

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

In The Matter Of:

Docket No.: 11-07

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 in In the Matter of Don A. Holshuh, M.D. ("Respondent" or "Dr. Holshuh") in Docket Number 11-07.

Background Information:

On April 4, 2011, the Board received information from the Keene Police Department alleging that the Respondent had been intoxicated to such a degree that he presented a danger to himself. The Board had previously received information from the New Hampshire Board of Pharmacy concerning the Respondent's ordering of Lorazepam tablets for personal use. On April 6, 2011, the Board issued an 'Order of Emergency License Suspension and Notice of Hearing.' On April 15, 2011, the Board held an emergency hearing. See RSA 329:18-b; RSA 541-A: 30, III. The Respondent did not appear nor did he send legal counsel. The Board held a hearing in absentia. That day, the Board found an imminent danger to life or health, and voted the Respondent's license be suspended through the duration of the adjudicatory/disciplinary proceedings. See April 28, 2011 Order. On July 15, 2011, the Board issued a Notice of Hearing to schedule a hearing on the merits of all the outstanding issues.

A hearing on the merits of this matter was held on Wednesday, August 3, 2011 and testimony continued on Wednesday, September 7, 2011. Board members present¹ at the adjudicatory/disciplinary hearing in the above captioned matter were:

Edmund Waters, Jr., Public Member, Presiding Officer
Robert Cervenka, Physician Member
Louis Rosenthal, Physician Member
Nick Perencevich, Physician Member
John Wheeler, Physician Member
Mark Sullivan, Physician Assistant Member
Gail Barba, Public Member

¹ These same Board members also deliberated and voted on this Final Decision and Order.

The prosecution was represented by Hearing Counsel Attorney Sarah Blodgett of the Administrative Prosecutions Unit ("APU") of the Office of the Attorney General. Dr. Holshuh was represented by Robert J. Moses of the Law Offices of Robert J. Moses.

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

- Hearing Counsel's exhibits: 1-18 (13, 14, and 18 are sealed).
- The Respondent's exhibits: none.

Findings of Fact:²

Hearing Counsel called the following individuals as witnesses:

- Sharon Wirant,³ a former patient of the Respondent. Ms. Wirant's husband, Mark Wirant's practice is located in the same office building as the Respondent.
- Mark Wirant,⁴ a dentist, whose dental practice is located in the same office building as the Respondent.
- Katherine St. Pierre,⁵ who has worked in the same office building as the Respondent for over 21 years (for Dr. Meehan for about 5 years and for Dr. McBeth for about 17 years).⁶
- Jane Beauregard,⁷ an office manager who has worked in the same office building as the Respondent for twenty seven (27) years (for Dr. McBeth); prior to that had worked for the Respondent for 6 months.
- Dr. Craig McBeth,⁸ a co-owner of the office building with the Respondent.
- Deborah Titcomb,⁹ a licensed practical nurse who worked for the Respondent for 13 years (1989-2002).
- Barbara Paige,¹⁰ who worked as an office manager for the Respondent from April 2003 to April 2005.
- Elizabeth "Beth" Furlone,¹¹ who worked in the same office building as the Respondent for 8 years (2000-2008).
- Katherine Greeley,¹² who was the Respondent's office manager for six years, up until his suspension.
- Todd Flanagan¹³, an investigator with the New Hampshire Attorney General's Office's Administrative Prosecutions Unit.

The Respondent called only himself to testify.¹⁴

² "Tr1" refers to the transcript of the August 3, 2011 date of hearing; "Tr2" refers to the transcript of the September 7, 2011 date of hearing.

³ Tr1 at 18 (Mrs. Wirant).

⁴ Tr1 at 37 (Dr. Wirant).

⁵ Tr1 at 52 (Ms. St. Pierre).

⁶ Tr1 at 53, 67 (Ms. St. Pierre).

⁷ Tr1 at 83 (Ms. Beauregard).

⁸ Tr1 at 103 (Dr. McBeth).

⁹ Tr1 at 115 (Ms. Titcomb).

¹⁰ Tr1 at 133 (Ms. Paige).

¹¹ Tr1 at 143 (Ms. Furlone).

¹² Tr1 at 165 (Ms. Greeley).

¹³ Tr2 at 44 (Inv. Flanagan).

In light of the testimony and exhibits, the Board finds the following facts by a preponderance of the evidence:

1. The Respondent co-owns a medical office building located at 650 Court Street in Keene with about a half dozen other health care practitioners.¹⁵ The relationship between the co-owners had been professional and cordial since founding 650 Court Street in the late 1970s; the Respondent joined in ownership in 1979.¹⁶ At some point this relationship became antagonistic. It appears that the Respondent's disruptive behavior contributed to the deterioration of the relationship. The Respondent was a marathon runner,¹⁷ but it appears that he may have ceased running a few years ago.¹⁸
2. The occupants of the office building shared a carton-like box for incoming mail and for outgoing mail.¹⁹ Many of the witnesses who testified before the Board, believed that the Respondent purposely misplaced mail items.²⁰ A few years ago, several various mail items, addressed to or from individuals whom the Respondent was feuding with, did not arrive to the addressee.²¹ Many in the building suspected the Respondent of mail tampering.²² When the co-owners of the office building built individual locked mailboxes, the mail issues ceased.²³
3. Over the course of a few years²⁴, the Respondent would suddenly close his practice in the afternoon. This occurred on a regular basis.²⁵ The Respondent would routinely treat scheduled patients in

¹⁴ Tr2 at 100 (the Respondent).

¹⁵ Tr1 at 18, 30 (Mrs. Wirant); Tr1 at 40 (Dr. Wirant); Tr1 at 107 (Dr. McBeth).

¹⁶ Tr2 at 68 (Inv. Flanagan); Tr2 at 102-03 (the Respondent).

¹⁷ Tr2 at 135-37 (the Respondent).

¹⁸ Tr1 at 50 (Dr. Wirant); Tr1 at 55, 67 (Ms. St. Pierre); Tr2 at 138 (the Respondent).

¹⁹ Tr1 at 28 (Mrs. Wirant); Tr1 at 90 (Ms. Beauregard); Tr1 at 106 (Dr. McBeth).

²⁰ Tr1 at 92 (Ms. Beauregard).

²¹ Tr1 at 25 (Mrs. Wirant); Tr1 at 90-91 (Ms. Beauregard); Tr1 at 105 (Dr. McBeth).

²² Tr1 at 90-92, 95 (Ms. Beauregard); Tr1 at 106 (Dr. McBeth).

²³ Tr1 at 106 (Dr. McBeth); Tr2 at 117 (the Respondent).

²⁴ Starting from about three or four years prior to the hearing. Tr1 at 86 (Ms. Beauregard).

²⁵ Tr1 at 41 (Dr. Wirant); There was also testimony of this happening in the more distant past: Tr1 at 115 (Ms.

Titcomb)(Nurse Titcomb testified to a specific instance of the Respondent treating patients in the morning, leaving at approximately 11:30, the Respondent was late/failed to show up for his afternoon patients, the Respondent's daughter telephoned Nurse Titcomb and called her to the home where the Respondent was inebriated and injured; the Respondent could not return to work – the witness "saw him in his bedroom disheveled and bleeding and weeping" – and the witness and

the morning.²⁶ The Respondent would take a lunch break.²⁷ The Respondent would drink alcohol during his lunch break.²⁸ The Respondent would be too inebriated to treat patients who were scheduled for the afternoon.²⁹ The Respondent's office assistants would regularly send the Respondent home, as he was too impaired to see patients.³⁰ The Respondent's office assistant would then call the patients scheduled for that afternoon and cancel their appointment and/or reschedule their respective appointments.³¹ The Respondent's office assistant would leave a sign on the office door.³² The sign would state that the Respondent's office was closed for the rest of the day.³³ The sign would also state that the Respondent's practice "tried to reach you" but that if they did not reach the patient, the practice would be contacting the patient to reschedule.³⁴ Patients often arrived at the Respondent's office for their scheduled appointment but would find the practice closed.³⁵ Disgruntled patients sometimes left notes on the sign to voice their displeasure.³⁶

4. This unscheduled closing would happen regularly.³⁷ Though the sign sometimes stated that the closings occurred due to a family emergency, the frequency of the closures belies the accuracy of this

the office manager had to cancel/reschedule patients); see Tr2 at 177-78 (the Respondent) (the Respondent testified that the did not deny these actions).

²⁶ Tr1 at 167 (Ms. Greeley).

²⁷ Tr1 at 136 (Ms. Paige); Tr1 at 167 (Ms. Greeley).

²⁸ Tr1 at 55 (Ms. St. Pierre)("you could smell alcohol in the office"); Tr1 at 86 (Ms. Beauregard)("there were times when there would be a strong alcohol smell, you know, not a good smell, that sort of thing, in his office"); Tr1 at 168 (Ms. Greeley) ("definitely in the afternoons after coming back from lunch it was apparent to me"); Tr2 at 138 (the Respondent).

²⁹ Tr1 at 139-40 (Ms. Paige); Tr1 at 168 (Ms. Greeley).

³⁰ Tr1 at 136-7, 139-40, 142-43 (Ms. Paige); Tr1 at 168-69 (Ms. Greeley).

Q: Did you at any point have to assist him in getting home because of his intoxicated state?

A: On occasion I did drive him home and his wife came back and got the vehicle later.

Tr1 at 169 (Ms. Greeley).

³¹ Tr1 at 137 (Ms. Paige).

³² Tr1 at 41 (Dr. Wirant); Tr1 at 62 (Ms. St. Pierre).

³³ Tr1 at 41 (Dr. Wirant); Tr1 at 93 (Ms. Beauregard); Tr1 at 110 (Dr. McBeth); Tr1 at 113 (Dr. McBeth)("on several occasions it might have said 'family emergency'"); Tr2 at 139 (the Respondent).

³⁴ Tr1 at 41 (Dr. Wirant); Tr1 at 93 (Ms. Beauregard).

³⁵ Tr1 at 63 (Ms. St. Pierre).

³⁶ Tr1 at 41 (Dr. Wirant); Tr1 at 110 (Dr. McBeth).

³⁷ Tr1 at 41 (Dr. Wirant)("once every couple of weeks"); Tr1 at 64 (Ms. St. Pierre) ("in the past year, easily eight times"); Tr1 at 93 (Ms. Beauregard).

statement.³⁸ The Board finds these unscheduled closings and frequent rescheduling of patients, disruptive to continuing patient care.³⁹ The Board finds these closing unprofessional conduct in that patients were suddenly left without care and/or the ability to retrieve their medical records to seek care elsewhere. The Board finds that these closing were without regard to the urgency of patients' needs.⁴⁰

5. Several years prior to the most recent pattern, the Respondent had acknowledged to one of his nurses that he had a drinking problem.⁴¹ At that time, the Respondent's drinking frequency had escalated until the nurse had quit because of having to cover for the Respondent.⁴² At least on one occasion, this nurse personally observed that the Respondent's drinking had influenced the Respondent and the care of his patients by his having to reschedule.⁴³ On the many other occasions, the Respondent would call in that he was not returning, so the nurse did not personally observe the Respondent.⁴⁴

6. The Respondent's drunkenness permeated into his office boundaries.⁴⁵ Mrs. Wirant testified that she felt that the Respondent was impaired while he treated her.⁴⁶ Ms. Paige testified that the Respondent would appear inebriated at work and that she smelled alcohol in the examination room after the patient would leave.⁴⁷ Ms. Furlone testified that she observed the Respondent at his office staggering, slurring his language, smelling of alcohol, and walking in his underwear.⁴⁸ Ms. Greeley testified that she

³⁸ Tr1 at 62 (Ms. St. Pierre); Tr1 at 127 (Nurse Titcomb) ("You know, you can have the flu just so many times before there's something wrong, and I didn't know what the problem was.").

³⁹ See also Tr1 at 182 (Ms. Greeley):

When I called that person to reschedule the appointment, she said that she was not going to have the surgery because she knew about the accident because she had read about it in the paper.

⁴⁰ See also Tr2 at 162-63 (the Respondent).

⁴¹ Tr1 at 120, 124 (Nurse Titcomb).

⁴² Tr1 at 120, 125-26 (Nurse Titcomb).

⁴³ Tr1 at 128 (Nurse Titcomb).

⁴⁴ Tr1 at 128 (Nurse Titcomb).

⁴⁵ Tr2 at 71 (Inv. Flanagan) (Jackie Mosher, a nurse who had formerly worked for the Respondent told the Board's investigator that she had noticed the odor of alcohol on the Respondent's breath in 1988).

⁴⁶ Tr1 at 20-22 (Mrs. Wirant).

⁴⁷ Tr1 at 135 (Ms. Paige).

⁴⁸ Tr1 at 145 (Ms. Furlone); this testimony was corroborated by Ms. Greeley, Tr1 at 169 (Ms. Greeley) ("he was intoxicated enough that he was laying on the floor of his office, and usually he had a tendency to take all of his clothes off when he did that and he basically passed out laying on the floor").

could definitely smell alcohol in the office, which the Respondent would attempt to mask with alcohol.⁴⁹

Ms. Greeley also testified that the Respondent treated patients while intoxicated.⁵⁰

7. The Respondent altered medical records.⁵¹ The Respondent failed to comply with requests for records.⁵² More disturbingly, the Respondent altered biopsy results, or created biopsy results, when he could not locate (or failed to send) the lesion to the testing company.⁵³ In one incident, the Respondent removed lesions from both a husband and a wife; but when he misplaced the wife's lesion, he took one of the husband's lesions and put it in the wife's bottle and sent that to the laboratory.⁵⁴ The results given to the wife were actually the results from the husband's sample.⁵⁵

8. The Respondent was observed engaging in odd behavior consistent with alcohol addiction impairment.⁵⁶ For example, one winter, the Respondent was observed vomiting near the side entrance of the office building into the snow.⁵⁷ A different time, within the past three years, during warm weather, the Respondent was observed stumbling in the parking lot; after he fell, a patient helped the Respondent back to his feet, then the Respondent walked exceptionally slowly to his vehicle.⁵⁸ Another example of disruptive behavior involved placing a note⁵⁹ and allegedly vandalizing an office- employee's automobile.⁶⁰

⁴⁹ Tr1 at 167 (Ms. Greeley).

⁵⁰ Tr1 at 167 (Ms. Greeley).

⁵¹ Tr1 at 177, 188-89 (Ms. Greeley).

⁵² Tr1 at 189-90 (Ms. Greeley).

⁵³ Tr1 at 181 (Ms. Greeley); Tr2 at 7374 (Inv. Flanagan) (one of the laboratories the Respondent worked with provided the Board's investigator with records that there were three instances where there was no tissue in the sample provided to them); but see Tr2 at 134 (the Respondent) (blaming the laboratory for losing the sample).

⁵⁴ Tr1 at 183 (Ms. Greeley); Tr2 at 42 (Ms. Greeley).

⁵⁵ Tr1 at 180 (Ms. Greeley).

⁵⁶ Tr1 at 144-45 (Ms. Furlone).

⁵⁷ Tr1 at 55 (Ms. St. Pierre); Tr1 at 146 (Ms. Furlone) (Furlone testified that this was in 2004 or 2005).

⁵⁸ Tr1 at 58, 69 (Ms. St. Pierre).

⁵⁹ Tr1 at 155-56 (Ms. Furlone).

⁶⁰ Tr1 at 149-156 (Ms. Furlone); this information is corroborated by Exhibit 2. Exhibit 2 – Narrative for Officer Fintan P Moore Jr:

I went to Holshuh's house around 1645 hours. He answered the bell at the garage and invited me inside the garage, but never into the house. We spoke there for about twenty minutes. I noted that Holshuh had an odor of alcoholic beverage about his person and breath, but did not appear drunk. ...

Holshuh became marginally bizarre at this point. ...

Earlier in this interview also, Holshuh also denied any knowledge of the typewritten note found on Furlone's vehicle. After having presented him with the evidence, that he had the only typewriter in the Clinic and that the print allegedly matched this typewriter, Holshuh made a complete admission/confession that he had indeed authored the note. However, he tried to soften this admission by saying the note left in jest. ...

Driving While Intoxicated

9. On numerous occasions, the Respondent drove while intoxicated.
- Subsequent to the parking lot stumbling described above, the Respondent got into his car and drove extraordinarily slowly both out of the parking lot and down the street.⁶¹ An observer of the Respondent's behavior was believed that he was impaired "enough that [she] was afraid for [the Respondent] and for anybody else on the road so that [she] called the Keene Police."⁶²
 - At times, after his office manager told him he was too drunk to see patients, the Respondent would drive himself home.⁶³
 - On one occasion, Ms. Greeley's son called her to the Respondent's car on Surry Road.⁶⁴ The Respondent was "extremely intoxicated" "totally out of it" "slumped over the steering wheel" while the engine was on.⁶⁵ Ms. Greeley removed the Respondent from the vehicle, threw him into the back seat of her car and drove him home.⁶⁶
 - On November 20, 2008, the police were called to the Respondent's home.⁶⁷ The officer reported: "It was clear to me that [the Respondent] was under the influence of ... medication."⁶⁸ The next day, on November 21, 2008, the Respondent was in an accident with his van.⁶⁹ "The roadway was in normal condition free from any abnormal debris and the roadway was flat and dry. ... His

At this point, Holshuh appears to be lying (and doing a terrible job at covering his tracks). First he tells me that he doesn't know who Furlone is, and in the next breath, he's alleging being sexually harassed by her at the workplace. Secondly, he denies any knowledge of the sarcastic note left on Furlone's windshield, and in the next breath, he's acknowledging being the author of that note. He then resort (sic) to dramatics and alleges rather bizarre sexual harassment that appears farfetched and unfounded. Holshuh denied knowing which vehicle belonged to Furlone. A minute later, however, he's describing it to me as a "champagne" colored SUV. ...

As I was preparing to leave Holshuh's, he told me in so many words that he was going to make life miserable for Furlone in the workplace. ...

On 4/11 I received a voice message from Furlone who again sounded on the verge of tears. In this message Furlone asks that the matter no longer be pursued as to do so will jeopardize her job and that Holshuh will essentially make life at the Clinic miserable and unbearable for her.

⁶¹ Tr1 at 58, 69 (Ms. St. Pierre).

⁶² Tr1 at 81 (Ms. St. Pierre).

⁶³ Tr1 at 167 (Ms. Greeley).

⁶⁴ Tr1 at 169 (Ms. Greeley).

⁶⁵ Tr1 at 170 (Ms. Greeley).

⁶⁶ Tr1 at 171 (Ms. Greeley).

⁶⁷ Exhibit 3 – Investigation Report of TFC Shawn Skahan; Tr2 at 62 (Inv. Flanagan).

⁶⁸ Exhibit 3 – Investigation Report of TFC Shawn Skahan (the report later stated: "Again, based on his slurred speech and impaired gait, DON appeared under the influence of the medication.").

⁶⁹ Tr1 at 186-7 (Ms. Greeley); Exhibit 4 – Traffic Accident Report.

impaired state was a contributing factor to the collision.⁷⁰ The Respondent refused a Breathalyzer test.⁷¹ At the hearing, the Respondent admitted that he was intoxicated.⁷² Although charged with a DWI, he was convicted of reckless operation.⁷³

10. On April 30, 2009, the police were called to the Respondent's home.⁷⁴ The Respondent was intoxicated.⁷⁵ He was violent towards the rescue crew and had injuries.⁷⁶

11. On May 5, 2010, four police officers went to the Respondent's residence. The Respondent was "bleeding from somewhere on his upper torso/ head region, as there was blood on his person and all over the floor of the bedroom."⁷⁷ One of the officer's reports states about the Respondent: "I knew him to abuse alcohol."⁷⁸ The Respondent was involuntarily removed from his home for emergency medical treatment.⁷⁹ At the hospital, the Respondent's "had an alcohol concentration of .336."⁸⁰ This incident of the police responding to the Respondent's home was just one of many times that the police had responded because the Respondent "was intoxicated and most of the time had fallen down and was hurt and bleeding."⁸¹

12. On May 21, 2010, the New Hampshire Division of Motor Vehicles (Department of Safety) issued an immediate suspension of the Respondent's driver's license as a result of "information on file that gives the director of motor vehicles reason to believe you are driving improperly and consequently pose a

⁷⁰ Exhibit 4 – Traffic Accident Report.

⁷¹ Tr2 at 94 (Inv. Flanagan).

⁷² Tr2 at 136 (the Respondent), the Respondent testified:

I was intoxicated. The car slid off the road. I put the car in reverse. The car caught on fire. I got out of the car. The car blew up. I was arrested.

⁷³ Tr2 at 63 (Inv. Flanagan).

⁷⁴ Exhibit 5 – Surry Police Department: Call for Service Detail Page; Tr2 at 63 (Inv. Flanagan).

⁷⁵ Tr2 at 63 (Inv. Flanagan); Exhibit 5 – Surry Police Department: Call for Service Detail Page. The officer wrote:

At that point in time I could detect a strong odor of alcohol on him. ... The intoxication was also noticed by the rescue personnel. ... When [the Respondent's wife] returned home she found her husband unresponsive in the bedroom upstairs on the floor naked lying in blood.

⁷⁶ Tr2 at 63 (Inv. Flanagan).

⁷⁷ Exhibit 6 – Investigation Report of Aaron Gillis.

⁷⁸ Exhibit 6 – Investigation Report of Aaron Gillis.

⁷⁹ Exhibit 6 – Investigation Report of Aaron Gillis.

⁸⁰ Exhibit 6 – Investigation Report of Aaron Gillis; Tr2 at 63 (Inv. Flanagan) (.336 is four (4) times the legal limit for driving").

⁸¹ Tr1 at 191 (Ms. Greeley); Tr2 at 31 (Ms. Greeley).

danger to the public safety.”⁸² As of the hearing, the Respondent had not had his driving privileges returned.⁸³

March 31-April 5, 2011

13. On Thursday, March 31, 2011, the police were called to the Respondent’s home.⁸⁴ The police report states: “We proceeded upstairs to the bedroom and found a male subject whom I recognized to be [the Respondent] laying in bed. There was a lot of blood all over the floor and on the bed and the [Respondent’s] left eye was almost closed (very swollen) and he had severe bruising all over his face. I asked what happened and he said he had fallen and hit his head due to the medication he was taking [Lorazepam].”⁸⁵ The Respondent was transported to a hospital.⁸⁶

14. Later that night on Thursday, March 31, 2011, the Respondent’s wife called Ms. Greeley (the Respondent’s office manager and family friend) to remove the Respondent from his home.⁸⁷ Ms. Greeley refused as it was extremely late at night (technically early Friday morning).⁸⁸ On Friday, April 1, the Respondent’s sister-in-law and another person brought the Respondent to the Holiday Inn Express in Keene.⁸⁹ The Respondent telephoned Ms. Greeley and asked her to bring him food and drinks.⁹⁰ The Respondent drank heavily during his stay at the hotel.⁹¹ On Saturday morning, the Respondent was seen “taking a cab from the hotel only to return a short time later with what was reported to be a bottle of alcohol.”⁹² He had been seen with feces and vomit on his person.⁹³ On Saturday night, the Respondent called “the front desk and asked that his bed sheets be changed as he had vomited on them.”⁹⁴ When

⁸² Exhibit 8 – Notice of Suspension/Revocation Action.

⁸³ Tr1 at 172 (Ms. Greeley).

⁸⁴ Exhibit 9 - Surry Police Department: Call for Service Detail Page.

⁸⁵ Exhibit 9 - Surry Police Department: Call for Service Detail Page.

⁸⁶ Exhibit 9 - Surry Police Department: Call for Service Detail Page; Tr1 at 173 (Ms. Greeley).

⁸⁷ Tr1 at 172 (Ms. Greeley).

⁸⁸ Tr1 at 172 (Ms. Greeley).

⁸⁹ Tr1 at 173 (Ms. Greeley).

⁹⁰ Tr1 at 173 (Ms. Greeley); Tr2 at 34 (Ms. Greeley).

⁹¹ Exhibit 10 – Protective Custody Report, Narrative for Detective Donald Wilson, page 1; Tr2 at 146 (the Respondent) (testifying: “I was intoxicated, so I moved into the Holiday Inn for a few days. I was drinking.”).

⁹² Exhibit 10 – Protective Custody Report, Narrative for Detective Donald Wilson, page 1; Tr2 at 54 (Inv. Flanagan).

⁹³ Tr2 at 49-50 (Inv. Flanagan).

⁹⁴ Exhibit 10 – Protective Custody Report, Narrative for Detective Donald Wilson, page 1; Tr2 at 54 (Inv. Flanagan).

hotel staff came to his room in response, the Respondent opened the door while naked.⁹⁵ On Sunday morning, when the hotel housekeeping went to tend to the Respondent's room, he again answered the door naked.⁹⁶ On Sunday, April 3, at 1:41 p.m., the Respondent called Ms. Greeley and asked her to bring back the bottle of vodka that she removed from his hotel room.⁹⁷ Due to the Respondent's behavior, hotel staff called the police as the Respondent was being asked to leave the premises.⁹⁸ When the police knocked on the Respondent's hotel room door, the Respondent answered the door naked and heavily intoxicated.⁹⁹

15. From the hospital, the Respondent was taken into protective custody.¹⁰⁰ He was released Monday morning.¹⁰¹ The Respondent did not return home but went to his office.¹⁰² As stated above, the Board issued an emergency license suspension to the Respondent on Wednesday, April 6, 2011. The Respondent remained secluded in his office until Thursday.¹⁰³ Ms. Greeley brought him food and drink to the office in the evenings.¹⁰⁴ As Ms. Greeley would not provide him with alcohol, he took a cab to purchase alcohol; the Respondent was heavily inebriated at times during his stay in the office.¹⁰⁵ The Respondent instructed Ms. Greeley not to come during the office during the day, as he did not want the Board to be able to serve him with his emergency license suspension and notice of hearing.¹⁰⁶ On

⁹⁵ Exhibit 10 – Protective Custody Report, Narrative for Detective Donald Wilson, page 1.

⁹⁶ Exhibit 10 – Protective Custody Report, Narrative for Detective Donald Wilson, page 1.

⁹⁷ Tr1 at 175 (Ms. Greeley); Exhibit 12 – Transcript of voice message recording from Greeley's answering machine:

Kathy, I'm asking you to bring that bottle back. There's not that much in there and there's just enough to help me get to sleep at night because you guys wouldn't bring me, you know, any of the other stuff. Uh. Come on, please. Can you do that? I'm at ... I'm begging you. I'm begging you. I'm begging you. I'm begging you as my friend. Please bring it back.

⁹⁸ Exhibit 10 – Protective Custody Report, Narrative for Detective Donald Wilson, page 1; Tr2 at 52 (Inv. Flanagan).

⁹⁹ Exhibit 10 – Protective Custody Report, Narrative for Detective Donald Wilson, page 1; Tr2 at 52-53 (Inv. Flanagan).

¹⁰⁰ Tr1 at 175 (Ms. Greeley); Tr2 at 54 (Inv. Flanagan).

¹⁰¹ Tr1 at 176 (Ms. Greeley).

¹⁰² Tr1 at 175 (Ms. Greeley).

¹⁰³ Tr1 at 175 (Ms. Greeley).

¹⁰⁴ Tr2 at 35-36 (Ms. Greeley).

¹⁰⁵ Tr2 at 40-41 (Ms. Greeley).

¹⁰⁶ Tr2 at 36 (Ms. Greeley).

Thursday night, April 7, an interventionist escorted the Respondent to a Narcanon rehabilitation facility.¹⁰⁷ As stated above, the Board held a hearing in absentia on April 15, 2011.

16. On Monday, April 25, the Respondent telephoned Ms. Greeley from the rehabilitation facility twice in rapid succession.¹⁰⁸ In addition to other things, the Respondent instructed Ms. Greeley not to talk to anyone, meaning the Board of Medicine, and stated that he will be “going to get back into practice.”¹⁰⁹

17. This was at least the third rehabilitation program that Ms. Greeley helped the Respondent enroll.¹¹⁰ The Respondent had previously participated in The Road to Recovery in Florida in May 2010.¹¹¹ He had also participated in Narkick in Massachusetts.¹¹² In April 2011, the Respondent participated in Narcanon.¹¹³ Two weeks into treatment, the Respondent maligned that rehabilitation program with profanity.¹¹⁴ Subsequent to that program, the Respondent has participated in Accelerated Recovery for Physicians.¹¹⁵

Lorazepam Issue:

18. Prior to the Board receiving information on April 4, 2011, from the Keene Police Department that the “Respondent was alleged to have been intoxicated to such a degree that presented a danger to himself,”¹¹⁶ the Board had an open investigation regarding the Respondent.¹¹⁷ This matter was referred to the Board from the NH Board of Pharmacy.¹¹⁸ The Board of Pharmacy was investigating wholesale orders of Lorazepam purchased by the Respondent.¹¹⁹ Lorazepam is a high-potency benzodiazepine drug (anxiolytic, amnesic, sedative/hypnotic, anticonvulsant, antiemetic, and muscle relaxant) that is used for

¹⁰⁷ Tr1 at 175 (Ms. Greeley); Tr2 at 146 (the Respondent).

¹⁰⁸ Exhibit 12 – Transcript of voice message recording from Greeley’s answering machine.

¹⁰⁹ Exhibit 12 – Transcript of voice message recording from Greeley’s answering machine; Tr2 at 129 (the Respondent).

¹¹⁰ Tr1 at 180 (Ms. Greeley); Tr2 at 31-32 (Ms. Greeley).

¹¹¹ Tr1 at 180 (Ms. Greeley); Exhibits 13-14; Tr2 at 66 (Inv. Flanagan)(The Respondent was in the rehab program The Road to Recovery when his driving license administrative suspension went into effect); Tr2 at 124 (the Respondent).

¹¹² Tr1 at 180 (Ms. Greeley).

¹¹³ Tr1 at 180 (Ms. Greeley); Tr2 at 179-80 (the Respondent).

¹¹⁴ Exhibit 12 – Transcript of voice message recording from Greeley’s answering machine.

¹¹⁵ Tr2 at 124 (the Respondent).

¹¹⁶ Notice of Hearing dated July 15, 2011.

¹¹⁷ Tr2 at 45 (Inv. Flanagan).

¹¹⁸ Tr2 at 44 (Inv. Flanagan).

¹¹⁹ Tr2 at 45 (Inv. Flanagan); Exhibits 15-17.

the short-term treatment of anxiety, insomnia, acute seizures and sedation. Lorazepam is a schedule IV controlled substance. There is an increased risk of abuse of Lorazepam for those with alcohol or drug dependence. The Respondent practices dermatology.¹²⁰ Lorazepam has no apparent dermatological uses.

19. At the hearing, the Board reviewed the Respondent's prescription profile.¹²¹ This exhibit shows the amount of Lorazepam the Respondent obtained from pharmacies by prescription from another physician.¹²² At the hearing, the Board also reviewed copies of wholesale orders of Lorazepam.¹²³ This exhibit shows the amount of Lorazepam the Respondent ordered wholesale through his medical practice but were for personal use (i.e. were not prescribed to him by another doctor).¹²⁴

20. From March 2009 to August 2009, Dr. Stern prescribed the Respondent 100 tablets of 2 mg Lorazepam on a monthly basis (averaging about 3 tablets a day).¹²⁵ On October 4, 2009, Dr. Heffernan prescribed the Respondent a lower dose 365 tablets of 2 mg Lorazepam for the year (averaging 1 tablet a day).¹²⁶ One year later, on September 10, 2010, Dr. Heffernan increased the Respondent's dose to 365 tablets of 2 mg Lorazepam for a half year (averaging 2 tablets a day).¹²⁷ What Dr. Heffernan did not know, was that during the same time frame¹²⁸ the Respondent ordered an additional 800 Lorazepam tablets for himself.¹²⁹ The Respondent was self-administering 8 to 10 milligrams a day.¹³⁰ The Respondent would take the dose at staggered intervals in the evening and night and treat patients the following morning.¹³¹ At the hearing, the Respondent denied he has had a problem with the Lorazepam.¹³²

¹²⁰ Tr2 at 125 (the Respondent).

¹²¹ Tr2 at 46 (Inv. Flanagan); Exhibit 16 – Prescription Profile for Dr. Holshuh.

¹²² Exhibit 16 – Prescription Profile for Dr. Holshuh.

¹²³ Tr2 at 46 (Inv. Flanagan); Exhibit 15 – Wholesale orders of Lorazepam.

¹²⁴ Exhibit 15 – Wholesale orders of Lorazepam.

¹²⁵ Tr2 at 47-49 (Inv. Flanagan); Exhibit 16 – Prescription Profile for Dr. Holshuh.

¹²⁶ Tr2 at 47-49 (Inv. Flanagan); Exhibit 16 – Prescription Profile for Dr. Holshuh.

¹²⁷ Tr2 at 47-49 (Inv. Flanagan); Exhibit 16 – Prescription Profile for Dr. Holshuh.

¹²⁸ October 2009 to May 14, 2010.

¹²⁹ Tr2 at 49-50 (Inv. Flanagan); Exhibit 16 – Prescription Profile for Dr. Holshuh.

¹³⁰ Tr2 at 151 (the Respondent).

¹³¹ Tr2 at 181-82 (the Respondent).

¹³² Tr2 at 180-81 (the Respondent).

21. The Respondent ordered the Lorazepam through his office as a business expense.¹³³ The Respondent did not maintain invoices or receipts.¹³⁴ On December 20, 2010, in response to a Board of Pharmacy investigation, the Respondent wrote and signed an 'Explanation of Correction' to the Pharmacy Board which states: "I will no longer order any controlled substances for personal use...."¹³⁵ When the Board of Medicine investigated the matter, however, the Respondent angrily instructed Ms. Greeley not to talk to the caller and to tell the woman not to call Ms. Greeley again.¹³⁶

22. The Respondent recognizes that he is an alcoholic.¹³⁷ The Board finds that the Respondent's answers at the hearing, however, were self serving and consistent with an addict in denial.¹³⁸

¹³³ Tr2 at 121 (the Respondent).

¹³⁴ Tr2 at 121 (the Respondent).

¹³⁵ Exhibit 17 – NH Board of Pharmacy Violation Notice. At the hearing on direct-examination, the Respondent stated that he "didn't do it again and that the amount of Lorazepam I had left, that went in the toilet." Tr2 at 122 (the Respondent); on cross-examination, the Respondent stated that he did not testify that he flushed them down the toilet but that he still have a "pretty full" "bottle of the five hundred and I decided then and there that I don't want to be guilty, so I threw them out." Tr2 at 156-57 (the Respondent); notably, the Board heard testimony at the April 15, 2011 emergency hearing that the Respondent had many tablets, which were consistent in appearance with Lorazepam, strewn about his hotel room on April 3, 2011.

¹³⁶ Tr1 at 178-79; Tr2 at 36-40.

¹³⁷ Tr2 at 150-51 (the Respondent).

¹³⁸ See e.g. Tr2 at 159-61; 173-76; 177-78 (the Respondent).

Rulings of Law:

Relevant Laws:

RSA 329:17, VI:

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

...

(b) Is a habitual user of drugs or intoxicants.

(c) Has displayed medical practice which is incompatible with the basic knowledge and competence expected of persons licensed to practice medicine or any particular aspect or specialty thereof.

(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.

Med 501.02 Standards of Conduct:

(h) A licensee shall adhere to the most current edition of the Code of Medical Ethics - Current Opinions With Annotations (2010-2011 Edition)¹³⁹ as adopted by the American Medical Association.

American Medical Association ("AMA") Code of Ethics

8.19 Self-Treatment or Treatment of Immediate Family Members

Physicians generally should not treat themselves or members of their immediate families. Professional objectivity may be compromised when an immediate family member or the physician is the patient; the physician's personal feelings may unduly influence his or her professional medical judgment, thereby interfering with the care being delivered. ... It would not always be inappropriate to undertake self-treatment or treatment of immediate family members. In emergency settings or isolated settings where there is no other qualified physician available, physicians should not hesitate to treat themselves or family members until another physician becomes available. In addition, while physicians should not serve as a primary or regular care provider for immediate family members, there are situations in which routine care is acceptable for short-term, minor problems. Except in emergencies, it is not appropriate for physicians to write prescriptions for controlled substances for themselves or immediate family members. (I, II, IV)

8.15 Substance Abuse

It is unethical for a physician to practice medicine while under the influence of a controlled substance, alcohol, or other chemical agents which impair the ability to practice medicine.

9.0305 Physician Health and Wellness

To preserve the quality of their performance, physicians have a responsibility to maintain their health and wellness, construed broadly as preventing or treating acute or chronic diseases, including mental illness, disabilities, and occupational stress. When health or wellness is compromised, so may the safety and effectiveness of the medical care provided. When failing physical or mental health reaches the point of interfering with a physician's ability to engage safely in professional activities, the physician is said to be impaired.

In addition to maintaining healthy lifestyle habits, every physician should have a personal physician whose objectivity is not compromised. Physicians whose health or wellness is compromised should take measures to mitigate the problem, seek appropriate help as necessary, and engage in an honest self-assessment of their ability to continue practicing. ...

9.035 Gender Discrimination in the Medical Profession

Physician leaders in medical schools and other medical institutions should take immediate steps to increase the number of women in leadership positions as such positions become open. There is already a large enough pool of female physicians to provide strong candidates for such positions. Also, adjustments should be made to ensure that all physicians are equitably compensated for their work. ...

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

¹³⁹ This is the current version of the Board's administrative rule. The previous versions of the rule cited previous editions of the AMA Code of Ethics. There have been no substantive changes to the relevant provisions in the relevant time period.

		In violation of						
		RSA 329:17, VI			Med 501 .02	AMA Code of Ethics Principle		
		(b)	(c)	(d)	(h)	8.15	8.19	9.035
A	Whether on or between 2008 and 2011, R engaged in professional misconduct by purchasing controlled medication for his personal use	N/A	Yes ¶¶ 18-21	N/A	Yes ¶¶ 18-21	N/A	Yes ¶¶ 18-21	N/A
B	Whether on or between March 31, 2011 and April 5, 2011, R committed professional misconduct by failing to maintain his sobriety	Yes ¶¶ 13-15	No	N/A	Yes ¶¶ 13-15	No	No	9.0305 ¹⁴⁰ ¶¶ 13-15
C	Whether on or between March 31, 2011 and April 5, 2011, R engaged in 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 and vomit	Yes ¶ 14	No	N/A	Yes ¶ 14	No	N/A	9.0305 ¶ 14
D	Whether on or between March 31, 2011 and April 5, 2011, R engaged in professional misconduct by neglecting to address his physical and mental health to such an extent that he interacted with various hotel staff while naked	Yes ¶ 14	No	N/A	Yes ¶ 14	No	N/A	9.0305 ¶ 14
E	Whether on or between March 31, 2011 and April 5, 2011, R engaged in professional misconduct by neglecting to address his mental and physical health to such an extent that he had to be taken into protective custody	Yes ¶ 15	No	N/A	Yes ¶ 15	No	N/A	9.0305 ¶ 15
F	Whether on or between 2007 and 2011, R engaged in professional misconduct by returning to his practice after consuming alcohol	Yes ¶¶ 3-6	No	Yes ¶¶ 3-6	Yes ¶¶ 3-6	No	N/A	9.0305 ¶¶ 3-6
G	Whether on or between 2007 and 2011, R engaged in professional misconduct by treating patients after consuming alcohol	No	No	No	No	No	N/A	No
H	Whether on or between 2007 and 2011, R engaged in professional misconduct by failing to care for his patients due to his consumption of alcohol	Yes ¶¶ 3-7	Yes ¶¶ 3-7	Yes ¶¶ 3-7	Yes ¶¶ 3-7	Yes ¶¶ 3-7	N/A	9.0305 ¶¶ 3-7
I	Whether on or between April 30, 2009 and March 31, 2011, R engaged in professional misconduct by consuming alcohol to such an extent that he was incapacitated	Yes ¶¶ 3-12	No	N/A	Yes ¶¶ 3-12	No	N/A	9.0305 ¶¶ 3-12
J	Whether on or around May 5, 2010 R engaged in professional misconduct by consuming alcohol to such an extent that his alcohol content level was .336	Yes ¶ 11	No	N/A	Yes ¶ 11	No	N/A	9.0305 ¶ 11
K	Whether on or between 2007 and 2010, R engaged in professional misconduct by driving while intoxicated on numerous occasions	Yes ¶ 9	No	N/A	Yes ¶ 9	No	N/A	9.0305 ¶ 9

¹⁴⁰ The July 15, 2011 Notice of Hearing consistently refers to "AMA Code of Ethics 9.035." This is clearly a scrivener's error as that provision refers to gender discrimination in the medical profession. The correct provision is 9.0305, which delineates physicians' responsibilities to their own health and wellness. The Board's findings as to these allegations are enumerated in the corresponding paragraphs. However, to the extent the scrivener's error did not provide the Respondent with sufficient notice of the exact provision, the Board's rulings, and attendant disciplinary sanctions, do not including the findings on these provisions.

Disciplinary Action:

Based upon the Findings of Facts and Rulings of Law above, the Board has voted to order the following:

IT IS ORDERED that the Respondent is REPRIMANDED.

IT IS FURTHER ORDERED that the Respondent's license is suspended for at least one (1) additional year. Due to the emergency license suspension, the Respondent's license has been suspended since April 6, 2011. The additional one year suspension shall start on the effective date of this Order, as further defined below. This suspension shall remain in effect until further order of the Board.

IT IS FURTHER ORDERED that the Respondent shall, at his own expense, meaningfully participate in, without interruption, a Program¹⁴¹ pre-approved by Dr. Sally Garhart, Director of the New Hampshire Professionals Health Program, for evaluation and treatment.

- The Respondent shall authorize Program to provide the Board with its completed assessment.
- The Board has the authority to provide Program with copies of all evaluative and investigative materials in its possession, the (public and non-public portions of the) record of this proceeding, and the Respondent's complete licensure application materials.

IT IS FURTHER ORDERED that the Respondent shall engage in a seven (7) year contract for monitoring by the NHPHP. The Respondent shall, at his own expense, undergo random drug and alcohol screening as required by the contract. The Respondent shall, at his own expense, meaningfully participate in counseling as required by the contract.

- The Respondent shall forward a copy of this contract with the NHPHP to the Board within fifteen (15) days of the effective date of this Order.
- The Respondent shall provide the Board with all releases necessary for NHPHP to communicate with the Board regarding the Respondent's compliance with that contract.

IT IS FURTHER ORDERED that the Respondent shall fully comply with all recommendations or requirements made by Program and/or the NHPHP.

¹⁴¹ The Program shall an inpatient residential treatment facility - either (1) Pine Grove Behavioral Health & Addiction Services in Mississippi; (2) Talbott Recovery in Georgia; (3) Marworth in Pennsylvania; (4) The Betty Ford Clinic in California; or (5) the equivalent thereof as pre-approved by the Director of the NHPHP – and for the length/duration approved by the Director of the NHPHP.

IT IS FURTHER ORDERED that the Respondent shall file quarterly (every 3 months) reports (with relevant documents attached) under seal for one (1) year from the date of Program's assessment report describing the Respondent's compliance with the recommendations and requirements of Program and the NHPHP.

IT IS FURTHER ORDERED that whether to lift the suspension of the Respondent's license shall be solely within the discretion of the Board and shall be based on the results of a forensic psychiatric evaluation done either by Program or a licensed forensic psychiatrist pre-approved by Dr. Garhart.

- If lifting the suspension of the Respondent's license is not consistent with the results of the forensic psychiatric evaluation, the Board shall be under no obligation to lift the suspension.
- If lifting the suspension of the Respondent's license is appropriate in light of the results of the forensic psychiatric evaluation, then the Respondent shall be allowed to request the lifting of the suspension not earlier than (A) one (1) year from the effective date of this order or (B) the Respondent's filing of three (3) quarterly reports, as detailed above, describing the Respondent's compliance with the requirements and recommendations of Program and the NHPHP.

IT IS FURTHER ORDERED that the Board, in the exercise of reasonable discretion, shall lift the suspension at that time if the Respondent successfully: (1) completes the forensic psychiatric evaluation; (2) complies with any and all recommendations and requirements of Program; (3) complies with any and all conditions imposed by the NHPHP; and (4) provides at least 3 quarterly reports.

- If for any reason the Board does not lift the suspension of the Respondent's license on the first request, the Respondent may request the lifting of the suspension at subsequent three-month intervals, assuming the Respondent's continued satisfaction and compliance with all conditions and recommendations of Program and the NHPHP during those intervals. Assuming the Respondent's full compliance during these intervals, the Board, in the exercise of reasonable discretion, shall lift the suspension of Respondent's license accordingly at that time.

IT IS FURTHER ORDERED that in the event that Respondent's license remains suspended upon the expiration date of the Respondent's license (April 6, 2013), if the Respondent chooses to resume the practice medicine, the Respondent must reapply by reinstatement rather than renewal. At that time, the

Respondent will be required to demonstrate that he is "of good professional character" as required by RSA 329:12, I (d)(2).

IT IS FURTHER ORDERED that the Respondent shall bear all costs of treatment, evaluation, and reporting required by this Order, but he shall be permitted to share such costs with third parties.

IT IS FURTHER ORDERED that the Respondent may consider the Respondent's compliance with the terms and conditions herein and with the recommendations of any treating health care professionals in any subsequent proceeding before the Board regarding the Respondent's license.

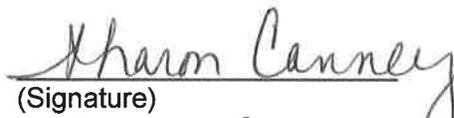
IT IS FURTHER ORDERED that the Respondent's failure to comply with any terms or conditions imposed by this Final Decision and Order shall constitute unprofessional conduct pursuant to RSA 329:17, VI (d), and a separate and sufficient basis for further disciplinary action by the Board against the Respondent.

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.

*\BY ORDER OF THE NEW HAMPSHIRE BOARD
OF MEDICINE

Date: 11/4/11


(Signature)

Sharon Canney, Acting Administrator
Authorized Representative of the
New Hampshire Board of Medicine

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