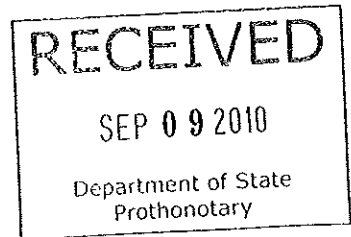


COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF STATE  
BEFORE THE STATE BOARD OF MEDICINE



Commonwealth of Pennsylvania :  
Bureau of Professional and Occupational Affairs :  
v. : Docket no. 1595-49-10  
Kermit B. Gosnell, M.D., : DOS File no. 10-49-07163  
Respondent :

**MEMORANDUM ORDER CONTINUING TEMPORARY SUSPENSION**

This matter comes before the undersigned hearing examiner on an order of temporary suspension and notice of hearing issued by the probable cause screening committee of the State Board of Medicine (Board) August 16, 2010.<sup>1</sup> The Board's temporary suspension order was issued upon the submission of a petition for immediate temporary suspension by the prosecuting attorney for the Commonwealth Bureau of Professional and Occupational Affairs, alleging that the continued practice of medicine by Kermit B. Gosnell, M.D. (Respondent) poses an immediate and clear danger to the public health and safety.<sup>2</sup> The petition and order were served upon Respondent at his address of record, 3801 Lancaster Avenue, Philadelphia, PA 19104, on August 19, 2010, as evidenced by a United States Postal Service certified mail return receipt, filed of record. A notice scheduling a preliminary hearing for September 8, 2010, was issued by the Department of State Prothonotary August 19, 2010, which was mailed to Respondent at his address of record.

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<sup>1</sup> The temporary suspension order was signed by Radheshyam M. Agrawal, M.D., committee member.

<sup>2</sup> The petition and order were filed simultaneously August 16, 2010.

The Commonwealth's petition comprises a single count, containing the following factual averments:

- Respondent admitted to a United States Drug Enforcement Agency (DEA) investigator that he prescribed Oxycontin, a Schedule II controlled substance, to patients "for their emotional well-being;"
- Respondent admitted to the DEA investigator that he prescribed controlled substances to patients whom he believed were selling the controlled substances for monetary gain; and
- Respondent admitted to the DEA investigator that he allowed patients to pick up controlled substance prescriptions in the names of other patients.

On the basis of the above factual averments, the Commonwealth alleged that "Respondent's continued practice or resumption of practice of medicine within the Commonwealth of Pennsylvania makes Respondent an immediate and clear danger to the public health and safety."

This action is brought under section 40(a) of the Medical Practice Act of 1985,<sup>3</sup> 63 P.S. § 422.40(a), which provides as follows:

**§ 422.40. Temporary and automatic suspensions**

(a) **Temporary suspensions.**-- A license or certificate issued under this act may be temporarily suspended under circumstances as determined by the board to be an immediate and clear danger to the public health and safety. The board shall issue an order to that effect without a hearing, but upon due notice to, the licensee or certificate holder

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<sup>3</sup> Act of October 5, 1978, P.L. 1109, No. 261, *as amended*, 63 P.S. § 271.1 *et seq.*

concerned at his or her last known address, which shall include a written statement of all allegations against the licensee or certificate holder. The provisions of section 9 shall not apply to temporary suspension. The board shall thereupon commence formal action to suspend, revoke or restrict the license or certificate of the person concerned as otherwise provided for in this act. All actions shall be taken promptly and without delay. Within 30 days following the issuance of an order temporarily suspending a license, the board shall conduct or cause to be conducted a preliminary hearing to determine that there is a prima facie case supporting the suspension. The licensee or certificate holder whose license or certificate has been temporarily suspended may be present at the preliminary hearing and may be represented by counsel, cross examine witnesses, inspect physical evidence, call witnesses, offer evidence and testimony and make a record of the proceedings. If it is determined that there is not a prima facie case, the suspended license shall be immediately restored. The temporary suspension shall remain in effect until vacated by the board, but in no event longer than 180 days [*footnote omitted*].

The preliminary hearing was held as scheduled in Harrisburg September 8, 2010. Juan A. Ruiz, Esquire represented the Commonwealth as prosecuting attorney. Respondent did not attend the preliminary hearing nor was he represented by counsel.

At the preliminary hearing, the Commonwealth offered testimony from Stephen Dougherty, a diversion investigator with the DEA. The Commonwealth also presented copies of the petition for immediate temporary suspension and order of temporary suspension and notice of hearing, and an order to show cause issued by the DEA seeking the revocation of Respondent's certificate permitting him to prescribe and dispense controlled substances. Investigator Dougherty testified that he interviewed Respondent at Respondent's office in Philadelphia February 18, 2010, as part of a raid of that facility conducted by the FBI, DEA and the Philadelphia Police Department. Dougherty stated that in the interview, Respondent stated the following:

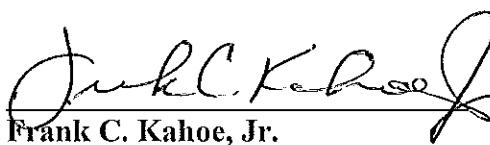
- Respondent has prescribed Oxycontin, a Schedule II controlled substance, to patients “for pain and also for their emotional well-being;”
- Respondent believes that, due to the economy, “many patients” sell their prescriptions; and
- Many patients pick up prescriptions for controlled substances written for others.

With respect to patients picking up prescriptions in other patients’ names and selling the prescriptions he has written, Respondent told the investigator that there was “nothing he could do about it.”

The evidence presented by the Commonwealth, particularly the testimony of DEA Investigator Dougherty outlined above, constitutes a prima facie case in support of the temporary suspension of Respondent’s license in accordance with section 40(a) of the Medical Practice Act. Accordingly, the following order shall issue.

**AND NOW**, this 8<sup>th</sup> day of **September, 2010**, following the preliminary hearing held this date, and in accordance with the foregoing discussion, the undersigned hearing examiner **finds** that there is a prima facie case supporting the immediate temporary suspension of Respondent's license to practice medicine and surgery as ordered by the probable cause screening committee of the State Board of Medicine August 16, 2010, and it is hereby **ordered** that said license, **no. MD009422E**, shall remain suspended until otherwise ordered by the State Board of Medicine but **in no event longer than 180 days from the date of service of the petition and order of temporary suspension, August 19, 2010.**

**BY ORDER:**

  
Frank C. Kahoe, Jr.  
Chief Hearing Examiner

**DATE OF MAILING:** September 9, 2010

*For the Commonwealth:*

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