



**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., Dr.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

PUBLIC

January 28, 2004

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Robert Bogan, Esq.
NYS Department of Health
Office of Professional Medical Conduct
433 River Street – 4th Floor
Troy, New York 12180

Michael Brian Kilborn, R.P.A.
4520 S. Sherwood Forest Boulevard
Box 104-210
Baton Rouge, LA 70816

Michael Brian Kilborn, R.P.A.
RD Box 282 A
E. Chatham, New York 12060

RE: In the Matter of Michael Brian Kilborn, R.P.A.

Dear Parties:

Enclosed please find the Determination and Order (No. 04-12) 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 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
Hedley Park Place
433 River Street - Fourth Floor
Troy, New York 12180

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.

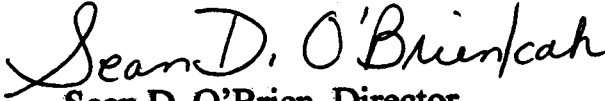
The notice of review served on the Administrative Review Board should be forwarded to:

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


Sean D. O'Brien, Director
Bureau of Adjudication

SDO:cah
Enclosure

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

IN THE MATTER
OF
MICHAEL BRIAN KILBORN, R.P.A.

DETERMINATION

AND

ORDER

COPY

BPMC #04-12

A hearing was held on January 21, 2004, at the offices of the New York State Department of Health ("the Petitioner"). A Notice of Referral Proceeding and a Statement of Charges, both dated December 18, 2003, were served upon the Respondent, **Michael Brian Kilborn, R.P.A.** Pursuant to Section 230(10)(e) of the Public Health Law, **Peter B. Kane, M.D.**, Chairperson, **Alexander M. Yvars, M.D., F.A.C.S.**, and **James P. Milstein, J.D.**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. **John Wiley, Esq.**, Administrative Law Judge, served as the Administrative Officer.

The Petitioner appeared by **Donald P. Berens, Jr., Esq.**, General Counsel, by **Robert Bogan, Esq.**, of Counsel. The Respondent did not appear at the hearing either in person or by 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 when 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 State or another jurisdiction, or upon a prior administrative adjudication regarding conduct that 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) and (d). Copies of the Notice of Referral Proceeding and the Statement of Charges are attached to this Determination and Order as Appendix 1.

WITNESSES

For the Petitioner: None

For the Respondent: None

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers below in parentheses refer to exhibits, denoted by the prefix "Ex." These citations refer to 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.

1. Michael Brian Kilborn, R.P.A., the Respondent, was authorized to practice as a registered physician's assistant in New York State on August 12, 1987, by the issuance of license number 003305 by the New York State Education Department (Petitioner's Ex. 4).

2. On May 2, 2003, the Texas State Board of Physician Assistant Examiners ("Texas Board"), by an Agreed Order ("Texas Order"), accepted the voluntary and

permanent surrender of the Respondent's physician assistant license based on the Respondent's failure to practice in an acceptable professional manner consistent with public health and welfare. (Texas uses the term "physician assistant" while New York State uses the term "physician's assistant" to describe this profession.) The Texas Board found that on or about May 30, 2002, while on duty at a hospital, the Respondent treated two patients while the Respondent was under the influence of alcohol. Supervisors at the hospital, after receiving complaints that day about the Respondent's apparent intoxication, administered a blood test that disclosed that the Respondent was legally intoxicated. (Petitioner's Ex. 5).

HEARING COMMITTEE CONCLUSIONS

The Hearing Committee concludes that the conduct of the Respondent would constitute professional misconduct under the laws of New York State, had the conduct occurred in New York State, pursuant to New York Education Law Section 6530(7) - "Practicing the profession while impaired by alcohol..."

VOTE OF THE HEARING COMMITTEE

FIRST SPECIFICATION

"Respondent violated New York Education Law Section 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 SPECIFICATION

"Respondent violated New York Education Law Section 6530(9)(d) by having surrendered his license to practice as a physician assistant after a disciplinary action was

instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the surrender would, if committed in New York state, constitute professional misconduct under the laws of New York state..."

VOTE: Sustained 3-0

HEARING COMMITTEE DETERMINATION

The Respondent did not appear at the hearing. The Petitioner, by means of Petitioner's Exhibits 2, 2a, 3, 6 and 6a, proved that personal service of the Notice of Referral Proceeding and the Statement of Charges was unsuccessfully attempted at his last known address and that the Respondent refused to accept service of these papers by certified mail. The Administrative Law Judge ruled that the Petitioner had satisfied the service of process requirements of the law (Public Health Law Section 230[10][d]) and that the hearing could proceed.

The danger inherent in providing medical care while intoxicated is both considerable and obvious. The fact that the Respondent got drunk before work is disturbing, as is the fact that he did not know or did not care that he should refrain from treating patients while he was in that condition. The Respondent, because of his failure to attend the hearing, provided no evidence of mitigating circumstances, rehabilitation or remorse. The Hearing Committee has no evidence on which it can base a determination that such dangerous conduct will be repeated if the Respondent is allowed to keep his license to practice in New York State. His license will be revoked.

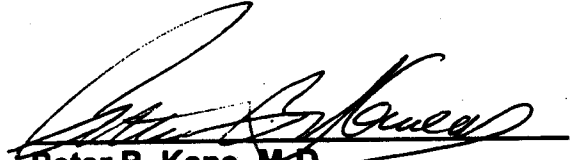
ORDER

IT IS HEREBY ORDERED THAT:

1. The license of the Respondent to practice as a physician's assistant is revoked.

2. This Order shall be effective upon service on the Respondent in accordance with the requirements of Public Health Law Section 230(10)(h).

DATED: Cazenovia, New York
1/21, 2004

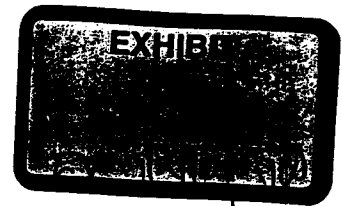


Peter B. Kane, M.D.
Chairperson

Alexander M. Yvars, M.D., F.A.C.S.
James P. Milstein, J.D.

APPENDIX 1

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



IN THE MATTER
OF

MICHAEL BRIAN KILBORN, R.P.A.
CO-03-07-3202-A

NOTICE OF
REFERRAL

PROCEEDING

ORIGINAL

TO: MICHAEL BRIAN KILBORN, R.P.A.
RD Box 282 A
E. Chatham, NY 12060

MICHAEL BRIAN KILBORN, R.P.A.
4520 S. Sherwood Forest Blvd.
Box 104-210
Baton Rouge, LA 70816

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 21st day of January 2004, 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 attached Statement of Charges. 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 that 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, Hedley Park Place, 5th Floor, 433 River Street, Troy, New York, ATTENTION: HON.

SEAN O' BRIEN, DIRECTOR, BUREAU OF ADJUDICATION, (hereinafter "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before January 12, 2004.

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 January 12, 2004, 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.

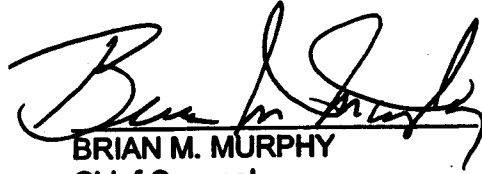
The proceeding may be held whether or not you appear. Please note that requests for adjournments must be made in writing to the Bureau of Adjudication, at the address indicated above, with a copy of the request to the attorney for the Department of Health, whose name appears below, at least five days 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

December 18, 2003



BRIAN M. MURPHY

Chief Counsel

Bureau of Professional Medical Conduct

Inquiries should be addressed to:

**Robert Bogan
Associate Counsel
New York State Department of Health
Office of Professional Medical Conduct
433 River Street - Suite 303
Troy, New York 12180
(518) 402-0828**

STATE OF NEW YORK

DEPARTMENT OF HEALTH

STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER
OF
MICHAEL BRIAN KILBORN, R.P.A.
CO-03-07-3202-A

STATEMENT
OF
CHARGES

MICHAEL BRIAN KILBORN, R.P.A., the Respondent, was licensed to practice as a physician assistant in New York state on August 12, 1987, by the issuance of license number 003305 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about May 2, 2003, the Texas State Board of Physician Assistant Examiners (hereinafter "Texas Board"), by an Agreed Order (hereinafter "Texas Order"), accepted the voluntary and permanent surrender of Respondent's physician assistant license, based on Respondent failing to practice as a physician assistant in an acceptable professional manner consistent with public health and welfare.

B. The conduct resulting in the Texas Board 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(7) (practicing the profession while impaired by alcohol).

SPECIFICATIONS
FIRST SPECIFICATION

Respondent violated New York Education Law §6530(9)(b) by having disciplinary action taken 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:

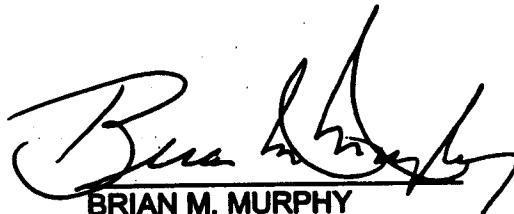
1. The facts in Paragraphs A and/or B.

SECOND SPECIFICATION

Respondent violated New York Education Law §6530(9)(d) by having surrendered his license to practice as a physician assistant after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the surrender would, if committed in New York state, constitute professional misconduct under the laws New York state, in that Petitioner charges:

2. The facts in Paragraphs A and/or B.

DATED: *12/18*, 2003
Albany, New York



BRIAN M. MURPHY
Chief Counsel
Bureau of Professional Medical Conduct