



New York State Board for Professional Medical Conduct

433 River Street, Suite 303 • Troy, New York 12180-2299 • (518) 402-0863

*NYS Department of Health
James W. Clyne, Jr.
Executive Deputy Commissioner
Keith W. Servis, Director
Office of Professional Medical Conduct*

PUBLIC

*Kendrick A. Sears, M.D.
Chair
Carmela Torrelli
Vice Chair
Katherine A. Hawkins, M.D., J.D.
Executive Secretary*

January 12, 2011

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

John Paul Kelly, RPA

Redacted Address

RE: License No. 007491

Dear Dr. Kelly:

Enclosed is a copy of Order BPMC #11-08 of the New York State Board for Professional Medical Conduct. This Order and any penalty provided therein goes into effect January 19, 2011.

If the penalty imposed by the Order is a fine, please write the check payable to the New York State Department of Health. Noting the BPMC Order number on your remittance will assist in proper crediting. Payments should be directed to the following address:

Bureau of Accounts Management
New York State Department of Health
Corning Tower, Room 1717
Empire State Plaza
Albany, New York 12237

Sincerely,

Redacted Signature

Katherine A. Hawkins, M.D., J.D.
Executive Secretary
Board for Professional Medical Conduct

cc: Stephen R. Stern, Esq.
Hiffinger, Stern & Ross, LLP
150 East 58th Street
New York, New York 10155

**IN THE MATTER
OF
JOHN PAUL KELLY, R.P.A.**

CONSENT
ORDER

BPMC: #11-08

Upon the application of (Respondent) JOHN PAUL KELLY, R.P.A., in the attached Consent Agreement and Order, which is made a part of this Consent Order, it is

ORDERED, that the Consent Agreement, and its terms, are adopted and it is further

ORDERED, that this Consent Order shall be effective upon issuance by the Board, either

- by mailing of a copy of this Consent Order, either by first class mail to Respondent at the address in the attached Consent Agreement or by certified mail to Respondent's attorney, OR
- upon facsimile transmission to Respondent or Respondent's attorney, whichever is first.

SO ORDERED.

DATE: 1/11/11

Redacted Signature

KENDRICK A. SEARS, M.D.
Chair
State Board for Professional Medical Conduct

**IN THE MATTER
OF
JOHN PAUL KELLY, R.P.A., M.D.**

**CONSENT
AGREEMENT
AND
ORDER**

JOHN PAUL KELLY, R.P.A., represents that all of the following statements are true:

That on or about May 12, 2000, I was authorized to practice as a registered physician assistant in New York State, and issued Registration Number 007491 (hereafter "license") by the New York State Education Department.

My current address is _____ Redacted Address _____

and I will advise the Director of the Office of Professional Medical Conduct of any change of address.

I understand that the New York State Board for Professional Medical Conduct (Board) has charged me with two specifications of professional misconduct.

A copy of the Statement of Charges, marked as Exhibit "A", is attached to and part of this Consent Agreement.

I do not contest the First Specification, Practicing Beyond the Scope Permitted By Law, and the Second Specification, Willful or Grossly Negligent Failure to Comply With Governing Law, in full satisfaction of the charges against me, and agree to the following penalty:

Pursuant to N.Y. Pub. Health Law § 230-a(1), I shall be subject to a Censure and Reprimand. Pursuant to N.Y. Pub. Health Law §§ 230-a(7) and (9), I shall be subject to a fine in the amount of \$20,000.00, to be paid in full within 24 months

of the effective date of this Order in equal quarterly installments of \$2500, with payments due on: February 1, 2011; May 1, 2011; August 1, 2011; November 1, 2011; February 1, 2012; May 1, 2012; August 1, 2012; November 1, 2012. Payments must be submitted to:

Bureau of Accounts Management
New York State Department of Health
Empire State Plaza
Corning Tower, Room 1717
Albany, New York 12237

I further agree that the Consent Order shall impose the following conditions:

That Respondent shall remain in continuous compliance with all requirements of N.Y. Educ Law § 6502 including but not limited to the requirements that a licensee shall register and continue to be registered with the New York State Education Department (except during periods of actual suspension) and that a licensee shall pay all registration fees. Respondent shall not exercise the option provided in N.Y. Educ. Law § 6502(4) to avoid registration and payment of fees. This condition shall take effect immediately upon the Consent Order's effective date and will continue so long as Respondent remains a licensee in New York State; and

That Respondent's failure to pay any monetary penalty by the prescribed date shall subject Respondent to all provisions of law relating to debt collection by New York State, including but not limited to: the imposition of interest, late payment charges and collection fees; referral to the New York State Department of

Taxation and Finance for collection; and non-renewal of permits or licenses [Tax Law § 171(27); State Finance Law § 18; CPLR § 5001; Executive Law § 32].

That Respondent shall cooperate fully with the Office of Professional Medical Conduct (OPMC) in its administration and enforcement of this Consent Order and in its investigations of matters concerning Respondent. Respondent shall respond in a timely manner to all OPMC requests for written periodic verification of Respondent's compliance with this Consent Order. Respondent shall meet with a person designated by the Director of OPMC, as directed.

Respondent shall respond promptly and provide all documents and information within Respondent's control, as directed. This condition shall take effect upon the Board's issuance of the Consent Order and will continue so long as Respondent remains licensed in New York State.

I stipulate that my failure to comply with any conditions of this Consent Order shall constitute misconduct as defined by N.Y. Educ. Law § 6530(29).

I agree that, if I am charged with professional misconduct in future, this Consent Agreement and Order **shall** be admitted into evidence in that proceeding.

I ask the Board to adopt this Consent Agreement.

I understand that if the Board does not adopt this Consent Agreement, none of its terms shall bind me or constitute an admission of any of the acts of alleged misconduct; this Consent Agreement shall not be used against me in any way and shall be kept in strict confidence; and the Board's denial shall be without

prejudice to the pending disciplinary proceeding and the Board's final determination pursuant to N.Y. Pub. Health Law.

I agree that, if the Board adopts this Consent Agreement, the Chair of the Board shall issue a Consent Order in accordance with its terms. I agree that this Consent Order shall take effect upon its issuance by the Board, either by mailing of a copy of the Consent Order by first class mail to me at the address in this Consent Agreement, or to my attorney by certified mail, OR upon facsimile transmission to me or my attorney, whichever is first. The Consent Order, this agreement, and all attached Exhibits shall be public documents, with only patient identities, if any, redacted. As public documents, they may be posted on the Department's website.

I stipulate that the proposed sanction and Consent Order are authorized by N.Y. Pub. Health Law §§ 230 and 230-a, and that the Board and OPMC have the requisite powers to carry out all included terms. I ask the Board to adopt this Consent Agreement of my own free will and not under duress, compulsion or restraint. In consideration of the value to me of the Board's adoption of this Consent Agreement, allowing me to resolve this matter without the various risks and burdens of a hearing on the merits, I knowingly waive my right to contest the Consent Order for which I apply, whether administratively or judicially, I agree to be bound by the Consent Order, and I ask that the Board adopt this Consent Agreement.

I understand and agree that the attorney for the Department, the Director of OPMC and the Chair of the Board each retain complete discretion either to enter into the proposed agreement and Consent Order, based upon my application, or to decline to do so. I further understand and agree that no prior or separate written or oral communication can limit that discretion.

DATE 1-6-11

Redacted Signature

~~JOHN PAUL KELLY, R.P.A.~~
RESPONDENT

The undersigned agree to Respondent's attached Consent Agreement and to its proposed penalty, terms and conditions.

DATE: 1/6/11

Redacted Signature

STEPHEN STERN, ESQ.
Attorney for Respondent

DATE: January 6, 2011

Redacted Signature

MARCIA E. KAPLAN
Associate Counsel
Bureau of Professional Medical Conduct

DATE: January 10, 2011

Redacted Signature

KEITH W. SERVIS
Director
Office of Professional Medical Conduct

EXHIBIT "A"

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

IN THE MATTER
OF
JOHN PAUL KELLY, R.P.A.

STATEMENT
OF
CHARGES

JOHN PAUL KELLY, R.P.A., the Respondent, was authorized to practice as a registered physician assistant in New York State on or about May 12, 2000, by the issuance of Registration Number 007948 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. From in or about May 2003 through in or about December 2009, Respondent, a physician assistant, failed to comply with the re-registration requirements set forth in N.Y. Educ. Law § 6502(1).
- B. During the period of lapsed registration referenced in paragraph A, above, Respondent inappropriately issued prescriptions for controlled substances over the name of his supervising physician, and during periods after December 31, 2003, did so without a current DEA registration.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

PRACTICING BEYOND THE SCOPE PERMITTED BY LAW

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(24) by practicing or offering to practice beyond the scope

permitted by law, or accepting and performing professional responsibilities which the licensee knows or has reason to know that he is not competent to perform, or performing without adequate supervision professional services which the licensee is authorized to perform only under the supervision of a licensed professional, except in an emergency situation where a person's life or health is in danger, as alleged in the facts of:

1. Paragraphs A and B.

SECOND SPECIFICATION
WILLFUL OR GROSSLY NEGLIGENT FAILURE
TO COMPLY WITH GOVERNING LAW

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law § 6530(16), by a willful or grossly negligent failure to comply with substantial provisions of federal, state, or local laws, rules, or regulations governing the practice of medicine, as alleged in the facts of:

2. Paragraph A.

DATE: ^{Jan 6} December , 2010
New York, New York

Redacted Signature

ROY NEMERSON
Deputy Counsel
Bureau of Professional Medical Conduct