

COPY

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BEFORE THE STATE BOARD OF OSTEOPATHIC MEDICINE**

Commonwealth of Pennsylvania, :
Bureau of Professional and : **Case No. 14-53-02415**
Occupational Affairs :
v. :
Dennis Erik Von Kiel, D.O., :
Respondent :

**FINAL ORDER ADOPTING HEARING EXAMINER'S
PROPOSED ADJUDICATION AND ORDER IN CONSIDERATION
OF PETITION FOR REINSTATEMENT**

AND NOW, this 20th day of June, 2019, the State Board of Osteopathic Medicine (Board) having reviewed the entire record in this case established before the hearing examiner; and having determined that the findings of fact, conclusions of law, discussion, and order are supported by the record and appropriate; adopts the Proposed Adjudication and Order in Consideration of Petition for Reinstatement, as the Final Adjudication and Order in this case. A copy of the Proposed Adjudication and Order is attached as **Attachment A**.

This Order shall take effect immediately.

**BUREAU OF PROFESSIONAL &
OCCUPATIONAL AFFAIRS**



**K. KALONJI JOHNSON
ACTING COMMISSIONER**

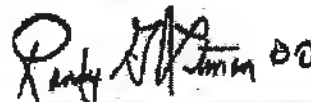
Respondent's Attorney:

Prosecuting Attorney:

Board Counsel:

Date of Mailing:

**BY ORDER:
STATE BOARD OF OSTEOPATHIC
MEDICINE**



**RANDY G. LITMAN, D.O.
CHAIRPERSON**

Richard Q. Hark, Esquire
Hark & Hark
1835 Market Street, Suite 2626
Philadelphia, PA 19103

Keith E. Bashore, Esquire

Kenneth J. Suter, Esquire

June 20, 2019

Attachment A

ORIGINAL

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BEFORE THE STATE BOARD OF OSTEOPATHIC MEDICINE**



**Commonwealth of Pennsylvania,
Bureau of Professional and
Occupational Affairs**

File No. 14-53-02415

v.

**Dennis Erik Von Kiel, D.O.,
Respondent¹**

**PROPOSED ADJUDICATION AND ORDER IN CONSIDERATION OF PETITION
FOR REINSTATEMENT**

**Ruth D. Dunnewold
Hearing Examiner**

**COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL
DEPARTMENT OF STATE
OFFICE OF HEARING EXAMINERS
P.O. Box 2649
Harrisburg, PA 17105-2649**

Date Distributed 4-19-19
Prosecution /
Counsel /
BFO /
Hearing Examiner /
Other /

¹Since this matter currently proceeds on Dr. Von Kiel's Petition for Reinstatement, he is the Petitioner in this matter, rather than the Respondent, and will be referred to as such outside of the caption.

HISTORY

This matter arises on the Petition for Reinstatement ("Petition") of his license to practice osteopathic medicine and surgery filed by Dennis Erik Von Kiel, D.O. ("Petitioner") on January 10, 2019. His license is actively and indefinitely suspended as the result of disciplinary action imposed by the State Board of Osteopathic Medicine ("Board") under the Osteopathic Medical Practice Act ("Act"), Act of October 5, 1978, P.L. 1109, No. 261, *as amended*, 63 P.S. § 271.1 -- 271.18, at section 15(a)(3), 63 P.S. § 271.15(a)(3), because Petitioner was convicted of multiple felonies in federal court. By Final Adjudication and Order filed June 20, 2018, the Board actively and indefinitely suspended Petitioner's license for a minimum of six months, until Petitioner has fulfilled specified terms and conditions. Upon expiration of the minimum period of six months, Petitioner filed his Petition.

A hearing on the Petition convened on February 25, 2019. Petitioner appeared at the hearing and was represented by Richard Q. Hark, Esquire. The Commonwealth was represented by Keith E. Bashore. At the conclusion of the hearing, the Commonwealth indicated the desire to file a post-hearing brief in lieu of a closing argument, Petitioner requested an expedited briefing schedule, and the record was left open till March 4, 2019, for Petitioner to provide additional documentary evidence in support of his Petition.

An Order Establishing Briefing Schedule, dated February 25, 2019, directed the Commonwealth to file its post-hearing brief by close of business on March 27, 2019, and Petitioner to file his reply brief, if any, by close of business on April 8, 2019. The hearing transcript was filed on March 13, 2019. Thereafter, Petitioner submitted additional proposed exhibits on March 1, March 4, and March 18, 2019, the Commonwealth had the opportunity to object to them but did not do so, and by orders dated March 14, 2019 and March 27, 2019,

Petitioner's proposed additional exhibits were marked as Petitioner's Exhibits 1, 2 and 3, and were admitted into the record. The Commonwealth filed its post-hearing brief on March 27, 2019, Petitioner filed his reply brief on April 9, 2019, and the record was closed at that time.

FINDINGS OF FACT

1. Petitioner holds a license to practice osteopathic medicine in the Commonwealth of Pennsylvania, license no. OS006022L, which was originally issued August 28, 1986 and expired on October 31, 2018. Official notice of Board records.²

2. Petitioner's license is currently suspended pursuant to a Final Adjudication and Order that the Board issued on June 20, 2018 ("2018 FA & O"), which actively and indefinitely suspended Petitioner's license for a minimum of six months, until Petitioner has fulfilled specified terms and conditions. *Id.*

3. At all pertinent times, Petitioner held a license to practice osteopathic medicine in the Commonwealth of Pennsylvania. *Id.*

4. Petitioner's last known address on file with the Board is 341 Bowers Rd, Kutztown, PA 19530. *Id.*

5. In the case captioned *United States of America v. Dennis Erik Fluck Von Kiel*, Case Number DPAE2:14CR00149-001, in the United States District Court for the Eastern District of Pennsylvania ("federal criminal matter"), Judge Jeffrey L. Schmehl issued a Judgment in a Criminal Case dated April 21, 2015, which sentenced Petitioner on his guilty plea to one count of conspiracy to defraud the United States, a felony in violation of 18 U.S.C. § 371; five

²At the hearing, official notice was taken of the content of Petitioner's Petition for Reinstatement, which included a certificate of successful completion of a medical ethics program, 105 hours of medical education, and child abuse certifications. Notes of Testimony at 6 – 7. Here, the Hearing Examiner also takes official notice of the issuance and expiration dates of Petitioner's license on file with the Board. Official notice is taken of the Board's licensure records pertaining to Petitioner in accordance with the rule that a licensing board may take official notice of its own records. General Rules of Administrative Practice and Procedure, 1 Pa. Code § 31.1 *et seq.*, at § 35.173; *see also Falasco v. Commonwealth of Pennsylvania Board of Probation and Parole*, 521 A.2d 991 (Pa. Cmwlth. 1987) (The doctrine of official notice allows an agency to take official notice of facts which are obvious and notorious to an expert in the agency's field and those facts contained in reports and records in the agency's files); *Gleeson v. State Bd. of Medicine*, 900 A.2d 430, 440 (Pa. Cmwlth. 2006), *appeal denied*, 917 A.2d 316 (Pa. 2007) (licensing board may take official notice of its own records). All subsequent such references will be cited as "Board records."

counts of attempting to defeat or evade a federal tax, felonies in violation of 26 U.S.C. § 7201; one count of attempting to obstruct the due administration of the Internal Revenue Code, a felony in violation of 26 U.S.C. § 7212(a); five counts of failure to file a tax return, in violation of 26 U.S.C. § 7203; one count of wire fraud, aiding and abetting, a felony in violation of 26 U.S.C. §§ 1343 and 2; one count of perjury in a bankruptcy proceeding, a felony in violation of 18 U.S.C. § 152(3); one count of financial aid fraud, aiding and abetting, a felony in violation of 20 U.S.C. § 1097 and 18 U.S.C. § 2; and two counts of attempted mail fraud, aiding and abetting, felonies in violation of 18 U.S.C. §§ 1341 and 1349. Exhibit C-1.

6. The judge in the federal criminal matter sentenced Petitioner to a total term of imprisonment of 41 months, to be followed by supervised release for three years, and ordered Petitioner, among other things, to pay restitution to the federal government in the amount of \$555,537.11. *Id.*

7. Based on Petitioner's conviction in the federal criminal matter, the Board disciplined Petitioner through issuance of its 2018 FA & O. Board records.

8. The 2018 FA & O suspended Petitioner's license for a minimum six months and until he has fulfilled the following terms and conditions:

SPECIAL

1. [Petitioner] shall complete and pass a multi-day, non-adversarial ethics program for health care professionals such as the Center for Personalized Education for Physicians' (CPEP) ProBE program related to ethics or a similarly intensive course that [Petitioner] shall submit the proposed program for Board approval prior to attendance.
2. After the minimum suspension period of six (6) months, [Petitioner] may file a written petition to the Board requesting reinstatement. [Petitioner's] petition for reinstatement must include:
 - a. Satisfactory evidence that he has completed the required remedial education in ethics,

- b. Satisfactory evidence that he meets all licensure and/or renewal requirements in this Commonwealth, and
 - c. A signed verification indicating whether the [Petitioner] has practiced osteopathic medicine and surgery since the suspension and has otherwise not acted in violation of this Order.
3. Upon receipt of a completed petition for reinstatement, a hearing examiner for the Board shall hold a hearing to determine if [Petitioner] is able to produce satisfactory evidence that he is able to resume the practice osteopathic medicine and surgery with the requisite honesty, integrity, trustworthiness, and competency.
4. [Petitioner] must submit to the Board satisfactory evidence that he is able to practice osteopathic medicine and surgery with the requisite honesty, integrity, trustworthiness and that [Petitioner] is suitable for licensure.
5. [Petitioner] will also be required to meet all licensure requirements in this Commonwealth.

* * *

Id.

9. On January 4, 2019, Petitioner filed his Petition. *Id.*
10. Petitioner's Petition included a signed verification of practice/non-practice stating, among other things, that Petitioner had not engaged in or practiced his profession in Pennsylvania since the discipline was imposed on his license in July 2018, which Petitioner affirmed in his testimony. Board records; Notes of Testimony ("NT") at 18 – 19.
11. Petitioner's Petition included an email chain between Petitioner and Brittany Zappasodi, bzappasodi@pa.gov, under the subject "Ethics course approval," dated from October 19, 2018 through October 24, 2018, in which Ms. Zappasodi stated, among other things, "As per Aaron Hollinger and the Board: the courses you submitted are acceptable to fulfill your consent agreement [sic] requirement." Board records (*see* Petition's attachments).

12. Aaron Hollinger was the Board staff member who approved the ethics course that Petitioner took in order to meet the Board's requirement that Petitioner complete and pass a multi-day, non-adversarial ethics program for health care professionals. NT at 59 – 60.

13. On November 30 – December 1, 2018, Petitioner participated in and completed the Board-approved PBI Medical Ethics and Professionalism Course provided by the University of California, Irvine School of Medicine. Board records; Petitioner's Exhibit 1; NT at 59 – 60.

14. In the biennial renewal period running from November 1, 2016 through October 31, 2018, which preceded the current biennial renewal period running from November 1, 2018 through October 31, 2020, Petitioner completed more than 100 credit hours of continuing medical education, including the following:

a. To meet the Board's regulatory requirement that at least 20 credit hours shall be completed in AOA category 1-A approved activities, Petitioner completed the course "Advanced Emergency Medicine Annual Program," from the Philadelphia College of Osteopathic Medicine, for which he was awarded 28 AOA Category 1A CME credits. 49 Pa. Code § 25.271(c)(1); Board records (*see* Petitioner's attachments); Petitioner's Exhibit 1.

b. To meet the Board's regulatory requirement that at least 12 credit hours shall be completed in Category 1 or Category 2 approved activities in the area of patient safety and risk management, as it is defined in the Board's regulation, Petitioner completed courses that included the following:³

³"Approved activities in the area of patient safety and risk management may include topics such as improving medical records and recordkeeping, reducing medical errors, professional conduct and ethics, improving communications, preventative medicine and healthcare quality improvement." 49 Pa. Code § 25.271(c)(1). The

(Footnote continued on next page.)

- i. "#41030 Burnout in Physicians," from NetCE Continuing Education, for which he was awarded 5 AMA PRA Category 1 credits.
- ii. "Safety and Acceptability of an Organic Light-Emitting Diode Sleep Mask as a Potential Therapy for Retinal Disease," from Medscape, for which he was awarded 1 AMA PRA Category 1 credit.
- iii. "Risk Factors for Disseminated Coccidioidomycosis, United States," from Medscape, for which he was awarded 1 AMA PRA Category 1 credit.
- iv. "Improving the Safe Use of Fluoroquinolone Antibiotics," from Medscape, for which he was awarded .75 AMA PRA Category 1 credit.
- v. "Using Patient Simulations to Improve HIV Care Individualization," from Medscape, for which he was awarded 1 AMA PRA Category 1 credit.
- vi. "Research Perspectives: Innovations and Implications of New LDL Lowering Strategies," from Annenberg Center for Health Sciences, for which he was awarded 1 AMA PRA Category 1 credit.

courses specifically listed here appear to meet those requirements based either on a statement to that effect on the certificate of completion, or based on the language in the title.

vii. "Study Companion: Mastering the Management of Type 2 Diabetes," from Annenberg Center for Health Sciences, for which he was awarded 1 AMA PRA Category 1 credit.

viii. "Office Perspectives: Seizing Opportunities to Enhance the Care of Chemotherapy-induced Nausea and Vomiting," from Annenberg Center for Health Sciences, for which he was awarded 1 AMA PRA Category 1 credit.

ix. "Panel Perspectives: Optimizing the Prevention of Herpes Zoster in Older Patients," from Annenberg Center for Health Sciences, for which he was awarded 1 AMA PRA Category 1 credit.

49 Pa. Code § 25.271(c)(1); Board records (*see* Petitioner's attachments); Petitioner's Exhibit 1.⁴

c. To meet the statutory requirement that all persons applying for renewal of a license issued by a licensing board complete at least two hours of continuing education addressing, but not limited to, recognition of the signs of child abuse and the reporting requirements for suspected child abuse in the Commonwealth, Petitioner completed "Recognition and Reporting Child Abuse," from the Pennsylvania Medical Society, for which he was awarded three AMA PRA Category 1 credits. Child Protective Services Law, Act of December 19,

⁴The documentation attached to the Petition incorporates, at different locations, duplicate copies of the Certificates of Completion from NetCE Continuing Education for "#41030 Burnout in Physicians," "#98770 Parkinson Disease," and "#94100 Low Back Pain." Likewise, the documentation attached to Petitioner's Exhibit 1 incorporates, at different locations, duplicate copies of the Certificates of Completion from NetCE Continuing Education for "#41030 Burnout in Physicians" and "#98770 Parkinson Disease."

1990, P.L. 1240, No. 206, *as amended by* the Act of April 15, 2014, P.L. 411, No. 31, 23 Pa.C.S. § 6301 *et seq.*, at 23 Pa.C.S. § 6383(b)(3)(ii); Board records (*see* Petition's attachments); Petitioner's Exhibit 1.

15. On March 17, 2019, to meet the statutory requirement that licensed prescribers applying for the renewal of a license complete at least two hours of continuing education in pain management, identification of addiction or the practices of prescribing or dispensing of opioids as a portion of the total continuing education required for biennial renewal, Petitioner completed "Prescribing Naloxone w Opioids," as well as "Opioid Prescribing for Chronic Non-Cancer Pain," from the Pennsylvania Medical Society, and for each course, he was awarded 1 AMA PRA Category 1 credit. Achieving Better Care by Monitoring All Prescriptions Program ("ABC-MAP") Act, Act of November 2, 2016, P.L. 980, No. 124, 35 P.S. § 872.1 *et seq.*, at section 9.1(a)(2), 35 P.S. § 872.9a(a)(2); Petitioner's Exhibit 3.

16. On February 25, 2019, a hearing on Petitioner's Petition occurred. NT, *passim*.

17. Petitioner remains on supervised release in the federal criminal matter until approximately February 2020, and as of the date of the hearing, he was in compliance with all of the terms and conditions of his supervised release. NT at 20, 21, 22.

18. Petitioner was assessed restitution in the federal criminal matter of approximately \$500,550 and as of the date of the hearing, had paid \$15,000 of that up front and had been making payments of \$500 per month since then, sometimes adding an additional \$100 when possible. NT at 51, 52 – 53.

19. Petitioner takes responsibility for his actions in the federal criminal matter, understands that actions he commits outside of the practice of osteopathic medicine are just as important as actions he commits within the practice of osteopathic medicine, and has started to

rebuild his integrity from the ground up, one day at a time, after hitting rock bottom. NT at 14, 15, 16, 25, 27, 29 – 30, 32, 43.

20. Petitioner learned during the multiday ethics course that he took at the Board's direction that integrity is required not only in his patient care but in his life outside of patient care as well. NT at 36 – 37.

21. Petitioner is interested in returning to practice in the low-income, rural, Amish, and intercity Vietnamese communities in which he practiced prior to the suspension of his license because he enjoys taking care of the people in those communities. NT at 38, 39 – 40, 41.

22. Petitioner has never had any alcohol or drug issues. NT at 44.

23. Petitioner has four grown children who are employed, or training to be employed, in law enforcement capacities, and he feels he has been an embarrassment to them, which is a factor that will help keep him working towards greater integrity. NT at 46.

24. Petitioner participated in the hearing in this matter, was represented by counsel, testified, and presented documentary evidence on his own behalf. NT at 5 and *passim*.

CONCLUSIONS OF LAW

1. The Board has jurisdiction in this matter. Findings of Fact 1 – 3.
2. Petitioner received notice of this proceeding and was afforded an opportunity to be heard in accordance with section 4 of the Administrative Agency Law, 2 Pa. C.S. § 504. Finding of Fact 24.
3. Petitioner has complied with the requirements of the Board's 2018 FA & O. Findings of Fact 5 – 23.
4. The record supports the reinstatement of Petitioner's license, subject to a period of probation. *Id.*

DISCUSSION

The Board's 2018 FA & O enunciated nine requirements for Petitioner to meet for the reinstatement of his license. **First**, Petitioner was to serve a minimum suspension of six months. 2018 FA & O, first paragraph. The suspension began on July 20, 2018, and Petitioner filed his Petition on January 10, 2019, so he has met that requirement.

Second, the 2018 FA & O required Petitioner to complete and pass a multi-day, non-adversarial ethics program for health care professionals, and **third**, to obtain approval by the Board of that program prior to attending it. 2018 FA & O, special paragraph 1. Petitioner met these requirements, presenting evidence through his Petition and his testimony that he obtained approval, from Board staff member Aaron Hollinger, of the PBI Medical Ethics and Professionalism Course provided by the University of California, Irvine School of Medicine, which Petitioner then attended and successfully completed from November 30 – December 1, 2018. *See* Findings of Fact 11 – 13. Accordingly, he has met the second and third requirements for reinstatement.

Fourth, Petitioner was required to file a written petition to the Board, requesting reinstatement. 2018 FA & O, special paragraph 2. As mentioned above, he did that on January 10, 2019. *See* Finding of Fact 9. **Fifth**, he was to provide, in the written petition, satisfactory evidence that he has completed the required remedial education in ethics, 2018 FA & O, special paragraph 2a, and **sixth**, he was to provide a signed verification indicating that he has not practiced osteopathic medicine and surgery since the suspension and otherwise has not acted in violation of this Order. 2018 FA & O, special paragraph 2c. He provided satisfactory evidence as to his completion of the PBI Medical Ethics and Professionalism Course, as indicated above, *see*

Findings of Fact 11 – 13, and he provided the required verification with his Petition, *see* Finding of Fact 10, so he has met the fifth and sixth requirements.

Seventh, Petitioner was required to provide satisfactory evidence that he meets all licensure and/or renewal requirements in this Commonwealth. 2018 FA & O, special paragraph 2b and special paragraph 5. This requirement requires a lengthier analysis, because there are a number of those requirements, some in the Act, and some in the Board's regulations. Section 6 of the Act begins, setting forth the basic requirements for initial licensure:⁵

- The individual must be a graduate of an osteopathic medical college.
- The individual must be of good moral character.
- The individual must not be addicted to habit-forming drugs.
- The individual must have completed the educational requirements prescribed by the Board.

63 P.S. § 271.6(a).⁶

Of the section 6(a) requirements, being a graduate of an osteopathic medical college and completing the requisite education are immutable. In other words, Petitioner met those requirements when he was first licensed, and the fact that he met them is not something that will change, so he clearly continues to meet them. The prohibition on addiction to habit-forming drugs is not at issue, and never has been in this case; indeed, Petitioner testified that he has never

⁵Section 6 incorporates a requirement that applies to applicants who have been convicted of drug-related felonies. *See* section 6(c), 63 P.S. § 271.6(c). Since that requirement does not apply to Petitioner, it will not be discussed.

⁶§ 271.6. Qualifications for license

(a) A graduate of an osteopathic medical college in the United States who seeks licensure by the board shall furnish the board with evidence, prior to any examination, that he is of good moral character, is not addicted to habit-forming drugs, and has completed the educational requirements prescribed by the board.

63 P.S. § 271.6(a).

had any alcohol or drug issues. Therefore, he meets the requirement that he must not be addicted to habit-forming drugs.

However, given Petitioner's conviction of so many felonies in the federal criminal matter, Petitioner's good moral character *is* at issue. Good moral character is similar to the ninth requirement in the 2018 FA & O, which is that Petitioner produce satisfactory evidence that he is able to resume the practice of osteopathic medicine and surgery with the requisite honesty, integrity, trustworthiness, and competency. Therefore, Petitioner's good moral character will be discussed below, in the context of the ninth requirement of the 2018 FA & O.

Section 10 of the Act also establishes requirements for the individual seeking licensure, including the following:

- The individual must comply with the requirements of the Board.
- The individual must pass a final exam.
- The individual must otherwise comply with the provisions of this Act.

63 P.S. § 271.10(a).⁷ Again, passing the exam is immutable except in certain circumstances which do not apply here.⁸ Since Petitioner has already passed the exam, and there is no requirement that he pass another in order to obtain the reinstatement of his license pursuant to the

⁷§ 271.10. Licenses; exemptions; nonresident practitioners; graduate students; biennial registration and continuing medical education

(a) Physicians who have complied with the requirements of the board, have passed a final examination, and have otherwise complied with the provisions of this act shall receive from the Commissioner of Professional and Occupational Affairs in the Department of State, or whoever exercises equivalent authority, a license entitling them to practice osteopathic medicine and surgery without restriction in this Commonwealth. . . .

* * *

63 P.S. § 271.10(a).

⁸Under section 14.1 of the Act, a person whose license has been revoked may apply for reinstatement after five years, but among other things, must retake the licensing exam as a prerequisite to reinstatement. 63 P.S. § 271.14a. Since the Board did not revoke Petitioner's license, this provision does not apply to Petitioner.

2018 FA & O or pursuant to any provision of the Act or the regulations, this requirement has been met.

The requirement that the individual otherwise comply with the provisions of the Act is understood, in this context, to refer to other provisions that relate to issuance or reinstatement of a license. In particular, it relates back to section 6, 63 P.S. § 271.6, which already was discussed above, as well as to several other subsections of section 10, 63 P.S. § 271.10, which set forth the following requirements:

- The individual must renew a granted license every two years. Section 10(c).
- The individual must complete continuing education defined by the Board every two years. Section 10(d).
- The individual must pay the required fee. Section 10(e).

63 P.S. § 271.10(c), (d), and (e).⁹ As for renewing every two years, the prior biennial renewal period expired October 31, 2018, along with Petitioner's license, so reinstatement of his license

§ 271.10. Licenses; exemptions; nonresident practitioners; graduate students; biennial registration and continuing medical education

* * *

(c) It shall be the duty of those licensed to practice osteopathic medicine and surgery without restriction to register with the board and to reregister at such intervals and by such methods as the board shall for a period determine. Such renewal period shall not be longer than two years. The form and method of such registration shall be determined by the board.

(d) . . . Each person licensed to practice osteopathic medicine and surgery without restriction, during the two-year period immediately preceding a biennial date for reregistering with the board, must complete a program of continuing medical education, as defined by and acceptable to the board. The number of hours of continuing education to be met by licensees shall be set by the board by regulation. . . .

(e) A person registering with the board shall pay, for each biennial registration, a fee. It shall accompany the application for registration. Upon receiving a proper application for registration accompanied by the fee and evidence satisfactory to the board of compliance with the continuing medical education requirements of subsection (d), the board shall issue its certificate of registration to the applicant. It and its renewals shall be good and sufficient evidence of registration.

* * *

63 P.S. § 271.10(c), (d) and (e).

now would be the equivalent of renewing for the present biennial renewal period, which runs from November 1, 2018 through October 31, 2020. Therefore, if Petitioner's license is reinstated, he will have complied with section 10(c), 63 P.S. § 271.10(c). And no application for renewal or reinstatement will be processed without payment of the required fee, so it is safe to assume that Petitioner will comply with section 10(e), 63 P.S. § 271.10(e), as a matter of course.

Section 10(d), 63 P.S. § 271.10(d), requires Petitioner to complete the continuing education defined by the Board. The Board has defined the continuing education requirements in its regulations at 49 Pa. Code § 25.271(c),¹⁰ which requires renewing licensees to complete 100 credit hours of continuing medical education in the preceding biennial period as a prerequisite to renewal for the new biennial renewal period. Those 100 credit hours must include at least 20 credit hours in AOA category 1-A approved activities and at least 12 credit hours in Category 1 or Category 2 approved activities in the area of patient safety and risk management. 49 Pa. Code § 25.271(c)(1). Since Petitioner seeks reinstatement for the present biennial renewal period,

¹⁰§ 25.271. Requirements for renewal.

* * *

(e) Proof of completion of 100 credit hours of continuing medical education in the preceding biennial period will be required for licensure renewal for osteopathic physicians.

(1) Beginning with the licensure renewal period commencing November 1, 2006, at least 20 credit hours shall be completed in AOA category 1-A approved activities. At least 12 credit hours shall be completed in Category 1 or Category 2 approved activities in the area of patient safety and risk management. Approved activities in the area of patient safety and risk management may include topics such as improving medical records and recordkeeping, reducing medical errors, professional conduct and ethics, improving communications, preventative medicine and healthcare quality improvement. The remaining credit hours shall be completed in any Category 1 or Category 2 approved activities. Credit will not be granted for courses in office management or practice building.

* * *

49 Pa. Code § 25.271(c).

which runs from November 1, 2018 through October 31, 2020, the preceding biennial period is the one that began on November 1, 2016 and ended on October 31, 2018.

In addition to those requirements established by the Board in its regulations, there are two other statutory provisions that require licensees, including licensees of the Board, to complete two other types of continuing education as a prerequisite to the biennial renewal of a license. First, the Child Protective Services Law,¹¹ at 23 Pa.C.S. § 6383(b)(3)(ii),¹² requires all persons applying for a license or certification issued by the licensing board to submit documentation acceptable to the licensing board of the completion of at least three hours of approved child abuse recognition and reporting training. Second, the Achieving Better Care by Monitoring All

¹¹Act of December 19, 1990, P.L. 1240, No. 206, as amended by the Act of April 15, 2014, P.L. 411, No. 31, 23 Pa.C.S. § 6301 *et seq.*

¹²§ 6383. Education and training.

* * *

(b) Duties of Department of State.

* * *

(3) Each licensing board with jurisdiction over professional licensees identified as mandated reporters under this chapter shall:

* * *

(ii) Require all persons applying for the renewal of a license or certification issued by the licensing board to submit documentation acceptable to the licensing board of the completion of at least two hours of approved continuing education per licensure cycle. Continuing education shall address, but shall not be limited to, recognition of the signs of child abuse and the reporting requirements for suspected child abuse in this Commonwealth. Continuing education curricula shall be approved by the licensing board in consultation with the Department of Public Welfare. The two hours of continuing education on child abuse recognition and reporting shall be completed by each licensee as a portion of the total continuing education required for biennial license renewal.

* * *

23 Pa.C.S. § 6383(b).

Prescriptions Program ("ABC-MAP") Act,¹³ at section 9.1(a)(2), 35 P.S. § 872.9a(a)(2),¹⁴ requires prescribers applying for the renewal of a license to complete at least two hours of continuing education in pain management, identification of addiction or the practices of prescribing or dispensing of opioids as a portion of the total continuing education required for biennial renewal.

With his Petition, by his testimony at the hearing, and via his three exhibits, which were admitted into the record after the hearing, Petitioner presented evidence that he has fulfilled all of these continuing education requirements. *See* Findings of Fact 14 – 15. The continuing education also serves to demonstrate his efforts to maintain his competency, as required in special paragraph 3 of the 2018 FA & O. Therefore, Petitioner has met the requirement enunciated at section 10(d) of the Act, 63 P.S. § 271.10(d), and has partially met the requirement set forth in the 2018 FA & O at special paragraph 3.

Complying with the requirements of the Board, as required in section 10(a), 63 P.S. § 271.10(a), refers by implication to the Board's regulations governing issuance or reinstatement of a license, because it is the Board's regulations that establish the Board's requirements. (The

¹³Act of November 2, 2016, P.L. 980, No. 124, 35 P.S. § 872.1 *et seq.*

¹⁴§ 872.9a. Licensing boards to require education in pain management, addiction and prescribing and dispensing practices for opioids.

(a) **General rule.** — Except as otherwise provided for in subsection (c), each licensing board shall require:

* * *

(2) Dispensers and prescribers applying for the renewal of a license or certification to complete at least two hours of continuing education in pain management, identification of addiction or the practices of prescribing or dispensing of opioids as a portion of the total continuing education required for biennial renewal.

* * *

35 P.S. § 872.9a(a)(2).

requirements in the Act are those determined by the General Assembly.) Those Board regulations that address issuance of an initial license, or renewal/reinstatement of an existing license, are found at 49 Pa. Code §§ 25.241 (related to unrestricted license by examination), 25.251 (related to general requirements), 25.271 (related to requirements for renewal) and 25.281 (related to malpractice insurance requirements).

These Board regulations duplicate many of the requirements for licensure already set forth in the Act and discussed above. For instance, 49 Pa. Code § 25.241¹⁵ requires the individual to graduate from an approved osteopathic medical college and successfully complete an approved internship. 49 Pa. Code § 25.241(1), (4). At subsections (2) and (3), 49 Pa. Code § 25.241 also requires the individual to receive passing scores on the required exams; this requirement is restated in the regulations at 49 Pa. Code § 25.251(a).¹⁶ These are educational, training and examination requirements that Petitioner had to meet prior to being initially

¹⁵§ 25.241. Unrestricted license by examination.

To secure an unrestricted license for the practice of osteopathic medicine and surgery by examination, the applicant shall meet the following educational and professional requirements. The applicant shall have:

- (1) Graduated from an approved osteopathic medical college.
- (2) Received passing scores on Parts I, II and III of the National Board Examination. The applicant shall pay the required examination fee at the direction of the National Board.
- (3) Received a passing score on the practical examination in osteopathic diagnosis and manipulative therapy developed and administered by the Board or a designated professional testing organization.
- (4) Successfully completed an approved internship.
- (5) Complied with the malpractice insurance requirements of the Health Care Services Malpractice Act (40 P. S. §§ 1301.101—1301.1006) and regulations thereunder.
- (6) Completed an application obtained from the Board detailing education and experience and indicating compliance with the applicable provisions of the act and this chapter, submitted with the required fees.

49 Pa. Code § 25.241.

¹⁶§ 25.251. General requirements.

(a) An applicant is eligible for unrestricted licensure only if the applicant has passed the required written examination and the practical examination.

* * *

49 Pa. Code § 25.251(a).

licensed, and as discussed above, they are immutable, so Petitioner continues to meet them. Also, the regulations reiterate the Act's requirement that the individual pay the necessary fee. 49 Pa. Code § 25.271(a). Again, that will occur when Petitioner's application is actually processed.

At 49 Pa. Code § 25.241(6), the Board's regulations further require the applicant to complete an application¹⁷ obtained from the Board. A similar requirement applies to licensees who wish to biennially renew their licenses. 49 Pa. Code § 25.271(a).¹⁸ Therefore, Petitioner will be required to obtain the applicable reinstatement application form from the Board, and then to complete and submit it.

Also, the Board's regulations require an applicant for initial licensure or renewal of licensure to comply with the malpractice insurance requirements of the Health Care Services Malpractice Act (40 P. S. §§ 1301.101—1301.1006) and regulations thereunder. 49 Pa. Code §§ 25.241(5) (initial applicant for licensure) and 25.281¹⁹ (initial or renewal applicant). Like the

¹⁷It should be emphasized that the administrative application form that an individual must complete and submit to the Board for issuance of an initial or renewal/reinstatement of an existing license under the Act at section 10(c), 63 P.S. § 271.10(c) and the Board's regulations at 49 Pa. Code §§ 25.241(6) and 25.271(a) is a separate and distinct requirement (required of all initial applicants and all renewing licensees) from the Petition for Reinstatement required by the Board's 2018 FA & O.

¹⁸§ 25.271. **Requirements for renewal.**

(a) A licensee shall biennially renew his license by completing a form obtained from the Board in advance of October 31 of every even-numbered year, and by paying the required fee. . . .

* * *

49 Pa. Code § 25.271(a).

¹⁹§ 25.281. **Malpractice insurance requirements.**

An applicant for original licensure or a licensee applying for biennial renewal shall maintain the required amount of professional liability insurance or an approved self-insurance plan and shall have paid the required fees and surcharges as set forth in the Health Care Services Malpractice Act (40 P. S. §§ 1301.101—1301.1006), and regulations thereunder. A licensee practicing solely as a Federal employee and a licensee who provides no medical services in this Commonwealth are not required to comply with the insurance requirements of the Health Care Services Malpractice Act. Proof of nonpractice shall be furnished by notarized statement.

49 Pa. Code § 25.281.

requirement, discussed earlier, that the individual pay the required fee, no application for renewal or reinstatement will be processed without proof that the applicant has complied with the malpractice insurance requirements, so again, Petitioner will have to comply with this section as a matter of course. If he does not meet it at that time, his reinstatement application form will not be processed.

The Board's regulations also lay out the continuing education requirements that have already been discussed above in relation to the Act. *See* 49 Pa. Code § 25.271(c). Petitioner has met those. No further discussion is necessary here.

In light of the foregoing, based upon Petitioner's having met the requirements for licensure set forth in the Act at sections 6(a) and 10(c), (d) and (e), 63 P.S. §§ 271.6(a) and 271.10(c), (d), and (e), as well as the requirements of the Board, as enunciated in the Board's regulations, and in the absence of any indications that Petitioner has violated (i.e. failed to comply with) any provision of the Act (other than the violation that led to his discipline in the first instance) which would serve as the basis for refusing him a license, or suspending or revoking his existing license,²⁰ the evidence demonstrates that, except for the good moral character requirement, which will be discussed below, Petitioner has "otherwise complied with the provisions of this Act," as required by section 10(a) of the Act, 63 P.S. § 271.10(a). He has, therefore, provided satisfactory evidence that he meets all licensure and/or renewal requirements in this Commonwealth, as required by 2018 FA & O, special paragraph 2b and special paragraph 5, other than good moral character.

²⁰Under section 15 of the Act, the Board has the authority to refuse, revoke or suspend a physician's license for any of eight specifically-enumerated reasons. *See* 62 P.S. § 271.15(a).

The eighth requirement of the 2018 FA & O was that a hearing be held on the Petition, *see* 2018 FA & O, paragraph 3, which occurred, and which Petitioner attended. Therefore, the eighth requirement has been met.

Ninth, and last, Petitioner was required to produce satisfactory evidence at the hearing that he is able to resume the practice osteopathic medicine and surgery with the requisite honesty, integrity, trustworthiness, and competency, and that he is suitable for licensure. 2018 FA & O, special paragraphs 3 and 4. The good moral character requirement from section 6(a) of the Act is analogous to the requirements of honesty, integrity and trustworthiness, so they will be discussed together.

Before moving to that analysis, however, it should be noted that, as mentioned above, the competency aspect of special paragraph 3 of the 2018 FA & O was addressed by Petitioner's completion of continuing education. Requiring licensees to obtain continuing education is one of the ways in which licensing boards help to assure the continued competency of their licensees.

The relevant evidence on the issue of good moral character, honesty, integrity and trustworthiness, is found in Petitioner's testimony describing his current status. With regard to federal criminal matter, he remains on supervised release until approximately February 2020, and as of the date of the hearing, he was in compliance with all of the terms and conditions of his supervised release. He was assessed restitution as part of the sanction in the federal criminal matter, approximately \$500,550, and as of the date of the hearing, had paid \$15,000 of that up front and had been making payments of \$500 per month since then, sometimes adding an additional \$100 when possible.

Since Petitioner last appeared before the Board, for the hearing in the disciplinary matter, Petitioner appears to have matured and come to understand the significance and seriousness of

his conviction the federal criminal matter. At this hearing on his Petition for Reinstatement, Petitioner testified that he learned, during the multiday ethics course that he took at the Board's direction, that integrity is required not only in his patient care but in his life outside of patient care as well. Having learned that lesson, Petitioner now takes full responsibility for his actions in the federal criminal matter, and exhibits a much-improved understanding that his actions outside of the practice of osteopathic medicine are just as important as his actions within the practice of osteopathic medicine. Petitioner was heartfelt and emotional in his testimony on this subject.

Moreover, Petitioner has four grown children who are employed, or training to be employed, in law enforcement capacities. He feels he has been an embarrassment to them, which is a factor that will help keep him working towards greater integrity and improvements in his moral character. Again, he was credible and contrite in this testimony. In the context of his children's choices of profession, and with his improved understanding that he cannot separate his integrity and honesty in his practice of osteopathic medicine from his integrity and honesty in other aspects of his life, Petitioner is now trying to rebuild his integrity from the ground up, one day at a time, after hitting rock bottom.

Petitioner has not practiced since the Board suspended his license, but he is interested in returning to practice in the low-income, rural, Amish, and intercity Vietnamese communities in which he practiced prior to the suspension of his license, because he enjoys taking care of the people in those communities. His recognition of his responsibility in the federal criminal matter, his intent to do better because of his children's example, and his interest in serving the less fortunate all do him credit, suggesting that he is on a path toward rehabilitation of his moral character that will lead farther and farther away from his reprehensible behavior in the federal criminal matter.

The last question that remains, under the terms of the 2018 FA & O, is whether Petitioner is "suitable for licensure," as stated in special paragraph 4 of the 2018 FA & O. In the original disciplinary matter, the Board chose not to revoke Petitioner's license, instead suspending him for a minimum of six months. Surely if the Board thought he was unsuitable for licensure, the Board would have revoked him in the first instance. Instead, the Board allowed him to retain his license, albeit under the restriction of a suspension. This strongly suggests that, while a suspension was required to bring Petitioner to the understanding of the severity of his conviction in the federal criminal matter, he is nonetheless suitable for licensure. This conclusion is supported by the evidence adduced at the hearing, discussed above. Therefore, Petitioner has successfully demonstrated that he is suitable for licensure, meeting the final requirement of the 2018 FA & O.

Even so, Petitioner does not seek to have his license reinstated to unrestricted status. NT at 43, 70; *Dr. Dennis Von Kiel's Post Hearing Brief* at 2. Also, in its post-hearing brief, the Commonwealth asserted that Petitioner has not met his burden of proving that his license should be "reinstated to *unrestricted* status at the present time." *Commonwealth's Post-Hearing Brief* at 6 (emphasis in original). The Commonwealth also advocated for placing Petitioner's license on probation for at least three years. *Id.* at 8. It follows that the Commonwealth has tacitly conceded that Petitioner met his burden of proving that his license should be restored to some restricted status. Based on this, it is apparent that Petitioner and the Commonwealth agree that reinstatement of Petitioner's license to unrestricted, non-probationary status is not appropriate at this time, but probation is acceptable.

The evidence summarized above supports the determination that Petitioner has complied with all nine requirements of the Board's 2018 FA & O. However, he remains on supervised

release in the federal criminal matter. Consideration of all of these factors leads to the conclusion that reinstatement of Petitioner's license to probationary status, for a period of time to run concurrently with the remaining period of his supervised release in the federal criminal matter, is the appropriate outcome in this matter. Accordingly, based upon the above findings of fact, conclusions of law and discussion, the following order shall issue:

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BEFORE THE STATE BOARD OF OSTEOPATHIC MEDICINE**

Commonwealth of Pennsylvania,
Bureau of Professional and
Occupational Affairs

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File No. 14-53-02415

v.

Dennis Erik Von Kiel, D.O.,
Respondent

PROPOSED ORDER

AND NOW, this 19th day of April, 2019, upon consideration of the foregoing findings of fact, conclusions of law and discussion, it is hereby **ORDERED** that the license to practice osteopathic medicine and surgery issued to Petitioner, **Dennis Erik Von Kiel, D.O.**, license no. OS006022L, shall be **GRANTED**, subject to Petitioner's submission of proof that he has complied with the malpractice insurance requirements of the Health Care Services Malpractice Act (40 P. S. §§ 1301.101—1301.1006) and regulations thereunder, as required in the Board's regulations at 49 Pa. Code §§ 25.241(5) and 25.281; submission of any remaining required documentation, including a properly completed reinstatement application; and payment of the necessary fees.

Upon reinstatement, Petitioner's license **IMMEDIATELY** shall be placed on **PROBATION INDEFINITELY**, until such time as Petitioner has successfully completed his term of supervised release in the case captioned *United States of America v. Dennis Erik Von Kiel*, Case Number DPAE2:14CR00149-001, in the United States District Court for the Eastern District of Pennsylvania ("federal criminal matter"). While his license remains on probation, Petitioner shall be subject to the following **TERMS AND CONDITIONS**:

GENERAL

1. Petitioner shall abide by and obey all laws of the United States, the Commonwealth of Pennsylvania and its political subdivisions and all rules and regulations and laws pertaining to the practice of the profession in this Commonwealth or any other state or jurisdiction in which Petitioner holds a license to practice a health care profession. Summary traffic violations shall not constitute a violation of this Order.
2. Petitioner shall at all times cooperate with the Bureau of Professional and Occupational Affairs and its agents and employees in the monitoring, supervision and investigation of Petitioner's compliance with the terms and conditions of this Order, including requests for, and causing to be submitted at Petitioner's expense, written reports, records and verifications of actions that may be required by the Bureau of Professional and Occupational Affairs.
3. Petitioner shall not falsify, misrepresent or make material omission of any information submitted pursuant to this Order.
4. Petitioner shall notify the Bureau of Professional and Occupational Affairs, in writing, within five (5) days of the filing of any criminal charges against Petitioner, **including the filing of any allegations that he has violated the terms and conditions of his supervised release in the federal criminal matter**, the initiation of any legal action pertaining to Petitioner's practice of the profession, the initiation, action, restriction or limitation relating to Petitioner by a professional licensing authority of any state or jurisdiction or the Drug Enforcement Agency of the United States Department of Justice, or any investigation, action, restriction or limitation relating to Petitioner's privileges to practice the profession at any health care facility.
5. Petitioner shall notify the Bureau of Professional and Occupational Affairs by telephone within 48 hours and in writing within five (5) days of any change of Petitioner's home address, phone number, employment status, employer and/or change in practice at a health care facility.

VIOLATION OF THIS ORDER

6. Notification of a violation of the terms or conditions of this Order shall result in the **IMMEDIATE TERMINATION** of the period of probation and **ACTIVATION** of an **INDEFINITE SUSPENSION** of Petitioner's license(s) to practice the profession in the Commonwealth of Pennsylvania as follows:

a. The prosecuting attorney for the Commonwealth shall present to the Board's Probable Cause Screening Committee ("Committee") a Petition that indicates that Petitioner has violated any terms or conditions of this Order.

b. Upon a probable cause determination by the Committee that Petitioner has violated any of the terms or conditions of this Order, the Committee shall, without holding a formal hearing, issue a preliminary order vacating the stay of the within suspension, terminating this probation and activating the suspension of Petitioner's license.

c. Petitioner shall be notified of the Committee's preliminary order within three (3) business days of its issuance by certified mail and first class mail, postage prepaid, sent to the Petitioner's last registered address on file with the Board, or by personal service if necessary.

d. Within twenty (20) days of mailing of the preliminary order, Petitioner may submit a written answer to the Commonwealth's Petition and request that a formal hearing be held concerning Petitioner's violation of probation, in which Petitioner may seek relief from the preliminary order activating the suspension. Petitioner shall mail the original answer and request for hearing to the Bureau of Professional and Occupational Affairs' Prothonotary, 2601 North Third Street, P.O. Box 2649,

Harrisburg, PA 17105, shall send a copy to the prosecuting attorney for the Commonwealth, and shall do the same with all subsequent filings in the matter.

e. If the Petitioner submits a timely answer and request for a formal hearing, the Board or a designated hearing examiner shall convene a formal hearing within forty-five (45) days from the date of the Prothonotary's receipt of Petitioner's request for a formal hearing.

f. Petitioner's submission of a timely answer and request for a hearing shall not stay the suspension of Petitioner's license under the preliminary order. The suspension shall remain in effect unless the Board or the hearing examiner issues an order after the formal hearing staying the suspension again and reactivating the probation.

g. The facts and averments in this Order shall be deemed admitted and uncontested at this hearing.

h. If the Board or hearing examiner after the formal hearing makes a determination against Petitioner, a final order will be issued sustaining the suspension of Petitioner's license and imposing any additional disciplinary measures deemed appropriate.

i. If Petitioner fails to timely file an answer and request for a hearing, the Board, upon motion of the prosecuting attorney, shall issue a final order affirming the suspension of Petitioner's license.

j. If Petitioner does not make a timely answer and request for a formal hearing and a final order affirming the suspension is issued, or the Board or the hearing examiner makes a determination against Petitioner sustaining the suspension of Petitioner's license, after at least one (1) year of active suspension and any additional

imposed discipline, Petitioner may petition the Board for reinstatement upon verification that Petitioner has complied with the Board's order, abided by and obeyed all laws of the United States, the Commonwealth of Pennsylvania and its political subdivisions, and all rules and regulations pertaining to the practice of the profession in this Commonwealth.

Petitioner's failure to fully comply with any terms of this Order may also constitute grounds for additional disciplinary action.

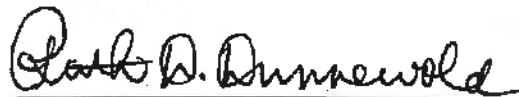
Nothing in this Order shall preclude the prosecuting attorney for the Commonwealth from filing charges or the Board from imposing disciplinary or corrective measures for violations or facts not contained in this Order.

Upon the successful completion of his term of supervised release in the federal criminal matter, Petitioner may file with the Board a written petition for reinstatement of his license to active, unrestricted, non-probationary status. Petitioner shall include with his petition for reinstatement original source documentation evidencing his successful completion of his term of supervised release in the federal criminal matter.

At the Board's discretion, prior to reinstatement, Petitioner may be required to prove at a formal hearing before the Board or its designee that he has successfully completed his term of supervised release in the federal criminal matter.

This order shall take effect 20 days from the date of mailing unless otherwise ordered by the State Board of Osteopathic Medicine.

BY ORDER:

A handwritten signature in cursive script, reading "Ruth D. Dunnewold", written in dark ink over a horizontal line.

Ruth D. Dunnewold
Hearing Examiner

For Petitioner:

Richard Q. Hark, Esquire
HARK & HARK
1835 Market Street, Suite 2626
Philadelphia, PA 19103

For the Commonwealth:

Keith E. Bashore, Prosecuting Attorney
GOVERNOR'S OFFICE OF GENERAL COUNSEL
DEPARTMENT OF STATE OFFICE OF CHIEF COUNSEL
PROSECUTION DIVISION
P.O. Box 69521
Harrisburg, PA 17106-9521

Date of mailing:

April 19, 2019



NOTICE

SERVICE OF PROPOSED REPORT:

The foregoing is the proposed report issued in this matter by a Hearing Examiner for the Department of State, in accordance with the General Rules of Administrative Practice and Procedure at 1 Pa. Code §35.207.

EXCEPTIONS TO PROPOSED REPORT:

Any participant who wishes to appeal all or part of the Hearing Examiner's proposed report to the Board must file exceptions in the form of a *Brief on Exceptions* with the Prothonotary of the Department of State within 30 days after the date of mailing shown on this proposed report in accordance with the General Rules of Administrative Practice and Procedure at 1 Pa. Code §§35.211-214.

The *Brief on Exceptions* shall contain a short statement of the case, a summary of the appealing party's position, the grounds for filing exceptions to the proposed report, and the argument in support of the appealing party's position with citations to the record and legal authority. The appealing party may also include proposed findings of fact and conclusions of law.

In the event any participant files exceptions, the Board may substitute its findings for those of the Hearing Examiner, and/or may impose a greater or lesser sanction than that imposed by the Hearing Examiner without regard to the relief requested or the position argued by any party, and without hearing additional argument or facing additional evidence.

Failure to file a *Brief on Exceptions* within the time allowed under the General Rules of Administrative Practice and Procedure at 1 Pa. Code §§35.211-214 shall constitute a waiver of all objections to the proposed report.

FILING AND SERVICES:

An original and three (3) copies of the *Brief on Exceptions* shall be filed with:

Prothonotary
2601 North Third Street
P. O. Box 2649
Harrisburg, PA 17105-2649

Copies of the *Brief on Exceptions* must also be served on all participants to the proceeding.

Briefs on Exceptions must be received for filing by the Prothonotary within the time limits specified herein. Date of receipt by the Office of Prothonotary and not date of deposit in the mail is determinative.

NOTICE

The attached Adjudication and Order represents the final agency decision in this matter. It may be appealed to the Commonwealth Court of Pennsylvania by the filing of a Petition for Review with that Court within 30 days after the entry of the order in accordance with the Pennsylvania Rules of Appellate Procedure. See Chapter 15 of the Pennsylvania Rules of Appellate Procedure entitled "Judicial Review of Governmental Determinations," Pa. R.A.P 1501 – 1561. Please note: An order is entered on the date it is mailed. If you take an appeal to the Commonwealth Court, you must serve the Board with a copy of your Petition for Review. The agency contact for receiving service of such an appeal is:

Board Counsel
P.O. Box 69523
Harrisburg, PA 17106-9523

The name of the individual Board Counsel is identified on the Order page of the Adjudication and Order.

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Department of State

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

BEFORE THE STATE BOARD OF OSTEOPATHIC MEDICINE

COMMONWEALTH OF PENNSYLVANIA,
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

v.

DENNIS ERIK VON KIEL, D.O.,
RESPONDENT

DOCKET NO. 0783-53-15
FILE NO. 14-53-02415

FINAL ADJUDICATION AND ORDER

IAN J. HARLOW
COMMISSIONER OF PROFESSIONAL AND
OCCUPATIONAL AFFAIRS

RANDY G. LITMAN, D.O., CHAIRPERSON
STATE BOARD OF OSTEOPATHIC MEDICINE

2601 North Third Street
Post Office Box 69523
Harrisburg, Pennsylvania 17106-9523

KJS

HISTORY

This case comes before the State Board of Osteopathic Medicine (Board) to consider the hearing examiner's adjudication and order issued on January 24, 2018. The hearing examiner's report and order sets forth the prior history of this case. The hearing examiner's report and order is appended to this adjudication and order as "Attachment A." On February 9, 2018, Respondent filed an Application for Review and Stay of Adjudication and Order. The Board subsequently issued a Notice of Intent to Review on February 12, 2018.

All Board members participating in the deliberation or decision in this matter reviewed the entire record. The Board now issues this adjudication and order in final disposition of the case.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

It is consistent with the authority of the Board under the Osteopathic Medical Practice Act (Act), the Act of October 5, 1978, P.L. 1109, No. 261. 63 P.S. §§ 271.1 – 271.18, and the Administrative Agency Law, 2 Pa. C.S. § 504, for the Board to adopt the hearing examiner's findings of fact, conclusions of law, and discussion if the Board determines that they are complete and the evidence supports them.

The Board has reviewed the entire record in this case. The Board concludes that the evidence and the law support the hearing examiner's findings of fact and conclusions of law. The Board, therefore, adopts the hearing examiner's findings of fact and conclusions of law and, hereby, incorporates them by reference as if they were set forth fully in this adjudication and order.

The Board further concludes that the facts and law support most of the hearing examiner's discussion and hereby adopts by reference the hearing examiner's discussion from page 12 through the end of the last paragraph on page 14 (which ends on page 15) and the hearing examiner's discussion from the first full paragraph on page 20 (through the end of page 22) as if set forth fully in this adjudication and order. The Board does not adopt the remainder of the hearing examiner's discussion.

The Board adds the following discussion:

DISCUSSION

As it determines the appropriate sanction, the Board is mindful that as a licensing board, it is charged with the responsibility and authority to oversee the profession and to regulate professionals to protect the public health and safety. *Barran v. State Board of Medicine*, 670 A.2d 765, 767 (Pa. Cmwlth. 1996), *appeal denied* 679 A.2d 230 (Pa. 1996). The Board is responsible for protecting the citizens of the Commonwealth from those that would use their license to harm others. *Barran*, 670 A.2d at 767.

When determining an appropriate sanction, the Board considers the seriousness of the offense and any aggravating or mitigating circumstances that may exist. As a result of a guilty plea, Respondent was convicted of 11 federal criminal felonies. Respondent's convictions involved lying under oath, illegal schemes, misrepresentations, false claims and evading payment of federal income tax. Respondent's conduct is certainly not of the nature that the Board expects of its licensees. Respondent's convictions involve crimes involving a lack of honesty, which raises questions regarding his integrity. The convictions further demonstrate a lack of judgment. Respondent's deception leads the Board to question how willing Respondent would be to deceive patients and the general public in the future. Honesty, integrity, judgment, and attention to detail are essential qualities that the Board expects of the physicians it licenses and which further indicate the seriousness of this case.

On the other hand, the record does not provide any evidence that Respondent's convictions related to patient care. There is no evidence of record to indicate that the care provided by Respondent to patients was not satisfactory; he did provide care to unique communities.

While no amount of mitigation evidence would ever excuse Respondent's conduct which lead to the convictions, Respondent appears deserving of an opportunity to once again serve patients. At the same time, a strong message must be sent that the Board will not tolerate such behavior from a licensee.

The Board also wants to ensure that Respondent never commits such criminal acts again that not only questions the ethics of Respondent but those of the profession.

Health care practitioners, such as Respondent, whose personal ethics result in felony criminal convictions also violate the ethics, regulations and the Act that govern the profession, exposing themselves, their patients, and the public to potential harm. Given that the underlying conduct and conviction that led to Respondent's violation of the Act called into clear question Respondent's ethics, the Board concludes that Respondent's remediation should include education on health care practitioners maintaining proper ethical standards. Consequently, prior to reinstatement of Respondent's license to active practice, Respondent shall be required to complete a multi-day, non-adversarial ethics program for health care professionals to assist the Board in ensuring that such a lapse in ethics and judgement will not occur in the future, potentially jeopardizing future patient care or finances. Respondent shall submit the proposed ethics program to the Board for approval. Such a course should be successfully completed before Respondent is permitted to practice again.

In addition, due to the serious nature of Respondent's federal felony convictions, suspension of Respondent's license is appropriate. Considering the underlying conduct, the seriousness of Respondent's offenses and in the interest of public health and safety, the Board concludes that Respondent's license should be actively suspended for an indefinite period-of-time, but for no less than a minimum period of six (6) months. The Board expects the suspension of Respondent's license to impart to him the seriousness and gravity of his conduct. The active suspension will provide Respondent with an opportunity to reflect upon the seriousness of his offense and the importance of honesty, integrity and judgment in the osteopathic profession. After the minimum period of active suspension and completion of the appropriate ethics course, Respondent may petition the Board for reinstatement. Reinstatement will be decided after a hearing where Respondent demonstrates his level of honesty,

integrity, trustworthiness and suitability for licensure and permit the Board the opportunity to impose any additional appropriate terms or conditions such as probation.

During the hearing and in Respondent's Application for Review and Stay of Adjudication and Order, Respondent objected to the admissibility of a Superseding Indictment dated July 10, 2014. Because Respondent has stipulated to his convictions, stipulated and acknowledged certain facts as set forth in the guilty plea hearing, and due to the serious nature of these convictions, there is no need for the Board to consider the allegations contained in the Superseding Indictment, and the Board bases its discussion, conclusions and decision on Respondent's criminal convictions and related admissions/stipulations, not on the allegations in the Indictment.

Wherefore, the following order shall issue:

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BEFORE THE STATE BOARD OF OSTEOPATHIC MEDICINE

Commonwealth of Pennsylvania,
Bureau of Professional and
Occupational Affairs

v.

Dennis Erik Von Kiel, D.O.,
Respondent

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Docket No. 0783-53-15
File No. 14-53-02415

FINAL ORDER

AND NOW, this day 20th of June 2018, the State Board of Osteopathic Medicine hereby **ADOPTS** the findings of fact and conclusions of law of the hearing examiner and those portions of the discussion of the hearing examiner as set forth in the Board's discussion, along with the foregoing additional discussion, and hereby **ACTIVELY AND INDEFINITELY SUSPENDS** the license to practice osteopathic medicine and surgery of Respondent, **Dennis Erik Von Kiel, D.O.**, license no. OS006022L, for a minimum period of six (6) months and until Respondent has fulfilled the following terms and conditions:

SPECIAL

1. Respondent shall complete and pass a multi-day, non-adversarial ethics program for health care professionals such as the Center for Personalized Education for Physicians' (CPEP) ProBE program related to ethics or a similarly intensive course that Respondent shall submit the proposed program for Board approval prior to attendance.
2. After the minimum suspension period of six (6) months, Respondent may file a written petition to the Board requesting reinstatement. Respondent's petition for reinstatement must include:
 - a. Satisfactory evidence that he has completed the required remedial education in ethics,

- b. Satisfactory evidence that he meets all licensure and/or renewal requirements in this Commonwealth, and
 - c. A signed verification indicating whether the Respondent has practiced osteopathic medicine and surgery since the suspension and has otherwise not acted in violation of this Order.
3. Upon receipt of a completed petition for reinstatement, a hearing examiner for the Board shall hold a hearing to determine if Respondent is able to produce satisfactory evidence that he is able to resume the practice osteopathic medicine and surgery with the requisite honesty, integrity, trustworthiness, and competency.
4. Respondent must submit to the Board satisfactory evidence that he is able to practice osteopathic medicine and surgery with the requisite honesty, integrity, trustworthiness and that Respondent is suitable for licensure.
5. Respondent will also be required to meet all licensure requirements in this Commonwealth.
6. Upon the granting of Respondent's petition for reinstatement, the Board may impose additional requirements or conditions, including but not limited to probation, supervision or educational requirements.

This Order shall take effect immediately; however, the discipline imposed on Respondent's license shall become effective on July 20, 2018, thirty (30) days from the date of the mailing of this Final Order.

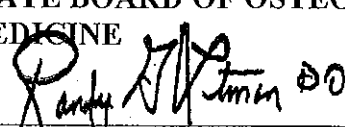
BUREAU OF PROFESSIONAL AND
OCCUPATIONAL AFFAIRS



IAN J. HARLOW
COMMISSIONER

BY ORDER:

STATE BOARD OF OSTEOPATHIC
MEDICINE



RANDY G. LITMAN, D.O.
CHAIR

For Respondent:

Matthew Ridley, Esquire
THOMAS, THOMAS & HAFFER
305 N. Front Street, Sixth Floor
Harrisburg, PA 17101

Christopher A. Sarno, Esquire
408 West Chestnut Street
Lancaster, PA 17603

For the Commonwealth:

Keith E. Bashore, Prosecuting Attorney
Prosecuting Attorney
P.O. Box 69521
Harrisburg, PA 17106-9521

Board Counsel:

Kenneth J. Suter, Esquire

Date of Mailing:

June 20, 2018

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Attachment A

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BEFORE THE STATE BOARD OF OSTEOPATHIC MEDICINE**

**Commonwealth of Pennsylvania,
Bureau of Professional and
Occupational Affairs**

v.

**Dennis Erik Von Kiel, D.O.,
Respondent**

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**Docket No. 0783-53-15
File No. 14-53-02415**

ADJUDICATION AND ORDER

**Ruth D. Dunnewold
Hearing Examiner**

**COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL
DEPARTMENT OF STATE
OFFICE OF HEARING EXAMINERS
P.O. Box 2649
Harrisburg, PA 17105-2649**

HISTORY

This matter comes before the State Board of Osteopathic Medicine ("Board") based upon a single-count order to show cause, filed May 5, 2015, alleging that Dennis Erik Von Kiel, D.O. ("Respondent") is subject to disciplinary action by under the Osteopathic Medical Practice Act ("Act"), Act of October 5, 1978, P.L. 1109, No. 261, *as amended*, 63 P.S. § 271.1 – 271.18, at section 15(a)(3), 63 P.S. § 271.15(a)(3), because he was convicted of felonies in federal court.

Respondent filed a timely *pro se* answer while he was incarcerated, in which he expressed interest both in a hearing and in retaining counsel. A Notice of Hearing then scheduled the matter for hearing on July 27, 2015, before Hearing Examiner Marc A. Moyer. However, Respondent filed a request for a continuance on July 10, 2015, based on his being incarcerated and unable to attend the scheduled hearing, as well as on his desire to secure counsel. An Order Granting Respondent's Motion for Continuance dated July 23, 2015, continued the hearing in the matter without objection from the Commonwealth. Hearings scheduled for September 29, 2015, December 18, 2015 and February 8, 2016, were likewise and for the same reasons continued.

The hearing was then rescheduled for May 4, 2016. On April 18, 2016, Respondent filed another request for a continuance because his situation, i.e. incarceration and the desire to retain counsel, had not changed. On April 26, 2016, the Commonwealth filed the Commonwealth's Reply in Opposition to Motion for Continuance Filed by Respondent. Thereafter, Hearing Examiner Moyer issued an Order Denying Respondent's Motion for Continuance of Hearing, dated April 26, 2016, which Order also directed that Respondent should be permitted to participate via telephone in the hearing scheduled for May 4, 2016.

The hearing convened on May 4, 2016, with Respondent participating via telephone. Based on Respondent's indication, at that time, that he had had insufficient time in which to

gather documents, identify witnesses and otherwise prepare to participate in the hearing via telephone, Respondent requested a continuance, which the Commonwealth did not oppose.

Upon further discussions about the pending matter, Hearing Examiner Moyer determined that the hearing on that date would be deemed a prehearing conference. Accordingly, by Order Granting Respondent's Motion for Reconsideration and/or Motion for Continuance of Hearing, dated May 5, 2016, Hearing Examiner Moyer ordered that the May 4, 2016 proceeding was a telephonic prehearing conference, and granted Respondent's request for reconsideration and oral motion for a continuance. Said Order also directed that any Notice of Rescheduled Hearing should not be issued prior to August 31, 2016, and ordered Respondent to notify the Commonwealth and the Hearing Examiner of Respondent's pending release from incarceration within five days of learning of his anticipated release.

Hearing Examiner Moyer subsequently continued hearings that had been scheduled for September 19, 2016 and November 9, 2016. On December 14, 2016, Arthur K. Hoffman, Esquire, and Thomas, Thomas & Hafer LLP, entered their appearance on behalf of Respondent. By Notice of Hearing dated January 10, 2017, the matter was rescheduled for a hearing to occur on March 15, 2017. Then, on February 1, 2017, Respondent filed his Motion of Respondent, Dennis Erik Von Kiel, D.O., For Recusal of Hearing Examiner and Continuance of Hearing, citing as grounds for the recusal motion the fact that Hearing Examiner Moyer had previously been a partner in the law firm now representing Respondent. Hearing Examiner Moyer granted the recusal motion by Order dated February 2, 2017 and continued the hearing generally.

Hearing Examiner Ruth D. Dunnewold then scheduled the matter for the mutually agreeable hearing date of May 8, 2017, but that hearing was later continued due to a scheduling conflict of Respondent's counsel. The hearing was rescheduled for September 13, 2017, and

finally occurred on that date. Respondent appeared at the hearing and was represented by Matthew Ridley, Esquire. The Commonwealth was represented by Keith E. Bashore. At the conclusion of the hearing, the Commonwealth indicated the desire to file post-hearing brief in lieu of a closing argument.

The hearing transcript was filed on October 2, 2017. An Order Establishing Briefing Schedule, dated October 3, 2017, directed the Commonwealth to file its post-hearing brief by close of business on November 2, 2017, Respondent to file his post-hearing brief in response by close of business on November 22, 2017, and the Commonwealth to file its reply brief, if any, by close of business on December 4, 2017. The Commonwealth filed its post-hearing brief on November 2, 2017, Respondent filed his post-hearing brief on November 27, 2017, and the Commonwealth filed no reply brief. Therefore, the record was closed on December 4, 2017, the date by which the Commonwealth was to file its reply brief.

Hearing Examiner Dunnewald issued an Adjudication and Order as directed by the Board on January 24, 2018. On February 9, 2018, Respondent filed an Application for Review and Stay of Adjudication and Order. The Board subsequently issued a Notice of Intent to Review on February 12, 2018.????? The Board deliberated on this matter during its Board meeting on April 11, 2018 and now issues this adjudication and order in full disposition of the charge against Respondent.

FINDINGS OF FACT

1. Respondent holds a license to practice osteopathic medicine in the Commonwealth of Pennsylvania, license no. OS006022L. Official notice of Board records.¹

2. Respondent's license is active through October 31, 2018, and may be renewed thereafter upon the filing of the appropriate documentation and payment of the necessary fees.

Id.

3. At all pertinent times, Respondent held a license to practice osteopathic medicine in the Commonwealth of Pennsylvania. *Id.*

4. Respondent's last known address on file with the Board is 341 Bowers Rd, Kutztown, PA 19530. *Id.*

5. On July 10, 2014, a Superseding Indictment was filed in the United States District Court for the Eastern District of Pennsylvania in the matter captioned *United States of America v. Dennis Erik Fluck Von Kiel*, at Criminal No. 14-149 ("federal criminal matter"). Exhibit C-1.

6. On or about April 21, 2015, Respondent was adjudicated guilty in the federal criminal matter based on his guilty plea to Counts 1 through 17 of the Superseding Indictment. Exhibit C-2.

7. The offenses to which Respondent pled guilty included the following felony offenses:

¹Official notice was taken of the Board's licensure records pertaining to Respondent in accordance with the rule that a licensing board may take official notice of its own records. General Rules of Administrative Practice and Procedure, 1 Pa. Code § 31.1 *et seq.*, at § 35.173; *see also Falasco v. Commonwealth of Pennsylvania Board of Probation and Parole*, 521 A.2d 991 (Pa. Cmwlth. 1987) (The doctrine of official notice allows an agency to take official notice of facts which are obvious and notorious to an expert in the agency's field and those facts contained in reports and records in the agency's files); *Gleeson v. State Bd. of Medicine*, 900 A.2d 430, 440 (Pa. Cmwlth. 2006), *appeal denied*, 917 A.2d 316 (Pa. 2007) (licensing board may take official notice of its own records). All subsequent such references will be cited as "Board records."

a. Count 1: conspiracy to defraud the United States, a felony in violation of 18 U.S.C. § 371;

b. Counts 2 – 6: attempt to defeat or evade a federal tax, felonies in violation of 26 U.S.C. § 7201;

c. Count 13: wire fraud, aiding and abetting, a felony in violation of 18 U.S.C. §§ 1343 and 2;

d. Count 14: perjury in a bankruptcy proceeding, a felony in violation of 18 U.S.C. § 152(3);

e. Count 15: financial aid fraud, aiding and abetting, a felony in violation of 20 U.S.C. § 1097 and 18 U.S.C. § 2;

f. Counts 16 – 17: attempted mail fraud, aiding and abetting, felonies in violation of 18 U.S.C. §§ 1341, 1349 and 2.

Exhibits C-1 and C-2; Notes of Testimony (“NT”) at 47.²

8. In the federal criminal matter, Respondent admitted the following facts underlying his guilty plea and adjudication of guilt:

Dr. Von Kiel is a doctor of osteopathy who practiced medicine, in part, in Lehigh County. He was the medical director at the Lehigh County Prison for many years.

He had obtained his degree after financing his medical education at the Philadelphia College of Osteopathic Medicine with federally insured Health Education Assistance Loans, or what are known as HEAL loans.

Although Dr. Von Kiel had steady employment and a good salary, he defaulted on his HEAL loans, and default judgments totaling more than \$160,000 were entered against him in 1999 and 2000.

²Respondent stipulated that he was convicted of the offenses identified as felonies in the order to show cause. Notes of Testimony at 11, 47.

And after those judgments were entered, Dr. Von Kiel spent more than a dozen years conspiring with other persons to evade both his medical school debt, which had been assigned to the United States Department of Health and Human Services, and his federal income tax obligations.

In December 2001, Dr. Von Kiel purported to become a minister of a Utah-based religious organization called the International Academy of Lymphology. He also purported to take a vow of poverty, in which he allegedly renounced any interest in real or personal property or current and future income. He filed no personal income taxes with the IRS after taking this alleged vow of poverty in December of 2001.

. . . Dr. Von Kiel's medical practice. . . included providing medical care at the Lehigh County Prison from approximately 1989 until sometime in 2013.

In 2004, Prime Care Medical obtained the contract to provide the medical services to the Lehigh County Prison. Prime Care retained Dr. Von Kiel to be its medical director at Lehigh County Prison and other correctional facilities.

In 2005, Dr. Von Kiel submitted an IRS Form W-4 to Prime Care, on which he declared, under penalties of perjury, that he was exempt from federal income taxes. He also directed Prime Care to deposit his biweekly wages into bank accounts controlled by the International Academy of Life, which was a successor organization to the International Academy of Lymphology.

Once the money arrived in those bank accounts, one of Dr. Von Kiel's co-conspirators in Utah would transfer. . . nearly the same amount of money into a bank account in the name of TLM, True Life Ministries, that Dr. Von Kiel controlled in Pennsylvania.

Dr. Von Kiel used the TLM bank account to pay for all of his family's day-to-day living expenses and to buy some unusual items, such as a batting cage for at least one son, all while purportedly living under his vow of poverty.

At some point in the 2000s, . . . the International Academy of Lymphology had a successor organization called the International Academy of Life. And in or around 2011, there was another name change to the Christian Forum Assembly Church.

Whatever the name of this institution was, Dr. Von Kiel directed Prime Care to send his wages to this church only to have this organization immediately wire the funds back to Dr. Von Kiel.

Prime Care reported to the IRS that Dr. Von Kiel earned wages. . . in excess of \$200,000 in each tax year from 2008 through 2012, yet no federal income taxes were withheld from Dr. Von Kiel's paychecks during that time because of his past representation that he was exempt from federal income tax withholdings.

The IRS had analyzed the deductions and exemptions he could lawfully have claimed and calculates that his taxes due and owing for these years is approximately \$54,828 for tax year 2008, \$53,758 for tax year 2009, \$52,804 for tax year 2010, \$50,771 for tax year 2011, and \$44,765 for tax year 2012, which results in a total of at least \$256,926 in unpaid federal tax[es]. . . for 2008 through 2012.

With regard to his debt to HHS, in 2010, the Department of Health and Human Services obtained an order from the Honorable Petrese B. Tucker, Chief Judge of the Eastern District of Pennsylvania, authorizing the garnishment of 25 percent of Dr. Von Kiel's net wages from Prime Care. Dr. Von Kiel responded by filing a petition for bankruptcy, which had the effect of staying the garnishment.

As part of this bankruptcy proceeding, there was a hearing that took place on June 28, 2010 before a meeting of creditors, where Dr. Von Kiel was asked questions regarding his bankruptcy petition.

At this meeting of creditors, he made several factual assertions, all under oath, including that he did not own any interest in real estate and had not sold or transferred anything to anyone in the last four years before he filed his bankruptcy petition.

This was a lie. On June 1, 2006, Dr. Von Kiel had transferred his interest in a family home, located at 7386 Alburdis Road in Macungie, Pennsylvania that he had owned with his wife, as joint tenants by the entirety, to his wife for \$1, which was all part of his effort to appear to have no assets.

With regard to Count 15, in addition to having his own medical school education financed through federally insured loans, he helped his four oldest children apply through the Department of Education website for financial aid to fund their college educations.

Applications for financial aid are done online through the Free Application for Federal Student Aid, or FAFSA, portal, and the Department of Education received applications for all of Dr. Von Kiel's college-age children between 2011 and 2014.

Each application contained misrepresentations that the applicant's parents were separated and that Dr. Von Kiel had no income. The Department of Education relied on Dr. Von Kiel's misrepresentations and paid out Pell Grants to his four oldest children in a total amount of \$36,314, and if Dr. Von Kiel had truthfully described his income to the Department of Education, his children would not have received any Pell Grants.

Lastly, with regard to Counts 16 and 17, Dr. Von Kiel also used the mails in furtherance of an entirely separate scheme to submit a false claim for disability benefits with the United States Social Security Administration.

In August 2013, Prime Care terminated Dr. Von Kiel's employment and told him the termination was a direct result of his refusal to repay his medical school loans and his refusal to pay personal income taxes he owed to the IRS.

Dr. Von Kiel, however, devised and executed a new scheme to defraud the Social Security Administration into paying him benefits based on a claim that the reason he was no longer working was because he suffered from post-traumatic stress disorder and that this PTSD made it impossible for him to work for at least the next year.

In November and December 2013, Dr. Von Kiel convinced a friend who was a medical doctor to send fraudulent letters to a law firm that specialized in filing Social Security disability claims.

These letters, which Dr. Von Kiel authored and persuaded the doctor to put on his letterhead, falsely stated that the doctor had been treating Dr. Von Kiel for PTSD for seven years and believed that Dr. Von Kiel would be unable to work for the foreseeable future.

One of the letters was dated November 18, 2013. The second letter was dated December 12, 2013. Both were transmitted by United States mail.

Exhibit R-1, pp. 38 – 44; NT at 48, 49 – 50.

9. Respondent was sentenced in the federal criminal matter to 41 months of imprisonment on each of Counts 1 through 6, and 13 through 17, with all terms to be served concurrently; to three years of supervised release on each of Counts 1 through 7, and 13 through 17, with all terms to run concurrently; to pay restitution in the amount of \$555,537.11 and an assessment of \$1,325.00; and to other specified terms and conditions. Exhibit C-2.

10. Respondent was incarcerated in the Federal Detention Center ("FDC") in Philadelphia at the end of February 2014, and was sent to the Federal Prison Camp ("FPC") at Cumberland, Maryland, in June 2015, where he spent 16 months until he was released, on

October 25, 2016, to a halfway house in Philadelphia, spending 10 days there prior to being released to approximately four months of home confinement at his home in Kutztown. NT at 59.

11. Respondent's incarceration ended on February 20, 2017, when he began three years of supervised release, scheduled to end in February 2020. NT at 59, 62.

12. Respondent got into no trouble while in prison; he described himself as a model prisoner who took every course that was offered, was a dog trainer for Fidos for Freedom, led a faith-based spirituality class for the 16 months he was in the FPC, and kept up his medical knowledge by interacting with other physicians at the FPC and reading all the medical journals and medical texts available to him. NT at 59, 60, 61.

13. While on supervised release, Respondent is considered "low maintenance" because he has no history of substance abuse or violent crimes; he is required to file monthly financial statements, file and pay his taxes, and stay current with his monthly restitution payments of \$500. NT at 62, 63, 64.

14. As of the date of the hearing, Respondent had been compliant with the terms of his supervised release and was current with his restitution payments. Exhibit R-2; NT at 64, 65.

15. Upon his release to home confinement, Respondent took the necessary steps to reactivate his license but found it difficult to find work under his home confinement restrictions, so initially, beginning in November 2016, he worked as a "lot boy" at a used car sales lot owned by a former patient and friend who was willing to employ Respondent when no one else would. NT at 66, 67, 68.

16. Respondent quit the lot boy job in early March 2017 so that he could complete the continuing medical education credits required for reactivation of his license. NT at 68.

17. Between the lot boy job and getting back into medical practice, Respondent worked as a farm laborer at Red Earth Farms, an organic farm in Kempton, PA. NT at 68 – 69.

18. After reactivating his license, Respondent found work providing general practice care at the 168 Medical Clinic in South Philadelphia, which is located in a largely Southeast Asian community where his patients are primarily Cambodian and Vietnamese immigrants. NT at 69 – 70.

19. Respondent also worked for several weeks in July 2017 as a locum tenens physician employed by Tomas Friedrich, M.D. NT at 28, 70.

20. Respondent also worked in the Amish community in Lancaster for about a month on a once-a-week basis, delivering basic care there. NT at 70.

21. At the time of the hearing, Respondent was working at a clinic in Lineville and had plans to launch his own practice in September 2017, with the practice to be wholly managed by a management company founded and operated by his former employee, former patient and friend, Loretta Darling Nicola, relieving Respondent of the financial aspects of the practice and leaving him to simply practice medicine. NT at 70 – 71, 91 – 93.

22. Respondent participated in the hearing in this matter, was represented by counsel, testified, and presented witnesses and documentary evidence on his own behalf. NT at 7, 9 and *passim*.

CONCLUSIONS OF LAW

1. The Board has jurisdiction in this matter. Findings of Fact 1 – 3.
2. Respondent has been afforded reasonable notice of the charges against him and an opportunity to be heard in this proceeding, in accordance with the Administrative Agency Law, 2 Pa. C.S. § 504. Finding of Fact 22.
3. Respondent is subject to discipline under section 15(a)(3) of the Act, 63 P.S. § 271.15(a)(3), in that Respondent was convicted in federal court of 11 felonies. Findings of Fact 5 – 9.

DISCUSSION

Violation

This action is brought under section 15(a)(3) of the Act, which provides as follows:

§ 271.15. Reasons for refusal, revocation, or suspension of license

The board shall have authority to refuse, revoke or suspend the license of a physician for any of the following reasons:

* * *

(3) Conviction of a felony . . . Conviction shall include a finding or verdict of guilt, [or] an admission of guilt. . .

* * *

63 P.S. § 271.15(a)(3). The Commonwealth charged in its order to show cause that Respondent was convicted of 11 felonies in the federal criminal matter.

More specifically, the order to show cause alleged that Respondent pled guilty to and was convicted in the federal criminal matter of one count of conspiracy to defraud the United States, a felony in violation of 18 U.S.C. § 371; two counts of attempt to defeat or evade a federal tax, felonies in violation of 26 U.S.C. § 7201; one count of wire fraud, aiding and abetting, a felony in violation of 18 U.S.C. §§ 1343 and 2; one count of perjury in a bankruptcy proceeding, a felony in violation of 18 U.S.C. § 152(3); one count of financial aid fraud, aiding and abetting, a felony in violation of 20 U.S.C. § 1097 and 18 U.S.C. § 2; and two counts of attempted mail fraud, aiding and abetting, felonies in violation of 18 U.S.C. §§ 1341, 1349 and 2.

At the hearing, through his counsel and in his testimony, Respondent stipulated that he had been convicted of the offenses identified as felonies in the order to show cause. Additionally, the Commonwealth moved into the record at the hearing certified copies of the court records from the federal criminal matter, and Respondent utilized the hearing solely to present mitigation

evidence. Therefore, the Commonwealth has proved the allegations in the order to show cause by a preponderance of the evidence,³ and the Board is authorized under the Act to impose disciplinary sanctions upon Respondent.

Sanction

The real question, then, is the nature of the sanction to be imposed. The Board has a duty to protect the health and safety of the public. Under professional licensing statutes including the Act, the Board is charged with the responsibility and authority to oversee the profession and to regulate and license professionals to protect the public health and safety. *Barran v. State Board of Osteopathic Medicine*, 670 A.2d 765, 767 (Pa. Cmwlth. 1996), *appeal denied* 679 A.2d 230 (Pa. 1996). Respondent is a licensed health care practitioner, in whom patients and the public place great faith and from whom patients and the public expect the best of behavior. Expected – and required – behaviors include abiding by the laws of the federal government, the Commonwealth, and any other jurisdiction in which Respondent finds himself.

In this case, the facts that Respondent admitted at his change of plea hearing in the federal criminal matter, documented in Exhibit R-1, indicate that Respondent spent more than a dozen years engaged in several illegal schemes. These included filing for bankruptcy and lying under oath to his creditors, thereby evading payment of the student loans which had enabled him to finance his medical education; helping his children apply for and obtain financial aid through the making of misrepresentations; making a false claim, through the United States mail, for

³The degree of proof required to establish a case before an administrative tribunal in an action of this nature is a preponderance of the evidence. *Lansberry v. Pennsylvania Public Utility Commission*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990). A preponderance of the evidence is generally understood to mean that the evidence demonstrates a fact is more likely to be true than not to be true, or if the burden were viewed as a balance scale, the evidence in support of the Commonwealth's case must weigh slightly more than the opposing evidence. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854, 856 (Pa. 1950).

disability benefits with the United States Social Security Administration; and evading payment of his federal income taxes. These are not the behaviors of a law-abiding individual who is entrusted with a license by the Board.

In his testimony, Respondent stated that he took “full and sole responsibility,” NT at 51, for his crimes, and indicated that he is ashamed of his actions. *Id.* Yet, at the same time, he explained his income tax evasion crimes by saying that

they stem[med] from the understanding that I grew to learn from my accountant. . . And through my own reading and learning through his guidance. . . And that created a difficult situation that later presented itself. . . it was a mistake. It was a misinterpretation and a mistake. . . That certainly was an area out of my area of expertise. . . And I took it verbatim and that was the understanding my accountant had and I trusted. . .

NT at 51 – 52. Respondent also testified that he has “come to learn” that what he did was wrong and illegal, NT at 54, implying that he did not know that at the time. He also testified that he thought his accountant “did file” Respondent’s taxes. NT at 53.

With those statements, rather than taking “sole responsibility,” Respondent minimizes his own actions, blaming them on his accountant and the advice his accountant provided. Moreover, saying it was a “difficult situation” and a “misinterpretation” makes it sound as if Respondent’s crimes were inadvertent or unintentional, which is inconsistent with the definitions of the offenses to which he pled guilty. For example, he pled guilty in the federal criminal matter to five felony counts of income tax evasion (Counts 2 – 6), under 26 U.S.C. § 2701, an offense which is defined to include an element of willfulness.⁴ Federal courts have defined “willful” to mean

⁴§ 7201. Attempt to evade or defeat tax

an act done voluntarily or intentionally or knowingly, as distinguished from accidental conduct. . . . an actor desired to bring about the result that followed, or at least that the actor was aware that the result was substantially certain to follow. . . . Actual prior knowledge must be found before the actor may be held liable for willful conduct.

Rosa v. United States of America, 613 F. Supp. 469, 476 (M.D. Pa. 1985) (citations omitted).

A defendant who pleads guilty acknowledges the existence of the facts and criminal intent that are the elements of the offense to which he pleads guilty. *C.f. Com. v. Anthony*, 475 A.2d 1303, 1307 (Pa. 1984). He cannot later assert that one or more of those elements did not exist. *Burnworth v. State Board of Vehicle Manufacturers, Dealers and Salespersons*, 589 A.2d 294, 297 (Pa. Cmwlth. 1991). Based on the above-cited definition of "willful," and the presence of willfulness as a statutory element of income tax evasion under 26 U.S.C. § 2701, as well as the requirement that "actual prior knowledge" must be present before an actor may be found liable for willful conduct, Respondent cannot now in any way assert that he did not know he was engaging in income tax evasion when he failed to pay his federal income taxes. Therefore, his actions cannot have been inadvertent or unintentional, despite his testimony implying otherwise.

Respondent took a similar position when he explained his conviction, at Count 14, of perjury in a bankruptcy proceeding. He testified that his long-ago one-time partner had filed for bankruptcy, basically propelling Respondent himself into bankruptcy, in which he included his student loans on the basis of advice that he followed despite his thinking it was "a fish story." NT at 55. Then, years later, he and his wife transferred their house out of their joint names and

Any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than \$100,000 (\$500,000 in the case of a corporation), or imprisoned not more than 5 years, or both, together with the costs of prosecution.

26 U.S.C. § 2701 (emphasis added).

into her name only. Four years after that, Respondent reopened his old bankruptcy, and when asked about the transfer of assets from his name to another name in the previous four years, he answered that he had not done so. He says he answered in that manner because he had miscalculated the dates and thought the home transfer was outside of the four-year period. *Id.* Again, he asserts, essentially, that the perjury in bankruptcy conviction arose out of inadvertent or unintentional behavior.

But, again, neither the statutory provision under which he was convicted of perjury in bankruptcy, 18 U.S.C. § 152(3), nor the facts he admitted in the criminal matter support his having acted inadvertently. The statute incorporates the element of “knowingly and fraudulently” making a false statement under penalty of perjury.⁵ “Knowingly” means that the actor knew factually what he was doing or that he acted with actual consciousness. *U.S. v. McDade*, 827 F. Supp. 1153, 1189 (E.D. Pa. 1993). Additionally, the courts have defined “fraud” as “anything calculated to deceive.” *C.f. Moser v. DeSetta*, 589 A.2d 679, 682 (Pa. 1991). Therefore, to have been convicted of this offense, Respondent had to have acted with actual consciousness and, furthermore, with the intent to deceive – i.e., to defraud – those to whom he was making the statements in question. This is consistent with the facts stated on the record at his change of plea

⁵§152. Concealment of assets; false oaths and claims; bribery
A person who—

* * *

(3) knowingly and fraudulently makes a false declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, in or in relation to any case under title 11;

* * *

shall be fined under this title, imprisoned not more than 5 years, or both.

18 U.S.C. § 152(3).

hearing, where he admitted that the transfer of the home out of his name was "all part of his effort to appear to have no assets." It follows that his conviction of perjury in bankruptcy was based on neither inadvertent nor unintentional behavior, despite what his testimony implies.

In addressing Count 15, aiding and abetting financial aid fraud, Respondent testified that, since he thought the income he earned, which was being passed through a "church" and then wired back to him, was not income (that was the scheme that led to his income tax evasion conviction), the filings for student loans showed that he had no income, instead of showing to the contrary. Respondent did not explain the other fact which he admitted in his change of plea hearing, that is, that the financial aid filings also misrepresented that Respondent and his wife were separated. His testimony again rested on his assertion that he did not know at the time, and only learned after the fact, that his scheme to avoid income tax liability was wrong.

But as discussed above, in light of his conviction of income tax evasion under 26 U.S.C. § 2701, with its element of willfulness, Respondent cannot claim to have acted unintentionally or inadvertently in making the assertion that he had no income. Furthermore, the statute under which he was convicted for financial aid fraud, 20 U.S.C. § 1097, also contains the elements of acting "knowingly and willfully."⁶ Again, it follows that Respondent cannot, now, assert that his

⁶§ 1097. Criminal penalties

(a) In general

Any person who knowingly and willfully embezzles, misapplies, steals, obtains by fraud, false statement, or forgery, or fails to refund any funds, assets, or property provided or insured under this subchapter and part C of subchapter I of chapter 34 of title 42 or attempts to so embezzle, misapply, steal, obtain by fraud, false statement or forgery, or fail to refund any funds, assets, or property, shall be fined not more than \$20,000 or imprisoned for not more than 5 years, or both, except if the amount so embezzled, misapplied, stolen, obtained by fraud, false statement, or forgery, or failed to be refunded does not exceed \$200, then the fine shall not be more than \$5,000 and imprisonment shall not exceed one year, or both.

20 U.S.C. §1097(a) (emphasis added).

(Footnotes continued on next page.)

actions in making false assertions on the financial aid application were inadvertent or unintentional. The facts set forth in the change of plea hearing demonstrate otherwise. That means his testimony implying that he didn't know any better cannot be taken as true.

In addressing his convictions under Counts 16 and 17 of aiding and abetting attempted mail fraud, in violation of 18 U.S.C. §§ 1341 and 1349, Respondent explained that he felt the flare-up of prior PTSD symptoms in 2013 because of the stress from this entire situation, and his counsel suggested he pursue a disability determination. NT at 57. His counsel also suggested that he have a physician write a letter about Respondent's PTSD to send to the prosecuting attorney in the tax case. *Id.* Respondent proceeded as suggested, and his physician, a colleague, signed a letter for that purpose, with the letter containing false statements. NT at 57, 58.

This testimony is problematic for at least two reasons. The first of these lies in the fact that Respondent testified that the letter falsely stated that his physician colleague had treated Respondent for PTSD for seven years, NT at 58, and Respondent added that he believed that's what it said, but he never got to go back and look at it, so he wasn't sure. NT at 57. He made that statement despite the fact that, according to his admissions at the change of plea hearing, he is the one who wrote the letter, and it was "a new scheme to defraud the Social Security Administration." Exhibit R-1, p. 43. For Respondent to say at this hearing that he wasn't sure of the content of the letter when, in fact, he wrote it, and to state in his testimony that he was suffering from PTSD when, in fact, he had admitted at the change of plea hearing that his assertion to that effect was a "scheme to defraud," and therefore untrue, is the height of disingenuousness.

The second reason his testimony is problematic is the fact that the statutory provisions under which Counts 16 and 17 fall, 18 U.S.C. §§ 1341 and 1349,⁷ contain elements of intent to defraud or obtain money or property by false or fraudulent means, and knowingly using the mail to facilitate the intended fraud. By their terms, and the fact that Respondent pled guilty to them, Respondent had the intent to use the mails to defraud the Social Security Administration. Therefore, no credence whatsoever can be given to any implication in Respondent's testimony that his actions pertaining to the Social Security Administration were based on something other than an intent to defraud that government agency.

In his testimony, Respondent did not address his conviction, at Count 1, of conspiracy to defraud the United States, in violation of 18 U.S.C. § 371.⁸ Nonetheless, the definition of "fraud"

⁷§1341. Frauds and swindles

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or deposits or causes to be deposited any matter or thing whatever to be sent or delivered by any private or commercial interstate carrier, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail or such carrier according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined under this title or imprisoned not more than 20 years, or both. . . .

18 U.S.C. § 1341.

* * *

§1349. Attempt and conspiracy

Any person who attempts or conspires to commit any offense under this chapter shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

18 U.S.C. § 1349.

⁸§ 371 Conspiracy to commit offense or to defraud United States

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both.

(Footnotes continued on next page.)

as "anything calculated to deceive," *Moser, supra*, also means that Respondent's conviction at Count 1 in the federal criminal matter includes that element of intentional deception. Conviction of this offense indicates that Respondent calculated to deceive the United States, i.e. to defraud it. Likewise, while Respondent did not, in his testimony, address his conviction of Count 13, aiding and abetting wire fraud, in violation of 18 U.S.C. § 1343, the definition of this offense also contains elements of intending to defraud or obtain money or property by false or fraudulent means.⁹ Consequently, he cannot assert that the actions underlying Counts 1 and 13 were inadvertent or unintentional.

By way of mitigation, Respondent highlighted the facts that he got into no trouble in prison and was a self-described model prisoner who educated himself, both generally and in the field of medicine, and taught a faith-based spirituality class while in prison. He also testified that, while on supervised release, he is considered "low maintenance" because he has no history of substance abuse or violent crimes. His supervised release terms and conditions require him to file monthly financial statements, file and pay his taxes, and stay current with his monthly restitution payments of \$500. As of the date of the hearing, Respondent had been compliant with the terms of his supervised release and was current with his restitution payments. However, these things

18 U.S.C. §371.

§1343. Fraud by wire, radio, or television

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than 20 years, or both. . . .

18 U.S.C. § 1343.

are all required of him as part of his sentencing and conviction in the federal criminal matter. Complying with these requirements keeps him from going back to prison, as he himself pointed out. *See* NT at 63. Therefore, his compliance cannot really be considered as mitigation, in terms of the sanction to be imposed here.

Respondent also testified about his employment, upon his release to home confinement, as a "lot boy" at a used car sales lot owned by a former patient and friend who was willing to employ Respondent when no one else would, after which, Respondent worked as a farm laborer at an organic farm. No doubt those jobs were humbling, but being forced into more menial employment than the practice of medicine is not so much a mitigating factor as it is a natural consequence of committing acts that ultimately resulted in his being convicted of multiple felonies.

After reactivating his license, Respondent found work providing general practice care to apparently underserved communities at a clinic in South Philadelphia, where his patients are primarily Cambodian and Vietnamese immigrants, and in the Amish community in Lancaster for about a month on a once-a-week basis, delivering basic care there. There is some mitigation in Respondent's willingness to work in underserved communities, but if those were the only places he could find employment because of his felony convictions, the amount of mitigation is not particularly substantial.

At the time of the hearing, Respondent was working at a clinic in Lineville and had plans to launch his own practice in September 2017, with the practice to be wholly managed by a management company founded and operated by his former employee, former patient, and friend, Loretta Darling Nicola, leaving Respondent to simply practice medicine. Respondent may consider this a mitigating factor because it would separate him from the financial aspects of the

practice, perhaps serving as reassurance to the rest of the world that he will not then be in a position to commit any financial crimes like those for which he was convicted in the federal criminal matter. However, while this practice model was Respondent's plan at the time of the hearing, there is no assurance that it was actually going to come about, there is no requirement that he practice in such a way, and there is no guarantee that even if he did practice in that model, it would remove him from the means of committing any further financial crimes. Therefore, his planned practice model provides no mitigation.

Finally, Respondent testified that his practice philosophy is based on the "first do no harm" principle of the Hippocratic oath, with his emphasis on nutritional, natural, herbal, alternative medicines in conjunction with conventional medicine for the different communities he has been serving. NT at 71 - 72. Since every physician who takes the Hippocratic oath is bound by the "first do no harm" principle, Respondent's having that as his philosophy is not so much a mitigating factor as it is a basic requirement of the practice of osteopathic medicine.

Besides his own testimony, Respondent presented the testimony of a number of witnesses, some of whom were former patients. Two of those patients testified that Respondent, in treating them and discussing treatment options and the like, advised them not to just trust him, but to do their own research and educate themselves. But according to his own testimony, he did not do that himself, but relied on person after person (his accountant, his counsel) whom, he would have us now believe, gave him bad advice, resulting in his inadvertent or unintentional criminal behavior and concomitant convictions. These two pictures aren't consistent. Nor is his picture of himself, drawn through his own testimony, consistent with the things he admitted at the change of plea hearing and the elements of the 11 felonies of which he was convicted.

These inconsistencies, together with the scope and duration of the activities underlying Respondent's convictions, make it impossible to credit Respondent's portrayal of himself as someone who inadvertently or unintentionally ended up in trouble with the law. He says he is remorseful, but in his testimony, he portrayed himself almost as a victim of circumstances, mischaracterizing his criminal actions as inadvertent or unintentional, when the facts he admitted in the federal criminal matter clearly indicate otherwise. This approach belies his remorse and strongly suggests that Respondent is once again calculating to deceive – this time, to deceive the Board about what really occurred leading up to his convictions. This does nothing for his credibility.

In a further effort to provide mitigation or demonstrate that he is deserving of a lesser sanction, Respondent presented the testimony of Thomas Kapsak, Tomas Friedrich, M.D., John Keim, Jimmy Khong, Loretta Darling Nicola, Cynthia Huber, and Deborah Miller. Their testimony appears to have been offered as character or reputation evidence. However, for the most part, the evidence these witnesses provided was opinion testimony about what kind of practitioner Respondent was or is, and how he treats patients. This evidence is entitled to little weight for two reasons.

First, the law in Pennsylvania does not allow character or reputation evidence in the form of an opinion. *See* Leonard Packel and Anne Bowen Poulin, Pennsylvania Evidence § 405-1 at 229 (2d ed. 1999) and cases cited therein. A character witness must be able to testify about the subject's reputation within a particular community. *Id.* None of the witnesses said anything about Respondent's reputation within any specific community. Mr. Khong came close, in testifying that he and other patients think Respondent is a caring doctor who knows his medicine and is

there to make people well. NT at 81 – 82. But that testimony is nonetheless couched in terms of opinion, not reputation.

Additionally, Ms. Nicola's testimony that she has kept in touch with a lot of Respondent's former patients, and there is a demand for his return to practice, NT at 95, could be construed as giving the consensus of the community comprising some of Respondent's former patients. But Ms. Nicola did not give any indication about what Respondent's reputation might be in that community. In that regard, Ms. Nicola's testimony falls short of proper reputation testimony. Accordingly, these witnesses' testimony does not constitute proper character evidence. It cannot, therefore, be given any weight as mitigating evidence.

Second, the testimony of these witnesses, in whatever form, is the consensus of only a small group of partial individuals who were within the Respondent's immediate business and patient circle, most of whom admitted that they have little understanding of Respondent's actual crimes. For example, Mr. Kapsak, a former patient whose family members were also patients of Respondent at one time, was aware that Respondent was convicted of "financial crimes" but he didn't know the details.

By way of further example, Dr. Friedrich formerly employed Respondent as a locum tenens physician and would like to employ him again, so Dr. Friedrich has a financial interest and professional stake in Respondent's maintaining his license. Dr. Friedrich understood Respondent's offenses to have been financial and tax crimes, which is accurate. However, Dr. Friedrich's testimony indicated that he essentially believes Respondent was lured by others into believing he did not need to pay taxes, which attributes to Respondent a lesser level of culpability than is consistent with the facts to which Respondent admitted in the guilty plea

proceeding. In light of Dr. Friedrich's partiality and misunderstanding of Respondent's admittedly active role in his crimes, Dr. Friedrich's testimony deserves very little weight.

Similarly, Mr. Keim is a business associate of Respondent who would like to secure Respondent's services, so Mr. Keim has a financial interest and professional stake in Respondent's maintaining his license. Like Dr. Friedrich, Mr. Keim understood Respondent's crimes were related to tax evasion and similar offenses. However, Mr. Keim did not believe that would interfere with what Mr. Keim's facility needs from Respondent. Again, Mr. Keim's partiality means his testimony is deserving of little weight.

Mr. Khong, a current patient of Respondent's, admitted he has only a "very vague" understanding of the nature of Respondent's convictions, knew no details, and didn't really look into it. His main concern was keeping Respondent as his physician. Ms. Huber and Ms. Miller, former patients who would like to resume treatment with Respondent, made similar statements. Ms. Huber had "a little understanding" of his crimes as tax evasion, and Ms. Miller understood Respondent's crimes were financially-related. But neither thought what he did is related to how Respondent practices medicine. All of these witnesses just want Respondent to be their physician and gave the appearance that they would say anything to achieve that, so their testimony deserves little weight.

The remaining witness, Ms. Nicola, is a former patient and former employee of Respondent who is now contemplating going into business with him. She clearly has a financial interest and a professional stake in seeing Respondent maintain his license.

Because of these witnesses' scant knowledge of the nature of Respondent's crimes, and because of their partiality, which is tied to Respondent's maintaining his license, their testimony is not of sufficient weight to provide mitigation that would warrant a lesser sanction in the face

of the serious felonies that Respondent committed. Even taking their testimony at face value, the only conclusion it supports is that Respondent is a caring, knowledgeable doctor who, by his own admission, spent more than a dozen years lying, evading his legitimate financial responsibilities under the law, and devising schemes to continue evading those responsibilities.

Respondent argued that he has been "heavily punished" already and that additional punishment by the Board "really would seem like piling on." NT at 115. However, a licensee's punishment for criminal actions in no way dictates the sanction his licensing board may impose on him in an administrative disciplinary action. See *Vogelman v. State Board of Funeral Directors*, 550 A.2d 1367 (Pa. Cmwlth. 1988). The Commonwealth, without elaborating, recommended that Respondent be placed on probation for the duration of his supervision in the federal criminal matter.

In light of the foregoing, there is little mitigation to tip the scales in Respondent's direction when it comes to sanction. His actions are more akin to the actions of the licensee in *Yurick v. State Board of Osteopathic Examiners*, 402 A.2d 290 (Pa. Cmwlth. 1978), who like Respondent was convicted of conspiracy, in violation of 18 U.S.C. § 371, and mail fraud, in violation of 18 U.S.C. § 1341. And here, Respondent was convicted of nine other felonies in addition to conspiracy and mail fraud. Given the lack of mitigation and Respondent's minimization of the egregiousness of his actions, a sanction comparable to that in *Yurick* is in order. Accordingly, based upon the above findings of fact, conclusions of law and discussion, the following order will issue:

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BEFORE THE STATE BOARD OF OSTEOPATHIC MEDICINE**

| | | | |
|--------------------------------------|---|-------------------|--------------------|
| Commonwealth of Pennsylvania, | : | | |
| Bureau of Professional and | : | | |
| Occupational Affairs | : | | |
| | : | | |
| v. | : | Docket No. | 0783-53-15 |
| | : | File No. | 14-53-02415 |
| | : | | |
| Dennis Erik Von Kiel, D.O., | : | | |
| Respondent | : | | |

ORDER

AND NOW, this 24th day of **January, 2018**, upon consideration of the foregoing findings of fact, conclusions of law and discussion, it is hereby **ORDERED** that the license to practice osteopathic medicine and surgery issued to Respondent, **Dennis Erik Von Kiel, D.O.**, license no. OS006022L, is **REVOKED**.

This order shall take effect 20 days from the date of mailing unless otherwise ordered by the State Board of Osteopathic Medicine.

BY ORDER:

Ruth D. Dunnewold
Hearing Examiner

For the Commonwealth: Keith E. Bashore, Prosecuting Attorney
GOVERNOR'S OFFICE OF GENERAL COUNSEL
DEPARTMENT OF STATE OFFICE OF CHIEF COUNSEL
PROSECUTION DIVISION
P.O. Box 69521
Harrisburg, PA 17106-9521

For Respondent: Matthew Ridley, Esquire
THOMAS, THOMAS & HAFFER
305 N. Front Street, Sixth Floor
Harrisburg, PA 17101

Date of mailing:

NOTICE

The attached Adjudication and Order represents the final agency decision in this matter. It may be appealed to the Commonwealth Court of Pennsylvania by the filing of a Petition for Review with that Court within 30 days after the entry of the order in accordance with the Pennsylvania Rules of Appellate Procedure. See Chapter 15 of the Pennsylvania Rules of Appellate Procedure entitled "Judicial Review of Governmental Determinations," Pa. R.A.P 1501 – 1561. Please note: An order is entered on the date it is mailed. If you take an appeal to the Commonwealth Court, you must serve the Board with a copy of your Petition for Review. The agency contact for receiving service of such an appeal is:

Board Counsel
P.O. Box 69523
Harrisburg, PA 17106-9523

The name of the individual Board Counsel is identified on the Order page of the Adjudication and Order.



COMMONWEALTH OF PENNSYLVANIA
OFFICE OF GENERAL COUNSEL

Kenneth J. Suter
Assistant Counsel

ksuter@pa.gov
Counsel Division

June 20, 2018

VIA CERTIFIED MAIL AND FIRST CLASS MAIL

Matthew Ridley, Esquire
THOMAS, THOMAS & HAER
305 N. Front Street, Sixth Floor
Harrisburg, PA 17101

Keith E. Bashore, Esquire
2601 North Third Street
P.O. Box 69521
Harrisburg, PA 17106-9521

Christopher A. Sarno, Esquire
408 West Chestnut Street
Lancaster, PA 17603

Re: **Final Order:**
Commonwealth of Pennsylvania Bureau of Professional and Occupational
Affairs vs. Dennis Erik Von Kiel, D.O.
File No. 14-53-02415
Docket No. 0783-53-15

Dear Counsel:

Enclosed please find an order issued by the State Board of Osteopathic Medicine.

Sincerely,

Kenneth J. Suter, Counsel
State Board of Osteopathic Medicine

KJS:jlt

cc: Aaron Hollinger, Board administrator
State Board of Osteopathic Medicine

