

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

In the Matter of:
Jonathan B. Warach, M.D.
License No. 12249
(Adjudicatory Proceedings)

Docket No. 12-03

**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 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. Jonathan B. Warach, M.D. (“Dr. Warach” or “Respondent”), holds an active license, No. 12249, issued on March 3, 2004, to practice medicine in the State of New Hampshire. Respondent practices medicine in Dover, New Hampshire.

3. The Board has received information indicating that the continued practice of medicine by Dr. Warach poses an imminent threat to life, safety and/or health, which

warrants the temporary suspension of Dr. Warach's license to practice medicine pending a hearing on whether permanent and/or temporary disciplinary or non-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. Respondent has privileges at Wentworth Douglass Hospital (WDH) and Frisbee Memorial Hospital ("Frisbee"). In addition, he is affiliated with a private-practice neurology partnership, and also practices at a rehabilitation facility.
- B. Following several reports from co-workers of inappropriate behavior, including urinating in an emergency department toilet without closing the door and repeatedly eating food that was clearly marked as belonging to others, WDH referred Respondent to the New Hampshire Professionals Health Program (NPHP). One of the WDH physicians who brought Respondent's behavior to the attention of WDH expressed concern that Respondent was suffering from a neuropsychiatric disorder. It was also voiced to the NPHP that Respondent's disruptive behavior had increased during the prior six to eight months.
- C. NPHP recommended that Respondent undergo a psychiatric evaluation, see a primary care physician for a physical, and take a leave

of absence from practicing medicine. Respondent did not follow any of the recommendations of the NHPHP.

- D. Respondent presented to the NHPHP looking disheveled and wearing ill-fitting clothing. Respondent exhibited inappropriate and unusual behavior, including making disparaging comments about the weights of NHPHP staff. Drug and alcohol test ordered by the NHPHP were negative.
- E. A colleague of Respondent reported that Respondent's co-workers at the neurology partnership reported instances of inappropriate behavior on the part of Respondent, including allegations of sexual harassment and intimidation. The colleague also reported concerns about Respondent's number of long-term, controlled-medication prescriptions. The colleague reported that Respondent's disruptive behavior had increased during the previous eight months.
- F. With regard to WDH and Frisbee, Respondent signed documents taking medical leaves of absence. However, after signing the documents, Respondent wrote orders for a patient who presented at WDH on February 23, 2012. Respondent was also escorted from WDH grounds on February 23, 2012, for attempting to see a patient.

- G. Respondent saw patients at a rehabilitation facility on February 22, 2012, and has not voluntarily stopped practicing medicine at that facility.
- H. Respondent has continued to not comply with the recommendations of the NHPHP that he undergo a psychiatric evaluation and a physical and assessment by a primary care physician.

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 or non-disciplinary sanctions, or both. The specific issues to be determined in this proceeding are:

- A. Whether Respondent's alleged conduct at WDH, including urinating in an emergency department toilet without closing the door, constitutes professional misconduct, in violation of RSA 329:17, VI(d);

- B. Whether Respondent committed professional misconduct by failing to follow the recommendations of the NHPHP, in violation of RSA 329:17, VI(d);
- C. Whether Respondent committed professional misconduct by continuing to see or attempting to see patients at WDH after agreeing to a medical leave of absence, in violation of RSA 329:17, VI(d);
- D. Whether Respondent committed professional misconduct by making disparaging remarks to NHPHP staff about their weights, in violation of RSA 329:17, VI(d); and
- 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 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 Jonathan B. Warach, M.D. shall appear before the Board on March 7, 2012 at 1:00 p.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* and disciplinary sanctions imposed without further notice or an opportunity to be heard; and,

IT IS FURTHER ORDERED that Jason D. Reimers, Assistant Attorney General, 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 Nick Perencevich, M.D., Board Member, 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 S. 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 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,

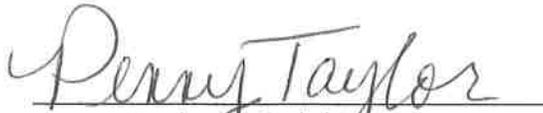
IT IS FURTHER ORDERED that all documents shall be filed with the Board by mailing or delivering them to Penny Taylor, Administrator, N.H. Board of Medicine, 2 Industrial Park Drive, Suite 8, Concord, New Hampshire 03301; and,

IT IS FURTHER ORDERED that routine procedural inquiries may be made by contacting Penny Taylor, Administrator, N.H. Board of Medicine, 2 Industrial Park Drive, Suite 8, Concord, New Hampshire 03301, (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 and/or by in-hand service. 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: February 24, 2012


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

* Robert P. Cervenka, M.D., Board Member, recused.
Daniel Morrissey, Board Member, did not participate.