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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

Joel E. Abelove, Esq.
NYS Department of Health
ESP-Corning Tower-Room 2512
Albany, New York 12237-0032

Richard Paul Kulak, D.O.
REDACTED

Richard Paul Kulak, D.O.
REDACTED

Emil M. Rossi, Esq.
307 South Townsend Street-Suite 100
Syracuse, New York 13202

Michael Spano, Esq.
304 South Franklin Street
Syracuse, New York 13202

RE: In the Matter of Richard Paul Kulak, D.O.

Dear Parties:

Enclosed please find the Determination and Order (No. 11-113) 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**

In the matter of

Richard Paul Kulak, D.O.
NYS license # 210974

**Determination
and Order**

BPMC #11-113

COPY

A notice of referral proceeding and statement of charges, both dated November 17, 2010, were served on Respondent **Richard Paul Kulak, D.O.** The statement of charges alleged violation of New York State Education Law 6530. A hearing was held at offices of the New York State Department of Health, Hedley Park Place, 433 River Street, Troy, New York, on March 23, 2011.

Pursuant to Public Health Law 230(10)(e), **Michael R. Golding, M.D.**, Chairperson, **Eleanor C. Kane, M.D.**, and **Janet M. Miller, R.N.**, duly designated members of the State Board for Professional Medical Conduct, served as the hearing committee. **John Harris Terepka**, Administrative Law Judge, served as the administrative officer.

The Department of Health (the Petitioner) was represented by **James E. Dering, Esq.**, General Counsel, and appeared by **Joel E. Abelove, Esq.** **Richard Paul Kulak, D.O.**, (the Respondent), appeared and was represented by **Emil M. Rossi, Esq.** and **Michael Spano, Esq.** Evidence was received and a transcript of the proceedings was made. After consideration of the entire record, the hearing committee issues this determination and order.

JURISDICTION

As is set forth in Public Health Law 230(1)&(7) and Education Law 6530, the legislature created the State Board for Professional Medical Conduct in the Department of Health (the Department), and authorized it to conduct disciplinary proceedings in matters of professional medical conduct.

Definitions of professional misconduct applicable to physicians, physician assistants and specialist assistants are set forth in Ed.L 6530 and 6531. In this case, the Respondent, a physician, has been charged with misconduct pursuant to Ed.L 6530(9)(a)(i).

Pursuant to PHL 230(10)(p), a "direct referral procedure" is authorized when a licensee is charged solely with a violation of Ed.L 6530(9). Charges of misconduct under Ed.L 6530(9) are based upon a criminal conviction or an administrative violation, in New York State or another jurisdiction, establishing conduct that would constitute a crime or professional misconduct if committed in New York. The scope of the hearing is limited to whether there is a relevant conviction or administrative determination and if so, to a determination of the nature and severity of the penalty to be imposed. PHL 230(10)(p). Hearing procedures are set forth in Department of Health regulations at 10 NYCRR Part 51.

EVIDENCE

Witnesses for the Petitioner:	None
Petitioner exhibits:	Department Exhibits 1-10.
Witnesses for the Respondent:	Laura Martin Amy Jennejohn Richard Christiana Cheryl Vitaletti
Respondent exhibits:	Respondent Exhibits A-R.

A transcript of the hearing was made. (Transcript, pages 1-77.)

FINDINGS OF FACT

An opportunity to be heard having been afforded the parties and evidence having been considered, it is hereby found:

1. Respondent Richard Paul Kulak, D.O. was authorized to practice medicine in New York State on June 24, 1998 under license number 210974. (Department Exhibit 4.)
2. On January 7, 2011, after entering a plea of guilty, the Respondent was convicted in the Onondaga County Supreme Court, New York, of attempted dissemination of indecent material to a minor in the first degree, in violation of NY Penal Law sections 110 and 235.22, a class E felony. The Respondent was sentenced to a term of ten years probation as a level one sex offender, with an order of protection, and assessed surcharges and fees in the amount of \$1,425. (Department Exhibit 5; Transcript, pages 12, 68.)

HEARING COMMITTEE DETERMINATION

After reviewing records obtained from the Onondaga County Supreme Court, (Department Exhibits 5, 10), the hearing committee unanimously determined that, as alleged in the statement of charges, the Respondent violated Ed.L 6530(9)(a)(i) which defines professional misconduct, in pertinent part, as:

9. (a) Being convicted of committing an act constituting a crime under... New York state law.

The conviction in this case arose from the Respondent's involvement in a sexual relationship with a 16 year old boy. The Petitioner recommended revocation of the Respondent's license. (Transcript, page 65.) Circumstances surrounding the conviction led the committee to agree that revocation of the Respondent's license is the appropriate action.

In particular, the committee was concerned that the victim of this crime, and his mother, had both been patients of the Respondent. (Department Exhibits 6, 7; Transcript,

pages 70-71.) The Respondent, who was medical director for the Syracuse City School District (Transcript, pages 45-46), had previously diagnosed and treated the boy for mood disorder and for "an extreme case of social anxiety." (Department Exhibit 6.) These circumstances compounded, in a manner directly relevant to the Respondent's fitness to practice medicine, the already serious transgression represented by the criminal act itself.

The committee also took notice that the Respondent presented several witnesses and extensive documentation purporting to establish "unreserved support" (Transcript, page 60) for his medical practice, and yet he chose not to testify. He thereby denied the committee an opportunity to hear from and directly evaluate the Respondent's own explanation why his license should not be revoked. Given these circumstances, the hearing committee unanimously determined that revocation of the Respondent's license pursuant to PHL 230-a(4) is the appropriate penalty.

The hearing committee's vote sustaining the charge and revoking the Respondent's license was unanimous (3-0).

ORDER

IT IS HEREBY ORDERED THAT:

1. The Respondent's license to practice medicine in New York State is **REVOKED**.

This order shall be effective upon service on the Respondent by personal service or by registered or certified mail as required under PHL 230(10)(h).

Dated: Albany, New York

06 May 2011

By:

REDACTED

Michael R. Golding, M.D.
Chairperson

Eleanor C. Kane, M.D.
Janet M. Miller, R.N.

To: Joel E. Ablove, Esq., Associate Counsel
Bureau of Professional Medical Conduct
Corning Tower, Empire State Plaza
Albany, New York 12237-0032

Richard Paul Kulak, D.O.

REDACTED

Richard Paul Kulak, D.O.

REDACTED

Emil M. Rossi, Esq.
307 South Townsend Street Suite 100
Syracuse, New York 13202

Michael Spano, Esq.
304 South Franklin Street
Syracuse, New York 13202

APPENDIX I

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



IN THE MATTER

OF

RICHARD PAUL KULAK, D.O.
SY-10-02-1237-A

NOTICE OF
REFERRAL
PROCEEDING

TO: RICHARD PAUL KULAK, D.O.
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 16th day of February, 2011, 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, 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

November 17, 2010

REDACTED

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

Inquiries should be addressed to:

Joel E. Ablove
Associate 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
RICHARD PAUL KULAK, D.O.
SY-10-02-1237-A

STATEMENT
OF
CHARGES

RICHARD PAUL KULAK, D.O., Respondent, was authorized to practice medicine in New York state on June 24, 1998, by the issuance of license number 210974 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about November 10, 2010, in Onondaga County Court of the State of New York, Respondent pled guilty to Attempted Disseminating Indecent Material to Minors in the first degree, in violation of New York Penal Law §§110.00 and 235.22, a class E felony, in the first degree.

SPECIFICATION

Respondent violated New York State Education Law §6530(9)(a)(i) by being convicted of committing an act constituting a crime under New York state law, in that Petitioner charges:

1. The facts in Paragraph A.

DATED: *November 17*, 2010
Albany, New York

REDACTED

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