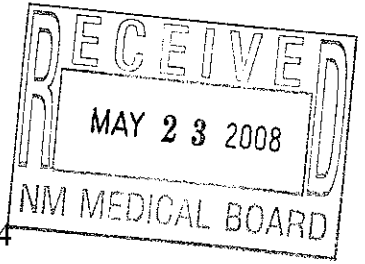


BEFORE THE NEW MEXICO MEDICAL BOARD

IN THE MATTER OF:

George R. Schwartz, MD  
License No. 71-84

Case No. 2008-004



Respondent.

ORDER ADOPTING HEARING OFFICER'S ORDER  
VACATING HEARING AND DISMISSING THIS ACTION

The New Mexico Medical Board hereby adopts and incorporates by reference the attached "Order Vacating Hearing and Dismissing This Action" entered by Hearing Officer Willard H. Davis, Jr. on April 16, 2008. The dismissal is without prejudice, as noted in the adopted order.

  
\_\_\_\_\_  
PAUL KOVNAT  
Chairman, New Mexico Medical Board

Date: 5/23/08

**BEFORE THE NEW MEXICO MEDICAL BOARD**



**IN THE MATTER OF:**

**George R. Schwartz, MD  
License No. 71-84**

**Case No. 2008-004**

**Respondent.**

**ORDER VACATING HEARING AND DISMISSING THIS ACTION**

THIS MATTER comes before the hearing officer on advice from Petitioner that Respondent has provided the Board a Certificate of Compliance (the Certificate) from the New Mexico Human Services Department, dated April 14, 2008, and moving that this action be dismissed without prejudice; Respondent having filed a Motion to Dismiss; each of the parties having filed for the record a copy of the Certificate; and the hearing officer being sufficiently advised FINDS that the Parties' Motions are well taken and it is, therefore, ORDERED that the hearing set for April 18, 2008 is hereby vacated and this action is dismissed, without prejudice.

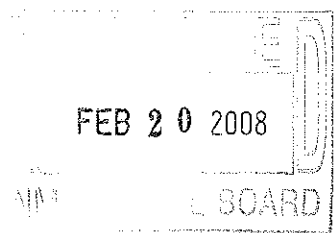
Dated in Rio Rancho, New Mexico this 16<sup>th</sup> day of April 2008.

 Electronic  
Signature

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Willard H. Davis, Jr., Hearing Officer  
Administrative Law Judge (retired)  
1624 Mallard Court NE  
Rio Rancho, NM 87144  
Tel. (505) 553-3354  
Fax (505) 212-0075  
E-mail: [Willard@WillardDavis.com](mailto:Willard@WillardDavis.com)

**BEFORE THE NEW MEXICO MEDICAL BOARD**



**IN THE MATTER OF** )  
 )  
**George R. Schwartz, M.D.** )  
**License No. 71-84** )  
 )  
**Respondent** )  
\_\_\_\_\_ )

**No. 2008-004**

**NOTICE OF CONTEMPLATED ACTION**

YOU ARE HEREBY NOTIFIED that pursuant to provisions of §61-1-4 NMSA 1978 of the Uniform Licensing Act, the New Mexico Medical Board ("Board") has before it sufficient evidence that, if not rebutted or explained, will justify the Board restricting, revoking or suspending your license to practice medicine in the State of New Mexico.

1. Respondent is subject to action by the Board pursuant to §61-1-1 et seq. NMSA 1978, §61-6-1 et seq. NMSA 1978, and §40-5A-1 et seq. NMSA 1978.

2. This action is based upon the following allegations:

A. On or about January 8, 2008 the New Mexico Human Services Department (HSD) placed Respondent on a certified list of obligors not in compliance with a Judgment and Order relating to child support. Because Respondent has failed to come into compliance with his judgment and order relating to child support, his name still appears on HSD's certified list of obligors.

This allegation would be a violation of the Parental Responsibility Act §40-5A-6 NMSA 1978, failure to be in compliance with a Judgment and Order for child support.

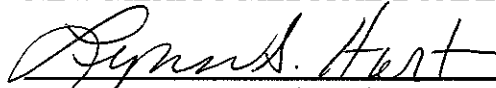
3. Please take notice that pursuant to §61-1-4, you may secure a hearing before the Board by depositing in the mail within twenty (20) days after service of this notice a certified

return receipt requested letter addressed to the Board and containing a request for a hearing. If you do not request a hearing within twenty (20) days after service of this notice as described above, the Board will take the contemplated action, i.e., restricting, suspending or revoking your license to practice medicine in the State of New Mexico. Such action shall be final and not subject to judicial review.

4. Pursuant to §61-1-8 NMSA 1978, you have the right to be represented by counsel or by a licensed member of your profession, or both; to present all relevant evidence by means of witnesses and books, papers, documents and other evidence; to examine all opposing witnesses who appear on any matter relevant to the issues; and to have subpoenas and subpoenas duces tecum issued as of right prior to the commencement of the hearing to compel discovery and the attendance of witnesses and the production of relevant books, papers, documents and other evidence upon making written request therefore to the Board or Hearing Officer. The issuance of such subpoenas after commencement of the hearing rests in the discretion of the Board or Hearing Officer.

Dated: February 20, 2008

NEW MEXICO MEDICAL BOARD



Lynn S. Hart, Executive Director  
New Mexico Medical Board  
2055 S. Pacheco, #400  
Santa Fe, New Mexico 87505  
(505) 476-7220

BEFORE THE NEW MEXICO MEDICAL BOARD



IN THE MATTER OF )  
 )  
George R. Schwartz, M.D. )  
License No. 71-84 )  
Respondent )  
\_\_\_\_\_ )

No. 2005-015

AGREED ORDER

WHEREAS the New Mexico Medical Board (“Board”), in March 2006, entered findings of fact, conclusions of law and an Order revoking Dr. George Schwartz, M.D.’s (“Respondent”) New Mexico license to practice medicine; and

WHEREAS in November 2007, upon appeal to the First Judicial District Court, the Court set aside the Board’s Order as arbitrary and capricious. The Court remanded the case to the Board for another hearing where Respondent would be afforded a fair opportunity to be represented by counsel. Respondent is represented by Stephen D. Aarons in this matter; and

WHEREAS after an otherwise long and distinguished medical career, Respondent has decided to retire from the practice of medicine. Respondent does not admit any wrongdoing, but desires an amicable resolution of this case in order to devote more time to his family and develop his consulting and research practice; and

WHEREAS Respondent, therefore, surrenders his New Mexico license to practice medicine, agrees not to reapply for the license, and foregoes any right to practice medicine now and in the future within the United States; and

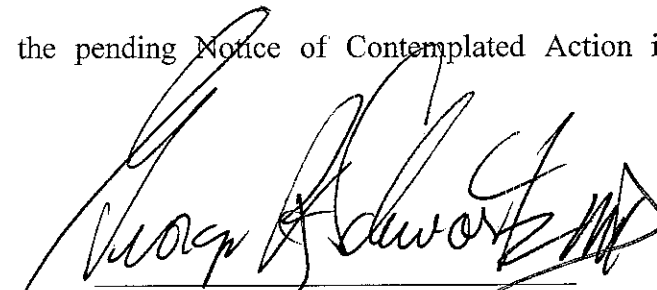
WHEREAS pursuant to the Medical Practice Act, NMSA 1978, §§ 61-6-1 through -35, and Board Rule 16.10.5.15 NMAC, Respondent enters into this Agreed Order after consulting with his counsel of record. He understands that by entering into this Agreed Order he waives his

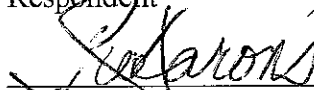
rights under the Uniform Licensing Act and the Medical Practice Act including the right to appeal. Respondent further understands that this Agreed Order will be reported to the National Practitioner Data Bank and the Healthcare Integrity and Protection Data Bank.

IT IS HEREBY ORDERED that the foregoing Agreed Order to surrender Respondent's New Mexico license to practice medicine, and not to practice medicine or seek an active license to practice medicine anywhere in the United States, now or in the future, is ACCEPTED.

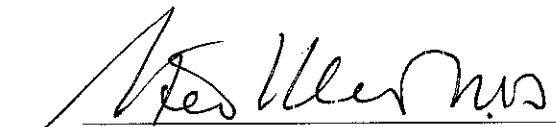
IT IS FURTHER ORDERED that the pending Notice of Contemplated Action is DISMISSED WITH PREJUDICE.

Dated: 27 June 2008

  
George R. Schwartz, M.D.,  
Respondent

  
Steve D. Aarons, Esq.  
Attorney for Respondent

Dated: 27 JUNE 2008

  
Steven Weiner, M.D., Vice Chair  
New Mexico Medical Board



STATE OF NEW MEXICO  
COUNTY OF SANTA FE  
FIRST JUDICIAL DISTRICT COURT

GEORGE R. SCHWARTZ, M.D.,

Appellant,

v.

NEW MEXICO MEDICAL BOARD,

Appellee.

ORDER MODIFYING DECISION AND ORDER

This matter came before the district court upon Appellee's Motion for Expedited Reconsideration for clarification of the Decision and Order entered in this matter on November 2, 2007. The district court, having reviewed Appellee's Motion for Expedited Reconsideration, Appellant's Response to Motion for Expedited Reconsideration, and having heard presentations of the parties on November 30, 2007, hereby enters an order modifying the Decision and Order. The final sentence in the Decision and Order entered in this matter on November 2, 2007 shall be modified to read as follows:

"This matter is remanded to the New Mexico Medical Board for a new hearing under the specific condition that at any rehearing, Appellant may be represented by counsel at Appellant's cost."

IT IS SO ORDERED.

DANIELA SANCHEZ

---

Daniel A. Sanchez  
District Judge  
Division VII

ENDORSED  
First Judicial District Court

DEC 03 2007

Santa Fe, Rio Arriba &  
Los Alamos Counties  
PO Box 2268  
Santa Fe, NM 87504-2268

FIRST JUDICIAL DISTRICT COURT  
STATE OF NEW MEXICO  
COUNTY OF SANTA FE

NO D-0101-CV-2006-00934

**IN THE MATTER OF GEORGE SCHWARTZ, MD ,  
Appellant,**

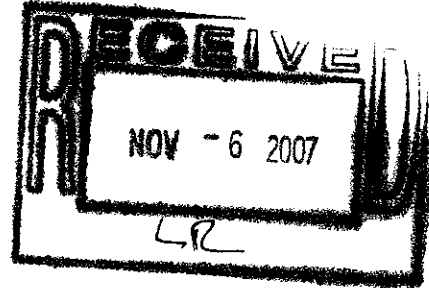
vs.

**STATE OF NEW MEXICO  
NEW MEXICO MEDICAL BOARD,  
Appellee,**

ENJOY  
First Judicial District Court

NOV 02 2007

Santa Fe  
Los Alamos  
PO Box 1150  
Santa Fe NM 87504



**DECISION and ORDER**

This matter came before this court upon Appellant, George Schwartz's Appeal of an Administrative Order sustaining the revocation of Appellant's license to practice medicine. A hearing was held on December 15, 2005, January 26-27, 2007, February 6-7, 2007 when it was concluded. Findings of Fact, Conclusions of Law, Decision and Order, Notice of Right to Judicial Review were filed on March 31, 2007. Appellants license to practice medicine was permanently revoked effective April 17, 2006 in the decision filed on March 31, 2006.

This appeal is brought before this Court pursuant to New Mexico Rules of Civil Procedure, 1-074. Appellant was represented by Paul J. Kennedy, Esq. and Appellee, New Mexico Medical Board was represented by Corliss Thalley, Esq., Special Assistant Attorney General.

The Court has now had the opportunity to review the pleadings, the exhibits and the record proper submitted by the parties. The Court also heard the presentations of the parties on November 1, 2007. The Appellant argues that the basic issues presented before this



Court is whether the Appellant was denied due process because he was denied the opportunity to retain legal counsel to assist him during the hearing of this matter. Appellant further argues that the decision to deny Appellant the opportunity to retain counsel to assist him at the hearing under Goldberg v Kelly 397 US 254, was arbitrary and capricious.

The Appellee argues inter alia that the Appellant's right to Counsel under the Goldberg case includes the important consideration of the governmental interest to be protected, ie. the protection of the public's health and safety in having the Appellant practicing medicine. The Appellee further proffers the argument that the decision of the board has to be contrary to all logic and reason, Meiboom v. Watson, 128 NM 536

This Court agrees that the revocation of a professional license carries with it dire consequences as noted by the appellant in Wilson v. Department of Professional Regulation, 801 NE 2d 31, and also the importance of ones right to the assistance of counsel as noted in Goldberg. The court also agrees with Appellee's contention of the governmental interest of protecting the health and safety of the general public, as being a fundamental interest or concern. For all practical purposes, however, this concern goes away in the board's final ruling and the appellants not practicing medicine or asking for a stay. At this point in this controversy. The Appellants right to have the assistance of Counsel at the administrative hearing would appear to outweigh the governments interest to be protected.

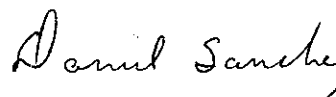
While it is true that the administrative agency possesses broad discretion in allowing a continuance as requested by appellant, that discretion must be exercised judiciously and not arbitrarily so as to justify the ends of justice, Wilson Id.

The denial of the continuance at the administrative hearing resulted in denying

Appellant the right to be represented by counsel, rendering the hearing as structurally defective and tantamount to a denial of due process. The New Mexico Medical Board's final decision is hereby reversed as being arbitrary and capricious. This matter is remanded to the New Mexico Medical Board for a new hearing under the specific condition that at any rehearing, Appellant must be represented by counsel at Appellant's cost.

IT IS SO ORDERED.

November 2<sup>nd</sup>, 2007



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Daniel A. Sanchez  
District Judge  
Division VII

**BEFORE THE NEW MEXICO  
MEDICAL BOARD**



**IN THE MATTER OF  
GEORGE R. SCHWARTZ, M.D.,**

**Respondent.**

**Case. No. 2005-015**

**FINDINGS OF FACT, CONCLUSIONS OF LAW  
DECISION AND ORDER  
NOTICE OF RIGHT TO JUDICIAL REVIEW**

THIS MATTER came before the New Mexico Medical Board ("Board") on March 30, 2006 for decision pursuant to provisions of the Uniform Licensing Act, §§ 61-1-1 to 61-1-33, NMSA 1978 (1957, as amended through 2003) and the Medical Practice Act, §§ 61-6-5(A) and 61-6-15(A), NMSA 1978 (1923, as amended through 2003).

The evidentiary hearing commenced before a duly appointed Hearing Officer on December 15, 2005. The case was continued until January 26-27, 2006 at Respondent's request. The parties did not conclude on January 27, 2006 and the case was recessed and reconvened on February 6, 2006. On January 24, 2006 the Administrative Prosecutor filed a motion to amend the NCA. Ex. 1-A. Respondent did not oppose the Amended NCA but sought a short continuance beyond January 26-27, 2006 to prepare. On January 27, 2006 the Hearing Officer granted the motion to amend. The Hearing Officer reconvened the hearing on February 6-7, 2006. The hearing concluded on February 7, 2006.

A quorum of the Board, having familiarized themselves with the transcript of the proceedings, exhibits admitted into the record, and the Hearing Officer's Report (with Appendix) dated March 9, 2006, voted unanimously to adopt the Hearing Officer's Report in its entirety (with Appendix), including the Hearing Officer's decisions on pre-hearing motions.

### Pre-hearing Motions

1. *Respondent's Motion to disqualify Administrative Prosecutor.*

Respondent moved to disqualify the Administrative Prosecutor based on alleged misconduct. Having heard arguments of the parties (Tr. 45-51) and having listened to the telephone message from Respondent's prospective attorney (Tr. 51-52; Tr. 260-261), and finding no threat or intimidation by the prosecutor or evidence of ethical violation (Tr. 53).

The motion is DENIED.

2. *Respondent's Motion to Dismiss Counts 2(A), 2(G), 2(H), 2(I), and 2(J).*

Respondent filed a motion to dismiss counts 2 (A), (G), (H), (I), and (J). The Hearing Officer ruled that the motion addresses the facts in dispute, which is the purpose of the hearing. The factual issues are to be determined based on the evidence presented by the parties at the hearing. Tr. 39, 60.

The motion is DENIED.

3. *Administrative Prosecutor's Motion to Amend NCA.*

On January 24, 2006, the Administrative Prosecutor filed a motion to amend the NCA to add charges alleging that Respondent violated the Hearing Officer's Order

dated December 23, 2005. The Order reflected the voluntary agreement by Respondent on December 15, 2005 not to prescribe schedule 2 and schedule 3 drugs pending the decision of the Board. Tr. 21. By the agreement, the Hearing Officer granted a continuance from December 15-16, 2005 to January 26-27, 2006. Respondent did not object to the amended NCA, but sought a short continuance to prepare. See *Respondent's Letter dated January 25, 2006.*

The motion to amend the NCA is GRANTED. (References herein to the NCA shall mean the NCA, as amended.)

#### Administrative Prosecutor's Motion to Dismiss Allegations

During the course of the proceedings the Administrative Prosecutor filed an oral motion to dismiss allegations 2(K), 2(L), and 2(M).

These allegations are DISMISSED.

#### FINDINGS OF FACT

The Board adopts the Hearing Officer's recommended findings of fact numbered 1-29 as follows:

1. George R. Schwartz, M.D., ("Respondent") is licensed by the Board to practice medicine in New Mexico and is subject to the jurisdiction of the Board.
2. The NCA was initiated on July 12, 2005. Ex. 1. The text shown in *italics* is the verbatim text of allegations contained in the NCA, as amended.
3. Respondent requested a hearing. Ex. 2.
4. The evidentiary hearing commenced on January 26-27, 2006 in accordance with a notice of hearing. Ex. 3. The NCA was amended by order of the

Hearing Officer and the hearing continued on February 6-7, 2006. See *Notice* dated January 31, 2006.

5. On June 10, 2004, Respondent reported a burglary to the Santa Fe police that occurred overnight on June 9-10, 2004. Exs. 15; 20. Respondent reported a safe was stolen from a pick up truck, along with other personal items. Ex. 15. The police officer who took the report did not list medical records as missing and did not remember mention of medical records being reported to him as missing at the time the report was taken. Deposition, Ex. 20, p. 6; Deposition Ex. 15-A. At the hearing, Respondent testified that the safe contained medical records. Ex. 15. Several witnesses, including Respondent's daughter and two part time employees, testified on Respondent's behalf that Respondent had medical records and the medical records were kept in a safe. Tr. 432-433, 487. Respondent did not report any drugs missing or stolen. Ex. 15; Deposition, Ex. 20, p. 6; Deposition Ex 15-A.

6. Respondent contends that he did not write all the prescriptions that are the subject of the NCA.

7. On October 24, 2005 Respondent went to the Board office and examined original prescriptions written on Respondent's Rx pad and bearing Respondent's signature written for five patients that form the basis for the allegations in the NCA involving injudicious prescribing of drugs and failure to maintain adequate medical records that justify the prescriptions written for the patients. Tr. 199-200; Ex. 14.

8. These five patients have the same surname. Ex. 51. Patient #2 is the mother of Patient #1. Patient #3 is the brother of Patient #1. Tr. 152. Patient #1

regularly picked up the prescriptions for Patient #2 and Patient #3. Ex. 53. Respondent prescribed controlled substances as though he was prescribing for management of severe chronic pain for all five members of the group, all bearing the identical surname. Patient #1 regularly signed for the prescriptions at the pharmacy for others. Ex. 53.

9. Respondent examined the original prescriptions and separated from the prescriptions those prescriptions Respondent said he did not write. Ex. 13; Tr. 201-202. Respondent did not deny writing the remaining prescriptions. Ex. 12, Tr. 206.

10. Whether Respondent wrote the prescriptions that are the subject of the allegations is relevant to the question whether Respondent violated certain provisions of the Medical Practice Act as alleged in the NCA. Specialized expert opinion testimony will assist the triers of fact to understand the evidence and to resolve disputed questions of fact.

11. The Administrative Prosecutor called Thomas Earl Van Valkenburgh to testify as an expert witness. Tr. 345.

12. Mr. Van Valkenburgh is qualified as a forensic handwriting expert by knowledge, skill, experience, training, and education to present testimony in the form of an opinion concerning whether Respondent wrote the disputed prescriptions. Tr. 354; See also *Appendix to Hearing Officer's Report*, incorporated herein by this reference.

13. Mr. Van Valkenburgh testified that in his opinion Respondent wrote the prescriptions that Respondent said he did not write. Tr. 352; Exs. 21-A; Ex. 21; Appendix.

14. Respondent wrote and signed all the questioned document prescriptions that Respondent said he did not write. Exhibits 21, 21-A, and 21-B; Tr. 352.

15. The prescriptions were done by individual hand, not by machine. Tr. 395.

16. **Allegation 2(A)** - violation of § 61-6-15(D) NMSA 1978, unprofessional or dishonorable conduct for failure to maintain timely, accurate, and complete medical records.

*Respondent did not maintain adequate medical records for at least 55 patients to whom he prescribed and/or dispensed controlled substances from at least March of 2001 until at least July of 2003, identified in a log he provided to the United States Drug Enforcement Administration.*

(a) Michelle Daugherty, a Diversion Investigator with the Drug Enforcement Administration, Albuquerque, conducts audits of doctors in order to account for drugs the doctor has ordered from manufacturers and distributors. Tr. 86-87.

(b) Ms. Daugherty served a Notice of Inspection. Tr. 103; Ex. 52.

(b) Respondent ordered and obtained controlled substances. Tr. 87; Ex. 5-7.

(c) Respondent is responsible to account for all controlled substances obtained by him for the audit period.

(d) Ms. Daugherty did an inventory of drugs. Respondent could not account for all the drugs. Tr. 91; Ex. 7.

(e) Drugs that are ordered and are not accounted for by inventory of drugs on hand can be accounted for if Respondent dispensed the drugs to patients. Tr. 93.



(f) Respondent produced what he calls a pharmacy log purporting to account for the drugs he dispensed to patients. Tr. 94; Ex. 4.

(g) The pharmacy log (Ex. 4) consists of a list of numbers (non-sequential numbers 001 - 074) purporting to represent patients, followed by dates and lists of drugs. Tr. 95; Ex. 4. The pharmacy log does not contain patients' medical histories, record of physical examinations, vital signs, diagnoses, treatments, patient-reported outcomes of treatments, any laboratory tests ordered or their results, information from other treating health care practitioners, or other information that is minimally necessary to constitute an adequate patient medical record. Ex. 4.

(h) Ms. Daugherty asked for the patients' medical records to account for controlled substances that Respondent said he dispensed to the patients, in order to verify that the patients received the controlled substances Respondent said he dispensed. Tr. 95, 106; 112. The only way to verify that an actual person received the controlled substances is to review the medical records. Tr. 95, 112.

(i) Respondent knew or should have known he had a duty to produce medical records to the DEA. Respondent did not produce the medical records requested by the DEA. If Respondent had adequate records, it is logical that he would have produced them to the DEA in order to verify that he actually dispensed the drugs to patients. Respondent did not produce medical records regarding patients listed on the pharmacy log. Tr. 102.

(j) Examples of Respondent's written medical records prior to July 2003 are

included in Ex. 16. The writings are illegible and incomplete and are either separated from other records or integrated with other patients' record. Ex. 16.

(k) Respondent did not maintain adequate medical records for patients to whom he prescribed or dispensed controlled substances from March 2001 to July 2003.

17. **Allegation 2(B)** - violation of §61-6-15(D)(12), gross negligence.

*Respondent obtained in excess of 1,000 doses of controlled substances from pharmacies and from manufacturing distributors from 2002-2003 that he cannot account for in his medical and inventory records.*

(a) Ms. Daugherty conducted an audit of controlled substances ordered by Respondent for the period from July 30, 2002 to July 30, 2003. Tr. 87. Ms. Daugherty served Respondent with a Notice of Inspection on June 30, 2003. Tr. 134; Ex. 52.

(b) Between July 30, 2002 and July 30, 2003, Respondent was unable to account for 2,700 doses of controlled substances. Tr. 91, Ex. 7.

(c) Ms. Dougherty conducted an inventory of controlled substances maintained at Respondent's registered DEA location, which was his residence. The inventory was conducted *before* June 9, 2004, the date of the reported burglary. Tr. 92.

(d) Ms. Daugherty counted the drugs on hand with Respondent present. Tr. 101.

(f) Respondent was unable to account for large quantities of drugs, either through patient medical records or his inventory of drugs, from 2002 to the present. Tr. 113.

18. **Allegation 2(C)** - violation of §61-6-15(D) NMSA 1978, unprofessional or dishonorable conduct for failure to maintain timely, accurate and complete medical records.

*Respondent did not maintain adequate medical records for Patient #1 that justified his prescription of large quantities on Hydrocodene/APAP 7.5>500 mg , Oxycontin 40 mg., Phentermine and Dextroamphetamines from at least March of 2002 until March of 2003.*

(a) The interest of the patient is paramount in the practice of medicine.

(b) Board Rule 16.10.14 NMAC, Management of Chronic Pain with Controlled Substances, establishes mandatory guidelines to be used by licensees in the interest of public health, safety and welfare in prescribing, administering, or dispensing controlled substances to meet the individual needs of the patient for management of chronic pain. The guidelines require record keeping practices that include, without limitation: physical examination, medical history, individually tailored written treatment plan stating objectives and evaluation measures, and long-term monitoring.

(c) Board Rule 16.10.14.8(C) states in part that "[t]he Board will judge the validity of prescribing based on the practitioner's treatment of the patient and on available documentation....." Without timely, accurate, and complete medical records documenting treatment, Respondent cannot justify the large quantities of controlled substances prescribed to patients for chronic pain.

(d) Adherence to the guidelines is necessary to determine whether the prescriptive practices are consistent with the appropriate treatment of pain.

(e) Respondent is required to comply with Board rules, including Board Rule 16.10.14.8, when prescribing controlled substances to treat chronic pain.

(f) Respondent had an intimate relationship with Patient #1. The personal relationship involved Respondent giving Patient #1 access to his personal finances. Respondent denied having a sexual relationship with Patient #1. Tr. 572; Ex. 26.

(g) Respondent's personal relationship with Patient #1 may explain why Respondent failed to comply with the guidelines for management of chronic pain. Personal relationships with patients cloud professional judgment and are detrimental to the best interests of the patient.

(h) Respondent did not maintain adequate medical records for Patient #1 that justified prescribing large quantities of Oxycontin from March 2002 to March 2003.

19. **Allegation 2(D)** - violation of §61-6-15(D)(26) NMSA 1978, injudicious prescribing, administering or dispensing any drug or medicine.

*From at least July of 2004 until April of 2005, Respondent prescribed large quantities of 5 mg. Dexedrine for Patient #1 that were not medically indicated.*

(a) Dexedrine is a potentiating agent for analgesics and is medically indicated to potentiate the effects of Oxycontin. Tr. 168.

(b) The Administrative Prosecutor did not present evidence that the prescriptions for Dexedrine for Patient #1 were not medically indicated to potentiate the effects of Oxycontin.

20. **Allegation 2(E)** - violation of §61-6-15(D)(33), failure to maintain timely, accurate and complete medical records.

*Respondent did not maintain adequate medical records for Patient #1 from at least July of 2004 until April of 2005 that justified his prescriptions of large quantities of 5 mg. Dexedrine.*

- (a) The reported burglary occurred overnight on June 9-10, 2004. Ex. 20.
- (b) Respondent was responsible to maintain records in accordance with Board Rule 16.10.14 for patients he treated for chronic pain after the burglary.
- (c) Exhibit 16 contains examples of Respondent's medical record keeping. There is a paucity of medical records for Patient #1.
- (d) Respondent did not maintain medical records for Patient #1 that comply with Board Rule 16.10.14 NMAC. See Recommended FOF 18(a)-(e).

21. **Allegation 2(F)** - violation of §61-6-15(D)(33), failure to maintain timely, accurate and complete medical records.

*Respondent did not maintain adequate medical records for Patient #1 that justified his prescribing of large quantities of Oxycontin 80 mg. in 2005.*

- (a) Based on the testimony of the expert forensic document examiner, Respondent wrote the prescriptions for Patient #1 dated between January 2005 to June 2005.
- (b) Patient #1 signed for and received prescriptions between January 2005 and June 2005. Exs. 8, 9, 10.
- (c) Eloy E. Aragon, pharmacist, owns Plaza Drug in Las Vegas. Tr. 137.
- (d) Mr. Aragon knows Patient #1 by sight. Tr. 147-148.
- (e) Mr. Aragon knows Respondent's voice. Tr. 149.

(f) Two prescriptions that Respondent denies writing were filled for Patient #1 by Mr. Aragon at Plaza Drug after Mr. Aragon called Respondent to confirm the prescription and received oral authorization from Respondent to fill the prescription. Tr. 149-150.

(g) Respondent prescribed Oxycontin to Patient #1 in 2005, ostensibly for pain relief. Tr. 577, Exs. 8, 9, 10. Patient #1 did not always fill the prescriptions in the quantities prescribed.

(h) Respondent's medical records for Patient #1 identified for March, April, and May 2005 are not adequate medical records in that the records do not meet the requirements of Board Rule 16.10.14 NMAC. Ex. 16; Recommended FOF 18(a)-(e).

22. **Allegation 2(G)** - violation of §61-6-15(D)(33), failure to maintain timely, accurate and complete medical records.

*Respondent did not maintain adequate medical records for Patient #2 from at least July of 2004 until April of 2005 that justified his prescription of large quantities of Oxycontin 80 mg.*

(a) Respondent treated Patient #2 and continued to prescribe large quantities of Oxycontin after June 2004. Ex. 30. Even if medical records were stolen in June 2004, Respondent was responsible after June 2004 to maintain records for Patient #2 in accordance with Board Rule 16.10.14 NMCA. Recommended FOF 18(a)-(e).

(b) Without medical records, Respondent cannot justify the prescribing of large quantities of Oxycontin to Patient #2.

(c) Respondent did not maintain adequate medical records for Patient #2 from July 2004 to April 2005 that comply with the requirements of Board Rule 16.10.14 NMAC.

23. **Allegation 2(H)** - violation of §61-6-15(D)(26), injudicious prescribing, administering or dispensing any drug or medicine.

*From at least May of 2004 until at least January of 2005, Respondent prescribed large quantities of 80 mg Oxycontin for Patient #3 that were not medically indicated.*

(a) From May 2004 to January 2005, Respondent prescribed large quantities of Oxycontin to Patient #3. Ex. 30, Ex. 53, p. 3.

(b) Without adequate medical records that are kept in accordance with Board Rule 10.16.14, Respondent cannot justify prescribing Oxycontin for the management of chronic pain. Recommended FOF 18(a)-(e).

(c) Respondent cannot provide records that indicate that Oxycontin was medically indicated for Patient #3 for the management of chronic pain.

24. **Allegation 2(I)** - violation of §61-6-15(D)(33), failure to maintain timely, accurate and complete medical records.

*Respondent did not maintain adequate records for Patient #3 from at least July of 2004 until at least April of 2005 that justified his prescriptions of large quantities of 80 mg Oxycontin.*

(a) Recommended findings of fact numbered 23(a)-(c) are incorporated herein. See Recommended FOF 18(a)-(e).

(b) Respondent did not maintain adequate records for Patient #3 from July 2004 to April 2005 that justify prescribing Oxycontin for chronic pain management or other medical purpose.

25. **Allegation 2(J)** - violation of §61-6-15(D)(26), injudicious prescribing, administering or dispensing any drug or medicine.

*Respondent prescribed large quantities of 80 mg. Oxycontin for Patient #3 from January of 2005 to at least April of 2005 when he was supposedly attempting to stop the patient's use of narcotics by prescribing Subutex for the patient.*

(a) Respondent prescribed large quantities of Oxycontin to Patient #3 from January 2005 to April 2005. Exs. 18, 30.

(b) Patient #3 was taking Subutex. Tr. 177; Ex. 18.

(c) Respondent has a special certification and is one of a few doctors certified as an Opioid Based Office Treatment (OBOT) doctor. Respondent is authorized to prescribe Subutex to addicts in an outpatient basis. Tr. 100, 131.

(d) Patients taking Subutex should not be prescribed Oxycontin. If Respondent is treating Patient #3 with Subutex for addiction, Respondent should have known that the Oxycontin was contraindicated and that the Oxycontin may have been diverted.

26. **Allegation 2(N)** - violation of §61-6-15(D)(15), the use of false, fraudulent, or deceptive statement in any document connected with the practice of medicine.



*On or about April 23, 2004, Respondent wrote the Board and stated that he had "for all practical purposes shut down the private practice I had." When Respondent made the statement, he knew it was not true as he continued, on a regular bases (sic), wrote prescriptions for large quantities of narcotics for at least Patients 1, 2, and 3*

(a) Respondent wrote to the Board on or about April 23, 2004, that he, for all practical purposes, shut down his private practice. Other statements in the letter concerning his practice were equivocal. Ex. 26, p. 4.

(b) The statement may have been true in April 2004. After April 2004, Respondent may have changed his mind.

(c) There is insufficient evidence that Respondent was false, fraudulent, or deceptive when he wrote the letter to the Board on April 23, 2004.

27. **Allegation 2(O)** - violation of §61-6-15(D)(15), false, fraudulent or deceptive statement in any document connected with the practice of medicine and Board Rule 16.10.8.8(H) NMAC, dishonesty.

*On or about April 8, 2005, Respondent wrote to the Board and stated that he could not provide the Board with certain medical records, "because all my medical records have been stolen." When Respondent made the statement, he knew it was not true*

(a) After the burglary, Respondent knew he had some medical records.

(b) By April 2005, Respondent had discovered some records and had prepared other patient records.

(c) Respondent's statement lacked candor.

28. **Allegation 2(P)** - violation of §61-6-15(D)(15), false, fraudulent or deceptive statement in any document connected with the practice of medicine and Board Rule 16.10.8.8(H), dishonesty.

*On or about July 8, 2005, Respondent provided the Board with his medical records regarding Patient #3. The records were misleading and deceptive. They reflect that he was treating the patient beginning January of 2005, to facilitate his withdrawal from the use of narcotics while Respondent was actually prescribing large quantities of Oxycontin 80 mg to the patient.*

(a) Respondent's medical records pertaining to Patient #3 indicate that Patient #3 was being treated with Subutex. Exs. 18, 30, 53.

(b) Respondent continued to prescribe large quantities of Oxycontin to Patient #3 while prescribing Subutex. Exs. 30, 53.

(c) Respondent's medical records regarding Patient #3 are inaccurate and are therefore misleading and deceptive.

29. **Allegation 2(Q)** - violation §61-6-15(D)(29), conduct unbecoming in a person licensed to practice medicine.

*On December 15, 2005, you agreed to not prescribe Schedule II drugs until the Board made a decision in the case. You knew that the Hearing Officer entered an Order that incorporated your agreement and ordered you not to prescribe Schedule II drugs until the Board made a decision in the case.*

*On December 15, 2005, you wrote prescriptions for Patient #1 for Oxycontin and Dexedrine. On January 14, 2006, you wrote prescriptions for Patient #4 for Oxycontin.*

*You also wrote a prescription for Oxycontin for Patient #5 on January 21, 2006 and for Patient #1 on January 23, 2006. These are Schedule II drugs.*

(a) The evidentiary hearing in the case was set to commence on December 15, 2005. On December 15, 2005, Respondent voluntarily agreed not to prescribe schedule 2 drugs until the Board made a decision in the case. Tr. 21; letter dated December 16, 2005. The Hearing Officer granted a continuance in the case based on the terms of the voluntary agreement. See *Order Granting Continuance With Voluntary Consent to Limit Prescribing of Schedule 2 and Schedule 3 Drugs, dated December 23, 2005.*

(b) Subsequent orders dated December 30, 2005 and January 17, 2006 reiterated and affirmed the agreed-to prescribing restrictions.

(c) Respondent prescribed schedule 2 drugs to patients on and after December 15, 2005. Specifically, Respondent wrote two (2) prescriptions on December 15, 2005, three (3) prescriptions on January 14, 2006, one (1) prescription on January 21, 2006 and one (1) prescription on January 23, 2006.

(d) Respondent intentionally violated his voluntary agreement and the Hearing Officer's Order. Based on the fact that Respondent intentionally violated the voluntary agreement on the day he made the agreement, within hours of at the time Respondent stated on the record that he would not prescribe schedule 2 and schedule 3 drugs, Respondent did not intend to comply with his agreement.

(g) Honesty and integrity are essential to the ethical practice of medicine.

## CONCLUSIONS OF LAW

Based on the findings of fact, the Board reaches the following conclusions of law:

1. The Board has jurisdiction over Respondent and the subject matter.
2. The Board has complied with all notice and hearing requirements of the Uniform Licensing Act and has afforded Respondent all due process required by law.

This decision is timely rendered.

3. Pursuant to § 61-1-15(A) and Rule 16.10.5.9 NMAC, the Board has authority to take disciplinary action, including license revocation, against the holder of a license upon satisfactory proof being made that the licensee is guilty of unprofessional or dishonorable conduct.

3. The Board concludes that there is sufficient evidence in the record to prove by a preponderance of the evidence that Respondent violated § 61-1-15(D), failure to maintain timely, accurate, and complete medical records, as alleged in ¶ 2(A) of the NCA.

4. The Board concludes that there is sufficient evidence in the record to prove by a preponderance of the evidence that Respondent violated § 61-1-15(D)(12), gross negligence, as alleged in ¶ 2(B) of the NCA.

5. The Board concludes that there is sufficient evidence in the record to prove by a preponderance of the evidence that Respondent violated § 61-1-15(D), failure to maintain timely, accurate, and complete medical records, as alleged in ¶ 2(C) of the NCA.

6. The Board concludes that there is sufficient evidence in the record to prove by a preponderance of the evidence that Respondent violated § 61-1-15(D)(33), failure to maintain timely, accurate, and complete medical records, as alleged in ¶ 2(E) of the NCA.

7. The Board has sufficient evidence in the record to prove by a preponderance of the evidence that Respondent violated § 61-1-15(D)(33), failure to maintain timely, accurate, and complete medical records, as alleged in ¶ 2(F) of the NCA.

8. The Board concludes that there is sufficient evidence in the record to prove by a preponderance of the evidence that Respondent violated § 61-1-15(D)(33), failure to maintain timely, accurate, and complete medical records, as alleged in ¶ 2(G) of the NCA.

9. The Board concludes that there is sufficient evidence in the record to prove by a preponderance of the evidence that Respondent violated § 61-1-15(D)(26), injudicious prescribing, administering, or dispensing any drug or medicine, as alleged in ¶ 2(H) of the NCA.

10. The Board concludes that there is sufficient evidence in the record to prove by a preponderance of the evidence that Respondent violated § 61-1-15(D)(33), failure to maintain timely, accurate, and complete medical records, as alleged in ¶ 2(I) of the NCA.

11. The Board concludes that there is sufficient evidence in the record to prove by a preponderance of the evidence that Respondent violated § 61-1-15(D)(26),

injudicious prescribing, administering, or dispensing any drug or medicine, as alleged in ¶ 2(J) of the NCA.

12. The Board concludes that there is sufficient evidence in the record to prove by clear and convincing evidence that Respondent violated § 61-1-15(D)(15), false, fraudulent, or deceptive statement in any document connected with the practice of medicine, as alleged in ¶ 2(P) of the NCA.

11. The Board concludes that there is sufficient evidence in the record to conclude that Respondent violated § 61-6-15(D)(29), conduct unbecoming in a person licensed to practice medicine, as alleged in ¶ 2(Q) of the NCA.

#### DECISION AND ORDER

Based on the findings of fact and conclusions of law, the Board renders this Decision and Order.

IT IS ORDERED that Respondent's license to practice medicine is and shall be permanently REVOKED effective April 7, 2006. Upon the effective date of revocation, Respondent shall not, directly or indirectly, engage in the practice of medicine in New Mexico as described in the Medical Practice Act or attempt or offer to practice medicine in New Mexico, including, without limitation, providing, directly or indirectly, medical care to any person or providing, dispensing, administering, or prescribing any drug to any person.

This action is disciplinary action and is a public record pursuant to the Inspection of Public Records Act and shall be reported to the National Practitioners Data Bank

(NPDA), the Healthcare Integrity and Protection Data Bank (HIPDP), and any other appropriate entities.

This Decision and Order shall be served upon Respondent in accordance with law. A notice informing Respondent of his right to seek judicial review and the time within which review must be brought is attached hereto and incorporated herein by this reference.

Steven Weiner, M.D., Secretary-Treasurer, is designated to sign the Decision and Order of the Board.

FOR THE NEW MEXICO  
MEDICAL BOARD

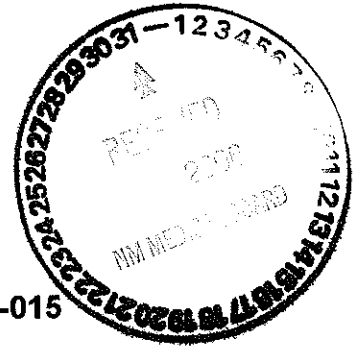
  
Steven Weiner, M.D.

Date: March 31, 2006

BEFORE THE NEW MEXICO MEDICAL BOARD

IN THE MATTER OF )  
)  
George R. Schwartz, M.D. )  
License No. 71-84 )  
Respondent )  
\_\_\_\_\_ )

No. 2005-015



**NOTICE OF CONTINUATION OF HEARING AND**  
**HEARING ON AMENDMENT TO NOTICE OF CONTEMPLATED ACTION**

YOU ARE HEREBY NOTIFIED that hearing in the above referenced matter will continue by agreement of the parties on February 6, 2006 at 11:00 a.m., and on February 7, 2006 at 9:00 a.m. at the offices of New Mexico Medical Board, 2055 S. Pacheco, Building 400, Santa Fe, New Mexico.

By order of the Hearing Officer rendered on January 27, 2006 the Administrative Prosecutor's Motion to Amend the Notice of Contemplated Action and Supplemental Motion to Amend the Notice of Contemplated Action are GRANTED. Hearing on the merits of the Amended Notices of Contemplated Action will be heard at the same time and place designated above.

Pursuant to 61-1-7 NMSA 1978, the hearing will be before a Hearing Officer appointed by the New Mexico Medical Board.

The Medical Board is authorized to take the Contemplated Action pursuant to Section 61-6-5 NMSA 1978. The statues and rules authorizing the contemplated action are contained in the Notice of Contemplated Action.



Pursuant to the provisions of Section 61-1-8 NMSA 1978, you are specifically advised of your rights at the hearing as follows:

A person entitled to be heard under the Uniform Licensing Act (61-1-1 to 61-1-31 NMSA 1978) shall have the right to be represented by counsel or by a licensed member of his own profession or occupation, or both; to present all relevant evidence by means of witnesses, books, papers, documents and other evidence; to examine all opposing witnesses who appear on any matter relevant to the issues; and to have subpoenas and subpoenas duces tecum issued as a matter of right prior to the commencement of the hearing and to compel discovery and the attendance of witnesses and the production of relevant books, papers, documents and other evidence upon making written request therefor to the Board or hearing officer. The issuance of such subpoenas after the commencement of the hearing rests in the discretion of the Board or hearing officer. All notices issued pursuant to section 61-1-4 NMSA 1978 shall contain a statement of these rights.

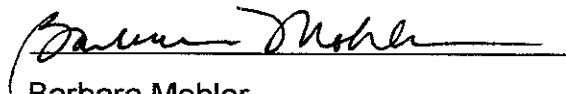
Upon written request to another party, any party is entitled to:

- (1) obtain the names and addresses of witnesses who will or may be called by the other party to testify at the hearing; and
- (2) inspect and copy any documents or items which the other party will or may introduce in evidence at the hearing.

The party to whom the request is made shall comply with it within ten (10) days after the mailing or delivery of the request. No such request shall be made less than fifteen (15) days before a hearing.

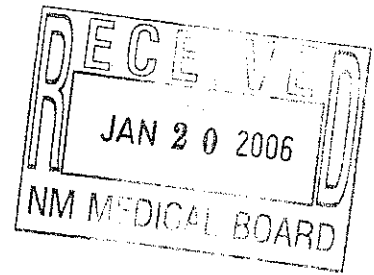
Any party may take depositions after service of notice in accordance with the Rules of Civil Procedure for the District Courts. Depositions may be used as in proceedings governed by those rules.

Dated: January 31, 2006



Barbara Mohler  
Acting Executive Director  
New Mexico Medical Board  
2055 S. Pacheco, #400  
Santa Fe, New Mexico 87505  
(505) 476-7220

BEFORE THE NEW MEXICO  
MEDICAL BOARD



IN THE MATTER OF  
George R. Schwartz, M.D.

Respondent.

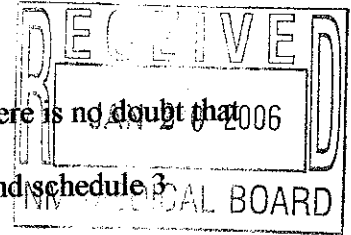
Case No. 2005-015

ORDER AFFIRMING PREVIOUS ORDER DENYING RESPONDENT'S  
MOTION TO ALLOW RE-FILLS OF SUBUTEX

THIS MATTER is before the Hearing Officer on Respondent's letter addressed to the Hearing Officer dated January 6, 2006, concerning the Hearing Officer's decision dated December 30, 2005, titled *Order Denying Respondent's Motion to Allow Re-fills of Subutex and for Other Relief Regarding Prescribing Schedule 2 and Schedule 3 Drugs*.

The Order dated December 30, 2005 that is the subject of Respondent's letter involves a decision denying a change to an agreement reached by Respondent on December 15, 2005. The Hearing Officer formalized the agreement of December 15, 2005 in an *Order Granting Continuance with Voluntary Consent to Limit Prescribing of Schedule 2 and Schedule 3 Drugs*. Respondent moved to modify the order. The Hearing Officer denied the motion on December 30, 2005. Respondent's letter dated January 6, 2006 is identified as an "appeal" of that decision of December 30, 2006. The Hearing Officer will consider Respondent's letter of January 6, 2006 as a Request for Reconsideration of the decision.

Having fully considered Respondent's Request for Reconsideration and having reviewed the entire transcript of the proceedings on December 15, 2005, I re-affirm the decision dated December 30, 2005. A review of the transcript of December 15, 2005 shows that Respondent, Administrative Prosecutor, and Hearing Officer had a full



discussion about the scope of the voluntary restriction. Tr. 15-21. There is no doubt that the agreement under discussion involved restricting both schedule 2 and schedule 3 drugs. At the close of the discussion, the Hearing Officer sought Respondent's decision whether he voluntarily would agree to limit prescribing until the case was heard.

The record shows (Tr. 21) that Respondent agreed to the restrictions.

*HEARING OFFICER: Would you agree to Class 2's and 3's? It's a short time.*


*Dr. SCHWARTZ: Okay.*

Thereafter, on pages 23-25, Respondent discusses the period of time of the prescribing restriction of schedule 2 and schedule 3 drugs. Again, it is clear that Respondent understood the restriction included both schedule 2 and schedule 3 drugs.

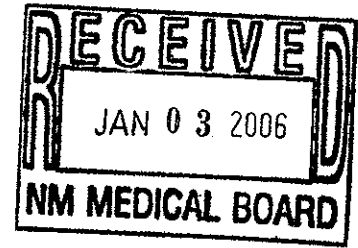
Having reviewed the transcript of the proceedings, it is clear that there is no ambiguity in the scope of the prescribing restriction that Respondent voluntarily agreed to on December 15, 2005. The continuance was granted based on mutual assent to the terms and consideration for the agreement. There is no doubt that Respondent understood the agreement. The continuance of the hearing until January 26-27, 2006 was granted based on Respondent's voluntary consent to limit prescribing schedule 2 and schedule 3 drugs. The order dated December 23, 2005 accurately reflects the agreement of December 15, 2005 and the order dated December 30, 2005 does not violate the agreement reached on December 15, 2005.

NOW, THEREFORE, Respondent's Request for Reconsideration is **DENIED**.

Date 1-17-06

  
\_\_\_\_\_  
John S. Romine, M.D.  
Hearing Officer

BEFORE THE NEW MEXICO  
MEDICAL BOARD



IN THE MATTER OF

George R. Schwartz, M.D.,

Respondent

Case No. 2005-15

**ORDER DENYING RESPONDENT'S MOTION TO ALLOW  
RE-FILLS OF SUBUTEX AND FOR OTHER RELIEF REGARDING  
PRESCRIBING SCHEDULE 2 AND SCHEDULE 3 DRUGS**

THIS MATTER is before the Hearing Officer on Respondent's *Immediate Motion for Clarification and Modification*, received on December 22, 2005 and Respondent's letter dated December 28, 2005, unnumbered paragraphs 4 and 5. This Order addresses only issues relating to prescribing Schedule 2 and Schedule 3 drugs. The remaining issues raised by Respondent in the letter dated December 28, 2005 are taken under advisement and will be addressed under separate order of the Hearing Officer

Having considered Respondent's *Immediate Motion for Clarification and Modification* (undated, received on December 22, 2005), the Administrative Prosecutor's *Opposition to "Immediate Motion for Clarification and Modification"*, filed December 23, 2005, Respondent's letter dated December 28, 2005, the Administrative Prosecutor's responsive letter dated December 30, 2005, Respondent's letter dated December 16, 2005, and having heard Respondent's oral statements made to the Hearing Officer on December 15, 2005, and otherwise being fully advised,

1 Respondent's requests to prescribe re-fills of Subutex (paragraph 4) and for other unspecified relief concerning prescribing Schedule 2 and Schedule 3 drugs (paragraph 5) are hereby **DENIED**. Respondent's voluntary agreement dated December

16, 2005 and the *Order Granting Continuance with Voluntary Consent to Limit Prescribing of Schedule 2 and Schedule 3 Drugs*, dated December 23, 2005, restricting Respondent's prescribing of Schedule 2 and Schedule 3 drugs effective December 15, 2005, remain in full force and effect. No Schedule 2 and Schedule 3 drugs may be prescribed or re-filled until the Medical Board has reached a final decision in this case.

2. Violation of this Order or the Order Granting Continuance shall be separate and independent ground for disciplinary action.

FOR THE NEW MEXICO  
MEDICAL BOARD

  
\_\_\_\_\_  
JOHN S. ROMINE, M.D.

Hearing Officer

Date: 12-30-05

RECEIVED

DEC 27 2005

NM BOARD OF  
MEDICAL EXAMINERS

**BEFORE THE NEW MEXICO MEDICAL BOARD**

IN THE MATTER OF )  
 )  
George R. Schwartz, M.D. )  
Respondent. )  
\_\_\_\_\_ )

No. 2005-015

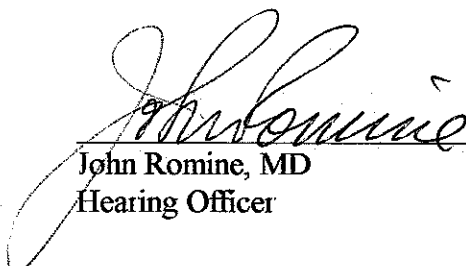
**ORDER GRANTING CONTINUANCE  
WITH VOLUNTARY CONSENT TO LIMIT PRESCRIBING OF  
SCHEDULE 2 AND SCHEDULE 3 DRUGS**

On Thursday, December 15, 2005, a hearing in this matter was convened before the Hearing Officer, John Romine, MD. Respondent, George Schwartz, MD, appeared without counsel and requested a continuance. The Administrative Prosecutor opposed a continuance without restrictions on Respondent's prescriptive authority. As a condition for continuance, Respondent voluntarily consented to cease all prescribing of Schedule 2 and Schedule 3 drugs effective December 15, 2005, until the Medical Board has reached a final decision in this case.

NOW, THEREFORE, IT IS ORDERED that the motion for continuance until January 26 and 27, 2006, is granted with the condition that Respondent shall cease all prescribing of Schedule 2 and Schedule 3 drugs effective December 15, 2005, until the Medical Board has reached a final decision in this case or until further order of the Board.

Dated: December 23, 2005

This Order  
corrects  
DATE of  
Signature  
from 12/06 to  
12/05

  
John Romine, MD  
Hearing Officer

**BEFORE THE NEW MEXICO MEDICAL BOARD**

**IN THE MATTER OF** )  
 )  
**George R. Schwartz, M.D.** )  
**Respondent.** )  
\_\_\_\_\_ )


**No. 2005-015**

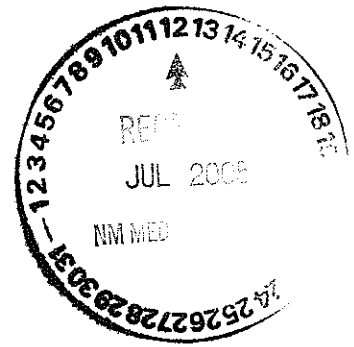
**ORDER GRANTING CONTINUANCE  
WITH VOLUNTARY CONSENT TO LIMIT PRESCRIBING OF  
SCHEDULE 2 AND SCHEDULE 3 DRUGS**

On Thursday, December 15, 2006, a hearing in this matter was convened before the Hearing Officer, John Romine, MD. Respondent, George Schwartz, MD, appeared without counsel and requested a continuance. The Administrative Prosecutor opposed a continuance without restrictions on Respondent's prescriptive authority. As a condition for continuance, Respondent voluntarily consented to cease all prescribing of Schedule 2 and Schedule 3 drugs effective December 15, 2006, until the Medical Board has reached a final decision in this case.

NOW, THEREFORE, IT IS ORDERED that the motion for continuance until January 26 and 27, 2006, is granted with the condition that Respondent shall cease all prescribing of Schedule 2 and Schedule 3 drugs effective December 15, 2006, until the Medical Board has reached a final decision in this case or until further order of the Board.

Dated: December 15, 2006

  
\_\_\_\_\_  
John Romine, MD  
Hearing Officer



**BEFORE THE NEW MEXICO MEDICAL BOARD**

IN THE MATTER OF )  
 )  
George R. Schwartz, M.D. )  
License No. 71-84 )  
Respondent )

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No. 2005-015

**NOTICE OF CONTEMPLATED ACTION**

YOU ARE HEREBY NOTIFIED that pursuant to provisions of §61-1-4 NMSA 1978 of the Uniform Licensing Act, the New Mexico Medical Board ("Board") has before it sufficient evidence that, if not rebutted or explained, will justify the Board restricting, revoking or suspending your license to practice medicine in the State of New Mexico.

1. Respondent is subject to action by the Board pursuant to §61-1-1 et seq. NMSA 1978, §61-6-1 et seq. NMSA 1978, and §61-24-2(D)-1 et seq. NMSA 1978.

2. This action is based upon the following allegations:

A. Respondent did not maintain adequate medical records for at least 55 patients to whom he prescribed and/or dispensed controlled substances from at least March of 2001 until at least July of 2003, identified in a log he provided to the United States Drug Enforcement Administration.

The allegations in Paragraph 2(A), if proven, would be a violation of the Medical Practice Act §61-6-15(D) NMSA 1978, unprofessional or dishonorable conduct, in that you did not maintain timely, accurate and complete medical records.



B Respondent obtained in excess of 1,000 doses of controlled substances from pharmacies and from manufacturing distributors from 2002-2003 that he cannot account for in his medical and inventory records

These allegations, if proven, would be a violation of the Medical Practice Act §61-6-15(D)12 NMSA 1978, gross negligence.

C Respondent did not maintain adequate medical records for Patient #1 that justified his prescription of large quantities of Hydrocodene/APAP 7.5 / 500 mg., Oxycontin 40 mg., Phentermine and Dextroamphetamines from at least March of 2002 until March of 2003

These allegations, if proven, would be a violation of the Medical Practice Act §61-6-15(D) NMSA 1978, unprofessional or dishonorable conduct, in that you did not maintain timely, accurate and complete medical records.

D. From at least July of 2004 until at least April of 2005, Respondent prescribed large quantities of 5 mg Dexedrine for Patient #1 that were not medically indicated

These allegations, if proven, would be a violation of the Medical Practice Act §61-6-15(D)26 NMSA 1978, injudicious prescribing, administering or dispensing any drug or medicine.

E. Respondent did not maintain adequate medical records for Patient #1 from at least July of 2004 until April of 2005 that justified his prescriptions of large quantities of 5 mg Dexedrine

These allegations, if proven, would be a violation of the Medical Practice Act §61-6-15(D)33 NMSA 1978, failure to maintain timely, accurate and complete medical records.

F. Respondent did not maintain adequate medical records for Patient #1 that justified his prescription of large quantities of Oxycontin 80 mg. in 2005.

These allegations, if proven, would be a violation of the Medical Practice Act §61-6-15(D)33 NMSA 1978, failure to maintain timely, accurate and complete medical records.

G. Respondent did not maintain adequate medical records for Patient #2 from at least July of 2004 until April of 2005 that justified his prescriptions of large quantities of Oxycontin 80 mg.

These allegations, if proven, would be a violation of the Medical Practice Act §61-6-15(D)33 NMSA 1978, failure to maintain timely, accurate and complete medical records.

H. From at least May of 2004 until at least January of 2005, Respondent prescribed large quantities of 80 mg Oxycontin for Patient #3 that were not medically indicated.

These allegations, if proven, would be a violation of the Medical Practice Act §61-6-15(D)26 NMSA 1978, injudicious prescribing, administering or dispensing any drug or medicine.

I. Respondent did not maintain adequate medical records for Patient #3 from at least July of 2004 until at least April of 2005 that justified his prescriptions of large quantities of 80 mg Oxycontin.

These allegations, if proven, would be a violation of the Medical Practice Act §61-6-15(D)33 NMSA 1978, failure to maintain timely, accurate and complete medical records.

J. Respondent prescribed large quantities of 80 mg Oxycontin for Patient #3 from January of 2005 to at least April of 2005 when he was supposedly attempting to stop the patient's use of narcotics by prescribing Subutex for the patient.

This allegation, if proven, would be a violation of the Medical Practice Act §61-6-15(D)26 NMSA 1978, injudicious prescribing, administering or dispensing any drug or medicine.

K Respondent did not provide the Board with medical records for Patient #1 from July of 2004 until April of 2005 that it requested on or about April 12, 2005.

These allegations, if proven, would be a violation of the Medical Practice Act §61-6-15(D)23 NMSA 1978, failure to furnish the Board, its investigators or representatives with information requested by the Board

L Respondent did not provide the Board with his medical records for Patient #2 from July of 2004 until April of 2005 that it requested on or about April 12, 2005.

These allegations, if proven, would be a violation of the Medical Practice Act §61-6-15(D)23 NMSA 1978, failure to furnish the Board, its investigators or representatives with information requested by the Board

M Respondent did not provide the Board with a log book that he uses for dispensing medications from his office after it was requested by the Board on or about April 12, 2005.

These allegations, if proven, would be a violation of the Medical Practice Act §61-6-15(D)23 NMSA 1978, failure to furnish the Board, its investigators or representatives with information requested by the Board.

N On or about April 23, 2004, Respondent wrote the Board and stated that he had "for all practical purposes shut down the private practice I had " When Respondent made the statement, he knew it was not true as he continued, and on a regular bases, wrote prescriptions for large quantities of narcotics for at least Patients 1, 2, and 3.

These allegations, if proven, would be a violation of the Medical Practice Act §61-6-15(D)15 NMSA 1978, the use of any false, fraudulent or deceptive statement in any document connected with the practice of medicine

O. On or about April 8, 2005, Respondent wrote the Board and stated that he could not provide the Board with certain medical records, "because all of my medical records have been stolen " When Respondent made the statement, he knew that it was not true.

These allegations, if proven, would be a violation of the Medical Practice Act §61-6-15(D)15 NMSA 1978, the use of any false, fraudulent or deceptive statement in any document connected with the practice of medicine

These allegations, if proven, would also be a violation of Board Rule 16.10.8.8(H) NMAC, dishonesty.

P. On or about July 8, 2005, Respondent provided the Board with his medical records regarding Patient #3. The records were misleading and deceptive. They reflect that he was treating the patient beginning in January of 2005, to facilitate his withdrawal from the use of narcotics while Respondent was actually prescribing large quantities of Oxycontin 80 mg to the patient.

These allegations, if proven, would be a violation of the Medical Practice Act §61-6-15(D)15 NMSA 1978, the use of any false, fraudulent or deceptive statement in any document connected with the practice of medicine

These allegations, if proven, would also be a violation of Board Rule 16.10.8.8(H) NMAC, dishonesty

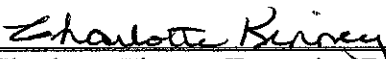
3. Please take notice that pursuant to §61-1-4, you may secure a hearing before the Board by depositing in the mail within twenty (20) days after service of this notice a certified

return receipt requested letter addressed to the Board and containing a request for a hearing. If you do not request a hearing within twenty (20) days after service of this notice as described above, the Board will take the contemplated action, i.e., restricting, suspending or revoking your license to practice medicine in the State of New Mexico. Such action shall be final and not subject to judicial review.

4. Pursuant to §61-1-8 NMSA 1978, you have the right to be represented by counsel or by a licensed member of your profession, or both; to present all relevant evidence by means of witnesses and books, papers, documents and other evidence; to examine all opposing witnesses who appear on any matter relevant to the issues; and to have subpoenas and subpoenas duces tecum issued as of right prior to the commencement of the hearing to compel discovery and the attendance of witnesses and the production of relevant books, papers, documents and other evidence upon making written request therefore to the Board or Hearing Officer. The issuance of such subpoenas after commencement of the hearing rests in the discretion of the Board or Hearing Officer.

Dated: July 12, 2005

NEW MEXICO MEDICAL BOARD

  
Charlotte Kinney, Executive Director  
New Mexico Medical Board  
2055 S. Pacheco, #400  
Santa Fe, New Mexico 87505  
(505) 476-7220