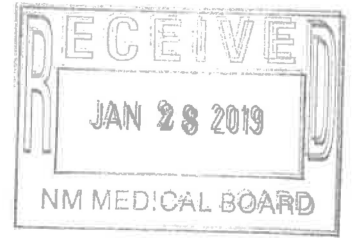


**BEFORE THE NEW MEXICO MEDICAL BOARD**



**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](mailto: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,<sup>1</sup>
  - 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

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<sup>1</sup> 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

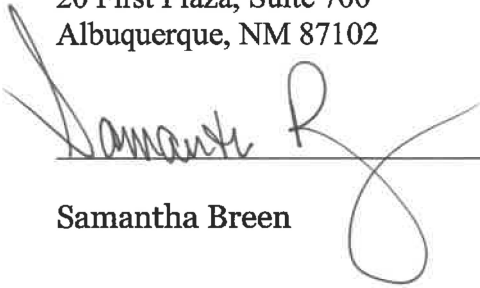
All further communications with respect to this matter should be directed to –

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](mailto: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



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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.

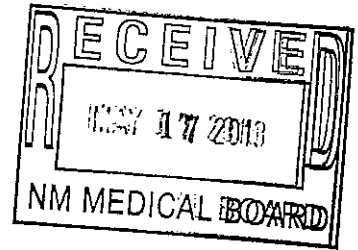
Dated: 05/08/2014

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<sup>\*</sup>, 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:



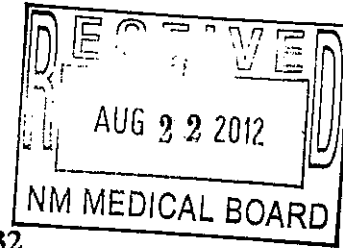
May 17, 2013  
Date



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 22<sup>nd</sup> 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)