



STATE OF NEW YORK
DEPARTMENT OF HEALTH

Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12237

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

Karen Schimke
Executive Deputy Commissioner

September 4, 1996

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Joseph Huberty, Esq.
NYS Department of Health
Corning Tower-Room 2438
Empire State Plaza
Albany, New York 12237

William Thomas Kelly, M.D.
575 Meadowbrook Drive
Adrian, Michigan 49221

Effective Date: 09/11/96

RE: In the Matter of William Thomas Kelly, M.D.

Dear Mr. Huberty and Dr. Kelly:

Enclosed please find the Determination and Order (No. 96-200) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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
Corning Tower - Fourth Floor (Room 438)
Empire State Plaza
Albany, New York 12237

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 all action 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.

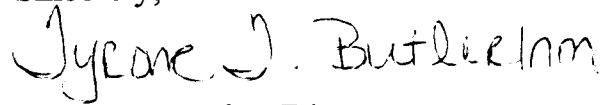
The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Empire State Plaza
Corning Tower, Room 2503
Albany, New York 12237-0030

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,

Handwritten signature of Tyrone T. Butler in black ink.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nm
Enclosure

COPY

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

IN THE MATTER

-OF-

WILLIAM THOMAS KELLY, M.D.

DECISION
AND
ORDER
OF THE
HEARING
COMMITTEE
BPMC ORDER
NO. 96- 200

This matter was commenced by a Notice of Hearing and Statement of Charges, both dated June 28, 1996 which were served upon **WILLIAM THOMAS KELLY, M.D.**, (hereinafter referred to as "Respondent"). **ARSENIO G. AGOPOVICH, M.D., Chairperson, LEO FISHEL, JR., M.D., and TIMOTHY TRUSCOTT**, 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. **JONATHAN M. BRANDES, ESQ.**, Administrative Law Judge, served as the Administrative Officer. A hearing was held on August 7, 1996 at Room 711, Legislative Office Building, Albany, New York. The State Board For Professional Medical Conduct (hereinafter referred to as "Petitioner") appeared by **HENRY M. GREENBERG, ESQ.**, General Counsel, by **JOSEPH HUBERTY, ESQ.**, Assistant Counsel, Bureau of Professional Medical Conduct. Respondent did not appear. Evidence was received. A transcript of these proceedings was made.

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

STATEMENT OF CASE

This case was brought pursuant to Public Health Law Section 230(10)(p). This statute provides for an expedited hearing where a licensee is charged solely with a violation of Section 6530(9) of the Education Law. In such cases, a licensee is charged with misconduct based upon prior professional disciplinary action or criminal conviction. The scope of this expedited hearing is limited to a determination of the nature and severity of the penalty to be imposed by this state upon the licensee based solely upon the record of the previous conviction or discipline.

In the instant case, Respondent is charged with professional misconduct pursuant to the New York State Education Law, Section 6530(9)(d) (having been disciplined by the duly authorized agency of another state). The charges in this proceeding arise from a Consent Order and Stipulation between Respondent and the Michigan Board of Medicine. The allegations in this proceeding and the underlying events are more particularly set forth in the Notice of Referral Proceeding and Statement of Charges, a copy of which is attached to this Decision and Order as Appendix One.

FINDINGS OF FACT

The Committee adopts the factual statements set forth on pages one and two of the Statement of Charges (Appendix One) as its findings of fact and incorporates them herein.

CONCLUSIONS
WITH REGARD TO
FACTUAL ALLEGATIONS
AND
PENALTY

Petitioner herein, has proven by a preponderance of the evidence that Respondent was disciplined by the Michigan Board of Medicine. Furthermore, the conduct resulting in the discipline in Michigan, would constitute misconduct if committed in New York. Therefore, the specifications in this proceeding are sustained. The Committee now turns its attention to what penalty to impose.

The Michigan authorities found Respondent herein to be incompetent and negligent as a result of mental disability. The primary concern of this Committee must be to protect the people of this state. As it is clear Respondent would pose a serious threat to the safety of any patient, there can be only one outcome to this proceeding: The license of Respondent to practice medicine in this state must be revoked.

ORDER

WHEREFORE, Based upon the preceding facts and conclusions,

It is hereby ORDERED that:

1. The Factual allegations in the Statement of Charges are SUSTAINED

Furthermore, it is hereby ORDERED that;

2. The Specifications of Misconduct contained within the Statement of Charges (Appendix One) are SUSTAINED;

Furthermore, it is hereby ORDERED that;

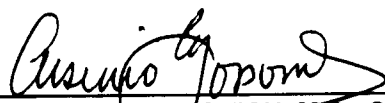
3. The license of Respondent to practice medicine in the State of New York is hereby REVOKED;

Furthermore, it is hereby ORDERED that;

4. This order shall take effect **UPON RECEIPT** or **SEVEN (7) DAYS** after mailing of this order by Certified Mail.

Dated:
Troy, New York

August 31st, 1996



ARSENIO G. AGOFOVICH, M.D., Chairperson
LEO FISHEL, JR., M.D.
TIMOTHY TRUSCOTT



TO:

JOSEPH HUBERTY, ESQ.
Assistant Counsel
Bureau of Professional Medical Conduct
New York State Department of Health
Room 2429 Corning Tower
Empire State Plaza
Albany NY 12237

WILLIAM THOMAS KELLY, M.D.
575 Meadowbrook Drive
Adrian, Michigan 49221

APPENDIX ONE

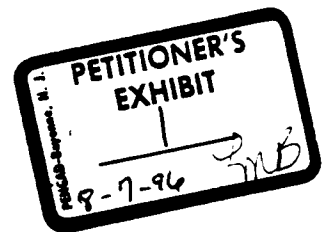
STATE OF NEW YORK : DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

-----x

IN THE MATTER : NOTICE OF
OF : REFERRAL
WILLIAM THOMAS KELLY, M.D. : PROCEEDING

-----x

TO: WILLIAM THOMAS KELLY, M.D.
575 Meadowbrook Drive
Adrian, Michigan 49221



PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law Section 230(10)(p) (McKinney Supp. 1996) and N.Y. State Admin. Proc. Act Sections 301-307 and 401 (McKinney 1984 and Supp. 1996). The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 7th day of August, 1996 at 10:00 in the forenoon of that day at the New York State Legislative Office Building, 7th Floor--Room 711, Empire State Plaza, Albany, New York 12248.

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

PET.
EX I

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, Corning Tower Building, 25th Floor, Empire State Plaza, Albany, New York 12237, 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 29, 1996.

You may file a written answer, brief, and affidavits with the Committee. Six copies of all papers you wish to submit must be filed with the Bureau of Adjudication at the address indicated above on or before July 29, 1996 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 28, 1996



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

Inquiries should be addressed to:

JOSEPH HUBERTY
Assistant Counsel
NYS Department of Health
Division of Legal Affairs
Corning Tower Building
Room 2429
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
WILLIAM THOMAS KELLY, M.D. : CHARGES

-----X

WILLIAM THOMAS KELLY, M.D., the Respondent, was authorized to practice medicine in New York State on September 23, 1958 by the issuance of license number 081343 by the New York State Education Department. The Respondent is not currently registered with the New York State Education Department to practice medicine in the State of New York. Respondent's address, as shown on Respondent's last registration with the New York State Education Department, is 575 Meadowbrook Drive, Adrian, Michigan 49221.

FACTUAL ALLEGATIONS

A. By Administrative Complaint dated December 27, 1994 the Michigan State Department of Commerce, Bureau of Occupations and Professional Regulation, Board of Medicine (hereinafter Michigan Board) charged Respondent with negligence or failure to exercise due care, incompetence and suffering from a mental or physical inability reasonably related to and affecting his ability to practice in a safe and competent manner. The charges of negligence and incompetence involved Respondent's care and treatment of four individual patients.

B. By Consent Order and Stipulation dated July 19, 1995 the Michigan Board found the allegations of fact set forth in the aforesaid Administrative Complaint to be true and to constitute a violation of the Public Health Code of the State of Michigan.

C. The Michigan Board disciplined Respondent by permanently restricting Respondent's license as follows:

1. Respondent can perform no delivery procedures and no surgery other than office procedures.
2. Respondent's practice shall be limited to an outpatient office practice.

D. Practicing the profession while impaired by physical or mental disability, if committed in New York State, would constitute a violation N.Y. Educ. Law Sec. 6530(7) (McKinney Supp. 1996).

E. Practicing the profession with negligence and/or incompetence on more than one occasion, if committed in New York State, would constitute violations of N.Y. Educ. Law Sec. 6530(3) and/or (5) (McKinney Supp. 1996) respectively.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

HAVING BEEN FOUND GUILTY OF PROFESSIONAL MISCONDUCT

BY THE DISCIPLINARY AGENCY OF A ANOTHER STATE

Petitioner charges Respondent with professional misconduct in that Respondent was 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 violation of N.Y. Educ. Law 6530(9)(b) (McKinney Supp. 1996) in that Petitioner charges:


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

SECOND SPECIFICATION
HAVING BEEN DISCIPLINED BY THE DISCIPLINARY
AGENCY OF ANOTHER STATE

Petitioner charges Respondent with professional misconduct in that disciplinary action was taken against Respondent by the duly authorized disciplinary agency of another state where the conduct resulting in such action would, if committed in New York State, constitute professional misconduct in violation of N.Y. Educ. Law Sec. 6530(9)(d) (Mc Kinney Supp. 1996) in that Petitioner charges:

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

DATED: June 28, 1996
Albany, New York


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

In the Matter of William Thomas Kelly, M.D.

Plaintiff(s)/Petitioner(s)

VS

Defendant(s)/Respondent(s)

STATE OF MICHIGAN)
COUNTY OF LIVINGSTON) SS

ROOSEVELT DENNIS

being duly sworn deposes and says:

Deponent is not a party herein and is over 18 years of age. On 7-3 1996 at 8:10 AM.
at 755 HIGH ST. ADRIAN MI 49221

deponent (did, ~~did not~~) serve the within Notice of Referral Proceeding, Statement of Charges & Summary of Dept
of Health Hearing Rules

ON: William Thomas Kelly, M.D. Respondent (herein called recipient) therein named

#1 INDIVIDUAL By delivering a true copy of each to said recipient personally; deponent knew the person served to be the person described as
said person therein.

#2 CORP. A _____ corporation, by delivering thereat a true copy of each to _____
personally, deponent knew said corporation so served to be the corporation, described in same as said recipient and knew said
individual to be _____ thereof.

#3 SUITABLE AGE PERSON By delivering a true copy of each to _____ a person of suitable age and discretion. Said
premises is recipient's [] actual place of business [] dwelling house (usual place of abode) within the state.

#4 AFFIXING TO DOOR By affixing a true copy of each to the door of said premises, which is recipient's [] actual place of business [] dwelling house
(usual place of abode) within the state. Deponent was unable, with due diligence to find recipient or a person of suitable age
and discretion, having called thereat
Day _____ Date _____ Time _____ Day _____ Date _____ Time _____
Day _____ Date _____ Time _____ Day _____ Date _____ Time _____

#5 MAILING COPY Deponent completed service under the last two sections by depositing a copy of the _____
_____ to the above address in a First Class postpaid properly addressed envelope marked
"Personal and Confidential" in an official depository under the exclusive care and custody of the United States Post Office in the
State of New York, on _____, 19____.

#6 NON-SERVICE After due search, careful inquiry and diligent attempts, I have been unable to effect process upon the person/entity being
served because of the following:
[] Unknown Address [] Evading [] Moved left no forwarding [] Address does not exist [] Other

#7 DESCRIPTION A description of the Defendant, or other person served, or spoken to on behalf of the Defendant is as follows:
(use with #1, 2 or 3) Sex M Color of skin W Color of hair GRAY Approx. Age 65 Approx. Height 5'7"
Approx. weight 170 Other _____

#8 WIT. FEES \$ _____ the authorizing traveling expenses and one day's witness fee was paid (tendered) to the recipient.

#9 MILITARY SERVICE Deponent asked person spoken to whether the recipient was presently in military service of the United States Government or on
active duty in the military service in the State of New York and was informed he/she was not.

Sworn to before me on this
3rd day of July 19 96

Roosevelt Dennis
Please Print Name Below Signature
ROOSEVELT DENNIS

Notary Public, _____
KIRKE SEBERT
My Commission Expires _____
Notary Public, Livingston County, MI
My Commission Expires Sept. 4, 1999

Invoice-Work Order # 9603228