



## Department of Health

KATHY HOCHUL  
Governor

JAMES V. McDONALD, M.D., M.P.H.  
Commissioner

JOHANNE E. MORNE, M.S.  
Acting Executive Deputy Commissioner

January 19, 2024

### CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Justine Clarke Caplan, Esq.  
New York State Department of Health  
Bureau of Professional Medical Conduct  
Corning Tower, Room 2512  
Empire State Plaza  
Albany, New York 12237

Anthony Kelly, P.A.  


**RE: In the Matter of Anthony Kelly, P.A.**

Dear Parties:

Enclosed please find the Determination and Order (No. 24-018) 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. 2015) and §230-c subdivisions 1 through 5, (McKinney Supp. 2015), "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:

Jean T. Carney, 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 Ms. Carney 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,

A solid black rectangular box used to redact the signature of the Chief Administrative Law Judge.

Natalie J. Børdeaux  
Chief Administrative Law Judge  
Bureau of Adjudication

NJB: cmg  
Enclosure

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

COPY

-----X  
IN THE MATTER  
OF  
ANTHONY KELLY, P.A.  
-----X

DETERMINATION  
AND  
ORDER

A hearing was held on January 11, 2024, by videoconference. Pursuant to Public Health Law (PHL) § 230(10)(e), Jonathan Ecker, M.D., Chairperson, Rose Berkun, M.D., and David Irvine, DHSc, P.A., duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. Tina M. Champion, Administrative Law Judge (ALJ), served as the Administrative Officer.

The Department appeared by Justine Clarke Caplan, Senior Attorney. A Notice of Referral Proceeding and Statement of Charges dated November 28, 2023, were duly served upon Anthony Kelly, P.A. (Respondent), who did not appear at the hearing.

The Hearing Committee received and examined documents from the Department (Dept. Exs. 1-4). A stenographic reporter prepared a transcript of the proceeding.

**BACKGROUND**

The Department brought this case pursuant to PHL § 230(10)(p), which provides for a hearing when a licensee is charged solely with a violation of Educ. Law § 6530(9). The Respondent is charged with one specification of professional misconduct pursuant to Educ. Law § 6530(9)(d) for "[h]aving his or her license to practice medicine revoked, suspended or having other disciplinary action taken, or having his or her application for a license refused, revoked or suspended or having voluntarily or otherwise surrendered his or her license after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the

revocation, suspension or other disciplinary action involving the license or refusal, revocation or suspension of an application for a license or the surrender of the license would, if committed in New York state, constitute professional misconduct under the laws of New York state."

Pursuant to PHL § 230(10), the Department has the burden of proving its case by a preponderance of the evidence. Any licensee found guilty of professional misconduct under the procedures prescribed in PHL § 230 "shall be subject to penalties as prescribed in [PHL § 230-a] except that the charges may be dismissed in the interest of justice." Educ. Law § 6530.

#### FINDINGS OF FACT

The following findings and conclusions are the unanimous determinations of the Hearing Committee:

1. The Respondent was licensed to practice as a physician assistant in New York State on March 22, 1993, by issuance of license number 004482. (Dept. Ex. 3.)

2. On February 24, 2022, the Arizona Regulatory Board of Physician Assistants (Arizona Board) issued an "Order for Letter of Reprimand; and Consent to the Same" to the Respondent for, among other things, signing correspondence and engaging in advertising identifying himself as "Doctor Kelly" or "Dr. Anthony Kelly" without reference to his physician assistant credentials. (Dept. Ex. 4.)

3. The Order stated that the Respondent's actions constituted unprofessional conduct in Arizona by "[c]ommitting false, fraudulent, deceptive or misleading advertising by a physician assistant or the physician assistant's staff or representative," "[f]ailing to clearly disclose the person's identity as a physician assistant in the course of the physician assistant's employment," "[f]ailing to use and affix the initials 'P.A.' or 'P.A.-C' after the physician assistant's name or signature on charts, prescriptions, or professional correspondence," and "[u]sing the term 'doctor' or the abbreviation 'Dr.' on a name tag or in a way that leads the public to believe that the physician assistant is licensed to practice as an allopathic or an osteopathic physician" in Arizona. (Dept. Ex. 4.)

### VOTE OF THE HEARING COMMITTEE

The Hearing Committee, by a vote of 3-0, sustains the charge that the Respondent committed professional misconduct as defined in Educ. Law § 6530(9)(d).

### HEARING COMMITTEE DETERMINATIONS

The Hearing Committee concludes that the conduct resulting in the disciplinary action in Arizona, if committed in New York State, would constitute professional misconduct under the laws of New York State as defined in:

Educ. Law § 6530(2) – Practicing the profession fraudulently or beyond its authorized scope; and

Educ. Law § 6530(27)(a)(i) – False, fraudulent, deceptive, misleading, sensational, or flamboyant advertising or soliciting.

Accordingly, the specification that the Respondent committed professional misconduct as defined in Educ. Law § 6530(9)(d) is sustained.

In considering the full spectrum of penalties available under the Public Health Law, the Hearing Committee has determined, by a vote of 2-1, to revoke the Respondent's license to practice as a physician assistant in New York State. The Hearing Committee finds that the Respondent's conduct was not an isolated incident, creates the potential for danger to the public, and, without the Respondent appearing and presenting any evidence to the contrary, demonstrates a blatant disregard for the laws formed to protect the public. The Hearing Committee also finds that the Respondent's conduct offends the conscience of physician assistants who properly identify themselves with their credentials and physicians who have obtained the requisite education and training to identify themselves as doctors. The majority of the Hearing Committee strongly feels revocation is the only appropriate penalty to protect the public in the State of New York, regardless of the Department's recommendation that the Respondent receive a censure and reprimand and be ordered to take continuing medical education in the area ethics, and regardless of the fact that it is a more severe penalty than was imposed by Arizona.

ORDER

Now, after reviewing the evidence from the hearing, it is hereby ordered that:

1. The specification of professional misconduct as set forth in the Statement of Charges is sustained;
2. The Respondent's license to practice as a physician assistant in the State of New York is revoked; and
3. This Order shall be effective upon service on the Respondent in accordance with the requirements of PHL § 230(10)(h).

Dated: Albany, New York  
January 18, 2024

[REDACTED]  
Jonathan Ecker, M.D., Chairperson  
Rose Berkun, M.D.  
David Irvine, DHSc, P.A.

Justine Clarke Caplan  
Senior Attorney  
New York State Department of Health  
Bureau of Professional Medical Conduct  
Corning Tower, Room 2512  
Empire State Plaza  
Albany, NY 12237  
[REDACTED]

Anthony Kelly, P.A.  
[REDACTED]

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

IN THE MATTER

OF

ANTHONY KELLY, P.A.

STATEMENT  
OF  
CHARGES

Anthony Kelly, P.A.; the Respondent, was authorized to practice as a physician assistant in New York State on or about March 22, 1993, by the issuance of license number 004482 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

- A. On or about February 24, 2022, the Arizona Regulatory Board of Physician Assistants (hereinafter, "Board") issued an "Order for Letter of Reprimand; And Consent to Same" ("Arizona Order"), pursuant to which Respondent was issued a Letter of Reprimand for among other things, signing correspondence and engaging in advertising identifying himself as "Doctor" or "Dr." Kelly without reference to his physician assistant credentials.
- B. The Arizona Order stated that Respondent's actions constituted misconduct in Arizona as "false, fraudulent, deceptive or misleading advertising by a physician assistant or the physician assistant's staff or representative," "[f]ailing to clearly disclose the person's identify as a physician assistant in the course of the physician assistant's employment," "[f]ailing to use and affix the initials "P.A." or "P.A.-C" after the

physician assistant's name or signature on charts, prescriptions, or professional correspondence" and "[u]sing the term "doctor" or the abbreviation "Dr." on a name tag or in a way that leads the public to believe that the physician assistant is licensed to practice as an allopathic or an osteopathic physician in this state."

C. The conduct resulting in the Arizona Order against Respondent would constitute misconduct under the laws of New York State pursuant to New York Education Law Sections 6530(2) (practicing the profession fraudulently or beyond its authorized scope) and/or 6530(27)(a)(i) (false, fraudulent, deceptive, misleading, sensational, or flamboyant advertising or soliciting).

### **SPECIFICATION OF CHARGES**

#### **FIRST SPECIFICATION**

#### **HAVING HAD DISCIPLINARY ACTION TAKEN**

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(9)(d) by having his or her license to practice medicine revoked, suspended or having other disciplinary action taken, or having his or her application for a license refused, revoked or suspended or having voluntarily or otherwise surrendered his or her license after a disciplinary action was instituted by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the revocation, suspension or other disciplinary action involving the license or refusal, revocation or suspension of an application for a license or the surrender of the license would, if



committed in New York state, constitute professional misconduct under the laws of New York state [namely N.Y. Educ. Law §§ 6530(2) and/or 6530(27)(a)(i)] as alleged in the facts of the following:

1. The facts in Paragraphs A, B and C.

DATE: November 28, 2023  
Albany, New York

  
JEFFREY J. CONKLIN  
Deputy Director  
Bureau of Professional Medical Conduct