

**Before the  
New Hampshire Board of Medicine  
Concord, New Hampshire 03301**

**In The Matter Of:**

**Docket No.: 12-15**

**Don A. Holshuh, M.D.**  
License No.: 6016  
(Adjudicatory/Disciplinary Proceeding)

**FINAL DECISION AND ORDER**

Before the New Hampshire Board of Medicine ("Board") is an adjudicatory/disciplinary proceeding of Don A. Holshuh, M.D. ("Respondent" or "Dr. Holshuh").

**Background Information:**

Pursuant to a November 4, 2011 Board Order, Respondent's license to practice medicine was indefinitely suspended. Respondent has not complied with any of the requirements to have the suspension of his license lifted, and it has been suspended since April 6, 2011. On or about April 10, 2012, the Board received information from Henry Schein, a wholesale pharmaceutical company that Dr. Holshuh was attempting to order medications under his medical license and when the Henry Schein representative contacted Respondent regarding the status of his license, Respondent advised that he was licensed and provided a copy of his medical license with an expiration date of June 30, 2013. On October 5, 2012, the Board issued a Notice of Hearing.

On Wednesday, April 3, 2013, at 1:00 p.m., the Board commenced with the adjudicatory/disciplinary hearing in the above captioned matter. Board members present<sup>1</sup> were:

Edmund Waters, Jr., Public Member, Presiding Officer  
Mark Sullivan, Physician Assistant Member  
John Wheeler, Physician Member  
Robert Andelman, Physician Member  
Robert Vidaver, Physician Member  
Michael Barr, Physician Member  
Louis Rosenthal, Physician Member  
Robert Cervenka, Physician Member  
Daniel Morrissey, Public Member  
Gail Barba, Public Member

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<sup>1</sup> These same Board members also deliberated and voted on this Final Decision and Order.

The prosecution was represented by Hearing Counsel Senior Assistant Attorney General Jeff Cahill of the Administrative Prosecutions Unit ("APU") of the Office of the Attorney General. A Notice of hearing was sent to Attorney Moses on October 5, 2012, and signed for by him. Neither Dr. Holshuh nor his Attorney Robert Moses appeared at the April 3, 2013 hearing. Attorney Cahill represented to the Board that he and Attorney Moses had one telephone conversation a couple of weeks before the hearing in which Attorney Moses advised Attorney Cahill that he was aware of the hearing and that it was their intention not to appear.

In accordance with the Notice of Hearing, Hearing Counsel submitted a Witness and Exhibit list at least three days prior to the 4/3/13 hearing. Respondent did not submit a Witness and Exhibit List.

The following exhibits were introduced into evidence and accepted into the record:

- Hearing Counsel's exhibits: 1 through 5

**Findings of Fact:**

On 4/3/13, the Board heard the direct examination of Dori Lefebvre<sup>2</sup>, Board Investigator.

The Board finds Ms. Lefebvre's testimony was forthright and credible.

In light of the testimony and exhibits, the Board finds the following facts:

On April 10, 2012, Dori Lefebvre received a call from Dwight Blair, a representative from Henry Schein, Inc., a drug wholesaler, indicating that on April 9, 2012 Don. A. Holshuh, M.D. had called Henry Schein, Inc. for the purpose of ordering ten bottles of non-controlled medications, specifically, the following: 2 bottles of 10 MG Amlodipine Besylate, 90 tablets per bottle; 2 bottles of 40 MG Lisinopril, 100 tablets per bottle; 4 bottles of 40 MG Furosemide, 100 tablets per bottle; 2 bottles of 20 MG Furosemide, 100 tablets per bottle. (Exhibit 5). At the time Dr. Holshuh placed the order with the company Mr. Blair checked the Board's website and questioned Dr. Holshuh's license status which appeared to have indicated that Dr. Holshuh's license was suspended pursuant to a Board Order. When he had contacted Dr. Holshuh to clarify the status of his medical license, Mr.

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<sup>2</sup> Dori Lefebvre is also referred to as Dori Tothill in some of the Exhibits in this matter. Between the time of the writing of the Exhibits and this hearing Ms. Tothill changed her name to Ms. Lefebvre.

Blair told Ms. Lefebvre that Dr. Holshuh had told him that he had a license and faxed a copy of his pocket card that said his license was good until June 30, 2013 (Exhibit 5). The representative from Henry Schein, Inc. questioned this status because of the information on the Board's website. Ms. Lefebvre confirmed with Mr. Blair that Dr. Holshuh's license was suspended. Henry Schein, Inc. did not complete the order (Exhibit 5).

As part of the Board investigation into whether Dr. Holshuh's attempt to order the above-named drugs from Henry Schein, Inc. was appropriate, Ms. Lefebvre stated that she received a licensee response from Dr. Holshuh's attorney, Robert Moses. In a letter dated May 11, 2012, Attorney Moses claimed that Dr. Holshuh had valid prescriptions for at least the Lisinopril and Amlodipine from his internist. He did not identify the internist in his letter. In this same letter, he informed Ms. Lefebvre that Dr. Holshuh was rescinding and withdrawing any and all authorizations that would allow the Board to contact any of his healthcare providers. As Ms. Lefebvre explained in her testimony, Dr. Holshuh's attorney had made several unverified statements on Dr. Holshuh's behalf that he then was making it impossible for her to investigate the validity of whether he had the prescription for those two drugs because Dr. Holshuh was rescinding any and all authorizations to review those medical records.

This is not the first time that Dr. Holshuh has been investigated for ordering prescription medication from a wholesaler for personal use. In January, 2011, the Board of Pharmacy investigated wholesale orders of Lorazepam purchased by Dr. Holshuh for his personal use. The matter was referred to the Board. During the period from October 2009 and May 2010, Dr. Holshuh ordered Lorazepam directly from Henry Schein, Inc. while he was being prescribed the same drug from his personal physician. During this same time period Dr. Holshuh was also ordering non-controlled substances for his personal use. In a letter from Dr. Holshuh's attorney regarding this matter, he explained that he had ordered a number of medications, mostly related to blood pressure control. He also "represented that he would not order these medications in that fashion again but would simply acquire them on a retail basis." (Exhibit 3).

Dr. Holshuh's license to practice medicine had been suspended as a result of an Emergency

License Suspension on April 6, 2011. On April 15, 2011 the Board of Medicine held an Emergency Hearing regarding the license suspension and on April 28, 2011 the Board issued an Order maintaining the license suspension pending the investigation. A Hearing was held on August 3 and testimony continued on September 7, 2011 in which both the issues of Dr. Holshuh's ordering Lorazepam and his personal conduct related to alcohol abuse were addressed.

On August 25, 2011, the Board received a letter regarding the renewal of Dr. Holshuh's license in which he stated that he did not intend to renew his license. At the Board hearing on September 7, 2011, Presiding Officer Waters informed Dr. Holshuh that "if he were to reapply and the license were given, it would be given under the suspension which is in place now." (Exhibit 1). Attorney Moses acknowledged on the record and agreed with Chairman Waters' assessment that any license renewal would be subject to the existing suspension. Dr. Holshuh was present during this exchange and on September 14, 2011 Dr. Holshuh's license was renewed subject to the existing suspension.

After the disciplinary hearing that was held and concluded on September 7, 2011, the Board issued a Final Decision and Order on November 4, 2011. As part of the Order, Dr. Holshuh's license to practice medicine in New Hampshire was suspended for a minimum of one year, or to November 4, 2012. He was required to participate in an in-patient residential treatment program to be preapproved by the Director of the Professionals' Health Program; and he was required to enter a seven-year contract no later than November 19, 2011 with the New Hampshire Professionals' Health Program for monitoring. As of the date of the hearing in this matter, April 3, 2013, Dr. Holshuh has not sought preapproval for an in-patient residential treatment program from the NPHP nor has he entered into a seven year contract with the NPHP for monitoring as he was required to do no later than November 19, 2011. At the time that Dr. Holshuh attempted to order the prescription medications from Henry Schein, Inc., the minimum one year suspension period of the November 4, 2011 Order was in effect.

### Rulings of Law:

#### Applicable Laws:

RSA 329:17, VI states in pertinent part:

The board, after hearing, may take disciplinary action against any person licensed by it upon finding that the person: ...

(d) Has engaged in dishonest or unprofessional conduct or has been grossly or repeatedly negligent in practicing medicine or in performing activities ancillary to the practice of medicine or any particular aspect or specialty thereof, or has intentionally injured a patient while practicing medicine or performing such ancillary activities.

RSA 329:24, I states:

Whoever, not being licensed or otherwise authorized according to the law of this state, shall advertise oneself as practicing medicine, or shall practice medicine, according to the meaning of RSA 329, or in any way hold oneself out as qualified so to do, or call oneself a "physician," or whoever does any such acts after receiving notice that such person's license has been revoked is engaged in unlawful practice.

#### Rulings:

The Board makes the following findings by a preponderance of the evidence:

1. In accordance with paragraph 6A of the Notice of Hearing ("NOH"), the Board finds that on April 9, 2012, the Respondent engaged in professional misconduct by attempting to order prescription drugs from Henry Schein, Inc., a drug wholesaler, for his personal use while his medical license was under suspension pursuant to the November 4, 2011 Final Decision and Order, in violation of RSA 329:17, VI(d).
2. In accordance with paragraph 6A of the NOH, the Board finds that on April 9, 2012, the Respondent engaged in professional misconduct by practicing medicine while his license was suspended in violation of RSA 329:24. The Respondent's suspension pursuant to the November 4, 2011 Final Decision and Order was in effect and the Respondent engaged in unlawful practice when he attempted to order prescription drugs from Henry Schein, Inc., a drug wholesaler, for his personal use.
3. In accordance with paragraph 6B of the NOH, the Board finds that on April 9, 2012, the Respondent engaged in professional misconduct by holding himself out as actively licensed to

practice medicine, when he sent a copy of his license with an expiration date of June 30, 2013 to Henry Schein, Inc., when in fact, his license was, at the time, under suspension, in violation of RSA 329:17, VI (d).

4. In accordance with paragraph 6B of the NOH, the Board finds that on April 9, 2012, the Respondent engaged in professional misconduct by holding himself out as actively licensed to practice medicine, when he sent a copy of his license with an expiration date of June 30, 2013 to Henry Schein, Inc., when in fact, his license was, at the time, under suspension, in violation of RSA 329:24.

**Disciplinary Action:**

After making its findings of fact and rulings of law, the Board deliberated on the appropriate disciplinary action authorized by RSA 329:17, VII ("The board, upon making an affirmative finding under paragraph VI, may take disciplinary action in any one or more of the following ways:..."). In this deliberation, the Board considered the 9 factors as outlined in Med 408.03(c) to determine appropriate disciplinary sanctions. Specifically, the Board considered that the Respondent has a substantial disciplinary history; had not complied with any of the provisions of the November 4, 2011 Order, and that such failure to comply can be separate grounds for disciplinary action; that the Respondent had previously purchased prescription drugs from a wholesale pharmaceutical company, knew it was improper, and did it again in this instant case while his license was under suspension; that after claiming to have prescriptions for some of the drugs he attempted to order that he rescinded all medical releases so the Board could not independently confirm the information demonstrating a clear lack of willingness to cooperate with the board's investigation. Based upon the above the Board has voted the following:

IT IS ORDERED that the Respondent's license be REVOKED.

IT IS FURTHER ORDERED that the Respondent shall pay an administrative fine of three thousand dollars (\$3,000) within thirty (30) days of the effective date of this Final Decision and Order. The payment shall be made in the form of a money order or bank check made payable to "Treasurer, State of New Hampshire" and delivered to the Board's office at 2 Industrial Park Drive,

Suite 8, Concord, NH 03301.

IT IS FURTHER ORDERED that this Final Decision and Order shall become a permanent part of the Respondent's file, which is maintained by the Board as a public document.

IT IS FURTHER ORDERED that this Final Decision and Order shall take effect as an Order of the Board on the date an authorized representative of the Board signs it.

Date: 5/8/2013

\*BY ORDER OF THE NEW HAMPSHIRE  
BOARD OF MEDICINE

Penny Taylor

(Signature)

PENNY TAYLOR

(Print or Type Name)

Authorized Representative of the  
New Hampshire Board of Medicine

\*\ Amy Feitelson, M.D., Board member, recused.