

Nirav R. Shah, M.D., M.P.H.
Commissioner

NEW YORK
state department of
HEALTH

Public

Sue Kelly
Executive Deputy Commissioner

May 1, 2012

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Colin Kelley, M.D.

REDACTED

Joel E. Abelove, Esq.
NYS Department of Health
ESP-Corning Tower-Room 2512
Albany, New York 12237

RE: In the Matter of Colin Kelly, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 12-85) 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 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
Hedley Park Place
433 River Street - Fourth Floor
Troy, New York 12180

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), (McKinney Supp. 2007) and §230-c subdivisions 1 through 5, (McKinney Supp. 2007), "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., Chief 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,

REDACTED

James F. Horan
Chief Administrative Law Judge
Bureau of Adjudication

JFH:cah
Enclosure

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

IN THE MATTER
OF
COLIN KELLEY, M.D.

DETERMINATION
AND
ORDER

BPMP #12-85

COPY

A hearing was held on March 22, 2012, at the offices of the New York State Department of Health ("the Petitioner"). A Commissioner's Order, Notice of Referral Proceeding and a Statement of Charges, all dated January 4, 2012, were served upon the Respondent, COLIN KELLEY, M.D.

Pursuant to Section 230(10)(e) of the Public Health Law, Sheldon H. Putterman, M.D., Chair, Petros Levounis, M.D., and Thomas W. King, Jr. M.P.A., P.E., duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. David A. Lenihan, Esq., Administrative Law Judge, served as the Administrative Officer. The Petitioner appeared by James E. Dering, Esq., General Counsel, by Joel E. Abelove, Esq., of Counsel. The Respondent, Colin Kelley, M.D., did not appear, although duly served. Evidence was received 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 when a licensee is charged solely with 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 State or another jurisdiction, or upon a prior administrative adjudication regarding conduct that 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, the Respondent is charged with professional misconduct pursuant to Education Law §6530(9) (a)(ii) by having been convicted of committing an act constituting a crime under federal law. For this felony conviction, the Respondent's license to practice medicine in New York State had been summarily suspended by Commissioner's Order dated January 4, 2012.

Copies of the Commissioner's Order, Notice of Referral Proceeding and the Statement of Charges are attached to this Determination and Order as Appendix 1.

WITNESSES

For the Petitioner:

None

For the Respondent:

None

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers below in parentheses refer to exhibits, denoted by the prefix "Ex."

These citations refer to 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. All Hearing Committee findings were unanimous.

1. Colin Kelley, M.D., the Respondent, did not appear at the hearing although duly and personally served with process. (Petitioner's Ex. 2, 3, 8, 9)
2. Colin Kelley, M.D., the Respondent, was authorized to practice medicine in New York State on April 25, 2006, by the issuance of license number 239895 by the New York State Education Department. (Petitioner's Ex. 7)
3. On or about December 2, 2008. In United States District Court, Western District of Tennessee, Memphis Division, Respondent pled guilty to one count of Health Care Fraud; Aiding and Abetting, a felony, in violation of Title 18 of the United States Code, Section 1347. (Petitioner's Ex. 4)
4. On or about July 30, 2010, Respondent was sentenced, *inter alia*, to a two year term of Probation, unsupervised, with reporting requirements, and to pay a \$100.00 Special Assessment and \$124,400.00 in restitution to the Centers for Medicare and Medicaid Services, Health and Human Services Administration. (Petitioner's Ex. 4)
5. Respondent violated New York Education Law Section 6530(9)(a)(ii) by being convicted of committing an act constituting a crime under federal law, to wit, the above felony of Health Care Fraud; Aiding and Abetting, in violation of Title 18 of the United States Code, Section 1347. (Petitioner's Ex. 4)
6. By Commissioner's Summary Order, dated January 4, 2012, the Respondent's license to practice medicine in New York was suspended based upon the above felony conviction. (Petitioner's Ex. 1)

VOTE OF THE HEARING COMMITTEE

SPECIFICATION

"Respondent violated New York Education Law Section 6530(9)(a)(ii) by being convicted of committing an act constituting a crime under federal law, to wit, the felony c Health Care Fraud, Aiding and Abetting, in violation of Title 18 of the United States Code, Section 1347..."

VOTE: Sustained (3-0)

HEARING COMMITTEE DETERMINATION

The Respondent did not appear at the hearing, either in person or by counsel. The Administrative Officer, after considering the documentary evidence, which included an Affidavit of Service of the Notice of Referral Proceeding and the Statement of Charges (Petitioner's Exhibits 2, 3, 8 and 9), ruled that the Petitioner had met the requirements of law for due diligence in the service of process, that jurisdiction had been established over the Respondent, and that the hearing could proceed on the merits notwithstanding the Respondent's absence.

The record in this case indicates that Respondent's license to practice medicine was summarily suspended by the Commissioner due to a felony conviction in Tennessee. (See Exhibit 1) The record shows that the Respondent has been charged and pled guilty to the

crime of health care fraud and was ordered to pay restitution to Medicare in the amount of \$124,400.00. (Ex. 4)

Respondent did not appear at the hearing, and the record does not contain any evidence of mitigating circumstances, or remorse. The Department's attorney indicates that there have been e-mail communications with the Respondent and that the Respondent was fully aware that this matter would be going forward. (Ex. 9) The panel noted that the Respondent was personally served with notice of this matter and was thus aware of this proceeding and chose to ignore it.

The Department's attorney, Mr. Abelow, stated that, given the nature of the felony conviction in Tennessee, there is no other appropriate outcome in New York State but to revoke the Respondent's New York license. The panel, unanimously, agreed with the Department on this recommendation. As to the penalty, therefore, the Hearing Committee determined that the people of New York State would be protected by a revocation of the Respondent's license. Accordingly, the panel decided, unanimously, to revoke the Respondent's license under the circumstances of this case.

ORDER

IT IS HEREBY ORDERED THAT:

1. The license of the Respondent to practice medicine in New York State is revoked.
2. This Order shall be effective upon service on the Respondent in accordance with the requirements of Public Health Law Section 230(10) (h).

DATED: New York, New York
April 24, 2012

REDACTED

Sheldon H. Putterman, M.D., Chair

**Petros Levounis, M.D.
Thomas W. King, Jr. M.P.A., P.E**

To:

Colin Kelley, M.D.

REDACTED

Respondent

**Joel E. Abelow, Esq.
Attorney for Petitioner
Associate Counsel
NYS Department of Health
Bureau of Professional Medical Conduct
Corning Tower, Room 2512
Albany, New York 12237**

APPENDIX 1

IN THE MATTER
OF
COLIN KELLEY, M.D.
CO-11-02-0785-A

COMMISSIONER'S
ORDER
AND
NOTICE OF
REFERRAL
PROCEEDING

TO: COLIN KELLEY, M.D.
REDACTED

The undersigned, Nirav R. Shah, M.D., M.P.H., Commissioner of Health, pursuant to New York Public Health Law §230, upon the recommendation of a Committee on Professional Medical Conduct of the State Board for Professional Medical Conduct, has determined that COLIN KELLEY, M.D., Respondent, licensed to practice medicine in the State of New York on April 25, 2006, by license number 239895, has been convicted of committing an act constituting a felony under federal law, in the United States District Court, Western District of Tennessee, as is more fully set forth in the Statement of Charges attached, hereto, and made a part, hereof.

It is, therefore:

ORDERED, pursuant to New York Public Health Law §230(12)(b), effective immediately COLIN KELLEY, M.D., shall not practice medicine in the State of New York or in any other jurisdiction where that practice is predicated on a valid New York State license to practice medicine.

ANY PRACTICE OF MEDICINE IN VIOLATION OF THIS COMMISSIONER'S ORDER SHALL CONSTITUTE PROFESSIONAL MISCONDUCT WITHIN THE MEANING OF NEW YORK EDUCATION LAW §6530(29) AND MAY CONSTITUTE UNAUTHORIZED MEDICAL PRACTICE, A FELONY, DEFINED BY NEW YORK EDUCATION LAW §6512.

PLEASE TAKE NOTICE that a hearing will be held pursuant to the provisions of New York Public Health Law §230 and New York State Administrative Procedure Act §§301-307 and 401. The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on the 22nd day of March, 2012, at 10:30 a.m., at Hedley Park Place, 433 River Street, 5th Floor, Troy, New York 12180, at the offices of the New York State Health Department and at such other adjourned dates, times, and places as the committee may direct. Respondent may file an answer to the Statement of Charges with the below-named attorney for the Department of Health.

At the hearing, evidence will be received concerning the allegations set forth in the Statement of Charges that is attached. A stenographic record of the hearing will be made and the witnesses at the hearing will be sworn and examined. Respondent shall appear in person at the hearing and may be represented by counsel who shall be an attorney admitted to practice in New York state. Respondent has the right to produce witnesses and evidence on his behalf, to issue or have subpoenas issued on his behalf for the production of witnesses and documents, and to cross-examine witnesses and examine evidence produced against him. A summary of the Department of Health Hearing Rules is enclosed. 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 hearing will proceed whether or not Respondent appears at the hearing. Scheduled hearing dates are considered dates certain and adjournment requests are not, therefore, routinely granted. Requests for adjournments must be made in writing to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Hedley Park Place, 433 River Street, Fifth Floor South, Troy, NY 12180, ATTENTION: HON. JAMES F. HORAN, ACTING DIRECTOR, BUREAU OF ADJUDICATION, and by telephone (518-402-0748), upon notice to the attorney for the Department of Health whose name appears below, at least five

days prior to the scheduled hearing date. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation.

At the conclusion of the hearing, the committee shall make findings of fact, conclusions concerning the charges sustained or dismissed, and, in the event any of the charges are sustained, a determination of the penalty or sanction to be imposed or appropriate action to be taken. Such determination may be reviewed by the administrative review board for professional medical conduct.

**THESE PROCEEDINGS MAY RESULT IN A DETERMINATION THAT YOUR
LICENSE TO PRACTICE MEDICINE IN NEW YORK STATE BE REVOKED OR
SUSPENDED AND/OR THAT YOU BE FINED OR SUBJECT TO OTHER
SANCTIONS SET FORTH IN NEW YORK PUBLIC HEALTH LAW §230-a.
YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN
THIS MATTER.**

DATED: Albany, New York
Jan 4, 2012

REDACTED

NIRAV R. SHAH, M.D., M.P.H.
Commissioner of Health
New York State Department of Health

Inquires should be addressed to:

Peter D. Van Buren
Deputy Counsel
Bureau of Professional Medical Conduct
Corning Tower - Room 2512
Empire State Plaza
Albany, New York 12237
(518) 473-4282

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

IN THE MATTER
OF
COLIN KELLEY, M.D.
CO-11-02-0785-A

STATEMENT
OF
CHARGES

COLIN KELLEY, M.D., Respondent, was authorized to practice medicine in New York state on or about April 25, 2006, by the issuance of license number 239895 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about December 2, 2008, in United States District Court, Western District of Tennessee, Memphis Division, Respondent plead guilty to one count of Health Care Fraud; Aiding and Abetting, a felony, in violation of Title 18 of the United States Code, Section 1347. On or about July 30, 2010, Respondent was sentenced, inter alia, to a two year term of Probation, unsupervised, with reporting requirements, and to pay a \$100.00 Special Assessment and \$124,400.00 in restitution to Centers for Medicare and Medicaid Services, Health and Human Services Administration.

SPECIFICATIONS

FIRST SPECIFICATION

Respondent violated New York Education Law Section 6530(9)(a)(ii) by being convicted of committing an act constituting a crime under federal law, in that Petitioner charges:

1. The facts in Paragraph A.

DATED: January 4, 2012
Albany, New York

REDACTED

PETER D. VAN BUREN
Deputy Counsel
Bureau of Professional Medical Conduct