



# 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

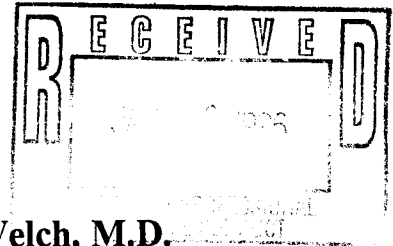
December 28, 1995

## CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Jacob P. Welch, Esq.  
Welch and Welch  
17-19 East Market Street  
Corning, New York 14830

Roy Nemerson, Esq.  
NYS Department of Health  
5 Penn Plaza-Sixth Floor  
New York, New York 10001

Frederick Welch, M.D.  
76 East First Street  
Corning, New York 14830



**RE: In the Matter of Frederick William Welch, M.D.**

Dear Mr. Welch, Mr. Nemerson and Dr. Welch:

Enclosed please find the Determination and Order (No. 95-313) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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.

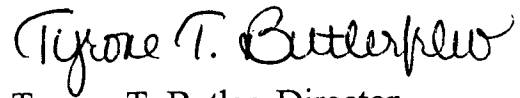
The notice of review served on the Administrative Review Board should be forwarded to:

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,

A handwritten signature in black ink that reads "Tyrone T. Butler". The signature is written in a cursive style with a large, prominent "T" at the beginning.

Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:nm  
Enclosure

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

**IN THE MATTER  
OF  
FREDERICK WILLIAM WELCH, M.D.**

**DETERMINATION  
AND  
ORDER**

BPMC-95-313

A Commissioner's Order and Notice of Hearing dated October 20, 1995 and Statement of Charges dated October 18, 1995 were served upon the Respondent, **FREDERICK WILLIAM WELCH, M.D. MICHAEL R. GOLDING, M.D. (Chair), ALLAN GIBOFSKY, M.D. and DANIEL W. MORRISSEY, O.P.**, 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 ARMON, ADMINISTRATIVE LAW JUDGE**, served as the Administrative Officer. A hearing was held on November 13 and 14, 1995. The Department of Health appeared by **ROY NEMERSON**, Deputy Counsel. The Respondent was represented by **JACOB P. WELCH, ESQ.** Evidence was received and witnesses sworn and 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 Sections 230(10)(p) and 230(12). The statute provides for an expedited hearing 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 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 such an expedited hearing is limited to a determination of the nature and severity of the penalty to be imposed upon the licensee.

By an Order dated October 20, 1995 the Commissioner of Health summarily suspended the medical license of the Respondent, Frederick William Welch, M.D., upon a finding that his continued practice of medicine would constitute an imminent danger to the health of the people of New York State. At the conclusion of this hearing on November 14, 1995, the Hearing Committee determined to recommend that the summary suspension of Respondent's license be continued pending final determination of this matter.

In the instant case, Respondent is charged with professional misconduct pursuant to Education Law Section 6530(9)(d). A copy of the Commissioner's Order and Notice of Hearing and Statement of Charges is attached to this Determination and Order in 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.

1. Frederick William Welch, M.D. (hereinafter "Respondent") was authorized to practice medicine in New York State on or about March 24, 1978 by the issuance of license number 134064 by the New York State Education Department. (Ex. 1)
2. By an Order of the New York State Education Department and Board of Regents dated August 11, 1989, Respondent's license to practice medicine in New York State was suspended for a three year period, with two and one-half years of said suspension stayed, based upon a finding that he had practiced medicine in a grossly negligent and fraudulent manner. (Ex. 2)

3. By an Order of the Chairperson of the State Board of Professional Medical Conduct dated March 7, 1994, Respondent's Application for Consent Order was approved, whereby he admitted Factual Allegations set forth in a Statement of Charges dated February 25, 1994, related to the verbal and physical abuse of a patient. Respondent's license to practice medicine in New York State was suspended for a five year period, with such suspension stayed, during which time he agreed to comply with certain Terms of Probation. (Ex. 3)
4. On or about July 25, 1995, the Commonwealth of Pennsylvania State Board of Medicine ordered the immediate suspension of Respondent's license to practice medicine in Pennsylvania based upon a finding that his continued practice of medicine and surgery presented an immediate and clear danger to the public health and safety. By Order of the Pennsylvania Board dated September 6, 1995, it was determined following the taking of evidence at a preliminary hearing that sufficient evidence had been presented to establish a prima facie case that Respondent's continued practice presented an immediate and clear danger to the public health and safety. Respondent's license was ordered to remain suspended for a period of no longer than 180 days. (Ex. 4)
5. The action by the Pennsylvania Board was based upon psychiatric and psychological evaluations of the Respondent conducted by two medical experts, both of whom concluded that Respondent's cognitive disorder made him unfit to practice medicine. (Ex. 4, 6, 7)
6. On or about September 6, 1995, Respondent advised the New York Office of Professional Medical Conduct of his intent to resume a medical practice in New York State. (Ex. 15)

## 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 Committee concluded that the Department had met its burden of proof by demonstrating by a preponderance of the evidence that the Pennsylvania Board took disciplinary action against Respondent's license to practice in that State, in that his license was suspended. The basis for such action was conduct which, had it been committed in New York State, would have constituted professional misconduct pursuant to New York Education Law Section 6530(8) [having a psychiatric condition which impairs the licensee's ability to practice.] Therefore, the Hearing Committee voted to sustain the specification of professional misconduct contained within the Statement of Charges.

## 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 to practice medicine in New York State 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.

Respondent has received treatment for bipolar disorder since approximately 1992. His condition had been stabilized in approximately November, 1994 when he was treated with the medications Tegretol and Effexor. (T. 81) The psychiatrist who treated Respondent from about November, 1994 through May, 1995 and again in November, 1995 testified that bipolar disorder is a condition that does not go away, but which can be stabilized with the proper medications. (T. 85) He further testified that at the time of this proceeding, he was continuing to titrate upward Respondent's medications and believed that additional adjustments in the treatment remained necessary. (T. 116) Respondent's own witness led the Committee to conclude that his condition was

not fully controlled and that an estimate of when it would be controlled could not be made. The Committee also noted Respondent's willingness to comply with a proposed agreement with the Pennsylvania Medical Society's Physician Health Program. Such an agreement would require Respondent to not practice medicine until a treating psychiatrist determined that the Respondent was able to practice. (Ex. F, T. 182) The Committee considered Respondent's willingness to enter into such an agreement as an admission that he was not currently able to practice as the result of an impairment.

As noted above, the scope of this expedited hearing was limited to a determination of the nature and severity of the penalty to be imposed. Respondent argued that a license suspension rather revocation would be most appropriate to enable him to avoid the "stigma" associated with licensure revocation. The Committee's determination that revocation would be the most appropriate penalty was a considered decision made following a two day adjudicatory hearing and a full review of all evidence received into the record. This included statements from the New York Medical Society and the Physician Prescribed Education Program at Syracuse Health Science Center submitted on behalf of Respondent. (Ex. F, H) The Committee was not persuaded that a practical and effective program of rehabilitation could be designed to meet both the needs of the Respondent and the public.

The Committee's determination was significantly influenced by the demeanor and testimony of the Respondent himself at this proceeding. It unanimously concluded that the Respondent continued to suffer from a psychiatric condition which impaired his ability to practice based on these personal observations. Respondent's answers were often non-responsive to the questions posed and he appeared to lack insight as to the extent to which his condition did, in fact, limit his ability to safely practice. It was noted that he could not suggest any activity he could consider pursuing in the future other than the practice of medicine if his license were to be revoked. (T. 216-7)

In reaching it's determination, the Committee recognized the efforts expended by the Respondent toward addressing both his history of alcohol abuse and his medical condition. The Committee was also impressed by the many sacrifices made by his family in support of the Respondent. It's decision that revocation was the most appropriate penalty was intended to best protect the public and was not based on a desire to punish the actions of the Respondent. The



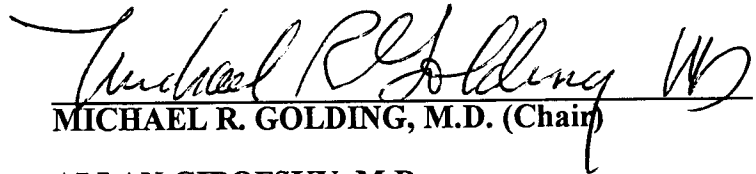
Committee was convinced that the Respondent remained impaired, that such impairment would prevent him from practicing safely and that the impairment would continue for an extended and indefinite period. It further observed that his rehabilitation program could proceed regardless of whether Respondent retained his license. Finally, the Committee concluded that the opportunity to reapply for restoration of his license after one year presented a meaningful incentive for Respondent to continue his rehabilitation so as to enable him at some future time to demonstrate that his condition no longer prevented him from practicing safely.

**ORDER**

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

1. The specification of professional misconduct contained within the Statement of Charges (Pet. Ex. 1) is **SUSTAINED**; and
2. Respondent's license to practice medicine in New York State is **REVOKED**.

**DATED: Albany, New York**  
**21 Dec 1995**

  
MICHAEL R. GOLDING, M.D. (Chair)

ALLAN GIBOFSKY, M.D.  
DANIEL W. MORRISSEY, O.P.

**TO:** Jacob P. Welch, Esq.  
Welch and Welch  
17-19 East Market Street  
Corning, New York 14830

Roy Nemerson, Esq.  
NYS Department of Health  
5 Penn Plaza-Sixth Floor  
New York, New York 10001

Frederick Welch, M.D.  
76 East First Street  
Corning, New York 14830

APPENDIX I

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

IN THE MATTER  
OF  
FREDERICK WILLIAM WELCH

COMMISSIONER'S  
ORDER AND  
NOTICE OF  
HEARING

TO: FREDERICK WILLIAM WELCH  
76 East First Street  
Corning, NY 14830

*Dept* EXHIBIT *1*  
DATE: *11-13-95*  
HELAINÉ GUGGENHEIM

The undersigned, Barbara A. DeBuono, M.D., M.P.H., Commissioner of Health of the State of New York, after an investigation, upon the recommendation of a Committee on Professional Medical Conduct of the State Board for Professional Medical Conduct, and upon the Statement of Charges attached hereto and made a part hereof, has determined that the continued practice of medicine in the State of New York by FREDERICK WILLIAM WELCH, the Respondent, constitutes an imminent danger to the health of the people of this state.

It is therefore:

ORDERED, pursuant to N.Y. Pub. Health Law §230(12) (McKinney Supp. 1995), that effective immediately FREDERICK WILLIAM WELCH, Respondent, shall not practice medicine in the State of New York. This Order shall remain in effect unless modified or vacated by the Commissioner of Health pursuant to N.Y. Pub. Health Law §230(12) (McKinney Supp. 1995).

PLEASE TAKE NOTICE that a hearing will be held pursuant to the provisions of N.Y. Pub. Health Law §230 (McKinney 1990 and Supp. 1995), and N.Y. State Admin. Proc. Act §§301-307 and 401 (McKinney 1984 and Supp. 1995). The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on November 1, 1995 at 10:00 a.m., at the offices of the New York State Health Department, 5 Penn Plaza, Sixth Floor, New

York, NY 10001, and at such other adjourned dates, times and places as the committee may direct. The Respondent may file an answer to the Statement of Charges with the below-named attorney for the Department of Health.

At the hearing, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the hearing will be made and the witnesses at the hearing will be sworn and examined. The Respondent shall appear in person at the hearing and may be represented by counsel. The Respondent has the right to produce witnesses and evidence on his behalf, to issue or have subpoenas issued on his behalf for the production of witnesses and documents and to cross-examine witnesses and examine evidence produced against him. A summary of the Department of Health Hearing Rules is enclosed. Pursuant to §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 hearing will proceed whether or not the Respondent appears at the hearing. Scheduled hearing dates are considered dates certain and, therefore, adjournment requests are not routinely granted. Requests for adjournments must be made in writing to the Administrative Law Judge's Office, Empire State Plaza, Corning Tower Building, 25th Floor, Albany, New York 12237-0026 and by telephone (518-473-1385), upon notice to the attorney for the Department of Health whose name appears below, and at least five days prior to the scheduled hearing date. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation.

At the conclusion of the hearing, the committee shall make findings of fact, conclusions concerning the charges sustained or dismissed, and, in the event any of the charges are sustained, a determination of the penalty or sanction to be imposed or appropriate action to be taken. Such determination may be reviewed by the administrative review board for professional medical conduct.

THESE PROCEEDINGS MAY RESULT IN A DETERMINATION THAT YOUR LICENSE TO PRACTICE MEDICINE IN NEW YORK STATE BE REVOKED OR SUSPENDED, AND/OR THAT YOU BE FINED OR SUBJECT TO OTHER SANCTIONS SET FORTH IN NEW YORK PUBLIC HEALTH LAW §230-a (McKinney Supp. 1995). YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: Albany, New York

*Oct. 20, 1995*



BARBARA A. DeBUONO, M.D., M.P.H.  
Commissioner of Health

Inquiries should be directed to:

Roy Nemerson  
Deputy Counsel, B.P.M.C.  
N.Y.S. Department of Health  
Division of Legal Affairs  
5 Penn Plaza  
Suite 601  
New York, New York 10001  
(212) - 613-2615

**IN THE MATTER  
OF  
FREDERICK WILLIAM WELCH, M.D.**

**STATEMENT  
OF  
CHARGES**

FREDERICK WILLIAM WELCH, M.D., the Respondent, was authorized to practice medicine in New York State on or about March 24, 1978, by the issuance of license number 134064 by the New York State Education Department. Respondent has held such license at all times from that date through the present, subject to:

a six month actual suspension, and two and one half year stayed suspension and probation, effective in August of 1989, based upon grossly negligent practice during performance of surgery, and based upon the fraudulent practice of medicine; and

a five year stayed suspension and probation, effective in March of 1994, based upon his having verbally and physically harassed a patient.

**FACTUAL ALLEGATIONS**

- A. On or about September 6, 1995, by Order of the Commonwealth of Pennsylvania Department of State, State Board of Medicine, after the taking of evidence, Respondent's license to practice medicine in the Commonwealth of Pennsylvania was suspended, based upon a finding that Respondent presents an immediate and clear danger to the public health and safety. Respondent

was suspended based upon his impairment, by his multiple psychiatric disorders and history of multiple substance abuse, for the practice of medicine.

**SPECIFICATION OF CHARGES**


**SPECIFICATION**

**HAVING HAD DISCIPLINARY ACTION TAKEN**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(9)(d)(McKinney Supp. 1995) by having his or her license to practice medicine revoked, suspended or having other disciplinary action taken, or having his or her application for a license refused, revoked or suspended or having voluntarily or otherwise surrendered his or her license after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation, suspension or other disciplinary action involving the license or refusal, revocation or suspension of an application for a license or the surrender of the license would, if committed in New York state, constitute professional misconduct under the laws of New York state (namely N.Y. Educ. Law §6530(8)) as alleged in the facts of:

- 1. Paragraph A

DATED: October 18, 1995  
New York, New York

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