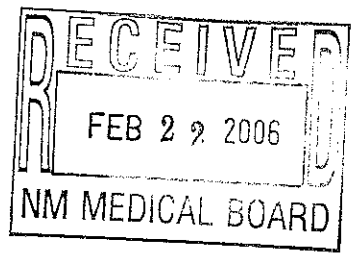
BEFORE THE NEW MEXICO
MEDICAL BOARD



IN THE MATTER OF

Michael Flanagan, M D ,
Respondent

License No 85-176

No 2005-016

FINDINGS OF FACT AND CONCLUSIONS OF LAW
DECISION AND ORDER
NOTICE OF RIGHT TO JUDICIAL REVIEW

THIS MATTER came before the New Mexico Medical Board ("Board") on February 17, 2006 for a decision pursuant to provisions of the Uniform Licensing Act, Sections 61-1-1 to 61-1-33 NMSA 1978 (1957, as amended through 2003)

FINDINGS OF FACT

The Board, having familiarized itself with the record, including the Hearing Officer's Report dated January 9, 2006, the verbatim transcript of the proceedings, and hearing exhibits 1-12, adopts the Hearing Officer's Recommended Findings of Fact numbered 1-13 in their entirety

A copy of the Hearing Officer's Report is attached and incorporated herein by this reference

CONCLUSIONS OF LAW

Based on the findings of fact, the Board reaches the following conclusions of law:

1 The Board has jurisdiction over Respondent and the subject matter

2 The Board has complied with all notice and hearing requirements of the Uniform Licensing Act and has afforded Respondent all due process required by law

This decision and order is timely rendered

3 The Board concludes that there is sufficient evidence in the record to prove by a preponderance of the evidence that Respondent committed gross negligence in violation of §61-6-15(D)(12) NMSA 1978 as alleged in ¶ 2(A) of the Amended NCA.

4 The Board concludes that there is sufficient evidence in the record to prove by clear and convincing evidence that Respondent violated Rule 16 10.8.8 (H) NMAC and §61-6-15(D) in that Respondent was dishonest and deceptive as alleged in ¶ 2(B) of the Amended NCA and made dishonest, false, fraudulent, or deceptive statements in documents connected to the practice of medicine as alleged in ¶ 2(C) of the Amended NCA.

5. The Board concludes that there is sufficient evidence to prove by a preponderance of the evidence that Respondent violated §61-6-15(D)(26) NMSA 1978, in that Respondent is guilty of injudicious prescribing, administering, or dispensing certain drugs as alleged in ¶ 2(D) of the Amended NCA.

6. The Board concludes that there is sufficient evidence to prove by a preponderance of the evidence that Respondent violated Rule 16.10.14 NMAC and §61-6-15(D) as alleged in ¶ 2(F) of the Amended NCA.

7. The Board concludes that there is insufficient evidence in the record to prove that Respondent violated Rule 16.10.8.8(H) NMAC as alleged in ¶ 2(E) and dismisses ¶ 2(E)

8 Pursuant to § 61-6-15(A) NMSA 1978 and Rule 16 10.5.1 NMAC, the Board has authority and has sufficient evidence in the record to revoke Respondent's license to practice medicine in New Mexico.

DECISION AND ORDER

Based on the findings of fact and conclusions of law, the Board renders this Decision and Order

1. It is ordered that Respondent's license to practice medicine is and shall be revoked effective ten (10) days from the date of this Decision and Order. Upon the effective date of revocation, Respondent shall not, directly or indirectly, engage in the practice of medicine in New Mexico as described in the Medical Practice Act or attempt or offer to practice medicine in New Mexico, including, without limitation, providing directly or indirectly, medical care to any person or providing, dispensing, administering, or prescribing drugs to any person.

2. At any time after fifteen (15) years from the date of this decision and order, Respondent may seek licensure under the Medical Practice Act by filing a new application for licensure with the Board. If Respondent applies for re-licensure, Respondent shall have the burden of demonstrating to the Board, to the Board's satisfaction, that he is capable of the competent practice of medicine with reasonable skill and safety to the public. The Board may require that Respondent take and pass an examination of current competency or require an evaluation of competency by any means endorsed or approved by the Board as a condition of filing an application. In addition, the Board may attach conditions to Respondent's practice as the Board deems appropriate, including, without limitation, a requirement that Respondent practice while under supervision and restrictions on Respondent's prescriptive authority

3 This action is disciplinary action and is a public record pursuant to the Inspection of Public Records Act and shall be reported to the National Practitioner Data Bank (NPDA), the Healthcare Integrity and Protection Data Bank (HIPDP) and any other appropriate entities.

4 This Decision and Order shall be served upon Respondent in accordance with law. A notice informing Respondent of his right to seek judicial review and the time within which review must be brought is attached.

Paul J. Kovnat, M.D., Board Chair, is designated to sign the Decision and Order of the Board.

FOR THE NEW MEXICO MEDICAL BOARD

Date 2-22-06

PAUL J. KOVNAT, M.D., CHAIR

BEFORE THE NEW MEXICO MEDICAL BOARD

IN THE MATTER OF	)	
	)	
Michael Flanagan, M.D.	)	
License No. 85-176	)	
Respondent.	)	**No. 2005-016**
	)	

AMENDED NOTICE OF CONTEMPLATED ACTION

YOU ARE HEREBY NOTIFIED that pursuant to provisions of §61-1-4 NMSA 1978 of the Uniform Licensing Act, the New Mexico Medical Board ("Board") has before it sufficient evidence that, if not rebutted or explained, will justify the Board 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 §61-1-1 et seq. NMSA 1978, §61-6-1 et seq. NMSA 1978, and §61-24-2(D)-1 et seq. NMSA 1978

2 This action is based upon the following allegations:

A. On at least January 9, 2004, February 8, 2005, April 8, 2005, May 6, 2005 and May 27, 2005, you prescribed syringes and needles for Patient #1.

You wrote these prescriptions knowing that Patient #1 was crushing at least some of the narcotic pills that you were prescribing for him, putting them in water, "filtering" the substance through cigarette filters and then using the syringes and needles to self-administer intravenous injections of these narcotics.

The allegations in Paragraph 2(A), if proven, would be a violation of the Medical Practice Act §61-6-15(D)12 NMSA 1978, gross negligence in the practice of medicine

B. On or about June 17, 2005, you wrote a letter to the Board regarding Patient #1. You stated that "Typical doses being used in December, 2004, by (Patient #1) were Dilaudid 12 mg q 3-hr during the days and evenings (744 4mg doses/month); either Percodan 5/325 ii-iii or Demerol 50 mg ii-iv q 3 to 4 hours at night (186 50mg doses/month)." "In addition to the narcotics, (Patient #1) has been taking either dextroamphetamine or methamphetamine 10 mg t.i.d. for the period I have known him (186 5mg doses/month) "

When you wrote the letter, you knew that in fact, during December, 2004 (prior to December 31, 2004), you wrote enough prescriptions for Patient #1 to fill the prescriptions and receive approximately 840 4mg doses of Dilaudid, 120 doses of Oxycodene, 714 50mg doses of Meperdine and 730 5mg doses of Methamphetamines

These allegations, if proven, would be a violation of Board Rule 16.10.8.8(H) NMAC, dishonesty

These allegations, if proven, would also be a violation of the Medical Practice Act §61-6-15(D) NMSA 1978, the use of any deceptive statement in any document connected with the practice of medicine.

C When you wrote in the June 17, 2005 letter to the Board that Patient #1 "has been taking either dextroamphetamine or methamphetamine 10 mg t.i.d (900 mg per month) for the period I have know him," you knew the statement was not true

You knew when you wrote the letter that you had written enough prescriptions for amphetamines for Patient #1 to fill the prescriptions and receive approximately 3,750 mg in July; 3,600 mg in August; 2,450 mg in September; 4,325 mg in October; 2,475 mg in November and 3,650 mg in December through December 30, 2004 You also wrote enough prescriptions for

amphetamines for Patient #1 to fill and receive approximately 3,150 mg in January, 2005 (including December 31, 2004) and 2,475 mg in February, 2005.

These allegations, if proven, would be a violation of Medical Practice Act §61-6-15(D)15 NMSA 1978, the use of false, fraudulent or deceptive statement in a document connected with the practice of medicine.

These allegations, if proven would also be a violation of Board Rule 16.10.8.8(H) NMAC, dishonesty.

D. During December of 2004, you prescribed many more doses of Dilaudid, Demerol, Oxycodone and Methamphetamine to Patient #1 then you knew were medically indicated.

These allegations, if proven, would be a violation of the Medical Practice Act §61-6-15(D)26 NMSA 1978, injudicious prescribing, administering or dispensing any drug or medicine.

E. On or about January 11, 2005, you wrote a clinical note regarding Patient #1 and stated: "Current use of Dilaudid 12 mg 8x/d, Demerol 150 mg q 4 hr and Desoxyn 20 mg 5x/d."

When you wrote the note, you knew that you were also prescribing Oxycodone for three of the previous four months and did not include these prescriptions in the note. These allegations, if proven, would be a violation of Board Rule 16.10.8.8(H) NMAC, dishonesty.

F. (1) Before beginning to treat Patient #1 with multiple controlled substances, you did not obtain an adequate history of the Patient's medical condition from prior treating doctors.

(2) You did not create a written treatment plan with stated objectives and the need for further testing

(3) You did not consult with health care professionals in the area of chronic pain control regarding the treatment provided to Patient #1

The allegations in Paragraphs F 1-3 would be a violation of §61-6-15(D) NMSA 1978, "unprofessional conduct", in that they would be a violation of 6.10.14.1 et seq NMAC, a Rule regarding the management of chronic pain with controlled substances.

These allegations, if proven, would also be a violation of the Medical Practice Act §61-6-15(D) NMSA 1978, the use of any deceptive statement in any document connected with the practice of medicine

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., restricting, suspending or revoking your license to practice medicine in the State of New Mexico. Such action shall be final and not subject to judicial review.

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; to present all relevant evidence by means of witnesses and books, papers, documents and other evidence; to examine all opposing witnesses who appear on any matter relevant to the issues; and to have subpoenas and subpoenas duces tecum issued as of right prior to the commencement of the hearing to compel discovery and the attendance of witnesses and the production of relevant books, papers, documents and other

evidence upon making written request therefore to the Board or Hearing Officer. The issuance of such subpoenas after commencement of the hearing rests in the discretion of the Board or Hearing Officer.

Dated: November 30, 2005

NEW MEXICO MEDICAL BOARD

Paul J. Kovnat, M.D., Chair
New Mexico Medical Board
2055 S. Pacheco, #400
Santa Fe, New Mexico 87505
(505) 476-7220

BEFORE THE NEW MEXICO MEDICAL BOARD

IN THE MATTER OF	)	
	)	
Michael Flanagan, M.D.	)	
License No. 85-176	)	
Respondent.	)	**No. 2005-016**
	)	

NOTICE OF CONTEMPLATED ACTION

YOU ARE HEREBY NOTIFIED that pursuant to provisions of §61-1-4 NMSA 1978 of the Uniform Licensing Act, the New Mexico Medical Board ("Board") has before it sufficient evidence that, if not rebutted or explained, will justify the Board 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 §61-1-1 et seq. NMSA 1978, §61-6-1 et seq. NMSA 1978, and §61-24-2(D)-1 et seq. NMSA 1978.

2. This action is based upon the following allegations:

A. On at least January 9, 2004, February 8, 2005, April 8, 2005, May 6, 2005 and May 27, 2005, you prescribed syringes and needles for Patient #1.

You wrote these prescriptions knowing that Patient #1 was crushing at least some of the narcotic pills that you were prescribing for him, cooking them in some manner, "filtering" the substance through cigarette filters and then using the syringes and needles to self-administer intravenous injections of these narcotics.

The allegations in Paragraph 2(A), if proven, would be a violation of the Medical Practice Act §61-6-15(D)12 NMSA 1978, gross negligence in the practice of medicine.

B. On or about June 17, 2005, you wrote a letter to the Board regarding Patient #1. You stated that "Typical doses being used in December, 2004, by (Patient #1) were Dilaudid 12 mg q 3-hr during the days and evenings; either Percodan 5/325 ii-iii or Demerol 50 mg ii-iv q 3 to 4 times at night " "In addition to the narcotics, (Patient #1) has been taking either dextroamphetamine or methamphetamine 10 mg t i d. for the period I have known him "

When you wrote the letter, you knew that in fact, during December, 2004, you wrote enough prescriptions for Patient #1 to fill the prescriptions and receive at least twice as much Dilaudid, 50 % more Oxycodene, more than three times as much Meperdine and more than three times as much Methamphetamines as you stated in your June 17, 2005 letter.

These allegations, if proven, would be a violation of Board Rule 16.10.8.8(H) NMAC, dishonesty.

These allegations, if proven, would also be a violation of the Medical Practice Act §61-6-15(D) NMSA 1978, the use of any deceptive statement in any document connected with the practice of medicine.

C When you wrote in the June 17, 2005 letter to the Board that Patient #1 "has been taking either dextroamphetamine or methamphetamine 10 mg t.i.d (900 mg per month) for the period I have know him," you knew the statement was not true

You knew when you wrote the letter that you had written enough prescriptions for amphetamines for Patient #1 to fill the prescriptions and receive approximately 5,100 mg in July, 2004; 2,900 mg in August, 2004; 2,575 mg in October, 2004; 3,000 mg in November, 2004; and 2,300 mg in December, 2004. You also wrote enough prescriptions for amphetamines for Patient #1 to fill and receive 2,100 mg in January, 2005 and 1,845 mg in February, 2005.

These allegations, if proven, would be a violation of Medical Practice Act §61-6-15(D)15 NMSA 1978, the use of false, fraudulent or deceptive statement in a document connected with the practice of medicine.

These allegations, if proven would also be a violation of Board Rule 16.10.8.8(H) NMAC, dishonesty.

D. During December of 2004, you prescribed many more doses of Dilaudid, Demerol, Oxycodone and Methamphetamine to Patient #1 then you knew was medically indicated.

These allegations, if proven, would be a violation of the Medical Practice Act §61-6-15(D)26 NMSA 1978, injudicious prescribing, administering or dispensing any drug or medicine.

E. On or about January 11, 2005, you wrote a clinical note regarding Patient #1 and stated: "Current use of Dilaudid 12 mg 8x/d, Demerol 150 mg q 4 hr and Desoxyn 20 mg 5x/d."

When you wrote the note, you knew that you were also prescribing approximately 11 Oxycodone / ASA 4 5 per day and did not include these prescriptions in the note. These allegations, if proven, would be a violation of Board Rule 16.10.8.8(H) NMAC, dishonesty.

These allegations, if proven, would also be a violation of the Medical Practice Act §61-6-15(D) NMSA 1978, the use of any deceptive statement in any document connected with the practice of medicine.

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., restricting, suspending or revoking your license to practice medicine in the State of New Mexico. Such action shall be final and not subject to judicial review

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; to present all relevant evidence by means of witnesses and books, papers, documents and other evidence; to examine all opposing witnesses who appear on any matter relevant to the issues; and to have subpoenas and subpoenas duces tecum issued as of right prior to the commencement of the hearing to compel discovery and the attendance of witnesses and the production of relevant books, papers, documents and other evidence upon making written request therefore to the Board or Hearing Officer. The issuance of such subpoenas after commencement of the hearing rests in the discretion of the Board or Hearing Officer

Dated: August 24, 2005

NEW MEXICO MEDICAL BOARD

Charlotte Kinney

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

BEFORE THE NEW MEXICO MEDICAL BOARD

IN THE MATTER OF	)	
	)	
Michael Flanagan, M.D.	)	**Case No. 2004-021**
License No. 85-176	)	
	)	
RESPONDENT	)	

STIPULATION AND ORDER

WHEREAS the New Mexico Medical Board ("Board") has issued a Notice of Contemplated Action ("NCA") against Respondent Michael Flanagan , M.D. ("Respondent"); and

WHEREAS Respondent has been advised to seek the advice of an attorney and has decided to represent himself in this matter;

WHEREAS Respondent desires to settle his differences with Board; and

WHEREAS Respondent admits to the allegations in the NCA;

WHEREAS Respondent waives all rights he may have including those under the Uniform Licensing Act and the Medical Practice Act, regarding his rights to hearing, appeals and claims; and

WHEREAS Respondent understands that this Stipulation and Order will be reported to the National Practitioner's Data Bank, Health Care Integrity and Protection Data Bank and the Federation of State Medical Boards; and

WHEREAS, with the entry of this Stipulation and Order, the Board does not deem it necessary to proceed to a hearing in this case; AND GOOD CAUSE

APPEARING;

IT IS HEREBY ORDERED that Respondent's licensed to practice medicine is suspended for 10 days from January 1, 2005 through January 10, 2005.

Dated: 12 Nov 2004

Michael Flanagan MD.
Michael Flanagan, M.D.
Respondent

John Romine, M.D., Chair
New Mexico Medical Board
18 November 2004

BEFORE THE NEW MEXICO MEDICAL BOARD

IN THE MATTER OF	)	
	)	
Michael Flanagan, M.D.	)	
License No. 85-176	)	
Respondent.	)	**No. 2004-021**
	)	

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 the Board pursuant to the ULA, §61-1-1 et seq. NMSA 1978, and the Medical Practice Act, §61-6-1 et seq. NMSA 1978.

2 This contemplated action is based on the following allegations:

On or about June 17, 2004, you signed a Triennial Renewal Application for the New Mexico Medical Board and answered "No" to Question No. 4 that asked "Have you been arrested, convicted of, or pled no contest to a crime since your last renewal?" When you answered the question, you knew that on or about April 26, 2003, you were arrested and booked into the Bernalillo County Detention Center for multiple charges of criminal sexual penetration.

3. The allegations in Paragraph 2, if not rebutted or explained, would be a violation of §61-6-15(D)8 NMSA 1978, fraud or misrepresentation in applying for a renewal of your New Mexico license to practice medicine and grounds for imposing sanctions on your license

4 The allegations in Paragraph 2, if not rebutted or explained, would also be a violation of Board Rule 16 10 8 8 H NMAC, which lists dishonesty as unprofessional or dishonorable conduct, and grounds for imposing sanctions on your license.

5 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

6. 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; to present all relevant evidence by means of witnesses and books, papers, documents and other evidence; to examine all opposing witnesses who appear on any matter relevant to the issues; and to have subpoenas and subpoenas duces tecum issued as of right prior to the commencement of the hearing to compel discovery and the attendance of witnesses and the production of relevant books, papers, documents and other evidence upon making written request