



STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Antonia C. Novello, M.D., M.P.H., Dr.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

Public

October 4, 2005

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Alison Kortz, P.A.
1524 Sunset Road
Castleton, New York 12033

Robert Bogan, Esq.
Joel E. Abelove, Esq.
NYS Department of Health
Office of Professional Medical Conduct
Hedley Building, Suite 303
433 River Street
Troy, New York 12180-2299

RE: In the Matter of Alison Kortz, RPA-C

Dear Parties:

Enclosed please find the Determination and Order (No. 05-214) 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), and §230-c subdivisions 1 through 5, (McKinney Supp. 1992), "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.

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,

A handwritten signature in cursive script that reads "Sean D. O'Brien".

Sean D. O'Brien, Director
Bureau of Adjudication

SDO:djh

Enclosure

cc:

via Certified Mail to:
Andrew Feldman, Esq.
Feldman, Kieffer & Herman, LLP
The Dun Building
110 Pearl Street, Ste 400
Buffalo, New York 14202

COPY

**IN THE MATTER
OF
ALISON KORTZ, RPA-C**

**DETERMINATION
AND
ORDER**

BPMC NO. 05-214

A Notice of Referral Proceeding and Statement of Charges, both dated June 24, 2005, were served upon the Respondent, **ALISON KORTZ, RPA-C**. **MR. PETER S. KOENIG, SR.**, Chairperson, **ELEANOR KANE, M.D.** and **ALEXANDER M. YVARS, M.D., F.A.C.S.**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to Section 230(10)(e) of the Public Health Law. **STEPHEN L. FRY, ESQ.**, Administrative Law Judge, served as the Administrative Officer.

A hearing was held on September 22, 2005, at the Offices of the New York State Department of Health, Hedley Park Place, 433 River Street, Troy, New York. The Department appeared by **DONALD P. BERENS, JR., ESQ.**, General Counsel, by **ROBERT BOGAN, ESQ.** and **JOEL E. ABELOVE, ESQ.**, of Counsel. The Respondent appeared in person.

Evidence was received and transcripts of these proceedings were 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 where 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 or another jurisdiction, or upon a prior administrative adjudication regarding conduct which 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 two specifications of professional misconduct pursuant to Education Law Sections 6530(9)(A)(i), based upon her conviction of crimes under New York State law. A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order as Appendix 1.

WITNESSES

For the Petitioner:

None

For the Respondent:

Alison Kortz, RPA-C
A. Neal Gregory, M.D.

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. All Hearing Committee findings were unanimous.

1. **ALISON KORTZ, RPA-C**, the Respondent, is a Physician's Assistant authorized to practice in New York State.
2. On August 5, 2004, Respondent was convicted of the crime of Criminal Possession of a Forged Instrument in the 3rd degree in the Town Court of Guilderland New York. She was sentenced to 3 years probation and required to make restitution. (Ex. 5)
3. On December 10, 2004, Respondent was convicted, by guilty plea, of Forgery in the 2nd degree (a class D felony) in the Rensselaer County Court. Respondent was sentenced to 30 days in the Sheriff's Work order Program, 5 years probation, payment of \$270 in surcharges and fees, and restitution of \$2,542.30. (Ex. 6)

HEARING COMMITTEE CONCLUSIONS

The hearing Committee concludes that Respondent's convictions of the crimes enumerated above constitute misconduct under the laws of New York State, pursuant to New York Education Law §6530(9)(a)(i), and that the appropriate penalty for this misconduct is a one month suspension of her license (stayed), and 3 years probation, under terms set forth below.

VOTE OF THE HEARING COMMITTEE

SPECIFICATIONS

FIRST AND SECOND SPECIFICATIONS

Respondent violated New York Education Law §6530(9)(a)(i) by having been convicted of a crime under New York State law.

VOTE: SUSTAINED (3-0)

HEARING COMMITTEE DETERMINATION

The record in this case establishes that both criminal convictions at issue in this case resulted from Respondent's actions on August 1, 2003, which resulted in her arrest in two jurisdictions. On that date, according to her uncontroverted admission, she used a credit card she stole from a co-worker's purse to go on a 6-hour shopping spree where she spent approximately \$4,000. Respondent testified credibly that her actions on and after that date occurred during an episode of mania activated by her use of the anti-depressant drug Effexor, and the bizarre nature of her actions lends support to this testimony.

However, Respondent also admitted that she knew what she was doing was wrong at the time, and the fact that she was convicted of crimes reflects this understanding. The convictions form the basis for the findings of misconduct and the imposition of disciplinary sanctions. Given the findings of misconduct, the only remaining issue, pursuant to Public Health Law §230(100)(p), is the nature of the penalty to be imposed.

The Hearing Committee feels that a suspension of Respondent's license is an appropriate penalty for the convictions, one of which was a felony, and a one-month suspension is hereby imposed. However, the Hearing Committee also feels, for reasons to be elaborated upon, that the imposition of the suspension should be stayed, and a three-year probation imposed instead. The Hearing Committee reaches this determination after due and careful consideration of the full spectrum of penalties available pursuant to P.H.L. §230-a, including:

- (1) Censure and reprimand;
- (2) Suspension of the license, wholly or partially;
- (3) Limitations of the license to a specified area or type of practice;
- (4) Revocation of the license;
- (5) Annulment of the license or registration;
- (6) Limitations on registration or the issuance of any further license;
- (7) The imposition of monetary penalties;
- (8) A course of education or training;
- (9) Performance of public service, and
- (10) Probation.

The Hearing Committee concludes, first of all, that the behavior that resulted in the criminal convictions was related in part to Respondent's underlying psychiatric problems and the treatment she was receiving for it. Respondent testified credibly, as noted above, that at the time of the incidents that led to her arrest, she was being treated for depression with the drug Effexor, which brought on a manic episode. She was diagnosed at a psychiatric evaluation on February 24, 2005, on the other hand, with Bipolar disorder, "...Single Manic Episode in full remission", and she is now taking Lexapro instead of Effexor. (Ex. E) In addition, Respondent began therapy after the incident, and her therapist, citing Respondent's efforts to understand and address the issues that led to this behavior, concludes that this was an ...isolated episode" and that Respondent is "...at very low risk to repeat her aberrant behavior and will be a law abiding member of society now and in the future." (Ex. B)

Respondent testified that she currently sees her therapist one time per month and makes additional contacts by phone or e-mail as needed, and the Hearing Committee concludes that Respondent needs to continue her treatment and medications in order to realize her goal of avoiding future problems. For this reason, and adopting the recommendation of her previous employer that she receive a sanction that provides her with the "...support she needs to ensure that there is never a recurrence" (Ex. F), the Hearing Committee hereby imposes a 3-year period of probation, with conditions she must meet in order to continue practicing. This penalty is favorable to one that prevents her from practicing altogether, given the evidence that her actual practice performance has, as far as this record reveals, been exemplary (see, for example, Ex.'s C and F, and the testimony of her current employer, Dr. Gregory).

The terms of probation are set forth in the attached order.

ORDER

IT IS HEREBY ORDERED THAT:

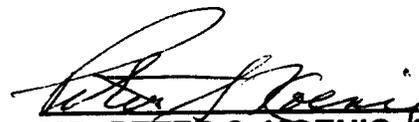
1. The New York physician's assistant license of **ALISON KORTZ, RPA-C** is hereby **SUSPENDED** for a period of **ONE MONTH**. The suspension is stayed.
2. Respondent is hereby placed on **PROBATION** for a period of **THREE YEARS**, to run from the effective date of this decision. The terms of this probation are as follows:
 - A. Respondent shall conduct herself in all ways in a manner befitting her professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his/her profession.
 - B. Respondent shall submit written notification to the New York State Department of Health addressed to the Director, Office of Professional Medical Conduct (OPMC), Hedley Park Place, 433 River Street Suite 303, Troy, New York 12180-2299; said notice is to include a full description of any employment and practice, professional and residential addresses and telephone numbers within or without New York State, and any and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty days of each action.
 - C. Respondent shall fully cooperate with and respond in a timely manner to requests from OPMC to provide written periodic verification of Respondent's compliance with the terms of this Order. Respondent shall personally meet with a person designated by the Director of OPMC as requested by the Director.
 - D. The period of probation shall be tolled during periods in which Respondent is not engaged in the active practice of medicine in New York State. Respondent shall notify the Director of OPMC, in writing, if she is not currently engaged in or intends to leave the active practice of medicine in New York State for a period of thirty (30) consecutive days or more. Respondent shall then notify the Director again prior to any change in that status. The period of probation shall resume and any terms of probation which were not fulfilled shall be fulfilled upon Respondent's return to practice in New York State.
 - E. Respondent's professional performance may be reviewed by the Director of OPMC. This review may include, but shall not be limited to, a review of office records, patient records and/or hospital charts, interviews with or periodic visits with Respondent and his/her staff at practice locations or OPMC offices.
 - F. Respondent shall maintain legible and complete medical records which accurately reflect the evaluation and treatment of patients. The medical records shall contain

all information required by State rules and regulations regarding controlled substances.

- G. Respondent shall engage and continue in therapy with a therapist in accordance with a treatment plan approved by the Director, OPMC. Any changes in the treatment plan, including changes of therapist, shall be approved by the Director. Respondent shall also continue any medication regimen recommended for her by the therapist or a medical practitioner.
- H. Respondent shall cause the therapist to submit a proposed treatment plan and quarterly reports to OPMC certifying whether she is in compliance with the treatment plan. Respondent shall cause the therapist to report to OPMC within 24 hours if she leaves treatment against medical advice, or displays any symptoms of a suspected or actual relapse.
- I. Respondent shall comply with any request from OPMC to obtain an independent psychiatric/chemical dependency evaluation by a health care professional proposed by the Respondent and approved, in writing, by the Director of OPMC. Respondent shall bear all expenses of such evaluation.
- J. Respondent shall comply with all terms, conditions, restrictions, limitations and penalties to which she is subject pursuant to the Order and shall assume and bear all costs related to compliance. Upon receipt of evidence of noncompliance with, or any violation of these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding and/or any such other proceeding against Respondent as may be authorized pursuant to the law.

This **ORDER** shall be effective upon service on the Respondent pursuant to Public Health Law section 230(10)(h).

DATED: Dewitt, New York
October 3, 2005



MR. PETER S. KOENIG, SR.
Chairperson

ELEANOR KANE, M.D.
ALEXANDER M. YVARS, M.D., F.A.C.S.

APPENDIX 1



IN THE MATTER

OF

³
ALLISON KORTZ, P.A.
CO-05-01-0203-A

NOTICE OF
REFERRAL
PROCEEDING

¹²
TO: ALLISON KORTZ, P.A.
1524 Sunset Road
Castleton, NY 12033

²
ALLISON KORTZ, P.A.
Upper Hudson Dermatology (Neal Gregory, M.D.)
1547 Columbia Turnpike
Castleton, NY 12033

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 Procedure Act Sections 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 20th day of July 2005, at 10:00 in the forenoon of that day at the Hedley Park Place, 5th Floor, 433 River Street, Troy, New York 12180.

At the proceeding, evidence will be received concerning the allegations set forth in the attached Statement of Charges. 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. 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 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, 5th Floor, 433 River Street, Troy, New York, ATTENTION: HON. SEAN O' BRIEN, DIRECTOR, BUREAU OF ADJUDICATION, (hereinafter "Bureau of Adjudication") as well as the Department of Health attorney indicated below, on or before July 11, 2005.

Pursuant to the provisions of N.Y. Public Health Law §230(10)(p), you shall file a written answer to each of the Charges and Allegations in the Statement of Charges no later than ten days prior to the hearing. Any Charge of Allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such an 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 brief and affidavits with the Committee. Six copies of all such papers you wish to submit must be filed with the Bureau of Adjudication at the address indicated above on or before July 11, 2005, and a copy of all papers must be served on the same date on the Department of Health attorney indicated below. Pursuant to Section 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 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.

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

June 24, 2005



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

Inquiries should be addressed to:

Robert Bogan
Associate Counsel
New York State Department of Health
Office of Professional Medical Conduct
433 River Street – Suite 303
Troy, New York 12180
(518) 402-0828

IN THE MATTER
OF
ALLISON KORTZ, P.A.
CO-05-01-0203-A

STATEMENT
OF
CHARGES

^{PS} ALLISON KORTZ, P.A., the Respondent, was authorized to practice medicine, as a Physician Assistant, in New York state on February 3, 1999, by the issuance of license number 006827 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about August 5, 2004, in Town Court of Guilderland, New York, Respondent was found guilty of Criminal Possession of a forged instrument in the third degree, in violation of New York Penal Law, §170.20, class A misdemeanor, and was sentenced to three (3) years probation and restitution.

B. On or about December 10, 2004, in the Rensselaer County Court, Troy, New York, Respondent was found guilty, based on a plea of guilty, of Forgery in the second degree, a class D felony, in violation of New York Penal Law §170.10, and was sentenced to thirty (30) days in the Sheriff's Work Order Program, five (5) years probation, a \$250.00 surcharge, \$20 CVAF, and \$2,542.30 restitution.

SPECIFICATIONS

FIRST AND SECOND SPECIFICIATIONS

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

1. The facts in Paragraph A.
2. The facts in Paragraph B.

DATED: *June 24*, 2005
Albany, New York

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