



STATE OF NEW YORK DEPARTMENT OF HEALTH

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

January 9, 1995

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Ralph J. Bavaro
Associate Counsel
New York State Department of Health
Bureau of Professional Medical Conduct
5 Penn Plaza, Sixth Floor
New York, New York 10001

Keith M. Muir, M.D.
P.O. Box 6550
Cairns, QLD 4870
Australia

RE: In the Matter of Keith M. Muir, M.D.

Effective Date: 01/16/95
Dear Mr. Bavaro and Dr. Muir:

Enclosed please find the Determination and Order (No. 95-05) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified mail or in person** to:

Office of Professional Medical Conduct
New York State Department of Health
Corning Tower - Fourth Floor (Room 438)
Empire State Plaza
Albany, New York 12237

If your license or registration certificate is lost, misplaced or its whereabouts is otherwise unknown, you shall submit an affidavit to that effect. If subsequently you locate the requested items, they must then be delivered to the Office of Professional Medical Conduct in the manner noted above.

As prescribed by the New York State Public health Law §230, subdivision 10, paragraph (i), and §230-c subdivisions 1 through 5, (McKinney Supp. 1992), "(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
Empire State Plaza
Corning Tower, Room 2503
Albany, New York 12237-0030

The parties shall have 30 days from the notice of appeal in which to file their briefs to the Administrative Review Board. Six copies of all papers must also be sent to the attention of Mr. Horan at the above address and one copy to the other party. The stipulated record in this matter shall consist of the official hearing transcript(s) and all documents in evidence.

Parties will be notified by mail of the Administrative Review Board's Determination and Order.

Sincerely,



Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nm

Enclosure

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

**IN THE MATTER
OF
KEITH M. MUIR, M.D.**

**DETERMINATION
AND
ORDER**

BPMC-95-05

BENJAMIN WAINFELD, M.D., (Chair), **PEARL D. FOSTER, M.D.** and **ANN SHAMBERGER** duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to §230(10)(e) of the Public Health Law.

MARC P. ZYLBERBERG, ESQ., **ADMINISTRATIVE LAW JUDGE**, served as the Administrative Officer.

The Department of Health appeared by **RALPH J. BAVARO, ESQ.**, Associate Counsel.

Respondent, **KEITH M. MUIR, M.D.**, failed to appear personally at the hearing and was not represented by counsel. However he did submit a response to a Notice of Referral Proceeding and a Statement of Charges, both dated September 26, 1994.

A hearing was held on December 14, 1994. Evidence was received and examined. A Transcript of the proceedings was made. After consideration of the record, the Hearing Committee issues this Determination and Order, pursuant to the Public Health Law and the Education Law of the State of New York.

STATEMENT OF CASE

The State Board for Professional Medical Conduct is a duly authorized professional disciplinary agency of the State of New York. (§230 et seq. of the Public Health Law of the State of New York [hereinafter P.H.L.]

This case, brought pursuant to P.H.L. §230(10)(p), is also referred to as an "expedited hearing". The scope of an expedited hearing is strictly limited to evidence or sworn testimony relating to the nature and severity of the penalty to be imposed on the licensee¹ (Respondent).

KEITH M. MUIR, M.D., (hereinafter "Respondent") is charged with professional misconduct within the meaning of §6530(9)(b) of the Education Law of the State of New York (hereinafter N.Y.S. Education Law), to wit: "professional misconduct ... by reason of having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state ..." (Petitioner's Exhibit # 1 and §6530(9)[b] of the N.Y.S. Education Law).

In order to find that Respondent committed professional misconduct, the Hearing Committee, pursuant to §6530(9)(b) of the N.Y.S. Education Law, must determine: (1) whether Respondent was found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state and (2) whether Respondent's conduct on which the findings were based would, if committed in New York State, constitute professional misconduct under the laws of New York State.

¹ P.H.L. §230(10)(p), fifth sentence.

A copy of the 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. These facts represent evidence found persuasive by the Hearing Committee in arriving at a particular finding. Unless otherwise noted, all Findings and Conclusions herein were unanimous. The State, who has the burden of proof, was required to prove its case by a preponderance of the evidence. All Findings of Fact made by the Hearing Committee were established by at least a preponderance of the evidence.

1. Respondent was authorized to practice medicine in New York State on March 22, 1974 by the issuance of license number 119599 by the New York State Education Department. (Petitioner's Exhibits # 1 and # 2)².
2. The Respondent is not currently registered with the New York State Education Department to practice medicine. (Petitioner's Exhibit # 1).
3. In 1993, Respondent moved to Australia. (Respondent's Exhibit # A).
4. Mr. David Cohen, an investigator with the New York State Health Department, made an unsuccessful attempt to find a residence address for Respondent in Australia. [T-3]³.

² refers to exhibits in evidence submitted by the New York State Department of Health (Petitioner's Exhibit) or by Dr. Keith M. Muir (Respondent's Exhibit).

³ Numbers in brackets refer to transcript page numbers [T-].

5. Ralph J. Bavaro caused to be mailed, by certified mail, return receipt requested, the Notice of Referral Proceedings and Statement of Charges to Respondent, at his Australia post office address.

6. The return receipt card indicates that said mailing was duly delivered and accepted, in Cairns, Australia, on October 7, 1994. (Petitioner's Exhibit # 1); [T-3].

7. Respondent acknowledged receipt of the aforesaid mailing and did not contest service of same. (Respondent's Exhibit # A).

8. The State Board of Medical Examiners of the State of New Jersey, (hereinafter "New Jersey Board") is a state agency charged with regulating the practice of medicine and surgery pursuant to the laws of the State of New Jersey. (Petitioner's Exhibit # 3 and # 4).

9. On October 8, 1993, the Attorney General of the State of New Jersey charged⁴, by Administrative Complaint, Respondent with four (4) separate counts of violating New Jersey laws. (Petitioner's Exhibit # 4).

10. As a result of the above complaint, on November 10, 1993, the New Jersey Board found that Respondent "has engaged in gross and repeated malpractice, which clearly placed two patients at emotional risk and indeed caused them harm.". (Petitioner's Exhibit # 3).

⁴ In the Matter of the Suspension or Revocation of the License of KEITH MUIR, M.D. License No. 38853 to Practice Medicine and Surgery in the State of New Jersey, Administrative Action Verified Complaint, Department of Law & Public Safety, Division of Consumer Affairs, State Board of Medical Examiners, signed by a Deputy Attorney General and dated October 8, 1993 and filed with the New Jersey State Board of Medical Examiners, on October 13, 1993. (Petitioner's Exhibit # 4).

11. The New Jersey Board's findings were based on proof submitted to them that Respondent, a psychiatrist, had maintained sexual relationships with two patients while he continued the therapeutic treatment relationship. (Petitioner's Exhibit # 3).

12. In addition, the New Jersey Board found, based on proof submitted to them, that Respondent had utterly failed to maintain appropriate patient records for both patients. (Petitioner's Exhibit # 3).

13. As a result of the above findings, the New Jersey Board determined in a default decision, made on November 10, 1993 (Filed January 5, 1994) that Respondent's license to practice medicine and surgery in New Jersey be revoked effective October 27, 1993. (Petitioner's Exhibit # 3).

14. The Hearing Committee accepts the findings of the New Jersey Board and adopts same as its own Findings of Fact. The New Jersey findings, issued as an Order of Revocation, is annexed hereto as appendix II and is incorporated herein.

During the course of its deliberations on these charges, the Hearing Committee consulted a memorandum, prepared by Peter J. Millock, General Counsel for the New York State Department of Health, dated February 5, 1992. This document, entitled: Definitions of Professional Misconduct under the New York Education Law, (hereinafter "Misconduct Memo"), sets forth suggested definitions of practicing the profession: (1) fraudulently; (2) with negligence on more than one occasion; (3) with gross negligence; (4) with incompetence on more than one occasion and (5) with gross incompetence.

The definitions from the Misconduct Memo were considered by the Hearing Committee during its deliberations.

Taking the findings of the New Jersey Board as true, the Hearing Committee finds that the record establishes that Respondent had sexual relations with two of his patients.

Respondent's role of psychiatrist and role of sexual partner were incompatible. The two roles played by Respondent could not co-exist without damaging the therapeutic process (potentially causing harm to the patient) or influencing the therapeutic decisions made by Respondent (also, potentially, causing harm to the patient). The Respondent deviated from accepted psychiatric standards by having sexual relations with his patients. Therefore, Respondent was negligent (on more than one occasion) in beginning, maintaining and continuing said sexual relationships while he continued to treat both patients.

The record also establishes that Respondent failed to maintain appropriate patient records for both patients.

The Hearing Committee finds that Respondent's conduct, if committed in New York State, constitutes professional misconduct, as defined by the Misconduct Memo and under §6530 of the N.Y.S. Education Law as follows:

(1) professional misconduct by reason of practicing the profession with negligence on more than one occasion⁶; and

(2) professional misconduct by reason of practicing the profession with gross negligence⁷; and

(3) failing to maintain records which accurately reflect the evaluation and treatment of the patients⁸.

Therefore, Respondent has committed professional misconduct pursuant to §6530(9)(b) of the N.Y.S. Education Law.

DETERMINATION

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determines that Respondent's license to practice medicine in New York State should be REVOKED.

This determination is reached after due and careful consideration of the full spectrum of penalties available pursuant to P.H.L. §230-a, including:

⁶ Education Law §6530(3) and Misconduct Memo (2).

⁷ Education Law §6530(4) and Misconduct Memo (3).

⁸ Education Law §6530(32).

(1) Censure and reprimand; (2) Suspension of the license, wholly or partially; (3) Limitations of the license; (4) Revocation of license; (5) Annulment of license or registration; (6) Limitations; (7) the imposition of monetary penalties; (8) a course of education or training; (9) performance of public service and (10) probation.

Since Respondent did not appear at this proceeding, he was not subject to direct or cross-examination nor to questions from the Hearing Committee in this proceeding. Therefore the Committee is bound by the documentary evidence presented.

The record clearly establishes that Respondent committed significant violations of New Jersey Laws. Respondent's lack of integrity, character and moral fitness is evident in his course of conduct.

The submissions by Respondent give no explanation, excuse or shed any different light on the charges brought in New Jersey or in New York. (Respondent's Exhibit # A).

The Hearing Committee concludes that if this case had been held in New York, on the facts presented, the pattern of sexual relationships with his patients and the lack of adequate medical records would have resulted in a unanimous vote for revocation of Respondent's license.

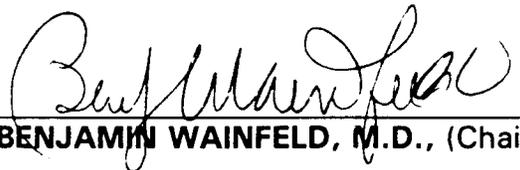
The Hearing Committee has noted that the State of New Jersey has revoked Respondent's license. The Hearing Committee considers Respondent's misconduct to be very serious. With a concern for the health and welfare of patients in New York State, the Hearing Committee determines that revocation of Respondent's license is the appropriate sanction to impose under the circumstances.

ORDER

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

1. The Specification of professional misconduct contained within the Statement of Charges (Petitioner's Exhibit # 1) is **SUSTAINED**, and
2. Respondent's license to practice medicine in the State of New York is hereby **REVOKED**.

DATED: Albany, New York
January 6, 1995



BENJAMIN WAINFELD, M.D., (Chair),

**PEARL D. FOSTER, M.D.
ANN SHAMBERGER**

To: Keith M. Muir, M.D.
P.O. Box 6550
Cairns, QLD 4870
AUSTRALIA

Ralph J. Bavaro
Associate Counsel,
New York State Department of Health
Bureau of Professional Medical Conduct
5 Penn Plaza, 6th Floor
New York, New York 10001

A P P E N D I X I

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

-----X
IN THE MATTER : STATEMENT
OF : OF
KEITH MUIR, M.D. : CHARGES
-----X

KEITH MUIR, M.D., the Respondent, was authorized to practice medicine in New York State on March 22, 1974 by the issuance of license number 119599 by the New York State Education Department. The Respondent is not currently registered with the New York State Education Department to practice medicine.

FACTUAL ALLEGATION

- A. On November 10, 1993 the State Board of Medical Examiners of the State of New Jersey, issued an order revoking Respondent's license to practice medicine in the State of New Jersey. The conduct upon which the revocation was based was Respondent's sexual involvement with two psychiatric patients and a failure to maintain adequate patient records.

SPECIFICATION OF CHARGES

Respondent is charged with professional misconduct within the meaning of N.Y. Educ. Law Section 6530(9) (b) in that he has been found guilty of misconduct by a duly authorized professional disciplinary agency of another state for conduct which, if committed in New York State, would constitute professional misconduct under New York law. Petitioner charges:

1. The facts contained in Paragraph A.

DATED: New York, New York

Oct - 20 - 1965



CHRIS STERN HYMAN
Counsel
Bureau of Professional Medical
Conduct

A P P E N D I X I I

FILED

January 5, 1994

NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC
SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF MEDICAL
EXAMINERS
DOCKET NO.

In the Matter of the Suspension)
or Revocation of the License of)

Administrative Action

KEITH MUIR, M.D.)

ORDER OF REVOCATION

LICENSE NO. 38853)

To Practice Medicine and Surgery)
in the State of New Jersey)

This matter was opened before the New Jersey State Board of Medical Examiners by filing of a Verified Complaint and Order to Show Cause by Attorney General Fred DeVesa by Marcia A. Membrino, Deputy Attorney General, on or about October 8, 1993. That application was served upon Brian Matthews of the firm of McCormick, Petrolle & Matthews who then represented respondent. By letter of October 19, Mr. Matthews advised that he had forwarded the moving papers to the doctor in Australia and that he no longer represented respondent. A current address was provided in Cairns, Australia. Deputy Attorney General Membrino advised that the materials were also sent by her to Australia and to the last known address for the doctor. That application initially sought to schedule a hearing on the Order to Show Cause at the November Board meeting, but a letter was subsequently forwarded to Executive Director Janousek to respondent at both addresses advising that the matter would be

CERTIFIED TRUE COPY

heard before the Board President and a committee on October 27, 1993.

On October 27, 1993, Deputy Attorney General Membrino appeared before Dr. Jacobs and several members of the Executive Committee seeking a suspension or revocation of respondent's license. She advised of the steps that had been undertaken to serve the doctor and the Board President determined that sufficient efforts had been made to provide notice and that respondent, by his failure to have filed an answer, was in default. In support of the Order to Show Cause and Verified Complaint, Deputy Attorney General Membrino offered into evidence the following documents:

- P-1 Letter of Brian Matthews, Esq.
- P-2 Affidavit of J.H.
- P-3 Affidavit of Keith Muir, M.D.
- P-4 Affidavit of M.H.
- P-5 Affidavit of R.H.
- P-6 Computer printout of prescriptions.
- P-7 Medical record pertaining to R.H.

The proofs in this matter establish that respondent, a psychiatrist, maintained a long term sexual relationship with patients J.H. (Count I) and R.H. (Count III). In addition, with respect to both patients the doctor utterly failed to maintain an appropriate patient record, in violation of N.J.A.C. 13:35-6.5. As to patient J.H., between May of 1986 and March of 1989, respondent engaged in sexual contact with J.H., initiating that contact shortly after the patient had

moved to Colorado and notwithstanding that he had undertaken to treat her for psychological problems related to alcohol dependency and an abusive childhood. He clearly knew or should have known of the patient's vulnerabilities and the likelihood that "transference" of the patient's feelings onto the therapist could occur. His conduct with J.H. threatened her emotional well being and violated the trust that she had reposed in him.

Similarly, respondent's course of conduct as to patient R.H. represents a violation of the trust that a psychiatric patient must, by necessity, place in her therapist. In September of 1989, he had sexual relations with R.H. -- and notwithstanding that event, and with recognition that the encounter was wrong -- he continued the therapeutic relationship. For a five month period between May of 1990 and October of 1990, respondent continued to treat R.H, at the same time that he was sleeping with her. He stopped the relationship in October, but nonetheless continued to prescribe Prozac to the patient on at least four occasions in 1991. Again, respondent played on this patient's vulnerabilities, corrupting a therapeutic relationship for his own sexual gratification. These relationships provide ample basis for the Board to conclude that the doctor has engaged in gross and repeated malpractice, which clearly placed two patients at emotional risk and indeed caused them harm. The only possible regulatory response to such an abuse of privilege can be a licensure revocation. That is the remedy ordered by Dr. Jacobs

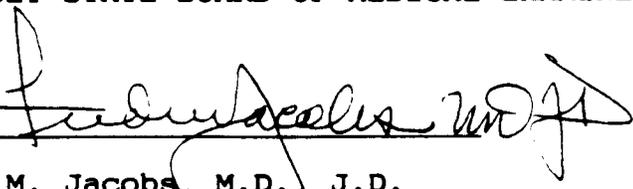
on October 27 and reaffirmed by the full Board on November 10, 1993.

ACCORDINGLY, it is on this 10th day of November, 1993, ordered:

1. Respondent's license to practice medicine and surgery in New Jersey shall be and hereby is revoked effective October 27, 1993.

NEW JERSEY STATE BOARD OF MEDICAL EXAMINERS

By: _____


Fred M. Jacobs, M.D., J.D.
Board President