

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

In the Matter of:
Don A. Holshuh, M.D.
License No. 6016
(Adjudicatory Proceedings)

Docket No. 11-07

**ORDER OF EMERGENCY LICENSE SUSPENSION
AND NOTICE OF HEARING**

1. RSA 329:18-b; RSA 541-A:30, III, and New Hampshire Board of Medicine Administrative Rule (“Med”) 503.01 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. In such cases, the Board must commence a hearing not later than 10 days after the date of the emergency order. If the Board does not commence the hearing within 10 days, the suspension order shall be automatically vacated. *See*, RSA 541-A:30, III. The Board may not continue such a hearing without the consent of the licensee to the continuation of the emergency suspension. *See*, RSA 329:18-b and Med 503.01. Postponement of the proceeding is prohibited unless the licensee agrees to continue the suspension pending issuance of the Board’s final decision. *See*, RSA 329:18-b and Med 503.01.

2. Don A. Holshuh, M.D. (“Dr. Don A. Holshuh, M.D.” or “Respondent”), holds an active license, No. 6016, issued on February 6, 1979, to practice medicine in the State of New Hampshire. Respondent practices medicine in Keene, New Hampshire.

3. The Board has received information indicating that the continued practice of medicine by Dr. Holshuh poses an imminent threat to life, safety and/or health, which warrants the temporary suspension of Dr. Holshuh's license to practice medicine 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 and Notice of Hearing*, the Board alleges the following facts:

- A. In June of 2010 Respondent completed a 28-day residential treatment program at A Road to Recovery in Port St. Lucie, Florida. During this treatment, Respondent was diagnosed with alcohol dependence.
- B. Following his discharge from A Road to Recovery, Respondent began regular counseling with Lee Faver, Ph.D. to address his issues with alcohol. Dr. Faver reported that Respondent did not suffer from alcohol dependence, but rather from episodic alcohol abuse. Dr. Faver also reported that Respondent had been able to maintain abstinence during his therapy.
- C. On December 20, 2010, the Board of Pharmacy conducted a routine inspection of Respondent's practice. During this inspection Respondent acknowledged ordering approximately 1400 lorazepam tablets for personal use. Respondent failed to create a biennial inventory for these purchases. He also failed to retain the invoices.
- D. When Respondent was asked to provide the Board with an explanation for these purchases, he reported that he had been prescribed this medication by his primary care physician. A review of Respondent's medical records revealed that his current PCP had prescribed lorazepam

on four separate occasions for a total of 120 tablets. There is no indication that Respondent's PCP was aware of these additional orders for Respondent's bulk purchases for personal use.

- E. Due to concerns about Respondent's potential self-prescribing, the Director of the NH Physicians Health Program contacted Respondent to set up a meeting. Respondent refused to meet with the PHP Director.
- F. On April 5, 2011 the Board investigator discovered that Respondent had been taken into protective custody on April 3, 2011. Respondent had been staying at a Keene area hotel when police were dispatched due to a report of an intoxicated naked male causing a disturbance.
- G. Respondent had been staying at this hotel since March 31, 2011. On April 2, 2011 he contacted housekeeping to request new sheets as he had vomited on his bed. When housekeeping arrived at Respondent's room he answered the door naked.
- H. On another occasion Respondent asked the assistant night housekeeper to clean his room. When she arrived, Respondent opened the door while naked. The housekeeper refused to clean the room until Respondent clothed himself.
- I. On several occasions during his stay at the hotel, hotel staff observed Respondent entering the lobby with bottles of alcohol. At least two of these occasions occurred around noontime.

- J. At one point Respondent was observed wandering around the hotel lobby covered in feces and vomit.
- K. When hotel staff became concerned about Respondent's safety, they contacted the individual listed as his emergency contact. This woman reported that she was Respondent's sister-in-law and that his wife had kicked him out of the home. She also reported that Respondent was suffering from depression.
- L. Hotel staff then proceeded to contact the Keene police department. Police knocked on Respondent's hotel room door. When he opened the door he was naked and appeared heavily intoxicated. His speech was slow and slurred. Police observed that Respondent's face was bruised and swelling and he had smaller bruises and lacerations all over his body.
- M. Police spoke with Respondent's attorney and his wife. Neither was able and/or willing to take custody of him. Police therefore took Respondent into protective custody.
- N. According to hotel staff, when Respondent vacated the hotel room he left behind empty pill and alcohol bottles. The pillows he used had to be disposed of due to blood stains. The mattress had to be steam cleaned because Respondent had vomited on it.

5. Based upon 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 license 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 503.01.

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 license suspension, the imposition of permanent disciplinary sanctions, or both. The specific issues to be determined in this proceeding are:

- A. Whether, on or between 2008 through 2011, Respondent committed professional misconduct by purchasing controlled medications for his personal use, in violation of RSA 329:17, VI (c); and/or Med 501.02 (h); and/or the American Medical Association ("AMA") Code of Ethics 8.19; and/or
- B. Whether on or between March 31, 2011 and April 5, 2011, Respondent committed professional misconduct by failing to maintain his sobriety, in violation of RSA 329:17, VI (b); and/or RSA 32:17, VI (c); and/or Med 501.02 (h); and/or AMA Code of Ethics 8.15; and/or AMA Code of Ethics 9.035; and/or
- C. Whether on or between March 31, 2011 and April 5, 2011, Respondent committed professional misconduct by neglecting to address his mental and physical health to such an extent that he wandered around a hotel lobby while covered in feces in vomit, in violation of RSA 329:17, VI (b); and/or RSA

32:17, VI (c); and/or Med 501.02 (h); and/or AMA Code of Ethics 8.15;
and/or AMA Code of Ethics 9.035; and/or

D. Whether on or between March 31, 2011 and April 5, 2011, Respondent committed professional misconduct by neglecting to address his mental and physical health to such an extent that he interacted with hotel staff while naked, in violation of RSA 329:17, VI (b); and/or RSA 32:17, VI (c); and/or Med 501.02 (h); and/or AMA Code of Ethics 8.15; and/or AMA Code of Ethics 9.035; and/or

E. Whether on or between March 31, 2011 and April 5, 2011, Respondent committed professional misconduct by neglecting to address his mental and physical health to such an extent that he had to be taken into protective custody, in violation of RSA 329:17, VI (b); and/or RSA 32:17, VI (c); and/or Med 501.02 (h); and/or AMA Code of Ethics 8.15; and/or AMA Code of Ethics 9.035; and/or

F. 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 15 days' notice of allegations of professional misconduct and the date, time and place of an adjudicatory hearing, RSA 541-A:30, III and Med 503.01 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 503.01. 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 503.01.

THEREFORE, IT IS ORDERED that Respondent's New Hampshire license to practice medicine 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 503.01. To the extent that this order or the Board's rules do not address an issue of procedure, the Board shall apply the New Hampshire Department of Justice Rules, Part 800; and,

IT IS FURTHER ORDERED that Don A. Holshuh, M.D. shall appear before the Board on Friday April 15, 2011 at 1:00p.m., at the Board's office located at 2 Industrial Park Drive, Concord, N.H., to participate in an 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*, or the imposition of disciplinary sanctions without further notice or an opportunity to be heard, or both; and,

IT IS FURTHER ORDERED that Sarah T. Blodgett, 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 Waters, Jr., Esq. 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 nine (9) copies, and with an additional copy mailed to any party to the proceeding, and to Assistant Attorney General Elyse Alkalay, 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 her 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,

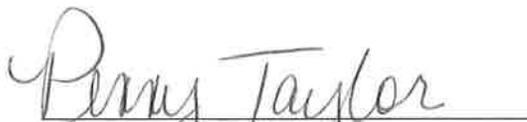
IT IS FURTHER ORDERED that all documents shall be filed with the Board by mailing or delivering them to Penny Taylor, Administrator, N.H. Board of Medicine, 2 Industrial Park Drive, Suite 8, Concord, New Hampshire 03301; and

IT IS FURTHER ORDERED that routine procedural inquiries may be made by contacting Penny Taylor, Administrator, N.H. Board of Medicine, at (603) 271-1204, 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 as well Attorney Robert Moses. *See*, RSA 329:18, VI, Med. 501.02 (c) and RSA 329:16 (f). A copy shall also be delivered to Hearing Counsel.

BY ORDER OF THE BOARD/*

Dated: April 6, 2011


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

/* Amy Feitelson, MD, Board member, did not participate