

**State of New Hampshire
Board of Medicine
Concord, New Hampshire 03301**

In the Matter of:
Colin T. Kelley, MD
No.: 10753
(Misconduct Allegations)

SETTLEMENT AGREEMENT

In order to avoid the delay and expense of further proceedings and to promote the best interests of the public and the practice of medicine, the New Hampshire Board of Medicine (“Board”) and Colin T. Kelley, MD (“Dr. Kelley” or “Respondent”), a physician licensed by the Board, do hereby stipulate and agree to resolve certain allegations of professional misconduct now pending before the Board according to the following terms and conditions:

1. Pursuant to RSA 329:17, I; RSA 329:18; RSA 329:18-a; and Medical Administrative Rule (“Med”) 206 and 210, the Board has jurisdiction to investigate and adjudicate allegations of professional misconduct committed by physicians.
2. Pursuant to RSA 329:18-a, III, the Board may, at any time, dispose of such allegations by settlement and without commencing a disciplinary hearing.
3. If a reciprocal proceeding were conducted, the Board would be authorized to impose any sanction permitted by RSA 329:17, VI; RSA 329:17-c; and Med 410.01(b).
4. The Board first granted Respondent a license to practice medicine in the State of New Hampshire on November 3, 1999. Respondent holds license number 10753. Respondent practices psychiatry at Palmerston North Hospital in Palmerston North, New Zealand.

5. On April 24, 2012, the New York Board for Professional Medical Conduct (“New York Board”) issued an order revoking Respondent’s New York medical license. (See **Attachment 1**). The Board first learned of this license revocation on May 22, 2012.
6. If reciprocal proceedings were commenced, Hearing Counsel would prove that on April 24, 2012, a final administrative order was issued against Respondent by the New York Board. Pursuant to the order, Respondent’s New York medical license was revoked.
7. As a basis for proceeding against Respondent, the Board finds the following:
 - A. On December 2, 2008, Respondent pled guilty to one count of Health Care Fraud; Aiding and Abetting, a felony, in violation of Title 18 U.S.C. Sect. 1347.
 - B. The conduct underlying the criminal charge occurred while Respondent was licensed in New Hampshire.
 - C. On April 24, 2012, the New York Board revoked Respondent’s license to practice medicine in New York.
 - D. The issuance of the order constitutes a final order by the New York Board.
8. Respondent acknowledges that this conduct underlying the revocation of his New York medical license constitutes grounds for the Board to impose disciplinary sanctions against Respondent’s license to practice as a physician in the State of New Hampshire.

9. Respondent consents to the Board imposing the following discipline, pursuant to RSA 329:17, VII:
 - A. Respondent's license is REVOKED.
 - B. Within ten (10) days of the effective date of this agreement, as defined further below, Respondent shall furnish a copy of the *Settlement Agreement* to any current employer for whom Respondent performs services as a physician or work which requires a medical degree and/or medical license or directly or indirectly involves patient care, and to any agency or authority which licenses, certifies or credentials physicians, with which Respondent is presently affiliated.
 - C. For a continuing period of one (1) year from the effective date of this agreement, Respondent shall furnish a copy of this *Settlement Agreement* to any employer to which Respondent may apply for work as a physician or for work in any capacity which requires a medical degree and/or medical license or directly or indirectly involves patient care, and to any agency or authority that licenses, certifies or credentials physicians, to which Respondent may apply for any such professional privileges or recognition.
10. Respondent's breach of any terms or conditions of this *Settlement Agreement* shall constitute unprofessional conduct pursuant to RSA 329:17, VI (d), and a separate and sufficient basis for further disciplinary action by the Board.
11. Except as provided herein, this *Settlement Agreement* shall bar the commencement of further disciplinary action by the Board based upon the misconduct described above.

However, the Board may consider this misconduct as evidence of a pattern of conduct in the event that similar misconduct is proven against Respondent in the future. Additionally, the Board may consider the fact that discipline was imposed by this Order as a factor in determining appropriate discipline should any further misconduct be proven against Respondent in the future.

12. This *Settlement Agreement* shall become a permanent part of Respondent's file, which is maintained by the Board as a public document.
13. Respondent voluntarily enters into and signs this *Settlement Agreement* and states that no promises or representations have been made to him other than those terms and conditions expressly stated herein.
14. The Board agrees that in return for Respondent executing this *Settlement Agreement*, the Board will not proceed with the formal adjudicatory process based upon the facts described herein.
15. Respondent understands that his action in entering into this *Settlement Agreement* is a final act and not subject to reconsideration or judicial review or appeal.
16. Respondent has had the opportunity to seek and obtain the advice of an attorney of his choosing in connection with his decision to enter into this agreement.
17. Respondent understands that the Board must review and accept the terms of this *Settlement Agreement*. If the Board rejects any portion, the entire *Settlement Agreement* shall be null and void. Respondent specifically waives any claims that any disclosures made to the Board during its review of this *Settlement Agreement* have

prejudiced his right to a fair and impartial hearing in the future if this *Settlement Agreement* is not accepted by the Board.

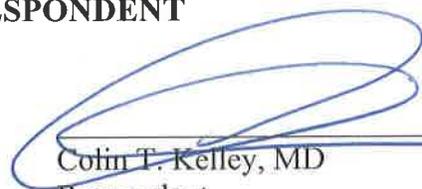
18. Respondent is not under the influence of any drugs or alcohol at the time he signs this *Settlement Agreement*.

19. Respondent certifies that he has read this document titled *Settlement Agreement*. Respondent understands that he has the right to a formal adjudicatory hearing concerning this matter and that at said hearing he would possess the rights to confront and cross-examine witnesses, to call witnesses, to present evidence, to testify on his own behalf, to contest the allegations, to present oral argument, and to appeal to the courts. Further, Respondent fully understands the nature, qualities and dimensions of these rights. Respondent understands that by signing this *Settlement Agreement*, he waives these rights as they pertain to the misconduct described herein.

20. This *Settlement Agreement* shall take effect as an Order of the Board on the date it is signed by an authorized representative of the Board.

FOR RESPONDENT

Date: 12/10/2012



Colin T. Kelley, MD
Respondent

Date: _____

not applicable


Counsel for Respondent
Colin T. Kelley

FOR THE BOARD/*

This proceeding is hereby terminated in accordance with the binding terms and conditions set forth above.

Date: 1/11/2013

Penny Taylor
(Signature)

PENNY TAYLOR
(Print or Type Name)
Authorized Representative of the
New Hampshire Board of Medicine

* Board members, recused:
Robert P. Cervenka, MD

ATTACHMENT 1

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

IN THE MATTER
OF
COLIN KELLEY, M.D.

DETERMINATION
AND
ORDER

BPMC #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 being 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 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. Ablove, 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. Abelove, 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

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

EXHIBIT
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, 2008, 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

12 DEC 17 PM 10:23

STATE OF NH
DEPT OF JUSTICE