

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

**In The Matter Of:**

**Michelle F. Lackovic, M.D.**  
License No.: 8314  
(Adjudicatory/Disciplinary Proceeding)

**Docket No.: 11-08**

**FINAL DECISION AND ORDER**

Before the New Hampshire Board of Medicine ("Board") is an adjudicatory/disciplinary proceeding in In the Matter of Michelle F. Lackovic, M.D. ("Respondent" or "Dr. Lackovic") in Docket Number 11-08.

**Background Information:**

On September 3, 2010, the Board issued a Settlement Agreement in *In The Matter of Michelle F. Lackovic, M.D.* (no Docket Number available). Subsequently, the Board received information that Dr. Lackovic failed to comply with the terms of the Settlement Agreement by failing to complete the required continuing medical education ("CME") course. On May 6, 2011, the Board issued a Notice of Hearing and Order to Show Cause. This hearing occurred on July 6, 2011.

On Wednesday, April 6, 2011, at 1:00 p.m., the Board commenced the adjudicatory/disciplinary hearing in the above captioned matter. Board members present<sup>1</sup> were:

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

The prosecution was represented by Hearing Counsel Attorney Jason Reimers of the Administrative Prosecutions Unit ("APU") of the Office of the Attorney General. Dr. Lackovic was pro se.

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<sup>1</sup> These same Board members also deliberated and voted on this Final Decision and Order, except for Drs. Andelman and Cervenka who were absent for the final vote.

At the beginning of the hearing, the parties stated that they had reached a stipulation of facts. The stipulation was that the Respondent had not complied with the sanction in paragraph 8B of the September 3, 2010 Settlement Agreement. No witnesses were presented. However, the Respondent made a brief statement to the Board. After, she responded to the Board's questions.

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

- Hearing Counsel's exhibits: 1 (The 9/3/10 Settlement Agreement)
- The Respondent's exhibits: none.

**Findings of Fact:**

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

As a result of allegations of professional misconduct, the Respondent and APU negotiated a settlement agreement. (Exhibit 1). The respondent signed the settlement agreement on August 17, 2010. (Exhibit 1: page 8). The Board approved the settlement agreement at its regularly scheduled board meeting in September and it was issued on September 3, 2010. (Exhibit 1: page 9). The settlement agreement stated in pertinent part:

Respondent is required to complete the Case Western Reserve School of Medicine Continuing Education Course on Controlled Substance Management or its equivalent if pre-approved by the Board.

Failure to complete this course within six months from the effective date of this agreement shall result in the suspension of Respondent's license to prescribe Schedule II and III narcotics.

Within fifteen (15) days of completing this course, Respondent shall notify the Board and provide written proof of completion.

(Exhibit 1: paragraph 8B).

Respondent's breach of any terms or conditions of this *Settlement Agreement* shall constitute unprofessional conduct pursuant to RSA 329:17, VI (d), and a separate and sufficient basis for further disciplinary action by the Board.

(Exhibit 1: paragraph 9) (italics in original).

The effective date of the settlement agreement was September 3, 2010. (Exhibit 1: paragraph 19).

The course should have been completed on or before March 3, 2011. (Exhibit 1: paragraph 8B "within six months from the effective date"). Written proof should have been provided on or before March 18, 2011. (Exhibit 1: paragraph 8B).

The Respondent has not completed the Case Western Reserve School of Medicine Continuing Education Course on Controlled Substance Management ("Case Western course"). At the hearing, the Respondent stated that the Case Western course is offered only twice a year. The Respondent admitted that due to mistake or neglect she missed the Case Western course that was timely available.

At no time (specifically: not after the issuance of the Settlement Agreement, not before the six month period, not after the six month period, not before or after the issuance of the Notice of Hearing and Order to Show Cause) did the Respondent petition the Board to pre-approve an equivalent course. At no time did the Respondent petition the Board to extend her deadline to take the Case Western course. The Respondent stated that the next available Case Western course is available in December. The Respondent admitted that, although there were still spots available for her to register for the December Case Western course, she has not done so as she is reluctant to travel far from home (New Hampshire) and the Case Western course is located in Cleveland, Ohio. The Respondent posited that she was unable<sup>2</sup> or unwilling<sup>3</sup> to attend an equivalent course.

The Respondent stated that her primary practice consists of traveling to conduct medical examinations for insurance purposes (insurance evaluations). The underlying reasons for the 9/3/10 Settlement Agreement related to her treatment of chronic pain patients, whom she treated for an internet-based health company. The internet-based health company is now defunct; however, she stated that she has continued care, treatment and proscribing for approximately ten (10) chronic pain patients.

#### **Rulings of Law:**

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

1. The Board finds that the Respondent has violated paragraph 8B of the September 3, 2010 Settlement Agreement.

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<sup>2</sup> See Transcript concerning: The Respondent's assertions regarding spending several hours unsuccessfully searching for an on-line equivalent to the Case Western Course.

<sup>3</sup> See Transcript concerning: (1) The Respondent's assertions regarding her finding only one equivalent to the Case Western course, which is available in New Orleans; and (2) The Respondent's assertions regarding her unwillingness to travel to New Orleans.

2. The Board finds that the Respondent has violated RSA 329:17, VI(d) and has engaged in unprofessional conduct and should be subject to further disciplinary sanctions based on her failure to comply with the terms of the Settlement Agreement with the Board.

**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 is assessed an ADMINISTRATIVE FINE in the amount of one dollar (\$1.00) due within thirty (30) days of the effective date of this 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 the Respondent is RESTRICTED from prescribing Schedule II and III narcotics for a minimum of twelve (12) months. The effective date of this restriction shall start one week (7 days) after the effective date of this Order.<sup>4</sup> This suspension shall remain in effect until further order of the Board. Prior to any request to lift the restriction, the Respondent must comply with the following condition:

- a. The Respondent is required to meaningfully complete the Case Western Reserve School of Medicine Continuing Education Course on Controlled Substance Management, or its equivalent if pre-approved<sup>5</sup> by the Board.

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

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<sup>4</sup> The effective date of this Order is August 8, 2011. Thus, the restriction shall commence on August 15, 2011. The restriction shall continue minimally until August 15, 2012 and by further order of this Board.

<sup>5</sup> Pre-approval by the Board requires the Respondent to make a detailed request by written petition and to receive a formal written response from the Board.

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.

Date: August 8, 2011

\*\BY ORDER OF THE NEW HAMPSHIRE  
BOARD OF MEDICINE

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

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