



STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Barbara A. DeBuono, M.D., M.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

August 4, 1998

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Jude Brearton Mulvey, Esq.
NYS Department of Health
Corning Tower Room 2509
Empire State Plaza
Albany, New York 12237

Robert Sherley Howell, Jr., M.D.
1015 Wilkinson Boulevard
Frankfort, Kentucky 40601

RE: In the Matter of Robert Sherley Howell, Jr., M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 98-159) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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,

A handwritten signature in black ink that reads "Tyrone T. Butler". The signature is written in a cursive style with a large initial "T" and "B".

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nm
Enclosure

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

COPIES

IN THE MATTER
OF
ROBERT SHERLEY HOWELL, JR., M.D.

DETERMINATION
AND
ORDER

BPMC-98-159

A Notice of Referral Proceedings, dated June 10, 1998 and Statement of Charges, dated May 18, 1998 were served upon the Respondent, **ROBERT SHERLEY HOWELL, JR., M.D.**

DENISE M. BOLAN, R.P.A., Chairperson, **PETER B. KANE, M.D.** and **SHARON KURITZKY, 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. **MICHAEL P. McDERMOTT, ESQ.**, Administrative Law Judge, served as the Administrative Officer.

A hearing was held on July 16, 1998, at the Offices of the New York State Department of Health, Hedley Park Place, 433 River Street, Troy, New York. The Department appeared by **HENRY M. GREENBERG, ESQ.**, General Counsel, by **JUDE BREARTON MULVEY, ESQ.**, of Counsel. The Respondent 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 case, 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 Section 6530(9)(b) and (d). A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order as Appendix I.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers in parenthesis 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. All Hearing Committee findings were unanimous unless otherwise stated.

1. Robert Sherley Howell, Jr., M.D., the Respondent, was authorized to practice medicine in New York State on January 7, 1988 by the issuance of license number 173399 by the New York State Education Department. The Respondent is not currently registered with the New York State Education Department. (Pet's. Ex. 3)

2. On June 28, 1996, the Kentucky State Board of Medical Licensure (hereinafter Kentucky Board), issued a COMPLAINT alleging, among other things, that the Respondent "has developed a physical or mental disability, or other condition, that the continued practice [of medicine] is dangerous to patients or to the public." (Pet's. Ex. 4)
3. On June 28, 1996, the Kentucky Board also issued an ORDER OF TEMPORARY SUSPENSION based upon the same allegations as contained in the COMPLAINT. (Pet's. Ex. 4)
4. Hearings in this matter were held over several days in November and December 1996, and on October 1, 1997, the Hearing Officer issued his FINDINGS OF FACT. CONCLUSIONS OF LAW, and RECOMMENDED ORDER. (Pet's. Ex. 4)
5. By ORDER OF INDEFINITE RESTRICTION, dated December 17, 1997, the Kentucky Board adopted and incorporated the Findings of Fact proposed by the Hearing Officer and concluded that the Respondent "has developed a mental or physical disability, or other condition, that continued unrestricted practice of medicine is dangerous to patients or to the public in violation of Kentucky Revised Statutes 311.595(8)". (Pet's. Ex. 4)
6. The Kentucky Board ORDERED that the Respondent's license to practice medicine be restricted for an indefinite period of time such that the Respondent's license will remain suspended until the Chairman of the Hearing Panel finds that the Respondent is not suffering from a Major Depressive episode, is not in the onset of such an episode, and is able to practice in an office or hospital setting without undue danger to patients or the public.

The ORDER also provided that the Respondent must enter the Kentucky Physicians Health Foundation-Impaired Physicians Program, and maintain counselling and cooperate with a psychotherapist, with the psychotherapist determining the frequency and nature of therapy and appropriate types and levels of medication. (Pet's. Ex. 4)

HEARING COMMITTEE CONCLUSIONS

The Hearing Committee concludes that the conduct upon which the Kentucky discipline was based would, if committed in New York, constitute misconduct under New York Education Law §6530(7) [practicing the profession while impaired by alcohol, drugs, physical disability or mental disability].

VOTE OF THE HEARING COMMITTEE

FIRST SPECIFICATION

The Respondent is charged with professional misconduct under New York Education Law §6530(9)(b) by reason of 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

The Respondent is charged with professional misconduct under New York Education Law §6530(9)(d) by reason of having his license to practice medicine suspended by a duly authorized professional disciplinary agency of another state where the conduct resulting in the suspension would, if committed in New York State, constitute professional misconduct under the laws of New York State.

VOTE: SUSTAINED (3-0)

DETERMINATION OF THE HEARING COMMITTEE

Based on the documentary evidence in this case, the Hearing Committee determines that the Respondent suffers from a mental disability whereby he is incapacitated for the active practice of medicine.

The Hearing Committee further determines that the Respondent's license to practice medicine in the State of New York should be **SUSPENDED** until such time as he can make a showing to the satisfaction of a committee of professional conduct of the State Board for Professional Medical Conduct that he is not incapacitated for the active practice of medicine.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Respondent's license to practice medicine in the State of New York is hereby **SUSPENDED** until such time as he can make a showing to the satisfaction of a committee of professional conduct of the State Board for Professional Medical Conduct that he is not incapacitated for the active practice of medicine.
2. This Order shall be effective upon service on the Respondent or the Respondent's attorney by personal service or by certified or registered mail.

DATED: Newcomb, New York
July 26, 1998

Denise M. Bolan, RPA-C
DENISE M. BOLAN, R.P.A.
Chairperson

PETER B. KANE, M.D.
SHARON KURITZKY, M.D.

APPENDIX I



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

-----x

IN THE MATTER : NOTICE OF
 OF : REFERRAL
 ROBERT SHERLEY HOWELL, JR., M.D. : PROCEEDING

-----x

TO: ROBERT SHERLEY HOWELL, JR., M.D.
 1015 Wilkinson Blvd.
 Frankfort, Kentucky 40601

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law Section 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 16 day of July, 1998 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 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.

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 12180, ATTENTION: HON. TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION, (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before July 13, 1998.

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 or 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 13, 1998 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, 1998



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

Inquiries should be addressed to:

JUDE BREARTON MULVEY
Assistant Counsel
NYS Department of Health
Division of Legal Affairs
Corning Tower Building
Room 2509
Empire State Plaza
Albany, New York 12237
(518) 473-4282

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

-----X

IN THE MATTER : STATEMENT
OF : OF
ROBERT SHERLEY HOWELL, JR., M.D. : CHARGES

-----X

ROBERT SHERLEY HOWELL, JR., M.D., the Respondent, was authorized to practice medicine in New York State on January 7, 1988 by the issuance of license number 173399 by the New York State Education Department. The Respondent is not currently registered with the New York State Education Department.

FACTUAL ALLEGATIONS

1. The Kentucky State Board of Medical Licensure summarily suspended Respondent's license to practice medicine on or about June 28, 1996 based upon the allegations that Respondent suffered from major depression and other disorders. The Board concluded that his "continued practice [of medicine] is dangerous to patients or to the public".

2. Following a hearing in November and December, 1996, the Board, by Order dated December 17, 1997, which adopted and incorporated the Findings of Fact of the Hearing Officer dated October 1, 1997, determined that Respondent engaged in improper professional practice in that Respondent developed a mental or physical disability, such that his continued unrestricted

practice of medicine is dangerous to patients or to the public, in violation of Kentucky Revised Statutes 311.595.(8).

3. More specifically, the Kentucky Board found that the following events indicated Respondent's development of a mental or physical disability that is dangerous to patients or to the public:

- Respondent developed Major Depression, a physical or mental disability, or other condition, in 1995, that made it impossible for him to practice medicine for a brief period of time and which subsequently impaired his ability to practice medicine safely in a hospital setting;
- Respondent was scheduled to assist in a Diagnostic Laparoscopy on August 23, 1995 but shortly before the procedure was to begin, hospital staff observed Respondent sitting in a fetal position on the operating room floor. Respondent was unable to assist in the procedure;
- Subsequent Neuropsychological and Psychiatric examinations of Respondent resulted in the diagnoses of Major Depression, Recurrent, partial remission; Dysthymia, Early Onset; and Personality Disorder, including features of Obsessive-Compulsive Disorder and Avoidant Personality Disorder;
- Respondent, with one brief exception, was not permitted to practice in a hospital setting from August 1995 until March 1996, under the concurrence of his treating psychiatrist and hospital staff.

4. The Kentucky Board ordered Respondent's license to practice medicine be restricted for an indefinite period of time such that Respondent's license will remain suspended until the Chairman of the Hearing Panel finds that Respondent is not suffering from a Major Depressive episode, is not in the onset of such an episode and Respondent is able to practice in an office or hospital setting without undue danger to patients or the

public. Respondent must also enter the Kentucky Physicians Health Foundation-Impaired Physicians Program, and maintain counselling and cooperate with a psychotherapist, with the psychotherapist determining the frequency and nature of therapy and appropriate types and levels of medication.

5. The conduct upon which the Kentucky discipline was based would, if committed in New York, constitute misconduct under New York Education Law §6530(7) [practicing the profession while impaired by alcohol, drugs, physical disability or mental disability].

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

Respondent is charged with professional misconduct under New York Education Law §6530(9)(b) by reason of 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 1,2,3,4 and/or 5.


SECOND SPECIFICATION

Respondent is charged with professional misconduct under New York Education Law §6530(9)(d) by reason of having his license to practice medicine suspended by a duly authorized professional disciplinary agency of another state where the conduct resulting in the suspension 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 1,2,3,4 and/or 5.

DATED: *May 18*, 1998

Albany, New York


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