

Public

**NEW YORK**  
state department of  
**HEALTH**

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

Sue Kelly  
Executive Deputy Commissioner

May 11, 2011

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Michael G. Bass, Esq.  
NYS Department of Health  
ESP-Corning Tower-Room 2512  
Albany, New York 12237-0032

Vernon Starr Kellogg, M.D.

REDACTED

**RE: In the Matter of Vernon Starr Kellogg, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 11-114) 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.

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 Respondent or the Department may seek a review of a committee determination.

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., 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, Acting Director  
Bureau of Adjudication

JFH:cah

Enclosure

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

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IN THE MATTER

OF

VERNON STARR KELLOGG, M.D.  
CO-I 0-07-4146-A

DETERMINATION

AND

ORDER

BPMC #11-114

COPY

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A hearing was held on April 21, 2011 at the offices of the New York State Department of Health ("the Petitioner"). A Notice of Referral Proceeding and a Statement of Charges, both dated February 23, 2011, were served upon the Respondent, **Vernon Starr Kellogg, M.D.**

Pursuant to Section 230(10)(e) of the Public Health Law, **Arthur S. Hengerer, M.D.**, Chair, **Jonathan Ecker, M.D.** and **Les Moore, N.D., MSOM.**, 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 **Michael G. Bass, Esq.**, of Counsel. The Respondent, **Vernon Starr Kellogg, 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 a 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)(b) by having been found guilty of improper professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York state, constitute professional misconduct under the laws of New York state. Respondent is also charged with violation New York Education Law §6530(9)(d) by having disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the disciplinary action would, if committed in New York state, constitute professional misconduct under the laws of New York state. Copies of the 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. Vernon Starr Kellogg, M.D., the Respondent, did not appear at the hearing and was duly served and notified of the hearing, by personal service of process, on March 2, 2011. (Petitioner's Exhibit 2.)
2. Vernon Starr Kellogg, M.D., the Respondent, was authorized to practice medicine in New York State on September 30, 1974, by the issuance of license number 122108 by the New York State Education Department (Petitioner's Ex. 4).
3. On or about May 19, 2010, the Commonwealth of Massachusetts, Board of Registration In Medicine, (hereinafter "Massachusetts Board"), by Final Decision And Order, (hereinafter "Massachusetts Order"), REVOKED the Respondent's inchoate right to renew his license. In the Massachusetts Order, the Massachusetts Board

found that the record established that Respondent engaged in a pattern of conduct that called into question his competence to practice medicine, engaged in conduct that had the capacity to deceive and defraud, and had put his patients at risk through his "cavalier" dispensing practices. More specifically Respondent failed to reveal to the Massachusetts Board on license renewal forms that he no longer held certification in emergency medicine and that he had been investigated twice by the Drug Enforcement Administration. Further, Respondent failed to follow the Massachusetts Board's prescribing guidelines concerning immediate care needs of a patient when he dispensed generic Vicodin in large amounts to some of his home patients. (Petitioner's Ex. 5).

4. The conduct resulting in the Massachusetts Board disciplinary action against Respondent would constitute misconduct under the laws of New York State, pursuant to the following sections of New York State law:

1. New York Education Law Sec. 6530(2) (practicing the profession fraudulently); and/or
2. New York Education Law Sec. 6530(3) (negligence on more than one occasion).

**VOTE OF THE HEARING COMMITTEE**

**SPECIFICATIONS**

**FIRST SPECIFICATION**

"Respondent violated New York Education Law §6530(9)(b) by having been found

guilty of improper professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York State, constitute professional misconduct under the laws of New York State..."

VOTE: Sustained (3-0)

### **SECOND SPECIFICATION**

"Respondent violated New York Education Law §6530(9)(d) by having disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the disciplinary action would, if committed in New York State, constitute professional misconduct under the laws of New York State..."

VOTE: Sustained (3-0)

### **HEARING COMMITTEE DETERMINATION**

The Respondent did not appear at the hearing, either in person or by counsel. The Administrative Law Judge, after considering the documentary evidence, which included an Affidavit of Personal Service of the Notice of Referral Proceeding and the Statement of Charges (Petitioner's Exhibit 2) ruled that the Petitioner had met the requirements of law for 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 the Massachusetts Board of Registration in Medicine had revoked the Respondent's medical license for several reasons, including the

fact that he had practiced in that jurisdiction without holding required malpractice insurance, had-provided inaccurate information to the Board regarding such insurance coverage as well as his specialty board certification, had improperly prescribed controlled substances, and failed to produce to the Board of Registration in Medicine patient medical records and receipts for purchases of controlled substances that had been sought by subpoena. (See Exhibit 5)

Following the Massachusetts decision the Respondent surrendered his medical license by Consent Orders in Vermont (Exhibit 6) and New Hampshire (Exhibit 7).

The Respondent has not appeared by a New York Attorney for the present matter and the Hearing commenced in his absence. It is noted that the Respondent did submit an Answer to the Department and the Department's attorney did offer it into evidence at the hearing. It was received as Respondent's Exhibit A. This Answer averred that Massachusetts had violated his constitutional rights and denied that he had ever acted fraudulently or been negligent.

The ALJ ruled that this Answer was an attempt to relitigate the underlying matter, which is not allowed under New York law. The Respondent had also sent a letter to the court indicating that he would appear only if certain conditions were met, including the agreement by the panel and the ALJ that the constitutions are the supreme law of the land. This letter is set forth in the record as ALJ Exhibit # 1. In response to this letter, the ALJ ruled that the Respondent would not be allowed to dictate any terms or conditions for the hearing and further ruled that the purpose of the hearing was not to review the propriety of the Massachusetts Decision but was limited to evidence and testimony relating to the nature and severity of the penalty to be imposed upon the licensee.



The record does not contain any evidence of mitigating circumstances, or remorse. The panel noted that that the Respondent was aware of this proceeding and chose not to appear or be represented by counsel in New York. As to an appropriate penalty, the Hearing Committee considered the full range of penalties available and determined that the people of New York State would be protected by a revocation of the Respondent's license.

**ORDER**

**IT IS HEREBY ORDERED THAT:**

1. The specifications of professional misconduct, as set forth in the Statement of Charges, are **SUSTAINED**.
2. The license of the Respondent to practice medicine in New York State is revoked.
3. This Order shall be effective upon service on the Respondent in accordance with the requirements of Public Health Law Section 230(10)(h).

DATED: Pittsford, New York  
May 8, 2011

REDACTED

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Arthur S. Hengerer, M.D., Chair,

Jonathan Ecker, M.D.  
Les Moore, N.D., MSOM.

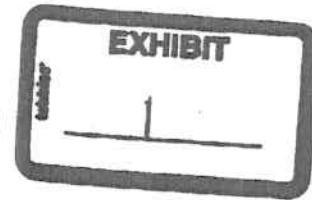
To:  
Vernon Starr Kellogg, M.D., Respondent

REDACTED

Michael G. Bass, Esq., Attorney for Petitioner  
Associate Counsel  
NYS Department of Health  
Bureau of Professional Medical Conduct  
Corning Tower, Room 2512  
Empire State Plaza  
Albany, New York 12237

## APPENDIX 1

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



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IN THE MATTER  
OF  
VERNON STARR KELLOGG, M.D.  
CO-10-07-4146-A

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NOTICE OF  
REFERRAL  
PROCEEDING

TO: VERNON STARR KELLOGG, M.D.  
REDACTED

**PLEASE TAKE NOTICE THAT:**

An adjudicatory proceeding will be held pursuant to the provisions of New York Public Health Law §§230(10)(p) and New York State Administrative Procedures Act §§301-307 and 401. The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 21<sup>st</sup> day of April, 2011, at 10:00 a.m., at the offices of the New York State Department of Health, Hedley Park Place, 433 River Street, 5<sup>th</sup> Floor, Troy, NY 12180.

At the proceeding, evidence will be received concerning the allegations set forth in the Statement of Charges, that is attached. A stenographic record of the proceeding will be made and the witnesses at the proceeding will be sworn and examined.

You may appear in person at the proceeding and may be represented by counsel who shall be an attorney admitted to practice in New York state. You may produce evidence and/or sworn testimony on your behalf. Such evidence and/or sworn testimony shall be strictly limited to evidence and testimony relating to the nature and severity of the penalty to be imposed upon the licensee. Where the charges are based on the conviction of state law crimes in other jurisdictions, evidence may be offered that would show that the conviction would not be a crime in New York State. The Committee also may limit the number of witnesses whose testimony will be received, as well as the length of time any witness will be permitted to testify.

If you intend to present sworn testimony, the number of witnesses and an estimate of the time necessary for their direct examination must be submitted 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 (Telephone: (518-402-0748), (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, no later than ten (10) days prior to the scheduled date of the Referral Proceeding, as indicated above.

Pursuant to the provisions of New York Public Health Law §230(10)(p), you shall file a written answer to each of the charges and allegations in the Statement of Charges not less than ten (10) days prior to the date of the hearing. Any charge or allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such answer. The answer shall be filed with the Bureau of Adjudication, at the address indicated above, and a copy shall be forwarded to the attorney for the Department of Health, whose name appears below. You may file a written brief and affidavits with the Committee. Six (6) copies of all papers you submit must be filed with the Bureau of Adjudication at the address indicated above, no later than fourteen (14) days prior to the scheduled date of the Referral Proceeding, and a copy of all papers must be served on the same date on the Department of Health attorney, indicated below. 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. Pursuant to the terms of New York State Administrative Procedure Act §401 and 10 N.Y.C.R.R. §51.8(b), the Petitioner demands, hereby, disclosure of the evidence that Respondent intends to introduce at the hearing, including the names of witnesses, a list of and copies of documentary evidence, and a description of physical and/or other evidence that cannot be photocopied.

**YOU ARE ADVISED, HEREBY, THAT THE ATTACHED CHARGES WILL BE MADE PUBLIC FIVE (5) BUSINESS DAYS AFTER THEY ARE SERVED.**

Department attorney: Initial here \_\_\_\_\_

The proceeding may be held whether or not you appear. Please note that requests for adjournments must be made in writing to the Bureau of Adjudication, at the address indicated above, with a copy of the request to the attorney for the Department of Health, whose name appears below, at least five (5) days prior to the scheduled date of the proceeding. Adjournment requests are not routinely granted. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation. Failure to obtain an attorney within a reasonable period of time prior to the proceeding will not be grounds for an adjournment.

The Committee will make a written report of its findings, conclusions as to guilt, and a determination. Such determination may be reviewed by the administrative review board for professional medical conduct.

**SINCE THESE PROCEEDINGS MAY RESULT IN A DETERMINATION THAT SUSPENDS OR REVOKES YOUR LICENSE TO PRACTICE MEDICINE IN NEW YORK STATE AND/OR IMPOSES A FINE FOR EACH OFFENSE CHARGED, YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER.**

DATED: Albany, New York

*February 23*, 2011

REDACTED

PETER D. VAN BUREN

Deputy Counsel

Bureau of Professional Medical Conduct

Inquiries should be addressed to:

Michael G. Bass  
Assistant Counsel  
Bureau of Professional Medical Conduct  
Corning Tower - Room 2512  
Empire State Plaza  
Albany, NY 12237  
(518) 473-4282

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

IN THE MATTER  
OF  
VERNON STARR KELLOGG, M.D.  
CO-10-07-4146-A

STATEMENT  
OF  
CHARGES

VERNON STARR KELLOGG, M.D., Respondent, was authorized to practice medicine in New York state on September 30, 1974, by the issuance of license number 122108 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A On or about May 19, 2010, the Commonwealth of Massachusetts, Board of Registration In Medicine, (hereinafter "Massachusetts Board"), by Final Decision And Order, (hereinafter "Massachusetts Order"), REVOKED the Respondent's inchoate right to renew his license. In the Massachusetts Order, the Massachusetts Board found that the record established that Respondent engaged in a pattern of conduct that called into question his competence to practice medicine, engaged in conduct that had the capacity to deceive and defraud, and had put his patients at risk through his "cavalier" dispensing practices. More specifically, Respondent failed to reveal to the Massachusetts Board on license renewal forms that he no longer held certification in emergency medicine and that he had been investigated twice by the Drug Enforcement Administration. Further, Respondent failed to follow the Massachusetts Board's prescribing guidelines concerning immediate care needs of a patient when he dispensed generic Vicodin in large amounts to some of his home patients.

B. The conduct resulting in the Massachusetts Board disciplinary action against Respondent would constitute misconduct under the laws of New York State, pursuant to the following sections of New York State law:

1. New York Education Law Sec. 6530(2) (practicing the profession fraudulently);  
and/or
2. New York Education Law Sec. 6530(3) (negligence on more than one occasion).

**SPECIFICATIONS**  
**FIRST SPECIFICATION**

Respondent violated New York Education Law §6530(9)(b) by having been found guilty of improper professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York state, constitute professional misconduct under the laws of New York state, in that Petitioner charges:

1. The facts in Paragraphs A and B.

**SECOND SPECIFICATION**

Respondent violated New York Education Law §6530(9)(d) by having disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the disciplinary action would, if committed in New York state, constitute professional misconduct under the laws of New York state, in that Petitioner charges:

2. The facts in Paragraphs A and B.

DATED: *February 23*, 2011  
Albany, New York

REDACTED

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