



STATE OF NEW YORK DEPARTMENT OF HEALTH

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

Mark R. Chassin, M.D., M.P.P., M.P.H.
Commissioner

Paula Wilson
Executive Deputy Commissioner

February 3, 1994

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Dianne Abeloff, Esq.
NYS Department of Health
Division of Legal Affairs
Metropolitan Regional Office
5 Penn Plaza - 6th Floor
New York, New York 10001

Frederick Keefer, M.D.
246 East Lake Shore North
High Point Country Club
Montauge, New Jersey 07827

RE: In the Matter of Frederick Keefer, M.D.

Dear Ms. Abeloff and Dr. Keefer:

Enclosed please find the Determination and Order (No. 94-12) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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:

New York State Department of Health
Office of Professional Medical Conduct
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 than 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 (p), and §230-c subdivisions 1 through 5, (McKinney Supp. 1992), "(t)he 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
Corning Tower -Room 2503
Empire State Plaza
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.

Very truly yours,


Tyrone T. Butler, Director
Bureau of Adjudication

TTB:lar
Enclosure

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

-----X
: IN THE MATTER :
: OF : DETERMINATION
: : AND
: : ORDER
: FREDERICK KEEFER, M.D. :
: : No. 94-12
: :
-----X

The Hearing Committee, composed of George Hyams, M.D., Chairperson, Diana E. Garneau, M.D., and Anthony Santiago, was duly designated and appointed by the Commissioner of Health of the State of New York pursuant to New York Public Health Law § 230, subd. 10(e). Eugene A. Gaer, Esq., Administrative Law Judge, served as Hearing Officer for the Committee.

The Committee, each of whose members has considered the entire record in this matter, hereby renders its decision with regard to the charges of professional misconduct filed against Frederick J. Keefer, M.D. (the "Respondent").

STATEMENT OF CHARGES

Petitioner Department of Health (the "Petitioner") brought this case pursuant to New York Public Health Law § 230, subd. 10(p), which provides for an expedited hearing when, as here, a licensee is charged solely with violations of New York Education Law § 6530, subd. 9.

In such cases, where the licensee has been convicted of a

crime in another jurisdiction which would have constituted a crime under New York law, or has been found guilty of professional misconduct by a professional disciplinary agency of another jurisdiction based on conduct which would have constituted professional misconduct under New York law, the scope of the expedited hearing is limited to a determination of the nature and severity of the penalty to be imposed upon the Respondent.

In the present case the Respondent was convicted of crimes and found guilty of professional misconduct under Massachusetts law. This was followed by revocation of his license to practice medicine in Massachusetts and New Jersey. These matters are set forth in the Notice of Referral Proceeding and Statement of Charges (the "Notice" and "Statement", respectively), attached hereto as Appendix I.

RECORD OF PROCEEDINGS

Pursuant to the Notice and Statement, dated October 13, 1993, a hearing was held on November 24, 1993, at the New York State Department of Health, 5 Penn Plaza, New York, New York. Petitioner was represented by Dianne Abeloff, Esq., Associate Counsel in the Bureau of Professional Medical Conduct. Respondent was not represented by counsel and did not appear. Petitioner's case rested on documentary evidence and no witnesses testified.

FINDINGS OF FACT

The following findings of fact were made after review of the entire record by the Committee. Citations indicate evidence found persuasive by the Committee in arriving at the finding. "Tr." citations are to the transcript of the November 24, 1993, hearing. "Ex." citations are to the exhibits introduced by Petitioner. Evidence which conflicted with any finding of the Committee was considered and rejected.

1. Respondent was authorized to practice medicine in the State of New York on January 18, 1989, by the issuance of License No. 177194 by the Department of Education. Ex. 2, p. 1. He is not currently registered with the Department of Education for the purpose of practicing medicine in the State. See Ex. 2; cf. Tr. 11-13.

2. On December 27, 1990, Respondent was convicted by the Superior Court of the Commonwealth of Massachusetts, County of Hampshire, of the crimes of rape ("Count I"), assault and battery with a dangerous weapon ("Count III") and indecent assault and battery ("Count IV"). Ex. 3, pp. 2-3, 7-8, 10. Respondent pled guilty to the above charges and was sentenced to two years incarceration followed by three years probation, with the requirement that Respondent receive psychological counseling. Ex. 3, pp. 7-8, 10. The charges resulted from an act of forcible

sexual intercourse with one patient, an improper injection of a second patient with a sedative drug and an indecent touching of a third patient. Ex. 3, pp. 2-3.

3. These acts would have constituted crimes under the laws of the State of New York if committed within this State. See Ex. 4; Mass. Ann. Laws, ch. 265, §§ 22, 15A, 13H; cf. New York Penal Law §§ 130.35 (rape, first degree), 120.05 (assault, second degree), 130.65 (sexual abuse, first degree).

4. On November 20, 1991, the Massachusetts Board of Registration in Medicine (the "Massachusetts Board") entered a Final Decision and Order (the "Mass. Fin. Ord.", included in Ex. 4) revoking Respondent's license to practice medicine in that State. Ex. 4, Mass. Fin. Ord., pp. 69-71. Its decision was based in part on Respondent's treatment of the three patients who were the victims of the criminal offenses of which Respondent was convicted (see Ex. 4, Mass. Fin. Ord., pp. 27-28, 34-35, 62), and in part on Respondent's treatment of three other patients (Id., pp. 28-35, 35-46, 62-67).

5. With respect to the patients whose treatment it reviewed, the Massachusetts Board entered findings of sexual misconduct or inappropriate advances of a sexual nature, in most cases accompanied by medically unjustified administration of drugs or hypnosis. Ex. 4, Mass. Fin. Ord., pp. 19-22, 26-27, 28-

29, 34-35, 37-42, 45-46, 47-48, 50-51, 55-57, 61-62, 63-67. The Massachusetts Board determined that these acts constituted gross misconduct in the practice of medicine, practice of medicine beyond its authorized scope and with gross incompetence, and misconduct in the practice of medicine. The Board further found that Respondent lacked good moral character, that he engaged in conduct that undermines public confidence in the integrity of the medical profession, and that he was convicted of a crime which reasonably calls into question his ability to practice medicine, all in violation of the relevant Massachusetts statutes and regulations. Ex. 4, Mass. Fin. Ord., pp. 68-69.

6. On June 10, 1992, the New Jersey State Board of Medical Examiners (the "New Jersey Board") entered a Final and Decision and Order revoking Respondent's license to practice medicine in the State of New Jersey. Ex. 5, p. 7. The New Jersey Board, which reviewed the Final Decision and Order of the Massachusetts Board (Ex. 5, pp. 2-6), found that under New Jersey law Respondent's license should be revoked on the following grounds: the revocation of Respondent's license by the Massachusetts Board; Respondent's conviction of crimes involving moral turpitude; Respondent's acts and practices in treating the six patients dealt with in the Massachusetts Board's Final Decision and Order, which constituted gross and repeated negligence, gross and repeated malpractice and gross and repeated incompetence in the practice of medicine; fraud, deceit and professional

misconduct in the practice of medicine; and failure to maintain good moral character as a continuing condition of licensure. Ex. 5, pp. 6-7.

7. The acts of professional misconduct of which Respondent was found guilty by the Massachusetts and New Jersey Boards would constitute professional misconduct under the laws of the State of New York. See Education Law § 6530, subds. 4, 20 and 31.

8. On October 29, 1993, Respondent was duly served with the Notice and Statement. Ex. 1, Affidavit of Service.

**CONCLUSIONS AS TO FACTUAL ALLEGATIONS
AND
DISPOSITION OF SPECIFICATIONS**

Respondent's wrongful conduct has been the subject of proceedings in two other jurisdictions. The conviction in Massachusetts, and the license revocations in Massachusetts and New Jersey, resulted from violations of criminal and professional statutes and regulations. If respondent had committed those acts in New York, he could have been found guilty of crimes or professional misconduct under the laws of this State.

The First Specification in the Statement summarizes Respondent's criminal conviction in Massachusetts and states

that, as the subject acts would have constituted crimes under New York Penal Law §§ 130.35, 120.05, 130.65, Respondent has committed professional misconduct as defined in Education Law § 6530, subd. 9(a)(iii) ("Being convicted of an act constituting a crime under ... the law of another jurisdiction and which, if committed within this state, would have constituted a crime under New York state law"). The record clearly establishes this conviction and, in fact, Respondent pled guilty to the charges.

The **FIRST SPECIFICATION** is **SUSTAINED**.

The Second Specification in the Statement summarizes the factual and legal findings of the Massachusetts Board and states that the conduct on which that Board based its revocation of Respondent's license would have constituted professional misconduct in New York in violation of Education Law § 6530, subds. 4 ("practicing the profession with gross negligence"), 20 ("conduct in the practice of medicine which evidences moral unfitness to practice medicine") and 31 ("willfully harassing, abusing or intimidating a patient either physically or verbally").

The Specification states that Respondent is therefore guilty of professional misconduct under Education Law § 6530, subd. 9(b) ("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.")

While the Second Specification accurately sets forth the Massachusetts Board's legal conclusions and the applicable provisions of the New York Education Law, its summary of the Massachusetts Board's factual findings is not entirely accurate.

The Second Specification states:

The [Massachusetts] Board found that Respondent injected six patients with Valium or a similar drug without medical justification and without the patient's consent. After administering the drug, Respondent hypnotized or attempted to hypnotize the patients, then without the patients' consents, he engaged in various types of sexual contact or conversations with them.

However, the findings of the Massachusetts Board state that Respondent did not actually administer an injection to at least one of the patients ("Patient B") and also make no mention of any attempt to hypnotize that patient (see Ex. 4, Mass. Fin. Ord., pp. 28-35). With respect to Patient E, where Respondent's conduct was manifestly improper, there is also no finding that attempts at hypnosis were preceded by an injection (see Ex. 4, Mass. Fin. Ord., pp. 37-46). This Specification does state accurately that Respondent engaged in sexual contact or

inappropriate sexual conversations with each of the six patients.

Accordingly the **SECOND SPECIFICATION** is **SUSTAINED**, except insofar as it purports to summarize the Massachusetts Board's findings with respect to the injection of Valium and attempts at hypnosis.

The Third Specification in the Statement of Charges sets forth the findings of the New Jersey Board and states that, since that Board revoked Respondent's New Jersey license as a result of conduct which would have violated New York Education Law § 6530, subds. 4, 20 and 31, Respondent's loss of his New Jersey license constituted professional misconduct under Education Law § 6530, subd. 9(b). As discussed above, this Specification is clearly established by the record. The **THIRD SPECIFICATION** is **SUSTAINED**.

All of the above conclusions were reached by unanimous vote of the Committee.

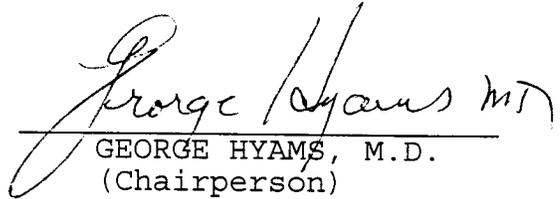
ORDER

The Committee, by unanimous vote, has determined that the following penalty should be, and it hereby is,

ORDERED that the license to practice medicine of Respondent **FREDERICK J. KEEFER, M.D.**, shall be **REVOKED**.

Dated: New York, New York
January , 1994

By:


GEORGE HYAMS, M.D.
(Chairperson)

DIANA E. GARNEAU, M.D.
ANTHONY SANTIAGO

APPENDIX I

Case Keefer Ex 1
McKinney
File # 11-24-93
In File 11-24-93

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

-----X
IN THE MATTER : NOTICE OF
OF : REFERRAL
FREDERICK KEEFER, M.D. : PROCEEDING
-----X

TO: FREDERICK KEEFER, M.D.
246 East Lake Shore North
High Point Country Club
Montauge, N.J.

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. 1993) and N.Y. State Admin. Proc. Act Sections 301-307 and 401 (McKinney 1984 and Supp. 1993). The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 24th day of November, 1993 at 11:00 o'clock in the forenoon of that day at 5 Penn Plaza, 6th Floor, New York, New York 10001.

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 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: NANCY MASSARONI, (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before November 10, 1993.

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 November 10, 1993 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.

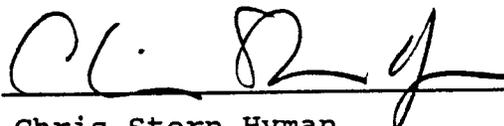
The proceeding may be held whether or not you appear. Please note that requests for adjournments must be made in writing to Bureau of Adjudication, at the address indicated above, with a copy of the request to the attorney for the Department of Health, whose name appears below, at least five days prior 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: New York, New York
October 13, 1993



Chris Stern Hyman
Counsel
Bureau of Professional
Medical Conduct

Inquiries should be addressed to:

Dianne Abeloff
Associate Counsel
212-613-2615

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

-----X
IN THE MATTER : STATEMENT
OF : OF
FREDERICK KEEFER, M.D. : CHARGES
-----X

FREDERICK KEEFER, M.D., the Respondent, was authorized to practice medicine in New York State on January 18, 1989 by the issuance of license number 177194 by the New York State Education Department. The Respondent is not currently registered with the New York State Education Department to practice medicine in New York state.

FIRST SPECIFICATION

1. Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law Sec. 6530 (9)(a)(iii) (McKinney Supp. 1993), in that Respondent was convicted of committing an act constituting a crime under the law of another jurisdiction and which, if committed within this state, would have constituted a crime under New York state law, specifically:

On or about December 27, 1990, Respondent pled guilty to and was convicted of

violating: Chapter 265 section 22 (a) of the Mass. Ann. Laws, rape; Chapter 265 section 15 (A)(b) of the Mass. Ann. Laws, assault and battery with a dangerous weapon; Chapter 265 section 13 (H) of the Mass. Ann. Laws, indecent assault and battery. These acts if committed in New York State would constitute crimes under N.Y. Penal Law Sections 130.35; 120.05; and, 130.65.

Respondent was sentenced to Hampshire County House of Correction for a period of two years, and at the conclusion of the prison term, he was to serve three years of probation. Psychological counselling was a condition of of probation.

SECOND SPECIFICATION

2. Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law section 6530 (9)(b) (McKinney Supp. 1993), in that Respondent was found guilty of improper professional practice 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, specifically:

On or about November 20, 1991, after a hearing, the Massachusetts Board of Medical Examiners (Board) revoked Respondent's license to practice medicine based upon their finding that Respondent was guilty of gross misconduct in the practice of medicine, practicing medicine beyond its authorized scope, and with gross incompetence. The Board also found that Respondent lacked good moral character and had engaged in conduct that undermined public confidence in the integrity of the medical profession. The Board found that Respondent injected six patients with Valium or a similar drug without medical justification and without the patient's consent. After administering the drug, Respondent hypnotized or attempted to hypnotize the patients, then without the patients' consents, he engaged in various types of sexual contact or conversations with the patients. These acts, if committed within New York State, would constitute professional misconduct under N.Y. Educ. Law Sections 6530(4) (practicing the profession

with gross negligence), and/or 6530(20) (conduct in the practice of medicine which evidences moral unfitness to practice medicine), and/or 6530(31) (willfully harassing, abusing, or intimidating a patient either physically or verbally).

THIRD SPECIFICATION

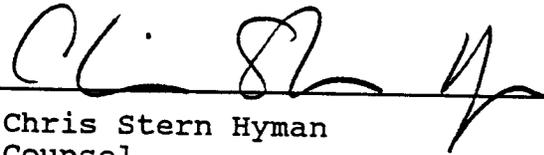
3. Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law section 6530 (9)(b) (McKinney Supp. 1993), in that Respondent was found guilty of improper professional practice by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would if committed in New York state, constitute professional misconduct under the laws of New York state, specifically:

On or about June 10, 1992, the New Jersey State Board of Medical Examiners after a hearing, revoked Respondent's license to practice medicine in New Jersey based upon the Massachusetts Board's findings referred to in the Second Specification, of this Statement of Charges. These acts, if committed within New York State, would

constitute professional misconduct under N.Y. Educ. Law Sections 6530(4) (practicing the profession with gross negligence), and/or 6530(20) (conduct in the practice of medicine which evidences moral unfitness to practice medicine, and/or 6530(31) (willfully harassing, abusing, or intimidating a patient either physically or verbally).

DATED: New York, New York

October 13, 1993



Chris Stern Hyman
Counsel
Bureau of Professional Medical
Conduct

