

**NEW YORK**  
state department of  
**HEALTH**

Public

Nirav R. Shah, M.D., M.P.H.  
Commissioner

Sue Kelly  
Executive Deputy Commissioner

November 14, 2012

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Michael G. Bass, Esq.  
NYS Department of Health  
ESP-Corning Tower -- Room 2512  
Albany, New York 12237

Herry H. Kijner, M.D.  
REDACTED

**RE: In the Matter of Herry H. Kijner, M.D.**

Dear Parties:

Enclosed please find the Determination and Order (No. 12-240) 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. 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., 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,

REDACTED  
James F. Horan  
Chief Administrative Law Judge  
Bureau of Adjudication

JFH:cah

Enclosure

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

-----X  
IN THE MATTER

OF

HERRY H. KIJNER, M.D.  
CO-11-08-4628-A

: DETERMINATION

: AND

: ORDER

-----X  
BPMC #12-240

**COPY**

A Notice of Referral Proceeding and a Statement of Charges, both dated August 22, 2012, were served upon the Respondent, Herry H. Kijner Wong, M.D. **IRVING S. CAPLAN (Chair), ELISA E. BURNS, M.D., and LELAND DEANE, M.D., M.B.A.,** 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. **LARRY G. STORCH, ESQ., ADMINISTRATIVE LAW JUDGE,** served as the Administrative Officer. The Department of Health appeared by Michael G. Bass, Esq., Assistant Counsel. The Respondent appeared *pro se*. A hearing was held on October 17, 2012. Evidence was received and witnesses sworn and heard 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 §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, Respondent is charged with professional misconduct pursuant to Education Law §6530(9)(b), in that he was found guilty of improper professional practice or professional misconduct by a duly authorized professional disciplinary agency of another state where the conduct upon which the finding was based would, if committed in New York state, constitute professional misconduct under the laws of New York State, as well as Education Law §6530(d) by having his action taken against his license by the duly authorized professional disciplinary agency of another state, for conduct which would, if committed in New York State, constitute professional misconduct.

A copy of the Statement of Charges is attached to this Determination and Order in Appendix I.

### FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers in parentheses refer to transcript page numbers or exhibits. These citations represent 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.

1. Herry H. Kijner, M.D. (hereinafter, "Respondent"), was authorized to practice medicine in New York State on March 6, 1967 by the issuance of license number 098471 by the New York State Education Department. (Exhibit #3).

2. On or about August 17, 2011, the State of Florida, Board of Medicine (hereinafter the "Florida Board") in a final order, accepted Respondent's voluntary relinquishment of his license to practice medicine. The Administrative Complaints that were the basis of Respondent's voluntary surrender of his license alleged, *inter alia*, that Respondent inappropriately and excessively prescribed controlled substances to multiple patients, did not keep medical records which recorded the rationale or justification for prescribing controlled substances for multiple patients, did not obtain pre-existing medical records documenting the extent of controlled substances multiple patients had previously required, did not appropriately titrate

the dosing of controlled substances for multiple patients, did not perform routine or random urine drug screens on multiple patients when appropriate, did not consider non-controlled, alternative treatments for multiple patients where appropriate, and did not display an increased level of suspicion of multiple self-pay, out-of-state patients seeking controlled substances. (Exhibit #4).

#### CONCLUSIONS OF LAW

The following conclusions were made pursuant to the Findings of Fact listed above. All conclusions resulted from a unanimous vote of the Hearing Committee unless noted otherwise.

The evidence established that the Respondent surrendered his Florida medical license in lieu of further disciplinary action after he was charged with many violations of Florida law concerning his inappropriate prescribing of large quantities of controlled substances. In executing the Voluntary Relinquishment of his license, Respondent acknowledged that this would constitute a disciplinary action by the Florida Board. The conduct detailed in the Administrative Complaint attached to the Florida Order would have constituted negligence on more than one occasion, in violation of Education Law §6530(3); gross negligence, in violation of Education Law §6530(4) and failure to

maintain records, in violation of Education Law §6530(32), had they occurred in New York State.

Accordingly, he is guilty of professional misconduct in violation of New York Education Law §6530(9)(b) and §6530(9)(d). Therefore, the First and Second Specifications of professional misconduct set forth in the Statement of Charges are sustained.

#### DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determined that Respondent's license to practice medicine should be revoked.

This determination was reached upon due consideration of the full spectrum of penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties.

Respondent appeared and testified at the proceeding. However, he presented no evidence which might mitigate the sanction imposed by this Committee. To the contrary, his testimony largely consisted of a condemnation of the Florida Board for an alleged vendetta against physicians providing pain management. We strongly disagree. The charges against Respondent, totaling more than 140 pages and involving at least a dozen patients, indicate that the Respondent repeatedly, and inappropriately, prescribed large quantities of controlled

substances, without following accepted standards of the profession. In doing so, he placed the public at risk, while enriching himself. Rather than accept responsibility, he stated his intention to transfer his medical practice to New York. This would present a grave risk to the public health. Under the circumstances, revocation is the only appropriate sanction.

ORDER

Based upon the foregoing, **IT IS HEREBY ORDERED THAT:**

1. The First and Second Specifications of professional misconduct, as set forth in the Statement of Charges (Exhibit # 1) are SUSTAINED;

2. Respondent's license to practice medicine in New York State be, and hereby is REVOKED;

3. This Determination and Order shall be effective upon service. Service shall be either by certified mail upon Respondent at Respondent's last known address and such service shall be effective upon receipt or seven days after mailing by certified mail, whichever is earlier, or by personal service and such service shall be effective upon receipt.

DATED: Albany, New York  
10.30 2012

REDACTED

~~IRVING S. CAPLAN (CHAIR)~~

ELISA E. BURNS, M.D.

LELAND DEANE, M.D., M.B.A.

TO: Michael G. Bass, Esq.  
Assistant Counsel  
New York State Department of Health  
Corning Tower, Room 2512  
Albany, New York 12237

Herry H. Kijner, M.D.

REDACTED

APPENDIX I

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

IN THE MATTER  
OF  
HERRY H. KIJNER, M.D.  
CO-11-08-4628-A

STATEMENT  
OF  
CHARGES

HERRY H. KIJNER, M.D., Respondent, was authorized to practice medicine in New York state on March 6, 1967, by the issuance of license number 098471 by the New York State Education Department.

**FACTUAL ALLEGATIONS**

A. On or about August 17, 2011, the State of Florida, Board of Medicine (hereinafter "Florida Board"), in a FINAL ORDER, ACCEPTED Respondent's Voluntary Relinquishment of Respondent's license to practice medicine. The Administrative Complaints that were the basis of Respondent's Voluntary Relinquishment and the Florida Order alleged, *inter alia*, that Respondent inappropriately and excessively prescribed controlled substances to multiple patients, did not keep medical records which recorded the rationale or justification for prescribing controlled substances for multiple patients, did not obtain pre-existing medical records documenting the extent of controlled substances multiple patients had previously required, did not appropriately titrate the dosing of controlled substances for multiple patients, did not perform routine or random urine drugs screens on multiple patients when appropriate, did not consider non-controlled, alternative treatments for multiple patients where appropriate, and did not display an increased level of suspicion of multiple self-pay, out-of-state patients seeking controlled substances.

B. The conduct resulting in the Florida Board disciplinary action against Respondent would constitute misconduct under the laws of New York State, pursuant to the following sections of New York State law:

1. New York Education Law Sec. 6530(3) (negligence on more than one occasion) and/or;
2. New York Education Law Sec. 6530(4) (gross negligence) and/or;

3. New York Education Law Sec. 6530(32) (failure to maintain a record).

SPECIFICATION

Respondent violated New York Education Law Sec. 6530(9)(d) by having disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the disciplinary action would, if committed in New York state, constitute professional misconduct under the laws of New York state, in that Petitioner charges:

1. The facts in Paragraphs A and B.

DATED: *August 27* 2012  
Albany, New York

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