



COMMONWEALTH of VIRGINIA

Department of Health Professions

Perimeter Center
9960 Mayland Drive, Suite 300
Henrico, Virginia 23233-1463

www.dhp.virginia.gov
TEL (804) 367- 4400
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Sandra Whitley Ryals
Director

March 8, 2010

Richard Alan Kaye, D.O.
2308 Kings Fork Road
Suffolk, Virginia 23434

CERTIFIED MAIL

7160 3901 9845 3429 9158

RE: License No.: 0102-037142

Dear Dr. Kaye:

This letter is official notification that an informal conference of the Virginia Board of Medicine ("Board") will be held on **Wednesday, April 21, 2010, at 11:00 a.m., at the Department of Health Professions, Perimeter Center, 9960 Mayland Drive, 2nd Floor, Henrico, Virginia.** The conference will be conducted pursuant to Sections 54.1-2400(10), 2.2-4019 and 2.2-4021 of the Code of Virginia (1950), as amended ("Code").

A Special Conference Committee ("Committee") will inquire into allegations that you may have violated certain laws governing the practice of osteopathy in Virginia. Specifically, you may have violated Sections 54.1-2915.A(3), (12), (13), (16) and (18) of the Code and 18 VAC 85-20-26(A) (which incorporates, by reference, Section 32.1-127.1:03 of the Code) and 18 VAC 85-20-27 of the Board of Medicine General Regulations, in that after learning that Patient A had been hospitalized under a Temporary Detention Order ("TDO") at another facility on or about January 30, 2008, and was being treated by others, you released confidential information regarding Patient A. Specifically:

1. On or about February 4, 2008, you initiated contact with Individual X, your friend who was also Patient A's co-worker, and described Patient A in a manner that would allow Individual X to identify Patient A. You informed Individual X that you had been treating Patient A, and that Patient A had been admitted to a psychiatric facility. You engaged in such communication without Patient A's knowledge or authorization. Individual X relayed the information he received from you to his superiors at his place of employment.

2. On or about February 7, 2008, you contacted Individual Y, a co-worker of Individual X and the person to whom Patient A's case had been assigned. You provided

Individual Y with Patient A's name and asked to remain anonymous. Further, you provided Individual Y with information related to your past treatment of Patient A, your opinion of her current mental state, and the status of her current TDO, which was dismissed on February 1, 2008. You engaged in such communication without Patient A's knowledge or authorization.

Please see Attachment I for the name of the patient/individuals referenced above.

After consideration of all information, the Committee may:

1. Exonerate you;
2. Place you on probation with such terms it deems appropriate;
3. Reprimand you;
4. Impose a monetary penalty pursuant to Section 54.1-2401 of the Code.

Further, the Committee may refer this matter for a formal administrative proceeding when it has failed to dispose of a case by consent pursuant to Section 2.2-4019 of the Code.

You have the right to information that will be relied upon by the Committee in making a decision. Therefore, I enclose a copy of the documents that will be distributed to the Committee for its consideration when discussing the allegations with you and when deliberating upon your case. These documents are enclosed only with the original notice sent by certified mail, and must be claimed at the post office. These materials have been provided this date to your counsel, Colleen M. Gentile, Esquire.

To facilitate this proceeding, you must submit eight (8) copies of any documents you wish for the Committee to consider to Reneé S. Dixon, Discipline Case Manager, Virginia Board of Medicine, 9960 Mayland Drive, Suite 300, Henrico, Virginia, 23233, by **March 30, 2010**. Your documents may not be submitted by facsimile or e-mail. Should you or Adjudication Specialist Virginia Scher wish to submit any documents for the Committee's consideration after **March 30, 2010**, such documents shall be considered only upon a ruling by the Chair of the Committee that good cause has been shown for late submission.

A request to continue this proceeding must state **in detail** the reason for the request and must establish good cause. Such request must be made, in writing, to me at the address listed on this letter and must be received by **March 22, 2010**. Only one such motion will be considered. Absent exigent circumstances, such as personal or family illness, a request for a continuance after **March 22, 2010**, will not be considered.

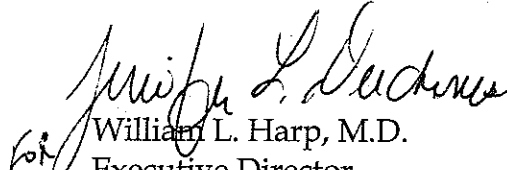
Relevant sections of the Administrative Process Act, which govern proceedings of this nature, as well as laws relating to the practice of medicine and other healing arts in Virginia cited in this notice can be found on the Internet at <http://leg1.state.va.us>. To access this information, please click on the *Code of Virginia* for statutes and *Virginia Administrative Code* for regulations.

In its deliberations, the Committee may utilize the Sanction Reference Points System, as contained in the Sanction Reference Manual. The manual, which is a guidance document of the Board, may be accessed at <http://www.dhp.virginia.gov/medicine>. You may request a paper copy from the Board office by calling (804) 367-4513.

Please advise the Board, in writing, of your intention to be present. Should you fail to appear at the informal conference, the Board may proceed to a formal administrative hearing in order to impose sanctions.

If you have any questions regarding this notice, please contact Virginia Scher, Adjudication Specialist, at (804) 367-4669.

Sincerely,


William L. Harp, M.D.
Executive Director
Virginia Board of Medicine

vs/Kaye54NIC.DOC

Enclosures:

Attachment I
Informal Conference Package
Map

cc: Jane E. Piness, M.D., President, Virginia Board of Medicine
Reneé S. Dixon, Discipline Case Manager, Board of Medicine
Virginia Scher, Adjudication Specialist
Lorraine McGehee, Deputy Director, APD
Colleen M. Gentile, Esquire (*w/enclosures*)
Kelly D. Ashley, Senior Investigator (124045)

VIRGINIA:

BEFORE THE BOARD OF MEDICINE

IN RE: RICHARD ALAN KAYE, D.O.
License No.: 0102-037142

ORDER

In accordance with Sections 54.1-2400(10), 2.2-4019 and 2.2-4021 of the Code of Virginia (1950), as amended ("Code"), an informal conference was held with Richard Alan Kaye, D.O., on May 13, 2010, in Henrico, Virginia. Members of the Virginia Board of Medicine ("Board") serving on the Special Conference Committee ("Committee") were: Karen A. Ransone, M.D., Chairman; Valerie Lowe Hoffman, D.C.; and Jennifer S. Lee, M.D. Dr. Kaye appeared personally and was represented by legal counsel, Colleen M. Gentile, Esquire. Virginia Scher, Adjudication Specialist, was present as a representative for the Administrative Proceedings Division of the Department of Health Professions.

The purpose of the informal conference was to inquire into allegations that Dr. Kaye may have violated certain laws and regulations governing the practice of osteopathic medicine in the Commonwealth of Virginia, as set forth in a Notice of Informal Conference dated March 8, 2010.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Now, having properly considered the evidence and statements presented, the Committee makes the following Findings of Fact and Conclusions of Law:

1. Richard Alan Kaye, D.O., was issued license number 0102-037142 by the Board to practice osteopathic medicine in Virginia on June 1, 1992. Said license is currently active and will expire on June 30, 2012, unless renewed or acted upon.

2. Dr. Kaye provided inpatient treatment to Patient A from approximately August 20, 2007 to September 4, 2007. Dr. Kaye did not provide any treatment to Patient A after September 4, 2007.

3. Dr. Kaye violated Sections 54.1-2915.A(3), (12), (13), (16) and (18) of the Code and 18 VAC 85-20-26(A) (*which incorporates, by reference, Section 32.1-127.1:03 of the Code*) and 18 VAC 85-20-27 of the Board of Medicine General Regulations, in that, after learning that Patient A had been hospitalized under a Temporary Detention Order ("TDO") at another facility on or about January 30, 2008, and was being treated by others, he released confidential information regarding Patient A. Specifically:

a. On or about February 4, 2008, Dr. Kaye initiated contact with Individual X, a friend of Dr. Kaye's who also had the same employer as Patient A, and described Patient A in a manner that allowed Individual X to identify Patient A. Dr. Kaye informed Individual X that he had been treating Patient A, and that Patient A had been admitted to a psychiatric facility. Dr. Kaye engaged in such communication without Patient A's knowledge or authorization. Individual X relayed the information he received from Dr. Kaye to his superiors at his place of employment.

b. On or about February 7, 2008, Dr. Kaye contacted Individual Y, a co-worker of Individual X. Dr. Kaye provided Individual Y with Patient A's name and asked to remain anonymous. Further, Dr. Kaye provided Individual Y with information related to his past treatment of Patient A, his opinion of her current mental state, and the status of her current TDO, although the TDO was dismissed on February 1, 2008. Dr. Kaye engaged in such communication without Patient A's knowledge or authorization.

4. When disclosing confidential information about Patient A to Individual X during a telephone conversation he initiated on or around February 4, 2008, Dr. Kaye falsely asserted that the information he was providing was a matter of public record and that he was not breaching patient confidentiality between himself and Patient A.

5. Dr. Kaye failed to advise Individual Y that the information he provided on February 7, 2008, was not Patient A's current medical status, nor that he was privileged to access such information since he was not Patient A's current treating practitioner and had not treated her since September 2007.

6. Dr. Kaye admitted that he knew Patient A's immediate supervisor was aware of her psychiatric history, which included her 2007 hospitalization and her ongoing outpatient care.

7. Dr. Kaye stated that when he became aware of Patient A's 2008 hospitalization, he contacted Patient A's current treatment providers at both the hospital and the Community Services Board. However, Dr. Kaye stated that they refused to speak with him or provide any information about Patient A's current medical status due to privacy and HIPAA concerns.

8. Despite direct and repeated questioning, Dr. Kaye could not fully articulate or justify his course of action in violating Patient A's privacy, other than alleged concerns for public safety based on her access to a weapon. Dr. Kaye could cite no specific threats of harm that Patient A had made to herself or to others, yet he claimed that he was afraid for his own safety and that of his family.

9. The Committee determined that Dr. Kaye failed to appreciate the gravity of his actions and the consequences that his breach of confidentiality has had on Patient A.

ORDER

WHEREFORE, based on the above Findings of Fact and Conclusions of Law, it is hereby ORDERED that the license of Richard Alan Kaye, D.O., be, and hereby is, issued a REPRIMAND.

It is further ORDERED that Dr. Kaye shall pay a MONETARY PENALTY in the amount of five thousand dollars (\$5,000.00). Said monetary penalty shall be paid to the Board within sixty (60) days of entry of this Order.

Further, it is ORDERED that Dr. Kaye's license be placed on INDEFINITE PROBATION and subject to the following TERMS and CONDITIONS:

1. Within six (6) months of entry of this Order, Dr. Kaye shall submit evidence satisfactory to the Board that he has completed eight (8) hours of Continuing Medical Education (CME) in the subject of professional ethics, to include patient confidentiality. Such CME shall be approved in advance of registration by the Executive Director of the Board, and shall be completed through face-to-face, interactive sessions (i.e., no home study, journal or Internet courses). Any CME hours obtained in compliance with this term shall not be used toward compliance with the Board's continuing education requirements for license renewal.

2. Upon receipt of evidence that Dr. Kaye has complied with the terms of this Order, the Board authorizes the Executive Director to terminate the terms and conditions on Dr. Kaye's license, or to refer this matter to a Special Conference Committee for determination.

Violation of this Order may constitute grounds for suspension or revocation of Dr. Kaye's license. In the event that Dr. Kaye violates this Order, an administrative proceeding may be convened to determine whether such action is warranted.

Dr. Kaye shall maintain a course of conduct in his practice of osteopathic medicine commensurate with the requirements of Title 54.1, Chapter 29 of the Code and all laws of the Commonwealth.

Pursuant to Sections 2.2-4023 and 54.1-2400.2 of the Code, the signed original of this Order shall remain in the custody of the Department of Health Professions as a public record, and shall be made available for public inspection and copying upon request.

Pursuant to Section 54.1-2400(10) of the Code, Dr. Kaye may, not later than 5:00 p.m., on June 22, 2010, notify William L. Harp, M.D., Executive Director, Board of Medicine, 9960 Mayland Drive, Suite 300, Henrico, Virginia 23233, in writing that he desires a formal administrative hearing before the Board. Upon the filing with the Executive Director of a request for the hearing, this Order shall be vacated.

Therefore, this Order shall become final on June 22, 2010, unless a request for a formal administrative hearing is received as described above.

FOR THE BOARD

William L. Harp
For William L. Harp, M.D.
Executive Director
Virginia Board of Medicine

ENTERED: 5/20/2010



COMMONWEALTH of VIRGINIA

Dianne L. Reynolds-Cane, M.D.
Director

Department of Health Professions

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October 4, 2010

Richard A. Kaye, D.O.
2308 Kings Fork Road
Suffolk, Virginia 23434

RE: License No.: 0102-037142

Dear Dr. Kaye:

The Virginia Board of Medicine ("Board") has received verification of your full compliance with the terms and conditions of the Board's Order entered May 20, 2010.

Therefore, pursuant to the authority granted by Term #2, I have determined that the terms placed on your license should be **TERMINATED** effective this date. The record of the Board currently reflects that you have a full and unrestricted license in the Commonwealth of Virginia.

Pursuant to §54.1-2400.2 (F) of the *Code of Virginia*, a signed copy of this letter shall remain in the custody of the Department of Health Professions as a public record, and shall be made available for public inspection and copying upon request.

The Board wishes you well in your future endeavors.

Sincerely,

William L. Harp, M.D.
Executive Director
Virginia Board of Medicine

cc: Renée S. Dixon, Discipline Case Manager [124045]
Susan Brooks, Office Manager, APD
Administrative Assistant