



STATE OF NEW YORK  
DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

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

Dennis P. Whalen  
*Executive Deputy Commissioner*

December 18, 1997

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

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

Robert E. Atkins, Esq.  
11 Hanover Square Suite 2400  
New York, New York 10005

Syam Prasad Kilaru, M.D.  
825 North 6th Street  
Burlington, Iowa 52601

**RE: In the Matter of Syam Prasad Kilaru, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 97-320) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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  
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.

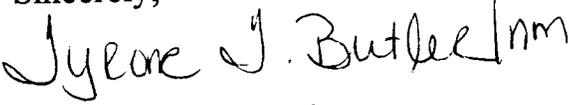
The notice of review served on the Administrative Review Board should be forwarded to:

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,



Tyrone T. Butler, Director  
Bureau of Adjudication

TTB:nm  
Enclosure

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

**COPY**

**IN THE MATTER  
OF  
SYAM PRASAD KILARU, M.D.**

**DETERMINATION  
AND  
ORDER  
BPMC-97-320**

A Notice of Hearing and Statement of Charges, each dated August 8, 1997, was served upon the Respondent, **SYAM PRASAD KILARU, M.D.** **KENNETH KOWALD** (Chairperson), **ALLAN GIBOFSKY, M.D.** and **ALBERT B. ACCETTOLA, 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 ARMON**, Administrative Law Judge, served as the Administrative Officer. A hearing was held on October 21, 1997. The Department of Health appeared by **HENRY M. GREENBERG**, General Counsel, by **PAUL STEIN, Esq.**, of Counsel. The Respondent appeared and was represented by **ROBERT E. ATKINS, 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 Section 230(10)(p). 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 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, Respondent was charged with professional misconduct pursuant to Education Law Section 6530(9)(b). A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order as Appendix I.

## **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 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. Respondent was authorized to practice medicine in New York State on December 10, 1984 by the issuance of license number 160904 by the New York State Education Department. (Ex.2)

2. On or about June 29, 1995, the Board of Medical Examiners of the State of Iowa filed a Complaint and Statement of Charges against Respondent which alleged that:

a. on or about May 28, 1992, after seeing approximately forty residents in thirty minutes or less while making nursing home rounds, Respondent dictated an identical chart entry for nearly all the patients seen; and that

b. on or about June 28, 1992, after seeing approximately thirty patients while making nursing home rounds, Respondent dictated an identical chart entry for nearly all the patients seen. (Ex. 3)

3. On or about December 12, 1996, the Iowa Board approved an Informal Settlement entered into with Respondent, thereby constituting a Final Order, in which Respondent admitted to the allegations contained in the Complaint and Statement of Charges that his use of generic chart entries in the two instances did not meet the acceptable standard of care for medical record keeping by physicians in a long-term care facility. (Ex. 3)

4. The Informal Settlement included a warning and an acknowledgement that Respondent had successfully completed a continuing medical education course addressing acceptable standards of care for medical record keeping and the appropriate scope of patient examinations in long term care facilities. (Ex. 3)

## **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 determined that the Department had met its burden of proof and concluded that the preponderance of the evidence demonstrated that Respondent had been found guilty of professional misconduct by a duly authorized professional disciplinary agency of another state. The basis for the action by the Iowa Board was conduct which, had it occurred in New York, would have constituted professional misconduct pursuant to New York Education Law sections 6530 (3) [ practicing the profession with negligence on more than one occasion] and 6530 (32) [failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient]. The Hearing Committee therefore determined to sustain the Specification set out in the Statement of Charges (Ex. 1).

## **DETERMINATION AS TO PENALTY**

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, determined that Respondent should receive a Censure and Reprimand, that his license to practice medicine in New York should be suspended for two years, said suspension to be stayed, and that he be placed on probation in accordance with the Terms of Probation as set forth in Appendix II during said period of suspension. The period of suspension and probation shall be tolled until such time as the Director of the Office of Professional Medical Conduct is advised, in writing, that Respondent intends to commence a medical practice in New York. This decision was made following due consideration of the full spectrum of penalties available pursuant to statute, including license revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties.

The decision to impose a penalty more significant than that imposed by the Iowa Board was more a result of the Committee's concern with the treatment and care rendered to the nursing home residents by the Respondent than with the adequacy of his medical records. The nature of the information contained in the generic notes appeared to indicate that all physiologic systems for each patient were individually examined and were found to be normal or unremarkable. The Respondent testified that some of those systems were actually examined only if the resident or nursing staff made reference to a specific complaint. The Committee considered the generic notes to be not only insufficient, but also inaccurate documentation of the care and treatment that was rendered. The Committee concluded that requiring that his practice be monitored for a period of time, in the event Respondent returned to New York, would most likely ensure that he met acceptable standards.

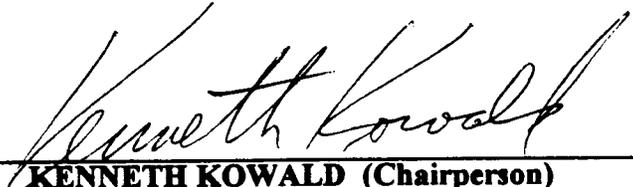
## **ORDER**

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

1. The Specification contained within the Statement of Charges (Ex. 1) is **SUSTAINED** ; and
2. Respondent receive a **CENSURE AND REPRIMAND**; and
3. Respondent's license to practice medicine in New York State is **SUSPENDED** for a period of two (2) years from the effective date of this Order, said suspension to be **STAYED**; and
4. Respondent's license shall be placed on **PROBATION** during the period of suspension, and he shall comply with all Terms of Probation as set forth in Appendix II, attached hereto and made a part of this Determination and Order; and
5. The period of suspension and probation shall be tolled until such time as the Director of the Office of Professional Medical Conduct is advised, in accordance with the Terms of Probation, of the fact that Respondent intends to commence a medical practice in New York.
6. This Order shall be effective upon service on the Respondent or the Respondent's attorney by personal service or by certified or registered mail.

**Dated: Albany, New York**

Dec 16, 1997



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**KENNETH KOWALD (Chairperson)**

**ALLAN GIBOFSKY, M.D.  
ALBERT B. ACCETTOLA, M.D.**

**TO:**

**Paul Stein, Esq.  
NYS Department of Health  
Division of Legal Affairs  
5 Penn Plaza, Suite 601  
New York, New York 10001**

**Robert E. Atkins, Esq.  
11 Hanover Square, Suite 2400  
New York, New York 10005**

**Syam Prasad Kilaru, M.D.  
825 North 6th Street  
Burlington, Iowa 52601**

APPENDIX I

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

**IN THE MATTER  
OF  
SYAM PRASAD KILARU, M.D.**

NOTICE OF  
REFERRAL  
PROCEEDING

TO: SYAM PRASAD KILARU, M.D.  
825 North 6th Street  
Burlington, Iowa 52601

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law §§230(10)(p) (McKinney Supp. 1997) and N.Y. State Admin. Proc. Act §§301-307 and 401 (McKinney 1984 and Supp. 1997). The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on September 9, 1997, at 10:00 a.m., at the offices of the New York State Department of Health, 5 Penn Plaza, Sixth 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, Hedley Park Place, 433 River Street, Fifth Floor South, Troy, NY 12180, ATTENTION: HON. TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION (Telephone: 518-402-0748), (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, no later than twenty days prior to the scheduled date of the Referral Proceeding, as indicated above.

Pursuant to the provisions of N.Y. Pub. Health Law §230(10)(c), you shall file a written answer to each of the charges and allegations in the Statement of Charges not less than ten days prior to the date of the hearing. Any charge or allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such 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 written brief and affidavits with the Committee. Six copies of all papers you submit must be filed with the Bureau of Adjudication at the address indicated above, no later than fourteen days prior to the scheduled date of the Referral Proceeding, and a copy of all papers must be served on the same date on the Department of Health attorney indicated below. 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. Pursuant to the terms of N.Y. State Admin. Proc. Act §401 (McKinney Supp. 1997) and 10 N.Y.C.R.R. §51.8(b), the Petitioner hereby demands disclosure of the evidence that the Respondent intends to introduce at the hearing, including the names of witnesses, a list of and copies of documentary evidence and a description of physical or other evidence which cannot be photocopied.

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: New York, New York  
August 8, 1997

  
\_\_\_\_\_  
ROY NEMERSON  
Deputy Counsel  
Bureau of Professional  
Medical Conduct

Inquiries should be addressed to:

Paul Stein  
Associate Counsel  
NYS Department of Health  
Division of Legal Affairs  
5 Penn Plaza, Suite 601  
New York, New York 10001  
(212) 613-2617

**IN THE MATTER**  
**OF**  
**SYAM PRASAD KILARU, M.D.**

STATEMENT  
OF  
CHARGES

SYAM PRASAD KILARU, M.D., the Respondent, was authorized to practice medicine in New York State on December 10, 1984 by the issuance of license number 160904 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A. 1. On or about June 29, 1995, the Board of Medical Examiners of the State of Iowa (hereinafter referred to as "the Board"), filed a Complaint and Statement of Charges charging Respondent, inter alia, as follows:

4. That on or about May 28, 1992, after seeing approximately forty patients in thirty minutes or less while making nursing home rounds, the Respondent dictated the following chart entry for nearly all the patients seen: "I spoke with patient and also nursing staff and patient do not seem to be having major complaints at this time. On exam patient do not seem to be having any pain at this time. No evidence of thyromegaly. No carotid bruits. Lungs are clear. SiS2 are normal. No hepato jugular reflex. Abdomen soft. Bowel sounds are normal. No evidence of tenderness of the abdomen. Patient chart is reviewed. No significant change in patient status. Diagnostic and treatment plans are reviewed with patient. Patient diagnosis is confirmed."  
[sic]

5. That on or about June 28, 1992, after seeing approximately thirty patients while making nursing home rounds, the Respondent dictated the following chart entry for nearly all the patients seen: "Spoke with nursing staff and also with patient and none of them reveal any major complaints at this time. On exam facial expression do not show any evidence of pain. Patient is not having a prominence of accessory muscles of respiration. No thyromegaly. Lungs are not revealing any bronchial breathing. SiS2 are normal. Abdomen soft. No tenderness in the abdomen. No rigidity of abdominal wall. No edema of feet. No change in patient condition from time of last visit. Patient chart reviewed. Patient diagnoses are confirmed. Treatment plan for next few weeks is outlined."  
[sic]

6. That the Respondent's conduct as described in paragraphs 4 and 5 herein constitutes a repeated departure from, and the failure to conform to, the minimal standard of physician care.

2. On or about December 12, 1996, the Board approved an Informal Settlement agreed to by Respondent on or about December 9, 1996, which approval constitutes a Final Order, in which Respondent admitted:

to the allegations contained in the Complaint and Statement of Charges that his use of generic dictation for nursing home patients on or about May 29, 1992 and June 28, 1992, did not meet the acceptable standard of care for medical record keeping by physicians in a long-term care facility. (Informal Settlement p. 1)

3. The Informal Settlement included a warning and an acknowledgment that Respondent successfully completed a

continuing medical education program that emphasized preparation of patient charts, appropriate scope of patient examinations in long term care facilities, and timely and accurate medical record keeping.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

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. 1997) 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, practicing the profession with negligence on more than one occasion (N.Y. Educ. Law sec. 6530 (3) (McKinney Supp. 1997)) and/or failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient (N.Y. Educ. Law sec. 6530 (32) (McKinney Supp. 1997)), as Petitioner specifically alleges:

1. The facts in Paragraph A1-3.

Dated: New York, New York  
August 8, 1997

  
\_\_\_\_\_  
ROY NEMERSON  
Deputy Counsel  
Bureau of Professional  
Medical Conduct

## **APPENDIX II**

### **TERMS OF PROBATION**

1. Respondent shall conduct himself at all times in a manner befitting his professional status, and shall conform fully to the moral and professional standards of conduct imposed by law and by his profession.

2. Respondent shall comply with all federal, state and local laws, rules and regulations governing the practice of medicine in New York State.

3. Respondent shall submit written notification to the Board addressed to the Director, Office of Professional Medical Conduct ("OPMC"), Hedley Park Place, 4th Floor, 433 River Street, Troy, New York 12180-2299, regarding any change in employment, practice, addresses, (residence or professional) telephone numbers, and facility affiliations within or without New York State, within 30 days of such change.

4. Respondent shall submit written notification to OPMC of any and all investigations, charges, convictions or disciplinary actions taken by any local, state or federal agency, institution or facility, within 30 days of each charge or action.

5. Prior to the commencement of a medical practice in New York State, Respondent shall submit written proof to the Director of the OPMC at the address indicated above that he has paid all registration fees due and is currently registered to practice medicine as a physician with the New York State Education Department.

6. Respondent's practice of medicine shall be monitored by a physician monitor, board certified in an appropriate specialty, ("practice monitor") approved in advance, in writing, by the Director of the Office of Professional Medical Conduct. Respondent may not practice medicine until an approved practice monitor and monitoring program is in place. Any practice of medicine prior to the submission and approval of the proposed practice monitor will be determined to be a violation of probation.

(a) The practice monitor shall report in writing to the Director of the Office of Professional Medical Conduct or his/her designee, on a schedule to be determined by the Office. The practice monitor shall visit Respondent's medical practice at each and every location, on a random basis and shall examine a random selection of records maintained by Respondent, including patient histories, prescribing information and billing records. Respondent will make available to the monitor any and all records or access to the practice requested by the monitor, including on-site observation. The review will determine

whether the Respondent's medical practice is conducted in accordance with the generally accepted standards of professional medical care. Any perceived deviation of accepted standards of medical care or refusal to cooperate with the monitor shall immediately be reported to the office of Professional Medical Conduct by the monitor.

(b) Any change in practice monitor must be approved in writing, in advance, by the Office of Professional Medical Conduct.

(c) It is the responsibility of the Respondent to ensure that the reports of the practice monitor are submitted in a timely manner. A failure of the practice monitor to submit required reports on a timely basis will be considered a possible violation of the terms of probation.

7. Respondent will maintain legible and complete medical records which accurately reflect evaluation and treatment of patients. Records will contain a comprehensive history, physical examination findings, chief complaint, present illness, diagnosis and treatment. In cases of prescribing, dispensing, or administering of controlled substances, the medical record will contain all information required by state rules and regulations regarding controlled substances.

**8. All expenses including, but not limited to, those of complying with these terms of probation and the Determination and Order shall be the sole responsibility of the Respondent.**

**9. Respondent shall comply with all terms, conditions, restrictions, and penalties to which he is subject pursuant to the Order of the Board. A violation of any of these terms of probation shall be considered professional misconduct. On receipt of evidence of non-compliance or any other violation of the terms of probation, a violation of probation proceeding and/or such other proceedings as may be warranted may be initiated against Respondent pursuant to New York Public Health Law §230(19) or any other applicable laws.**