

**State of New Hampshire
Board of Medicine
Concord, New Hampshire**

In the Matter of:
William Foord, M.D.
License No. 5307
(Adjudicatory Proceeding)

Docket No.: 13-01

**ORDER OF EMERGENCY SUSPENSION
OF PRESCRIBING PRIVILEGES
AND NOTICE OF HEARING**

1. RSA 329 and New Hampshire Board of Medicine Administrative Rule 409.01 authorize the New Hampshire Board of Medicine (“Board”) to suspend a license to practice medicine for no more than one hundred twenty (120) days pending completion of an adjudicatory proceeding, in cases involving imminent danger to life or health, prior to holding a hearing. RSA 329:18-b; Med 409.01. The Administrative Procedures Act requires agencies to commence an adjudicative proceeding not later than 10 days after the date of the emergency order suspending a license. RSA 541-A:30, III. Accordingly, the Board may commence a bifurcated proceeding. If so, the Board must hold a limited hearing (“first hearing”) within 10 working days to determine whether there is “imminent danger to life or health” or whether “the public health, safety or welfare requires” that the licensee’s license remain suspended for the duration of the adjudicative proceeding. RSA 329:18-b; RSA 541-A:30, III. This first hearing satisfies the requirements of RSA 329:18-b and a suspension may be ordered until the conclusion of the investigation and adjudicatory proceeding, even if such exceeds 120 days. RSA 329:18-b. If the Board does not commence the first hearing within 10 days, the suspension order shall be automatically vacated. RSA 541-A:30, III. The Board may not continue the first hearing

without the consent of the licensee to the continuation of the suspension pending issuance of the Board's final decision. RSA 329:18-b and Med 409.01.

2. William Foord, M.D. ("Dr. Foord" or "Respondent") holds an active license, No. 5307, issued on March 20, 1975, to practice medicine in the State of New Hampshire.

Respondent practices medicine in Berlin, New Hampshire.

3. The Board has received information indicating that Dr. Foord's continued prescribing of controlled medications poses an imminent threat to life, safety and/or health, which warrants the temporary suspension of Dr. Foord's privilege to prescribe controlled medications pending a hearing on whether permanent and/or temporary disciplinary sanctions should be imposed. An investigation was conducted and a Report of Investigation was provided to the Board.

4. In support of this *Order of Emergency License Suspension of Prescribing Privileges and Notice of Hearing*, the Board alleges the following facts:

A. Respondent, who is an ophthalmologist, began treating patient P.G. in April of 2007 for recurrent chronic uveitis, primarily affecting her right eye. P.G. experienced persistent right eye inflammation, accompanied by elevated intraocular pressure, causing significant pain. Early in treatment, the Respondent prescribed controlled substances to manage P.G.'s pain. Respondent continued to manage P.G.'s pain using controlled substances, primarily Oxycodone, from June of 2007 thru June of 2011. During this extended period of time, Respondent attempted to manage P.G.'s pain himself instead of referring the patient to a pain specialist.

- B. On July 6, 2011, the Board issued a letter of concern to Respondent related to his treatment of P.G. The letter notified Respondent that an investigation had revealed, in pertinent part, that he prescribed pain medication inappropriately to P.G. and that he failed to refer the patient to a pain clinic. The letter informed Respondent that the identified conduct may be construed as professional misconduct, as defined by RSA 329:17, VI.
- C. Respondent continued to prescribe controlled substances for P.G. between July and December of 2011, including Oxycodone, Alprazolam, and a Fentanyl patch.
- D. Patient P.G. died on December 29, 2011. Her cause of death was acute intoxication from the combined effects of several drugs, including Oxycodone and Alprazolam.
- E. On December 13, 2012, Respondent received a Board subpoena to produce P.G.'s medical record covering the period from August 2010 thru December 2011. On January 25, 2013, Respondent notified the Board that P.G.'s medical record was previously destroyed during the process of culling and destroying inactive files.
- F. Respondent began treating patient K.B. in March of 2008 for debilitating headaches localized behind each eye related to bilateral occipital muscle pain, painful temporalis muscles, and anxiety and severe emotional stress. Between March of 2008 thru at least May of 2011, Respondent regularly

prescribed the controlled substance Alprazolam (Xanax) for K.B. During this extended period of time, Respondent attempted to manage K.B.'s symptoms himself instead of referring the patient to a specialist or for drug treatment, despite having reasonable grounds to believe that K.B. was dependent on Alprazolam.

5. Based on the above information, the Board finds that the case involves imminent danger to life and/or health. Further, the Board believes there is a reasonable basis for both immediately suspending Respondent's privilege to prescribe all controlled substances, specifically scheduled drugs II, III, IV and V, on a temporary basis, and for commencing an expedited disciplinary proceeding against Respondent pursuant to RSA 329:18-b, 541-A:30, III, and Med 409.01.

6. The purpose of this proceeding will be to determine whether Respondent has engaged in professional misconduct contrary to RSA 329:17, VI and RSA 329:18-b, which warrants the continued imposition of a temporary suspension, the imposition of permanent disciplinary sanctions, or both. The specific issues to be determined in this proceeding are:

- A. Whether between April of 2007 and July of 2011, Respondent committed professional misconduct by inappropriate prescribing of narcotics to P.G., in violation of RSA 329:17, VI (c); and/or RSA 329:17, VI (d); and/or
- B. Whether between July of 2011 and December of 2011, Respondent committed professional misconduct by inappropriate prescribing of narcotics to P.G., in violation of RSA 329:17, VI (c); and/or RSA 329:17, VI (d); and/or

- C. Whether between March of 2008 and May of 2011, Respondent committed professional misconduct by inappropriate prescribing of narcotics to K.B., in violation of RSA 329:17, VI (c); and/or RSA 329:17, VI (d); and/or
- D. Whether between December of 2011 and December of 2012, Respondent committed professional misconduct by destroying the medical record of P.G., in violation of RSA 329:17, VI (c); and/or RSA 329:17, VI (d); and/or RSA 329:17, VI (k); and/or Med 501.02 (d).
- E. If any of the above allegations are proven, whether and to what extent Respondent should be subjected to one or more of the disciplinary sanctions authorized by RSA 329:17, VII.

7. While RSA 329:18-a requires that the Board furnish Respondent at least fifteen days' notice of allegations of professional misconduct and the date, time and place of an adjudicatory hearing, RSA 541-A:30, III and Med 409.01 require the Board to commence an adjudicatory hearing within ten (10) days after the date of an immediate, temporary license suspension order.

8. The Board intends to complete this adjudicative proceeding within the one hundred twenty (120) day time period provided by RSA 329:18-b and Med 409.01. Accordingly, neither the date of the initial evidentiary hearing nor the date for concluding this proceeding shall be postponed or extended unless Respondent agrees to continue the suspension period pending issuance of the Board's final decision in this matter. *See*, RSA 329:18-b, 541-A:30, III, and Med 409.01.

THEREFORE, IT IS ORDERED that Respondent's privilege to prescribe all controlled substances, specifically scheduled drugs II, III, IV and V, is immediately suspended until further order of the Board; and,

IT IS FURTHER ORDERED that an adjudicatory proceeding be commenced for the purpose of resolving the issues articulated above pursuant to RSA 329:17; 329:18-a; 329:18-b; 541-A:30, III; and Med 409.01. To the extent that this Order or the Board's rules do not address an issue of procedures, the Board shall apply the N.H. Department of Justice Rules, Part 800; and,

IT IS FURTHER ORDERED that William Foord, M.D. shall appear before the Board on February 20, 2013 at 8:00 a.m., at the Board's office located at 2 Industrial Park Drive, Concord, N.H., to participate in this adjudicatory hearing and, if deemed appropriate, be subject to sanctions pursuant to RSA 329:17, VII, and

IT IS FURTHER ORDERED that if Respondent elects to be represented by counsel, at Respondent's own expense, said counsel shall file a notice of appearance at the earliest date possible; and,

IT IS FURTHER ORDERED that Respondent's failure to appear at the time and place specified above may result in the hearing being held *in absentia* and disciplinary sanctions imposed without further notice or an opportunity to be heard; and,

IT IS FURTHER ORDERED that Senior Assistant Attorney General Jeff Cahill, 33 Capitol Street, Concord, N.H., 03301, is appointed to act as Hearing Counsel in this matter with all the authority within the scope of RSA Chapter 329 to represent the public interest. Hearing Counsel shall have the status of a party to this proceeding; and,

IT IS FURTHER ORDERED that Edmund J. Waters, Jr., Board Member, or any other person whom the Board may designate, shall act as presiding officer in this proceeding; and,

IT IS FURTHER ORDERED that any proposed exhibits, motions or other documents intended to become part of the record in this proceeding, be filed by the proponent with the Board, in the form of an original and eleven (11) copies, and with an additional copy mailed to any party to the proceeding, and to Elyse Alkalay, Esq., Counsel to the Board, N.H. Department of Justice, 33 Capitol Street, Concord, New Hampshire 03301. All responses or objections to such motions or other documents are to be filed in similar fashion within ten (10) days of receipt of such motion or other document unless otherwise ordered by the Board; and,

IT IS FURTHER ORDERED that a witness and exhibit list and any proposed exhibits, pre-marked for identification only, shall be filed with the Board no later than three (3) days before the date of the hearing. Respondent shall pre-mark his exhibits with capital letters, and Hearing Counsel shall pre-mark his exhibits with Arabic numerals; and,

IT IS FURTHER ORDERED that unless good cause exists, all motions shall be filed at least three (3) days before the date of any hearing, conference, event or deadline which would be affected by the requested relief, except any motion seeking to postpone a hearing or conference, which shall be filed at least ten (10) days before the hearing or conference in question; and,

IT IS FURTHER ORDERED that the entirety of all oral proceedings be recorded verbatim by the Board. Upon the request of any party made at least ten (10) days prior to the proceeding or conference or upon the Board's own initiative, a shorthand court reporter shall be provided at the hearing or conference and such record shall be transcribed by the Board if the requesting party or agency shall pay all reasonable costs for such transcription; and,

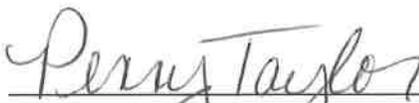
IT IS FURTHER ORDERED that all documents shall be filed with the Board by mailing or delivering them to Penny Taylor, Administrator, N.H. Board of Medicine, 2 Industrial Park Drive, Suite 8, Concord, New Hampshire 03301; and,

IT IS FURTHER ORDERED that routine procedural inquiries may be made by contacting Penny Taylor, Administrator, N.H. Board of Medicine, 2 Industrial Park Drive, Suite 8, Concord, New Hampshire 03301, (603) 271-1203, but that all other communications with the Board shall be in writing and filed as provided above. *Ex parte* communications are forbidden by statute and the Board's regulations; and,

IT IS FURTHER ORDERED that a copy of this Notice of Hearing shall be served upon Respondent by certified mail addressed to the office address he supplied to the Board in his latest renewal application and/or by in-hand service. *See* RSA 329:18, VI, Med. 409.01(c) and RSA 329:16-f. A copy shall also be delivered to Hearing Counsel.

BY ORDER OF THE BOARD/*

Dated: February 14, 2013



Penny Taylor, Administrator
Authorized Representative of the
New Hampshire Board of Medicine

/* Recused Board members not participating:

Robert P. Cervenka, M.D.
Michael Barr, M.D.
Gail Barba, Public Member