



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.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

October 16, 2000

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Francis W. Kelly, M.D.
1695 Saltdale Road
Wyoming, New York 15491

Eric Dadd, Esq.
11 Exchange Street
Attica, New York 14011

Francis W. Kelly, M.D.
Big Tree Medical Group
400 North Main Street
Warsaw, New York 14569

Robert Bogan, Esq. &
Paul Robert Maher, Esq.
NYS Department of Health
433 River St. – Hedley Bldg. –4th Fl.
Troy, New York 12180

RE: In the Matter of Francis W. Kelly, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 00-277) 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.

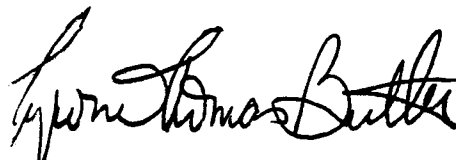
The notice of review served on the Administrative Review Board should be forwarded to:

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,



Tyrone T. Butler, Director
Bureau of Adjudication

TTB:cah
Enclosure

COPY

IN THE MATTER
OF
FRANCIS W. KELLY, M.D.

DETERMINATION
AND
ORDER
BPMC – 00-277

A Notice of Referral Proceeding and Statement of Charges, both dated July 24, 2000, were served upon the Respondent, **FRANCIS W. KELLY, M.D.**

STEVEN GRABIEC, M.D., Chairperson, **JOHN MORTON, M.D.** and **MR. JAMES DUCEY**, 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 September 21, 2000, at the Best Western Rensselaer Inn, 1800 Sixth Avenue, Troy, New York. The Department appeared by **HENRY M. GREENBERG, ESQ.**, General Counsel, by **ROBERT BOGAN, ESQ.**, and **PAUL ROBERT MAHER, ESQ.**, of Counsel. The Respondent appeared in person and was represented by **DADD and NELSON**, 11 Exchange Street, Attica, New York 14011, by **ERIC DADD, ESQ.**, of Counsel.

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)(d). A copy of the Notice of Referral Proceeding and Statement of Charges are attached to this Determination and Order as Appendix 1.

WITNESSES

For the Petitioner

NONE

For Respondent:

FRANCIS W. KELLY, M.D., the Respondent

FINDINGS OF FACT

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

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

1. FRANCIS W. KELLY, M.D., the Respondent, was authorized to practice medicine in the State of New York on March 27, 1990, by the issuance of license number 181785 by the New York State Education Department. (Pet's Ex. 4).

2. On September 6, 1995, the Division of Medical Quality, Medical Board of California, Department of Consumer Affairs (hereinafter "California Board"), by a Decision (hereinafter "California Decision"), denied Respondent's application for license as a physician and surgeon, based upon his providing false answers on his 1993 application for licensure in California. (Pet's Ex.6).

3. On October 5, 1999, the West Virginia Board of Medicine (hereinafter "West Virginia Board"), by an Order (hereinafter "West Virginia Order"), denied the Respondent's application for reinstatement of his West Virginia license to practice medicine and surgery, based upon the action of the California Board described in Finding of Fact No. 2 above. (Pet's Ex. 5).

HEARING COMMITTEE CONCLUSIONS

The Hearing Committee concludes that the conduct resulting in the California Board's disciplinary action against Respondent would constitute misconduct under the laws of New York State, pursuant to:

- New York Education Law §6530(21) (making or filing a false report).

The conduct resulting in the West Virginia Board's disciplinary action against Respondent would constitute misconduct under the laws of New York State, pursuant to:

- New York Education Law §6530(9)(b) (being found guilty by another state); and/or
- New York Education Law §6530(9)(d) (having a license refused by another state).

VOTE OF THE HEARING COMMITTEE

SPECIFICATIONS

FIRST AND SECOND SPECIFICATIONS

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 AND THIRD SPECIFICATIONS

Respondent violated New York Education Law §6530(9)(d) by reason of having his application for a license to practice medicine refused or having other disciplinary action taken, after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in refusal for an application for a

license or other 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

In 1995, the "California Board" denied the Respondent's application for a license as a physician based on his providing false answers on his 1993 application for licensure in California.

In 1999, the "West Virginia Board" denied the Respondent's application for reinstatement of his West Virginia license based on the prior action of the "California Board".

There are some mitigating factors in the record which the Hearing Committee has taken into consideration in determining the nature and severity of the penalty to be imposed upon the Respondent:

- The charges in this case do not reflect on the Respondent's competence as a physician.
- The incident in question occurred seven years ago, in 1993.
- There is no evidence of any other falsifications or false statements, in fact, the Respondent has disclosed his licensure problems in subsequent applications to

New York State, and OPMC, at that time (1996), determined to conclude its investigation and close this matter.

- The Respondent has since completed a residency in Family Practice.
- The Respondent currently practices medicine in Warsaw, Wyoming County, New York and serves as the Medical Director of the Wyoming County Public Health Department.

Based on the entire record in this case, the Hearing Committee determines (2-1) that the Respondent should be censured and reprimanded.

ORDER

IT IS HEREBY ORDERED:

1. The Respondent is **CENSURED AND REPRIMANDED**.
2. This **ORDER** shall be effective upon service on the Respondent or the Respondent's attorney by personal service or certified or registered mail.

DATED: Oct 9, 2000
Wilmington, New York



STEVEN GRABIEC, M.D.
Chairperson

JOHN MORTON, M.D.
MR. JAMES DUCEY

APPENDIX I

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

IN THE MATTER
OF
FRANCIS W. KELLY, M.D.

NOTICE OF
REFERRAL
PROCEEDING

TO: FRANCIS W. KELLY, M.D.
1695 Saltdale Road
Wyoming, New York 15491

FRANCIS W. KELLY, M.D.
Big Tree Medical Group
400 North Main Street
Warsaw, New York 14569

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 16th day of August, 2000 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.

EXHIBIT

1

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 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, (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before August 7, 2000.

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 August 7, 2000 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

July 24, 2000



PETER D. VAN BUREN

Deputy Counsel

Bureau of Professional Medical Conduct

Inquiries should be addressed to:

Robert Bogan
Assistant Counsel
Office of Professional Medical Conduct
433 River Street – Suite 303
Troy, New York 12180
(518) 402-0820

IN THE MATTER

STATEMENT

OF

OF

FRANCIS W. KELLY, M.D.

CHARGES

FRANCIS W. KELLY, M.D., the Respondent, was authorized to practice medicine in New York state on March 27, 1990, by the issuance of license number 181785 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about September 6, 1995, the Division of Medical Quality, Medical Board of California, Department of Consumer Affairs (hereinafter "California Board"), by a Decision (hereinafter "California Decision"), denied Respondent's application for license as a physician and surgeon, based upon his providing false answers on his application for licensure in California.

B. On or about October 5, 1999, the West Virginia Board of Medicine (hereinafter "West Virginia Board"), by an Order (hereinafter "West Virginia Order"), denied the Respondent's application for reinstatement of his West Virginia license to practice medicine and surgery, based upon the action of the California Board described in Paragraph A above.

C. The conduct resulting in the California Board's 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(16) (failure to comply with federal, state, or local laws, rules, or regulations, governing the practice of medicine); and/or
2. New York Education Law §6530 (21) (making or filing a false report).

D. The conduct resulting in the West Virginia Board's 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(9)(b) (being found guilty by another state); and/or
2. New York Education Law §6530(9)(d) (having a license refused by another state).

SPECIFICATIONS
FIRST AND SECOND SPECIFICATIONS

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, in that Petitioner charges:

1. The facts in paragraphs A and/or C.
2. The facts in paragraphs A, B and/or D.

SECOND AND THIRD SPECIFICATIONS

Respondent violated New York Education Law §6530(9)(d) by reason of having his application for a license to practice medicine refused or having other disciplinary action taken, after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in refusal for an application for a license 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:

3. The facts in paragraphs A and/or C.

4. The facts in paragraphs A, B, and/or D.

DATED: *July 24*, 2000
Albany, New York



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