

Public



STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303 Troy, New York 12180-2299

March 15, 2011

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Jude Brearton Mulvey, Esq.
NYS Department of Health
ESP-Corning Tower-Room 2509
Albany, New York 12237-0032

James A. Kowles, M.D.
REDACTED

RE: In the Matter of James A. Kowles, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 11-61) 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., 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

COPY

DETERMINATION

AND

ORDER

BPMC #11-61

IN THE MATTER
OF
JAMES A. KOWLES, M.D.

A Notice of Referral Proceeding and a Statement of Charges, both dated August 9, 2007, were served upon the Respondent, **James A. Kowles, M.D.** A hearing was commenced on September 20, 2007, at the offices of the New York State Department of Health ("the Petitioner"). The Respondent appeared in person and requested an adjournment of the hearing. The Petitioner appeared by **Thomas Conway, Esq.**, General Counsel, by **Robert Bogan, Esq.**, of Counsel. The Respondent provided the Petitioner with documentation of an appeal brought to the Supreme Court of the State of New Hampshire, which sought to annul the determination of New Hampshire's Board of Medicine (which formed one of the bases for this referral proceeding). The Petitioner consented to the Respondent's request, and the matter was adjourned.

Upon receipt of information that the Respondent's appeal to the New Hampshire Supreme Court had been denied, the Petitioner notified Respondent by letter dated December 20, 2010, that this direct referral proceeding was being restored to the February 17, 2011 calendar. In a telephone call on January 4, 2011, Respondent acknowledged receipt of the documents and advised the Petitioner that he did not intend to appear at the hearing.

The hearing resumed as scheduled on February 17, 2011. Pursuant to Section 230(10)(e) of the Public Health Law, **Trevor A. Litchmore, M.D.**, Chair, **Jill M. Rabin, M.D.**, and **Fran E. Tarlton**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. **William J. Lynch, Esq.**, Administrative Law Judge, served as the Administrative Officer. The Petitioner appeared by **James E. Dering, Esq.**, General Counsel, by **Jude Brearton Mulvey, Esq.**, of Counsel. The Respondent did not appear at the continued hearing, either in person or by counsel.

Evidence was received and transcripts of these proceedings were made. After consideration of the entire record, the Hearing Committee issues this Determination and Order.

BACKGROUND

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 Section 6530(9)(a)(iii), 6530(9)(b) and 6530(9)(d). 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. James A. Kowles, M.D., the Respondent, was authorized to practice medicine in New York State on July 9, 1975, by the issuance of license number 124513 by the New York State Education Department. (Petitioner's Ex. 4).

2. On January 26, 2000, in the Lebanon District Court, Lebanon, New Hampshire, Respondent was found guilty of Simple Assault, a crime, and was sentenced to a \$1000.00 fine, \$750.00 suspended, counseling, and a provision that he remain on good behavior for one year. (Petitioner's Ex. 5).

3. On April 9, 2007, the State of New Hampshire Board of Medicine (hereinafter "New Hampshire Board"), by a Decision and Order (hereinafter "New Hampshire Order"), inter alia, suspended Respondent's license to practice medicine for five years (though

permitting him to petition for reinstatement after two years), required his meaningful participation in a continuing medical education program on boundary violations, and fined him \$1000.00, based upon his unprofessional conduct demonstrating a lack of respect for ethical principles that guide the profession with regard to sexual misconduct in the practice of medicine. (Petitioner's Ex. 6).

4. On February 21, 2008, the Supreme Court of the State of New Hampshire issued an Order affirming the determination of the New Hampshire Board. (Petitioner's Ex. 8).

HEARING COMMITTEE CONCLUSIONS

The Hearing Committee unanimously concludes that the Respondent was convicted of a crime under the laws of the State of New Hampshire which would have constituted a crime under New York State law if committed within this state.

The Hearing Committee also unanimously concludes that the conduct of the Respondent would constitute professional misconduct under the laws of New York State, had the conduct occurred in New York State, pursuant to New York Education Law Section 6530(2) - Practicing the profession fraudulently; New York Education Law Section 6530(20) - Moral unfitness; New York Education Law Section 6530(31) - Harassing, abusing or intimidating a patient. Further, the Hearing Committee concludes by a vote of two in favor and one in opposition that the conduct of the Respondent would constitute professional misconduct under the laws of New York State, had the conduct occurred in New York State, pursuant New York Education Law Section 6530(32) - Failing to

maintain a record for each patient which accurately reflects the evaluation and treatment of the patient.

VOTE OF THE HEARING COMMITTEE

FIRST SPECIFICATION

"Respondent violated New York Education Law Section 6530(9)(a)(iii) by having been convicted of a crime under the law of another jurisdiction and which if committed within this state, would have constituted a crime under New York State law..."

VOTE: Sustained (3-0)

SECOND SPECIFICATION

"Respondent violated New York Education Law Section 6530(9)(b) by having been found guilty of improper professional practice or 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)

THIRD SPECIFICATION

"Respondent violated New York Education Law Section 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 evidence establishes that the Lebanon District Court in the State of New Hampshire found the Respondent guilty of section 631:2-a of its Criminal Code which defines Simple Assault as when a person "(a) Purposely or knowingly causes bodily injury or unprivileged physical contact to another; or (b) Recklessly causes bodily injury to another; or (c) Negligently causes bodily injury to another by means of a deadly weapon." This conduct would be a crime if committed within New York State pursuant to section 120.00 of the New York State Penal Code. The New Hampshire court record further indicates that the matter was related to a domestic violence arrest which occurred in January 2000.

The evidence in this proceeding also establishes that New Hampshire Board found that the Respondent treated Patient S.C. for several years for various medical conditions including depression, for which he prescribed medication. Although the Respondent contended that he had terminated his physician/patient relationship with Patient S.C. during their first date in November 1998, the New Hampshire Board found that the Respondent, according to his own testimony, had treated her for a case of bursitis on the morning after their first sexual intercourse. The New Hampshire Board further found that Respondent continued to treat Patient S.C. over the duration of their sexual relationship, which included cohabitation, until sometime during the year 2000. The New Hampshire Board also found that the Respondent submitted test results using fake names in order to hide Patient S.C.'s identity and that he facilitated the removal of her record from the offices of Family Health Center. Based upon the facts in evidence in its proceeding, the

New Hampshire Board determined that the Respondent knew that his conduct towards Patient S.C. was wrong, and that he had exploited Patient S.C.

Although the Respondent did not appear at the hearing, he did contact the Petitioner to advise that he is now 62 years of age, that he has retired from the practice of medicine, and that he no longer wants a New York State license. The Respondent indicated to the Petitioner that the New Hampshire Board had merely viewed his unmarried cohabitation negatively, and that he was proud of his medical career.

This direct referral proceeding, however, does not permit the Respondent to relitigate the underlying New Hampshire Order. The Hearing Committee determined that Respondent's conduct in New Hampshire included a criminal conviction for assault, exploiting a patient to engage in a sexual relationship, and falsifying the patient's name to conceal conduct which he knew was wrongful. Rather than provide any evidence of remorse or rehabilitation, Respondent refuses to accept the validity of the New Hampshire Board's findings.

The New York State Board for Professional Medical Conduct is committed to protecting the public from physician sexual misconduct. In reviewing the evidence and the Statement of Charges, the Hearing Committee accepts the findings of the New Hampshire Board which indicate that the Respondent exploited a continuing physician-patient relationship in a sexual way.

The Petitioner recommended that the Respondent's license to practice medicine be revoked as the only penalty that would protect the people of the State of New York. Based on the foregoing, the Petitioner's recommendation will be adopted.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Respondent's license 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 230(10)(h).

DATED: Rotterdam, New York
3/09, 2011

REDACTED

Trevor A. Litchmore, M.D.
Chairperson

Jill M. Rabin, M.D.
Frances E. Tarlton

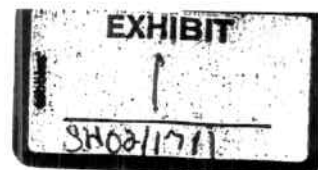
To: Jude Brearton Mulvey, Esq.
Associate Counsel
Bureau of Professional Medical Conduct
Empire State Plaza
Corning Tower – Room 2509
Albany, New York 12237-0032

James A Kowles, M.D.

REDACTED

ATTACHMENT A

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



IN THE MATTER
OF
JAMES A. KOWLES, M.D.
CO-07-05-2406-A

NOTICE OF
REFERRAL
PROCEEDING

TO: JAMES A. KOWLES, 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 20th day of September, 2007, at 10:00 a.m., at the offices of the New York State Department of Health, Hedley Park Place, 433 River Street, 5th Floor, Troy, NY 12180.

At the proceeding, evidence will be received concerning the allegations set forth in the Statement of Charges, which 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. You may produce evidence or sworn testimony on your behalf. Such evidence 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 which 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. SEAN D. O'BRIEN, 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 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 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 copies of all papers you submit must be filed with the Bureau of Adjudication at the address indicated above, no later than fourteen 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 hereby demands disclosure of the evidence that the 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 or other evidence which cannot be photocopied.

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 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

Aug. 9, 2007

REDACTED

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

Inquiries should be addressed to:

Robert Bogan
Associate Counsel
New York State Department of Health
Office of Professional Medical Conduct
433 River Street – Suite 303
Troy, New York 12180
(518) 402-0828

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

IN THE MATTER
OF
JAMES A. KOWLES, M.D.
CO-07-05-2406-A

STATEMENT
OF
CHARGES

JAMES A. KOWLES, M.D., Respondent, was authorized to practice medicine in New York state on July 9, 1975, by the issuance of license number 124513 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about January 26, 2000, in the Lebanon District Court, Lebanon, New Hampshire, Respondent was found guilty, based on a plea of guilty, of Simple Assault, a crime, and was sentenced to a \$1,000.00 fine, \$750.00 suspended, counseling, and that he remain on good behavior for one (1) year.

B. On or about April 9, 2007, the State of New Hampshire, Board of Medicine, by a Decision and Order (hereinafter "New Hampshire Order"), inter alia, suspended Respondent's license to practice medicine for five (5) years (he may petition for reinstatement after two (2) years), required him to meaningfully participate in a program of CME - specifically in boundary violations, and fined him \$1,000.00, based on unprofessional conduct demonstrating a lack of respect for the ethical principles, that guide the profession with regard to sexual misconduct in the practice of medicine.

C. The conduct resulting in the New Hampshire Board's 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 §6530(2) (practicing the profession fraudulently);
2. New York Education Law §6530(20) (moral unfitness);

3. New York Education Law §6530(31) (harassing, abusing, or intimidating a patient); and/or
4. New York Education Law §6530(32) (failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient).

SPECIFICATIONS

FIRST SPECIFICATION

Respondent violated New York Education Law §6530(9)(a)(iii) by having been convicted of committing an act constituting a crime under the law of another jurisdiction and which if committed within this state, would have constituted a crime under New York State law, in that Petitioner charges:

1. The facts in Paragraph A.

SECOND SPECIFICATION

Respondent violated New York Education Law §6530(9)(b) by having been found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the findings was based 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 B and/or C.

THIRD SPECIFICATION

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

3. The facts in Paragraph B and/or C.

DATED: Aug. 9, 2007
Albany, New York

REDACTED

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