

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

FROTHNOTARY

2007 DEC 21 AM 10:05

In the Matter of the :
Application for a License to : Docket No. 0332-49-07
Practice Medicine Without Restriction :
of Michael N. Kessler, M.D., : File No. 07-49-00779
Applicant :
:

Department of State

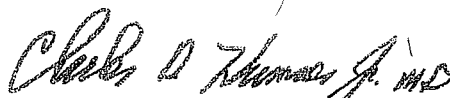
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Final Order Adopting Hearing Examiner's
Proposed Adjudication and Order

AND NOW, this 21st day of December 2007, the State Board of Medicine (Board),
having reviewed the entire record of this case established before the hearing examiner adopts the
Proposed Adjudication and Order of the hearing examiner as the Final Adjudication and Order in
this case. A copy of the Proposed Adjudication and Order is attached as Attachment A.

This order shall take effect immediately.

BY ORDER:
STATE BOARD OF MEDICINE



Charles D. Hummer, Jr., M.D., Chairman

Respondent's Attorney: Kathryn L. Simpson, Esquire
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Prosecuting Attorney: Keith E. Bashore, Esquire
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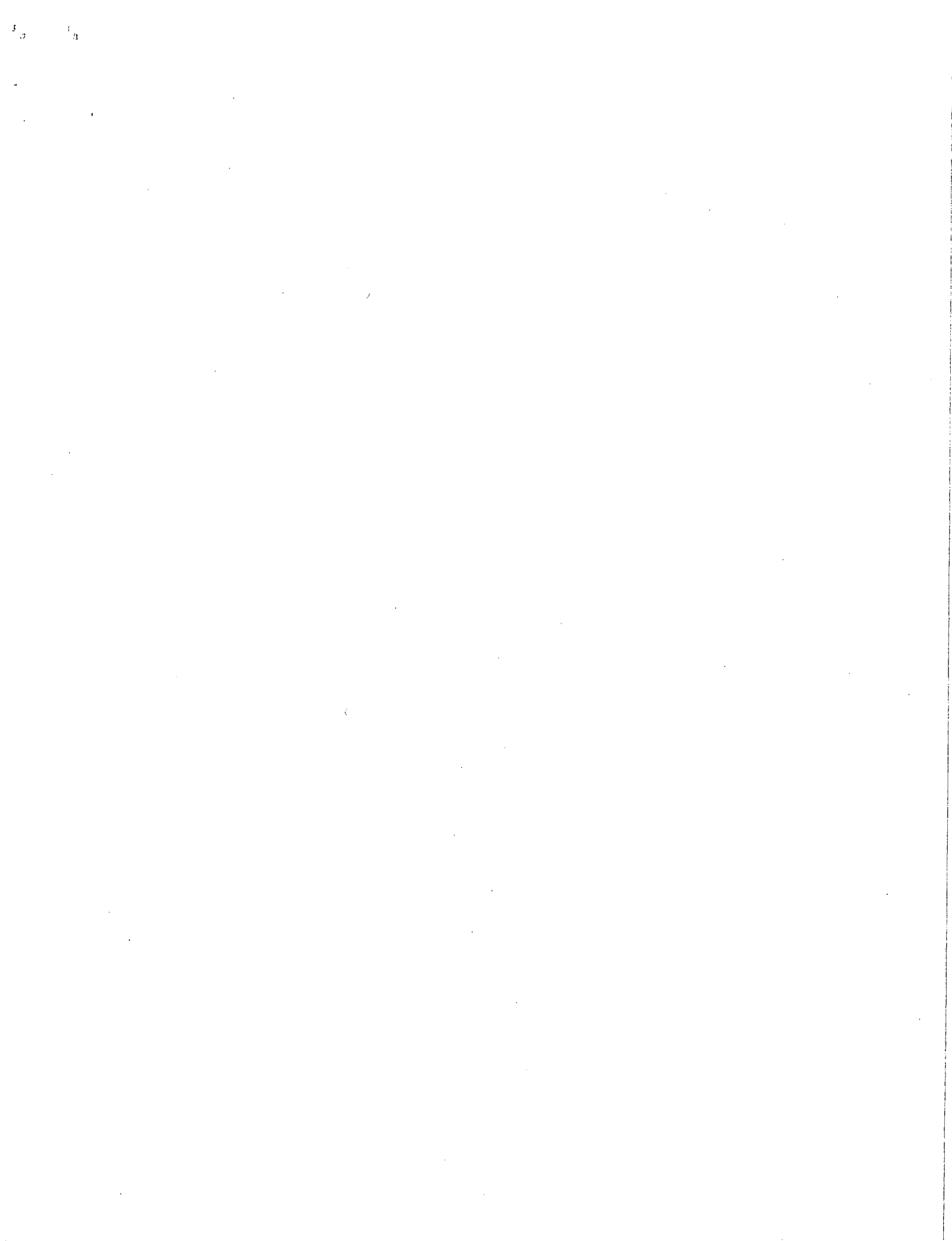
Date of Mailing: December 21, 2007

HISTORY

This matter arises on an appeal by Michael Nathaniel Kessler (Applicant) of the provisional denial by the State Board of Medicine (Board) of his application for a license to practice medicine without restriction in the Commonwealth. On January 29, 2007, the Board provisionally denied Applicant's application for a license based on sections 22 and 41 of the Medical Practice Act (Act), Act of December 20, 1985, P.L. 457, No. 112, *as amended*, 63 P.S. §§ 422.22 and 422.41, respectively. Section 22 provides that the Board shall not issue a license to an applicant unless the applicant establishes that, among other things, he or she is of good moral character, while section 41 authorizes the Board to refuse a license to an applicant who has had a license revoked, suspended or otherwise disciplined by the licensing authority of another state, § 41(4), 63 P.S. § 422.41(4), or who has been found guilty of immoral or unprofessional conduct. § 41(8), 63 P.S. § 422.41(8).

More specifically, the Board's provisional denial letter cited documents attached to Applicant's application indicating (1) that his license in New York had been revoked by the New York State Department of Health, Office of Professional Misconduct (New York Board) because of his alleged failure to disclose his affiliation with and dismissal from a psychiatry residency program on two hospital medical staff applications and to a professional liability carrier, and because of his alleged failure to disclose a criminal conviction on his application for a residency program, and (2) that the Massachusetts Board of Registration in Medicine (Massachusetts Board) revoked his license to practice medicine in that state based on the New York Board's revocation action.

Applicant submitted a timely appeal of the provisional denial and requested a hearing. By order dated February 22, 2007, the Board delegated this matter to a hearing examiner to



conduct a hearing and issue a decision. A hearing occurred on April 16, 2007, at which the Applicant did not appear, and shortly after the hearing on the same day, the Office of Hearing Examiner found that the Applicant had filed a faxed request for a continuance at approximately 10:30 p.m. the previous evening, based on foul weather that interfered with his ability to travel from New York to Pennsylvania for the hearing. The matter was subsequently scheduled for hearing on July 31, 2007, but that hearing was rescheduled at the Applicant's request because an essential witness on his behalf was to be out of the country. The matter was rescheduled again for August 31, 2007, but was rescheduled once more at the Applicant's request because the same witness was unavailable. At that point, the matter was rescheduled for hearing on October 12, 2007, and did occur on that date. Keith E. Bashore, Esquire, was present on behalf of the Commonwealth. Applicant appeared at the hearing and was represented by counsel, Kathryn L. Simpson, Esquire. The parties waived the filing of post-hearing briefs. The record in this matter was closed on October 25, 2007, with the filing of the hearing transcript.

FINDINGS OF FACT

1. On or about November 1, 2006, Applicant submitted to the Board an application for a license to practice medicine without restriction (application). Board records; Exhibit C-1 at pages 804 – 805 (Application for a License to Practice Medicine without Restriction).

2. On January 23, 2007, the Board notified Applicant that the Board had provisionally denied his application based on attached documents indicating (1) that his license in New York had been revoked by the New York Board because of his alleged failure to disclose his affiliation with and dismissal from a psychiatry residency program on two hospital medical staff applications and to a professional liability carrier, and because of his alleged failure to disclose a criminal conviction on his application for a residency program, and (2) that the Massachusetts Board had revoked his license to practice medicine in that state based on the New York Board's revocation action. Board records (Letter of January 23, 2007 from Sabina I. Howell to Michael Nathaniel Kessler).

3. The Board's January 23, 2007 letter notified Applicant that its provisional denial was based on sections 22 and 41 of the Act, §§ 422.22 and 422.41, respectively, the first of which provides that the Board shall not issue a license to an applicant unless the applicant establishes that, among other things, he or she is of good moral character, § 22(b), 63 P.S. § 422.22(b), and the latter of which authorizes the Board to refuse a license to an applicant who has had a license revoked, suspended or otherwise disciplined by the licensing authority of another state, § 41(4), 63 P.S. § 422.41(4), or who has been found guilty of immoral or unprofessional conduct, § 41(8), 63 P.S. § 422.41(8). *Id.*

4. Applicant timely appealed the Board's provisional denial and requested a hearing. Board records (Applicant's letter of February 8, 2007).

5. Applicant appeared at the hearing in this matter and was represented by counsel.

T at 4.

Applicant's education, licensure and medical employment background

6. Applicant obtained his M.D. from the University of Connecticut School of Medicine in May of 1997. T at 10.

7. Applicant also earned a master's degree in psychology from Central Connecticut State University. *Id.*

8. Applicant was licensed to practice medicine in the state of New York in 1999. T at 14.

9. On June 30, 2001, Applicant completed a four-year combined internship and residency at Long Island Jewish Medical Center and Hillside Hospital, the affiliated psychiatric hospital, which are now known collectively as the North Shore Long Island Jewish Health System due to a merger. T at 10.

10. Applicant was licensed to practice medicine in the state of Massachusetts in July 2001. T at 15.

11. On July 1, 2001, Applicant began a residency in child and adolescent psychiatry at Cambridge Health Alliance (CHA) in Cambridge and Somerville, Massachusetts, where he was paid, enrolled in the health plan, had a key to CHA's locked unit, and began working with adolescent inpatients. T at 10, 12 – 13.

12. Applicant was terminated from the residency at CHA on August 1, 2001 because he was arrested on July 8, 2001. T at 11.

Applicant's Arrests

Arrest of July 8, 2001: Criminal Docket #0157CR001822 – Wrentham (Massachusetts)

District Court

13. On July 8, 2001, Applicant was arrested, in Norwood, Massachusetts, at Criminal Docket #0157CR001822, and charged with open and gross lewdness, a felony in Massachusetts, as well as with disorderly conduct. T at 11; Exhibit C-1 at page 806 (Applicant's Explanation for "Yes" Answers on Page 2 of Application); Exhibit A-1.

14. The charge was based on allegations of two males in their twenties who stated that Applicant had been masturbating in his car in a nearby parking lot. Exhibit C-1 at page 806 (Applicant's Explanation for "Yes" Answers on Page 2 of Application).

15. The disorderly conduct charge was dismissed at the request of the Commonwealth of Massachusetts. Exhibit A-1.

16. Under the Massachusetts Rules of Criminal Procedure, a defendant may plead not guilty, but admit to sufficient facts to warrant a finding of guilty. Official Notice of Mass. Ann. Laws R. Crim. P. Rule 12(a)(2) (2007).

17. Applicant pled "not guilty" to the charge of open and gross lewdness but admitted sufficient facts, accepted after colloquy and 278 Section 29D warning,¹ to warrant a finding of guilty, but the matter was continued for one year without a finding, and the open and gross lewdness count eventually was dismissed on June 3, 2003. T at 17 – 18, 43; Exhibit A-1.²

¹Under Massachusetts law, a judge before accepting a plea must give a warning to the defendant concerning the consequences to the defendant if the defendant is not a U.S. citizen; this is known as a 278 section 29D warning. Mass. Ann. Laws ch. 278, § 29D (2007). It is not relevant to this case.

²During the course of cross-examining the Applicant, the Commonwealth took issue with the meaning of the handwritten notation on the fourth page of Exhibit A-1, next to the stamped date "June 3, 2003." T at 34, 42. (Footnote 2 continued on following page).

Arrest of November 13, 2001: Criminal Docket #0189CR002580 – Falmouth
(Massachusetts) District Court

18. On or about November 13, 2001, Applicant was arrested, in Falmouth, Massachusetts, at Criminal Docket #0189CR002580, and charged with open and gross lewdness, a felony in Massachusetts, and indecent exposure. T at 18 – 19; Exhibit C-1 at page 806 (Applicant's Explanation for "Yes" Answers on Page 2 of Application); Exhibit A-2.

19. The charges were based on allegations by two boys, ages 10 and 12, who lived across the street from Applicant and who alleged that they could see a man masturbating in the window of Applicant's home. Exhibit C-1 at page 806 (Applicant's Explanation for "Yes" Answers on Page 2 of Application); Exhibit A-3 (Opinion of Massachusetts Supreme Judicial Court in *Commonwealth v. Michael Kessler*, 442 Mass. 770, 817 N.E.2d 711 (2004)).

20. Applicant stood trial on the charges at Criminal Docket #0189CR002580 on June 2, 2002, and was convicted of open and gross lewdness; the judge dismissed the indecent exposure count as a lesser included offense of the open and gross lewdness count. T at 19; Exhibit A-2; Exhibit A-3 (Opinion of Massachusetts Supreme Judicial Court in *Commonwealth v. Michael Kessler*, 442 Mass. 770, 817 N.E.2d 711 (2004)).

Applicant testified that the word handwritten next to that date says "clear." T at 34. The Commonwealth questioned that interpretation of the word, which is difficult to read, if not entirely illegible.

A close examination of the notation at issue indicates that it is similar to the handwritten notation, on the third page of A-1, under the stamped date "June 4, 2002," next to the handwritten text "ct 1." The June 4, 2002 notation is most logically deciphered as "Dism," based on the fact that the first page of A-1 indicates unmistakably that count 1 was dismissed. (See the "Sentence or other disposition" box to the right and just below Count 1 on the first page of A-1). Beside the similarity to the June 4, 2002 notation, the notation at issue, on the fourth page of A-1, also has a pronounced dot or mark which, rather than a stray mark, looks like the dot for the letter "i." Because of that dot and the similarity between the handwritten note dated June 3, 2003 and the handwritten note under the date June 4, 2002, the most logical conclusion is that the handwritten notation next to June 3, 2003 also should be deciphered as "Dism." It therefore denotes that the charge was dismissed on that date, which is consistent with Applicant's testimony and with the lack of reference to it, in the subsequent disciplinary matters, as anything other than an arrest. *C.f.* Finding of Fact 38, below.

21. Applicant appealed and the Massachusetts Supreme Judicial Court overturned the conviction in an opinion filed November 12, 2004, reversing the judgment of the District Court, setting aside the guilty verdict, and acquitting Applicant of the charge of open and gross lewdness; the indecent exposure count, which the judge had dismissed during the trial, was not reinstated. Exhibit A-2; Exhibit A-3 (Opinion of Massachusetts Supreme Judicial Court in *Commonwealth v. Michael Kessler*, 442 Mass. 770, 817 N.E.2d 711 (2004)).

22. Because of the dismissal of the charges stemming from the July 8, 2001 arrest and the appellate court's judgment of acquittal on the only outstanding charge stemming from the November 13, 2001 arrest, Applicant has no criminal convictions on his record. Findings of Fact 17 and 21.

Applicant's misrepresentations

23. After CHA terminated Applicant from its employment in August 2001, Applicant was unable to find employment in Massachusetts. T at 11 - 12.

24. Because of his inability to find any kind of work in Massachusetts, Applicant returned to New York, where, within a week of his return, he found employment at Brunswick Hospital Center located in Amityville, New York. *Id.*

25. Applicant started full time employment at Brunswick Hospital Center on December 1, 2001. T at 12.

26. However, when Applicant filled out the employment application for Brunswick Hospital Center, he did not include his month of employment with CHA, during July 2001, in the space in which the employment application asked about every hospital where he had ever had privileges. *Id.*

27. After returning to New York, Applicant also filled out an employment application for Holliswood Hospital, and in response to the directive to list every place that he had had privileges, he again omitted his employment with CHA. T at 13.

28. As a part of securing employment at Brunswick Hospital Center, Applicant had to fill out an application so that he could be added to the employer's group malpractice insurance policy. *Id.*

29. The malpractice insurance application included a question that asked if Applicant had ever been arrested for a felony. T at 14.

30. Applicant answered that question by stating "no," although he knew, at the time, that what he had been arrested for in July 2001 was a felony in Massachusetts. *Id.*

Actions by the New York and Massachusetts Boards of Medicine

New York

31. In approximately October 2002, Applicant received the renewal for his license to practice medicine in New York. T at 14.

32. The renewal application asked whether Applicant had ever been disciplined by a hospital, as well as whether Applicant had been arrested for a felony or a misdemeanor, and Applicant answered both questions truthfully, in the affirmative. T at 14 – 15.

33. On December 13, 2002, the New York Board issued a Statement of Charges against Applicant, charging him with (1) having been terminated from CHA; (2) lying about that termination on his application to Brunswick Hospital Center; (3) lying about the termination on his application to Holliswood Hospital; (4) lying on his application for medical malpractice insurance about having been the subject of an investigation or disciplinary proceeding by a

governmental agency, professional society or professional review board of a hospital and about having been charged with a felony; and (5) being found guilty of gross lewdness and lascivious behavior in Falmouth District Court. Exhibit C-1 at pages 836 – 837 (In the Matter of Michael N. Kessler, M.D., CO-02-10-05389-A, Statement of Charges).

34. After a hearing on January 22, 2003, which Applicant attended, the New York Board sustained all of the specifications alleged in the Statement of Charges, except the allegation that he lied on his application for medical malpractice insurance about having been the subject of an investigation or disciplinary proceeding by a governmental agency, professional society or professional review board of a hospital, which was not supported. Exhibit C-1 at pages 822 – 831 (In the Matter of Michael N. Kessler, M.D., BPMC No. 03-43, Determination and Order).

35. The New York Board determined that Applicant's actions constituted fraudulent practice of the profession, moral unfitness to practice medicine, the willful making or filing of a false report, and conviction of an act in another state which would, if committed in New York, be a crime. *Id.*

36. The New York Board revoked Applicant's license to practice medicine in New York. *Id.*

37. At the time of the New York Board's decision, Applicant's conviction on the November 13, 2001 arrest in Falmouth had not yet been overturned by the Massachusetts Supreme Judicial Court. T at 40; Exhibit A-2.

38. The New York Board did not set forth any specifications or make any findings related to the July 2001 arrest. Exhibit C-1 at pages 836 – 837 (In the Matter of Michael N. Kessler, M.D., CO-02-10-05389-A, Statement of Charges).

Massachusetts

39. Applicant had not renewed his license to practice medicine in Massachusetts after its initial issuance in July 2001 because at the time for renewal in December 2001, he had already returned to New York and did not plan to return to Massachusetts to work. T at 15.

40. Because he did not renew his license in Massachusetts, after the expiration date, Applicant's license there was labeled "revoked," although it was not a disciplinary action and he was considered to have an inchoate right to renew. T at 15 – 16.

41. On September 2, 2003, the Massachusetts Board initiated a disciplinary action against Applicant's Massachusetts license based on allegations that Applicant (1) had exposed himself in a parking lot in Walpole, Massachusetts; (2) had been criminally convicted in Falmouth District Court for standing nude in a window exposing himself in front of children; (3) had his New York license revoked for providing false information on two applications for hospital privileges and on an application for professional liability insurance; and (4) had been convicted of open and gross lewdness. Exhibit C-1 at page 842 (Commonwealth of Massachusetts Board of Registration in Medicine, In the Matter of Michael N. Keller, M.D., Adjudicatory Case No. 03-22-DALA).

42. On the advice of an attorney, Applicant did not attend any hearings related to the action against his license before the Massachusetts Board. T at 16, 46.

43. On July 26, 2006, the Massachusetts Board issued a Final Decision and Order which acknowledged that the Massachusetts Supreme Judicial Court had overturned Applicant's conviction and found that Applicant had engaged in conduct undermining the public confidence in the integrity of the medical profession and lacked good moral character, had engaged in conduct which placed into question his ability to practice medicine, and had been disciplined by

another state for conduct substantially similar to conduct which has the capacity to deceive or defraud; as a result, the Massachusetts Board revoked Applicant's inchoate right to renew his license to practice medicine in Massachusetts. Exhibit C-1 at pages 850 – 857 (Commonwealth of Massachusetts Board of Registration in Medicine, In the Matter of Michael N. Keller, M.D., Final Decision and Order, Adjudicatory Case No. 03-22-DALA (RM-03-662)).

Applicant's situation since the arrests and other states' disciplinary actions

44. After the New York Board's revocation of his license in 2003, Applicant obtained a license as a life, accident and health insurance broker in New York and began working in the insurance field, which led to his current ownership of his own insurance agency, K & L Agency. T at 8, 17.

45. Applicant also obtained licenses as a life, accident and health insurance broker in Connecticut, New Jersey and Pennsylvania. T at 17.

46. Applicant has never had discipline against his insurance licenses in any state. T at 31.

47. Applicant is also currently employed with Aram Health and Disease Management of New Jersey, a firm that works on disease management in order to minimize increases in the cost of health insurance. T at 8.

48. Additionally, Applicant is associated with 123College.com, representing Long Island, Nassau and Suffolk, providing free seminars once a month during the school year to parents and high school students, instructing them as to methods to maximize the financial aid the students can obtain for college. T at 8 – 9.

49. Applicant is also certified by the Internal Revenue Service as a federal income tax

preparer and he prepares both state and federal income tax returns for individuals and small businesses. T at 9.

50. In September 2007, Applicant married a woman whom he met during their residency, who is a psychiatrist. T at 7.

51. Applicant has a lifelong anxiety disorder that has been very successfully treated with therapy. T at 22.

52. Applicant was in therapy throughout his residency, which he found helpful. *Id.*

53. In March 2002, Applicant began treating with Dr. Marc Reubins and has been seeing him regularly ever since. T at 21 – 22, 54.

54. Dr. Reubins is a physician who specializes in child psychiatry, adolescent psychiatry, health psychiatry and forensic psychiatry. T at 53.

55. Dr. Reubins is board-certified in adult psychiatry and child and adolescent psychiatry, with subspecialty qualifications in forensic psychiatry. T at 54.

56. Applicant initially sought consultation with Dr. Reubins for anxiety and concerns about the effect Applicant's arrests and subsequent disciplinary actions were having on his medical license, as well as for general life problems. *Id.*

57. Applicant has been diagnosed with social phobias and anxiety. T at 55.

58. Applicant has a very good prognosis; he is on medication and in ongoing psychotherapy, to which he is responsive. *Id.*

59. Applicant had very positive recommendations from his residency program in 1999. T at 56; Exhibit C-1 at pages 920 – 923 (Various letters of recommendation related to his residency).

60. Applicant is sincere, focused, bright, assertive and caring, would be capable as a

physician, and would probably be better than most doctors. T at 56.

61. Practicing medicine is one area that is conflict-free for Applicant. *Id.*

62. The problems that resulted in Applicant's arrests and misrepresentations in 2001 were related to impulses that had to do with transitions from one level of training to a different level of training; they are not compelling at this point, would be bizarre to see now, were acute episodes of dysfunction and gross bad judgment that have not been seen since, and will not reappear. T at 56 – 57.

63. Applicant is not mentally impaired, and although Applicant can be anxious in public situations, he is capable of controlling it and showing no signs of the anxiety he is feeling, control which he demonstrated very well at the hearing. T at 58 – 59.

64. Applicant is absolutely fit to practice medicine and as a result of what he has experienced, is a more astute physician with a better awareness of the importance of honesty and candidness in his work. T at 59.

65. Applicant has matured tremendously and would be a great asset to the medical community. T at 60.

66. In an effort to remediate the wrongs he had committed, Applicant successfully completed the ProBE Program in Professional Problem-Based Ethics, which consisted of 22 hours of curriculum, including readings and seminar participation, in September 2005. T at 25 – 26; Exhibit C-1 at pages 905 – 906 (Letter dated October 24, 2005 from The Ethics Group, LLC and Certificate of Completion dated October 24, 2005).

67. As a part of completing the ProBE program, Applicant wrote a Final Essay that discussed his untruthful reports to the Brunswick and Holliswood Hospitals and on the professional liability insurance application. T at 26; Exhibit C-1 at pages 907 – 914

(Professional Problem-Based Ethics Final Essay, October 7, 2005).

68. Applicant now understands that the things he did that led to the discipline in New York and Massachusetts were wrong and he now sees no justification for having done those things; even when others argue with him and try to rationalize or explain away his actions, he remains convinced that what he did were absolutely the wrong things to do. T at 29 – 30.

69. Applicant does not use alcohol or drugs, has engaged in no further improper behavior, has had no other instances of being untruthful, and has had no disciplinary action of any kind, other than the New York and Massachusetts actions at issue in this matter. T at 30 – 31, 50.

70. Applicant will not pursue reinstatement of his license in New York because it is a lengthy and complicated process and, among other things, requires the applicant for reinstatement to provide recommendations from three licensed New York physicians who have known the applicant for a significant period of time, including the time during which the license was revoked, and who are distinct from any physicians who may serve as witnesses for the applicant at the reinstatement hearing. T at 23.

71. Applicant, because of the lapse of time and his brief periods of practice of medicine in New York and Massachusetts prior to his revocation, is unable to meet that New York recommendation requirement. T at 24.

72. Applicant would also need a tentative job offer in New York in order to apply for reinstatement there, and would have to commit to working in New York, but Applicant and his wife had already decided they would like to move to Pennsylvania before he decided to apply for a medical license in the Commonwealth, because New York is too expensive, and because his wife has family in New Jersey, which would be about an hour away. *Id.*

73. For these reasons, Applicant desires to be licensed in Pennsylvania rather than returning to the practice of medicine in New York. T at 25, 31.

74. Throughout the period of time since he stopped practicing medicine and his licenses were revoked, Applicant has done his best to keep current with medical practices by reading professional journals, completing continuing medical education, and attending conferences such as the annual meeting of the American Psychiatric Association. T at 27 – 28.

75. Applicant obtained 123 CME credits in 2006 and has completed 82 so far in 2007. T at 28.

76. Applicant finds nothing so satisfying as the practice of psychiatry and still desires to practice in that area of medicine. T at 29, 31.

77. Applicant is willing to practice under any restrictions and take any tests or undergo additional training in order to be licensed in Pennsylvania. T at 28 – 30.

CONCLUSIONS OF LAW

1. The Board has jurisdiction in this matter. Findings of Fact 1 – 3.
2. Applicant had adequate notice of the statutory basis for the Board's provisional denial of his application for a license to practice medicine without restriction and was given an opportunity to be heard in accordance with the Administrative Agency Law, 2 Pa. C.S. § 504. Findings of Fact 4 – 5.
3. The record supports granting Applicant's application for a license to practice medicine in that Applicant has furnished satisfactory evidence that he is of good moral character, as required by section 22(b) of the Act, 63 P.S. § 422.22(b). Findings of Fact 43 – 77.
4. The record supports granting Applicant's application for a license to practice medicine in that Applicant has furnished satisfactory evidence that he has been rehabilitated to the extent that subsections 41(a)(4) and (8), of the Act, 63 P.S. § 422.41(a)(4) and (8), should not serve as a barrier to his licensure. *Id.*

DISCUSSION

This action is brought under the Medical Practice Act (Act), Act of December 20, 1985, P.L. 457, No. 112, *as amended*, at sections 22(b) and 41(4) and (8), 63 P.S. §§ 422.22(b) and 422.41(4) and (8). The relevant provisions of the Act are as follows:

§ 22. Licenses and certificates; general qualification

* * *

(b) **Qualifications.** – The board shall not issue a license or certificate to an applicant unless the applicant establishes with evidence, verified by an affidavit or affirmation of the applicant, that the applicant...is of good moral character...

* * *

§ 41. Reasons for refusal, revocation, suspension or other corrective actions against a licensee or certificate holder

(a) The board shall have authority to impose disciplinary or corrective measures on a board-regulated practitioner for any or all of the following reasons:

* * *

(4) Having a license or other authorization to practice the profession revoked or suspended or having other disciplinary action taken, or an application for a license or other authorization refused, revoked or suspended by a proper licensing authority of another state, territory, possession or country, or a branch of the federal government.

* * *

(8) Being guilty of immoral or unprofessional conduct....

* * *

Additionally, section 42(a) of the Act, 63 P.S. § 422.42(a), is relevant because it enumerates the actions the Board may take when the Board is empowered to take disciplinary or

corrective measures against a board-regulated practitioner. The relevant provisions of section 42(a) are as follows:

§ 42. Types of corrective action

(a) **Authorized actions.** – When the board is empowered to take disciplinary or corrective action against a board-regulated practitioner under the provisions of this act or pursuant to other statutory authority, the board may:

(1) Deny the application for a license, certificate or any other privilege granted by the board.

* * *

Applicant submitted to the Board an application for a license to practice medicine without restriction. Thereafter, the Board provisionally denied his application, based upon the disciplinary actions imposed on his licenses in New York and Massachusetts, the facts found in the course of arriving at those disciplinary actions, and the concerns raised, by both the disciplinary actions and the underlying facts, about Applicant's moral character.

At the hearing, the Commonwealth argued that the Board's provisional denial of Applicant's application should be upheld because Applicant has had two revocations in the past four and a half years and the Applicant failed to prove that he is of good moral character. While it is true that Applicant's license in New York was revoked in 2003 and his license in Massachusetts revoked just last year, it is also true that the events underlying the New York revocation occurred in 2001 and that, while Massachusetts instituted its action against Applicant in 2003, it took three years to finalize the decision that finally revoked his license in 2006. It is not as if the egregious behaviors that led to the revocations are fresh, or as if Applicant has had no time to learn from his mistakes and move beyond them. Six years have elapsed since the occurrence of the events underlying the disciplinary actions in New York and Massachusetts, a

period of time longer than the five years a revoked Pennsylvania licensee would have to wait before applying for the reinstatement of his license in the Commonwealth. Therefore, it is reasonable at this point to scrutinize Applicant's overall circumstances rather than basing a decision on a cursory glance at the New York and Massachusetts revocations, as the Commonwealth advocates.

Underlying the disciplinary actions from the other states are two types of behavior on Applicant's part. The first type is immoral conduct, in the form of exposing himself in public or in a situation in which persons outside the privacy of his home would be able to view him, which led to his arrests (though not ultimately to convictions). The second type is dishonesty or untruthfulness, in the form of lying about his brief period of employment with Cambridge Health Alliance (CHA) and about his being arrested for a felony. These immoral and dishonest behaviors led to the most negative consequences and Applicant faced the most severe professional punishment, revocation of his licenses, in New York and Massachusetts. The question now is whether he has improved in morality and ethics since engaging in those activities, such that it would be appropriate to license him in the Commonwealth.

Applicant's long-time psychiatrist, Dr. Reubins, testified that Applicant's immoral and untruthful behaviors in 2001 were responses to stresses attributable to Applicant's transition from one level of medical training to another, circumstances that Applicant had never experienced before. T at 57. Moreover, Dr. Reubins characterized these behaviors as "episodes of dysfunction" that are part of Applicant's past, are not compelling now, and will not be repeated. T at 56 - 57. He also opined that Applicant would be a fine physician, perhaps with a keener sense of right and wrong as a result of what he put himself through, that he has no mental impairments, that he is absolutely fit to practice medicine, and that he would be an asset to the

medical community. T at 58 – 60. His opinions as to Applicant's fitness to practice, mental stability, and being deserving of licensure were free of any reservations or doubts. Dr. Reubins has been treating Applicant for a long time and on a consistent basis, and Dr. Reubins has a professional background that renders him well-qualified to make those judgments. T at 54 – 55. Accordingly, his testimony is credible and constitutes a strong factor supporting the conclusion that Applicant has grown beyond the anxieties and stresses of 2001 and has developed ethically and morally into a better person.

Applicant's testimony also demonstrates that Applicant regrets, has learned from, and has evolved beyond his poor choices of more than five years ago. He voluntarily took the ProBE course on professional ethics and as a part of that course, wrote an essay about his past behaviors. In that essay, he characterized his actions as reflecting "an appalling lack of integrity and honesty" and stated that he harmed the medical profession as a whole. Exhibit C-1 at pages 912 – 913 (Professional Problem-Based Ethics Final Essay at pages 3 – 4). His consequent heightened understanding of the immorality of his untruthful statements indicates that he has grown in his capacity for ethical reasoning since committing those gross errors of judgment six years ago. It is particularly telling that he cannot now accept the justifications of friends or family for his immoral conduct and that he is certain there is simply no justification for what he did in 2001, T at 29 – 30; Exhibit C-1 at page 911 (Professional Problem-Based Ethics Final Essay at pages 3 – 4), for that demonstrates that Applicant recognizes and makes no excuses for his ethical failures.

Applicant now has established a new life on a better path, and toward that end, he has accomplished many goals, including the obtaining of insurance licenses in four states, the establishment of his own insurance agency, and the establishment and maintenance of an

unblemished career as an insurance agent. The nature of his new career is relevant to an examination of whether Applicant has grown beyond the improper behaviors that led to the loss of his medical licenses in two states. An insurance agent is in a fiduciary position requiring honesty and integrity towards clients. Four states, by issuing him insurance agent licenses, have found Applicant deserving of such trust. That speaks significantly about Applicant's rehabilitation with regards to honesty.

Yet he is willing to give up that successful insurance career to re-enter the medical field and pick up what he lost six years ago, because there is nothing as satisfying to him as the practice of psychiatry. For that primary reason, he wishes to obtain a medical license in the Commonwealth. Many people, with a comparatively short period of practice experience prior to revocation such as Applicant had, if they had gone on to forge a new career in an unrelated field, would be loathe to give it up to take the risk of starting all over again in that old field. But Applicant wants to do that, and because of his past mistakes, is willing to submit to any conditions that the Board chooses to impose upon him in order to obtain a license. This humility also speaks well of Applicant's character development over the past six years.

The opinions of Applicant's psychiatrist, Applicant's own evidence as to his improved understanding of the ethical standards to which he must adhere, Applicant's nonmedical license achievements, and his willingness to give up his alternative career and subject himself to any conditions of practice that the Board might choose to impose, comprise a preponderance of the evidence demonstrating that he has rehabilitated himself and has grown into sufficient moral character to warrant licensure in the Commonwealth.

Based upon the record presented at the hearing, Applicant's application for licensure should be granted, albeit subject to evaluation, probation, terms and conditions, in part because it

has been six years since he actually practiced medicine. For, despite his efforts to keep current with the profession, Applicant's completion of CME and his reading of professional journals do not suffice to make up for a six-year gap in actual practice experience, nor do they adequately sharpen skills that may have become dull through disuse. Accordingly, based upon the foregoing findings of fact, conclusions of law and discussion, the following Order shall issue:

