

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

IN THE MATTER
OF
HARVEY LAWRENCE KUGEL, M.D.

SURRENDER
ORDER
BPMC #95-128

Upon the Application of HARVEY LAWRENCE KUGEL, M.D., Respondent, to Surrender his license as a physician in the State of New York, which application is made a part hereof, it is

ORDERED, that the application and the provisions thereof are hereby adopted; it is further

ORDERED, that the name of Respondent be stricken from the roster of physicians in the State of New York; it is further

ORDERED, that this order shall take effect as of the date of the personal service of this order upon Respondent, upon receipt by Respondent of this order via certified mail, or seven days after mailing of this order via certified mail, whichever is earliest.

SO ORDERED.

DATED: 17 June 1995

Charles J. Vacanti

CHARLES J. VACANTI, M.D.
Chairperson
State Board for Professional
Medical Conduct

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

IN THE MATTER : APPLICATION TO
OF : SURRENDER
HARVEY LAWRENCE KUGEL, M.D. : LICENSE
-----X

STATE OF NEVADA)
COUNTY OF CLARK) SS.:

HARVEY LAWRENCE KUGEL, M.D., being duly sworn, deposes
and says:

On or about May 14, 1975, I was licensed to practice
medicine as a physician in the State of New York, having been
issued License No. 123743 by the New York State Education
Department.

My current address is 2275 S. Buffalo Drive, Las Vegas,
Nevada, and I will advise the Director of the Office of
Professional Medical Conduct of any change of my address.

I understand that I have been charged with three
specifications of professional misconduct as set forth in the
Statement of Charges, annexed hereto, made a part hereof, and
marked as Exhibit "A".

I am applying to the State Board for Professional Medical
Conduct for permission to surrender my license as a physician in
the State of New York on the grounds that I do not contest the

first specification of misconduct and related factual allegations. I do not contest the second specification of misconduct based upon the fact that I entered into a Consent Agreement, sworn to January 7, 1993, annexed hereto, made a part hereof, and marked as Exhibit "B", to resolve an Administrative Complaint filed June 4, 1992, annexed hereto, made a part hereof, and marked as Exhibit "C". I do not contest the third specification of misconduct based upon Findings of Fact, Conclusions of Law, and Order of the Board of Medical Examiners of the State of Nevada, dated February 11, 1994, annexed hereto, made a part hereof, and marked as Exhibit "D".

I hereby make this application to the State Board for Professional Medical Conduct and request that it be granted.

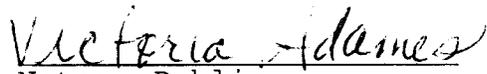
I understand that, in the event that the application is not granted by the State Board for Professional Medical Conduct, nothing contained herein shall be binding upon me or constructed to be an admission of any act of misconduct alleged or charged against me, such application shall not be used against me in any way, and shall be kept in strict confidence during the pendency of the professional misconduct disciplinary proceeding; and such denial by the State Board for Professional Medical Conduct shall be made without prejudice to the continuance of any disciplinary proceeding and the final determination by a Committee on Professional Medical Conduct pursuant to the provisions of the Public Health Law.

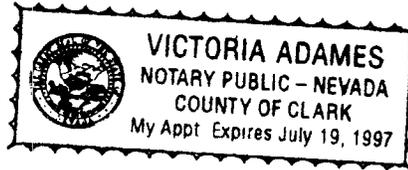
I agree that, in the event the State Board for Professional Medical Conduct grants my application, an order shall be issued striking my name from the roster of physicians in the State of New York without further notice to me.

I am making this Application of my own free will and accord and not under duress, compulsion, or restraint of any kind or matter.


HARVEY LAWRENCE KUGEL, M.D.
Respondent

Sworn to before me this
5 day of June, 1995


Notary Public

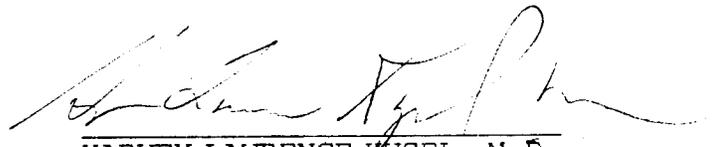


NEW YORK STATE DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT
-----X

IN THE MATTER : APPLICATION TO
OF : SURRENDER
HARVEY LAWRENCE KUGEL, M.D. : LICENSE
-----X

The undersigned agree to the attached application of the Respondent to surrender his license.

Date: June 7, 1995


HARVEY LAWRENCE KUGEL, M.D.
Respondent

Date: June 8, 1995


JONATHAN MARKS, ESQ.
Attorney for Respondent

Date: June 14, 1995


MARCIA E. KAPLAN
Attorney for the
Bureau of Professional
Medical Conduct

Date: June 15, 1995


KATHLEEN M. TANNER
Director
Office of Professional
Medical Conduct

Date: 17 June, 1995


CHARLES J. VACANTI, M.D.
Chairperson
State Board for
Professional Medical
Conduct

IN THE MATTER
OF
HARVEY LAWRENCE KUGEL, M.D.

STATEMENT
OF
CHARGES

HARVEY LAWRENCE KUGEL, M.D., the Respondent, was authorized to practice medicine in New York State on or about May 14, 1975, by the issuance of license number 123743 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. On or about September 25, 1981, the Florida Board of Medical Examiners (Florida Board) issued an Order, based upon a Stipulation entered into by Respondent and the Florida Department of Professional Regulation, reprimanding Respondent and fining him \$1000 upon finding that Respondent violated Chapter 458.331(1)(1), Florida Statutes, by making deceptive untrue or fraudulent representations in the practice of medicine or employing a trick or scheme in the practice of medicine when such scheme or trick fails to conform to the generally prevailing standards of treatment in the medical community, in that in or about 1979, Respondent submitted to specified Florida hospitals, and to several of them for the purpose of obtaining medical staff privileges at these hospitals, a fabricated letter allegedly certifying falsely that he had been granted board eligibility by the American Board of Internal Medicine and "Subspecialty Board of Cardiovascular Disease." The Board further found that Respondent violated Sections 458.1201(1)(b),(f) and (h),

Florida Statutes in that in approximately June, 1979, Respondent authorized the placement of an advertisement in several Fort Lauderdale area newspapers announcing the opening of his medical practice and stating falsely that he was a Diplomate of the American Board of Internal Medicine and Cardiology. If committed in New York, this conduct would constitute professional misconduct under N.Y. Educ. Law Sec. 6530 (2) (practicing fraudulently) and 6530(27) (advertising or soliciting for patronage that is not in the public interest because false, fraudulent, deceptive and misleading) (McKinney Supp. 1995).

- B. On or about February 9, 1993, the Florida Board issued an Order, based upon a Stipulation entered into by Respondent and the Florida Department of Professional Regulation to resolve an administrative complaint against Respondent alleging violations of 458.331(1)(g) and 455.241(1), Florida Statutes, fining Respondent \$1000, and requiring, *inter alia*, that Respondent maintain adequate office staff to handle requests for medical records and furnish such records to an authorized person or legal representative within twenty days of a written request. If committed in New York, this conduct would constitute professional misconduct under N.Y. Educ. Law Sec. 6530(16) (a willful or grossly negligent failure to comply with substantial provisions of federal, state, or local laws, rules or regulations governing the practice of medicine) and/or 6530(22) (failing to make available to a patient, upon request, copies of documents in the possession or under the control of the licensee which have been prepared for and paid for by the patient or client and/or 6530(40) (failing to provide access by qualified persons to patient information in accordance with the standards set forth in section eighteen of the public health law as added by chapter 497 of the laws of 1986) (McKinney Supp. 1995).

C. On or about February 11, 1994, the Nevada Board of Medical Examiners (Nevada Board) issued an Order fining Respondent \$100 upon finding that Respondent violated NRS 630.304(1), renewing a license to practice medicine by filing a false, misleading, inaccurate or incomplete statement, in that on or about May 14, 1993, Respondent filed with the Nevada Board a renewal registration application in which he answered "no" to the question "Have any U.S. state and/or Canadian provincial licensing or disciplinary agencies limited, restricted, suspended or revoked a license you have held or taken any other disciplinary action against you?" when he knew that he had been fined by the Florida Board, as more fully set forth in paragraph B above. If committed in New York, this conduct would constitute professional misconduct under N.Y. Educ. Law Sec. 6530(2) (practicing fraudulently) and/or 6530(21)(willfully making or filing a false report) (McKinney Supp. 1995).

SPECIFICATION OF CHARGES

FIRST AND SECOND SPECIFICATIONS

HAVING BEEN FOUND GUILTY OF MISCONDUCT BY ANOTHER STATE

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(9)(b) (McKinney Supp. 1995) 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, as alleged in the facts of:

1. Paragraph A.
2. Paragraph C.

**THIRD SPECIFICATION
HAVING DISCIPLINARY ACTION
TAKEN BY ANOTHER STATE**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(9)(d) (McKinney Supp. 1995) by having his or her license to practice medicine revoked, suspended or having other disciplinary action taken, after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the disciplinary action involving the license would, if committed in New York state, constitute professional misconduct under the laws of New York state, as alleged in the facts of:

3. Paragraph B.

DATED: March 30, 1995
New York, New York


CHRIS STERN HYMAN
Counsel
Bureau of Professional
Medical Conduct

STATE OF FLORIDA
DEPARTMENT OF PROFESSIONAL REGULATION

DEPARTMENT OF PROFESSIONAL
REGULATION,

Petitioner,

v.

DPR CASE NO. 91-04612

HARVEY KUGEL, M.D.,

Respondent.

CONSENT AGREEMENT

Harvey Kugel, M.D., referred to as the "Respondent", and the Department of Professional Regulation, referred to as "Department", stipulate and agree to the following Agreement and to the entry of a Final Order of the Board of Medicine, referred to as "Board", incorporating the Stipulated Facts and Stipulated Disposition in this matter.

STIPULATED FACTS

1. At all times material hereto, Respondent was a licensed physician in the State of Florida having been issued license number ME 0031558.

2. Respondent was charged by an Administrative Complaint filed by the Department and properly served upon Respondent with violations of Chapter 458, Florida Statutes, and the rules enacted pursuant thereto. A true and correct copy of the Administrative Complaint is attached hereto as Exhibit A.

3. Respondent neither admits nor denies the allegations of fact contained in the Administrative Complaint.

STIPULATED CONCLUSIONS OF LAW

1. Respondent admits that, in his capacity as a licensed physician, he is subject to the provisions of Chapters 455 and 458, Florida Statutes, and the jurisdiction of the Department and the Board.

2. Respondent admits that the facts set forth in the Administrative Complaint, if proven, would constitute violations of Chapter 458, Florida Statutes, as alleged in the Administrative Complaint.

STIPULATED DISPOSITION

1. FUTURE CONDUCT. Respondent shall not in the future violate Chapters 455, 458 and 893, Florida Statutes, or the rules promulgated pursuant thereto.

2. FINE. The Board shall impose an administrative fine in the amount of one thousand dollars (\$1,000.00) against the Respondent. The fine shall be paid by the Respondent to the Board of Medicine within 180 days of its imposition by Final Order of the Board.

3. OBLIGATIONS/REQUIREMENTS.

a. Respondent must keep current residence and practice addresses on file with the Board. Respondent shall notify the board within ten (10) days of any changes of said addresses.

b. Respondent shall maintain adequate office staff to handle requests for medical records. Specifically, Respondent shall furnish, upon written request of an authorized person or a legal representative within twenty (20) working days, copies of all reports and records relating to examination or treatment, including

X-rays and insurance information. If for any reason the Respondent does not have in his possession a complete copy of the medical records that he maintained on the patient, the Respondent shall provide to the requesting person the name and address of the person who has possession of said documents.

4. It is expressly understood that this Agreement is subject to the approval of the Board and the Department. In this regard, the foregoing paragraphs (and only the foregoing paragraphs) shall have no force and effect unless a Final Order incorporating the terms of this Agreement is entered by the Board.

5. Should this Agreement be rejected, no statement made in furtherance of this Agreement by the Respondent may be used as direct evidence against the Respondent in any proceeding; however, such statements may be used by the Petitioner for impeachment purposes.

6. Respondent and the Department fully understand that this joint Agreement and subsequent Final Order incorporating same will in no way preclude additional proceedings by the Board and/or the Department against the Respondent for acts or omissions not specifically set forth in the Administrative Complaint attached as Exhibit "A" herein.

7. Upon the Board's adoption of this Agreement, Respondent expressly waives all further procedural steps, and expressly waives all rights to seek judicial review of or to otherwise challenge or contest the validity of the Agreement and the Final Order of the Board incorporating said Agreement.

8. Upon the Board's adoption of this Agreement, the parties hereby agree that each party will bear his own attorney's fees and costs resulting from prosecution or defense of this matter. Respondent waives the right to seek any attorney's fees or costs from the Department in connection with this matter.

9. This Agreement is executed by the Respondent for the purpose of avoiding further administrative action with respect to this cause. In this regard, Respondent authorizes the Board to review and examine all investigative file materials concerning Respondent prior to or in conjunction with consideration of the Agreement. Furthermore, should this joint Agreement not be accepted by the Board, it is agreed that presentation to and consideration of this Agreement and other documents and matters by the Board shall not unfairly or illegally prejudice the Board or any of its members from further participation, consideration or resolution of these proceedings.

SIGNED this 7 day of January, 1997.

Harvey Kugel
Harvey Kugel, M.D.

Before me, personally appeared Harvey Kugel, whose identity is known to me by Nevada Driver License (type of identification) and who, under oath, acknowledges that his/her signature appears above.

Sworn to and subscribed before me this 7 day of January, 1997.

Victoria S. Jenkin
NOTARY PUBLIC

My Commission Expires:

July 19, 1993



APPROVED this _____ day of _____, 1992.

George Stuart
Secretary

By: Larry G. McPherson, Jr.
Chief Attorney
Medical Section

STATE OF FLORIDA
DEPARTMENT OF PROFESSIONAL REGULATION
BOARD OF MEDICINE

DEPARTMENT OF PROFESSIONAL
REGULATION,

Petitioner,

vs.

Case No. 91-04612

HARVEY KUGEL, M.D.,

Respondent.

ADMINISTRATIVE COMPLAINT

COMES NOW, the Petitioner, Department of Professional Regulation, hereinafter referred to as "Petitioner", and files this Administrative Complaint before the Board of Medicine against HARVEY KUGEL, M.D., hereinafter referred to as "Respondent", and alleges:

1. Petitioner is the state agency charged with regulating the practice of medicine pursuant to Section 20.30, Florida Statutes, Chapter 455, Florida Statutes and Chapter 458, Florida Statutes.

2. Respondent is and has been at all times material hereto a licensed physician in the State of Florida, having been issued license number ME 0031558. Respondent's last known address as listed with the Petitioner and the Florida Board of Medicine is Internal Medicine and Cardiology, West Tamarac Professional Building, 6208 NW 57th St. Tamarac, FL. 33319.

3. Pursuant to section 455.241(1) Florida Statutes

Any health care practitioner licensed pursuant to chapter 457, chapter 458, ...who makes a physical or mental examination of, or administers treatment to any person, shall upon request of such person or his legal representative, furnish, in a timely manner, without delays for legal review, copies of all reports and records relating to such examination or treatment, including X-rays and insurance information;.... The furnishing of such report or copies shall not be conditioned upon payment of a fee for services rendered.

4. From on or about 1987, through on or about January, 1991, Respondent had been treating Patient #1.

5. Patient #1 requested copies of her medical records from the Respondent on or about February, 1991, March, 1991 and April, 1991.

6. The Respondent did not forward a complete set of Patient #1's medical records to Patient #1.

7. The Respondent subsequently left the practice of medicine in Florida and began practicing medicine in Nevada, however the Respondent has failed to notify the Department of the address of his primary place of practice.

COUNT ONE

8. Petitioner realleges and incorporates paragraphs one (1) through seven (7) as if fully set forth herein this Count One.

9. The Respondent failed to perform a statutory or legal obligation placed upon a licensed physician in that Respondent failed to timely furnish Patient #1 or her legal representative copies of Patient #1's medical records.

10. Based on the foregoing, Respondent has violated Section 458.331(1)(g), Florida Statutes, by failing to perform any statutory or legal obligation placed upon a licensed physician.

COUNT TWO

11. Petitioner realleges and incorporates paragraphs one (1) through seven (7) and nine (9) as if fully set forth herein this Count Two.

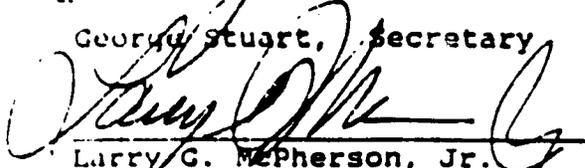
12. Pursuant to section 458.319(5) Florida Statutes the Respondent has failed to notify the department of the address of his primary place of practice.

13. Based on the foregoing, Respondent by violating section 458.319(5) Florida Statutes, has violated Section 458.331(1)(g), Florida Statutes, by failing to perform any statutory or legal obligation placed upon a licensed physician.

WHEREFORE, Petitioner respectfully requests the Board of medicine enter an Order imposing one or more of the following penalties: revocation or suspension of the Respondent's license, restriction of the Respondent's practice, imposition of an administrative fine, issuance of a reprimand, placement of the Respondent on probation, and/or any other relief that the Board deems appropriate.

SIGNED this 7 day of June, 1992.

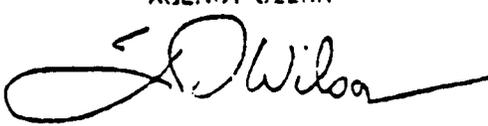
George Stuart, Secretary


Larry G. McPherson, Jr.
Chief Medical Attorney

COUNSEL FOR DEPARTMENT:
Larry G. McPherson, Jr.
Senior Attorney
Fla. Bar No. 0788643
Department of Professional
Regulation
1940 North Monroe Street
Tallahassee, Florida 32399-0792
(904) 488-0062
PCP: May 19, 1992
Murray, Basisht, Rodrigue?

FILED

Department of Professional Regulation
AGENCY CLERK


CLERK

DATE 6-4-92

BOARD OF MEDICAL EXAMINERS
I, Patricia R. Perry, Official Custodian,
records, do hereby certify that this document
is a true and correct copy of the original
file in this office.

Signed *Patricia R Perry*
Executive Director
1-31-95

COPY

**BEFORE THE BOARD OF MEDICAL EXAMINERS
OF THE STATE OF NEVADA**

7326
FILED 2-11-94

IN THE MATTER OF THE COMPLAINT

AGAINST

HARVEY L. KUGEL, M.D.,

Patricia R Perry
EXECUTIVE DIRECTOR

RESPONDENT.

Case No. 7326

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The Board, having carefully considered the transcripts, the documents, the exhibits admitted in the record, and the arguments of counsel makes the following Findings of Fact, Conclusions of Law, and Order.

The matter was heard before a hearing officer, Richard J. Legarza, on December 14, 1993, at the Clark County Health District Offices, 625 Shadow Lane, Las Vegas, Nevada. Respondent appeared and was represented by Gene T. Porter, Esq. The case was prosecuted by Larry Lessly, Esq., general counsel for the Board.

The deliberation and adjudication of this matter was conducted on January 22, 1994 in Las Vegas, Nevada. The following Board members participated: Theodore Jacobs, M.D.; Rex T. Baggett, M.D.; Susan S. Buchwald, M.D.; Dipak K. Desai, M.D., and Richard Baker, M.D., who was appointed by the Governor to participate in the adjudication. Members of the Investigative Committee did not participate in the adjudication or the deliberation. Page Underwood, Deputy Attorney General, appeared as legal counsel to the Board.

FINDINGS OF FACT

1 The Board makes the following findings of fact:

2 That the Board has jurisdiction over the matter.

3 That Respondent is now, and at all times alleged herein was,
4 licensed by the Board of Medical Examiners of the State of Nevada
5 to practice medicine in the State of Nevada.

6 That on or about February 19, 1993, a final order was entered
7 pursuant to a consent agreement to resolve an administrative
8 complaint against Respondent by the State of Florida, Department
9 of Professional Regulation, Board of Medicine, case #91-04612.
10 That said consent agreement imposed an administrative fine in the
11 amount of One Thousand Dollars (\$1,000.00) against Respondent and
12 required Respondent to keep current residence and practice
13 addresses on file with the Florida board and notify the Florida
14 board within ten (10) days of any change of said addresses, and
15 maintain adequate office staff to handle requests for medical
16 records within twenty (20) working days of a request.

17 That on or about May 14, 1993, Respondent filed with the
18 Nevada State Board of Medical Examiners a renewal application to
19 practice medicine in the State of Nevada. That question ten (10)
20 on said application asks for the time period, July 1, 1991 through
21 the date of application, "Have any U.S. state and/or Canadian
22 provincial licensing or disciplinary agencies limited, restricted,
23 suspended or revoked a license you have held or taken any other
24 disciplinary action against you?" That Respondent answered "no"
25 to said question.

26 That the terms of the consent agreement in the administrative
27 action by the State of Florida, Department of Professional
28

1 Regulation, Board of Medicine, case #91-04612 did not modify or
2 limit Respondent's medical practice.

3 That the One Thousand Dollars (\$1,000.00) "fine" imposed by
4 the Florida State Medical Board was intended as, and was repre-
5 sented in the settlement papers as, a "fine" and not an adminis-
6 trative fee.

7 That any question about whether to report the incident to the
8 Nevada Medical Board should have been clarified with the Nevada
9 Board, particularly in light of the fact that in the initial
10 application for licensure Respondent answered "yes" to question
11 ten (10) with regard to a 1981 disciplinary action by the Florida
12 medical board, and from that experience was familiar with the
13 Nevada application process and of positive consequences of
14 responding truthfully to the questions presented.

15 That Respondent's conduct in answering question ten (10) on
16 his application "no" constitutes renewing a license to practice
17 medicine by filing a false, misleading, inaccurate or incomplete
18 statement, a violation of 630.304(1).

19 That there is insufficient evidence to prove by a clear and
20 convincing standard that Respondent's conduct was intentional and
21 done with the specific intent of deceiving the Board.

22 That if any of the foregoing findings of fact are more
23 properly deemed a conclusions of law, it may be so construed.

24 CONCLUSIONS OF LAW

25 The Board makes the following conclusions of law:

26 That NRS 630.301(2) provides that the suspension, modifica-
27 tion or limitation of a licensee's license to practice any type of
28

2 medicine by any other jurisdiction constitutes grounds for
3 initiating disciplinary action against said licensee.

4 That NRS 630.304(1) provides that obtaining, maintaining or
5 renewing, or attempting to obtain, maintain or renew a license to
6 practice medicine by bribery, fraud or misrepresentation, or by
7 any false, misleading, inaccurate or incomplete statement
8 constitutes grounds for initiating disciplinary action against a
9 licensee.

10 That NRS 630.306(2)(a) provides that engaging in any conduct,
11 which is intended to deceive, constitutes grounds for initiating
12 disciplinary action against a licensee.

13 That Respondent is not guilty as alleged in Count One of the
14 Complaint.

15 That Respondent is guilty as alleged in Count Two of the
16 Complaint.

17 That Respondent is not guilty as alleged in Count Three of
18 the Complaint.

19 That if any of the foregoing conclusions of law are more
20 properly deemed findings of fact, it may be so construed.

21 **ORDER**

22 Based upon the foregoing,

23 IT IS HEREBY ORDERED, that Respondent pay a fine in the
24 amount of One Hundred Dollars (\$100.00), which is to be paid
25 within ninety (90) days.

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27 THEODORE JACOBS, M.D.
28 Chairman

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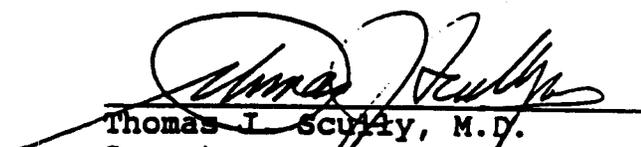
CERTIFICATION

I hereby certify that the foregoing is a full, true, and correct original FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER on file and of record in the office of the Board of Medical Examiners, in the matter of the Complaint against HARVEY L. KUGEL, M.D., Respondent, Case No. 7326.

I further certify that Theodore Jacobs, M.D., is the President of the Board of Medical Examiners of the State of Nevada, and that full force and credit is due to his official acts as such; that the signature to the foregoing ORDER is the genuine signature of the said Theodore Jacobs, M.D.

IN WITNESS WHEREOF, I have hereunto set my hand in my official character as Secretary-Treasurer of the Board of Medical Examiners of the State of Nevada.

DATED: This 11th day of February, 1994.


Thomas J. Scully, M.D.
Secretary
Nevada State Board of
Medical Examiners