

BEFORE THE NEW MEXICO MEDICAL BOARD

**IN THE MATTER OF
JERRY KUBENA, M.D.**

**License No. MD 2012-0005
Respondent.**

**Case No. 2023-023
(Inv. Case No. 2022-C-161)**

NOTICE OF CONTEMPLATED ACTION

YOU ARE HEREBY NOTIFIED that pursuant to provisions of NMSA 1978, Section 61-1-4 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 [B]oard imposing sanctions that could include restricting, revoking or suspending your license to practice as a physician in the State of New Mexico. See NMSA 1978, § 61-1-4(D) (stating the requirements for the Board's written notice to a licensee); NMSA 1978, § 61-1-3 (requiring written notice before the Board takes action and describing the actions the Board may take).

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, and the Uniform Licensing Act (ULA), NMSA 1978, Sections 61-1-1 to -34, because you hold a license to practice in New Mexico or you held a license at the time the Board initiated its investigation into your conduct.

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 Practitioner Data Bank (NPDB).

Evidence Supporting Contemplated Action

4. Credible evidence possessed by the Board supports the following factual allegation(s) –
 - a. On or about December 17, 2022, CVS pharmacy refused to fill a prescription written by Respondent for himself.
 - b. The prescription at issue was for a five day supply of Ivermectin 3 mg #16 daily.
 - c. Based on the Board’s investigation, it was learned that the pharmacy refused to fill the prescription based on the dangerous dosage of the medication prescribed.
 - d. When the pharmacist asked Respondent about this dosage, Respondent became verbally abusive and threatening to the pharmacist.

5. If a preponderance of the evidence establishes the accuracy of any or all of these allegations, the Board may conclude you engaged in unprofessional conduct subjecting you to discipline under the MPA and the rules and regulations of the Board (“the Board’s Rules”), found at Title 16, Chapter 10, NMAC, such as –
 - a. Injudicious prescribing, administering or dispensing of a drug or medicine; *see e.g.*, NMSA 1978, §§61-6-15(D)(26),
 - b. Conduct unbecoming in a person licensed to practice; *see e.g.*, NMSA 1978, §61-6-15(D)(29),

6. The Board’s investigation is ongoing. Subject to the requirements of due process, the Board may amend the allegations set forth above at any time prior to the conclusion of any evidentiary hearing that may be held in connection with this NCA to reflect additional evidence supporting the imposition of disciplinary sanctions.

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 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 –

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, book, papers, documents, and other evidence, and (3) to question all opposing witnesses who may appear on any matter relevant to the issues.

b. Within ten days after you submit a written request to the Board, you are entitled (1) to receive 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 offer as evidence at the hearing.

c. In advance of the hearing, you have the right to have subpoenas issued to third parties compelling them (1) to produce relevant books, papers, documents, and other evidence, and (2) to appear as witnesses on your behalf. Subpoenas must be presented in an acceptable

form and will be issued, absent objection, following 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.

d. Like the Board, you may take and use depositions, subject to the notice and use provisions of the Rules of Civil Procedure for the District Courts.

NEW MEXICO MEDICAL BOARD

04/25/2024
Date


Amanda Quintana, Interim Executive Director

Please direct any questions you or your attorney may have to –

JoHanna Cox, Administrative Prosecutor
New Mexico Medical Board
2055 South Pacheco Street, Building 400
Santa Fe, NM 87505
Ph: 505.596.1930
Email: johanna.cox@nmmb.nm.gov
johanna@johannacoxlaw.com

Certificate of Service

I certify I transmitted a copy of this Notice of Contemplated Action, as entered, via certified mail, return receipt requested, to Respondent at 4825 Hwy 25, Fort Mohave, AZ 96426 and kubenajk@yahoo.com and the Administrative Prosecutor, JoHanna Cox, johanna.cox@nmmb.nm.gov and johanna@johannacoxlaw.com, via email on this 25th day of April, 2024.

04/25/2024
Date


Lori Arevalo
Compliance Coordinator