

DOH 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 3, 1996

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

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

Kermit Gosnell, M.D.
3801 Lancaster Street
Philadelphia, PA 19104

RE: In the Matter of Kermit Gosnell, M.D.

Dear Ms. Kaplan and Dr. Gosnell:

Enclosed please find the Determination and Order (No. 96-289) 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required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate.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), "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

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

KERMIT GOSNELL, M.D.

DETERMINATION

AND

ORDER

BPMC-96-289

A Notice of Hearing and Statement of Charges, both dated July 31, 1996, were served upon the Respondent, **KERMIT GOSNELL, M.D. STANLEY GITLOW, M.D.**, (Chair), **JOHN H. S. HOLLOMAN, JR., M.D.** and **DENNIS HARRIGAN**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to Section 230(100)(e) of the Public Health Law. **CHRISTINE C. TRASKOS, ESQ.**, Administrative Law Judge, served as the Administrative Officer. A hearing was held on September 26, 1996. The Department of Health appeared by **HENRY M. GREENBERG, GENERAL COUNSEL**, by **MARCIA KAPLAN, ESQ.**, Associate Attorney of Counsel. The Respondent did not appear and was not represented by counsel. 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 is charged with professional misconduct pursuant to Education Law Section 6530 (9) (d). A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order in 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 October 22, 1970, by the issuance of license number 107476 by the New York State Education Department.
(Pet. Ex. #3)

2. On or about March 12, 1996, Respondent entered a Consent Agreement with the Commonwealth of Pennsylvania State Board of Medicine, (hereinafter Board) in which Respondent admitted that his right to practice as a physician in the Commonwealth of Pennsylvania was subject to disciplinary action under the Medical Practice Act, 63 P.S. Section 422.41(7) and 49 Pa. Code §18.158 by aiding and assisting in the unlicensed practice of medicine based upon the following facts that he admits are true: that during July 1990, he employed a physician assistant who was not certified and had not received a supervision letter authorizing her to work pending receipt of her Board examination scores; the physician assistant saw at least one patient and treated him; and the physician assistant wrote a prescription for a patient which was co-signed by Respondent. (Ex.4A)

3. As a result of the above, the Commonwealth of Pennsylvania issued a public reprimand to Respondent and imposed a civil penalty in the amount of \$1,000 plus reimbursement costs. (Ex. 4A)

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 unanimously concluded that the Department has sustained its burden of proof. The preponderance of the evidence demonstrates that the Pennsylvania Board reprimanded and fined Respondent for allowing an unlicensed physician assistant under his supervision to practice medicine. Section 6530(9)(d) defines professional misconduct as having one's 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 revocation, suspension or other disciplinary action, would if committed in New York

State, constitute professional misconduct under the laws of New York state. As a result, the Hearing Committee voted to sustain the the Specification of professional misconduct contained within the Statement of Charges.

DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, determined by a vote of 2 to 1, that Respondent should be censured and reprimanded as well as fined \$1,000 for his professional misconduct. This determination was reached upon due consideration of the full spectrum for penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties.

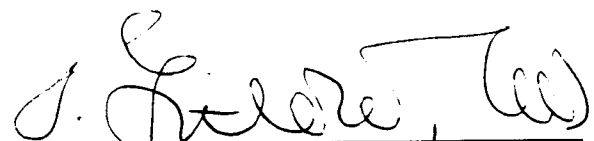
The Hearing Committee notes that Respondent did not appear at the hearing and that there is nothing to consider in mitigation of the penalty. The majority of the Hearing Committee, however, believes that Respondent's misconduct of allowing an uncertified physician assistant to see a patient on one occasion and to write one prescription does not warrant revocation. The majority of the Hearing Committee believes that a censure and reprimand and a civil penalty of \$1,000 is consistent with the penalty imposed in Pennsylvania. More importantly it sends a sufficient message that professional misconduct of this nature is not permissible in the State of New York. Therefore, under the circumstances, censure and reprimand and a \$1,000 civil penalty are the appropriate sanctions in this instance.

ORDER

Based upon 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.**
2. Respondent is hereby **CENSURED AND REPRIMANDED.**
3. A fine in the amount of One Thousand Dollars (\$1,000.00) is imposed upon the Respondent. Payment of the fine shall be made within thirty (30) days of the effective date of this ORDER to the New York State Department of Health, Bureau of Accounts Management, Revenue and Cash Unit, Corning Tower Building, Room 1245, Empire State Plaza, Albany, New York, 12237.
4. Any civil penalty not paid by the date prescribed herein shall be subject to all provisions of law relating to debt collection by the state of New York. This includes, but is not limited to, the imposition of interest late payment charges and collection fees; referral to the New York State Department of Taxation and Finance for collection; and non-renewal of permits or licenses (tax law 171(27); state finance law 18; CPLR 5001; executive law 32).
5. 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: New York, New York
11/29, 1996



STANLEY GITLOW, M.D. (Chair)

JOHN H. S. HOLLOMAN, JR., M.D.
DENNIS HORRIGAN



TO: Marcia Kaplan, Esq.
NYS Department of Health
5 Penn Plaza-Sixth Floor
New York, New York 10001

Kermit Gosnell, M.D.
3801 Lancaster Street
Philadelphia, PA 19104

APPENDIX I

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

IN THE MATTER
OF
KERMIT GOSNELL, M.D.

NOTICE OF
REFERRAL
PROCEEDING

TO: KERMIT GOSNELL, M.D.
3801 Lancaster Street
Philadelphia, PA 19104

PLAINTIFF'S
DEFENDANT'S
COMPLAINT'S
DEPARTMENT'S
PETITIONER'S
RESPONDENT'S
DATE 9/26/96
STERLING REPORTING SERVICE, INC.

EXHIBIT 1

(for identification)
in evidence
REPORTER ON

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. 1996) and N.Y. State Admin. Proc. Act §§301-307 and 401 (McKinney 1984 and Supp. 1996). The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on September 10, 1996 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, Corning Tower Building, 25th Floor, Empire State Plaza, Albany, New York 12237, ATTENTION: HON. TYRONE BUTLER, DIRECTOR, BUREAU OF ADJUDICATION, (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.

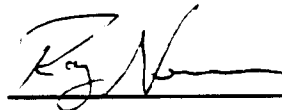
You may file a written answer, brief, and affidavits with the Committee. Six copies of all papers you wish to submit must be filed with the Bureau of Adjudication at the address indicated above, no later than fourteen days prior to the scheduled date of the Referral Proceeding, and a copy of all papers 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.

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
July 31, 1996



ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct

Inquiries should be addressed to:

Marcia E. Kaplan
Associate Counsel
NYS Department of Health
Division of Legal Affairs
5 Penn Plaza, Suite 601
New York, New York 10001
(212) 613-2615

IN THE MATTER
OF
KERMIT GOSNELL, M.D.

STATEMENT
OF
CHARGES

KERMIT GOSNELL, M.D., the Respondent, was authorized to practice medicine in New York State on or about October 22, 1970, by the issuance of license number 107476 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. On or about March 26, 1996, the Pennsylvania State Board of Medicine issued an Order publicly reprimanding Respondent and imposing a civil penalty of \$1000 and reimbursement of costs to the Commonwealth of \$653.70. This Order was based upon a Consent Agreement in which Respondent admitted that his right to practice as a physician in the Commonwealth of Pennsylvania was subject to disciplinary action under the Medical Practice Act, 63 P.S. Section 422.41(7) and 49 Pa. Code Sec. 18.158 by aiding and assisting in the unlicensed practice of medicine based upon the following facts he admits are true: that during July 1990, he employed a physician's assistant who was not certified and had not received a supervisional letter authorizing her to work pending receipt of her Board examination scores; the physician's assistant saw at least one patient and treated him; and the physician's assistant wrote a prescription for a patient which was co-signed by Respondent. If committed in New York state, the conduct resulting in Respondent's disciplinary action in Pennsylvania would constitute professional misconduct under the laws of New York state (namely

N.Y. Educ. Law §6530(11), permitting, aiding or abetting an unlicensed person to perform activities requiring a license and/or 6530(25), delegating professional responsibilities to a person when the licensee delegating such responsibilities knows or has reason to know that such person is not qualified, by training, by experience, or by licensure, to perform them.

SPECIFICATION OF CHARGES
HAVING HAD DISCIPLINARY ACTION TAKEN

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(9)(d)(McKinney Supp. 1996) by having his license to practice medicine revoked, suspended or having other disciplinary action taken, or having his application for a license refused, revoked or suspended or having voluntarily or otherwise surrendered his or her license after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation, suspension or other disciplinary action involving the license or refusal, revocation or suspension of an application for a license or the surrender of the license would, if committed in New York state, constitute professional misconduct under the laws of New York state (namely N.Y. Educ. Law §6530(11) and/or (25), as alleged in the facts of the following:

1. Paragraph A.

DATED: July 31, 1996
New York, New York



ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct