

IN THE MATTER OF
JOANNE B. KELLY, M.D.,
Respondent
License Number: D21467

*** BEFORE THE MARYLAND**
*** STATE BOARD OF**
*** PHYSICIAN QUALITY**
*** ASSURANCE**
*** BPQA Cases Nos. 98-0486**
& 2001-0630

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ORDER LIFTING STAY OF SUSPENSION

The Board first issued charges in September of 1999 that Dr. Kelly violated the standard of quality care in her postoperative monitoring, treatment and resuscitation efforts on behalf of one of her anesthesia patients who died while under her care. As a resolution to those charges, Dr. Kelly entered into a Consent Order on February 23, 2000. Pursuant to that Consent Order, Dr. Kelly was suspended for a period of three years, but that suspension was stayed and Dr. Kelly was placed on probation for a period of three years, subject to numerous terms and conditions.

The Consent Order provided, among other things, that if the Board would conduct peer reviews of the care provided by Dr. Kelly and that if the Board received any report that Dr. Kelly had failed to deliver quality medical care, violated the conditions of the order, or otherwise violated the Medical Practice Act, the Board may impose any other sanctions it deems appropriate. The order also stated that if Dr. Kelly presented a danger to the health, safety or welfare of the public, the Board may summarily suspend her license. The order permitted Dr. Kelly to petition for the termination of the conditions of the order after three years, but Dr. Kelly has not petitioned for termination of the conditions in that order.

Upon receipt of a subsequent peer review report in which both peer reviewers agreed that Dr. Kelly had not met the standard of care in her treatment of four patients in her pain clinic, one of whom died of drug and alcohol intoxication, the Board charged Dr. Kelly with violation of probation on September 18, 2002. The Board notified Dr. Kelly to attend a hearing and show cause why the stay of the suspension of her license imposed in the Consent Order should not be immediately lifted. Dr. Kelly attended a Show Cause Hearing on September 25, 2002. Her attorney requested that the hearing be postponed for one month in order for him to prepare a defense. The Board granted that request, but ordered that Dr. Kelly in the meantime refrain from practicing anesthesia or prescribing any and all Controlled Dangerous Substances,

On October 23, 2002, Dr. Kelly appeared again and took part in her Show Cause Hearing. At the conclusion of this hearing, the Board declined to summarily suspend her license. The Board issued an order, however, stating that if the hearing on the merits before the Administrative Law Judge did not take place as scheduled on March 25 and 26, 2003, the Board would revisit the issue of lifting the stay of her summary suspension. In that order, the Board also ordered that Dr. Kelly undergo a psychiatric and psychological evaluation.

Subsequently, the Administrative Law Judge granted a short postponement of the case until April of 2003 in order to accommodate the schedule of Dr. Kelly's lawyer.

Subsequently, Dr. Kelly moved for an additional postponement in order to further prepare her defense. The Administrative Law Judge then granted a much lengthier postponement, until June 24, 2003, because: (1) the Board had received further peer review reports, questioning Dr. Kelly's care in additional cases, and had amended the

charges to include these additional cases; and (2) the psychiatric and psychological reports on Dr. Kelly's condition, ordered by the Board in October, were not received as early as expected and were not submitted until March of 2003. The Board also amended the charges to include a charge of incompetence to practice medicine.

The case was subsequently rescheduled for June 24, 2003. On May 22, 2003, Dr. Kelly again filed a request for postponement, alleging that going forward with the hearing would "have significant adverse consequences for her health" and that going forward with the case "will compromise her inability to defend herself." The Administrative Prosecutor objected to this further postponement. The Administrative Law Judge initially denied the request for a postponement.

On or about June 6, 2003, however, Dr. Kelly filed a "Second Motion for Postponement of the Administrative Hearing." In this motion, Dr. Kelly alleged that she is suffering from "anxiety and major depression which is interfering significantly with her ability to focus and organize her thoughts." Dr. Kelly's motion summarized her own experts' opinions: "she is too upset to focus on complex issues which will undoubtedly arise during the hearing" As an example of her disorganization, Dr. Kelly cited her own behavior in accidentally putting Superglue in her eye after the prehearing conference. Overruling the Administrative Prosecutor's objection, which pointed out that a physician charged with incompetence to practice medicine should not be allowed an indefinite postponement of the hearing on the ground that she is incompetent even to assist in her own defense, the Administrative Law Judge granted the motion and postponed the hearing "until January 19-23 and 26, 2004, subject to confirmation by the parties."

The Board thus revisits the issue of lifting the stay of the summary suspension. The Board is absolutely convinced that the health and safety of the public requires a lifting of the stay at this time. The Board is faced with the death of two of Dr. Kelly's patients, one of whose cases resulted in the original Consent Order and another whose case will not be resolved at any time in the near future. Dr. Carol Kleinman, a Board-certified psychiatrist and neurologist who examined Dr. Kelly for the Board, reported that "it is unsafe for Dr. Kelly to continue to practice medicine." After completing a neuropsychological evaluation, David P. Fago, Ph.D, a licensed psychologist, reported that "it would seem premature for her at this time to return to practice."

Dr. Kelly's own witness, Katherine Whipple, Ph.D, opined after an evaluation that Dr. Kelly, because of her extreme anxiety and major depression, "will be unable to fully consider and address the issues which will be presented at a hearing scheduled for late June of 2003." Using virtually identical language, Dr. Kelly's psychiatrist, Dr. Carl Gray, opined that Dr. Kelly, because of her anxiety and major depression, "will be unable to fully consider and address the issues which will be presented at the hearing scheduled for late June of 2003." Both of Dr. Kelly's own evaluators opine that, although Dr. Kelly is incapable now even of participating in the hearing, that her condition is treatable and that improvement can be expected in six months -- yet both suggest that the hearing be postponed from six to twelve months.

The Administrative Prosecutor has now moved the Board to lift the stay of the summary suspension, noting that the medical and psychological reports are unanimous that Dr. Kelley is currently incompetent because: (1) in the opinions of both Board evaluators, she is incompetent to practice medicine, and (2) in the opinions of both of


Dr. Kelly's own evaluators, she is incompetent even to participate in a hearing. Dr. Kelly, in the second motion for a postponement, agreed "to continue in an indefinite suspension until the issues in this case are resolved."

The Board has determined that the health, safety and welfare of the public imperatively requires that the stay of the suspension of Dr. Kelly's license be immediately lifted. Dr. Kelly is in no condition to practice medicine, and the danger to the public is too great to allow her to do so. The suspension now effectuated will remain in effect until the conclusion of the administrative proceedings in this case, including any exceptions process conducted by the Board and the issuance of a Final Decision following any exceptions process.

Therefore, it is this 25th day of June, 2003 hereby ORDERED that the stay of the suspension of the medical license of Dr. Joanne B. Kelly, License No. D21467, is hereby **LIFTED**, and Dr. Kelly's license is hereby **SUSPENDED**; and it is further

ORDERED that this Order is a **PUBLIC DOCUMENT** within the meaning of Md. State Gov't Code Ann., Section 10-617 (h) (2) (vi).

6/25/03
Date



C. Irving Pinder, Jr., Executive Director
Maryland State Board of Physician Quality Assurance

NOTICE OF RIGHT TO APPEAL

Dr. Kelly may file an appeal of this Order Lifting Stay of Suspension within ten days of its date. An appeal must be in writing and should be addressed to: Barbara Vona, Esq., Chief of Compliance, Board of Physician Quality Assurance, 4201 Patterson Avenue, Baltimore, Maryland 21215. If an appeal is filed, an Administrative Law Judge will provide an administrative hearing within 30 days of the appeal. See COMAR 10.32.02.05 I and J.