

BEFORE THE NEW MEXICO MEDICAL BOARD

IN THE MATTER OF)	
DAVID BRANNAN DURHAM, M.D.,)	
License No. MD2008-0595,)	Case No. 2018-056
)	(Inv. No. 2017-B-030)
Respondent.)	
_____)	

**AGREED ORDER IMPOSING REPRIMAND, FINES
AND STIPULATION ON LICENSE**

The New Mexico Medical Board (“the Board”) and David Brannan Durham, M.D. (“Respondent”), together, the “Parties,” have agreed to resolve this matter under the terms of this Agreed Order Imposing Reprimand, Fines and Stipulation on License (“Agreed Order”).

Stipulations by the Parties

1. The Parties stipulate Respondent, as holder of a license to practice in New Mexico, is subject to the jurisdiction of the Board pursuant to the Medical Practice Act (MPA), NMSA 1978, Sections 61-6-1 through -35, the Uniform Licensing Act (ULA), NMSA 1978, Sections 61-1-1 through -34, and rules and regulations of the Board relating to the practice of medicine (“the Board’s Rules” or “the Rules”), Title 16, Chapter 10, NMAC.
2. The Parties stipulate the Board has authority to enter into this Agreed Order.
3. The Parties stipulate this Agreed Order is in the best interests of Respondent, the Board and the public.
4. The Parties stipulate they are entering into this Agreed Order to avoid the time, uncertainty and expense of proceeding to an evidentiary hearing.
5. The Parties stipulate this Agreed Order was mutually negotiated and determined, contains no unconscionable provision, and will otherwise remain in full force and effect if any

portion of it is invalidated by judgment or court order.

6. The Parties stipulate Respondent admits no wrongdoing by entering into this Agreed Order.

7. The Parties stipulate this Agreed Order contains the entire agreement between the Parties with respect to its subject matter and will not be enlarged, modified, or altered except by written order of the Board after Respondent has been given all due process required by law.

8. The Parties agree this Agreed Order will have full force and effect if executed in counterparts and/or via facsimile or electronic means.

9. The Parties agree this Agreed Order will be effective upon entry by the Board.

10. The Parties stipulate this Agreed Order is a public document and the Board will report its entry to the National Practitioner Data Bank (NPDB), the Federation of State Medical Boards (FSMB) and the American Medical Association (AMA).

11. The Parties stipulate Respondent came under investigation by the Board on or March 7, 2018, when the Board obtained evidence of what appeared to be suspicious prescribing practices by Respondent and indications Respondent was not complying with the Board's Rules governing the prescribing of controlled substances.

12. The Parties stipulate the Board entered a Notice of Contemplated Action (NCA) in this matter on January 28, 2019, Respondent submitted a timely request for hearing on the NCA, Respondent waived the requirements the ULA imposes on the Board for scheduling and holding a hearing on the NCA, and the Board provided Respondent substantial discovery related to the allegations contained in the NCA.

13. The Parties stipulate, were an evidentiary hearing held, the Board would introduce evidence supporting the following factual findings –

a. In one or more instances, and with respect to one or more patients, Respondent did not comply with the Board's rule governing the management of pain and other conditions with controlled substances.

b. Respondent's testimony to the Board regarding the frequency with which Respondent reviewed PMP reports prior to issuing controlled substance prescriptions lacked support in prescription monitoring program (PMP) reports maintained by the New Mexico Board of Pharmacy.

c. Respondent did not maintain timely and accurate medical records with respect to one or more patients he was treating with controlled substances.

d. Respondent did not respond to Board requests for records regarding his treatment of one or more patients and was not forthcoming regarding his own medical treatments.

e. Respondent did not adhere to standard security measures for protecting prescription pads and did not comply with requirements regarding issuing prescriptions based on his practice locations.

f. In Case No. 2012-032, the Board previously disciplined Respondent in connection with his prescribing of controlled substances and his failure to maintain timely and accurate medical records.

g. Respondent unnecessarily and inappropriately involved himself in the court proceedings of a personal acquaintance.

14. The Parties stipulate the findings set forth above, if established by a preponderance of the evidence during a hearing held pursuant to the ULA, the MPA and the Board's Rules would subject Respondent to discipline by the Board under the MPA and/or the Board's Rules. *See, e.g.*, NMSA 1978, § 61-6-15(D)(7), (8), (15), (17), (18), (19), (23), (26),

(29), (33) (“habitual or excessive use of intoxicants or drugs[.]” “misrepresentation . . . in connection with applying for or procuring renewal . . .[.]” “the use of a false, fraudulent or deceptive statement in a document connected with the practice of a licensee[.]” “the prescribing, administering or dispensing of narcotic, stimulant or hypnotic drugs for other than accepted therapeutic purposes[.]” “conduct likely to deceive, defraud or harm the public[.]” “repeated similar negligent acts[.]” “failure to furnish the [B]oard, its investigators or representatives with information requested by the [B]oard[.]” “injudicious prescribing, administering or dispensing of a drug or medicine[.]” “conduct unbecoming in a person licensed to practice or detrimental to the best interests of the public[.]” “improper management of medical records, including failure to maintain timely, accurate, legible and complete medical records”); Part 16.10.8 NMAC (setting forth ethical standards for practitioners and adopting the AMA’s Code of Ethics and its principles requiring professionalism, honesty and respect for the law at all times); Part 16.10.14 NMAC (establishing requirements for the management of pain and other conditions with controlled substances).

Terms

15. Respondent agrees –
 - a. to accept a reprimand,
 - b. to pay fines totaling \$5,000.00 within four months following entry of this Agreed Order,¹

¹ The Board will place an administrative stipulation on Respondent’s license until the fines are paid. The Board may extend the time within which Respondent must complete payment of the fines administratively, without the need for formal Board action. As soon as Respondent pays the fines, the Board will remove the stipulation administratively, without the need for formal Board action. Fines are to be paid by check made out to “New Mexico Medical Board” and stating the case number of this Agreed Order. Payment is to be sent or delivered to the Board

c. not to challenge any of the investigative findings contained in this Agreed Order in any future proceeding before the Board,

d. for purposes of enforcement, this Agreed Order shall be the equivalent of a decision entered by the Board following an evidentiary hearing,

e. to cooperate fully with any person responsible for monitoring and ensuring his compliance with this Agreed Order, and

f. to report entry of this Agreed Order to any jurisdiction where he may be licensed or apply for licensure.

16. Respondent further agrees to a stipulation on his license requiring him to successfully complete a Board-approved ethics and boundaries course and provide the Board a written statement regarding what he learned from the course and identifying six specific ways he will apply what he learned in his practice within three months following entry of this Agreed Order. Any continuing medical education (CME) hours associated with completion of the course shall be in addition to the CME hours required for the triennial renewal of his license.

17. In exchange for Respondent's agreements, and contingent upon Respondent's compliance with the terms of this Agreed Order, the Board agrees to close its investigation, to limit the disciplinary action it will take against Respondent based on the investigative findings outlined in this Agreed Order to the discipline contained in this Agreed Order, and to waive the requirement for Respondent to reimburse the Board its costs of investigating this case.

18. The Parties agree the stipulations on Respondent's license imposed by this Agreed Order do not constitute a restriction on Respondent's practice.

(Attn: Compliance), 2055 S. Pacheco Street, Santa Fe NM 87505.

STATEMENT AND AFFIRMATIONS BY RESPONDENT

19. By signing below, I state and affirm –
- a. I understand the terms of this Agreed Order and knowingly, voluntarily and intelligently agree to accept and to comply with its terms.
 - b. I knowingly, voluntarily and intelligently waive my rights under the MPA and the ULA, including my right to a hearing and any right I may have to seek judicial review of this Agreed Order.
 - c. I knowingly, voluntarily and intelligently agree not to challenge the investigative findings contained in this Agreed Order or to challenge the validity or admissibility of this Agreed Order in any future proceeding before the Board.
 - d. I know and understand any violation of this Agreed Order constitutes a violation of the MPA and/or the Board’s Rules and may result in further disciplinary action by the Board up to and including summary suspension and revocation of my license.
 - e. I know and understand I have the right to consult with an attorney of my choice regarding my rights and the effects of this Agreed Order, and I have either consulted an attorney or am waiving my right to counsel.
 - f. I am aware this Agreed Order is a public document and the Board will report its entry to the NPDB, the FSMB and the AMA.
 - g. I am of sound mind and not impaired by any medication or drug.
 - h. I will report this Agreed Order to any jurisdiction where I may be licensed or apply for licensure.

11/10/20


Date

DB Durham

David Brannan Durham, M.D.

11/10/20

Date


David H. Urias, Esq.
Josh B. Ewing, Esq.
Friedman Boyd Hollander Goldberg
Urias & Ward P.A.

**ORDER IMPOSING REPRIMAND, FINES
AND STIPULATION ON LICENSE**

THE BOARD, HAVING FOUND resolving this matter under the terms of this Agreed Order is in the best interests of Respondent, the Board and the public, and

HAVING FURTHER FOUND Respondent understands the terms of this Agreed Order, including his waiver of rights,

ORDERS Respondent reprimanded and assessed fines totaling \$5,000.00,

FURTHER ORDERS Respondent to complete a Board-approved ethics and boundaries course and provide the Board with the required written statement, and

FURTHER ORDERS closure of this case and the underlying investigation and waiver of the requirement for Respondent to reimburse the Board its costs of investigating this case, *contingent upon* Respondent's compliance with the terms of this Agreed Order.

NEW MEXICO MEDICAL BOARD



Peter T. Beaudette, M.D.
Chairman

Certificate of Service

I certify I transmitted a copy of this Agreed Order, as entered, to Respondent's counsel, David H. Urias, Esq., at dhu@fbdllaw.com, and Josh B. Ewing, at jbe@fbdllaw.com, and to the Board's Prosecutor Yvonne Chicoine at yvonnem.chicoine@state.nm.us.

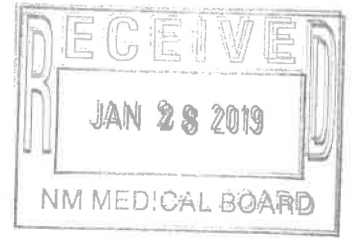
11/20/2020

Date

Elisha F. Lucero

Elisha F. Lucero
Administrative Assistant

BEFORE THE NEW MEXICO MEDICAL BOARD



IN THE MATTER OF)
DAVID BRANNAN DURHAM, M.D.)
License No. MD2008-0595)
Respondent.)
_____)

No. 2018-056
(Inv. No. 2017-B-030)

Via email (msn@fdblaw.com)
and certified first-class mail to

To: David Brannan Durham, M.D.
c/o Molly Schmidt-Nowara, Esq.
Freedman Boyd Hollander et al.
20 First Plaza, Suite 700
Albuquerque, NM 87102

NOTICE OF CONTEMPLATED ACTION (NCA) AGAINST LICENSEE

YOU ARE HEREBY NOTIFIED that the New Mexico Medical Board (“Board”) “has before it sufficient evidence that, if not rebutted or explained, will justify the [B]oard in taking action” imposing disciplinary sanctions, up to and including revocation of your license to practice medicine in New Mexico. NMSA 1978, § 61-1-4(D) (stating the requirements for the Board’s written notice to a licensee); *see also* NMSA 1978 § 61-1-3 (requiring written notice before the Board takes disciplinary action).

Board Jurisdiction and Authority

1. You are subject to the Board’s jurisdiction pursuant to the Medical Practice Act (MPA), NMSA 1978, Sections 61-6-1 to -35, the Uniform Licensing Act (ULA), NMSA 1978, Sections 61-1-1 to -33, and the Pain Relief Act, NMSA 1978, Sections 24-2D-1 through -6, because you hold a license to practice medicine in New Mexico.

2. The Board has authority to issue this Notice of Contemplated Action (NCA) under Section 61-6-15 of the MPA and Section 61-1-4(D) of the ULA.

Public Action

3. This NCA is a public document, open to public inspection, but its issuance does not constitute a disciplinary event reportable to the National Practitioners Data Bank (NPDB).

Evidence Supporting Contemplated Action

4. Credible evidence possessed by the Board supports findings that –
- a. in one or more instances, and with respect to one or more patients, you did not comply with the Board’s rule governing the management of pain and other conditions with controlled substances, e.g., by failing to review the prescription monitoring program (PMP) report before prescribing one or more controlled substances,
 - b. with respect to one patient, you testified under oath at a Board hearing held on March 8, 2018, that you reviewed the PMP report every time before writing a prescription for a specific controlled substance for that patient, but, despite writing more than six controlled substance prescriptions for that patient over the course of almost two years, PMP records indicate you accessed that patient’s PMP report only once,¹
 - c. in one or more instances, and with respect to one or more patients, you did not maintain timely and accurate medical records.
 - d. you did not comply with a subpoena issued by the Board for EMR information and audit logs relating to one or more patients,
 - e. in one or more instances, and with respect to one or more patients, medical records to not accurately reflect actions taken with respect to those patients,
 - f. you did not disclose in one or more applications to renew your license a medical

¹ See NMSA 1978, § 61-6-25 (“Any person making a false statement under oath or a false affidavit shall be guilty of a fourth degree felony and upon conviction shall be sentenced in accordance with the Criminal Sentencing Act to eighteen months imprisonment and, in the sentencing court’s discretion, to a fine of not more than five thousand dollars (\$5,000).”).

condition for which you were being treated that could affect patient care,

g. you obtained one or more prescriptions and/or used one or more controlled substances in the absence of a documented physical condition warranting issuance of the prescription(s) and/or the drug's/drugs' use,

h. you violated state and/or federal drug laws in one or more respects, e.g., by not following standard security measures for prescription pads bearing your identifying information, by writing prescriptions while practicing in locations not covered by your drug enforcement administration registration(s), by writing prescriptions using the prescription pads bearing names and addresses of organizations where you were not employed,

i. in one or more instances, and with respect to one or more patients, you prescribed controlled substances without a documented medical justification,

j. you were previously disciplined by the Board in connection with the prescribing of controlled substances and the falsification of medical records, and/or

k. you conducted yourself in a coercive, threatening manner in your dealings with a patient who was the alleged victim of a crime of domestic violence, and indicated you had the ability to use your influence to affect the official actions taken by government officials with respect to that individual.

5. If a preponderance of the evidence establishes any or all of these findings, the Board may conclude that you engaged in conduct actionable under the MPA and the rules and regulations of the Board ("Rules"), found at Title 16, Chapter 10, NMAC, including –

a. conduct contemplated by the MPA's non-exclusive definition of "unprofessional or dishonorable conduct," such as –

(1) NMSA 1978, Section 61-6-15(D)(7) ("habitual or excessive use of

intoxicants or drugs”),

(2) NMSA 1978, Section 61-6-15(D)(8) (“misrepresentation . . . in connection with applying for or procuring renewal . . .”),

(3) NMSA 1978, Section 61-6-15(D)(15) (“the use of a false, fraudulent or deceptive statement in a document connected with the practice of a licensee”),

(4) NMSA 1978, Section 61-6-15(D)(17) (“the prescribing, administering or dispensing of narcotic, stimulant or hypnotic drugs for other than accepted therapeutic purposes”),

(5) NMSA 1978, Section 61-6-15(D)(18) (“conduct likely to deceive, defraud or harm the public”),

(6) NMSA 1978, Section 61-6-15(D)(19) (“repeated similar negligent acts”),

(7) NMSA 1978, Section 61-6-15(D)(23) (“failure to furnish the [B]oard, its investigators or representatives with information requested by the [B]oard,”

(8) NMSA 1978, Section 61-6-15(D)(26) (“injudicious prescribing, administering or dispensing of a drug or medicine”),

(9) NMSA 1978, Section 61-6-15(D)(29) (“conduct unbecoming in a person licensed to practice or detrimental to the best interests of the public”), and/or

(10) NMSA 1978, Section 61-6-15(D)(33) (“improper management of medical records, including failure to maintain timely, accurate, legible and complete medical records”), and/or

b. 16.10.8.8 NMAC (including “dishonesty” among the enumerated examples of “unprofessional or dishonorable conduct”), and/or

c. Part 16.10.14 NMAC (prescribing requirements for the management of pain and

other conditions with controlled substances).

6. The Board's investigation is ongoing. At any time prior to final resolution of this matter, the Board may amend this NCA to reflect additional evidence and potential findings supporting the imposition of disciplinary sanctions against you.

Your Rights

7. Section 61-1-3 of the ULA entitles you to a hearing on the allegation(s) contained in this NCA. You secure your right to a hearing by submitting a request to the Board. Your request must be in writing, addressed to the Board, and delivered by certified mail, return receipt requested. You must deposit your request for a hearing in the mail *within twenty days* following your receiving service of this NCA. NMSA 1978, § 61-1-4(D)(3).

8. If you do not request a hearing within twenty days following service of this NCA, the Board may take action against your license up to and including revocation of your license and the privilege to practice in New Mexico. In accordance with Section 61-1-4(E) of the ULA, that action will be final and not subject to judicial review.

9. Section 61-1-8 of the ULA entitles you to certain rights in connection with any hearing that may be held on this matter. Those rights include the following –

a. At the hearing, you have the right (1) to be represented by counsel or by a licensed member of your profession or both, (2) to present all relevant evidence by means of witnesses, books, papers, documents and other evidence, and (3) to question all opposing witnesses who may appear on any matter relevant to the issues.

b. In advance of the hearing, you have the right to have subpoenas issued to compel (1) the production of relevant books, papers, documents and other evidence, and (2) the attendance of witnesses on your behalf. These subpoenas will be issued by the Board upon your

written request to the Hearing Officer assigned to your case. After commencement of the hearing, the issuance of subpoenas is at the discretion of the Hearing Officer.

c. Within ten days following your submission of a written request to the Board, you are entitled (1) to obtain the names and addresses of witnesses the Board will or may call to testify at the hearing, and (2) to inspect or copy any documents or items the Board will or may introduce in evidence at the hearing.

d. Like the Board, you may take and use depositions in accordance with the Rules of Civil Procedure for the District Courts of New Mexico.

Costs

10. Under Section 61-1-4(G) of the ULA, if the Board takes action against your license, as defined in Section 61-1-3 of the ULA, you will be required to reimburse the Board for the costs of its proceedings unless the Board excuses some or all of those costs.

NEW MEXICO MEDICAL BOARD



Sondra Frank, Esq., Executive Director

1-25-19
Date

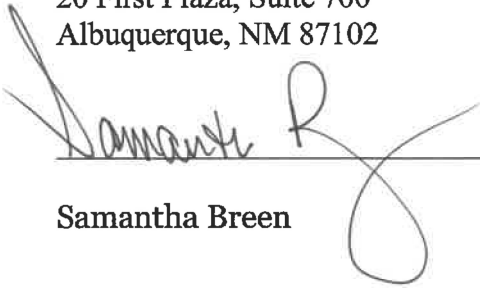
All further communications with respect to this matter should be directed to –

Yvonne Chicoine, Chief Legal Counsel
New Mexico Medical Board
2055 South Pacheco Street, Building 400
Santa Fe, New Mexico 87505
ph: 505/476-7223
email: YvonneM.Chicoine@state.nm.us

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the Notice of Contemplated Action was sent to Respondent's Counsel via Certified Return Receipt USPS mail on January 28, 2019.

Molly Schmidt-Nowara, Esq.
Freedman Boyd Hollander et al.
20 First Plaza, Suite 700
Albuquerque, NM 87102



Samantha Breen



BEFORE THE NEW MEXICO MEDICAL BOARD

IN THE MATTER OF
DAVID DURHAM, M.D.
License No:2008-0595

No. 2012-032

Respondent.

ORDER OF RELEASE

THIS MATTER came before the New Mexico Medical Board ("Board") upon David Durham, M.D.'s ("Respondent") request to be released from his May 17, 2013 Stipulation of Licensure and Order.

WHEREAS Respondent has an active license to practice medicine in the state of New Mexico; and

WHEREAS on May 17, 2013 Respondent entered into a Stipulation of Licensure and Order with the Board which placed certain terms and conditions upon Respondent's license to practice medicine; and

WHEREAS on April 1, 2014, Respondent requested to be released from the Amended Stipulation of Licensure and Order; and

WHEREAS the Board has determined that Respondent has met all the terms and conditions set forth in the Stipulation of Licensure and Order.

IT IS THEREFORE ORDERED that the stipulations placed on Respondent's license to practice medicine in Case No. 2012-032 are hereby removed and Respondent shall have an unrestricted license to practice medicine in New Mexico.

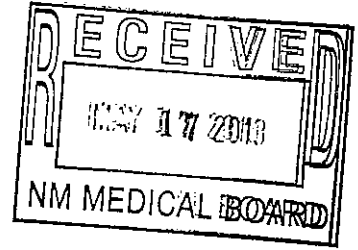
Dated: 05/08/2014

NEW MEXICO MEDICAL BOARD

By: 

Steven Weiner, M

BEFORE THE NEW MEXICO MEDICAL BOARD



IN THE MATTER OF)
DAVID DURHAM, M.D.)
License No. 2008-0595)
Respondent.)

No. 2012-032

STIPULATION OF LICENSURE AND ORDER

This matter, having come before the New Mexico Medical Board ("the Board"), upon the joint motion of the Prosecutor and the respondent David Durham, M.D. ("Respondent"), by and through his counsel, Molly Schmidt-Nowara and Zachary Ives (collectively, "the Parties"), to accept this Stipulation of Licensure and Order ("Stipulation and Order"), and the Board, being fully advised, hereby finds and orders as follows:

FINDINGS

- 1. Respondent is subject to the jurisdiction of the Board pursuant to the Medical Practice Act, NMSA 1978, §§ 61-6-1 through -35, and the New Mexico Medical Board rules and regulations, Title 16, Chapter 10, NMAC.
2. The Board enters this Stipulation and Order pursuant to NMSA 1978, §61-6-15(A), and Board Rule 16.10.5.15 NMAC.
3. The Board issued a Notice of Contemplated Action on August 22, 2012.
4. The Notice of Contemplated Action alleges that Respondent violated, inter alia, NMSA 1978, Section 61-6-15(D) (26) of the Medical Practice Act, namely, injudicious prescribing. Respondent, without admitting that his actions have violated the above cited statute, acknowledges that sufficient evidence exists to find that he violated the above cited statute and hereby agrees and submits to the sanctions and discipline set forth in the Order below.

5. Respondent knows and understands the applicable statutory and regulatory provisions setting forth the authority and power of the Board. Respondent further understands that this proposed stipulated order, if accepted, results in a waiver of his rights under the Uniform Licensing Act and the Medical Practice Act, including the right to a hearing and to judicial review on the matters alleged, and the right to challenge this order in court.

ORDER

A. For a period of two and one-half (2 ½) years from date of this Order, Respondent shall not prescribe any opiates or other narcotics listed in Schedules II through V of the New Mexico Controlled Substances Act. This prohibition does not effect Respondent's ability to prescribe scheduled psychotropic medications, including, but not limited to benzodiazepines and psychostimulant medications that may be prescribed in the standard practice of psychiatry. The limitation with regard to opiates and narcotics shall remain in effect until the restrictions are removed by the Board. Beginning one (1) month before the end of the above mentioned limitation period, Respondent may petition the Board for reinstatement of his prescribing privileges as restricted herein.

B. For a period of two and one-half (2 ½) years from the date of this order, Respondent shall not treat any patients for acute or chronic pain. This limitation shall remain in effect until the restrictions are removed by the Board. Beginning one (1) month before the end of the above mentioned limitation period, Respondent may petition the Board for reinstatement of his treating privileges as restricted herein.

C. The restrictions in A and B, above, do not prevent Respondent from making any appropriate referrals to other health care providers, but Respondent is restricted from recommending or proposing any specific treatment plan for any such referred patients.

D. Respondent shall take and complete a course on pain management approved by the Board within six (6) months of approval of this Agreement by the Board. Such coursework is in addition to the continuing medical education requirements established by Board Rule at NMAC 16.10.4.

E. Respondent shall provide a copy of this Stipulation and Order to all health care providers that he works with or supervises until the restrictions in A and B are removed by Board order.

F. Respondent shall appear before the Board upon the Board's request. Such appearances may be telephonic unless otherwise requested by the Board.

G. Within sixty (60) days of the date of this order, Respondent shall pay the recoverable costs incurred by the Board for prosecution of this action in the amount of \$2948.32^{*}, including \$548.32 for the court reporter's costs of the transcript of the deposition of Dr. Wagner, and \$2400.00 for the hourly fee incurred for the expert review by Dr. William Wagner. Respondent shall directly pay such expert, to wit, Dr. William Wagner, within thirty (30) days of the date of this Stipulation and Order. This Stipulation also memorializes Respondent's separate prior agreement to directly pay Dr. Wagner for the costs of Dr. Wagner's deposition.

H. Respondent shall comply with the Medical Practice Act and Rules and all other applicable laws. Failure to do so during the period of limitation on prescribing privileges may be grounds for denial of the approval to regain prescribing privileges for opiates and narcotics.

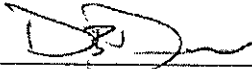
I. In the event Respondent breaches any of the terms of this Stipulation and Order, the Board may immediately and summarily suspend his license to practice as a physician in New Mexico pursuant to NMAC 16.10.5.15. Furthermore, each breach of any term of this stipulation

shall constitute conduct unbecoming in a person licensed to practice medicine as set forth in Sec. 61-6-15 (D) 29 NMSA 1978. The Board shall within 10 days of an immediate suspension issue a Notice of Contemplated Action, and Respondent will be entitled to a formal hearing in accordance with the Uniform Licensing Act, Section 61-1-1 through 61-1-33 NMSA 1978. The Board may issue a NCA upon a breach of any term without issuing an immediate suspension.

J. All allegations other than Section 61-6-15(D) (26) are hereby dismissed without prejudice.

K. This Stipulation and any subsequent Board Order enforcing or interpreting this Order will be reported to the National Practitioners Data Bank and/or Healthcare Integrity and Protection Data Bank and is a public document open to public inspection.

AGREED:



DR. DAVID DURHAM

SO ORDERED:

THE NEW MEXICO MEDICAL BOARD

By:

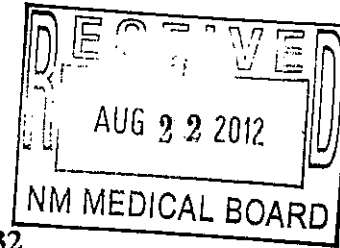


May 17, 2013
Date

BEFORE THE NEW MEXICO MEDICAL BOARD

IN THE MATTER OF)
DAVID DURHAM, M.D.)
)
License No. 2008-0595)
)
Respondent.)

No. 2012-032



NOTICE OF CONTEMPLATED ACTION

YOU ARE HEREBY NOTIFIED that pursuant to provisions of §61-1-4 NMSA 1978 of the Uniform Licensing Act (“ULA”), the New Mexico Medical Board ("Board") has before it sufficient evidence that, if not rebutted or explained, will justify the Medical Board imposing sanctions that could include restricting, revoking or suspending your license to practice medicine in the State of New Mexico.

1. Respondent is subject to action by the Board pursuant to Sections 61-1-1 et seq. NMSA 1978 of the Uniform Licensing Act and Sections 61-6-1 et seq., NMSA 1978 of the Medical Practice Act.

2. This contemplated action is based on the following allegations:

A. At various times during 2009, 2010 and 2011, Respondent has treated numerous patients for chronic pain with opiates, including methadone, morphine, oxycodone, as well as amphetamines that deviated from the standard of care required of physicians through the injudicious prescribing of medication. Furthermore, Respondent has prescribed such medications to poor candidates for such treatment, failing to make a reasonable assessment of his patients’ behavioral and medical histories, and ignoring his patients’ abuse of narcotics and diversion of narcotics both prior to and while in the care of Respondent.

The above allegations, if proven, would constitute a violation of Section 61-6-15(D)(26) of the Medical Practice Act, “injudicious prescribing, administering or dispensing of a drug or medicine;” and NMAC 16.10.8.8(D), “excessive prescribing or administering of

drugs,” promulgated by the Board pursuant to such Act, and constitute grounds for action against Respondent’s license.

B. At various times during 2009, 2010 and 2011, Respondent has treated one or more patients for opiate addiction using methadone without proper U.S.D.E.A. licensure. Respondent also took possession of some portion of his patients’ prescribed medications and subsequently re-dispensed them to those patients.

These allegation, if proven would constitute a violation of Section 16.10.8.8(C) of the Rules promulgated by the Board pursuant to the Act, violation of a drug or narcotic law.

C. During the practices described in A and B, above, Respondent failed to maintain or keep adequate, legible, accurate or complete medical records. This allegation, if proven, would constitute a violation of Section 61-6-15(D)(33) of the Medical Practice Act. In an attempt to conceal such failure, and in response to the investigation of Board staff, Respondent has generated medical documentation using a computer program. This allegation, if proven would constitute a violation of Section 61-6-15(D)(18), “conduct likely to deceive, defraud or harm the public.”

D. Respondent forged prescriptions for controlled substances for himself. This allegation, if proven, would be a violation of NMSA 1978 §61-6-15(D) (26), injudicious prescribing; of NMAC 16.10.8.9 and of NMSA 1978 §61-6-15(D) (29), unprofessional or dishonorable conduct, and of NMSA 1978 §61-6-15(D)(10), impersonating another licensee.

3. Please take notice that pursuant to §61-1-4, you may secure a hearing before the Board by depositing in the mail within twenty (20) days after service of this notice a certified return receipt requested letter addressed to the Board and containing a request for a hearing. If you do not request a hearing within twenty (20) days after service of this notice as described above, the Board

will take the contemplated action, i.e., imposing sanctions that could include the revocation or suspension of your license to practice medicine in the State of New Mexico, and there will be no judicial review of their decision.

4. Pursuant to §61-1-8 NMSA 1978, you have the right to be represented by counsel or by a licensed member of your profession or both, and to present all relevant evidence by means of witnesses, books, papers, documents and other evidence; to examine all opposing witnesses who may appear on any matter relevant to the issues and have subpoenas duces tecum issued as of right prior to the commencement of the hearing, to compel the attendance of witnesses and the production of relevant books, papers, documents and other evidence upon making a written request therefore to the Board. The issuance of such subpoenas after commencement of the hearing rests with the discretion of the Board or Hearing Officer.

Dated this 22nd day of August, 2012.

NEW MEXICO MEDICAL BOARD



Lynn Hart, Executive Director
NM Medical Board
2055 S. Pacheco, #400
Santa Fe, New Mexico 87505
(505) 476-7220

CERTIFICATE OF SERVICE

I hereby certify that on August 23, 2012, a true and correct copy of the Notice of Contemplated Action was served on Respondent, at the address below, via certified mail, return receipt requested:

David Durham, M.D.
1961 Hollyhock Circle
Farmington, New Mexico 87401



(signed)