

BEFORE THE NEW MEXICO MEDICAL BOARD

IN THE MATTER OF)
STEVEN RAY BLACK, M.D.,)
License No. MD2011-0547,)
)
Respondent.)
_____)

Case Nos. 2018-007; 2018-054
(Inv. Nos. 2017-B-039; 2017-C-230)

AGREED ORDER IMPOSING REPRIMAND, FINES
AND STIPULATIONS ON LICENSE

The New Mexico Medical Board (“Board”) and Steven Ray Black, M.D. (“Respondent”), together “the Parties,” have agreed to resolve this matter under the terms of this Agreed Order Imposing Reprimand, Fines and Stipulations on License (“Agreed Order”).

Stipulations by the Parties

1. The Parties stipulate Respondent, as holder of a license to practice in New Mexico, is subject to the jurisdiction of the Board and to the provisions of the Medical Practice Act (MPA), NMSA 1978, Sections 61-6-1 through -35, the Impaired Health Care Provider Act, NMSA 1978, Sections 61-7-1 through -12, and the Uniform Licensing Act (ULA), NMSA 1978, Sections 61-1-1 through -34, and rules and regulations of the Board relating to the practice of medicine (“the Board’s Rules” or “the Rules”), Title 16, Chapter 10, NMAC.
2. The Parties stipulate the Board has the authority to enter into this Agreed Order.
3. The Parties stipulate this Agreed Order is in the best interests of Respondent, the Board and the public.
4. The Parties stipulate they are entering into this Agreed Order to avoid the uncertainty and expense of proceeding to an evidentiary hearing at which the Board would be

required to prove the allegations contained in the Notices of Contemplated Action (NCAs) the Board issued on February 16, 2018, in Case No. 2018-007, and on January 28, 2019, in Case No. 2018-054.

5. The Parties stipulate this Agreed Order was mutually negotiated and determined, contains no unconscionable provision, and will otherwise remain in full force and effect if any portion of it is invalidated by judgment or court order.

6. The Parties stipulate Respondent admits no wrongdoing by entering into this Agreed Order.

7. The Parties stipulate this Agreed Order contains the entire agreement between the Parties with respect to its subject matter and will not be enlarged, modified, or altered except by written order of the Board after Respondent has been given all due process required by law.

8. The Parties stipulate this Agreed Order will have full force and effect if executed in counterparts and/or via facsimile or other electronic means.

9. The Parties stipulate this Agreed Order will be effective upon entry by the Board.

10. The Parties stipulate this Agreed Order is a public document and its entry will be reported to the National Practitioner Data Bank (NPDB), the Federation of State Medical Boards (FSMB) and the American Medical Association (AMA).

11. The Parties stipulate Respondent came under investigation by the Board for the first time on or about November 7, 2017, when the Board learned Respondent had been arrested in a domestic violence incident on October 28, 2017. He came under investigation for a second time on March 12, 2018, after a pharmacy reported what appeared to be suspicious prescribing activity involving Respondent.

12. The Parties stipulate the Board's investigations produced evidence supporting the following factual findings –

a. records for certain patients to whom Respondent was prescribing controlled substances do not contain information necessary to demonstrating Respondent's compliance with the Board's requirements for treating patients for pain and other conditions with controlled substances.

b. Respondent did not disclose to the Board he was being treated for chronic pain and did not comply with the Board's requirements regarding his treatment with controlled substances.¹

c. Respondent was found guilty, following trial, of a misdemeanor domestic violence offense that occurred in October 2017.²

d. Respondent allowed unauthorized access to and use of his prescription pads.

e. Respondent did not provide the Board timely-produced medical records supporting his treatment of certain patients.

f. Respondent accessed the prescription monitoring program (PMP) report of an individual who was not a patient.

13. The Parties stipulate the findings set forth above, if established by a preponderance of the evidence during a hearing held pursuant to the ULA, the MPA and the

¹ Respondent's failure to comply with the requirements the Board imposes on practitioners being treated with opioids resulted in the Board summarily suspending Respondent's license. Following a hearing on the summary suspension, during which Respondent presented evidence of his having come into compliance with the Board's requirements, the Board determined Respondent was safe to practice and restored Respondent's ability to practice.

² At Respondent's March 7, 2019, sentencing hearing, the court entered an order of conditional discharge. Under the conditional discharge order, the case will be dismissed without an adjudication of guilt if Respondent successfully completes two years of probation.

Board's Rules, would subject Respondent to discipline by the Board under the MPA and the Board's Rules. *See, e.g.*, NMSA 1978, § 61-6-15(D)(7), (8), (17), (23), (26), (29), (33) ("habitual or excessive use of intoxicants or drugs[,] "misrepresentation in . . . applying for or procuring renewal[,] "the prescribing, administering or dispensing of narcotic, stimulant or hypnotic drugs for other than accepted therapeutic purposes[,] "failure to furnish the [B]oard, its investigators or representatives with information requested by the [B]oard[,] "injudicious prescribing, administering or dispensing of a drug or medicine[,] "conduct unbecoming in a person licensed to practice . . . [,]" "improper management of medical records, including failure to maintain timely, accurate, legible and complete medical records"); Part 16.10.8 NMAC (adopting ethical standards for the practice of medicine and adopting the AMA code of ethics which requires adherence to the principles of professionalism, honesty and respect for the law at all times); Part 16.10.10 NMAC (detailing the Board's reporting requirements); Part 16.10.14 (establishing requirements for the treatment of pain and other conditions with controlled substances and for practitioners who are being treated for chronic pain).

Terms

14. In exchange for the Board's willingness to enter into this Agreed Order, Respondent agrees to accept a reprimand and pay fines totaling \$2,000.00 within sixty days following entry of this Agreed Order.³ He also agrees not to challenge the investigative findings contained in this Agreed Order in any future proceeding before the Board.

15. In addition, Respondent agrees to stipulations on his license requiring him to sign

³ The Board may extend the time within which Respondent must complete payment of the fines administratively, without the need for formal Board action. As soon as Respondent pays the fines, the Board will remove the stipulation on her license requiring him to pay the fine administratively, without the need for formal Board action.

within thirty days following entry of this Agreed Order a Board-approved mandatory participation contract with the New Mexico Health Professional Wellness Program (HPWP) (“the HPWP Contract” or “the Contract”), with the term (length) of the Contract to be determined by HPWP in consultation with the Board.⁴

16. Respondent agrees if he fails to sign the HPWP Contract within thirty days following entry of this Agreed Order, the Board may take further action affecting his license.

17. Respondent further agrees –

a. to comply fully with (i) the HPWP Contract, which may be amended from time to time by HPWP, with concurrence of the Board, (ii) any written recommendations made by HPWP, and (iii) any written requirements imposed by the Board consistent with the purpose(s) of this Agreed Order, including additional deadlines and reporting requirements, until the Board enters a formal written Release from Stipulation,⁵

b. to appear before the Board on a quarterly basis and upon receiving notice from the Board,

c. to waive any right to confidentiality and to sign all necessary consent forms authorizing HPWP and other providers engaged pursuant to the terms of the HPWP Contract to share with the Board all information related to Respondent’s compliance with the Contract,

d. to abstain completely from the use of all mind-altering substances, alcoholic beverages and controlled substances, except as legitimately prescribed by a licensed practitioner

⁴ Respondent has been a voluntary participant of HPWP since April 2018. The new, mandatory contract will be predicated on a new assessment.

⁵ To be enforceable, all amendments to the Contract, HPWP recommendations and Board requirements must be in writing and signed by Respondent. Respondent’s refusal to sign an amendment, recommendation or requirement constitutes a violation of this Agreed Order.

with prior approval by HPWP in consultation with the Board, or within three days afterward, where the prescription is issued on an emergency basis.

e. to comply at all times with all federal, state and local laws, and all rules governing the practice of medicine,

f. to comply with all terms of licensure imposed on him by any other jurisdiction where he is or may become licensed,

g. to submit quarterly written statements to the Board, in a form prescribed by the Board, attesting under oath to having fully complied with the terms of this Agreed Order, and

h. to self-report to the Board and HPWP any violation of this Agreed Order immediately after the conduct giving rise to the violation occurs.

18. Respondent agrees the stipulation on his license requiring participation with HPWP under the terms and conditions of the HPWP Contract will remain on his license until a formal written release (“Release from Stipulation”) is entered by the Board.

19. Respondent also agrees to successfully complete a Board-approved intensive ethics program, such as the PROBE ethics and boundaries course offered by the Center for Personalized Education for Professionals (CPEP), and to provide the Board an acceptable statement regarding how the course will affect his practice going forward within 120 days following entry of this Agreed Order.⁶

20. In exchange for Respondent’s agreement to enter into this Agreed Order, and

⁶ The Board may extend the time within which Respondent must provide evidence of his completion of the required course without the need for formal Board action. (Due to COVID-19 requirements, many Board-approved courses are being offered as interactive, web-based videoconferences and availability may be limited.)

contingent upon Respondent's compliance with the terms of this Agreed Order, the Board agrees to close the investigations giving rise to this Agreed Order, to limit the discipline it will impose to the discipline set forth in this Agreed Order, and to waive any requirement for Respondent to reimburse the Board the expenses it incurred in investigating this case.

21. The Parties agree any violation of this Agreed Order will constitute "conduct unbecoming in a person licensed to practice or detrimental to the best interests of the public" and possibly other violations of the MPA and/or the Board's Rules, may give rise to a new Board investigation, and may result in further disciplinary action, up to and including summary suspension or revocation of Respondent's license to practice in New Mexico.

22. The Parties agree, if the Board has reasonable cause to believe Respondent has violated the terms of this Agreed Order, including the terms and conditions of the HPWP Contract, the Board in its discretion –

- a. will give notice to Respondent at Respondent's address of record that it has suspended Respondent's license and will issue an NCA, as provided under 16.10.5.15 NMAC, or
- b. will enter an order imposing discipline based on Respondent having engaged in "conduct unbecoming in a person licensed to practice or detrimental to the best interests of the public," *see* NMSA 1978, Section 61-6-15(D)(29), and other applicable provisions of the MPA and the Board's Rules, if Respondent, having received not less than ten days' notice, fails to appear before the Board when requested to do so and/or appears as required but fails to rebut the allegation he violated this Agreed Order.

STATEMENTS AND AFFIRMATIONS BY RESPONDENT

23. By signing below, I state and affirm –

a. I knowingly, voluntarily and intelligently waive my rights under the MPA and the ULA, including my right to a hearing.

b. I knowingly, voluntarily and intelligently accept and understand the terms of this Agreed Order.

c. I knowingly, voluntarily and intelligently waive any right I may have to seek judicial review of this Agreed Order.

d. I understand any violation of this Agreed Order constitutes a violation of the MPA and the Board's Rules and may result in disciplinary action by the Board up to and including summary suspension and revocation of my license. I also understand –

(i) the Board may immediately suspend my license based on it having reasonable cause to believe I have violated this Agreed Order,

(ii) if the Board immediately suspends my license, I am waiving my right to a hearing on the order suspending my license, *contingent upon* the Board issuing an NCA within ten days following entry of the suspension order, and

(iii) if the Board does not suspend my license immediately, the Board may immediately enter a decision and order imposing discipline upon a finding I violated this Agreed Order, *contingent upon* it having provided me notice and an opportunity to be heard.

e. I accept each stipulation on my license contained in this Agreed Order will remain on my license until a Release of Stipulation is entered by the Board.

f. I understand I cannot challenge the investigative findings contained in this Agreed Order in any future proceeding before the Board.

g. I know and understand I have the right to consult with an attorney of my choice


regarding my rights and the effects of this Agreed Order, and I am stating I have either consulted an attorney or am waiving my right to counsel.

h. I am aware this Agreed Order is a public document and will be reported to the NPDB, the FSMB and the AMA.

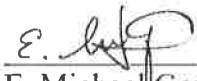
i. I am of sound mind and not impaired by any medication or drug.

j. I will report this Agreed Order to any jurisdiction where I may be licensed or apply for licensure.

11/12/20
Date


Steven Ray Black, M.D.

11/12/20
Date


E. Michael Gomez, Esq.
Counsel to Dr. Black

**BOARD ORDER IMPOSING REPRIMAND, FINES
AND STIPULATIONS ON LICENSE**

THE BOARD, HAVING FOUND resolving this matter under the terms of this Agreed Order is in the best interests of Respondent, the Board and the public, and will further the purposes of the Medical Practice Act (MPA) and the Board's responsibilities,

HAVING FURTHER FOUND Respondent understands the terms of this Agreed Order, including the requirement he participate in the New Mexico Health Professional Wellness Program (HPWP) and comply with the terms of the HPWP Contract, and

HAVING FURTHER FOUND Respondent understands the rights he waived when signing this Agreed Order,

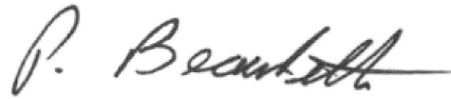
ORDERS Respondent reprimanded and assessed fines totaling \$2,000.00,

FURTHER ORDERS a stipulation on Respondent's license requiring him to participate in HPWP under a mandatory contract,

FURTHER ORDERS a stipulation on Respondent's license requiring him to successfully complete a Board-approved ethics course and provide the Board a statement regarding how he will incorporate what he learned in the course in his practice, and

FURTHER ORDERS, *contingent upon* Respondent's compliance with all the terms of this Agreed Order, closure of the investigation giving rise to this case and waiver of the requirement for Respondent to reimburse the Board its costs of investigating this case.

NEW MEXICO MEDICAL BOARD

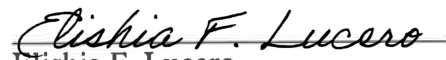


Peter T. Beaudette, M.D.
Chairman

Certificate of Service

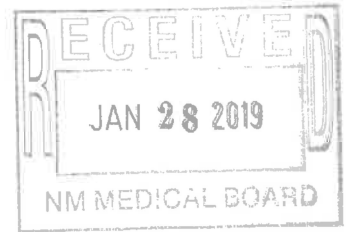
I certify I transmitted a copy of this Agreed Order, as entered, to Respondent's counsel, at *michael@gomezlawoffices.com*, and to Counsel for the Prosecution, Yvonne M. Chicoine, at *yvonnem.chicoine@state.nm.us*.

11/20/2020
Date



Elishia F. Lucero
Administrative Assistant

BEFORE THE NEW MEXICO MEDICAL BOARD



IN THE MATTER OF
STEVEN RAY BLACK, M.D.

License No. MD2011-0547

Respondent.

No. 2018-054
(Inv. No. 2017-B-039)

Via email (msn@fdblaw.com)
and certified first-class mail to

To: Steven Ray Black, M.D.
c/o Molly Schmidt-Nowara, Esq.
Freedman Boyd Hollander et al.
20 First Plaza, Suite 700
Albuquerque, NM 87102

NOTICE OF CONTEMPLATED ACTION (NCA) AGAINST LICENSEE

YOU ARE HEREBY NOTIFIED that the New Mexico Medical Board (“Board”) “has before it sufficient evidence that, if not rebutted or explained, will justify the [B]oard in taking action” imposing disciplinary sanctions, up to and including revocation of your license to practice medicine in New Mexico. NMSA 1978, § 61-1-4(D) (stating the requirements for the Board’s written notice to a licensee); *see also* NMSA 1978 § 61-1-3 (requiring written notice before the Board takes disciplinary action).

Board Jurisdiction and Authority

1. You are subject to the Board’s jurisdiction pursuant to the Medical Practice Act (MPA), NMSA 1978, Sections 61-6-1 to -35, the Uniform Licensing Act (ULA), NMSA 1978, Sections 61-1-1 to -33, and the Pain Relief Act, NMSA 1978, Sections 24-2D-1 through -6, because you hold a license to practice medicine in New Mexico.

2. The Board has authority to issue this Notice of Contemplated Action (NCA) under Section 61-6-15 of the MPA and Section 61-1-4(D) of the ULA.

Public Action

3. This NCA is a public document, open to public inspection, but its issuance does not constitute a disciplinary event reportable to the National Practitioners Data Bank (NPDB).

Evidence Supporting Contemplated Action

4. Credible evidence possessed by the Board supports findings that –
- a. you did not comply with the Board’s rule governing the management of pain and other conditions with controlled substances, e.g., by failing to review the prescription monitoring program (PMP) report before prescribing one or more controlled substances, and by failing to require a signed pain contract and not performing regular urine drug screens for patients you were treating for chronic pain,
 - b. in one or more instances medical records for one or more of your patients do not appear to establish medical justification for the controlled substance(s) you prescribed,
 - c. you violated state and/or federal drug laws in one or more respects, e.g., by allowing a physician not associated with your practice to write prescriptions to you for controlled substances using your practice’s prescription pads, by prescribing controlled substances to one or more patients in the absence of an established medical need, and/or by altering and/or forging prescriptions,
 - d. in one or more instances medical records for one or more of your patients appear to have been generated after the Board issued a subpoena for you to produce copies of the patient’s/patients’ medical records,
 - e. you did not comply with a subpoena issued by the Board for EMR audit logs relating to one or more patients,
 - f. you accessed the PMP report of an individual who was not a patient, and/or

g. you obtained one or more prescriptions and/or used one or more controlled substances in the absence of a documented physical condition warranting issuance of the prescription(s) and/or the drug's/drugs' use,

5. If a preponderance of the evidence establishes any or all of these findings, the Board may conclude that you engaged in conduct actionable under the MPA and the rules and regulations of the Board ("Rules"), found at Title 16, Chapter 10, NMAC, including –

a. conduct contemplated by the MPA's non-exclusive definition of "unprofessional or dishonorable conduct," such as –

(1) NMSA 1978, Section 61-6-15(D)(7) ("habitual or excessive use of intoxicants or drugs"),

(2) NMSA 1978, Section 61-6-15(D)(15) ("the use of a false, fraudulent or deceptive statement in a document connected with the practice of a licensee"),

(3) NMSA 1978, Section 61-6-15(D)(17) ("the prescribing, administering or dispensing of narcotic, stimulant or hypnotic drugs for other than accepted therapeutic purposes"),

(4) NMSA 1978, Section 61-6-15(D)(18) ("conduct likely to deceive, defraud or harm the public"),

(5) NMSA 1978, Section 61-6-15(D)(19) ("repeated similar negligent acts"),

(6) NMSA 1978, Section 61-6-15(D)(23) ("failure to furnish the [B]oard, its investigators or representatives with information requested by the [B]oard,"

(7) NMSA 1978, Section 61-6-15(D)(26) ("injudicious prescribing, administering or dispensing of a drug or medicine"),

(8) NMSA 1978, Section 61-6-15(D)(29) ("conduct unbecoming in a person

licensed to practice or detrimental to the best interests of the public”), and/or

(9) NMSA 1978, Section 61-6-15(D)(33) (“improper management of medical records, including failure to maintain timely, accurate, legible and complete medical records”), and/or

b. 16.10.8.8 NMAC (including “dishonesty” among the enumerated examples of “unprofessional or dishonorable conduct”), and/or

c. Part 16.10.14 NMAC (prescribing requirements for the management of pain and other conditions with controlled substances).

6. The Board’s investigation is ongoing. At any time prior to final resolution of this matter, the Board may amend this NCA to reflect additional evidence and potential findings supporting the imposition of disciplinary sanctions against you.

Your Rights

7. Section 61-1-3 of the ULA entitles you to a hearing on the allegation(s) contained in this NCA. You secure your right to a hearing by submitting a request to the Board. Your request must be in writing, addressed to the Board, and delivered by certified mail, return receipt requested. You must deposit your request for a hearing in the mail *within twenty days* following your receiving service of this NCA. NMSA 1978, § 61-1-4(D)(3).

8. If you do not request a hearing within twenty days following service of this NCA, the Board may take action against your license up to and including revocation of your license and the privilege to practice in New Mexico. In accordance with Section 61-1-4(E) of the ULA, that action will be final and not subject to judicial review.

9. Section 61-1-8 of the ULA entitles you to certain rights in connection with any hearing that may be held on this matter. Those rights include the following –

a. At the hearing, you have the right (1) to be represented by counsel or by a licensed member of your profession or both, (2) to present all relevant evidence by means of witnesses, books, papers, documents and other evidence, and (3) to question all opposing witnesses who may appear on any matter relevant to the issues.

b. In advance of the hearing, you have the right to have subpoenas issued to compel (1) the production of relevant books, papers, documents and other evidence, and (2) the attendance of witnesses on your behalf. These subpoenas will be issued by the Board upon your written request to the Hearing Officer assigned to your case. After commencement of the hearing, the issuance of subpoenas is at the discretion of the Hearing Officer.

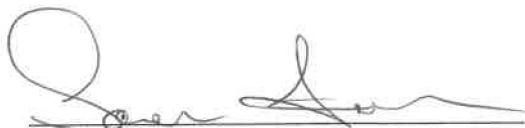
c. Within ten days following your submission of a written request to the Board, you are entitled (1) to obtain the names and addresses of witnesses the Board will or may call to testify at the hearing, and (2) to inspect or copy any documents or items the Board will or may introduce in evidence at the hearing.

d. Like the Board, you may take and use depositions in accordance with the Rules of Civil Procedure for the District Courts of New Mexico.

Costs

10. Under Section 61-1-4(G) of the ULA, if the Board takes action against your license, as defined in Section 61-1-3 of the ULA, you will be required to reimburse the Board for the costs of its proceedings unless the Board excuses some or all of those costs.

NEW MEXICO MEDICAL BOARD



Sondra Frank, Esq., Executive Director

1.25.19

Date

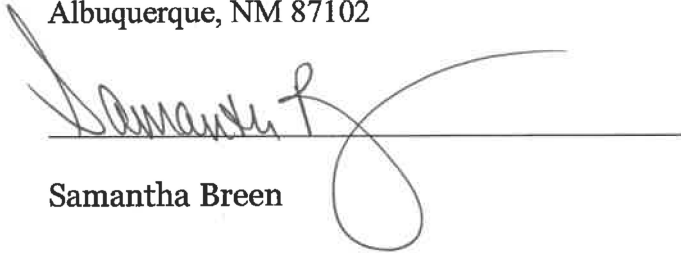
All further communications with respect to this matter should be directed to –

Yvonne Chicoine, Chief Legal Counsel
New Mexico Medical Board
2055 South Pacheco Street, Building 400
Santa Fe, New Mexico 87505
ph: 505/476-7223
email: *YvonneM.Chicoine@state.nm.us*

CERTIFICATE OF SERVICE

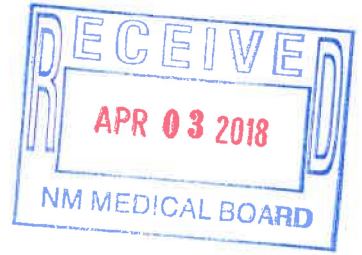
I hereby certify that a true copy of the Notice of Contemplated Action was sent to Respondent's Counsel via Certified Return Receipt USPS mail on January 28, 2019.

Molly Schmidt-Nowara, Esq.
Freedman Boyd Hollander et al.
20 First Plaza, Suite 700
Albuquerque, NM 87102

A handwritten signature in dark ink, appearing to read "Samantha Breen", is written over a horizontal line. The signature is stylized with a large, looping flourish at the end.

Samantha Breen

BEFORE THE NEW MEXICO MEDICAL BOARD



IN THE MATTER OF
STEVEN BLACK, M.D.

License No. MD2011-0547

Respondent.

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No. 2018-007
(Inv. No. 2017-C-230)

DECISION AND ORDER

This matter came before the New Mexico Medical Board (“Board”) at its meeting of March 29, 2018, for decision and order following a March 8, 2018, evidentiary hearing on the Notice of Summary Suspension the Board issued against Respondent on February 16, 2018. The Hearing Officer’s report was filed with the Board on March 22, 2018.

Findings of Fact

After familiarizing itself with and giving full consideration to the record, including the transcript of the testimony and the exhibits presented during the course of the evidentiary hearing, the Board adopts the findings of fact recommended in the Hearing Officer’s report and incorporates the report into this Decision and Order.

Correction to the Record

The Board also adopts the requested correction to the record contained in the Prosecution’s Proposed Resolution following Hearing filed by the Prosecution on March 26, 2018. As requested, the record will reflect that, in addition to Exhibits 10, 11 and 20, Exhibits 12 through 19, and Exhibits A and B are included as part of the record “under seal.”

Conclusions of Law

The Board enters the following conclusions of law –

1. Board Rule 16.10.14.10 imposes three requirements on physicians being treated with opioids for chronic pain.

2. Those requirements are intended to ensure that physicians being treated with opioids are competent to practice medicine in a safe manner.

3. Respondent has failed to demonstrate that he is in compliance with the three requirements contained in Rule 16.10.14.10.

4. The Board concludes there is insufficient evidence for it to conclude that Respondent poses a clear and immediate danger to the public as a result of his failure to comply with the requirements contained in Rule 16.10.14.10.

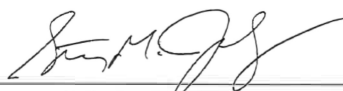
Order

Absent evidence that Respondent's continued practice of medicine poses a clear and immediate danger to the public, THE BOARD lifts the suspension of Respondent's license resulting from the Notice of Summary Suspension it issued on February 16, 2018.

Notice of Right of Appeal

In accordance with Section 61-1-17 of the Uniform Licensing Act (ULA) and NMSA 1978, Section 39-3-1.1, Respondent may seek judicial review of this Decision and Order by initiating an action in the First Judicial District Court within thirty days of the entry of this Decision and Order.

IT IS SO ORDERED.



Steven M. Jenkusky, M.D., Chairman
New Mexico Medical Board

Attachment: March 22, 2018, Hearing Officer's Report

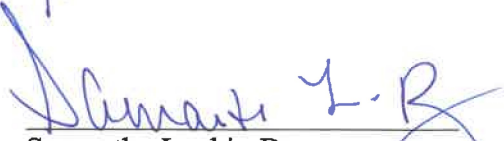
[Certificate of service appears on following page.]

Certificate of Service

I certify that this order was successfully transmitted by email to Respondent's counsel, Molly Schmidt-Nowara at *molly@ginlawfirm.com* (with a copy to *assistant@ginlawfirm.com*), upon agreement by Ms. Schmidt-Nowara to accept electronic service.

I further certify this pleading was successfully transmitted by email to the Board's Prosecutor, Yvonne Chicoine, at *yvonnem.chicoine@state.nm.us*, upon agreement of Ms. Chicoine to accept electronic service.

Transmission occurred at _____ a.m./p.m. on 4/3/18.


Samantha Luckie-Breen
Board Administrator

BEFORE THE NEW MEXICO MEDICAL BOARD



**IN THE MATTER OF
STEVEN BLACK, M.D.**

License No. MD2011-0547

No. 2018-007

(Inv. No. 2017-C-230)

Respondent

HEARING OFFICER'S REPORT

On March 8, 2018, this matter came before the Hearing Officer, Frank Weissbarth, Esq., for an evidentiary hearing on the New Mexico Medical Board's Notice and Order of Summary Suspension, issued on February 16, 2018. The Medical Board was represented by Yvonne M. Chicoine, Administrative Prosecutor for the Medical Board, and the Respondent, Steven Black, M.D., was represented by Molly Schmidt-Nowara of Garcia Ives Nowara.

New Mexico Medical Board Investigations manager Debbie Dietrich testified for the State. Respondent testified on his own behalf and Siavash Karimian, M.D., Maxann Shwartz, Ph.D., and David Durham, M.D. testified for Respondent via FaceTime. All witnesses who testified at the hearing were duly sworn, and a verbatim transcript of the proceedings was taken by Robin E. Johnson, certified court reporter.

The hearing was conducted pursuant to and in accordance with the Uniform Licensing Act, NMSA 1978, §§ 61-1-1 through 61-1-33 and the Medical Practice Act, NMSA 1978, §§ 61-6-1-1 through 61-6-35, and the corresponding regulations. At the conclusion of the hearing the Hearing Officer requested that counsel for the parties submit proposed findings of fact and brief written closing arguments on or before March 19, 2018, and both parties did so.

PROPOSED FINDINGS OF FACT

1. On February 16, 2016, the New Mexico Medical Board (“Board”) issued a Notice of Summary Suspension (NSS) in which it suspended Respondent Steven Black’s license to practice medicine. The Notice was served on Respondent, through his counsel, the same day.

2. The NSS stated the Board possessed credible evidence that Respondent’s continued practice of medicine posed a clear and immediate danger to the public health and safety.

3. The stated factual basis for the summary suspension was that “[Dr. Black has] chronic pain and have been treated with opiates since at least January 2016 but [has] not provided the Board with evidence that [he has] undergone an independent neuropsychological evaluation and received clearance from [his] physician to continue to practice” in violation of Board Rule 16.10.14.10 NMAC. *See* Feb. 16, 2018 NSS at 3.

4. On or about February 22, 2018, Respondent requested a hearing on the NSS.

5. On or about February 26, 2018, the Board served a Notice of Hearing on Respondent setting the matter for hearing on March 8, 2018.

6. A full evidentiary hearing was held on March 8, 2018, at the Board’s office in Santa Fe, New Mexico. All witnesses who testified at the hearing were duly sworn and subject to cross-examination.

7. At the conclusion of the hearing, the Hearing Officer asked the parties to submit written closing arguments and proposed findings of fact by March 19, 2018. Both parties made the requested submissions.

8. At the hearing, the Prosecution called the Board’s investigations manager Debbie Dieterich, as a witness.

9. Respondent called Drs. Siavash Karimian, Maxann Shwartz and David Durham to testify on his behalf. These three witnesses testified via “FaceTime.”

10. Respondent was present in person and testified in his own behalf.

11. The State introduced the following Exhibits in evidence:

a. Exhibit 1, Rule 16.10.14 NMAC, which deals with management of pain and other conditions with controlled substances;

b. Exhibit 2, Rule 16.10.4 NMAC, which deals with continuing medical education;

c. Exhibit 3, the New Mexico Medical Board complaint against Respondent;

d. Exhibit 4, which is a letter from Respondent’s attorney to James Perez at the Medical Board responding to the complaint;

e. Exhibit 6, June 28, 2012, Order of Release from Stipulation of Licensure;

f. Exhibit 7, July 11, 2012 Stipulation of Licensure with Respondent;

g. Exhibit 8, Notice of Contemplated Action against Respondent dated March 29, 2011;

h. Exhibit 9, which is the professional practice questions and answers from Respondent’s 2015 medical license renewal;

i. Exhibit 10, **admitted under seal**, subpoena to Medical Office of Siavash Karimian, M.D., and patient records of Respondent produced in response to subpoena;

j. Exhibit 11, **admitted under seal**, subpoena to Medical Office of David Durham, M.D., and patient records of Respondent produced in response to subpoena;

k. Exhibit 12, an Admission Note/Psychiatric Evaluation of Respondent related to marijuana use, dated 8/27/07, conducted pursuant to a referral by the North Carolina Physicians Health Program (“NCPHP”);

l. Exhibit 13, a Professional Assessment Summary Report dated February 14, 2008, concerning Respondent;

m. Exhibit 14, a Psychiatric Evaluation of Respondent dated 2/14/08, recommending monitoring by the NCPHP for minimum of 2 years and complete abstinence from alcohol or other mood-altering substances;

n. Exhibit 15, a History and Physical of Respondent dated 2/14/08, that was done for the NCPHP, which states, “Dr. Black does not appear to meet strict DSV IV criteria for substance abuse for cannabis. However, based on the high SASSI defensiveness scores and the self report nature of this diagnostic process, professions with this profiles (sic) would likely tend to minimize their use.”

o. Exhibit 16, an Initial Counselor Assessment of Respondent dated 2/14/08 done for the NCPHP;

p. Exhibit 17, a letter dated 9/24/10 from Babak Mirin, M.D. to New Mexico Medical Board summarizing his diagnosis and treatment of Respondent, which concludes that, “Dr. Black would be an excellent addition to the New Mexico medical community....”;

q. Exhibit 18, letter from NCPHP to New Mexico Medical Board dated October 7, 2010, concerning Respondent’s history with NCPHP, non-compliance with random screening protocol and voluntary surrender of his North Carolina medical license;

r. Exhibit 19, a New Mexico Monitored Treatment Program Initial Assessment Report concerning Respondent, dated 12/23/10;

s. Exhibit 20, **admitted under seal**, New Mexico Prescription Management Program (“PMP”) report dated 2/15/18 concerning Respondent; and

t. Exhibit 21, an exchange of email correspondence dated from November 17, 2017 to November 21, 2017, between James Perez at the New Mexico Medical Board, Respondent and Respondent’s attorney

12. Respondent introduced two Exhibits in evidence:

a. Exhibit A, a Forensic Neuropsychological Evaluation by Maxann Shwartz, Ph.D. dated March 4, 2018, with an evaluation date of February 27, 2018, that concluded that “[Respondent] presents as a highly capable, extremely bright and well-balanced individual who is likely a tremendous asset to his profession”; and

b. Exhibit B, a letter from Siavash Karimian, M.D. dated February 19, 2018, stating that “I can attest that from family practice stand point [Respondent] seems to be fit to discharge his duties as a physician.”

13. Respondent was initially licensed to practice medicine in New Mexico pursuant to a stipulation of licensure on July 11, 2011 [Ex. 7], and was awarded license 2011-0547. [Tr. 12:21 to 13:8]

14. The stipulation constituted settlement of a March 29, 2011, Notice of Contemplated Action (NCA). [Ex. 8] The NCA indicates the Board considered denying Respondent a license based on allegations that (a) Respondent voluntarily surrendered his North Carolina medical license on July 31, 2009, because of a drug arrest and a diagnosis that Respondent was abusing cannabis, (b) the North Carolina Medical Board had found that Respondent’s abuse of drugs

rendered Respondent “unable to practice medicine with reasonable skill and safety to patients in violation of State law[,]” and (c) North Carolina had indefinitely suspended Respondent’s medical license on March 2, 2010, after a hearing. [Ex. 8; Tr. 43:23 to 44:17]

15. The Board entered the stipulation of licensure because it was “persuaded that Respondent [could] safely perform the duties of a physician” only if he, among other things, entered into “a treatment contract with, and as determined by, the Monitored Treatment Program [MTP] and [complied] fully with the recommendations, terms and conditions required of Respondent by the [MTP].” [Ex. 7]

16. The stipulation on Respondent’s license was released on June 28, 2012, giving Respondent an unrestricted license to practice medicine in New Mexico. [Ex. 6; Tr. 46:8-15]

17. When Respondent renewed his license in 2015, he answered “yes” to professional practice questions (PPQs) 19 and 19a, certifying that he had completed the continuing medical education (CME), as required by Board Rule 16.10.4, and that five of his completed hours were in pain management, as required by Board Rule 16.10.14.11. [Ex. 9; Tr. 36:5-15]. Board Rule 16.10.4.8(A) requires licensees to earn one CME hour reviewing the New Mexico Medical Practice Act and the Board’s rule. [Ex. 2; Tr. 36:23 to 37:4]. Board Rule 16.10.14.11 imposes a pain management CME requirement “to ensure that all [covered] health care practitioners safely prescribe for pain management and harm reduction” and identifies five content elements for those CMEs. [Ex. 1; Tr. 36:1-3]

18. Respondent came under investigation by the Board on November 7, 2017, after the Board learned Respondent had been arrested for domestic violence. [Ex. 3; Tr. 38:13-14]

19. As part of its standard practice, the Board reviewed Respondent's licensing history in order to identify potential patterns of conduct. [Tr. 40:16 to 41:1]. Evidence of prior substance abuse is of concern to the Board when it conducts investigations. [Tr. 41:2-7; *see* Ex. 8]

20. In Respondent's case, the Board also had reports from psychiatric and physical evaluations and assessments of Respondent that had been conducted during 2007 and 2008, as a result of Respondent's cannabis use in North Carolina. [Ex. 12-16, 18]. It also had substance-abuse related evaluations and assessments that were performed in New Mexico after Respondent applied for licensure in New Mexico in 2010. [Ex. 17, 19]

21. As part of its investigation of Respondent, the Board also requested a copy of Respondent's prescription monitoring program (PMP) report from the Board of Pharmacy. [Ex. 20; *see* Tr. 31:23 to 32:19]. The PMP showed that Respondent had been receiving and filling regular and continuous prescriptions for two Schedule II controlled substances – hydrocodone (an opioid painkiller) and dextroamphetamine (used in the treatment of ADHD) – since at least January 2016. [Ex. 20; Tr. 54:22 to 55:5]. The hydrocodone-acetaminophene 10-325 prescription was for 90 pills every 30 days during the period beginning on January 14, 2016, and continuing through February 3, 2018, the last date reflected on the PMP.

22. On or about November 17, 2017, the Board sent Respondent a copy of its complaint. [Ex. 3, 21]. The complaint referenced Respondent's prescriptions for Vicodin (hydrocodone) and dextroamphetamines, as well as Respondent's history of chemical dependency. [Ex. 3, 21]

23. Because of the nature of its investigation, the Board asked Respondent to put his license on "inactive" status and to submit to an evaluation by MTP, but Respondent refused. [Tr. 60:2-8; Tr. 83:24 to 84:9; Ex. 21]

24. In a December 4, 2017, letter, Respondent, through his counsel, sought to dispel any concern by the Board that Respondent was diverting the prescriptions or abusing prescription medications and advised the Board that he was being treated with opioids for chronic pain. [Ex. 4]. Respondent explained that the opioids were prescribed by his primary care physician, “who diligently documents prescriptions, checks [his] PMP and has [him] on contract[,] all in compliance with the Board’s rules concerning the use of this class of medication.” [Ex. 4]

25. Respondent’s letter introduced into the Board’s investigation Respondent’s lack of compliance with Board Rule 16.10.14.10, which imposed requirements on physicians, like Respondent who were being treated with opioids. [Ex. 1].

26. Rule 16.10.14.10 requires physicians who are being treated for chronic pain with opioids to “be evaluated by a pain clinic or, by a medical doctor or doctor of osteopathy pain specialist, and must have a complete, independent neuropsychological evaluation, as well as clearance from their physician, before returning to or continuing to practice.” [Ex. 1; Tr. 34:20 to 35:4]

27. Rule 16.10.14.10 addresses a licensee’s competence to practice and impairment; it does not presume abuse. [Tr. 85:1-8]. The Board expects licensees to be familiar with Rule 16.10.14.10. [Tr. 35:5-7; Tr. 84:10-18]

28. Respondent knows that opioids can be addictive and that addiction can lead to impairment, which affects one’s ability to function. [Tr. 207:16 to 208:5]

29. Medical records and testimony of Respondent’s primary care physician, Dr. Karimian, confirmed that Dr. Karimian had been treating Respondent with opioids (identified in his medical records as prescriptions for Norco) for chronic pain since Respondent’s very first visit with him on January 14, 2016, following Respondent’s bypass surgery. [Ex. 10; Tr. 99:12-25; *see*

Tr. 123:24 to 124:6]. Respondent testified he did not have the bypass surgery until February 2016 [Tr. 192:20-21]; Dr. Karimian's records state Respondent's chief complaint on his first visit was back pain [Ex. 10 at NMMB 0055].

30. January 14, 2016, is the date Respondent filled his first thirty-day, three-times-a-day prescription for hydrocodone. [Ex. 20; Tr. 55:3-5]

31. On February 19, 2018, three days after the Board summarily suspended Respondent's license to practice medicine, Dr. Karimian sent a letter to the Board stating he could "attest that from [a] family practice stand[point], Respondent] seems to be fit to discharge his duties as a physician." [Ex. B]

32. Dr. Karimian wrote the letter after Respondent asked him to in order to deal with a "legal problem" he was having. [Tr. 129:20-25]. Dr. Karimian did not connect the letter to Rule 16.10.14.10's requirement that he provide clearance for Respondent's continued safe practice of medicine while being treated with opioids for chronic pain, and would not have written the letter unless Respondent asked him to because he was busy and knew what was going on in the community. [Tr. 130:5-15]

33. Dr. Karimian testified that he had been prescribing opiates to Respondent for two years and that he was concerned about the possibility of addiction. TR 123:9-11.

34. Dr. Karimian testified that he had been seeing Respondent as a patient for more than 2 years, that during that entire time, he prescribed Norco to Respondent for back and chest pain, that he had treated other patients with chest pain following open heart surgery, and that none of the other patients continued to report chest pain after two years. Tr. 132:15-133:16.

35. Dr. Karimian testified that he had prescribed opiates to other patients for post open heart chest pain, but that he had never prescribed opiates for post open heart chest pain for a long a time as he had for Respondent. [Tr. 131].

36. Dr. Karimian was not a pain specialist and did not refer Respondent to one as Rule 16.10.14.10 requires because there were no pain specialists in the Roswell area. [Tr. 101:4-7; Tr. 125:8-10, 19-22].

37. On February 27, 2018, Respondent underwent a neuropsychological examination by Maxann Shwartz, Ph.D., which resulted in a March 4, 2018, report. [Ex. A].

38. Dr. Schwartz is an experienced psychologist in Albuquerque. [Tr. 137]. She estimates she has conducted between two hundred and three hundred neuropsychological evaluations. [Tr. 137].

39. Prior to Dr. Schwartz' evaluation of Dr. Black, she did not know him. [Tr. 142].

40. Dr. Schwartz interviewed Dr. Black and conducted a battery of standardized tests to evaluate Dr. Black's neurocognitive functioning in different areas. [Ex. A; Tr. 157-160].

41. Dr. Schwartz concluded that Dr. Black did not have any problems or deficits in his neurocognitive functioning. [Tr.140; Ex. A].

42. In the conclusion of her report, Dr. Shwartz stated, "The results of the current neuropsychological evaluation revealed Dr. Steven Black presents with intact cognitive and emotional functioning and with no noted impairment or weaknesses," and that "it is the clinical opinion of this evaluator [that Respondent] presents as a highly capable, extremely bright and well-balanced individual who is likely a tremendous asset to his profession." [Ex. A, pp. 8-9]

43. On cross-examination, Dr. Shwartz stated she had not been apprised of the reason for Respondent's referral for the evaluation. Respondent's referral, which initially came from Dr.

Durham, was a “general referral.” [Tr. 138:5-9].

44. Dr Shwartz was unaware that Respondent was using opioids on a regular and continuous basis to treat chronic pain. [Tr. 153:24 to 154:4; Tr. 162:18-22; Tr. 163:1-2]. She did not know her evaluation was required by Board rules in order to determine whether Respondent could practice medicine safely. [Tr. 149:10-18; 155:21 to 156:4]

45. The referral question affected the nature of Dr. Shwartz’ examination. [Tr. 138:17-20]. If she had known about the Board Rule and Respondent’s use of opioids to treat his chronic pain, Dr. Shwartz “might have come up with a different recommendation or maybe a list of concerns” because she could not render an opinion on something she was not asked to evaluate. [Tr. 163:21 to 164:5]

46. In addition, at the time of her examination of Respondent, Dr. Shwartz was not privy to other information, such as Respondent’s history, which is “very important” and may have affected her opinion and her recommendation. [Tr. 146:18-23; Tr. 147:17-19]

47. Dr. Shwartz was not told Respondent had been arrested for drug charges in North Carolina. [Tr. 154:13-24]. She did not know Respondent had lost his license to practice medicine in North Carolina because of alleged substance abuse issues. [Tr. 153:2-5]. She was not given or informed of the results of Respondent’s previous psychiatric and/or psychological evaluations, and did not know Respondent had a history of “pervasive depression.” [Tr. 146:24 to 147:16]. She thought he was only being treated for “depressed mood.” [Tr. 154:5-7; Tr. 160:10-25]. Dr. Shwartz was not told that Respondent had been arrested in November for an act of violence; she only knew that his medical license had been taken away. [Tr. 154:25 to 155:8]

48. Dr. Shwartz testified she “might have made some different diagnoses” if she had more information. [Tr. 161:1-4]

49. The timing of Dr. Karimian's letter and Dr. Shwartz's evaluation and report support the Board's allegation in the NSS that Respondent had not complied with Board Rule 16.10.14.10 at the time it summarily suspended Respondent's license.

50. David Durham, M.D. testified that he is the Respondent's psychiatrist. He testified that he has known the Respondent for many years, since the time when they were in the same residency program in Virginia. He testified that he coordinates his treatment with Dr. Karimian and knows what opiates Dr. Karimian prescribed for Respondent, including the dosage and frequency. Finally, Dr. Durham testified that he had no concerns about Respondent being impaired in the practice of medicine. [Tr. 173:17-19].

51. Respondent is a physician who suffers from chronic pain.

52. Respondent has continuously been treated with opiates since January 14, 2016.

53. Respondent has not been evaluated by a pain clinic or by a medical doctor or doctor of osteopathy pain specialist.

54. Respondent did not have an independent neuropsychological evaluation until after the Board issued its NSS on February 16, 2018.

55. Respondent never read the Board's pain management regulation until the day before the hearing on the NSS. [Tr. 205:4-8].

56. The Board's rule concerning physicians being treated with opiates, 16.10.14.10 NMAC, states in pertinent part that "Physicians... who have chronic pain and are being treated with opiates shall be evaluated by a pain clinic or, by a medical doctor or doctor of osteopathy pain specialist, and must have a complete, independent neuropsychological evaluation, as well as clearance from their physician, before returning to or continuing in the practice. In addition, they

must remain under the care of a physician for as long as they remain on opiates while continuing to practice.”

57. The evidence at the hearing establishes that Respondent was not in compliance with any of the requirements of 16.10.14.10 NMAC when the NSS was served and that he was not in compliance with 16.10.14.10 NMAC as of the date of the hearing, because he had continuously been treated with opiates for chronic pain since at least January of 2016 and had never been evaluated by a pain clinic or, by a medical doctor or doctor of osteopathy pain specialist.

58. The evidence at the hearing establishes that as of the date on which the NSS was issued, Respondent had not been cleared by either of his treating physicians to continue practicing medicine.

59. The Medical Practice Act, NMSA 1978, Section 61-6-15.1, reads in relevant part:

A. The board may summarily suspend or restrict a license issued by the board without a hearing, simultaneously with or at any time after the initiation of proceedings for a hearing provided under the Uniform Licensing Act [61-1-1 NMSA 1978], if the board finds that evidence in its possession indicates that the licensee:

- (1) poses a clear and immediate danger to the public health and safety if the licensee continues to practice;
- (2) has been adjudged mentally incompetent by a final order or adjudication by a court of competent jurisdiction; or
- (3) has pled guilty to or been found guilty of any offense related to the practice of medicine or for any violent criminal offense in this state or a substantially equivalent criminal offense in another jurisdiction. NMSA 1978, Section 61-6-15.1.

60. There was no evidence presented that Respondent had ever been adjudged mentally incompetent by a court of competent jurisdiction.

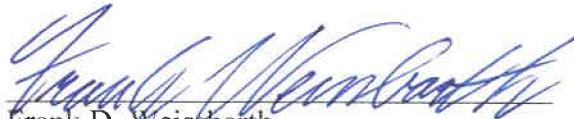
61. There was no evidence presented that Respondent had every guilty to or been found guilty of any offense related to the practice of medicine or for any violent criminal offense in New Mexico or another jurisdiction.

62. The State did not introduce any expert testimony or other evidence to contradict the testimony of Respondent's witnesses, doctors Karimian, Durham and Shwartz, to the effect that they had no concerns about Respondent's use of opiates impairing his ability to practice medicine.

63. There was no evidence presented that Respondent had failed to properly treat or had injured any patient.

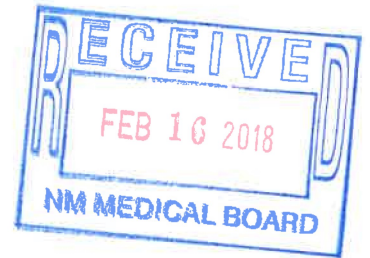
64. The State did not present any direct evidence Respondent's continued practice of medicine poses a clear and immediate danger to the public health and safety.

65. Whether other evidence adduced at the hearing, such as the length of time Respondent has been taking opiates and/or the quantity of opiates Respondent was prescribed and was taking, supports a finding that Respondent's continued practice of medicine poses a clear and immediate danger to the public health and safety is a determination that the Hearing Officer, who is not a doctor, is unable to make on the record before him. Under § 61-1-1(C), the Board may use its "experience, technical competence and specialized knowledge in the evaluation of evidence presented."


Frank D. Weissbarth
Hearing Officer

Date: March 22, 2018

BEFORE THE NEW MEXICO MEDICAL BOARD



**IN THE MATTER OF
STEVEN BLACK, M.D.**

License No. MD2011-0547

Respondent.

No. 2018-007
(Inv. No. 2017-C-230)

Via email and first-class mail to

TO: Steven Black, M.D.
c/o Molly Schmidt-Nowara
Garcia Ives Nowara
924 Second Street, NW, Suite A
Albuquerque, NM 87102

NOTICE AND ORDER OF SUMMARY SUSPENSION (NSS)

YOU ARE HEREBY NOTIFIED that the New Mexico Medical Board
("Board"), at its meeting of February 8-9, 2018,

FOUND AND CONCLUDED that your practice of medicine in the State of New
Mexico poses a clear and immediate danger to the public health and safety, and

ORDERS your license to practice medicine in the State of New Mexico
SUMMARILY SUSPENDED until further order of the Board.

Board Jurisdiction and Authority

1. You are subject to the Board's jurisdiction pursuant to the Medical
Practice Act ("MPA"), NMSA 1978, Sections 61-6-1 to -35, and the Uniform Licensing
Act ("ULA"), NMSA 1978, Sections 61-1-1 to -33, because you hold a license to practice
medicine in New Mexico.

2. The Board has authority to issue this Notice and Order of Summary
Suspension (NSS) under Section 61-6-15.1 of the MPA and Section 61-1-4 of the ULA.

In relevant part, Section 61-6-15.1(A) provides –

The [B]oard may summarily suspend or restrict a license issued by the [B]oard without a hearing, simultaneously with or at any time after the initiation of proceedings for a hearing provided under the [ULA], if the [B]oard finds that evidence in its possession indicates that the licensee:

- (1) poses a clear and immediate danger to the public health and safety if the licensee continues to practice[.]

See also Rule 16.10.5.16 NMAC (defining summary suspension as “a formal preliminary disciplinary action that immediately suspends a licensee’s right to practice [which] remains in effect until a further order of the [B]oard is entered.”).

Public Action

3. This NSS is a public document, open to public inspection. Its issuance constitutes a disciplinary event, and will be reported to the National Practitioner Data Bank (NPDB).

Compliance with Order

4. New Mexico law requires you to comply with this NSS as soon as (1) you receive service of it personally or by certified mail, return receipt requested, at your last known address as shown in the Board’s records, or (2) you have actual knowledge of it, whichever comes first. *See* NMSA 1978, § 61-6-15.1(B).

5. Summary suspension of your license requires you to refrain from any and all conduct constituting the practice of medicine, as “the practice of medicine” is defined in the MPA. *See* NMSA 1978, § 61-6-6(K) (defining “the practice of medicine”); *see also* NMSA 1978, § 61-6-15(C) (a person who practices, attempts to practice or offers to practice in New Mexico following suspension of his or her license commits a felony).

Evidence Supporting Summary Suspension

6. Credible evidence possessed by the Board indicates you pose a clear and immediate danger to the public health and safety if you continue to practice medicine.

That evidence includes the following factual allegation(s) –

a. you have chronic pain and have been treated with opiates since at least January 2016, but have not provided the Board with evidence that you have undergone an independent neuropsychological evaluation and received clearance from your physician to continue to practice.

7. The Board's investigation is ongoing. At any time prior to disposition of this matter by the Board, additional evidence obtained by the Board may result in it notifying you of further allegations supporting action against your license under the MPA, the ULA and the Board's Rules.

Your Rights

8. Section 61-6-15.1(C) of the MPA, Section 61-1-3 of the ULA, and Rule 16.10.5.16 of the Board's Rules entitle you to a hearing on the allegations contained in this NSS. You secure your right to a hearing by submitting a request to the Board. Your request must be in writing, addressed to the Board, and delivered by certified mail, return receipt requested. The hearing must take place within fifteen days of the Board's receipt of your request.

9. At any hearing that may be held on this NSS, you have the right (a) to be represented by counsel or by a licensed member of your profession or both, (b) to present all relevant evidence by means of witnesses, books, papers, documents and other evidence, and (c) to question all opposing witnesses who may appear on any matter

relevant to the issues. NMSA 1978, § 61-1-8.

10. In advance of the hearing, you also have the right to have subpoenas compelling (a) the production of relevant books, papers, documents and other evidence and (b) the attendance of witnesses on your behalf. These subpoenas will be issued by the Board upon your written request. After commencement of the hearing, issuance of such subpoenas is at the discretion of the Board or Hearing Officer. *See id.*

Costs

11. By law, if the Board takes final action against your license, as defined in Section 61-1-3 of the ULA, you will be required to reimburse the Board for all costs of the Board's disciplinary proceedings unless the Board excuses some or all of those costs. *See* NMSA 1978, Section 61-1-4(G).

NEW MEXICO MEDICAL BOARD

0.16.18
Date


Sondra Frank, J.D., Executive Director
New Mexico Medical Board

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

Yvonne Chicoine, Chief Legal Counsel
New Mexico Medical Board
2055 South Pacheco Street, Building 400
Santa Fe, New Mexico 87505
ph: 505/476-7223
email: YvonneM.Chicoine@state.nm.us

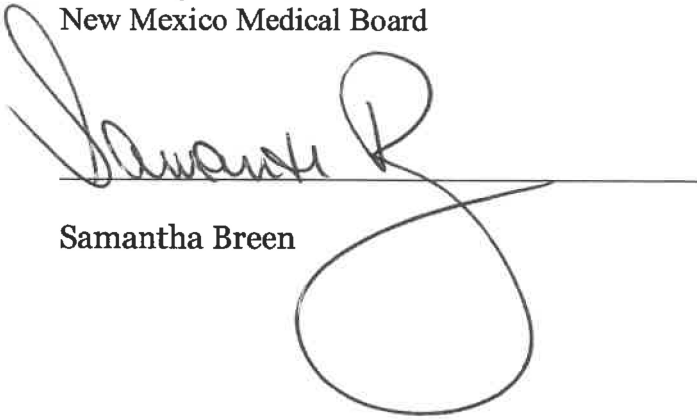
CERTIFICATE OF SERVICE

I hereby certify that a true copy of the Notice of Summary Suspension and Notice of Contemplated Action was sent to Respondent's Counsel via email and First Class USPS on February 16, 2018.

Molly Schmidt-Nowara, Esq.
924 Garcia Ives Nowara
Suite A
Albuquerque, NM 87102
molly@ginlawfirm.com

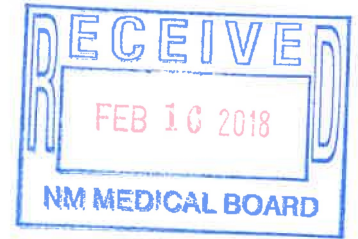
HAND DELIVERED TO:

Yvonne Chicoine
Chief Legal Counsel
New Mexico Medical Board

A handwritten signature in black ink, appearing to read "Samantha Breen", is written over a horizontal line. The signature is stylized with a large, looping flourish that extends below the line and to the right.

Samantha Breen

BEFORE THE NEW MEXICO MEDICAL BOARD



**IN THE MATTER OF
STEVEN BLACK, M.D.**

License No. MD2011-0547

Respondent.

No. 2018-007
(Inv. No. 2017-C-230)

Via email and first-class mail to

TO: Steven Black, M.D.
c/o Molly Schmidt-Nowara
Garcia Ives Nowara
924 Second Street, NW, Suite A
Albuquerque, NM 87102

NOTICE OF CONTEMPLATED ACTION (NCA)

YOU ARE HEREBY NOTIFIED that the New Mexico Medical Board (“Board”) has before it sufficient evidence that, if not rebutted or explained, will justify the Board imposing disciplinary sanctions, up to and including revocation of your license to practice medicine in New Mexico. *See* NMSA 1978, § 61-1-4 (the Board must provide written notice when contemplates taking action against a licensee).

Board Jurisdiction and Authority

1. You are subject to the Board’s jurisdiction pursuant to the Medical Practice Act (“MPA”), NMSA 1978, Sections 61-6-1 to -35, and the Uniform Licensing Act (“ULA”), NMSA 1978, Sections 61-1-1 to -33, because you hold a license to practice medicine in New Mexico.

2. The Board has authority to issue this Notice of Contemplated Action (NCA) under Section 61-6-15 of the MPA and Section 61-1-4 of the ULA.

Public Action

3. This NCA is a public document, open to public inspection, but its issuance does not constitute a disciplinary event reportable to the National Practitioners Data Bank (NPDB).

Evidence Supporting Contemplated Action

4. Credible evidence possessed by the Board supports the Board taking disciplinary action against your license. The evidence includes the following factual allegations –

- a. you have chronic pain and have been treated with opiates since at least January 2016, but have not provided the Board with evidence that you have undergone an independent neuropsychological evaluation and received clearance from your physician to continue to practice,
- b. you have been criminally charged for conduct involving violence against a household member and lack of truthfulness.

5. If proven, the allegations outlined above constitute conduct actionable under the MPA, and the rules and regulations of the Board (“Board’s Rules”), found at Title 16, Chapter 10, NMAC. The specific provisions may include –

- a. conduct contemplated by the MPA’s non-exclusive definition of “unprofessional or dishonorable conduct,” such as –
 - Section 61-6-15(D)(18) (conduct likely to harm the public),
 - Section 61-6-15(D)(23) (failure to furnish the Board, its investigators or representatives with information requested by the Board),
 - Section 61-6-15(D)(29) (“conduct unbecoming a person licensed to practice or detrimental to the best interests of the public”), and

- b. conduct violating the Board's Rules, such as –
 - Rule 16.10.8.8(H) (identifying dishonesty as unprofessional or dishonorable conduct), and
 - Rule 16.10.14.10 (requiring physicians with chronic pain who are being treated with opiates to have a complete, independent neuropsychological evaluation and be cleared by their physicians to continue to practice).
- 6. The Board's investigation is ongoing. At any time prior to disposition of this matter by the Board, additional evidence obtained by the Board may result in it notifying you of further allegations supporting action against your license under the MPA, the ULA and the Board's Rules.

Your Rights

- 7. Section 61-1-3 of the ULA entitles you to a hearing on the allegations contained in this NCA. You secure your right to a hearing by submitting a request to the Board. Your request must be in writing, addressed to the Board, and delivered by certified mail, return receipt requested. You must deposit your request for a hearing in the mail *within twenty days* following your receiving service of this NCA. NMSA 1978, § 61-1-4(D)(3).
- 8. If you do not request a hearing within twenty days following service of this NCA, the Board may take action against your license up to and including revocation of your license and the privilege to practice in New Mexico. In accordance with Section 61-1-4(E) of the ULA, that action will be final and not subject to judicial review.
- 9. At any hearing that may be held on this NCA, you have the right (a) to be represented by counsel or by a licensed member of your profession or both, (b) to present

all relevant evidence by means of witnesses, books, papers, documents and other evidence, and (c) to question all opposing witnesses who may appear on any matter relevant to the issues. NMSA 1978, § 61-1-8.

10. In advance of the hearing, you also have the right to have subpoenas compelling the production of relevant books, papers, documents and other evidence and the attendance of witnesses on your behalf. These subpoenas will be issued by the Board upon your written request. After commencement of the hearing, issuance of such subpoenas is at the discretion of the Board or Hearing Officer. *Id.*

Costs

11. By law, if the Board takes action against your license, as defined in Section 61-1-3 of the ULA, you will be required to reimburse the Board for the costs of its proceedings unless the Board excuses some or all of those costs. *See* NMSA 1978, Section 61-1-4(G).

NEW MEXICO MEDICAL BOARD

2.16.18
Date


Sondra Frank, J.D., Executive Director
New Mexico Medical Board

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

Yvonne Chicoine, Chief Legal Counsel
New Mexico Medical Board
2055 South Pacheco Street, Building 400
Santa Fe, New Mexico 87505
ph: 505/476-7223
email: YvonneM.Chicoine@state.nm.us

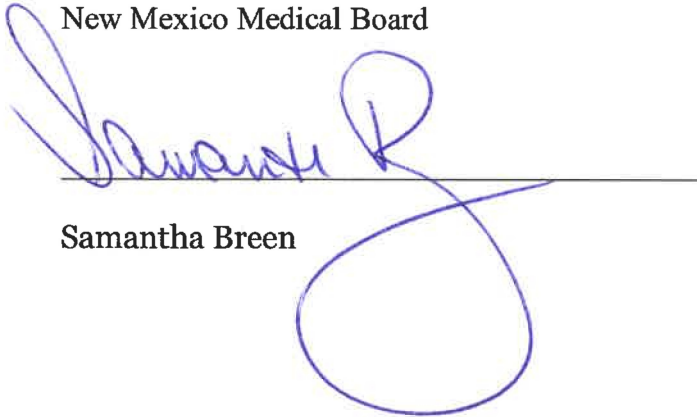
CERTIFICATE OF SERVICE

I hereby certify that a true copy of the Notice of Summary Suspension and Notice of Contemplated Action was sent to Respondent's Counsel via email and First Class USPS on February 16, 2018.

Molly Schmidt-Nowara, Esq.
924 Garcia Ives Nowara
Suite A
Albuquerque, NM 87102
molly@ginlawfirm.com

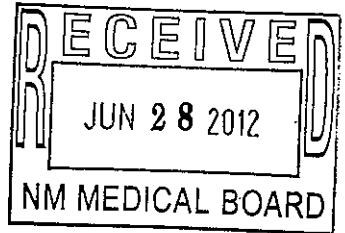
HAND DELIVERED TO:

Yvonne Chicoine
Chief Legal Counsel
New Mexico Medical Board



Samantha Breen

BEFORE THE NEW MEXICO MEDICAL BOARD



IN THE MATTER OF)

STEVEN R. BLACK, M.D.)

License #MD2011-0547)

Respondent)

Case No. 2011-011

ORDER

THIS MATTER came before the New Mexico Medical Board ("Board") upon Steven Black, MD's ("Respondent") request to be released from his Stipulation of Licensure.

WHEREAS Respondent has an active license to practice medicine in the state of New Mexico; and

WHEREAS in July 2011, Respondent entered into a Stipulation of Licensure with the Board which placed certain terms and conditions upon Respondent's license to practice medicine; and

WHEREAS in May 2012, Respondent requested to be released from the Stipulation of Licensure; and

WHEREAS the Board has determined that Respondent has met all the terms and conditions set forth in the Stipulation of Licensure.

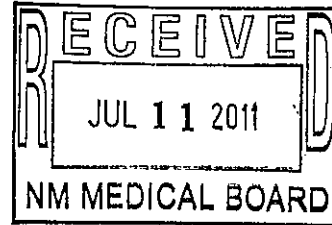
IT IS THEREFORE ORDERED that the stipulations placed on Respondent's license to practice medicine in Case No. 2011-011 are hereby removed and Respondent shall have an unrestricted license to practice medicine in New Mexico.

Dated: June 28, 2012

NEW MEXICO MEDICAL BOARD

By: 
Steven Weiner, MD, Chair

BEFORE THE NEW MEXICO MEDICAL BOARD



IN THE MATTER OF
STEVEN R. BLACK, M.D.

Applicant

Respondent.

No. 2011-011

STIPULATION OF LICENSURE

THIS Stipulation of Licensure is between, Steven R. Black, M.D. ("Respondent") and the New Mexico Medical Board ("Board").

Respondent is subject to the jurisdiction of the Board pursuant to the Medical Practice Act, NMSA 1978, §§ 61-6-1 through -35; the New Mexico Medical Board rules and regulations, Title 16, Chapter 10, NMAC.

THIS MATTER came before the Board upon Respondent's application for licensure pursuant to §61-6-1 et. seq. NMSA 1978.

WHEREAS, the Board is persuaded that Respondent can safely perform the duties of a physician, however, only under certain terms and conditions set forth herein.

WHEREAS, Respondent consents to and agrees to follow the terms and conditions set forth herein.

1. Respondent shall enter into a treatment contract with, and as determined by, the Monitored Treatment Program and shall comply fully with the recommendations, terms and conditions required of Respondent by the Monitored Treatment Program.

2. If the Board is notified that Respondent has violated any of the Monitored Treatment Program contract terms, the Board shall constitute it as a violation of this Stipulation and subsequent Order of the Board.

3. Respondent hereby waives any right to confidentiality he may have with respect to information gathered by the Monitored Treatment Program with regard to the Board's access to Monitored Treatment Program information. Respondent hereby authorizes the Monitored Treatment Program to release any and all information to the Board..

4. Respondent shall appear before the Board on a quarterly basis or upon the Board's request.

5. Respondent shall submit quarterly reports to the Board attesting to his compliance with this stipulation. Such quarterly reports shall be on a form provided by Board staff and sent to Respondent.

6. Respondent shall, at all times, comply with all federal, state and local laws and all rules governing the practice of medicine.

7. At the end of one year from the date of the Board's acceptance of this Stipulation, the Board shall review all terms and conditions and determine whether continued stipulations are necessary. If the Board determines continued stipulations are necessary, the necessary stipulations, terms and conditions remain in force. Thereafter, the Board will conduct such review at least on a yearly basis or upon petition by the Respondent.

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

9. Respondent understands that this stipulation is made pursuant to NMSA 1978, §61-6-1(H), and Board Rule 16.10.5.15 NMAC. Respondent further understands that entering into this stipulation results in a waiver of his rights under the Uniform Licensing Act and the Medical Practice Act including the right to appeal;

10.. Respondent understands that this stipulation will be reported to the National Practitioners Data Bank and/or Healthcare Integrity and Protection Data Bank; and is a public document open to public inspection.

11. The conditions and terms set forth in this stipulation will remain in effect unless and until removed or amended by the Board.


12. Respondent knows and understands his right to consult with an attorney and Respondent's signature below signifies that Respondent has either consulted with an attorney or Respondent waives his right to counsel.

13. This stipulation incorporates any and all agreements, covenants and understandings between the Parties. No prior agreement or understanding, verbal or otherwise of the Parties or their agents or assignees shall be valid or enforceable unless embodied in this Stipulation.

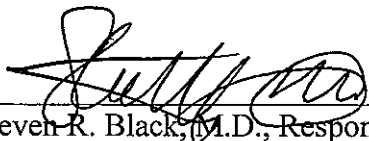
IT IS SO STIPULATED BY Steven R. Black, M.D. and the New Mexico Medical Board.

New Mexico Medical Board

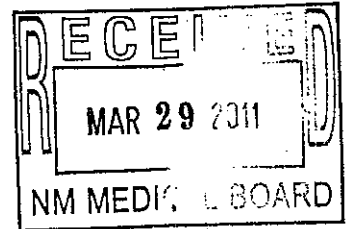
Dated: 6/30/2011


Steven Weiner, M.D. Chair

Dated: 7/8/11


Steven R. Black, M.D., Respondent

BEFORE THE NEW MEXICO MEDICAL BOARD



IN THE MATTER OF)

STEVEN R. BLACK, MD)
Applicant)

No. 2011-011

Respondent.)

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 in imposing sanctions that could include denial of your application for a 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. Respondent has failed to satisfy the Board of his qualifications to be issued a license to practice medicine.

3. This failure to satisfy the Board is based on the following allegations:

A. The North Carolina medical license of Respondent was voluntarily surrendered on or about July 31, 2009 because of his arrest for possession of marijuana and a diagnosis that Respondent was abusing cannabis. The North Carolina Medical Board found that Respondent's abuse of drugs constituted Respondent's being unable to practice medicine with reasonable skill and safety to patients in violation of State law.

These allegations, if proven, would be a violation of §61-6-15(D) (14) NMSA 1978, discipline imposed on licensee by another state based upon acts by the licensee similar to acts described in §61-6-15 NMSA 1978; §61-6-15(7) NMSA 1978, habitual or excessive use of intoxicants or drugs; and §61-6-15(29) NMSA 1978, conduct detrimental to the best interests of the public.

B. Subsequently, on or about March 2, 2010, the North Carolina Medical Board, after a hearing and consideration of the facts set out in A above, indefinitely suspended Respondent's North Carolina medical license.

These allegations, if proven, would be a violation of §61-6-15(D) (14) NMSA 1978, discipline imposed on licensee by another state based upon acts by the licensee similar to acts described in §61-6-15 NMSA 1978; §61-6-15(7) NMSA 1978, habitual or excessive use of intoxicants or drugs; and §61-6-15(29) NMSA 1978, conduct detrimental to the best interests of the public.

4. Please take notice that pursuant to §61-1-4 NMSA 1978, 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 denial of your application for a license to practice medicine in the State of New Mexico, and there will be no judicial review of their decision.

5. 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.

6. The issuance of this Notice of Contemplated Action is not reportable to any national data bank, but is a public document subject to the New Mexico Inspection of Public Records Act.

Dated this 29th day of March, 2011.

NEW MEXICO MEDICAL BOARD



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