BEFORE THE NEW MEXICO MEDICAL BOARD

IN THE MATTER OF
KENNETH BULL, M.D.
License No. 73099
Respondent.

No. 2014- 001

ORDER OF THE BOARD DENYING RESPONDENT DR. KENNETH BULL'S EMERGENCY MOTION TO STAY MEDICAL BOARD'S ORDER OF JULY 1, 2014 AND RENEWED MOTION TO REOPEN CASE TO RECEIVE ADDITIONAL EVIDENCE

On July 10, 2014, a quorum of the New Mexico Medical Board ("Board"), having reviewed Respondent Dr. Kenneth Bull's Respondent Dr. Kenneth Bull's Emergency Motion To Stay Medical Board's Order Of July 1, 2014 And Renewed Motion To Reopen Case To Receive Additional Evidence and Prosecution Response to Motion, unanimously voted to deny the motion to stay and the motion to reopen.

Therefore the motions arehereby **denied.**

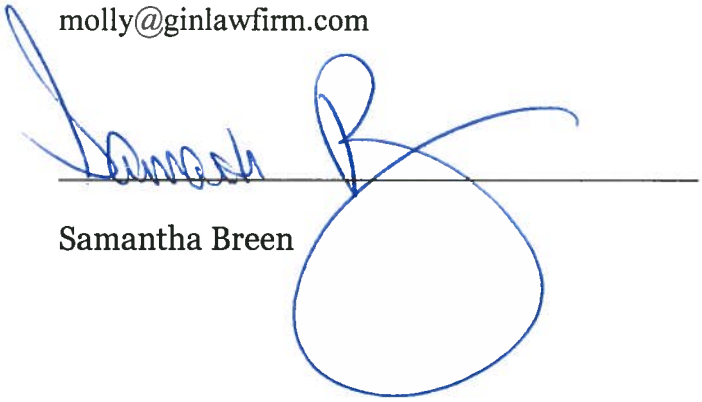
IT IS SO ORDERED.

Steve Weiner, M.D.
Chair New Mexico Medical Board

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the Order of the Board Denying Respondent Dr. Kenneth Bull's Emergency Motion to Stay Medical Board's Order of July 1, 2014 and Renewed Motion to Reopen Case to Receive Additional Evidence was sent electronic mail to Respondent's Council on July 10, 2014.

molly@ginlawfirm.com



Samantha Breen

BEFORE THE NEW MEXICO MEDICAL BOARD

IN THE MATTER OF
KENNETH BULL, M.D.
License No. 73-99,

Respondent.

No. 2014-001

ORDER OF THE BOARD
DENYING RESPONDENT KENNETH BULL, M.D.'s OPPOSED MOTION TO REOPEN CASE TO RECEIVE ADDITIONAL EVIDENCE PURSUANT TO NMSA 1978 § 61-1-21

On June 26, 2014, a quorum of the New Mexico Medical Board ("Board"), having reviewed Respondent Dr. Kenneth Bull's Opposed Motion To Reopen Case To Receive Additional Evidence Pursuant To NMSA 1978 § 61-1-21 and the Prosecution Response to Motion to Reopen, unanimously voted to deny the request to reopen.

Therefore the request to reopen the case is hereby **DENIED.**

IT IS SO ORDERED.

Steve Weiner, M.D.
Chair New Mexico Medical Board

BEFORE THE NEW MEXICO MEDICAL BOARD

IN THE MATTER OF
KENNETH BULL, M.D.
License No. 73-99,

Respondent.

No. 2014-001

DECISION AND ORDER OF THE BOARD

On June 26, 2014, a quorum of the New Mexico Medical Board ("Board"), having familiarized themselves with the transcript of the proceedings, the exhibits admitted into the record and the Hearing Officer's Report submitted June 6, 2014, voted unanimously to adopt the Hearing Officer's Report with one amendment to Finding of Fact number 38, page 9, as follows:

> 38. The [Board] finds there is sufficient and clear and convincing evidence to confirm #1, 2, and 4 of the CPEP report. CPEP finding number 3 is not sustained.

The Hearing Officer's Report, with the amendment, is incorporated by reference herein and adopted with the amendment noted above as the Board's Finding of Fact and Conclusions of Law.

ORDER

1. Due to the deficiencies noted in the CPEP report and the finding of manifest incompetence to practice medicine, effective immediately the license of Dr. Bull is suspended indefinitely, until he successfully completes a Board approved retraining in a residency or residency–like program to address the deficiencies noted in the CPEP report.
2. Once Dr. Bull has successfully completed, as determined by the Board, the retraining in a residency or residency-like program, Dr. Bull may petition the Board for reinstatement of his medical license.

3. Dr. Bull has thirty (30) days to refer his patients for appropriate care; however, during the thirty (30) day period, and thereafter, he is prohibited from practicing medicine, including, prescribing, diagnosing and treatment or directing the prescribing, diagnosing and treatment of any patient or person.
4. Dr. Bull shall pay costs for the hearing in the amount of $5,685.68.

Therefore, it is hereby **ORDERED** that effective immediately Respondent's license to practice medicine is **SUSPENDED** in accordance with the provisions noted above.

RIGHT TO JUDICIAL REVIEW

Respondent may seek judicial review of the Decision and Order pursuant to NMSA 1978, Sections 61-1-17 and 39-3-1.1 within thirty days from the date of filing of the Board's Decision and Order.

Steve Weiner, M.D.
Chair New Mexico Medical Board

BEFORE THE NEW MEXICO MEDICAL BOARD

IN THE MATTER OF

KENNETH BULL,
Respondent.

Case No. 2014-001

HEARING OFFICER'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter came before the State of New Mexico Medical Board (the "Board") on March 31, April 2 and April 10, 2014 at the New Mexico Medical Society in Albuquerque, New Mexico for a Disciplinary Hearing before Hearing Officer David K. Thomson, Esq., who conducted the hearing on behalf of the Board. The within findings and conclusions shall constitute the Hearing Officer's Report and Recommendation.

The case was prosecuted for the Board by Daniel Rubin, Esq. The Respondent, Dr. Kenneth Bull, M.D. was represented by Molly Schmidt-Nowara of the law firm Garcia Ives Nowara.

The Hearing Officer heard from four witnesses and admitted eight exhibits into evidence. The Hearing Officer did not admit Exhibit 6 which was proffered by the prosecution, but is made part of the record. [4/2/14 Tr. At 315-316]

FINDINGS OF FACT

A. Proceedings prior to the assessment by CPEP:

1. Respondent, Dr. Kenneth Bull is a highly trained and experienced psychiatrist. Dr. Bull has been in practice in psychiatry since he completed his residency in 1973. [4/2/14 Tr. at 329]. Dr. Bull graduated from the University of British Columbia Medical School. [4/2/14 Tr. at 328]. Dr. Bull then moved to the United States, where he did post-graduate work in psychology at Cornell University and the University of Wisconsin. [4/2/14 Tr. at 329]. Dr. Bull then did his medical internship at the Madison General Hospital in Madison, Wisconsin and residency at Stanford University. *Id.* Dr. Bull also had a faculty position at the University of Connecticut in which he oversaw the inpatient psychiatric unit. Dr. Bull then came to the University of New Mexico as a faculty member in 1973 where he ran the psychiatric inpatient units at the University of New Mexico for approximately six months and then went into private practice, where he has remained since. *Id.*

2. Dr. Bull maintains a general psychiatry practice. [4/2/14 Tr. at 327]. In his time of private practice, Dr. Bull has been the chief of staff or chief of the psychiatric section at almost all the psychiatric facilities in Albuquerque. [4/2/14 Tr. at 329].

3. Dr. Bull's practice includes the treatment of patients with the entire range of psychiatric illnesses: affective disorders, psychotic disorders, anxiety disorders, attention deficit disorder, and situational problems. [4/2/14 Tr. at 328]. Dr. Bull has hundreds of patients as admitted by Dr. Bull. The Hearing Officer finds Dr. Bull's caseload is a contributing factor to the adverse findings by CPEP and this report.

4. Dr. Bull has been on a probationary status with the Board since May, 2011. This followed the Board summarily suspending his license and then reinstating it

under certain conditions after an evidentiary hearing was conducted. [4/2/14 Tr. at 399]. *See* also NCA Exhibit 1

5. In an Amended Decision and Order dated August 15, 2011 ("Prior Order"), the Board previously disciplined Respondent. *Prosecution Exhibit 4.* The Board found, *inter alia,* that Respondent injudiciously prescribed to five different patients, and further found with respect to several of these patients that Respondent either violated the Board's regulations at NMAC 16.10.15, entitled "Management of Chronic Pain with Controlled Substances," or failed to maintain timely, accurate, legible and complete medical records, or both. *Prosecution Exhibit 4, p. 13, ¶¶ 96-98.*

6. The Prior Order placed Respondent on probation. *Prosecution Exhibit 4, p. 14.* It prohibited Respondent from prescribing any opioids and from treating patients with chronic pain. *Prosecution Exhibit 4, p. 14,* ¶¶3-4. It further required Respondent to "alter his medical record-keeping practice in accordance with accepted practices..." *Prosecution Exhibit 4, p. 14,* ¶5. The Hearing Officer finds Dr. Bull has not altered his record keeping practices nor has he paid due care to the restrictions imposed on the types of drugs, and finds those allegations sustained by clear and convincing evidence.

7. This Amended Decision and Order raises many of the same concerns reviewed at the case at bar. *See* Exh. 4, ¶¶ 3, 4, 6, 12, 14, 15, 23.

8. The Board issued the Notice of Contemplated Action (NCA) in this matter against Dr. Bull on January 13, 2014. *See* Exhibit 1. The NCA alleges that Dr. Bull "currently lacks the skills necessary to practice medicine" and is manifestly

incompetent to practice medicine in violation of the Medical Practice Act, NMRA 1978, § 61-6-15(D)(13). *Id.* Dr. Bull timely gave notice of his appeal of the NCA.

9. The NCA is based on a report by the Colorado-based assessment program, the Center for Personalized Education for Physicians, or CPEP. *See* Exhibits 1 and 3. In the fall of 2013, Dr. Bull, through counsel, was approached by the Board's prosecutor, who indicated that the Board had received some complaints about Dr. Bull. [4/2/14 Tr. at 310-311]. The prosecutor indicated that Dr. Bull could make one of two choices: undergo an assessment at CPEP or be subject to an NCA. [4/2/14 Tr. at 339].

10. Respondent voluntarily signed an Assessment Services Participation Agreement with CPEP on September 7, 20133 ("CPEP Agreement"). *Prosecution Exhibit 5.*

11. The CPEP Agreement included a provision that "any records, reports, data and other information generated during the Assessment Process belong solely to CPEP and that [Respondent] has no rights of ownership in CPEP file materials and is not entitled to review the contents of the file. *Prosecution Exhibit 6,* ¶2.6(d).

12. Dr. Bull contacted CPEP and enrolled to undergo an assessment. [4/2/14 Tr. at 399]. The assessment was performed by three Colorado board-certified psychiatrists who are contracted with by CPEP to perform assessments. [3/31/14 Tr. at 61-62].

13. Dr. Bull was asked to participate in two 30-minute simulated patient encounters. [3/31/14 Tr. at 123-124]. The patients were played by actors.

[3/1/14 Tr. at 127]. The simulated patient encounters were supposed to simulate typical intake interviews. [3/31 Tr. at 123].

14. The final CPEP report (Exhibit 3), which is unsworn, was not written by the consultants, and was authored by an Associate Medical Director at CPEP who is not a psychiatrist. [3/31/14 Tr. at 108]. The report is based on the consultants writing reports after meeting with Dr. Bull and reviewing their allotted medical records and forwarding those reports to the Associate Medical Director. [3/31/14 Tr. at 107].

15. None of the consultants who assessed Dr. Bull observed him in his practice or spoke to his patients.

16. The CPEP report does not opine as to whether Dr. Bull is manifestly incompetent to practice medicine, but does recommend that Dr. Bull "retrain in a residency." *See* Exhibit 3 at 3.

B. Prehearing procedures pursuant to the Uniform Licensing Act ("ULA").

17. The Board filed and served a Notice of Contemplated Action ("NCA") on or about January 13, 2014, against the Respondent. *Prosecution Exhibit 1.*

18. The NCA alleged a violation of Section 61-6-15(D)(13) of the Medical Practice Act, manifest incapacity or incompetence to practice medicine. *Prosecution Exhibit 1.*

19. By letter from Respondent's counsel dated January 27, 2014, Respondent timely requested a hearing on the matters alleged in the NCA, and demanded discovery from the prosecution.

20. The Prosecution timely disclosed all witnesses and made all exhibits available by notice dated February 5, 2014.

21. The Board timely notified the parties of its appointment of David K. Thomson, Esq. as hearing officer and of a hearing to begin on March 31, 2014, by notice dated February 7, 2014.

22. Respondent filed and served a witness list on or about February 28, 2014.

23. At the request of Respondent's counsel, the Board filed an Amended Notice of Hearing on March 25, 2014, amending the starting time from 9:00 a.m. to 11:00 a.m.

24. The hearing was held in Albuquerque, New Mexico beginning on March 31, 2014, and, by agreement of the parties, continued on April 2 and April 10, 2014.

C. Findings regarding the credibility of CPEP's assessment procedure:

25. CPEP is a nonprofit corporation that provides competence assessment services for health care professionals. *Testimony of Dr. Elizabeth Grace.* [3/31/14 Tr. at 51].

26. CPEP's reports are not prepared in contemplation of litigation, but rather, a record of CPEP's regular business activities. [3/31/14 Tr. at ¶¶95-96].

27. When assessing a physician for competency within a specialty, CPEP relies upon the opinions of three "Consultants" that are Board-certified within the specialty, are free from disciplinary history, and who benefit from favorable peer recommendations. [3/31/14 Tr. at 62].

28. The associate medical director solicits medical charts from the subject from a randomly selected time period, with the specific charts selected within that random

time period to provide a broad variety of cases. [3/31/14 Tr. at 61]. The associate medical director also explains in writing to each Consultant the content area to be assessed, and the pertinent background information for the subject's professional practice. [3/31/14 Tr. at 66].

29. Each Consultant reviews a third of the selected charts before separately interviewing the subject. [3/31/14 Tr. at 66].

30. The Consultants observe the simulated clinical interviews using experienced actors that simulate a physician-patient encounter. [3/31/14 Tr. at ¶¶65-66].

31. To insure accuracy of the Consultant's initial reports, the associate medical director is present at each Consultant's interview of the subject. [3/31/14 Tr. at ¶¶69-70 and 4/10/14 Tr. at 498].

32. The associate medical director then prepares a draft report that synthesizes the Consultants' reports. [3/31/14 Tr. at ¶¶69-70].

33. The final report reflects a three-way consensus between the associate medical director, a second CPEP physician, and CPEP's chief executive officer. [3/31/14 Tr. at ¶¶71-72].

34. CPEP's Assessment synthesizes the separate recordings of events and opinions, made at or near the time by, or from information transmitted by, the Consultants and the associate medical director, and was maintained by CPEP in the course of its regularly conducted activity and is a regular practice of CPEP's assessment activity, as testified to by CPEP's Medical Director, Dr. Elizabeth Grace, a witness qualified to testify to these matters.

35. The CPEP Assessment was designed to evaluate Respondent's practice of outpatient adolescent and adult psychiatry, including the prescribing of controlled substances within a psychiatry practice. *Prosecution Exhibit 3 at 2.*

36. The CPEP Assessment is a more robust version of traditional peer review insofar as it relies upon review of the subject's medical charts, but additionally includes multiple interviews of the subject, and simulated patient-physician interactions. *Prosecution Exhibits 3 and 4.*

37. Findings regarding Respondent's current competence to practice psychiatry based on the CPEP Report:

In summary, the CPEP adverse findings against Dr. Bull that are the subject matter of this report are:

1. During this Assessment, Dr. Bull demonstrated medical knowledge of outpatient psychiatry that was not satisfactory.

2. His clinical judgment and reasoning were not adequate, particularly his prescribing of controlled substances within the context of a psychiatric practice.

3. Dr. Bull's communication skills were poor with Simulated Patients (SPs).

4. His documentation in the patient charts submitted for review was not adequate; his documentation of the SP encounters was marginally adequate with the need for improvement..

38. The Hearing Officer finds there is sufficient and clear and convincing evidence to confirm #2 and 4 of the CPEP report. Similarly, 1 and 3 are not sustained.

39. Respondent last received formal education in psychiatry during a residence in 1973. *Prosecution Exhibit 3 at 16.*

40. The practice of psychiatry has radically changed in the past few decades, from an emphasis on psychoanalysis to an emphasis on prescribing [4/2/14 Tr. at 143; 4/10/14 Tr. at 421]. This is a significant finding by this Hearing Officer. Dr. Bull clearly practices "prescribing" psychiatry in accordance with paragraph 37 above.. If in the Board's expert opinion, the standards for "prescribing" psychiatry are different from psychoanalysis, in particular in the area of regular record keeping and counseling, these findings should be revisited.

41. Respondent's patients include patients that "no one else would take". [4/10/14 Tr. at 25]. To address the addiction and diversion issues in his patients, he relies upon cheek swabs instead of urine analysis. [4/10-14 Tr. at 436]. Respondent would "probably" agree that urine should be seen as the specimen of choice for drug screening, but asserted that urine drug screening is not the community standard of care in Albuquerque. [4/10/14 Tr. at ¶¶443-444]. He was also unaware of any differences in detection times between urine and oral fluid. [4/10/14 Tr. at 453]. Nor did he know what specific swab test he was relying upon, or the FDA's determination as to its efficacy, which is available from the FDA website. [4/10/14 Tr. at ¶¶455-458].

42. During his assessment, Respondent demonstrated clinical judgment and reasoning that were not adequate, particularly his prescribing of controlled substances within the context of psychiatric practice. *Prosecution Exhibit 3 at 8.*

43. Respondent's high daily patient load, seeing 25 to 40 patients daily, would be difficult to maintain while providing quality psychiatric care. *Prosecution Exhibit 3 at 10.*

44. During his assessment, Respondent demonstrated poor physician-patient communication skills. *Prosecution Exhibit 3 at 13.* The Hearing Officer does not find this accusation was reliable enough to warrant disciplinary action.

45. The concerns expressed in the CPEP Assessment regarding Respondent's prescribing practices are similar to the prescribing deficiencies for which Respondent was disciplined in the Prior Order. *Prosecution Exhibits 3 and 4.* This continuing pattern appears to reflect Respondent's unwillingness to accept criticism from his peers – either by his peers on the Board, or peers from CPEP. Respondent categorically denied the validity of almost every criticism in the CPEP Assessment as "completely wrong," and he could "explain away" all their criticisms. [4/10/14 Tr. at ¶¶471-477]. However, after Respondent became aware of the appearance of such unwillingness, he changed his testimony on questioning by the Hearing Officer to acknowledge some validity of CPEP's criticisms. [4/10/14 Tr. at 474].

46. Respondent cannot currently practice outpatient psychiatry safely regarding his prescription practices, but instead requires remedial measures through a residence or a mentorship. *Prosecution Exhibit 3 at 3.*

47. Three board-certified psychiatrists from Colorado (referred to by CPEP as "Consultants") unanimously agreed on this point. CPEP recommended a residency as a means to address his deficiencies. CPEP left the particulars of such a residence to the discretion of the Board. To the Hearing Officer, this was an unfortunately vague recommendation. The Hearing Officer finds Respondent to be a competent physician deficient in the critical categories of prescriptions and record keeping.

48. The Board should be able to rely upon an assessment by CPEP as it would rely upon a report by an examining committee pursuant to 61-7-7(B) of the Impaired Health Care Provider Act, or upon any medical records generated by competent health care practitioners. Neither Respondent nor his expert can credibly reargue, after "failing" the test (as CPEP describes it), what Respondent knows or doesn't know, or re-argue the substance of Respondent's answers to the Consultants' questions and the medical charts they reviewed.

E. CPEP: Treatment and Prescribing of Drugs

49. Dr. Dempsey also dismissed CPEP's concern with Dr. Bull's apparent failure to list the lowering of seizure threshold as a potential complication of SSRIs as not clinically relevant. [3/31/14 Tr. at 158].

50. Dr. Dempsey also testified to several examples where the consultant's view differed from Dr. Bull's view of treatment, but where those differences were argued as reasonable and not illustrative of incompetence on Dr. Bull's part. [3/31/14 Tr. at 150]. Dr. Dempsey explained that not infrequently, he and other practitioners prescribe doses of medications that may be higher or lower than the Food and Drug

Administration's recommended dose, depending on the circumstances of the patient and clinical experience, so CPEP's concerns with Dr. Bull's perceived high dosing was not, in itself, evidence of incompetence. [3/31/14 Tr. at 164]. Regardless, there was not sufficient evidence presented to rebut the Board's position that Dr. Bull did not deviate from the normal standard of practice dosage. He clearly did and this deviation shows the pattern and practice for which he was disciplined has not been remedied. For this reason, the Hearing Officer sustains the CPEP findings and suggests training, constraints on or strict supervision of his prescribing practice.

51. For example, Dr. Dempsey testified that, contrary to the implications of the CPEP report, Dr. Bull's assertion that lithium could be used during pregnancy was clinically reasonable under the right circumstances, such as where there is a concern that a patient might become psychotic or suicidal. [3/31/14 Tr. at 162]. This is a clear example of Dr. Bull's personal belief that dosage guidelines can be departed from for extenuating circumstances. Those circumstances, however, only come at the time of hearing. It is clear to this Hearing Officer that Dr. Bull does not believe he is obligated to follow strict dosage protocols.

52. Dr. Bull testified that he understood full well that lithium should only be used with pregnancy under necessary circumstances. [4/2/14 Tr. at 350].

53. Both Dr. Dempsey and Dr. Bull also addressed CPEP's expressed concern over Dr. Bull's dosing of Lamictal. Lamictal can cause a potentially fatal rash, regardless of the dosage. [4/2/14 Tr. at 252-253]. CPEPs concern with regard to Lamictal was not well-articulated in the report; it merely stated that Dr. Bull's

dosing of Lamictal was "incorrect" without explaining why the consultant (or author of the report) believed it to be. *See* Exhibit 3 at 6.

54. Moreover, throughout the report, CPEP asserted that Dr. Bull's "starting dose" of medication, such as Klonopin, was "too high" without explaining what the proper dose would be for that patient. *See e.g.* Exhibit 3 at 5. Similarly, CPEP complained that Dr. Bull seemed unaware of the risk of iatrogenic addiction. The Hearing Officer finds that if Dr. Bull was not unaware, he was at the least unconcerned as it is clear he has his own practiced views of prescribing drugs. Unfortunately they deviate from the standards.

55. Dr. Dempsey also took Issue with CPEP's criticism that Dr. Bull did not formally identify diagnoses in the hypothetical patient profiles given to him until "pressed" to do so. *See* Exhibit 3 at 8. Dr. Dempsey explained that he, Dr. Dempsey, had never had problems communicating clinically with Dr. Bull. [4/22/14 Tr. at 195].

56. Dr. Dempsey's criticism of CPEP's assessment of Respondent's prescribing practices lacks credibility. Dr. Dempsey only examined one or two medical charts of the twenty-four examined by CPEP's consultants as a basis for disagreeing with the Consultant's criticisms, although the charts were available for his review. [4/2/14 Tr. at ¶¶223-224]; *prosecution Exhibit 3 at 28-31.* During cross-examination, he could not recall any of the particulars of these one or two charts, and was unable to identify them from the appendix in the CPEP Assessment. *Id.*

57. CPEP's criticisms of Dr. Bull's medical records were not controverted by Dr. Dempsey and Dr. Bull's testimony. Dr. Dempsey did a review of a few of the medical

records Dr. Bull submitted to CPEP and found that the records covered what he termed to be "all the essential things: detailed medication history, family history, marital history, work history, symptoms[.]" [4/2/14 Tr. at 214]. To the Hearing Officer this is the most objectionable of the issues. It was not controverted that Dr. Bull "took all comers" and had an unusually large practice. It appears that two casualties of this are receiving therapy and counseling and record keeping. The record keeping – though a concern, is not grossly negligent, does not appear to threaten the health and safety of his patients and could be remedied by training and supervision.

58. Considering all the evidence presented by each party, CPEP's Assessment is a credible assessment of Respondent's knowledge, reasoning and skills within the context of outpatient psychiatric practice.

F. Criticisms of The CPEP Report

59. Dr. Bull called Dr. Gerald Dempsey as an expert witness. Dr. Dempsey is a highly skilled and experienced psychiatrist who has practiced in Albuquerque for almost 40 years. *See* Exhibit A, Dr. Dempsey's CV. Dr. Dempsey considers Dr. Bull an acquaintance, but not a personal friend. [3/31/14 Tr. at 147]. Dr. Dempsey practiced along side Dr. Bull from 1978 until approximately 2002. [3/31/14 Tr. at 142].

60. Dr. Bull also testified on his own behalf. *See* testimony from April 2, 2014 and April 10, 2014.

61. Each of Dr. Dempsey's criticisms of the CPEP report can be sorted into one of three categories. First, the report includes criticisms that Dr. Dempsey classified at

trial that are immaterial to assess whether Dr. Bull is competent to practice medicine. [3/31/14 Tr. at 156-157]. Second, the author of the report makes many bald assertions that Dr. Bull's approach to an aspect of practice (e.g., medication dosages, treatment modalities, etc.) is incorrect without explaining what is purportedly incorrect about Dr. Bull's approach and what the correct approach would be. [3/31/14 Tr. at 157]. Third, there are criticisms contained in the report on matters over which reasonable psychiatrists could reasonably disagree. [3/31/14 Tr. at 159-161].

62. As an example, Dr. Dempsey testified that Dr. Bull, contrary to the report's assertion, does use the Diagnostic and Statistical Manual (DSM) nomenclature. [3/31/14 Tr. at 157].

63. Dr. Dempsey also testified that CPEP's concern over Dr. Bull placing some anxiety diagnoses on Axis II was immaterial, given that in the old DSM-IV nomenclature, there was significant overlap between personality disorders featuring anxiety (Axis II) and anxiety-related disorders (Axis I). [3/31/14 Tr. at 160].

64. Moreover, Dr. Dempsey testified that Dr. Bull's use of the DSM nomenclature appears to be more consistent with the American Psychiatric Association's current view of the DSM nomenclature, given its recent repudiation of the axis model in the DSM-V (the most recent version of the DSM). [3/31/14 Tr. at 157].

65. The Hearing Officer finds no fault with the mode or manner of the CPEP reports or its findings except for those clearly not sustained by this Hearing Officer

CONCLUSIONS OF LAW

1. The Board is authority to conduct this hearing. *See* NMAG 16-10-6-3 (promulgated pursuant to and in accordance with the Medical Practice Act and the Uniform Licensing Act.

2. The standard of proof to be applied by the Board is by a preponderance of the evidence. NMSA, 1978 §61-1-13; *Foster v. Board of Dentistry of State of N.M.,* 103 N.M. 776, 777-78, 714 P.2d 580, 581-82 (1986).

3. A professional license is a constitutionally protected property right, and professional licensees facing licensing revocation or suspension must be afforded due process. *Mills v. New Mexico State Bd. of Psychologist Examiners,* 1997 NMSC 28, P14, 123 N.M. 421, 426, 941 P.2d 502, 507.

4. Respondent violated the Prior Order through his substandard medical documentation.

5. Although hearsay may be admissible in administrative hearings, it must be a kind commonly relied upon by reasonably prudent men in the conduct of serious affairs. *Willoughby v. Bd. of Veterinary Examiners,* 82 N.M. 443, 444 (N.M. 1971).

6. The CPEP report may be relied upon by the Board that Dr. Bull is incompetent to practice medicine in a trustworthy and reliable manner, as required under NMRA 1978, § 61-6-15(D)(13).

7. Pursuant to Board Rule at NMAC 16.10.6.28, when the Board has reason to believe that Respondent is not competent to practice, it may require Respondent to take a competency examination or to be evaluated for competence by any means that has been endorsed or approved by the Board.

8. The CPEP Assessment satisfies the requirements of NMAC 16.10.6.28.

9. A preponderance of the evidence in the record supports a violation of Section 61-1-15(D)(13) of the Medical Practice Act, for manifest incapacity or incompetence to practice medicine, as it relates explicitly to findings of Fact #37 above.

David K. Thomson, Esq.
Hearing Officer
New Mexico Medical Board

This report was served on all interested parties by and through counsel this 6th day of June, 2014.

New Mexico Medical Board

BEFORE THE NEW MEXICO MEDICAL BOARD

IN THE MATTER OF KENNETH BULL, M.D.	)	
License No. 73-99	)	**No. 2014-001**
Respondent.	)	

NOTICE OF CONTEMPLATED ACTION

YOU ARE HEREBY NOTIFIED that pursuant to provisions of Section 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. You are 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. You voluntarily submitted to an assessment by the Center for Personalized Education for Physicians ("CPEP") located in Denver, Colorado, on or about November 4-5, 2013.

B. As stated in a report by CPEP dated January 10, 2014, based upon their assessment of you, you currently lack the skills necessary to practice medicine.

3. The above allegations in 2A-B, if proven, would violate Section 61-6-15(D)(13), manifest incapacity or incompetence to practice as a licensee.

4. Please take notice that pursuant to Section 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.

5. Pursuant to Section 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.

6. The issuance of this Notice of Contemplated Action is not a disciplinary event reportable to any data bank but is a public document open to public inspection.

7. In the event that the Board takes a final action against you as specified in Section 61-1-3 of the ULA, you shall bear all costs of disciplinary proceedings pursuant to Section 61-1-4(G) of the ULA unless excused by the Board.

Dated this 13th day of January, 2014.

NEW MEXICO MEDICAL BOARD

Lynn Hart

Lynn Hart, Executive Director
NM Medical Board
2055 S. Pacheco, #400
Santa Fe, New Mexico 87505

(505) 476-7220

BEFORE THE NEW MEXICO MEDICAL BOARD

IN THE MATTER OF

KENNETH BULL, M.D. No. 2010-026

Respondent.

AMENDED DECISION AND ORDER

The Board amends its earlier-issued Decision and Order to make a minor clarification, which Dr. Bull has requested, to paragraph 3 of its Order. In all other respects, its Decision and Order as set forth below remains unchanged from the original. The issuance of this Amended Decision and Order does not serve to extend the deadline for seeking judicial review, which deadline has expired.

FINDINGS OF FACT

1. Respondent Dr. Kenneth Bull is a medical doctor who held a New Mexico medical license from 1973 until October 1, 2010, when the Board entered an order summarily suspending his license. Dr. Bull timely appealed the Board's suspension and Notice of Contemplated Action (NCA). The NCA charges, with respect to five patients, injudicious prescribing and improper management of medical records, not conforming to the Board's rules and standards.

2. Dr. Bull completed his medical training at the University of British Columbia. He completed his residency at Stanford University in Paolo Alto, California and has held academic positions at the University of Connecticut and University of New Mexico. Dr. Bull also held the position of chief of the psychiatric section at almost every Albuquerque hospital, including Presbyterian hospital on and off for twenty years.

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Bull was engaged in private practice treating primarily psychiatric patients. Dr. Bull was president of the New Mexico Psychiatric Association and a fellow of the American Psychiatric Association.

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Carl Ray treated Patient Number One after Dr. Bull treated her. Dr. Ray testified that Patient Number One suffered from serious psychiatric illnesses.

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15. Dr. Bull explained in his testimony that he treated Patient Number One primarily for her psychiatric conditions, including anxiety and bipolar disorder. Dr. Bull explained that he saw the patient's past alcohol use as "partly a response—a way of self-medication for her bipolar disease."

16. Dr. Komaromy admitted that she was speculating about Patient No. One's alcohol addiction based on the inadequate notes from Dr. Bull.

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24. Dr. Bull's patients came to see Dr. Sutter with a full spectrum of psychiatric illnesses. They were on a curious combination of medications and in higher dosages than approved by the FDA.

25. Regarding Patient Number Two, part of her treatment by Dr. Sutter was to suggest that she significantly cut back on the opioid pain medication. She was also on high dosages

of dextroamphetamine, and he suggested that it be cut by 15%. The patient was also on seemingly high dosages of benzodiazepine.

26. The patient also had been on hydrocodone and oxycodone. The amount of hydrocodone (40 mg) was not necessarily high, but adding the oxycodone (50 mg) could potentially kill her liver.

27. Dr. Sutter changed the medications for this patient and recommended a transfer to suboxone, which is an opioid replacement treatment.

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30. Dr. Sutter does not believe that the drugs that Dr. Bull prescribed and the quantities of those drugs were appropriate.

31. Generally, a doctor would not want patients to remain on narcotic pain medications because they are addictive and lose effectiveness.

32. Based on Dr. Bull's prescribing, Patient Number Two was getting in one month other drugs on top of the narcotics and amphetamines, which was a dangerous combination that could potentially kill someone.

33. Dr. Bull's medical records for Patient Number Two include five pages of medication charts with diagnoses and notes, Dr. Bull's handwritten progress notes from when he saw the patient, an extensive letter Dr. Bull wrote to Patient Number Two's school

detailing her diagnosis and progress in treatment, a symptom checklist and an extensive personal history.

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38. Dr. Bull treated Patient Number Three with buprenorphine, a synthetic opiate used for the treatment of opiate addiction, which is sold as subutex or suboxone.

39. Dr. Bull also treated Patient Number Three for chronic migraines.

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43. Dr. Bull also treated Patient Number Three for anxiety, as had Patient Number Three's primary physician.

44. Patient Number Three's wife complained to the Board but failed to tell the Board that she and her husband were separated. In her complaint, Patient Number Three's wife claimed Patient Number Three had gone into a full relapse into opiate addiction.

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46. Debbie Dieterich, the Board's investigator in this matter, acknowledged that Patient Number Three wanted his wife's complaint withdrawn.

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49. Dr. Komaromy's testimony was that Dr. Bull was overprescribing pain medication.

50. Regarding Patient Number One, Dr. Komaromy was concerned that Dr. Bull had prescribed a number of highly addictive medications in very high doses and in dangerous combination. Patient Number One had been prescribed hydrocodone and a barbiturate, which is a sedative.

51. Overall, Dr. Komaromy was concerned about the quantity and addictive potential, as well as the sedative potential, leading to a risk of overdose death when combined and in high doses.

52. Dr. Bull's records for Patient Number One are not adequate to understand why he was prescribing the treatments he was prescribing.

53. Dr. Komaromy's conclusion regarding Dr. Bull's prescribing for Patient Number

One is: "The prescribing for this patient showed a pattern of reckless and excessive overprescribing of multiple sedating and addictive medication, with generally poor documentation of any rationale for why these medications were needed."

54. In addition, the escalations in dosages and early refills were signs that the patient was likely developing addiction problems. Another problem was Dr. Bull's adding additional medications in the same class on top of already prescribed medications, without justification in the medication record.

55. Regarding Patient Number Two, Dr. Bull prescribed high dosages of hydrocodone and oxycodone, in combination with acetaminophen. The quantities prescribed far exceed acceptable limits and lead to a tremendous risk of liver toxicity.

56. Dr. Komaromy's conclusions regarding Patient Number Two are the same as for Patient Number One. Dr. Bull was prescribing multiple medications with potential for addiction and oversedating, possibly inducing overdose death, with poor documentation of the rationale. Also, other concerns are the allowance of early refills and no documentation to support adding other medications of the same class.

57. Patient Number Three had been receiving pain medication management and had been using oxycontin, percocet and methadone.

58. Dr. Bull started the patient on suboxone, a treatment for opiate addition.

59. For Patient Number Three, Dr. Bull prescribed suboxone and at the same time prescribed high dosages of benzodiazepines, which is considered a risky combination because the risk of overdose death increases.

60. In addition, Dr. Bull prescribed oxycontin, which does not make sense, because the suboxone blocks the effects of other opiates. Therefore, prescribing the two is

contraindicated from the standpoint of treating addition. Also, oxycontin should not be prescribed to a person with a history of opiate addiction.

61. Dr. Bull also prescribed for Patient Number Three multiple different benzodiazepines, which increases the risk of opiate overdose death.

62. Dr. Bull's prescribing pattern for Patient Number Three led to an increased risk of addiction and was dangerous to the patient, including risk of death.

63. Regarding Patient Number Four, the parent of this patient complained, alleging that Dr. Bull's prescribing for this patient, a son, was abusive and negligent and resulted in the patient's medication overdose in May of 2010.

64. Patient Number Four had a history of alcohol and marijuana use and had been using oxycontin and heroin.

65. Dr. Bull initiated suboxone therapy, but also prescribed benzodiazepines, which is irrational and dangerous.

66. The patient was hospitalized for overdose, but the month following, Dr. Bull resumed the same addictive medications the patient had been taking before hospitalization.

67. Benzodiazepines, in combination with opiates, has a potential for overdose and overdose death.

68. Regarding Patient Number Five, this patient died from a suspected drug overdose. A large number of bottles of benzodiazepines and opiates prescribed by Dr. Bull were found in the patient's medicine cabinet when he died.

69. On the first visit with this patient, Dr. Bull had prescribed benzodiazepines and high doses of multiple opiates.

70. Dr. Bull's behavior with respect to Patient Number Five was irresponsible and

reckless and substantially increased the patient's risk of overdose death.

71. Regarding Patient Number Five, this patient was also getting substantial amounts of opiate drugs from another doctor, which overlapped Dr. Bull's prescribing.

72. Pharmacy records for Patient Number Three show that Dr. Bull prescribed 10 milligram oxycontin on October 3, 2008; the ten pills lasted Patient Number Three for twenty days, or approximately one pill every other day. On October 22, 2008, Patient Number Three received another prescription for ten more 10 milligram pills that lasted for eight days. The patient was then prescribed just six tablets of 10 milligram oxycontin on October 30, 2008. That prescription lasted the patient for nearly one hundred days.

73. Patient Number Four saw Dr. Bull for suboxone treatment, as well as serious psychiatric illnesses including anxiety and Post-Traumatic Stress Disorder (PTSD). Dr. Bull's charts for Patient Number Four reflect his diagnoses of opiate addiction, PTSD, and OCD.

74. Patient Number Four's mother complained to the Board about Dr. Bull. Patient Number Four had a difficult relationship with his mother, in part because she behaved in an erratic manner and is a difficult person. Patient Number Four told Dr. Bull that he saw his mother try to hang herself.

75. Dr. Bull also treated Patient Number Four with benzodiazepines for his anxiety and PTSD. Dr. Komaromy admitted that there are some circumstances under which it is appropriate to prescribe both benzodiazepines and suboxone at the same time.

76. Dr. Bull was attempting to closely monitor Patient Number Four, but Patient Number Four was not entirely compliant.

77. Dr. Bull later learned that Patient Number Four was not being honest with him.

Patient Number Four was a particularly difficult patient to treat because of his noncompliance and dishonesty issues.

78. Patient Number Four was on xanax when he first saw Dr. Bull. Dr. Bull was attempting to transition Patient Number Four from xanax to klonopin because of the addictive nature of xanax. While there was some overlap of the two medications, xanax and klonopin have different indications. One is more short-acting and one is more long-acting.

79. Dr. Komaromy testified that it does not violate acceptable practice to prescribe both xanax and klonopin at the same time. Dr. Komaromy's concern was not due just to the prescribing of the two drugs but the addition of suboxone in spite of a chart note and treatment contract that benzodiazepines in combination with suboxone can cause death.

80. It is unclear from the hospital records whether Patient Number Four actually overdosed on medication or simply stopped taking medication, leading to a seizure. There is no toxicology report in the Presbyterian Kaseman medical records.

81. Patient Number Five saw Dr. Bull for the treatment of anxiety and for depression. Dr. Bull prescribed benzodiazepines for Patient Number Five's situational anxiety, as indicated in the medical charts. A month later, Patient Number Five reported feelings of social anxiety and decreased confidence, which Dr. Bull also charted. Dr. Bull also prescribed Patient Number Five pain medication, as well as an anti-inflammatory (naproxen), for the pain in his arm associated with a motor vehicle accident.

82. Patient Number Five was dishonest with Dr. Bull about having past substance abuse problems. Patient Number Five was also dishonest because he failed to tell Dr. Bull that he was seeing another physician, Dr. Barry Maron, who was also prescribing Patient Number Five substantial amounts of pain medication. Dr. Komaromy's report was based on

Dr. Bull's prescribing.

83. Dr. Komaromy states that Dr. Bull should have known that Patient Number Five was abusing drugs because he was "fired" from the UNM Pain Clinic.

84. Patients may be "fired" by clinics for many different reasons, including noncompliance, personality issues, lack of trust issues, and disagreements over treatment plans.

85. Dr. Komaromy's report states that at the first visit, Patient Number Five was given three prescriptions for slow-release opiates and one for immediate-acting opiates (oxycodone). The medical charts and pharmacy records show that, at the first visit, Dr. Bull prescribed the patient 36, 20-milligrams tablets of short-acting oxycodone based on the patient's statement of the medication he was currently taking (oxycodone 5 milligrams, 3-4 every 4 hours). The pharmacy, however, did not have 20 milligram tablets. It substituted 144, 5-miligram tablets.

86. Dr. Bull prescribed 255 tablets of opiates to Patient Number Five, because, it appears from the charts, the patient told Dr. Bull that the patient's cousin stole his pain medication. Dr. Bull wrote a progress note that states "Meds. stolen by cousin."

87. The toxicology screen performed during Patient Number Five's autopsy shows that Patient Number Five consumed numerous powerful medications that Dr. Bull had not prescribed to him, including morphine, tramadol, codeine and phenobarbital. Of the six substances found in Patient Number Five's toxicology report, Dr. Bull prescribed only two.

88. Dr. Bull has acknowledged his charting needs improvement. He has developed a new charting system that he will implement with the Board's approval if his license is restored.

89. Dr. Bull realizes that his records are a major shortcoming and that he has to shape-up.

90. Dr. Bull has also recognized that he needs to be more aggressive in referring patients who need chronic pain management.

91. Dr. Bull was not aware of the Medical Board's regulations concerning the management of medical records.

92. Dr. Bull was not aware of the Medical Board's regulations about the management of chronic pain, which, among other things, require a physical examination and evaluations.

93. Dr. Bull did not develop a written treatment plan for the patients or record DSM-IV axis classifications.

94. About twenty of Dr. Bull's patients required treatment for addiction at Turquoise Lodge in the past five years.

95. Dr. Bull testified that he is not familiar with the New Mexico Pain Relief Act but would become familiar with it.

96. With respect to Patient Numbers One through Five, Dr. Bull has engaged in injudicious prescribing.

97. With respect to Patient Numbers One and Two and Patient Numbers Four and Five, Dr. Bull has failed to maintain timely, accurate, legible and complete medical records.

98. With respect to Patient Numbers Three, Four and Five, Dr. Bull has failed to treat and manage patients with chronic pain in the manner required by Title 16, Chapter 10, Part 15 of the Board's regulations entitled "Management of Chronic Pain with Controlled Substances."

CONCLUSIONS OF LAW

Dr. Bull has engaged in unprofessional or dishonorable conduct contrary to NMSA 1978, Section 61-6-15(D)(26) (injudicious prescribing of drugs) and Section 61-6-15(D)(33) (improper management of medical records, including failure to maintain timely, accurate, legible and complete medical records).

ORDER

Dr. Bull is hereby placed upon probation subject to the following terms and conditions:

1. Dr. Bull's term of probation extends until further order of the Board.

2. Dr. Bull may continue to practice medicine in psychiatry but with the following conditions and restrictions described below.

3. Dr. Bull may not prescribe narcotics, including but not limited to, all opioid analgesics, including buprenorphine and all synthetic opioid analgesics, as defined by the Controlled Substance Act NMSA §30-31-2.

4. Dr. Bull is prohibited from treating patients with chronic pain.

5. Dr. Bull must alter his medical record-keeping practice in accordance with accepted practices and must appear before the Board on a quarterly basis.

6. Dr. Bull shall submit quarterly reports to the Board attesting to his compliance with this Order. Such quarterly reports shall be on a form provided by Board staff and sent to Dr. Bull.

7. Dr. Bull shall not delegate or direct the prescribing, administering or dispensing of opioid analgesics to any subordinate or other healthcare provider with whom he practices.

8. Dr. Bull must provide a copy of this Order to any healthcare provider with whom he practices.

If the Board has reasonable cause to believe that Dr. Bull has violated any of the terms and conditions of this Order, the Board may immediately and summarily suspend his license to practice as a physician in New Mexico. A breach of any term or condition of this Order shall constitute conduct unbecoming in a person licensed to practice medicine as set forth in NMSA 1978, Section 61-6-15(D)(29). The Board shall within 10 days of a summary suspension, issue a Notice of Contemplated Act, and Dr. Bull will be entitled to a formal hearing in accordance with the Uniform Licensing Act, NMSA 1978, Sections 61-1-1 through -33.

RIGHT TO JUDICIAL REVIEW

Dr. Bull 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.

Date: August 15, 2011

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

BEFORE THE NEW MEXICO MEDICAL BOARD

IN THE MATTER OF

KENNETH BULL, M.D. No. 2010-026

Respondent.

DECISION AND ORDER

FINDINGS OF FACT

1. Respondent Dr. Kenneth Bull is a medical doctor who held a New Mexico medical license from 1973 until October 1, 2010, when the Board entered an order summarily suspending his license. Dr. Bull timely appealed the Board's suspension and Notice of Contemplated Action (NCA). The NCA charges, with respect to five patients, injudicious prescribing and improper management of medical records, not conforming to the Board's rules and standards.

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62. Dr. Bull's prescribing pattern for Patient Number Three led to an increased risk of addiction and was dangerous to the patient, including risk of death.

63. Regarding Patient Number Four, the parent of this patient complained, alleging that Dr. Bull's prescribing for this patient, a son, was abusive and negligent and resulted in the patient's medication overdose in May of 2010.

64. Patient Number Four had a history of alcohol and marijuana use and had been using oxycontin and heroin.

65. Dr. Bull initiated suboxone therapy, but also prescribed benzodiazepines, which is irrational and dangerous.

66. The patient was hospitalized for overdose, but the month following, Dr. Bull resumed the same addictive medications the patient had been taking before hospitalization.

67. Benzodiazepines, in combination with opiates, has a potential for overdose and overdose death.

68. Regarding Patient Number Five, this patient died from a suspected drug overdose. A large number of bottles of benzodiazepines and opiates prescribed by Dr. Bull were found in the patient's medicine cabinet when he died.

69. On the first visit with this patient, Dr. Bull had prescribed benzodiazepines and high doses of multiple opiates.

70. Dr. Bull's behavior with respect to Patient Number Five was irresponsible and reckless and substantially increased the patient's risk of overdose death.

71. Regarding Patient Number Five, this patient was also getting substantial amounts of opiate drugs from another doctor, which overlapped Dr. Bull's prescribing.

72. Pharmacy records for Patient Number Three show that Dr. Bull prescribed 10 milligram oxycontin on October 3, 2008; the ten pills lasted Patient Number Three for twenty days, or approximately one pill every other day. On October 22, 2008, Patient Number Three received another prescription for ten more 10 milligram pills that lasted for eight days. The patient was then prescribed just six tablets of 10 milligram oxycontin on October 30, 2008. That prescription lasted the patient for nearly one hundred days.

73. Patient Number Four saw Dr. Bull for suboxone treatment, as well as serious psychiatric illnesses including anxiety and Post-Traumatic Stress Disorder (PTSD).

Dr. Bull's charts for Patient Number Four reflect his diagnoses of opiate addiction, PTSD, and OCD.

74. Patient Number Four's mother complained to the Board about Dr. Bull. Patient Number Four had a difficult relationship with his mother, in part because she behaved in an erratic manner and is a difficult person. Patient Number Four told Dr. Bull that he saw his mother try to hang herself.

75. Dr. Bull also treated Patient Number Four with benzodiazepines for his anxiety and PTSD. Dr. Komaromy admitted that there are some circumstances under which it is appropriate to prescribe both benzodiazepines and suboxone at the same time.

76. Dr. Bull was attempting to closely monitor Patient Number Four, but Patient Number Four was not entirely compliant.

77. Dr. Bull later learned that Patient Number Four was not being honest with him. Patient Number Four was a particularly difficult patient to treat because of his noncompliance and dishonesty issues.

78. Patient Number Four was on xanax when he first saw Dr. Bull. Dr. Bull was attempting to transition Patient Number Four from xanax to klonopin because of the addictive nature of xanax. While there was some overlap of the two medications, xanax and klonopin have different indications. One is more short-acting and one is more long-acting.

79. Dr. Komaromy testified that it does not violate acceptable practice to prescribe both xanax and klonopin at the same time. Dr. Komaromy's concern was not due just to the prescribing of the two drugs but the addition of suboxone in spite of a chart note and treatment contract that benzodiazepines in combination with suboxone can cause death.

80. It is unclear from the hospital records whether Patient Number Four actually

overdosed on medication or simply stopped taking medication, leading to a seizure. There is no toxicology report in the Presbyterian Kaseman medical records.

81. Patient Number Five saw Dr. Bull for the treatment of anxiety and for depression. Dr. Bull prescribed benzodiazepines for Patient Number Five's situational anxiety, as indicated in the medical charts. A month later, Patient Number Five reported feelings of social anxiety and decreased confidence, which Dr. Bull also charted. Dr. Bull also prescribed Patient Number Five pain medication, as well as an anti-inflammatory (naproxen), for the pain in his arm associated with a motor vehicle accident.

82. Patient Number Five was dishonest with Dr. Bull about having past substance abuse problems. Patient Number Five was also dishonest because he failed to tell Dr. Bull that he was seeing another physician, Dr. Barry Maron, who was also prescribing Patient Number Five substantial amounts of pain medication. Dr. Komaromy's report was based on Dr. Bull's prescribing.

83. Dr. Komaromy states that Dr. Bull should have known that Patient Number Five was abusing drugs because he was "fired" from the UNM Pain Clinic.

84. Patients may be "fired" by clinics for many different reasons, including noncompliance, personality issues, lack of trust issues, and disagreements over treatment plans.

85. Dr. Komaromy's report states that at the first visit, Patient Number Five was given three prescriptions for slow-release opiates and one for immediate-acting opiates (oxycodone). The medical charts and pharmacy records show that, at the first visit, Dr. Bull prescribed the patient 36, 20-milligrams tablets of short-acting oxycodone based on the patient's statement of the medication he was currently taking (oxycodone 5 milligrams, 3-4 every 4 hours). The pharmacy, however, did not have 20 milligram tablets. It substituted 144, 5-miligram tablets.

86. Dr. Bull prescribed 255 tablets of opiates to Patient Number Five, because, it appears from the charts, the patient told Dr. Bull that the patient's cousin stole his pain medication. Dr. Bull wrote a progress note that states "Meds. stolen by cousin."

87. The toxicology screen performed during Patient Number Five's autopsy shows that Patient Number Five consumed numerous powerful medications that Dr. Bull had not prescribed to him, including morphine, tramadol, codeine and phenobarbital. Of the six substances found in Patient Number Five's toxicology report, Dr. Bull prescribed only two.

88. Dr. Bull has acknowledged his charting needs improvement. He has developed a new charting system that he will implement with the Board's approval if his license is restored.

89. Dr. Bull realizes that his records are a major shortcoming and that he has to shape-up.

90. Dr. Bull has also recognized that he needs to be more aggressive in referring patients who need chronic pain management.

91. Dr. Bull was not aware of the Medical Board's regulations concerning the management of medical records.

92. Dr. Bull was not aware of the Medical Board's regulations about the management of chronic pain, which, among other things, require a physical examination and evaluations.

93. Dr. Bull did not develop a written treatment plan for the patients or record DSM-IV axis classifications.

94. About twenty of Dr. Bull's patients required treatment for addiction at Turquoise Lodge in the past five years.

95. Dr. Bull testified that he is not familiar with the New Mexico Pain Relief Act but would become familiar with it.

96. With respect to Patient Numbers One through Five, Dr. Bull has engaged in injudicious prescribing.

97. With respect to Patient Numbers One and Two and Patient Numbers Four and Five, Dr. Bull has failed to maintain timely, accurate, legible and complete medical records.

98. With respect to Patient Numbers Three, Four and Five, Dr. Bull has failed to treat and manage patients with chronic pain in the manner required by Title 16, Chapter 10, Part 15 of the Board's regulations entitled "Management of Chronic Pain with Controlled Substances."

CONCLUSIONS OF LAW

Dr. Bull has engaged in unprofessional or dishonorable conduct contrary to NMSA 1978, Section 61-6-15(D)(26) (injudicious prescribing of drugs) and Section 61-6-15(D)(33) (improper management of medical records, including failure to maintain timely, accurate, legible and complete medical records).

ORDER

Dr. Bull is hereby placed upon probation subject to the following terms and conditions:

1. Dr. Bull's term of probation extends until further order of the Board.

2. Dr. Bull may continue to practice medicine in psychiatry but with the following conditions and restrictions described below.

3. Dr. Bull may not prescribe narcotics, including but not limited to, all opioid analgesics, including buprenorphine and all synthetic opioid analgesics.

4. Dr. Bull is prohibited from treating patients with chronic pain.

5. Dr. Bull must alter his medical record-keeping practice in accordance with accepted practices and must appear before the Board on a quarterly basis.

6. Dr. Bull shall submit quarterly reports to the Board attesting to his compliance with this Order. Such quarterly reports shall be on a form provided by Board staff and sent to Dr. Bull.

7. Dr. Bull shall not delegate or direct the prescribing, administering or dispensing of opioid analgesics to any subordinate or other healthcare provider with whom he practices.

8. Dr. Bull must provide a copy of this Order to any healthcare provider with whom he practices.

If the Board has reasonable cause to believe that Dr. Bull has violated any of the terms and conditions of this Order, the Board may immediately and summarily suspend his license to practice as a physician in New Mexico. A breach of any term or condition of this Order shall constitute conduct unbecoming in a person licensed to practice medicine as set forth in NMSA 1978, Section 61-6-15(D)(29). The Board shall within 10 days of a summary suspension, issue a Notice of Contemplated Action, and Dr. Bull will be entitled to a formal hearing in accordance with the Uniform Licensing Act, NMSA 1978, Sections 61-1-1 through -33.

RIGHT TO JUDICIAL REVIEW

Dr. Bull 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.

Dated: May 9, 2011

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

BEFORE THE NEW MEXICO MEDICAL BOARD

IN THE MATTER OF	)	
	)	
Kenneth Bull, MD	)	
License No. 73-99	)	**No. 2010-26**
	)	
Respondent.	)	

SUMMARY SUSPENSION ORDER

WHEREAS the New Mexico Medical Board ("Board") having received complaints against Respondent and investigations having been initiated; and

WHEREAS the Board having reviewed such investigations, reports and evaluations issued a Notice of Contemplated Action on August 9, 2010; and

WHEREAS the Board having received additional complaints, and having reviewed the additional investigations, reports and evaluations; and

WHEREAS pursuant to §61-6-15.1 NMSA 1978, the Board may summarily suspend a license issued by the board, and has simultaneously issued an Amended Notice of Contemplated Action on October 1, 2010; and

WHEREAS the Board pursuant to §61-6-15.1(A) has reason to believe that Respondent poses a clear and immediate danger to the public health and safety if the licensee continues to practice; AND GOOD CAUSE APPEARING; and

WHEREAS the Respondent is entitled to a hearing on this Order by the Board within fifteen days from the date the Respondent requests a hearing.

IT IS HEREBY ORDERED that Respondent's New Mexico license to practice medicine is hereby SUSPENDED until further Order of the Board.

Dated this 1st day of October, 2010.

Steven Weiner, M.D., Chair
New Mexico Medical Board

BEFORE THE NEW MEXICO MEDICAL BOARD

IN THE MATTER OF	)	
	)	
Kenneth Bull, MD	)	
License No. 73-99	)	**No. 2010-026**
	)	
Respondent.	)	

AMENDED 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 §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. From on or about June 10, 2008 to on or about June 2, 2009, Respondent injudiciously prescribed to Patient #1 including but not limited to: Respondent prescribed opiates to Patient #1 without medically indicating rationale; Respondent prescribed benzodiazepines to Patient #1, a patient with history of alcohol addiction; and Respondent prescribed a combination of opiates, benzodiazepines, barbiturates and sedating antidepressants to Patient #1 who was drinking heavily. During the time of Respondent's treatment of Patient #1, Respondent failed to chart patient visits, failed to chart diagnosis or rational for ongoing treatment, and failed to chart notes on medical record of Patient #1 as to why prescribing medications and/or changing doses of prescriptions.

These allegations, if proven, would be a violation of §61-6-15(D) (26) NMSA 1978, injudicious prescribing; and §61-6-15(D) (33) improper management of medical records, including failure to maintain timely, accurate, legible and complete medical records.

B. From on or about June 10, 2008 to on or about June 2, 2009, Respondent injudiciously prescribed to Patient #2 including but not limited to: Respondent overprescribed combinations of drugs to Patient #2 that if all taken by Patient #2 would have been toxic. During the time of Respondent's treatment of Patient #2, Respondent noted diagnosis without any or little documentation as to symptoms supporting the diagnosis; Respondent failed to chart notes in the medical record of Patient #2 as to why prescribing medications and/or changing doses of prescriptions; and Respondent sent a letter regarding Patient #2 to the school of Patient #2 indicating particular diagnosis that was not documented in Patient #2's medical record.

These allegations, if proven, would be a violation of §61-6-15(D) (26) NMSA 1978, injudicious prescribing; and §61-6-15(D) (33) improper management of medical records, including failure to maintain timely, accurate, legible and complete medical records.

C. From on or about June 2008 to on or about February 2009, Respondent injudiciously prescribed to Patient #3 including but not limited to: Respondent prescribed multiple high-dose benzodiazepines during the same period that he prescribed Suboxone, Subutex and Oxycodone in high doses to Patient #3; Respondent prescribed Suboxone and Subutex both to Patient #3; Respondent with the knowledge that Patient #3 had an addiction to opiate analgesics, prescribed them to Patient #3 in high doses; and Respondent prescribed buprenorphine-containing medication with Oxycodone to treat acute pain.

These allegations, if proven, would be a violation of §61-6-15(D) (26) NMSA 1978, injudicious prescribing and of 16.10.14 NMAC.

D. From on or about September 2008 to on or about May 2010, Respondent injudiciously prescribed to Patient #4 including but not limited to: Respondent prescribed multiple high-dose benzodiazepines during the same period that he prescribed Suboxone; Respondent prescribed number and combinations of benzodiazepines without medical justification; Respondent continued prescribing same medications to Patient #4 without adjustment even after noting Patient #4 had been hospitalized for an overdose; and Respondent failed to chart notes in the medical record of Patient #4 as to why prescribing medications and/or changing doses of prescriptions.

These allegations, if proven, would be a violation of §61-6-15(D) (26) NMSA 1978, injudicious prescribing and of 16.10.14 NMAC, and §61-6-15(D) (33) improper management of medical records, including failure to maintain timely, accurate, legible and complete medical records.

E. From on or about February 2010 to on or about June 2010, Respondent injudiciously prescribed to Patient #5 including but not limited to: Respondent prescribed large amounts of benzodiazepines without indicating rationale for such prescribing; Respondent prescribed high-doses of opiates simultaneously with high-strength benzodiazepines without indicating rationale for such prescribing and with reason to know patient had addiction problems.

These allegations, if proven, would be a violation of §61-6-15(D) (26) NMSA 1978, injudicious prescribing and of 16.10.14 NMAC, and §61-6-15(D) (33) improper management of medical records, including failure to maintain timely, accurate, legible and complete medical records.

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 1st day of October, 2010.

NEW MEXICO MEDICAL BOARD

Lynn Hart

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

BEFORE THE NEW MEXICO MEDICAL BOARD

IN THE MATTER OF	)	
	)	
Kenneth Bull, MD	)	
License No. 73-99	)	**No. 2010-026**
	)	
Respondent.	)	

NOTICE OF CONTEMPLATED ACTION

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including failure to maintain timely, accurate, legible and complete medical records.

B. From on or about June 10, 2008 to on or about June 2, 2009, Respondent injudiciously prescribed to Patient #2 including but not limited to: Respondent overprescribed combinations of drugs to Patient #2 that if all taken by Patient #2 would have been toxic. During the time of Respondent's treatment of Patient #2, Respondent noted diagnosis without any or little documentation as to symptoms supporting the diagnosis; Respondent failed to chart notes in the medical record of Patient #2 as to why prescribing medications and/or changing doses of prescriptions; and Respondent sent a letter regarding Patient #2 to the school of Patient #2 indicating particular diagnosis that was not documented in Patient #2's medical record.

These allegations, if proven, would be a violation of §61-6-15(D) (26) NMSA 1978, injudicious prescribing; and §61-6-15(D) (33) improper management of medical records, including failure to maintain timely, accurate, legible and complete medical records.

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These allegations, if proven, would be a violation of §61-6-15(D) (26) NMSA 1978, injudicious prescribing and of 16.10.14 NMAC.

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Dated this 9th day of August, 2010.

NEW MEXICO MEDICAL BOARD

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

NEW MEXICO BOARD OF MEDICAL EXAMINERS
491 Old Santa Fe Trail
Second Floor, Lamy Building
Santa Fe New Mexico 87501

Gary E. Johnson
GOVERNOR

Livingston Parsons, Jr., M.D.
PRESIDENT

August 23, 1996

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Kenneth J. Bull, M.D.
2403 San Mateo Blvd, NE, Ste.#S-10
Albuquerque, New Mexico 87110

REF: LETTER OF REPRIMAND

Dear Dr. Bull,

I am writing on behalf of the New Mexico Board of Medical Examiners in this matter. This letter constitutes a formal public reprimand for your action related to doctor-patient relationships: asking a patient for a loan of $25,000.00.

In your response to the allegations on November 5 1995, you admitted making an offer of a short-term business loan from the patient to your business venture. Your letter of March 10, 1996 indicated that you would accept a letter of reprimand.

While the Board of Medical Examiners does not expect this type of behavior to occur again, if it does, the Board will respond with a Notice of Contemplative Action and proceed to take action against your license to practice medicine in New Mexico. This action of reprimand is a reportable action to the National Practioners Data Bank.

Sincerely,

Livingston Parsons Jr. M.D.

Livingston Parsons, Jr., M.D.
President

ADMINISTRATION
(505) 827-5022
(505) 827-7377 FACSIMILE

FINANCIAL
(505) 827-0750

INVESTIGATIONS
(505) 827-7302
(505) 827-8401

LICENSING
(505) 827-0033 APPLICATIONS
(505) 827-7317 PHYSICIAN ASSISTANT
(505) 827-0784 VERIFICATIONS