

**State of New Hampshire
Board of Medicine
Concord, New Hampshire**

In the Matter of:

Docket No. 12-10

Christopher Kirby, MD
License No. 8450
(Adjudicatory Proceedings)

**ORDER OF EMERGENCY LICENSE SUSPENSION
AND NOTICE OF HEARING**

1. RSA 329:18-b; RSA 541-A:30, III, and New Hampshire Board of Medicine Administrative Rule (“Med”) 503.01 authorize the New Hampshire Board of Medicine (“Board”) to suspend a license to practice medicine for no more than one hundred twenty (120) days pending completion of an adjudicatory proceeding, in cases involving imminent danger to life or health. In such cases, the Board must commence a hearing not later than 10 days after the date of the emergency order. If the Board does not commence the hearing within 10 days, the suspension order shall be automatically vacated. *See*, 541-A:30, III. The Board may not continue such a hearing without the consent of the licensee to the continuation of the emergency suspension. *See*, RSA 329:18-b and Med 503.01. Postponement of the proceeding is prohibited unless the licensee agrees to continue the suspension pending issuance of the Board’s final decision. *See*, RSA 329:18-b and Med 503.01.

2. Christopher Kirby, MD (“Dr. Christopher B. Kirby, M.D.” or “Respondent”), holds an active license, No. 8450, issued on October 10, 1990, to practice medicine in the State of New Hampshire. Respondent practices medicine in Manchester, New Hampshire.

3. The Board has received information indicating that the continued practice of medicine by Dr. Kirby poses an imminent threat to life, safety and/or health, which warrants the

temporary suspension of Dr. Kirby license to practice medicine pending a hearing on whether permanent and/or temporary disciplinary sanctions should be imposed. An investigation was conducted and a Report of Investigation was provided to the Board.

4. In support of this *Order of Emergency License Suspension and Notice of Hearing*, the Board alleges the following facts:

- A. Respondent had voluntarily entered the NH Professionals Health Program (“NHPHP”) in 2007. In August of 2008, Respondent had a positive alcohol screen. Respondent acknowledged several recent episodes of drinking.
- B. Following the August 2008 screen, Respondent agreed to stop working and subsequently entered into a Preliminary Agreement for Practice Restrictions with the Board.
- C. In the fall of 2008, Respondent entered into a new five-year contract with the NHPHP. He completed a fifteen-month residential treatment program and was engaged in appropriate aftercare.
- D. In the fall of 2010, Respondent entered into a Settlement Agreement with the Board to resolve these underlying issues. Sanctions included a ten-year contract with the NHPHP.
- E. On June 25, 2012, the Board received notification from the NHPHP that Respondent had violated his contract by drinking alcohol. Respondent’s June 14, 2012 screen was positive and he subsequently admitted to

consuming vodka on several occasions over the weekend of June 9, 2012.

An earlier screen (May 7, 2012) came back as diluted.

- F. One week later, the Board received a second notice from the NHPHP, reporting that Respondent's June 26, 2012 random urine screen came back positive.
- G. The NHPHP attempted to contact Respondent immediately after this positive screen. He did not respond to these communications.
- H. Upon receipt of the June 26, 2012 screen results, the NHPHP contacted Respondent and directed that he cease practicing medicine. Respondent did not respond to this communication.

5. Based upon the above information, the Board finds that the case involves imminent danger to life and/or health. Further, the Board believes there is a reasonable basis for both immediately suspending Respondent's license on a temporary basis, and for commencing an expedited disciplinary proceeding against Respondent pursuant to RSA 329:18-b, 541-A:30, III, and Med 503.01.

6. The purpose of this proceeding will be to determine whether Respondent has engaged in professional misconduct contrary to RSA 329:17, VI and RSA 329:18-b, which warrants the continued imposition of a temporary license suspension, the imposition of permanent disciplinary sanctions, or both. The specific issues to be determined in this proceeding are:

- A. Whether, on or about June 9, 2012, Respondent committed professional misconduct by consuming alcohol in violation of the terms of his NHPHP contract

and/or the terms of his 2011 Settlement Agreement, in violation of RSA 329:17, VI (b) and/or RSA 329:17, VI (d); and/or

- B. Whether, on or about June 9, 2012, Respondent committed professional misconduct by failing to disclose to the NHPHP of his alcohol use, as required by his monitoring contract, in violations of RSA 329:17, VI (b) and/or RSA 329:17, VI (d); and/or
- C. Whether, on or about June 26, 2012, Respondent committed professional misconduct by consuming alcohol in violation of the terms of his NHPHP contract and/or the terms of his 2011 Settlement Agreement, in violation of RSA 329:17, VI (b) and/or RSA 329:17, VI (d); and/or
- D. Whether, on or about June 26, 2012, Respondent committed professional misconduct by failing to disclose to the NHPHP of his alcohol use, as required by his monitoring contract, in violations of RSA 329:17, VI (b) and/or RSA 329:17, VI (d); and/or
- E. Whether on or between June 26, 2012 and July 2, 2012, Respondent committed professional misconduct by continuing to practice medicine despite a NHPHP directive to refrain from such practice, in violations RSA 329:17, VI (d); and/or
- F. If any of the above allegations are proven, whether and to what extent, Respondent should be subjected to one or more of the disciplinary sanctions authorized by RSA 329:17, VII.

7. While RSA 329:18-a requires that the Board furnish Respondent at least fifteen days' notice of allegations of professional misconduct and the date, time and place of an

adjudicatory hearing, RSA 541-A:30, III and Med 503.01 require the Board to commence an adjudicatory hearing within ten (10) days after the date of an immediate, temporary license suspension order.

8. The Board intends to complete this adjudicative proceeding within the one hundred twenty (120) day time period provided by RSA 329:18-b and Med 503.01. Accordingly, neither the date of the initial evidentiary hearing nor the date for concluding this proceeding shall be postponed or extended unless Respondent agrees to continue the suspension period pending issuance of the Board's final decision in this matter. *See* RSA 329:18-b, 541-A:30, III, and Med 503.01.

THEREFORE, IT IS ORDERED that Respondent's New Hampshire license to practice medicine is immediately suspended until further order of the Board; and,

IT IS FURTHER ORDERED that an adjudicatory proceeding be commenced for the purpose of resolving the issues articulated above pursuant to RSA 329:17; 329:18-a; 329:18-b; 541-A:30, III; and Med 503.01. To the extent that this order or the Board's rules do not address an issue of procedure, the Board shall apply the New Hampshire Department of Justice Rules, Part 800; and,

IT IS FURTHER ORDERED that Christopher Kirby, MD shall appear before the Board on July 25, 2012 at 1:00 p.m., at the Board's office located at 2 Industrial Park Drive, Concord, N.H., to participate in an adjudicatory hearing and, if deemed appropriate, be subject to sanctions pursuant to RSA 329:17, VII; and,

IT IS FURTHER ORDERED that if Respondent elects to be represented by counsel, at Respondent's own expense, said counsel shall file a notice of appearance at the earliest date possible; and,

IT IS FURTHER ORDERED that Respondent's failure to appear at the time and place specified above may result in the hearing being held *in absentia* and disciplinary sanctions imposed without further notice or an opportunity to be heard; and,

IT IS FURTHER ORDERED that Sarah T. Blodgett, 33 Capitol Street, Concord, N.H., 03301 is appointed to act as Hearing Counsel in this matter with all the authority within the scope of RSA Chapter 329 to represent the public interest. Hearing Counsel shall have the status of a party to this proceeding; and,

IT IS FURTHER ORDERED that Edmund J. Waters, Jr., Member of the Board, shall act as presiding officer in this proceeding; and,

IT IS FURTHER ORDERED that any proposed exhibits, motions or other documents intended to become part of the record in this proceeding, be filed by the proponent with the Board, in the form of an original and nine (9) copies, and with an additional copy mailed to any party to the proceeding, and to Attorney Elyse Alkalay, Counsel to the Board, N.H. Department of Justice, 33 Capitol Street, Concord, New Hampshire 03301. All responses or objections to such motions or other documents are to be filed in similar fashion within ten (10) days of receipt of such motion or other document unless otherwise ordered by the Board; and,

IT IS FURTHER ORDERED that a witness and exhibit list and any proposed exhibits, pre-marked for identification only, shall be filed with the Board no later than three (3) days

before the date of the hearing. Respondent shall pre-mark his exhibits with capital letters, and Hearing Counsel shall pre-mark her exhibits with Arabic numerals; and,

IT IS FURTHER ORDERED that unless good cause exists, all motions shall be filed at least three (3) days before the date of any hearing, conference, event or deadline which would be affected by the requested relief, except any motion seeking to postpone a hearing or conference, which shall be filed at least ten (10) days before the hearing or conference in question; and,

IT IS FURTHER ORDERED that the entirety of all oral proceedings be recorded verbatim by the Board. Upon the request of any party made at least ten (10) days prior to the proceeding or conference or upon the Board's own initiative, a shorthand court reporter shall be provided at the hearing or conference and such record shall be transcribed by the Board if the requesting party or agency shall pay all reasonable costs for such transcription; and,

IT IS FURTHER ORDERED that all documents shall be filed with the Board by mailing or delivering them to Penny Taylor, Administrator, N.H. Board of Medicine, 2 Industrial Park Drive, Suite 8, Concord, New Hampshire 03301; and,

IT IS FURTHER ORDERED that routine procedural inquiries may be made by contacting Penny Taylor, Administrator, N.H. Board of Medicine, 2 Industrial Park Drive, Suite 8, Concord, New Hampshire 03301, (603) 271-1204, but that all other communications with the Board shall be in writing and filed as provided above. *Ex parte* communications are forbidden by statute and the Board's regulations; and,

IT IS FURTHER ORDERED that a copy of this Notice of Hearing shall be served upon Respondent by certified mail addressed to the office address he supplied to the Board in his latest

renewal application. See, RSA 329:18, VI, Med. 501.02 (c) and RSA 329:16 (f). A copy shall also be delivered to Hearing Counsel.

BY ORDER OF THE BOARD/*

Dated: July 13, 2012



Penny Taylor, Administrator
Authorized Representative of the
New Hampshire Board of Medicine

/*Amy Feitelson, M.D. and John Wheeler, D.O., Board members, did not participate