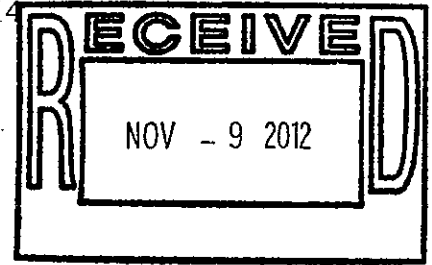


BEFORE THE NEW MEXICO MEDICAL BOARD

IN THE MATTER OF  
JASMIN U. BREITUNG, M.D.  
License No. 2005-0825,

Case No. 2010-014



Respondent.

DECISION AND ORDER

FINDINGS OF FACT

1. A notice of contemplated action (NCA) issued against Dr. Breitung on or about April 30, 2012.
2. A hearing was conducted by Hearing Officer, Steven M. Jenkusky, M.D., member of the New Mexico Medical Board on September 14, 2012 upon the charges contained in the NCA. Dr. Breitung was represented by counsel, Nancy Richards, Esq., at the hearing.
3. The NCA charges as follows:
  - A. At various times during 2009, 2010 and 2011, Respondent wrote prescriptions for controlled substances on a monthly basis for several patients and took possession of some portion of the prescribed medications and subsequently re-dispensed them to those patients.

This allegation, if proven, would be a violation of NMSA 1978, Section 61-6-15(D)(26).
  - B. Commencing in February 2008, Respondent began prescribing methadone to a patient for opiod dependence. Respondent was not certified by the USDEA to prescribe for opiod dependency.

This allegation, if proven, would be a violation of NMSA 1978, Section 61-6-15(D)(26).
3. Dr. Breitung has been a licensed New Mexico physician, practicing in Las Vegas, New Mexico, since 2006.
4. Dr. Breitung has a combined practice involving internal medicine and psychiatry.

5. Dr. Breitung's practice involves the prescribing of controlled substances to her patients, including Suboxone and methadone.
6. From time to time, when Dr. Breitung thought it advisable to have greater control over her patients' controlled drugs and to make sure that her patients were receiving the proper amount of drug at the proper time, Dr. Breitung would dispense the drugs to her patients, after the prescriptions had been filled by the pharmacy, from a medicine box that Dr. Breitung maintained at her office for this purpose.
7. Pharmacies would often deliver those prescribed drugs, after filling the prescription, directly to the doctor's office, after the patient had agreed to the arrangement. The point to the arrangement was to assure greater control of the drugs and provide greater help to the patients with their clinical problems.
8. Dr. Breitung has since discontinued engaging in this arrangement with respect to controlled drugs, having been later apprised by the DEA that the practice is not regarded as lawful.
9. Patient #1 (identified herein by the initials L.B.) is a patient in her late 70's who has osteoporosis, fractures of her back, anxiety, depression and cognitive defects.
10. Dr. Breitung prescribed controlled drugs to patient L.B.
11. Because of her cognitive defects and the possibility of diversion by others, Dr. Breitung decided to prescribe on a weekly basis and to prepare for patient #1 a weekly medicine box at the doctor's office, from which the prescribed medicine would be given to the patient or to a member of the patient's family for the patient.
12. This prescribed medicine was kept at the doctor's office, after having been dispensed by the pharmacy.

13. Patient #2 (identified herein by the initials L.M.) is a patient in her late 40's who has a schizoaffective disorder of the bipolar type, anxiety, chronic insomnia and chronic pain.
14. Dr. Breitung prescribed controlled and non-controlled drugs to patient L.M.
15. The pharmacy filled the prescriptions and delivered them to the doctor's office.
16. As to all her prescribed drugs, both controlled and non-controlled, Dr. Breitung prepared weekly medicine boxes, and the patient would come to the office to pick them up.
17. Dr. Breitung prepared weekly medicine boxes for patient #2 because there were significant issues about the patient's ability to follow directions.
18. Patient #3 (identified herein by the initials I.M.) is a patient in her early 70's who has spinal stenosis, severe and chronic back pain, diabetes and hypertension.
19. Dr. Breitung prescribed controlled drugs for the patient, reducing the quantity of one drug that had been prescribed by a different physician.
20. Because patient #3 lives in Santa Rosa, Dr. Breitung did not prepare and keep for her use a weekly medicine box. Instead, and to reduce the opportunity for diversion by others, Dr. Breitung prescribed controlled drugs for patient #3 on a two-week basis.
21. Patient #4 (identified by the initials T.N.) is a patient in his 20's who is dependent on narcotics and heroin and has some chronic pain issues.
22. Dr. Breitung prescribed Subutex for patient #4 and later changed to methadone because patient #4 lost his insurance and methadone is a less expensive medication and seemed to Dr. Breitung to be a good choice for treating both his pain and narcotics addiction.
23. Patient #5 (identified by the initials C.L.) was transferred by another doctor to Dr. Breitung who had chronic back pain and narcotics addiction.
24. Dr. Breitung prescribed methadone for patient #5 for both her pain and narcotics addiction.

25. In March of 2011, the DEA advised Dr. Breitung that she was not allowed to dispense controlled drugs to patients, specifically, those drugs which she had prescribed for them, and, therefore, that the “medicine box” arrangement was not legal.

26. The DEA’s advice came as a “surprise” to Dr. Breitung, who testified that she had no knowledge that it was not legal. Dr. Breitung testified: “Well, I was shocked. I had no idea. I felt bad.”

27. The number of patients for whom Dr. Breitung had maintained “medicine boxes,” in March of 2011, was approximately 10 and was a small minority of patients for whom she prescribed controlled drugs.

28. Immediately following the DEA’s advisement, Dr. Breitung, as instructed by the DEA, returned those drugs to the patients who owned them and, as to those patients whom Dr. Breitung could not immediately contact, the DEA confiscated their drugs. The amount of confiscated drugs was a very small number.

29. In accordance with the DEA’s advice, Dr. Breitung immediately ceased dispensing, and will no longer dispense, Class II and Class III controlled drugs to patients for whom she had prescribed those drugs, which prescriptions the pharmacies had filled and had delivered, with the patient’s permission, to the doctor’s office.

30. Dr. Breitung testified that she believed her “medicine box” arrangement with patients and the dispensing pharmacies was legal, because a clinic in town was dispensing controlled drugs to its patients. Also, Dr. Breitung believed that the “medicine box” arrangement, which included both controlled and non-controlled drugs, helped her patients maintain organization and control of their medications. Those medications were kept in separately identified containers, by patient

names, as dispensed by the pharmacies. When the patients came into the office for their medicine, the office assistant would put them in a smaller 7-day pill box for the patient.

31. No pharmacy had ever advised Dr. Breitung that her practice with respect to the “medicine boxes” was not legal.

32. Dr. Breitung also believed that the “medicine box” arrangement afforded financial relief to patients because there would be fewer insurance “copays” for the patient to pay if a monthly prescription were written instead of four weekly prescriptions.

33. In Las Vegas, there are only two other physicians, besides Dr. Breitung, who prescribe Suboxone, and some physicians are reluctant to take pain patients.

34. If Dr. Breitung were to be prohibited from prescribing Class II and Class III controlled drugs, a lot of her patients would be adversely affected, possibly a third. Dr. Breitung might be unable to locate other treating physicians for them. Those patients might relapse, suffer withdrawal or turn to street drugs, such as intravenous heroin.

35. Regarding the prescriptions for patients #4 and #5, Dr. Breitung acknowledges that she erred in failing to write on the prescriptions “PRN pain.” She attributes this error to forgetfulness on her part, because she definitely intended the prescriptions to also be for pain. On such prescriptions for a handful of other patients, she had correctly written the prescriptions, but in these two instances, she had forgotten to write them correctly.

36. As to those instances of forgetting to write “PRN pain,” Dr. Breitung acknowledges that it was a mistake.

37. Dr. Breitung has since devised a written contract, exhibit A, entitled “contract for patient on chronic opiates,” which she uses with her patients who are prescribed opiate drugs.

38. Dr. Breitung testified, with respect to her behavior, that she never had any intention of deceiving the public or of hiding anything from either the public or her patients.

39. DEA investigator Rodriguez testified that Dr. Breitung is not authorized by the DEA to prescribe methadone for addiction. Only practitioners in a narcotic treatment program may prescribe methadone for addiction.

40. In investigator Rodriguez' opinion, Dr. Breitung violated the law by prescribing methadone for addiction.

41. In investigator Rodriguez' opinion, Dr. Breitung's "medicine box" arrangement was not legal, because that conduct was outside the legal system of distribution. "Dr. Breitung is a DEA-registered practitioner. She has to remain within the system of distribution, the legal, legitimate system of distribution. The only way for us to verify what she acquires is through legitimate means, which is via an order form or an invoice, drugs that are supplied to her from another DEA registrant.... So there was no way for us to track what she had actually acquired."

42. Regarding a hypothetical question, in investigator Rodriguez' opinion, it is not legal for a patient to have medications delivered to his or her doctor's office for the patient later to pick up in an unopened condition.

43. Once Dr. Breitung was advised that her conduct may be in violation of the DEA rules, Dr. Breitung stopped the practices. Dr. Breitung did not intend to violate the DEA rules.

44. Dr. Breitung did not otherwise appear to be engaged in inappropriate and injudicious prescribing from a strictly clinical point of view.

#### CONCLUSION OF LAW

Insufficient evidence has been presented to warrant disciplinary action against Dr. Breitung. However, the evidence is sufficient to warrant issuance of an advisory letter, as stated

in the Order, advising and cautioning Dr. Breitung to follow strictly the requirements of law, state and federal, that appertain to her practice of medicine.

ORDER

By this Order, Dr. Breitung is issued an advisory letter advising and cautioning Dr. Breitung that she must at all times strictly adhere to the requirements of law that pertain to her practice of medicine, including, but not limited to, the State and Federal DEA and controlled substances laws.

RIGHT TO JUDICIAL REVIEW

Dr. Breitung may seek judicial review of this Decision and Order pursuant to NMSA 1978, § 61-1-17 and NMSA 1978, § 39-3-1.1. The time within which to do so is thirty days from the date of filing of the Board's Decision and Order.



STEVEN WEINER, M.D.  
Chairman  
New Mexico Medical Board

Date: 11/9/2012

CERTIFICATE OF SERVICE


I hereby certify that a true copy of the Decision and Order was served on counsel of record, this 9<sup>th</sup> day of November, 2012:

Via Certified Mail:

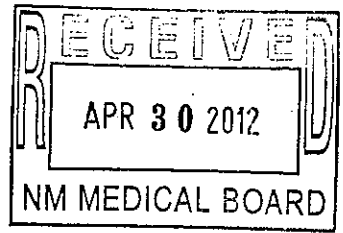
Jasmin U. Breitung, M.D.  
c/o Nancy Ann Richards, Esq.  
PO Box 1888  
Las Vegas, New Mexico 87701

Via Hand Delivery:

Daniel Rubin, Board Prosecutor  
NM Medical Board  
2055 S. Pacheco Building 400  
Santa Fe, New Mexico 87505

  
\_\_\_\_\_  
(signed)





BEFORE THE NEW MEXICO MEDICAL BOARD

IN THE MATTER OF )
JASMIN U. BREITUNG, MD )
License No. 2005-0825 )
Respondent. )

No. 2012-014

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 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 §61-1-1 et seq. NMSA 1978 and §61-6-1 NMSA 1978 et seq.

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

A. At various times during 2009, 2010 and 2011, Respondent wrote prescriptions for controlled substances on a monthly basis for several patients and took possession of some portion of the prescribed medications and subsequently re-dispensed them to those patients.

This allegation, if proven, would be a violation of NMSA 1978 §61-6-15(D) (26), injudicious prescribing,

B. Commencing in February 2008, Respondent began prescribing methadone to a patient for opiod dependency. Respondent was not certified by the U.S.D.E.A. to prescribe for opiod dependency..

This allegation, if proven, would be a violation of NMSA 1978 §61-6-15(D) (26),

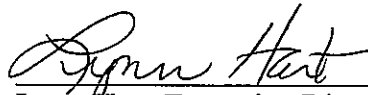
injudicious prescribing.

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 30<sup>m</sup> day of April, 2012.

NEW MEXICO MEDICAL BOARD



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