



New York State Board for Professional Medical Conduct

433 River Street, Suite 303 • Troy, New York 12180-2299 • (518) 402-0863

Antonia C. Novello, M.D., M.P.H., Dr. P.H.
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NYS Department of Health*

Dennis P. Whalen
*Executive Deputy Commissioner
NYS Department of Health*

Dennis J. Graziano, Director
Office of Professional Medical Conduct

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Vice Chair

Ansel R. Marks, M.D., J.D.
Executive Secretary

October 23, 2002

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

John R. Kearney, M.D.
2 West State Street
Gloversville, NY 12078-1019

RE: License No. 116539

Dear Dr. Kearney:

Enclosed please find Order #BPMC 02-325 of the New York State Board for Professional Medical Conduct. This Order and any penalty provided therein goes into effect October 23, 2002.

If the penalty imposed by the Order is a surrender, revocation or suspension of this license, you are required to deliver to the Board the license and registration within five (5) days of receipt of the Order to Board for Professional Medical Conduct, New York State Department of Health, Hedley Park Place, Suite 303, 433 River Street, Troy, New York 12180.

Sincerely,

Ansel R. Marks, M.D., J.D.
Executive Secretary
Board for Professional Medical Conduct

Enclosure

cc: Jerome T. Levy
Duane Morris, LLP
380 Lexington Avenue
New York, NY 10168

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

IN THE MATTER
OF
JOHN RAYMOND KEARNEY, M.D.

CONSENT
AGREEMENT
AND
ORDER

BPMC No. 02-325

John Raymond Kearney, M.D., (Respondent) says:

That on or about June 28, 1973, I was licensed to practice as a physician in the State of New York, having been issued License No. 116539, by the New York State Education Department.

My current address is 2 West State Street, Gloversville, New York, and I will advise the Director of the Office of Professional Medical Conduct of any change of my address.

I understand that the New York State Board for Professional Medical Conduct has charged me with one specification of professional misconduct.

A copy of the Statement of Charges is annexed hereto, made a part hereof, and marked as Exhibit "A".

I do not contest the First Specification, in full satisfaction of the charges against me.

I hereby agree to the following penalty:

1. Censure and Reprimand
2. Three year period of monitoring in accordance with the terms attached hereto as Exhibit B.

I further agree that the Consent Order for which I hereby apply shall impose the following conditions:

That, except during periods of actual suspension, if any, Respondent shall maintain active registration of Respondent's license with the New York State Education Department Division of Professional Licensing Services, and pay all registration fees. This condition shall be in effect beginning thirty days after the effective date of the Consent Order and will continue while the licensee possesses his/her license; and

That Respondent shall fully cooperate in every respect with the Office of Professional Medical Conduct (OPMC) in its administration and enforcement of this Order and in its investigation of all matters regarding Respondent. Respondent shall respond in a timely manner to each and every request by OPMC to provide written periodic verification of Respondent's compliance with the terms of this Order. Respondent shall meet with a person designated by the Director of OPMC as directed. Respondent shall respond promptly and provide any and all documents and information within Respondent's control upon the direction of OPMC. This condition shall be in effect beginning upon the effective date of the Consent Order and will continue while the licensee possesses his/her license.

I hereby stipulate that any failure by me to comply with such conditions shall constitute misconduct as defined by New York State Education Law §6530(29).

I agree that in the event I am charged with professional misconduct in the future, this agreement and order shall be admitted into evidence in that proceeding.

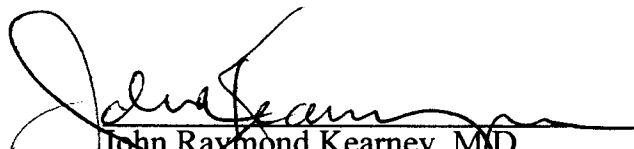
I hereby make this Application to the State Board for Professional Medical Conduct (the Board) and request that it be granted.

I understand that, in the event that this Application is not granted by the Board, nothing contained herein shall be binding upon me or construed to be an admission of any act of misconduct alleged or charged against me, such Application shall not be used against me in any way and shall be kept in strict confidence during the pendency of the professional misconduct disciplinary proceeding; and such denial by the Board shall be made without prejudice to the continuance of any disciplinary proceeding and the final determination by the Board pursuant to the provisions of the Public Health Law.

I agree that, in the event the Board grants my Application, as set forth herein, an order of the Chairperson of the Board shall be issued in accordance with same. I agree that such order shall be effective upon issuance by the Board, which may be accomplished by mailing, by first class mail, a copy of the Consent Order to me at the address set forth in this agreement, or to my attorney, or upon transmission via facsimile to me or my attorney, whichever is earliest.

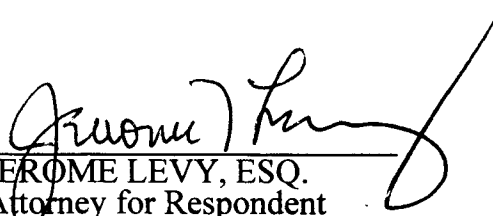
I am making this Application of my own free will and accord and not under duress, compulsion or restraint of any kind or manner. In consideration of the value to me of the acceptance by the Board of this Application, allowing me to resolve this matter without the various risks and burdens of a hearing on the merits, I knowingly waive any right I may have to contest the Consent Order for which I hereby apply, whether administratively or judicially, and ask that the Application be granted.

DATED 09/13/02


John Raymond Kearney, M.D.
RESPONDENT

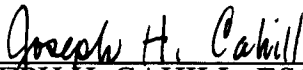
The undersigned agree to the attached application of the Respondent and to the proposed penalty based on the terms and conditions thereof.

DATE: 9/20/02




JEROME LEVY, ESQ.
Attorney for Respondent

DATE: 9-25-02



JOSEPH H. CAHILL, ESQ.
Associate Counsel
Bureau of Professional
Medical Conduct

DATE: 10/17/02



DENNIS J. GRAZIANO
Director
Office of Professional
Medical Conduct

IN THE MATTER

OF

JOHN RAYMOND KEARNEY, M.D.

CONSENT
ORDER

Upon the proposed agreement of John Raymond Kearney, M.D. (Respondent) for Consent Order, which application is made a part hereof, it is agreed to and

ORDERED, that the application and the provisions thereof are hereby adopted and so ORDERED, and it is further

ORDERED, that this order shall be effective upon issuance by the Board, which may be accomplished by mailing, by first class mail, a copy of the Consent Order to Respondent at the address set forth in this agreement or to Respondent's attorney by certified mail, or upon transmission via facsimile to Respondent or Respondent's attorney, whichever is earliest.

SO ORDERED.

DATED: 10/22/02

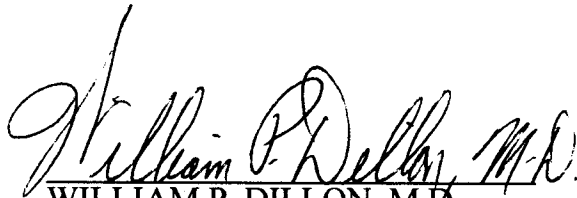

WILLIAM P. DILLON, M.D.
Chair
State Board for Professional
Medical Conduct

EXHIBIT B

TERMS OF MONITORING

1. Respondent shall conduct himself/herself in all ways in a manner befitting his/her professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his/her profession. Respondent acknowledges that if s/he commits professional misconduct as enumerated in New York State Education Law §6530 or §6531, those acts shall be deemed to be a violation of monitoring terms and that an action may be taken against Respondent's license pursuant to New York State Public Health Law §230(19).
2. Respondent shall submit written notification to the New York State Department of Health addressed to the Director, Office of Professional Medical Conduct (OPMC), Hedley Park Place, 433 River Street Suite 303, Troy, New York 12180-2299; said notice is to include a full description of any employment and practice, professional and residential addresses and telephone numbers within or without New York State, and any and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty days of each action.
3. Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of Respondent's compliance with the terms of this Order. Respondent shall personally meet with a person designated by the Director of OPMC as requested by the Director.
4. Any civil penalty not paid by the date prescribed herein shall be subject to all provisions of law relating to debt collection by New York State. This includes but is not limited to the imposition of interest, late payment charges and collection fees; referral to the New York State Department of Taxation and Finance for collection; and non-renewal of permits or licenses [Tax Law section 171(27)]; State Finance Law section 18; CPLR section 5001; Executive Law Section 32].
5. The period of monitoring shall be tolled during periods in which Respondent is not engaged in the active practice of medicine in New York State. Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in or intends to leave the active practice of medicine in New York State for a period of thirty (30) consecutive days or more. Respondent shall then notify the Director again prior to any change in that status. The period of monitoring shall resume and any terms of monitoring which were not fulfilled shall be fulfilled upon Respondent's return to practice in New York State.
6. Respondent's professional performance may be reviewed by the Director of OPMC. This review may include, but shall not be limited to, a review of office records, patient records and/or hospital charts, interviews with or periodic visits with Respondent and his/her staff at practice locations or OPMC offices.
7. Respondent shall maintain legible and complete medical records which accurately reflect the evaluation and treatment of patients. The medical records shall contain all information required by State rules and regulations regarding controlled substances.
8. Respondent shall enroll in and complete a continuing education program in the area of Ophthalmology and/or Pharmacology to be equivalent to at least 8 credit hours of Continuing Medical Education, over and above the recommended minimum standards set by the American Board of Ophthalmology. Said continuing education program shall be subject to the prior written approval of the Director of OPMC and be completed within the period of monitoring or as otherwise specified in the Order.

9. Within thirty days of the effective date of the order, Respondent shall practice medicine only when monitored by a licensed physician, board certified in an appropriate specialty, ("practice monitor") proposed by Respondent and subject to the written approval of the Director of OPMC.

- a. Respondent shall make available to the monitor any and all records or access to the practice requested by the monitor, including on-site observation. The practice monitor shall visit Respondent's medical practice on a random unannounced basis at least monthly and shall examine a selection (no fewer than 20) of the total records maintained by Respondent, including patient records, prescribing information and office records. The review will determine whether the Respondent's medical practice is conducted in accordance with the generally accepted standards of professional medical care. Any perceived deviation of accepted standards of medical care or refusal to cooperate with the monitor shall be reported within 24 hours to OPMC.
- b. Respondent shall be solely responsible for all expenses associated with monitoring, including fees, if any, to the monitoring physician.
- c. Respondent shall cause the practice monitor to report quarterly, in writing, to the Director of OPMC.
- d. Respondent shall maintain medical malpractice insurance coverage with limits no less than \$2 million per occurrence and \$6 million per policy year, in accordance with Section 230(18)(b) of the Public Health Law. Proof of coverage shall be submitted to the Director of OPMC prior to Respondent's practice after the effective date of this Order.

10. Respondent shall require all patients to obtain appropriate medical clearances from their primary care physicians or other qualified health care professional before scheduling ophthalmological surgical procedures. Copies of such medical clearance document shall be maintained by Respondent and made a part of the patient's office chart.

11. Respondent shall comply with all terms, conditions, restrictions, limitations and penalties to which he or she is subject pursuant to the Order and shall assume and bear all costs related to compliance. Upon receipt of evidence of noncompliance with, or any violation of these terms, the Director of OPMC and/or the Board may initiate a violation of monitoring proceeding and/or any such other proceeding against Respondent as may be authorized pursuant to the law.

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

IN THE MATTER
OF
JOHN RAYMOND KEARNEY, M.D.

STATEMENT
OF
CHARGES

JOHN RAYMOND KEARNEY, M.D., Respondent, was authorized to practice medicine in New York State on June 28, 1973, by the issuance of license number 116538 by the New York State Education Department, with a registration address of 135 County Highway 128, Box 249E, Johnstown, New York, 12095.

FACTUAL ALLEGATIONS

- A. Respondent provided medical care to Patient A, from approximately July 1993 through approximately August 1995. Respondent provided such care at the Cataract Care Center and also at Nathan Littauer Hospital, located at 39 East State Street, Gloversville, New York. Respondent's care and treatment of Patient C failed to meet accepted standards of medical care in that:
1. Respondent inappropriately prescribed Timoptic for Patient A on or about September 20, 1993. Such medication was inappropriate and/or contraindicated based upon the patient's medical condition and history.
 2. Respondent inappropriately prescribed Timoptic for Patient A on or about July 10, 1995. Such medication was inappropriate and/or contraindicated based upon the patient's medical condition and history.

3. Respondent inappropriately prescribed Timoptic for Patient A on or about July 31, 1995. Such medication was inappropriate and/or contraindicated based upon the patient's condition and history.
4. Respondent inappropriately prescribed Timoptic for Patient A on or about August 14, 1995. Such medication was inappropriate and/or contraindicated based upon the patient's medical condition and history.

B. Respondent provided medical care to Patient B from approximately 1993 through, at least, March 1998. Respondent provided medical care to Patient B at the Cataract Care Center and also at St. Mary's Hospital, 427 Guy Park Avenue, Amsterdam, New York, 12010. Respondent's care and treatment of Patient B failed to meet accepted standards of care in that:

1. Respondent inappropriately chose to perform cataract surgery on Patient B on June 1, 1994 despite the patient's arteriosclerotic heart disease, congestive heart failure uncontrolled type II diabetes, obesity, abnormal EKG, and history of respiratory difficulties.
2. Respondent failed to obtain appropriate medical clearance prior to performing cataract surgery on June 1, 1994.
3. Respondent, on June 1, 1994, prescribed Timoptic for Patient B. Such medication was inappropriate and/or contraindicated based upon the patient's medical condition and history.

4. Respondent, on June 1, 1994, prescribed Mannitol for Patient B. This medication was inappropriate and/or contraindicated based upon the patient's medical condition and history.

C. Respondent provided medical care and treatment to Patient C from approximately April 1995 through, at least, February 1996. Respondent provided medical care to Patient C at the Cataract Care Center, St. Mary's Hospital and also at Nathan Littauer Hospital, Respondent's care and treatment of Patient C failed to meet accepted standards of care in that:

1. Respondent inappropriately prescribed Timoptic for Patient C on June 19, 1995. Such medication was inappropriate and/or contraindicated based upon the patient's medical condition and history.


SPECIFICATION

NEGLIGENCE ON MORE THAN ONE OCCASION

Respondent is charged with negligence on more than one occasion, in violation of N.Y. Education Law § 6530(3), in that Petitioner charges two or more of the following:

1. The facts in Paragraphs A and A.1, A and A.2, A and A.3, A and A.4, B and B.1, B and B.2, B and B.3, B and B.4, C and C.1

DATED: ~~August~~ ^{Sept. 24}, 2002
Albany, New York


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