

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

In the Matter of:

Docket No. 12-14

Kevin Kendall, M.D.

License No. 10774

(Adjudicatory Proceedings)

**ORDER OF EMERGENCY LICENSE SUSPENSION
AND NOTICE OF HEARING**

1. RSA 329 and New Hampshire Board of Medicine Administrative Rule 409.01 authorize the New Hampshire Board of Medicine (“Board”) to suspend a license to practice medicine for no more than one hundred twenty (120) days pending completion of an adjudicatory proceeding, in cases involving imminent danger to life or health, prior to holding a hearing. RSA 329:18-b; Med 409.01. The Administrative Procedures Act requires agencies to commence an adjudicative proceeding not later than 10 days after the date of the emergency order suspending a license. RSA 541-A:30, III. Accordingly, the Board may commence a bifurcated proceeding. If so, the Board must hold a limited hearing (‘first hearing’) within 10 working days to determine whether there is “imminent danger to life or health” or whether “the public health, safety or welfare requires” that the licensee’s license remain suspended for the duration of the adjudicative proceeding. RSA 329:18-b; RSA 541-A:30, III. This first hearing satisfies the requirements of RSA 329:18-b and a suspension may be ordered until the conclusion of the investigation and adjudicatory proceeding, even if such exceeds 120 days. RSA 329:18-b. If the Board does not commence the first hearing within 10 days, the suspension order shall be automatically vacated. RSA 541-A:30, III. The Board may not continue the first hearing without the consent of the licensee to the

continuation of the suspension pending issuance of the Board's final decision. RSA 329:18-b and Med 409.01.

2. Kevin Kendall, M.D. ("Dr. Kevin M. Kendall, M.D." or "Respondent"), holds an active license, No. 10774, issued on November 16, 1999, to practice medicine in the State of New Hampshire. Respondent most recently practiced medicine in Lewiston, Maine. On August 17, 2012, Respondent entered into an Interim Consent Agreement with the State of Maine Board of Licensure in Medicine ("Maine Board") whereby he agreed to stop practicing medicine until further order of the Maine Board.

3. The Board has received information indicating that the continued practice of medicine by Dr. Kendall poses an imminent threat to life, safety and/or health, which warrants the temporary suspension of Dr. Kendall license to practice medicine pending a hearing on whether permanent and/or temporary disciplinary sanctions should be imposed. An investigation was conducted and a Report of Investigation was provided to the Board.

4. In support of this *Order of Emergency License Suspension and Notice of Hearing*, the Board alleges the following facts:

- A. On or about October 6, 1999, the Board issued an Order of Conditional Approval regarding Respondent's application for a New Hampshire medical license. At that time, Respondent was candid regarding his addiction and the recovery process. He was actively receiving treatment and was monitored by the Maine Physician's Health Program.

- B. On August 8, 2012, Respondent called the Board and self-reported a recent relapse. Two days prior, Respondent had been removed from his emergency department shift at Bridgton Hospital in Lewiston, Maine, due to concerns that he appeared to be impaired.
- C. Following an evaluation of his impairment, Respondent was sent home from the hospital and was arrested for operating under the influence after hitting a mail box.
- D. Although Respondent did report his relapse to the Board, he did not disclose his arrest.
- E. On August 17, 2012, the Maine Board issued an Interim Consent Agreement whereby Respondent agreed not to practice medicine until further order of the Board.

5. Based upon the above information, the Board finds that the case involves imminent danger to life and/or health. Further, the Board believes there is a reasonable basis for both immediately suspending Respondent's license on a temporary basis, and for commencing an expedited disciplinary proceeding against Respondent pursuant to RSA 329:18-b, 541-A:30, III, and Med 409.01.

6. The purpose of this proceeding will be to determine whether Respondent has engaged in professional misconduct contrary to RSA 329:17, VI and RSA 329:18-b, which warrants the continued imposition of a temporary license suspension, the imposition of

permanent disciplinary sanctions, or both. The specific issues to be determined in this proceeding are:

- A. Whether, on or about August 6, 2012, Respondent committed professional misconduct by reporting for an emergency department shift while under the influence of alcohol, in violation of RSA 329:17, VI (b); and/or RSA 329:17, VI (c); and/or RSA 329:17, VI (d); and/or
 - B. Whether, on or about August 6, 2012, Respondent committed professional misconduct by attempting to treat patients while under the influence of alcohol, in violation of RSA 329:17, VI (b); and/or RSA 329:17, VI (c); and/or RSA 329:17, VI (d); and/or
 - C. Whether, on or about August 6, 2012, Respondent committed professional misconduct by operating a motor vehicle while under the influence of alcohol, in violation of RSA 329:17, VI (b); and/or RSA 329:17, VI (c); RSA 329:17, VI (d); and/or
 - D. If any of the above allegations are proven, whether and to what extent, Respondent should be subjected to one or more of the disciplinary sanctions authorized by RSA 329:17, VII.
7. While RSA 329:18-a requires that the Board furnish Respondent at least fifteen days' notice of allegations of professional misconduct and the date, time and place of an adjudicatory hearing, RSA 541-A:30, III and Med 409.01 require the Board to commence

an adjudicatory hearing within ten (10) days after the date of an immediate, temporary license suspension order.

8. The Board intends to complete this adjudicative proceeding within the one hundred twenty (120) day time period provided by RSA 329:18-b and Med 409.01.

Accordingly, neither the date of the initial evidentiary hearing nor the date for concluding this proceeding shall be postponed or extended unless Respondent agrees to continue the suspension period pending issuance of the Board's final decision in this matter. *See* RSA 329:18-b, 541-A:30, III, and Med 409.01.

THEREFORE, IT IS ORDERED that Respondent's New Hampshire license to practice medicine is immediately suspended until further order of the Board; and,

IT IS FURTHER ORDERED that an adjudicatory proceeding be commenced for the purpose of resolving the issues articulated above pursuant to RSA 329:17; 329:18-a; 329:18-b; 541-A:30, III; and Med 409.01. To the extent that this order or the Board's rules do not address an issue of procedure, the Board shall apply the New Hampshire Department of Justice Rules, Part 800; and,

IT IS FURTHER ORDERED that Kevin Kendall, M.D. shall appear before the Board on October 3, 2012 at 10:00 a.m., at the Board's office located at 2 Industrial Park Drive, Concord, N.H., to participate in an adjudicatory hearing and, if deemed appropriate, be subject to sanctions pursuant to RSA 329:17, VII; and,

IT IS FURTHER ORDERED that if Respondent elects to be represented by counsel, at Respondent's own expense, said counsel shall file a notice of appearance at the earliest date possible; and,

IT IS FURTHER ORDERED that Respondent's failure to appear at the time and place specified above may result in the hearing being held *in absentia* and disciplinary sanctions imposed without further notice or an opportunity to be heard; and,

IT IS FURTHER ORDERED that Sarah T. Blodgett, Department of Justice, 33 Capitol Street, Concord, N.H., 03301 is appointed to act as Hearing Counsel in this matter with all the authority within the scope of RSA Chapter 329 to represent the public interest. Hearing Counsel shall have the status of a party to this proceeding; and,

IT IS FURTHER ORDERED that Gail Barba, Board Member, or any other person whom the Board may designate, shall act as presiding officer in this proceeding; and,

IT IS FURTHER ORDERED that any proposed exhibits, motions or other documents intended to become part of the record in this proceeding, be filed by the proponent with the Board, in the form of an original and eleven (11) copies, and with an additional copy mailed to any party to the proceeding, and to Attorney Elyse Alkalay, Counsel to the Board, N.H. Department of Justice, 33 Capitol Street, Concord, New Hampshire 03301. All responses or objections to such motions or other documents are to be filed in similar fashion within ten (10) days of receipt of such motion or other document unless otherwise ordered by the Board; and,

IT IS FURTHER ORDERED that a witness and exhibit list and any proposed exhibits, pre-marked for identification only, shall be filed with the Board no later than three (3) days before the date of the hearing. Respondent shall pre-mark his exhibits with capital letters, and Hearing Counsel shall pre-mark her exhibits with Arabic numerals; and,

IT IS FURTHER ORDERED that unless good cause exists, all motions shall be filed at least three (3) days before the date of any hearing, conference, event or deadline which

would be affected by the requested relief, except any motion seeking to postpone a hearing or conference, which shall be filed at least ten (10) days before the hearing or conference in question; and,

IT IS FURTHER ORDERED that the entirety of all oral proceedings be recorded verbatim by the Board. Upon the request of any party made at least ten (10) days prior to the proceeding or conference or upon the Board's own initiative, a shorthand court reporter shall be provided at the hearing or conference and such record shall be transcribed by the Board if the requesting party or agency shall pay all reasonable costs for such transcription; and,

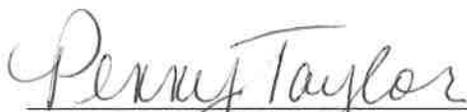
IT IS FURTHER ORDERED that all documents shall be filed with the Board by mailing or delivering them to Penny Taylor, Administrator, N.H. Board of Medicine, 2 Industrial Park Drive, Suite 8, Concord, New Hampshire 03301; and,

IT IS FURTHER ORDERED that routine procedural inquiries may be made by contacting Penny Taylor, Administrator, N.H. Board of Medicine, 2 Industrial Park Drive, Suite 8, Concord, New Hampshire 03301, (603) 271-1204, but that all other communications with the Board shall be in writing and filed as provided above. *Ex parte* communications are forbidden by statute and the Board's regulations; and,

IT IS FURTHER ORDERED that a copy of this Notice of Hearing shall be served upon Respondent by certified mail addressed to the home address he supplied to the Board in his latest renewal application as well as to Respondent's attorney, Michael Duddy, Esq. *See*, RSA 329:18, VI, Med. 501.02 (c) and RSA 329:16 (f). A copy shall also be delivered to Hearing Counsel.

BY ORDER OF THE BOARD/*

Dated: Sept. 25, 2012



Penny Taylor, Administrator
Authorized Representative of the
New Hampshire Board of Medicine

/*Robert P. Cervenka, M.D., Board member, recused. Board Members Robert M. Vidaver, M.D. and Michael Barr, M.D. did not participate.