



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

September 27, 1996

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Dianne Abeloff, Esq.
Associate Counsel
Bureau of Professional Medical Conduct
New York State Department of Health
5 Penn Plaza - Suite 601
New York, New York 10001

Alan Howard Welner, M.D.
1700 Benjamin Franklin Pkwy
#616
Philadelphia, Pennsylvania 19103

Alan Howard Welner, M.D.
Olympic Rehabilitation
200 W. Ridge Pike
Conshohocken, Pennsylvania 19428

Effective Date: 10/04/96

RE: In the Matter of Alan Howard Welner, M.D.

Dear Ms. Abeloff and Dr. Welner:

Enclosed please find the Determination and Order (No. BPMC-96-227) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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 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.

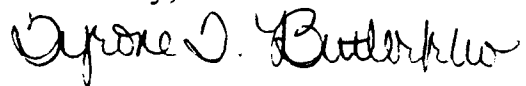
The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
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,

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:crc
Enclosure

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

COPY

IN THE MATTER

-OF-

ALAN HOWARD WELNER, M.D.

Respondent

DETERMINATION

AND

ORDER

No. BPMC-96-227

A Notice of Referral Proceeding and Statement of Charges, both dated June 12, 1996, were served upon the Respondent, Alan Howard Welner, M.D. **KENNETH KOWALD (Chair), ANDREW CONTI, M.D. and JAMES B. EISENKRAFT, 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. **JEFFREY W. KIMMER, ESQ., ADMINISTRATIVE LAW JUDGE**, served as the Administrative Officer. The Department of Health appeared by Dianne Abeloff, Esq., Associate Attorney. The Respondent did not appear either in person or by counsel. Evidence was received, statements were heard 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). This statute provides for an expedited proceeding 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 prior professional disciplinary action or criminal conviction. The scope of this expedited proceeding is limited to a determination of the nature and severity of the penalty to be imposed upon the licensee.

In the instant case, Respondent is charged with professional misconduct pursuant to Education Law § 6530(9)(b) (found guilty of misconduct by another state). The charges herein arise from Respondent being found unable to practice medicine with reasonable skill and safety to his patients by the State of Pennsylvania based on a determination that the Respondent suffers from paranoid type schizophrenia. The State Board of Medicine of Pennsylvania suspended the Respondent's license to practice medicine until such time as he can demonstrate that he can practice safely. Based on the Pennsylvania Order, the Rhode Island Board of Medical Licensure and Discipline took the same disciplinary action against the Respondent's Rhode Island medical license. The allegations in this proceeding are set forth in the Statement of Charges, a copy of which is attached to this Determination and

Order as Appendix One.

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 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.

1. Alan Howard Welner, M.D. (hereinafter, "Respondent"), was licensed to practice medicine in New York State on November 11, 1995, by the issuance of license number 199335 by the New York State Education Department. (Pet. Ex. #3).
2. On or about June 26, 1995, the State of Pennsylvania Board of Medicine issued an Order which suspended the Respondent's license to practice medicine in Pennsylvania until such time as he can prove that he is fit to practice. (Pet. Ex. #4)
3. The Respondent was found by the Pennsylvania State Board of Medicine to be subject to disciplinary measures and unable to practice medicine with reasonable skill and safety to his patients by reason of illness, addiction to drugs or mental incompetence. (Pet. Ex. #4)

4. The Pennsylvania State Board of Medicine found that the Respondent suffers from Paranoid Type Schizophrenia. (Pet. Ex. #4)

5. The Rhode Island Board of Medical Licensure and Discipline suspended the Respondent's license to practice medicine in that state based on the findings and action taken by the Pennsylvania State Board of Medicine. (Pet. Ex. # 5)

CONCLUSIONS OF LAW

The following conclusions were made pursuant to the Findings of Fact listed above. All conclusions resulted from a unanimous vote of the Hearing Committee unless noted otherwise.

The Hearing Committee concluded that the Department has sustained its burden of proof in this matter. The preponderance of the evidence demonstrates that Respondent was found guilty of improper professional practice or misconduct by a duly authorized professional disciplinary agency of another state. The underlying condition which was the basis for the action by Pennsylvania and Rhode Island would constitute professional misconduct in New York. Specifically, the Hearing Committee found the Respondent's condition would fall within the

definitions of misconduct set forth at §6530(7) (Practicing the profession while impaired by a mental disability) and N.Y. Education Law §6530(8) (Having a psychiatric condition which impairs the ability to practice medicine).

DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determined that Respondent's license should be **Revoked**. This determination was reached upon due consideration of the full spectrum of penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties .

The Hearing Committee based its determination on the fact that the conduct and condition upon which the Pennsylvania action was based indicated a complete inability on the part of the Respondent to practice medicine. The Hearing Committee believes it is in the best interest of the safety of the people of New York to revoke the Respondent's license given the fact that should the Respondent recover from his disability he can apply for reinstatement of his license. It is the Hearing Committee's duty to protect the consumers of medical services of this state. The committee

believes the revocation of the Respondent's license to practice will fulfill that duty.

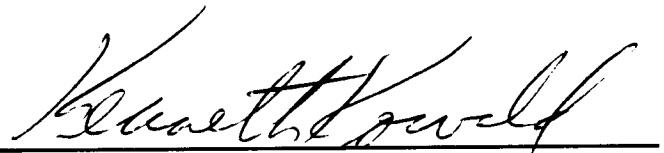
ORDER

Based upon the foregoing, **IT IS HEREBY ORDERED THAT:**

1. The First and Second Specifications of professional misconduct, as set forth in the Statement of Charges (Appendix I) are **SUSTAINED**;
2. Respondent's license to practice medicine in New York State is hereby **REVOKED**.

DATED: Brooklyn, New York

September 25, 1996



**KENNETH KOWALD (Chair)
ANDREW CONTI, M.D.
JAMES B. EISENKRAFT, M.D.**



TO: DIANNE ABELOFF, ESQ.
Associate Counsel
Bureau of Professional Medical Conduct
New York State Department of Health
5 Penn Plaza - Suite 601
New York, New York 10001

ALAN HOWARD WELNER, M.D.
1700 Benjamin Franklin Pkwy
#616
Philadelphia, PA 19103
and
Olympic Rehab.
200 W. Ridge Pike
Conshohocken, PA 19428

APPENDIX ONE

IN THE MATTER
OF
ALAN HOWARD WELNER, M.D.

STATEMENT
OF
CHARGES

ALAN HOWARD WELNER, M.D., the Respondent, was authorized to practice medicine in New York State on or about May 11, 1995, by the issuance of license number-199335 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. On or about March 22, 1994, Respondent was ordered by the State Board of Medicine, Commonwealth of Pennsylvania, (Board) to undergo a complete mental evaluation. Said evaluation was performed on or about May 31, 1994. The evaluating psychiatrist determined that Respondent suffers from Paranoid Type Schizophrenia (DSM-IV 295.30).
- B. On or about June 27, 1995, after being given notice and an opportunity for a hearing, the Board entered a default judgment finding Respondent impaired from the practice of medicine due to a mental disability and suspended Respondent's Pennsylvania license to practice medicine and surgery until such time that he can demonstrate that he can resume the practice of medicine and surgery with reasonable skill and safety to patients.
- C. On or about November 8, 1995, the Rhode Island Board of Medical Licensure and Discipline suspended Respondent's Rhode Island license in Rhode Island until such time that he can demonstrate that he can practice medicine with a

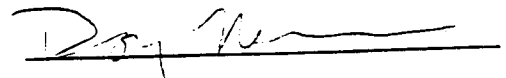
reasonable degree of skill and safety. This order is based upon the Pennsylvania action referred herein in Paragraph B.

SPECIFICATION OF CHARGES
FIRST THROUGH SECOND SPECIFICATIONS
HAVING BEEN FOUND GUILTY OF
PROFESSIONAL MISCONDUCT

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(9)(b)(McKinney Supp. 1996) 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 (namely N.Y. Educ. Law §6530(7)practicing the profession while impaired by a mental disability and §6530(8) having a psychiatric condition which impairs the ability to practice medicine) as alleged in the facts of the following:

1. Paragraphs A and B.
2. Paragraph C.

DATED: June 12, 1996
New York, New York



ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct