

**State of New Hampshire
Board of Registration in Podiatry
Concord, New Hampshire**

In the Matter of:
Edward P. Newcott, D.P.M.
License No. 0147
(Adjudicatory Proceedings)

Docket No. 16-01

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

1. RSA 315:10-b; and RSA 541-A:30, III, authorize the New Hampshire Board of Podiatry (“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 315:10-b. Postponement of the proceeding is prohibited unless the licensee agrees to continue the suspension pending issuance of the Board’s final decision. *See*, RSA 315:10-b.

2. Edward P. Newcott, D.P.M. (“Dr. Newcott” or “Respondent”), holds an active license, No. 0147, to practice podiatry in the State of New Hampshire. Respondent practices podiatry in Concord, New Hampshire and Peterborough, New Hampshire.

3. The Board has received information indicating that the continued practice of podiatry by Dr. Newcott poses an imminent threat to life, safety and/or health, which warrants the temporary suspension of Dr. Newcott's license to practice podiatry 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. At a hearing held on October 24, 2014, Respondent entered into a Stipulation of Facts. As part of the Stipulation of Facts, Respondent represented that he would no longer perform surgeries, he would no longer treat patients in any nursing home setting, and he would close his office in New London. Additionally, he represented that he had brought on Dr. Timothy Kemple, a New Hampshire licensed podiatrist, to assist him in both the Concord and Peterborough offices and that Dr. Kemple would provide general and infection control supervisory support to him in his practice.
- b. On November 19, 2014, the Board of Podiatry issued a Final Decision and Order following the October 24, 2014 hearing. In the Final Order, the Board found that Respondent had committed professional misconduct and ordered that his license remained suspended until he could complete additional continuing education in infection control. The order also specified that upon the suspension being lifted, Respondent's license was restricted in that he could no longer perform surgeries, he could not seek to reinstate his privileges at any hospital, he could no longer treat patients in nursing home settings, and he was required to have a Board-approved infection control supervisor that is licensed by the Board of Podiatry and was required to notify the Board if his

supervisor leaves or changes. The order also specified that Respondent's practice would be subject to unannounced inspections for a period of five years.

- c. On December 16, 2014, the Board issued an Order lifting the suspension of Respondent's license.
- d. Soon after Respondent's suspension was lifted, Dr. Kemple retired and Dr. Gorgol took over Respondent's supervision. Dr. Gorgol supervised Respondent by stopping by Respondent's practice every few months to look around and see whether it appeared proper infection control procedures were in place. Respondent never notified the Board that Dr. Kemple retired, that Dr. Gorgol had taken over his supervision, or that the type of supervision being provided had changed.
- e. In the summer and fall on 2015, Respondent repeatedly called Board member Dr. James Dolan regarding the restrictions on his license. Dr. Dolan repeatedly told Respondent that it was inappropriate and unhelpful for Respondent to call him. Dr. Dolan reported that each time Respondent called, they would have the same conversation.
- f. On December 2, 2015, the Board received a somewhat disjointed and confusing letter from Respondent in which he asked to have some of the restrictions on his license removed. Some of the claims in Respondent's letter are inconsistent with information uncovered in a prior Board investigation.

- g. On December 7, 2015, the Board's Administrator, Penny Taylor, received a call from Respondent. In this phone call Respondent referenced his prior hearing and stated he was never told when it was and was not allowed to attend the hearing. Ms. Taylor reminded Respondent that he had attended the hearing with his attorney, to which he responded that the Board told him he could not speak at the hearing. Ms. Taylor explained to Respondent that his choice to speak was between him and his attorney and the Board did not prevent him from speaking at the hearing. He then, again, indicated he did not get to attend the hearing and no one told him where it was. It was Ms. Taylor's impression that the Respondent seemed to be confused about events that had already taken place.
- h. Respondent attended the Board's meeting on December 9, 2015 and again requested that the Board lift certain restrictions on his license. Ms. Taylor characterized Respondent's behavior at the meeting as odd and bizarre. During his interactions with the Board, Respondent kept repeating himself and asking the same questions. He also told the Board that he didn't understand why he couldn't say anything at the prior hearing or why he couldn't bring witnesses. It appeared to Ms. Taylor that the Respondent was having difficulty comprehending what was going on. After the Board concluded hearing Respondent's request, Respondent remained in the room even though he was told several times the hearing was over. Eventually, Ms. Taylor had to assist the Respondent in leaving the room.

- i. On December 22, 2015, Board investigators conducted an unannounced inspection on Respondent's Concord practice. Investigator Todd Flanagan noted that during the inspection it appeared that Respondent has having cognitive difficulties. Investigators reported that Respondent appeared to have a blank expression when they interacted with him, which necessitated investigators speaking to Respondent using very simple terms and repeating themselves many times.
- j. Respondent again attended the Board's March 9, 2016 meeting asking again to have certain restriction on his license lifted. While addressing the Board, Respondent repeated the same information he had provided at the Board's last meeting in December. He also tried to discuss the complaints that had led to the 2014 disciplinary hearing and again stated that he had not been allowed to attend the 2014 hearing. Respondent also referenced the podiatrist that was supervising him and called him Dr. Dolan. After being asked about his supervisor, it became apparent that Respondent was confusing Dr. Dolan and Dr. Gorgol. Ms. Taylor stated that Respondent appeared very confused at this meeting. The Board voted to deny Respondent's request and moved to go into a non-public session. Respondent was told he could not stay in the room for the non-public session, but Respondent continued to discuss his request. Eventually, one of the Board members was able to lead Respondent out of the room.

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 315:10-b, and 541-A:30, III.

6. The purpose of this proceeding will be to determine whether Respondent has engaged in professional misconduct contrary to RSA 315:9, II and RSA 315:10-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 Respondent committed professional misconduct by a physical or mental incapacity, in violation of RSA 315:9, II(d); and/or
- B. Whether Respondent committed professional misconduct by failing to notify the Board that his supervisor had changed, in violation of RSA 315:9, II(f); and/or
- C. 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 315:9, III.

7. While RSA 315:10-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 requires 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 315:10-b. 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 315:10-b, and 541-A:30, III.

THEREFORE, IT IS ORDERED that Respondent's New Hampshire license to practice podiatry 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 315:9, RSA 315:10-a, RSA 315:10-b, and 541-A:30, III. 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 Edward P. Newcott, D.P.M. shall appear before the Board on Wednesday, March 23, 2016 at 4:00 p.m., at the Board's office located at 121 South Fruit Street, Concord, N.H., to participate in an adjudicatory hearing and, if deemed appropriate, be subject to sanctions pursuant to RSA 315:9, III; 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 Assistant Attorney General Michelle Heaton, 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 315 to represent the public interest. Hearing Counsel shall have the status of a party to this proceeding; and,

IT IS FURTHER ORDERED that Jennifer S. Sartori, DPM, President of the Board, or any other person whom she 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, and with an additional copy mailed to any party to the proceeding, and to Attorney Thomas Broderick, 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; and,

IT IS FURTHER ORDERED that the entirety of all oral proceedings be recorded verbatim by the Board. A record of the proceeding shall be made by a certified shorthand court reporter provided by the Board; and,

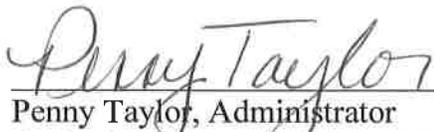
IT IS FURTHER ORDERED that all documents shall be filed with the Board by mailing or delivering them to Penny Taylor, Administrator, N.H. Board of Podiatry, 121 South Fruit Street, Concord, New Hampshire 03301; and

IT IS FURTHER ORDERED that routine procedural inquiries may be made by contacting Penny Taylor, Administrator, N.H. Board of Podiatry, at (603) 271-1205, 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. *See* Pod 403.03. A copy shall also be delivered to Hearing Counsel.

BY ORDER OF THE BOARD/*

Dated: March 17, 2016


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

/*Dr. Dolan, Board member, did not participate.