

Public

NEW YORK
state department of
HEALTH

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

Sue Kelly
Executive Deputy Commissioner

November 2, 2012

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Dahlia V. Kirkpatrick, M.D.
Register #05501-095
FCI Tallahassee
Federal Correctional Institution
501 Capital Circle, NE
Tallahassee, Florida 32301

Michael G. Bass, Esq.
NYS Department of Health
Bureau of Professional Medical Conduct
ESP-Corning Tower Building-Room 2513
Albany, New York 12237-0032

RE: In the Matter of Dahlia V. Kirkpatrick, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 12-228) 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
Office of Professional Medical Conduct
Riverview Center
150 Broadway - Suite 355
Albany, New York 12204

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., Chief Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Riverview Center
150 Broadway – Suite 510
Albany, New York 12204

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
Chief Administrative Law Judge
Bureau of Adjudication

JFH:cah
Enclosure

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

IN THE MATTER
OF
DAHLIA V. KIRKPATRICK, M.D.

DETERMINATION
AND
ORDER
BPMC #12-228

COPY

A hearing was held on October 18, 2012, at the offices of the New York State Department of Health ("the Petitioner"). A Commissioner's Order and Notice of Referral Proceeding, dated July 1, 2012, and a Statement of Charges, dated July 2, 2012, were served upon the Respondent, **Dahlia V. Kirkpatrick, M.D.**

Pursuant to Section 230(10)(e) of the Public Health Law, **Kendrick A. Sears, M.D.**, Chair, **Trevor A. Litchmore, 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 **Michael G. Bass, Esq.**, of Counsel.

The Respondent, **Dahlia V. Kirkpatrick, M.D.** did not appear although duly served with process. Evidence was received and a transcript of these proceedings was 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 Section 6530(9)((a)(ii) by having been found guilty of committing a crime under federal law, specifically, a Conspiracy to Commit Health Care Fraud in violation of Title 18 of the United States Code, Section 1349 a felony.

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.

1. Dahlla V. Kirkpatrick, M.D. did not appear at the hearing although she was duly served and notified of the hearing on August 6, 2012. (Petitioner's Exhibit 2.)
2. The Respondent, Dahlia V. Kirkpatrick, M.D. was authorized to practice medicine in New York State on November 18, 1975 by the issuance of license number 125906 by the New York State Education Department (Petitioner's Ex. 3).
3. On or about October 4, 2010, in United States District Court, Middle District of Louisiana, Respondent pled guilty to Conspiracy to Commit Health Care Fraud, in violation of Title 18 of the United States Code, Section 1349, a felony. (Petitioner's Ex. 4).
4. On or about January 13, 2011, in United States District Court, Middle District of Louisiana, Respondent was sentenced, *inter alia*, to thirty (30) months imprisonment and ordered to pay restitution in the amount of \$302,811.00. (Petitioner's Ex. 4).

VOTE OF THE HEARING COMMITTEE

SPECIFICATION

Respondent violated New York Education Law Section 6530 (9)(a)(ii) by having been convicted of committing an act constituting a crime under federal law to wit

Conspiracy to Commit Health Care Fraud, in violation of Title 18 of the United States Code, Section 1349, a felony.

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 Exhibit 2) ruled that the Petitioner had met the requirements of law for 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.

It is noted that the Respondent is presently incarcerated at the Federal Correctional Institution in Tallahassee, Florida. It appears that the Respondent has been in contact with the Department's attorney and has given him documents to submit on her behalf. Three documents were received into the record at the hearing as Respondent's Exhibits A, B, and C. The panel considered the Respondent's documents but rejected her argument that they diminish her guilt in this matter. It was her license that made this fraudulent scheme possible and without her license this fraud would not have been perpetrated. The panel recognized that while the Respondent may not have enjoyed financial gain from this scheme, nevertheless it is clear that she was part and parcel of a conspiracy to defraud. The panel was unanimous in deciding that this activity warranted revocation.

As to the merits of the case, the Department contended that the record shows that the Respondent was charged and convicted of the federal crime of Health Care Fraud, a

felony. (Petitioner's Ex. 4). Accordingly, the panel sustained the charges herein unanimously.

As to the penalty, the Department's attorney requested revocation, and the panel agreed. The Hearing Committee determined, unanimously, 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 specification of professional misconduct, as set forth in the Statement of Charges, is **SUSTAINED**.
2. The license of the Respondent to practice medicine in New York State is hereby **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: Syracuse, New York
October 26, 2012**

REDACTED

Kendrick A. Sears, M.D., Chair

**Trevor A. Litchmore, M.D.
Thomas W. King, Jr., M.P.A., P.E.**

To:

Dahlia V. Kirkpatrick, M.D.,
Respondent, Register # 05501-095
FCI Tallahassee - Federal Correctional Institution
501 Capital Circle, NE
Tallahassee, FL 32301

Michael G. Bass, Esq.
Attorney for Petitioner
Associate Counsel
NYS Department of Health
Bureau of Professional Medical Conduct
Corning Tower Building - Room 2513
Empire State Plaza
Albany, NY 12237-0032

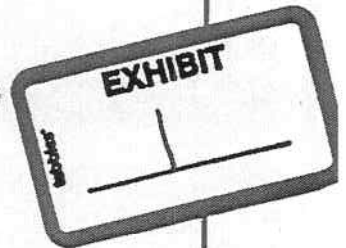
APPENDIX 1

IN THE MATTER

OF

DAHLIA V. KIRKPATRICK, M.D.
CO-11-08-4321-A

COMMISSIONER'S
ORDER
AND
NOTICE OF
REFERRAL
PROCEEDING



TO: DAHLIA V. KIRKPATRICK, M.D.
Register #05501-095
FCI Tallahassee-Federal Correctional Institution
501 Capital Circle, NE
Tallahassee, FL 32301

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 DAHLIA V. KIRKPATRICK, M.D., Respondent, licensed to practice medicine in the State of New York on November 18, 1975, by license number 125906, has been convicted of committing an act constituting a felony under federal law, in the United States District Court, Middle District of Louisiana, 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 DAHLIA V. KIRKPATRICK, 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 16th day of August 2012, at 10:30 a.m., at Riverview Center, 150 Broadway – Suite 510, Albany, New York 12204-2719, 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, Riverview Center, 150 Broadway – Suite 510, Albany, NY 12204-2719, 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
July 1, 2012

REDACTED

NIRAV R. SHAH, M.D., M.P.H.
Commissioner of Health
New York State Department of Health

Inquires should be addressed to:

Michael G. Bass
Assistant 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
DAHLIA V. KIRKPATRICK, M.D.
CO-11-08-4321-A

STATEMENT
OF
CHARGES

DAHLIA V. KIRKPATRICK, M.D., Respondent, was authorized to practice medicine in New York state on or about November 18, 1975, by the issuance of license number 125906 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about October 4, 2010, in United States District Court, Middle District of Louisiana, Respondent pled guilty to Conspiracy to Commit Health Care Fraud, in violation of Title 18 of the United States Code, Section 1349, a felony. On or about January 13, 2011, in United States District Court, Middle District of Louisiana, Respondent was sentenced, *inter alia*, to thirty (30) months of imprisonment and ordered to pay restitution in the amount of \$302,811.00.

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: July 2, 2012
Albany, New York

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