

**State of New Hampshire
Office of Licensed Allied Health Professionals
Physical Therapy Governing Board
Concord, New Hampshire**

In the Matter of:
Robert M. Caulkins
(Application for Initial Licensure)

ORDER ON APPLICATION DENIAL

The New Hampshire Governing Board of Physical Therapy ("Board") received an application on February 22, 2012 for Mr. Robert M. Caulkins ("Mr. Caulkins" or "Petitioner") for initial licensure to practice Physical Therapy in the State of New Hampshire. For the following reasons, the Board has voted to **DENY** the Petitioner's request for licensure.

Background

On the application for initial licensure provided to the Board on February 22, 2012 the petitioner answered "Yes" to the following questions by placing an "X" on the designated space provided:

- Has any malpractice claim been made against you?
- Have you, for disciplinary reasons, been put on administrative leave or had any privileges limited, suspended or revoked any of the following settings: hospital, healthcare institution, home health care agency, education institution, or other professional settings.
- Have you, been found guilty or entered a plea of no contest to any felony or misdemeanor?
- Have you, ever been the subject of any disciplinary action by any professional licensing authority?
- Have you, ever been denied a license, or other authorization to practice in any state or jurisdiction?
- Have you, ever surrendered a license or other authorization to practice in order to avoid or settle disciplinary charges?

The petitioner indicated on the application for initial licensure that he had held Physician licenses in Massachusetts, New Hampshire, Vermont, Connecticut, Maryland, and New York. The following Letters of Verification were received: **Exhibit #1.**

- New Hampshire – received February 21, 2012 from the State of New Hampshire Board of Medicine. Mr. Caulkins held a physician license from December 4, 1986 to May 18, 1989. Disciplinary Action: “None”. This license lapsed for none renewal.
- Massachusetts – received February 27, 2012 from the Commonwealth of Massachusetts Board of Registration in Medicine. Physician license was issued June 6, 1990. Status of license “Revoked”.
“Closed complaint information – Our files contain 5 closed complaint(s) on this physician. **Final Board Disciplinary Action** – Our files contain 4 disciplinary action(s) taken against this physician by the Board. This information is derived from Board files from January 1, 1987 to the present. It does not include all information contained in a license application”
- Vermont – received March 2, 2012 from State of Vermont Department of Health. Physician license held November 12, 1985 to January 31, 1989. Disciplinary Information: “None”.
- Maryland – received March 5, 2012 from the Maryland Board of Physicians. Physician license held July 3, 1989 to September 30, 2000. Disciplinary Actions: “None”.
- New York – received June 11, 2012 from the University of the State of New York, State Education Department, The Division of Professional Licensing Services. Physician license held September 30, 1997 to non-expiring. Mr. Caulkins is not currently registered. The Letter of Verification states: “These records indicate that in October 2000 the New York State Department of Health took disciplinary action against the licensee.”
- Connecticut – no Letter of Verification was received.

Mr. Caulkins submitted a criminal offender record report from the State of New Hampshire on March 1, 2012 in accordance with the Board’s Administrative Rules, Phy 304.04(j). The report indicated that “No Record” was found in the State of New Hampshire

On February 22, 2012 Mr. Caulkins submitted a letter to this Board giving a detailed report of the relevant circumstances to the “Yes” answers on his application as required in the Board’s Administrative Rules, Phy 304.04 (b) and (c). **Exhibit #2**. In this report Ms. Caulkins describes his addiction to alcohol, convictions for DUI, malpractice claims, loss of job, and loss of medical license. In this letter Mr. Caulkins gives the following time line:

- Mr. Caulkins practiced as an Orthopedic Surgeon from 1990 until 2004. “There were seven malpractice cases filed against me. There are no outstanding nor pending cases.”
- Mr. Caulkins lost his medical privileges and his job at UMass Medical Center in 2000 and at St. Elizabeth’s Hospital in 2004.
- Mr. Caulkins plead no contest to three separate misdemeanor DUI convictions in Massachusetts in 1993, 1998 and 1999.
- Mr. Caulkins’ Massachusetts medical license was suspended in 2000 and reinstated in 2002. It was then revoked in 2004 due to alcohol related offenses.
- Mr. Caulkins held a license to practice in New York State at that time. The New York Board of Medicine took reciprocal action and suspended Mr. Caulkins’ license

On February 22, 2012, this Board received a letter from Robert R. Hamel, Jr. of Hamel, Marcin, Dunn & Reardon, PC, Attorneys at Law. This letter describes seven malpractice claims filed against Mr. Caulkins. Three cases were dismissed with no payment, one case was settled by the insurer with a payment of \$300,000, one case was dismissed with a payment of \$799,975, one case was denied and never pursued, and one case was closed with a payment of \$90,000.

Exhibit #3.

On March 5, 2012 letter received from Luis T. Sanchez, M.D. **Exhibit 4**. Under Seal and not discussed herein.

On April 18, 2012, Tina M. Kelley, the New Hampshire Board of Physical Therapy’s Administrator printed a document from the New York Professional Misconduct and Physician Discipline web site. This is the Surrender Order issued by the State of New York, Department of Health, State Board for Professional Medical Conduct. **Exhibit 5**.

On April 23, 2012, Administrator Kelley sent Mr. Caulkins a letter requesting the following follow-up information. The Board voted to obtain the additional information at their meeting held April 18, 2012. **Exhibit #6.**

- A Letter of Verification of from the New York Board of Medicine.
- All documentation from the New York Board of Medicine regarding the Suspension of your New York medical license.
- All documentation from Massachusetts Board of Medicine regarding the 5 closed complaints and 4 disciplinary actions.
- A Massachusetts criminal offender record report.
- All documentation with regards to any and all convictions.

On May 1, 2012, a National Practitioner Data Bank Report on Mr. Caulkins. **Exhibit #7.** This report describes all incidents cited above as reported by the individual reporting authorities.

On June 13, 2012 per Mr. Caulkins request, Anitte Belka of the Commonwealth of Massachusetts, Board of Registration in Medicine, Division of Law and Policy provided this Board with all pertinent documents with regards to disciplinary action taken in the State of Massachusetts. **Exhibit #8.**

On June 14, 2012 Mr. Caulkins provided the Board with a letter further describing his history of alcohol use and the incidents surrounding that use. Included with the letter was a criminal offender record report from the State of Massachusetts with court documents pertaining to the convictions listed on the report. **Exhibit #9.**

Relevant Law:

RSA 328-F:23 II states in pertinent part:

Misconduct sufficient to support disciplinary proceedings shall include:

- (b) Any criminal conviction in any jurisdiction, excluding traffic violations, or failure to report such conviction within 30 days.
- (c) Violation of the ethical standards adopted by the governing board.
- (e) Failure to provide care with reasonable skill, safety and regard for client or patient rights, whether or not the client or patient has suffered injury.
- (f) Actual or potential inability to render care with reasonable skill and safety by reason of illness, by reason of use of alcohol or drugs or any other material, or by reason of mental or physical condition.
- (g) Disciplinary action by a regulatory authority in another domestic or foreign jurisdiction.
- (j) Violation of any provision of this chapter, of any governing board's practice act or rule adopted pursuant to RSA 541-A

RSA 329:17, IX-a

Any persons who have had their licenses to practice medicine revoked or suspended shall be barred from practicing any other human health care activities, including psychotherapy, whether or not such other activity is licensed or certified by another licensing agency.

RSA 328-A:5 I.

An applicant for a license as a physical therapist who has been educated in the United States shall:

(a) Be of good moral character.

Phy 405.01 states in relevant part:

Misconduct shall be:

(b) Conviction of any criminal offense other than a traffic violation;

(d) Violation of Phy 500

(f) Failure to provide care with reasonable skill, safety and regard for client rights, whether or not the client has suffered injury;

(k) Violation of:

(1) Any provision of RSA 328-F;

(2) Any provision of RSA 328-A;

(3) Any rule adopted by the board; or

(f) Any state or federal law reasonably related to the licensee's authority to practice or the licensee's ability to practice safely.

Phy 501.02 Ethical Standards for Physical Therapists.

The ethical standards for physical therapists shall be the APTA Code of Ethics for the Physical Therapist.

APTA Code of Ethics for the Physical Therapist, 5A:

Physical therapists shall comply with applicable local, state, and federal laws and regulations..

Findings of Fact and Rulings of Law:

- The petitioner had his Medical license revoked in Massachusetts on August 31, 2004 in violation of RSA 328-F:23, II(g); RSA 329:17, IX-a; RSA 328-A:5, I; Phy 405.01(d); Phy 405.01(f); and Phy 405.01(k).
- The petitioner voluntarily surrendered his Medical license in the State of New York in violation of RSA 328-F:23, II(g); RSA 329:17, IX-a; RSA 328-A:5, I; Phy 405.01(d); and Phy 405.01(k).
- On December 21, 1994 the petitioner was convicted of misdemeanor Driving While Intoxicated in the Westborough Court, Massachusetts in violation of RSA 328-F:23,

- II(b),(c); RSA 328-A:5, I; Phy 405.01(b); Phy 405.01(d); Phy 405.01(k) and Phy 501.02 (APTA-COE 5A).
- On February 24, 1999 the petitioner was convicted of misdemeanor Driving While Intoxicated in Marlborough Court, Massachusetts in violation of RSA 328-F:23, II(b),(c); RSA 328-A:5, I; Phy 405.01(b); Phy 405.01(d); Phy 405.01(k) and Phy 501.02 (APTA-COE 5A).
 - On February 22, 2000 the petitioner was convicted of misdemeanor Driving While Intoxicated in Shrewsbury Court, Massachusetts in violation of RSA 328-F:23, II(b),(c); RSA 328-A:5, I; Phy 405.01(b); Phy 405.01(d); Phy 405.01(k) and Phy 501.02 (APTA-COE 5A).
 - In 2000 the petitioner lost his medical privileges and his job at UMass Medical Center in violation of RSA 328-F:23, II(e),(f); RSA 328-A:5, I; Phy 405.01(d); Phy 405.01(f); and Phy 405.01(k).
 - In 2004 the petitioner lost his medical privileges and his job at St. Elizabeth Hospital in violation of RSA 328-F:23, II(e),(f); RSA 328-A:5, I; Phy 405.01(d); Phy 405.01(f); and Phy 405.01(k).
 - The petitioner had 7 malpractice claims filed against him. Of the 7 claims 3 were settled through monetary award in violation of RSA 328-F:23, II; Phy 405.01(d); Phy 405.01(f); and Phy 405.01(k).

Conclusion:

For the reasons stated above, and in light of the Board's authority in RSA 328-F:18, I; RSA 328-F:1; RSA 328-A:1 (see also RSA 328-F:23, V), the Petitioner's application for initial licensure is **DENIED**.

Moreover, the Board is statutorily barred from licensing the Petitioner pursuant to RSA 329:17, IX-a (quoted above), thus, the Petitioner's application for initial licensure is **DENIED**.

THEREFORE IT IS ORDERED this Order on Application Denial ("Order") will become a 'final order' within fifteen (15) days of the effective date of this Order, as defined further below, unless prior to 4:00 p.m. on the fifteenth day of the effective date of this Order, unless the Board receives a written request for a hearing; and

IT IS FURTHER ORDERED that receipt of a timely filed hearing request shall automatically stay this Order and a further order shall be issued in due course in which the Board establishes a date and time of the hearing, and specifies the issues to be heard; and

IT IS FURTHER ORDERED that any hearing held in response to this Order shall be a non-adjudicatory hearing conducted pursuant to RSA chapter 326-F; RSA chapter 328-F and RSA chapter 541-A. The Petitioner may request to be heard on any relevant matter of law or fact, but evidentiary proceedings shall be conducted only to the extent the Petitioner has identified disputed factual issues which require resolution. This non-adjudicatory hearing will be conducted in non-public session unless the Petitioner makes a timely written request to conduct it in public session. Subsequent to such hearing, the Board will issue a 'final order' within the statutory amount of time; and

IT IS FURTHER ORDERED that by analogy to RSA 318:31, V, a 'final order' is a public document; and

IT IS FURTHER ORDERED that once a Board order is a 'final order' in accordance with either of the circumstances outlined above, the petitioner has thirty (30) days to file a request for reconsideration pursuant to RSA 541:3. Such motion shall comply with RSA 541:4.

IT IS FURTHER ORDERED THAT THIS Order shall take effect as an Order of the Board on the date it is signed by an authorized representative of the New Hampshire Governing Board of Physical Therapy.

BY ORDER OF THE BOARD

Date: _____

July 18, 2012

Tina M. Kelley
Tina M. Kelley, Administrator
Authorized Representative of the
Physical Therapy Governing Board