d) of the Public Health Law, a copy of the charges and the notice of hearing shall be served on the licensee personally by the board at least twenty days before the hearing. If personal service cannot be made after due diligence and such fact is certified under oath, a copy of the charges and the notice of hearing shall be served by registered or certified mail to the licensee's last known address by the board at least fifteen days before the hearing.

In this case, personal service attempted pursuant to the statute was unsuccessful, so service by mail was authorized. Mailings by first class and certified mail were made to Respondent at his last two known addresses pursuant to the statute. The mailing by certified mail satisfied the service requirement of the statute, and since neither the certified nor the first class mailings were returned to the Department as of the date of the hearing as undelivered, there is a presumption that they were duly delivered to Respondent.

HEARING COMMITTEE CONCLUSIONS

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

- New York Education Law §6530(28) (failure to respond to written communications from the Department of Health regarding possible misconduct);

- New York Education Law §6530(16) (willful or grossly negligent failure to comply with substantial provisions of federal, state or local laws, rules or regulations governing the practice of medicine).

VOTE OF THE HEARING COMMITTEE

SPECIFICATIONS

FIRST SPECIFICATION

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

VOTE: SUSTAINED (3-0)

SECOND SPECIFICATION

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

VOTE: SUSTAINED (3-0)

HEARING COMMITTEE DETERMINATION

The record in this case indicates that On December 28, 2001, the Alabama Commission, by issuance of the Alabama Order, suspended Respondent's license to practice medicine, based upon his failure to appear before the Alabama State Board of

Medical Examiners after having been formally requested, in writing, to do so, and that he thus practiced medicine in such a manner as to constitute unprofessional conduct.

The Hearing Committee determines that the Alabama Order constitutes evidence of professional misconduct in New York State under New York Education Law §6530(9)(b) and (d), because the acts committed by Respondent would have constituted misconduct in New York, had they been committed here, under subdivision (28) of the same statute. This definition of misconduct covers the failure of a licensee to respond to written communications of the Department of Health with respect to an inquiry of complaint about the licensee's professional misconduct. The Alabama Board Commission found that Respondent failed to appear before the Credentials Committee of the Alabama Board after he was issued a written communication, actually received by him, requiring him to appear. This was comparable to the New York definition of misconduct cited above.

The acts committed by Respondent would also have constituted misconduct in New York under New York Education Law §6530(16) (willful or grossly negligent failure to comply with substantial provisions of federal, state or local laws, rules or regulations governing the practice of medicine). The Alabama Order makes a specific finding that, although duly notified of the requirement that he appear before the Alabama Board pursuant to its statutes, he "refused" to appear.

The Hearing Committee concludes, however, although it has no bearing on the ultimate outcome in this case, that Respondent's conduct would not have constituted misconduct in New York, had the acts been committed here, under the other definitions of misconduct cited by the Department in the Statement of Charges. The acts would not have constituted misconduct under New York Education Law §6530(15) because no orders of the types specified in that section were issued by the State of Alabama (there were no

orders issued by the State of Alabama comparable to those authorized by Public Health Law section 230 subdivisions (7), (10)(a) or (17)).

Furthermore, the Alabama Order contains no findings that Respondent committed acts demonstrating moral unfitness to practice medicine, so the citation by the Department of the definition of misconduct by moral unfitness (New York Education Law §6530(20)) was improper.

Pursuant to Public Health Law §230(10)(p), the only remaining issue to be decided is the penalty to be imposed in New York State. The Hearing Committee concludes that the appropriate penalty is a suspension of Respondent's license until such time as his medical license is restored by the State of Alabama. The Hearing Committee does not feel that revocation of Respondent's license would be appropriate, since there is no evidence as to the seriousness of the matters about which the Alabama Board wished to inquire, but, on the other hand, the Hearing Committee feels that suspension of Respondent's license is necessary to prevent him from being able to circumvent the Alabama Board's inquiry and suspension of his license by coming to New York to practice. Should Respondent comply with the Alabama Board's inquiry and have his license restored, he may supply the New York Office of Professional Medical Conduct with such documentation, and the New York suspension will be lifted. Such documentation should be addressed to the Director, Office of Professional Medical Conduct, Hedley Park Place, 433 River Street - Fourth Floor, Troy, New York 12180-2299.

ORDER

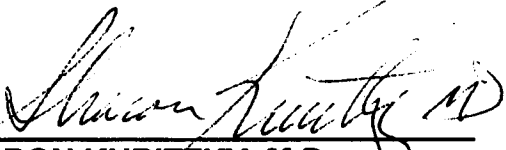
IT IS HEREBY ORDERED THAT:

The medical license of **DAVID M. CONNELLY, M.D.** is hereby **SUSPENDED** until such time as he documents that his medical license has been restored by the State of Alabama.

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

DATED: Amherst, New York

August 5, 2002



SHARON KURITZKY, M.D.
Chairperson

JOEL H. PAULL, D.D.S., M.D., J.D.
MS. DEANNA KRUSENSTJERNA

APPENDIX 1

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

EXHIBIT
✓ Ev 7/18/02

IN THE MATTER
OF
DAVID M. CONNELLY, M.D.
CO-02-02-0681-A

NOTICE OF
REFERRAL
PROCEEDING

TO: DAVID M. CONNELLY, M.D.
PO Box 230335
Montgomery, AL 36123

DAVID M. CONNELLY, M.D.
Alabama Plastic Surgery
4146 Carmichael Court
Montgomery, AL 36106

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law § 230(10)(p) and N.Y. State Admin. Proc. Act Sections 301-307 and 401. The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 18th day of July 2002, at 10:00 in the forenoon of that day at the Hedley Park Place, 5th Floor, 433 River Street, Troy, New York 12180.

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

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

If you intend to present sworn testimony, the number of witnesses and an estimate of the time necessary for their direct examination must be submitted to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication,

Hedley Park Place, 5th Floor, 433 River Street, Troy, New York, ATTENTION: HON. TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION, (hereinafter "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before July 8, 2002.

Pursuant to the provisions of N.Y. Public Health Law §230(10)(p), you shall file a written answer to each of the Charges and Allegations in the Statement of Charges no later than ten days prior to the hearing. Any Charge of Allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such an answer. The answer shall be filed with the Bureau of Adjudication, at the address indicated above, and a copy shall be forwarded to the attorney for the Department of Health whose name appears below. You may file a brief and affidavits with the Committee. Six copies of all such papers you wish to submit must be filed with the Bureau of Adjudication at the address indicated above on or before July 8, 2002, and a copy of all papers must be served on the same date on the Department of Health attorney indicated below. Pursuant to Section 301(5) of the State Administrative Procedure Act, the Department, upon reasonable notice, will provide at no charge a qualified interpreter of the deaf to interpret the proceedings to, and the testimony of, any deaf person.

The proceeding may be held whether or not you appear. Please note that requests for adjournments must be made in writing to the Bureau of Adjudication, at the address indicated above, with a copy of the request to the attorney for the Department of Health, whose name appears below, at least five days prior to the scheduled date of the proceeding. Adjournment requests are not routinely granted. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation. Failure to obtain an attorney within a reasonable period of time prior to the proceeding will not be grounds for an adjournment.

The Committee will make a written report of its findings, conclusions as to guilt, and a determination. Such determination may be reviewed by the Administrative Review Board for Professional Medical Conduct.

SINCE THESE PROCEEDINGS MAY RESULT IN A DETERMINATION THAT SUSPENDS OR REVOKES YOUR LICENSE TO PRACTICE MEDICINE IN NEW YORK STATE AND/OR IMPOSES A FINE FOR EACH OFFENSE CHARGED, YOU ARE URGED TO OBTAIN AN

ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: Albany, New York

June 10, 2002



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

Inquiries should be addressed to:

Robert Bogan
Associate Counsel
New York State Department of Health
Office of Professional Medical Conduct
433 River Street – Suite 303
Troy, New York 12180
(518) 402-0828

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

IN THE MATTER
OF
DAVID M. CONNELLY, M.D.
CO-02-02-0681-A

STATEMENT
OF
CHARGES

DAVID M. CONNELLY, M.D., the Respondent, was authorized to practice medicine in New York state on June 9, 1959, by the issuance of license number 082430 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about December 28, 2001, the Alabama State Board of Medical Examiners, Medical Licensure Commission of Alabama (hereinafter "Alabama Board"), by an Order (hereinafter "Alabama Order"), SUSPENDED Respondent's license to practice medicine, based refusal to appear before the Alabama Board of Medical Examiners after having been formally requested, in writing, to do so and practiced medicine in such a manner as to constitute unprofessional conduct.

B. The conduct resulting in the Alabama Board disciplinary action against Respondent would constitute misconduct under the laws of New York state, pursuant to the following sections of New York state law:

1. New York Education Law §6530(15) (failure to comply with an order);
2. New York Education Law §6530(16) (willful or grossly negligent failure to comply with federal, state, or local laws, rules, or regulations governing the practice of medicine);
3. New York Education Law §6530(20) (moral unfitness); and/or
4. New York Education Law §6530(28) (failing to respond within thirty days to written communications from the department of health).

SPECIFICATIONS

FIRST SPECIFICATION

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

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

SECOND SPECIFICATION

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

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

DATED: *June 10, 2002*
Albany, New York



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