



Department of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

July 31, 2017

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Alexander G. Bateman, Jr
Ruskin, Moscou, Faltischek, P.C.
East Tower, 15th Floor
1425 RXR Plaza
Uniondale, New York 11556-1425

David Kraus, M.D.


Ian H. Silverman, Esq.
Associate Counsel
Bureau of Professional Medical Conduct
Corning Tower Building- Room 2512
Empire State Plaza
Albany, New York 12237

RE: In the Matter of David Kraus

Dear Parties:

Enclosed please find the Determination and Order (No.17- 216) 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. 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 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., 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,


James F. Horan
Chief Administrative Law Judge
Bureau of Adjudication

JFH: 

Enclosure

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

COPY

-----X
IN THE MATTER
OF
DAVID KRAUS, M.D.
-----X

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: DETERMINATION
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: AND
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: ORDER
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:-----X

BPMC 17- 216

A hearing was held on July 20, 2017, at the offices of the New York State Department of Health ("Department").¹ Pursuant to § 230(10)(e) of the Public Health Law ("PHL"), JILL M. RABIN, M.D., Chairperson, GAIL HOMICK-HERRLING and RONALD UVA, M.D., duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. DAWN MacKILLOP-SOLLER, ADMINISTRATIVE LAW JUDGE ("ALJ"), served as the Administrative Officer.

The Department appeared by Ian H. Silverman, Associate Counsel. A Notice of Referral Proceeding and Statement of Charges dated May 23, 2017, were served upon David Kraus, M.D. ("Respondent").² The Respondent appeared at the hearing and was represented by Alexander G. Bateman, Jr., Esq. and David F. Durso, Esq. The Respondent testified, and Manny Lamazares provided testimony on the Respondent's behalf. The Hearing Committee received and examined documents from the Department (Exhibits 1-4) and the Respondent (Exhibits A and B), and a stenographic reporter prepared a transcript of the proceeding. After consideration of the entire record, the Hearing Committee sustains the charge that the Respondent committed professional misconduct, in violation of Education Law ("Educ. Law") § 6530(9)(a)(ii), by having been convicted of committing an act

¹ The location of the hearing was 150 Broadway, Suite 510, Menands, New York.

² Copies of the Notice of Referral Proceeding and Statement of Charges are attached to this Determination and Order as Appendix I and were personally served on the Respondent's attorney, on behalf of the Respondent, on June 8, 2017, at East Tower, 15th Floor, 1425 RXR Plaza, Uniondale, New York, establishing jurisdiction. [Exhibit 2].

constituting a crime under federal law. The Hearing Committee unanimously votes 3-0 to a two-year suspension of the Respondent's medical license in the state of New York. The suspension period is stayed in its entirety.

BACKGROUND

The Department brought the case pursuant to PHL § 230(10)(p), which provides for a hearing when a registered provider or licensee is charged solely with a violation of Educ. Law § 6530(9). In such cases, the charge of misconduct is based upon a prior criminal conviction in New York or another jurisdiction, or upon a prior administrative adjudication regarding conduct that would amount to professional misconduct, if committed in New York. The Respondent is charged with one specification of professional misconduct pursuant to Educ. Law § 6530(9)(a)(ii) by having been convicted of committing an act constituting a crime under federal law, specifically 18 U.S.C. § 1001.

FINDINGS OF FACT

These Findings of Fact were made by the Hearing Committee after a review of the record in this matter. Under PHL § 230(10), the Department had the burden of proving its case by a preponderance of the evidence. The references in brackets refer to exhibits ["Ex."]. The following findings and conclusions are the unanimous determinations of the Hearing Committee:

1. On April 19, 1993, the Respondent was authorized to practice medicine in New York by the Education Department and was issued license number 191922. [Ex. 4].
2. In order to obtain a modified loan in 2009 for his family's farm and winery business located in Sandusky, Ohio, the Respondent submitted a 2008 federal income tax return to a loan officer of the United States Department of Agriculture, Farm Service Agency, that reported a net loss that was approximately \$58,000 greater than the loss later reported in the tax return that he filed with the Internal Revenue Service. [Ex. 3].

3. Based on this conduct, on or about March 4, 2015, in the United States District Court, Northern District of Ohio, the Respondent pled guilty to the felony crime of False Statements, in violation of 18 U.S.C. § 1001. On June 23, 2015, the Respondent was sentenced to 15 months of imprisonment, two years of supervised release, 200 hours of community service, a \$100.00 assessment, a \$10,000 fine and was ordered to pay restitution in the amount of \$447,406.33. [Ex. 1, 3].

VOTE OF THE HEARING COMMITTEE

The Respondent violated New York Educ. Law § 6530(9)(a)(ii) by having been convicted of committing an act constituting a crime under federal law.

VOTE: Sustained (3-0)

CONCLUSIONS OF LAW

In the United States District Court, Northern District of Ohio, a federal court, the Respondent was adjudicated guilty, following his plea of guilty, to the felony crime of False Statements, in violation of 18 U.S.C. § 1001. The conduct that is the subject of the Statement of Charges in this action constitutes a crime under federal law. Therefore, the specification of misconduct contained in the Statement of Charges of this proceeding is sustained.

The Hearing Committee considered the full spectrum of penalties available by statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties. Although the Department recommended revocation of the Respondent's medical license or an actual suspension with conditions, the Hearing Committee considered those penalties excessive because the Respondent took responsibility for his poor judgment in the handling of his family's farm and winery business and is complying with the terms of his criminal sentence. Also, despite his prison term, the Respondent has continued to maintain his professional medical practice

in psychiatry and is current with his Continuous Medical Education requirements. As such, the Hearing Committee concluded that the appropriate penalty in this case is a two-year period of a stayed suspension of the Respondent's New York medical 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 Respondent's license to practice as a physician in New York state is hereby subject to a two-year period of **SUSPENSION**, which is stayed in its entirety;
3. This Determination and Order shall be effective upon service on the Respor shall be either by certified mail or upon the Respondent at his last known address and shall be effective upon receipt or seven days after mailing by certified mail, whichever by personal service and such service shall be effective upon receipt.

DATED: Albany, New York
July 25th, 2017



Jill M. Rabin, M.D.
Chairperson

Gail Homick-Herrling
Ronald Uva, M.D.

To: Alexander G. Bateman, Jr.
Ruskin, Moscou, Faltischek, P.C.
East Tower, 15th Floor
1425 RXR Plaza
Uniondale, New York 11556-1425

David Kraus, M.D.



Ian H. Silverman, Esq.
Associate Counsel
Bureau of Professional Medical Conduct
Coming Tower Building – Room 2512
Empire State Plaza
Albany, New York 12237

APPENDIX I

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

IN THE MATTER
OF
DAVID KRAUS, M.D.

NOTICE OF
REFERRAL
PROCEEDING

TO: DAVID KRAUS, M.D.
[REDACTED]

PLEASE TAKE NOTICE THAT:

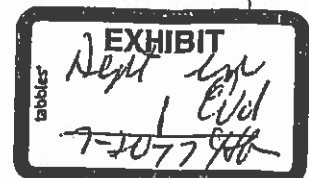
An adjudicatory proceeding will be held pursuant to the provisions of N.Y. Pub. Health Law §230(10)(p) and N.Y. State Admin. Proc. Act §§301-307 and 401. The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on July 20, 2017, at 10:30 a.m., at the offices of the New York State Department of Health, Riverview Center, 150 Broadway, Suite 510, Menands (Albany), NY 12204-2719.¹

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 who shall be an attorney admitted to practice in New York state. 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


¹ For GPS purposes, enter "Menands", not "Albany".



Department of Health, Division of Legal Affairs, Bureau of Adjudication, Riverview Center, 150 Broadway - Suite 510, Albany, NY 12204-2719, ATTENTION: HON. JAMES HORAN, 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 twenty days prior to the scheduled date of the Referral Proceeding, as indicated above. Should the parties have objection to proposed witnesses or documentary evidence, the party raising the objection shall contact the Bureau of Adjudication to arrange for a pre-hearing conference with the Administrative Law Judge, prior to the hearing date.

Pursuant to the provisions of N.Y. Pub. Health Law §230(10)(p), you shall file a written answer to each of the charges and allegations in the Statement of Charges not later 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 N.Y. State Admin. Proc. 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.

YOU ARE HEREBY ADVISED THAT THE ATTACHED CHARGES WILL BE MADE PUBLIC FIVE 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 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.

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 OUT 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

~~March, 2017~~

May 23, 2017



MICHAEL A. HISER
Deputy Counsel
Bureau of Professional Medical Conduct

Inquiries should be addressed to:

Ian Silverman
Associate Counsel
Bureau of Professional Medical Conduct
Corning Tower – Room 2512
Empire State Plaza
Albany, NY 12237
(518) 473-4282

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

IN THE MATTER

OF

DAVID KRAUS, M.D.

STATEMENT

OF

CHARGES

DAVID KRAUS, M.D., the Respondent, was authorized to practice medicine in New York State on or about April 19, 1993, by the issuance of license number 191922 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about on March 4, 2015 in the US District Court Northern District of Ohio, the Respondent plead guilty to one count of knowingly and willfully making a material false, fictitious, and fraudulent statement or representation, in violation of Title 18 United States Code, Section 1001 (a) (2) Respondent was sentenced on June 23, 2015 to fifteen months imprisonment followed by two years supervised release, 200 hours of community service, ordered to comply with the IRS and file all delinquencies, pay a \$100 assessment, \$10,000 fine, and \$447,406.33 of restitution without interest. The Respondent's criminal conviction, was in relation to the provision of a 2008 income tax return to a United States Department of Agriculture Farm Service Agency office, which return was purportedly filed with the IRS but which had in fact not been filed at the time. By the provision of the false tax return Respondent sought to modify an outstanding loan.

SPECIFICATION OF CHARGES
CRIMINAL CONVICTION (Federal)

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(9)(a)(ii) by having been convicted of committing an act constituting a crime under federal law as alleged in the facts of the following:

1. The facts in paragraph A.

DATE: May 23, 2017
Albany, New York



Michael A. Hiser
Deputy Counsel
Bureau of Professional Medical Conduct