



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

February 20, 2003

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Michael N. Kessler, M.D.
5 Lincoln Avenue
Massapequa Park, New York 11762

William L. Wood, Jr., Esq.
Wood & Scher
14 Harwood Court
Scarsdale, New York 10583

Robert Bogan, Esq.
Paul Robert Maher, Esq
NYS Department of Health
Division of Legal Affairs
Bureau of Professional Medical
Conduct
433 River Street - Suite 303
Troy, New York 12180

RE: In the Matter of Michael N. Kessler, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 03-043) 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,



Tyrone T. Butler, Director
Bureau of Adjudication

TTB:
Enclosure

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

IN THE MATTER
OF
MICHAEL N. KESSLER, M.D.

COPY

DETERMINATION

AND

ORDER

BPMC NO. 03-43

A Notice of Hearing and Statement of Charges, both dated December 13, 2002, were served upon the Respondent, **MICHAEL N. KESSLER M.D.**. **ROGER OSKVIG, M.D.**, Chairperson, **LYON M. GREENBERG, M.D.** and **SISTER MARY THERESA MURPHY**, 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. **STEPHEN L. FRY, ESQ.**, Administrative Law Judge, served as the Administrative Officer.

A hearing was held on January 22, 2003, at the Offices of the New York State Department of Health, Hedley Park Place, 433 River Street, Troy, New York. The Department appeared by **DONALD P. BERENS, JR., ESQ.**, General Counsel, by **ROBERT BOGAN, ESQ.** and **PAUL ROBERT MAHER, ESQ.**, of Counsel. The Respondent appeared in person and by **WILLIAM L. WOOD, JR., ESQ.**

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)(b-h). The statute provides for a hearing where a licensee is charged with professional misconduct under Section 6530 of the Education Law. In such cases, the Department must prove, by a preponderance of the evidence, that Respondent committed one or more acts of misconduct.

In the instant case, the Respondent is charged with professional misconduct pursuant to Education Law Sections 6530(2), (20), (21) and (9)(iii). A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order as Appendix 1.

WITNESSES

For the Petitioner:

None

For the Respondent:

Seymour H. Bloch, D.O., F.A.P.A.
Marc Stephan Reubins, M.D.
Fredrick S. Berlin, M.D., Ph.D.
Michael N. Kessler, M.D.

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.". Letters refer to the factual allegations in the Statement of Charges that led to these findings of fact, denoted by the prefix "F.A." The exhibit 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 N. KESSLER M.D.**, the Respondent, was authorized to practice medicine in New York State on February 11, 1999, by the issuance of license number 213086 by the New York State Education Department (Ex. 4).
2. On August 1, 2001, the Cambridge Health Alliance, Cambridge Massachusetts, withdrew an offer of employment/participation in its adolescent psychiatry residency program, and terminated his participation in the program based upon an unsatisfactory "CORI" check. Respondent had been participating in the program for one month at the time of his termination (Ex.'s 4 and 5; F.A. "A").
3. On November 19, 2001, Respondent completed an application for appointment to the staff of the Brunswick Hospital Center, Amityville, N.Y., wherein he checked the "no" box in response to the following question:

Have you ever had any of the following items denied, revoked, suspended, not renewed, placed under probation, subjected to disciplinary action, or otherwise limited or curtailed...

Hospital or other health care facility staff membership/ privileges

Respondent also failed to list the Cambridge Health Alliance program on either the application or in his C.V. (Ex. 6; F.A. "B").

4. On November 22, 2001, Respondent completed an application for appointment of the medical staff of Holliswood Hospital, Holliswood, N.Y., wherein he checked the "no" box next to the following question:

Have your Medical Staff appointment and/or clinical privileges ever been denied, revoked, suspended, not renewed or reduced?

Respondent also failed to list his affiliation with the Cambridge program in the section of the application where he was required to list all past hospital affiliations (Ex. 7; F.A. "C").

5. On November 13, 2001, Respondent was arrested and arraigned in the Trial Court of Massachusetts, Falmouth District Court, on charges of "Lewdness, Open and Gross" and "Indecent Exposure". The former offense is punishable by imprisonment for up to three years (Ex. 9).
6. On November 22, 2001, Respondent submitted a "Pre-Qualification Information" form to The Psychiatrists' Program's Professional Liability Insurance Program wherein he checked the "no" boxes in response to the following questions:

Have you ever been the subject of an investigation or disciplinary proceedings by any governmental agency (e.g., State Medical Board, DEA, HHS), professional society (e.g., APA or its District Branches) or a professional review board of a hospital, HMO, PPO, or IPA)?;

Have you ever been charged with, convicted of, or pleaded guilty or no contest to a felony? (Ex. 8; F.A. "D")

Respondent admitted at the hearing that he lied on this application when he denied having been arrested for a felony.

7. On June 5, 2002, Respondent was convicted of Lewdness, Open and Gross, after a trial in the Falmouth District Court. (Ex. 9; F.A. "E").

HEARING COMMITTEE CONCLUSIONS

The hearing Committee concludes Respondent committed acts of professional misconduct under the laws of New York State, pursuant to New York Education Law §6530(2), (20), (21) and (9)(iii), as set forth in detail below. Respondent's license to practice medicine should, as a result, be revoked.

VOTE OF THE HEARING COMMITTEE

(The findings of fact supporting these conclusions, as set forth above, are stated for each specification by use of the abbreviation "F.F." The Hearing Committee also finds that each of these conclusions is supported by the fair preponderance of the evidence.)

SPECIFICATIONS

FIRST SPECIFICATION

Respondent violated New York Education Law §6530(2) (practicing the profession fraudulently) by providing false information on his Brunswick Hospital Center application.

VOTE: SUSTAINED (3-0) (F.F.'s 2 and 3)

SECOND SPECIFICATION

Respondent violated New York Education Law §6530(2) (practicing the profession fraudulently) by providing false information on his Holliswood Hospital application.

VOTE: SUSTAINED (3-0) (F.F.'s 2 and 4)

THIRD SPECIFICATION

Respondent violated New York Education Law §6530(2) (practicing the profession fraudulently) by providing false information on his Psychiatrists' program application.

VOTE: SUSTAINED (3-0)¹ (F.F.'s 5 and 6)

¹ This specification actually contained two separate allegations. The Hearing Committee upholds this specification by concluding that Respondent falsely answered "no" to the question as to whether he had been charged with a felony. The Department also charged that Respondent falsely answered "no" to the question as to whether he had been the subject of an investigation or disciplinary proceeding by any governmental agency, professional society or professional review board. The Hearing Committee does not uphold this portion of the specification, for reasons to be set forth in the discussion, below.

FOURTH SPECIFICATION

Respondent violated New York Education Law §6530(20) (engaging in conduct in the practice of medicine that evidences moral unfitness to practice medicine) by providing false information on his Brunswick Hospital Center application.

VOTE: NOT SUSTAINED (3-0)

FIFTH SPECIFICATION

Respondent violated New York Education Law §6530(20) (engaging in conduct in the practice of medicine that evidences moral unfitness to practice medicine) by providing false information on his Holliswood Hospital application.

VOTE: NOT SUSTAINED (3-0)

SIXTH SPECIFICATION

Respondent violated New York Education Law §6530(20) (engaging in conduct in the practice of medicine that evidences moral unfitness to practice medicine) by providing false information on the Psychiatrists' Program application.

VOTE: SUSTAINED (3-0)² (F.F. 6)

SEVENTH SPECIFICATION

Respondent violated New York Education Law §6530(21) (willfully making or filing a false report) by providing false information on his Brunswick Hospital Center application.

VOTE: SUSTAINED (3-0) (F.F.'s 2 and 3)

² The Hearing Committee upholds this specification by concluding that Respondent's false answer of "no" to the question as to whether he had been charged with a felony evidenced moral unfitness to practice medicine. The Hearing Committee, as noted in footnote 1, above did not uphold the charge that Respondent's answer of "no" to the question as to whether he had been the subject of an investigation or disciplinary proceeding by any governmental agency, professional society or professional review board was false, and, thus, this answer did not constitute evidence of moral unfitness.

EIGHTH SPECIFICATION

Respondent violated New York Education Law §6530(21) (willfully making or filing a false report) by providing false information on his Holliswood Hospital application.

VOTE: SUSTAINED (3-0) (F.F.'s 2 and 4)

NINTH SPECIFICATION

Respondent violated New York Education Law §6530(21) (willfully making or filing a false report) by providing false information on his Psychiatrists' program application.

VOTE: SUSTAINED (3-0)³ (F.F.'s 5 and 6)

TENTH SPECIFICATION

Respondent violated New York Education Law §6530(9)(a)(iii) by being 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.

VOTE: SUSTAINED (3-0) (F.F. 7)

HEARING COMMITTEE DETERMINATION

The charges in this case stemmed from a series of events that commenced on August 1, 2001, when Respondent was terminated from his position as a resident in the Cambridge Health Alliance's Adolescent Psychiatry Residency program. The first nine specifications in the Statement of Charges dealt with Respondent's failures to list this dismissal on two hospital staff applications and a malpractice insurance application.

³ The Hearing Committee upholds this specification only as to Respondent's false answer of "no" to the question as to whether he had been charged with a felony. Respondent's answer of "no" to the question as to whether he had been the subject of an investigation or disciplinary proceeding by any governmental agency, professional society or professional review board was not false.

With respect to the hospital applications (see F.F.'s 3-4, above), it was Respondent's contention that he did not list the Cambridge Health Alliance termination on the applications because he was involved in an ongoing dispute and legal action over whether or not he was actually terminated from the program, or whether, on the other hand, the offer of employment was withdrawn. It was Respondent's testimony that he did not list the termination on the applications at issue, despite the fact that he felt he had been terminated, because the facility was taking the position that he was not terminated. This explanation is rejected as not credible. First, it is implausible on its face. If Respondent felt he had actually been terminated, and was taking this position in his dispute with the facility, and he was honestly trying to answer the application questions, he would have indicated that he had been terminated. Furthermore, Respondent did not list his participation in the program on the hospital applications at all, even in the spaces where he was required to do so. And, in addition, the questions asked of him on the applications (see F.F.'s 3-4, above) were worded so that he should have answered "yes" no matter whether he had been terminated or whether he had merely had his offer of employment denied.

The unavoidable conclusion is that Respondent was trying to hide his termination from the Cambridge program because he did not want the hospitals to which he was applying to hold the termination against him and did not want them to delve into the grounds for his termination. The Hearing Committee concludes unanimously that the evidence relating to the hospital applications more than justifies the conclusion that Respondent practiced medicine fraudulently and that, by filing these applications, he filed false reports (see the findings above on specifications 1-2, 7-8). The Hearing Committee does not feel, however, that these acts evinced moral unfitness to practice medicine as charged in specifications 4 and 5.

The Psychiatrist's Program application presents slightly different questions. One question to which Respondent answered "no" on that application was as to whether he had been "the subject of an investigation or disciplinary proceedings by any governmental agency (e.g., State Medical Board, DEA, HHS, professional society (e.g., APA or its District Branches) or a professional review board of a hospital, HMO, PPO, or IPA)". There is nothing in the evidence presented by the Department that would establish that Respondent had been the subject of any such investigation. The investigation by the Falmouth Police Department (discussed immediately below) was not an investigation of the type referred to in this question, nor is there any evidence that the professional review board of the Cambridge program was involved in the termination from the residency program.

However, Respondent did falsely state on the Psychiatrist's Program application that he had never been charged with a felony. Respondent admitted at the hearing that this answer was false. Even though the allegation discussed in the previous paragraph regarding the question in the application regarding the governmental review board investigation was not substantiated, the evidence supports the conclusion that Respondent committed misconduct by practicing the profession fraudulently and filing a false report (specifications 3 and 9) by filing this application. In addition, the Hearing Committee concludes that by attempting to conceal his arrest for a crime of moral turpitude, Respondent committed misconduct by engaging in an act evincing moral unfitness to practice medicine (specification 6).

The validity of the tenth specification, that Respondent committed misconduct by being convicted of a crime, was clearly established by the evidence of that conviction adduced by the Department (see F.F. 7, above). Respondent stipulated at the hearing that

the conduct for which he was convicted would have constituted a crime in New York State, had it been committed here.

Inasmuch as a number of specifications of professional misconduct against Respondent have been upheld, the Hearing Committee now addresses itself to the question of the appropriate penalty to be imposed. The Hearing Committee concludes, for reasons to be expressed below, that revocation of Respondent's medical license is the appropriate penalty. Respondent committed four individual acts that constituted professional misconduct under various definitions of misconduct, over the course of a little over five months. Each of these acts, taken separately, would constitute grounds for revocation of Respondent's license, and absent some convincing mitigating evidence, revocation is the appropriate penalty to impose.

Respondent's primary contention with regard to penalty is that he has a psychological condition that brought about the behavior that led to the criminal conviction, and that he is receiving successful treatment for this condition. In support of these contentions, Respondent presented the testimony of three psychiatrists, Seymour H. Bloch, D.O., F.A.P.A., Marc Stephan Reubins, M.D., and Fredrick S. Berlin, M.D., Ph.D..

Dr. Bloch, who performed a forensic psychiatric evaluation of Respondent, testified that Respondent has an anxiety condition known as "social phobia". It was Dr. Bloch's testimony that social phobia might produce uncontrolled behavior of the sort that led to the criminal conviction, and that Respondent's prognosis is good, now that he is being medicated appropriately (the current medication regimen began in July, 2002) and receiving appropriate therapy.

Dr. Reubins, who is Respondent's treating therapist, testified that Respondent has a dysthemic disorder characterized by anxiety and depression, with a history of social phobia.

He testified that the behavior that led to the criminal conviction was related to Respondent's anxiety and depression, although neither he nor Respondent understand specifically why Respondent engaged in this behavior. He felt, in any event, that the conduct was unrelated to Respondent's practice of medicine, and that continued treatment should keep Respondent's underlying psychological problems under control.

After hearing this somewhat inconsistent testimony, the Hearing Committee was left with the feeling that these witnesses provided an inadequate explanation for Respondent's criminal sexual behavior. Respondent has, at the hearing and in his conversations with these witnesses, attempted to portray the conduct that led to the conviction as unconscious and "innocent" in nature. It was his version of the incident that, without consciously thinking about his exposure, he moved about in his dwelling, visible from outside through the window, without clothes on, and that he may have, without thinking, rubbed himself in the area of his genitals.

However, the crime for which Respondent was convicted was defined as "open and gross lewdness and lascivious behavior" (Mass. Ann. Laws, ch. 272 §16). The very language of the statute clearly describes behavior of a blatant sexual nature witnessed by other persons, rather than innocent nudity. This conclusion is corroborated by the fact that Respondent was convicted of this crime, rather than the lesser-included offense of "indecent exposure" (see Ex. 9; Mass Ann. Laws ch. 272 §53).

The Hearing Committee's primary concern regarding the testimony of Dr.'s Bloch and Reubins was that it appears to have been based in large part upon information provided by Respondent as to his background and the nature of the conduct that led to the criminal conviction. The Hearing Committee was not comfortable with Respondent's version of the incident, nor was it comfortable with the conclusions reached by these

medical witnesses, especially since Respondent, himself a psychiatrist, wrote a paper and his Master's Degree thesis on adult social phobia and social anxiety before he even met Dr.'s Bloch and Reubins. The Hearing Committee was concerned that these evaluations of Respondent's psychological state might have been colored by attempts by Respondent to sway the evaluations in a particular direction by less than reliable reporting, and the evidence relating to Respondent's attempts to hide his Cambridge program termination and criminal arrest do nothing to ease the fear that he might have been hiding things from these evaluators as well. This discomfort was heightened by the testimony of Dr. Berlin.

The Hearing Committee was extremely impressed by Dr. Berlin's credentials (Ex. E). He has both a Ph.D. in psychology and M.D., with a specialty in psychiatry. He was the founder and director of the Johns Hopkins Sexual Disorders Clinic, is board certified in psychiatry and forensic psychiatry, is a fellow of the American Psychiatry Association, and is a Diplomat of various other boards. The Hearing Committee found his testimony to be the most convincing of any of the psychiatric witnesses.

Dr. Berlin saw Respondent one time shortly before the hearing, for an evaluation, and testified that, based upon his knowledge of the evidence available to him, he had a fear that Respondent has a sexual disorder characterized by exhibitionism and an urge to be seen masturbating by young males. He also questions the accuracy of the previous diagnosis of Social Phobia. Dr. Berlin testified that Respondent is not being adequately treated at this time for a sexual disorder, although his prognosis would be good if the condition were to be treated adequately.

The Hearing Committee recognizes that neither Respondent's precise psychiatric diagnosis nor the question of whether he has an impairment that hinders his practice of medicine is directly at issue in this hearing. The Department did not raise these issues by

inclusion in the Statement of Charges, nor was the evidence adduced sufficient to make any conclusive assessment thereof. This evidence is assessed solely with regard to Respondent's contention that his psychiatric condition caused his criminal sexual behavior and that he is receiving treatment that will minimize the likelihood of repeat behavior. This evidence was offered in an attempt to mitigate against a severe sanction against Respondent for his multiple acts of misconduct. However, that evidence was, at best, conflicting, and taken in its worst light, indicative of more serious problems about which Respondent has been less than candid. It was clearly insufficient to mitigate against the sanction of revocation that the Hearing Committee feels is appropriate one for the multiple acts of misconduct of a serious nature committed by Respondent.

ORDER

IT IS HEREBY ORDERED THAT:

1. The New York medical license of **MICHAEL N. KESSLER M.D.** is hereby **REVOKED**.

The **ORDER** shall be effective upon service on the Respondent or the Respondent's attorney by personal service or by certified or registered mail.

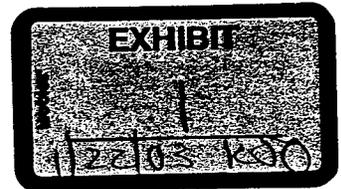
DATED: Pittsford, New York
Feb 13, 2003



ROGER OSKVIG, M.D.
Chairperson

LYON M. GREENBERG, M.D.
SISTER MARY THERESA MURPHY

APPENDIX 1



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

-----X
IN THE MATTER : **NOTICE**
OF : **OF**
MICHAEL N. KESSLER : **HEARING**
CO-02-10-5389-A
-----X

TO: MICHAEL N. KESSLER, M.D.
5 Lincoln Avenue
Massapequa Park, NY 11762

PLEASE TAKE NOTICE:

A hearing will be held pursuant to the provisions of N.Y. Pub. Health Law Section 230 and N.Y. State Admin. Proc. Act Sections 301-307 and 401. The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on the 22nd of January, at 10:00 in the forenoon of that day at the Hedley Park Place, 5th Floor, 433 River Street, Troy, New York, 12180 and at such other adjourned dates, times and places as the committee may direct.

At the hearing, evidence will be received concerning the allegations set forth in the Statement of Charges, that is attached. A stenographic record of the hearing will be made and the witnesses at the hearing will be sworn and examined. You shall appear in person at the hearing and may be represented by counsel. You have the right to produce witnesses and evidence on your behalf, to issue or have subpoenas issued on your behalf in order to require the production of witnesses and documents and you may cross-examine witnesses and examine evidence produced against you. A summary of the Department of Health Hearing Rules is enclosed.

The hearing will proceed whether or not you appear at the hearing. Please note that requests for adjournments must be made in writing and by telephone to the Bureau of Adjudication, Hedley Park Place, 5th Floor, 433 River Street, Troy, New York 12180, (518-402-0748), upon notice to the attorney for the Department of Health whose name appears below, and at least five(5) days prior to the scheduled hearing date. Adjournment requests are not routinely granted as scheduled dates are considered dates certain. Claims of court

engagement will require detailed Affidavits of Actual Engagement. Claims of illness will require medical documentation.

Pursuant to the provisions of N.Y. Pub. Health Law Section 230(10)(c), you shall file a written answer to each of the Charges and Allegations in the Statement of Charges no later than ten(10) days prior to the date of the hearing. Any Charge and 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. 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.

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 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 THE OTHER SANCTIONS
SET OUT IN NEW YORK PUBLIC HEALTH LAW SECTION 230-
a. YOU ARE URGED TO OBTAIN AN ATTORNEY TO
REPRESENT YOU IN THIS MATTER.

DATED: Albany, New York
Dec. 13, 2002


PETER D. VAN BUREN
Deputy Counsel

Inquiries should be directed to:

Robert Bogan
Associate Counsel
Division of Legal Affairs
Bureau 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 N. KESSLER, M.D.
CO-02-10-5389-A

STATEMENT
OF
CHARGES

MICHAEL N. KESSLER, M.D., the Respondent, was authorized to practice medicine in New York state on February 11, 1999, by the issuance of license number 213086 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about August 1, 2001, Respondent was terminated from a Child and Adolescent Psychiatry Fellowship in Cambridge, Massachusetts,

B. On or about November 19, 2001, Respondent submitted an Application for appointment to the Brunswick Hospital Center wherein he falsely responded "No" to the question, "Have you ever had any hospital or other health care facility staff memberships/privileges denied, revoked, suspended, non-renewed, placed under suspension, subjected to disciplinary action, or voluntarily or involuntarily relinquished any of these in anticipation of any of these actions?" and with which he submitted a curriculum vitae (hereinafter "C.V."), that did not mention his participation in the Child and Adolescent Psychiatry Fellowship in Cambridge, Massachusetts from 7/1/01 through 8/1/01, described in Paragraph A above.

C. On or about November 22, 2001, Respondent submitted an Application for privileges to the Holliswood Hospital wherein he was directed to list all previous hospital privileges during the past ten (10) years, wherein he failed to list his participation in the Child

and Adolescent Psychiatry Fellowship in Cambridge, Massachusetts, from July 1, 2001, to August 1, 2001, described in Paragraph A above; he also answered "No" to the question in Section 9 of that application, "Have your Medical Staff appointment and/or clinical privileges ever been denied, revoked, suspended, not renewed, or reduced?"

D. On or about November 22, 2001, Respondent completed an application for medical malpractice insurance with The Psychiatrists' Program wherein he answered "No" to questions, "Have you been the subject of an investigation or disciplinary proceeding by any governmental agency...professional society...or a professional review board of a hospital, HMO, PPO, or IPA?" and "Have you been charged with, convicted of, or pleaded guilty or no contest to a felony?"

E. On or about June 5, 2002, in the Falmouth District Court, Respondent was found guilty of Open and gross lewdness and lascivious behavior, in violation of the General Laws of Massachusetts, Chapter 272, Section 16, a felony, and was sentenced to two (2) years probation.

SPECIFICATIONS

FIRST THROUGH THIRD SPECIFICATIONS

Respondent violated New York Education Law §6530(2) by practicing the profession fraudulently, in that Petitioner charges:

1. The facts in Paragraphs A and/or B.
2. The facts in Paragraphs A and/or C.
3. The facts in Paragraphs A and/or D.

FOURTH THROUGH SIXTH SPECIFICATIONS

Respondent violated New York Education Law §6530(20) by conduct in the practice of medicine which evidences moral unfitness to practice medicine, in that Petitioner charges:

4. The facts in Paragraphs A and/or B.
5. The facts in Paragraphs A and/or C.

6. The facts in Paragraphs A and/or D.

SEVENTH THROUGH NINETH SPECIFICATIONS

Respondent violated New York Education Law §6530(21) by willfully making or filing a false report, or failing to file a report required by law or by the department of health or the education department, in that Petitioner charges:

7. The facts in Paragraphs A and/or B.
8. The facts in Paragraphs A and/or C.
9. The facts in Paragraphs A and/or D.

TENTH SPECIFICATION

Respondent violated New York Education Law §6530(9)(iii) by having been 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, in that Petitioner charges:

10. The facts in Paragraph E.

DATED: *Dec. 13*, 2002
Albany, New York


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