

BEFORE THE NEW MEXICO MEDICAL BOARD

**IN THE MATTER OF
KENNETH STOLLER, M.D.**

License No. 97-382

Case No. 2021-025

Respondent.

(Inv. Case No. 2021-C-034)

ORDER FOR REIMBURSEMENT OF COSTS

THIS MATTER came before the New Mexico Medical Board (“the Board”) on November 9, 2023, for consideration of the Prosecution’s motion for reimbursement of costs.

THE BOARD, after considering Respondent’s response to the Prosecution’s motion, the Prosecution’s reply to Respondent’s response, as well as the Parties’ oral arguments, and

HAVING FOUND the accounting in the affidavit submitted by Antoinette Griego, the Board’s chief financial officer, accurate, reasonable, and consistent with the Medical Practice Act, the Uniform Licensing Act (ULA), and case law interpreting the ULA,

ORDERS Respondent to reimburse the Board its costs for investigating and prosecuting Respondent’s case before the Board in the amount of \$ 11,573.63, to be paid within three months following entry of this Order.

NEW MEXICO MEDICAL BOARD



Karen Carson, M.D., F.A.A.P.
Chair

Certificate of Service

I certify that I sent a copy of this Decision and Order to –

- 1.) Respondent’s counsel, Kate Ferlic and Heather Tanner and their assistant, Becky Josey, by both regular mail *and* certified mail, return receipt requested addressed to –

Kate Ferlic, Esq.
Heather Tanner, Esq.
Becky Josey
123 W. San Francisco St., 2nd Floor
Santa Fe, New Mexico 87501

- 2.) Respondent’s counsel, by email, addressed to Kate@EgolfLaw.com, Heather@EgolfLaw.com, and becky@egolflaw.com and
- 3.) Counsel for the prosecution, Michael Nuñez, by email, addressed to michael.nunez@nmmb.nm.gov.

12/05/2023
Date

Lori Arevalo

Lori Arevalo
Compliance Coordinator

BEFORE THE NEW MEXICO MEDICAL BOARD

**IN THE MATTER OF
KENNETH STOLLER, M.D.**

License No. 97-382

Case No. 2021-025

Respondent.

(Inv. Case No. 2021-C-034)

DECISION AND ORDER REVOKING LICENSE

This matter came before the New Mexico Medical Board (“the Board”) for decision and order at its January 11, 2023, meeting. Except for the closed session, the meeting was recorded.

This proceeding was governed by the Medical Practice Act, NMSA 1978, Sections 61-6-1 to -35 (2003, amended 2021) (MPA) and the Uniform Licensing Act, NMSA 1978, Sections 61-1-1 to -37 (amended 2021) (ULA).

Before taking action, the Board familiarized itself with and gave full consideration to the entire record, which included the transcript of Respondent’s August 30-31, 2022, evidentiary hearing, the exhibits admitted into evidence during the hearing, the Hearing Officer’s November 14, 2022, Report and its proposed findings of fact. The Board also heard from Respondent, through his counsel, Kate Ferlic, Esq., who addressed the Board to present oral argument, as requested, via video conference technology, and the Prosecutor, who appeared in person., also presented oral argument. The Board members utilized their experience, technical competence and specialized knowledge to evaluate the evidence presented.

After adopting the procedural history and findings of fact made by the hearing officer and making independent conclusions of law, the Board voted 5-2 to revoke Respondent’s license.

Additionally, Respondent shall reimburse the Board its costs in investigating and prosecuting his case, after filing a motion for costs, any response by Respondent, and further

action by the Board. Section 61-1-4(G)

PROCEDURAL HISTORY

1. On March 18, 2021, the Medical Board of California revoked Respondent's California medical license. **Ex. P-2**, Decision at 1.

2. Respondent timely self-reported to the New Mexico Medical Board ("NMMB") the discipline imposed by the Medical Board of California and provided the NMMB with relevant materials. **Tr. 30:14-19, 35:6-23**.

3. On October 22, 2021, the NMMB issued a Notice of Contemplated Action (NCA) to Respondent. **Ex. P-1**, NCA at 1.

4. The NCA stated the Respondent was subject to the NMMB's jurisdiction pursuant to the MPA and ULA because he holds a license to practice in New Mexico. *Id.*

5. The NCA was issued pursuant to Section 61-6-15 of the MPA and Section 61-1-4(D) of the ULA. *Id.*

6. The NCA stated that credible evidence supported the factual allegation that "the Medical Board of California, entered an Order to take effect on March 18, 2021, revoking [Respondent's] California License to Practice Medicine." *Id.* at 2.

7. The NCA stated that "[i]f a preponderance of the evidence establishes the accuracy of any or all of these allegations, the Board may conclude you engaged on conduct subjecting you to discipline under the MPA and the rules and regulations of the Board . . . found at Title 16, Chapter 10, NMAC, such as . . . Discipline imposed on a licensee by another state, including denial, probation, suspension or revocation, *based upon acts by the licensee similar to acts described in the MPA*; see, e.g., NMSA 1978, § 61-6-15(D)(14)[.]" *Id.* (emphasis added).

8. Respondent was on notice that he was subject to discipline if a preponderance of evidence showed he violated the MPA, specifically Section 61-6-15(D)(14) or the regulations found at Title 16, Chapter 10 NMAC.

9. The NCA was never amended.

10. On November 8, 2021, the Board received Respondent's timely request for a hearing on the NCA.

11. On November 22, 2021, the Board issued a notice of hearing on the NCA advising the parties that Respondent's evidentiary hearing had been scheduled for January 19 and January 20, 2022, and that the Board had appointed Frank Weissbarth, Esq., to serve as Hearing Officer. *See* Section 61-1-4(F) (requiring the Board to notify the licensee, within twenty days following receipt of a request for hearing, (a) the time and place of the evidentiary hearing and (b) the name of the person who will conduct the hearing).

12. On December 6, 2021, the Board issued a notice of status conference scheduled for December 22, 2021, at 10:00 a.m.

13. On December 20, 2021, a Waiver of Right to Hearing on Notice of Contemplated Action Within Time Frame Established by Section 61-1-4 was filed by Respondent, waiving the time limits established by Section 61-1-4, and agreeing to continue the hearing to March 9 and 10, 2022.

14. On December 22, 2021, the telephonic status conference was held, and on January 3, 2022, the Hearing Officer entered an Order where Respondent and the Prosecution agreed to a continuance from the scheduled January 19-20, 2021, hearing to March 9-10, 2022. Counsel agreed to deadlines of disclosure of experts and exchange of documents, and Respondent had filed a waiver of time limit to hold the evidentiary hearing.

15. On January 4, 2022, the Board issued a notice of hearing on the NCA advising the parties the evidentiary hearing was scheduled for March 9 and 10, 2022.

16. On February 23, 2022, the Board issued a notice of status conference scheduled for March 2, 2022, at 10:30 am.

17. On March 2, 2022, the Board issued a notice of hearing for the evidentiary hearing with the Zoom video conference details setting the hearing for March 9 and 10, 2022.

18. On March 7, 2022, a Joint Motion to Vacate Adjudicatory Hearing Pending Board's Consideration of Proposed Settlement Offer was filed by the parties. This Joint Motion contemplated for a proposed settlement offer to be considered at the April 20, 2022, Interim Board Meeting, and if an agreement was not reached, the evidentiary hearing would be reset.

19. On March 7, 2022, along with the Joint Motion, Respondent and Counsel filed a Waiver of Right to Hearing on Notice of Contemplated Action Within Time Frame Established by NMSA 1978, Section 61-1-4.

20. On May 13, 2022, the Board issued a notice of status conference scheduled for May 18, 2022, at 10:00 am.

21. On May 25, 2022, Respondent filed a waiver of time limits waiving the time for the Board to hold the hearing in this matter through December 30, 2022.

22. On August 2, 2022, the Board issued a notice of hearing for the evidentiary hearing with the Zoom video technology details scheduled for August 30 and 31, 2022.

23. At the evidentiary hearing on August 30 and 31, 2022, Respondent was represented by Counsel, Kate Ferlic, Esq. Michael A. Nunez, Esq., appeared as counsel for the Prosecution.

24. Due to COVID-19 social distancing requirements applicable to State Government

functions, Respondent's hearing was conducted via Zoom video-conferencing technology, with venue in Santa Fe, New Mexico.

25. The Prosecution called three (3) witnesses: Debbie Dieterich, Board Investigator, Respondent- Kenneth Stoller, M.D., and Expert Witness, Dr. Steven Weiner. The

26. Respondent called three (3) witnesses: Respondent- Kenneth Stoller, M.D., and expert witnesses Greg Glaser, Esq. and Dr. James Neuenschwander. Both of Respondent's witnesses were affiliated with Physicians for Informed Consent, a California non-profit organization. **Tr. 82:6-15, 296:10 to 297-7.**

27. The parties submitted a Joint Stipulated Scope of Expertise for Expert Witnesses, regarding Respondent's witnesses Greg Glaser, Esq. and Dr. James Neuenschwander, and Prosecution witness Dr. Steven Weiner. The Joint Stipulated Scope of Expertise provides as follows:

Dr. Neuenschwander is a medical doctor qualified on the basis of his education, over 30 years in practice, and his medical research to testify as an expert regarding the standard of care for each of the following: 1) patient intake, screening, medical history, family history, and examination procedures, 2) consultation with a patient's other treating doctors, 3) patient follow up care, and 4) writing vaccine exemptions. Dr. Neuenschwander is qualified to testify regarding actions of Dr. Kenneth Stoller as compared to the standard of care as articulated by the New Mexico Medical Practice Act and the New Mexico Administrative Code. Dr. Neuenschwander is qualified to testify about the risk factors that qualify a patient for a vaccine exemption. Dr. Neuenschwander is a former emergency room doctor who currently practices as an integrative medical doctor focused on treating chronic and autoimmune disorders, including in children.

As a fact witness, Mr. Glaser will provide relevant testimony regarding legal advice he gave to Dr. Stoller about the legal requirements in California for medical exemptions from vaccination. Mr. Glaser is an attorney licensed in California whose practice includes 19 years of healthcare law. Mr. Glaser qualified on the basis of his education, professional experience, and legal research, to testify as an expert regarding legislative history of California Senate Bill 277, Cal. Legis. Serv. Ch. 35 (S.B. 277) (West), the Complementary and Alternative Medicine

"CAM" Safe Harbor law in California, Cal. Bus. & Prof. Code §§ 2053.5, 2053.6 (West 2005), the meaning of those laws for doctors in California, and disciplinary actions taken against California doctors for providing vaccine exemptions.

Dr. Weiner is a medical doctor, who graduated from Medical School in 1970, has over 50 years of practice, and based on education and experience is qualified as an expert in Orthopaedics, Surgery, and Orthopaedic Surgery and may testify as an expert regarding the standard of care for each of the following: 1) patient intake, screening, medical history, family history, and examination procedures, 2) consultation with a patient's other treating doctors, 3) patient follow-up care, and 4) the requirements imposed on New Mexico Medical Board Licensees (including rules, regulations and statutes such as the Medical Practice Act and the New Mexico Administrative Code Board Rules), having practiced in New Mexico for 40 years and having served on the New Mexico Medical Board for 12 years, where he served 3 years as Vice chair and 6 years as Chairman.

28. All witnesses were placed under oath before testifying.

29. The Prosecution and Respondent agreed to admit all exhibits via stipulation, and Prosecution Exhibits P1-P7 and Respondent's Exhibits Resp. 1 and 3-15 were admitted in evidence. **Tr. 11:15-12:18.**

30. The Prosecution Exhibits entered in evidence at the hearing are the following:

Exhibit P-1 Notice of Contemplated Action

Exhibit P-2 Decision and Order of the California Medical Board

Exhibit P-3 California Medical Board Accusation against Respondent

Exhibit P-4 New Mexico Medical Practice Act

Exhibit P-5 New Mexico Administrative Code provisions

Exhibit P-6 New Mexico Administrative Code provisions

Exhibit P-7 New Mexico Administrative Code provisions

31. Respondent's Exhibits entered in evidence are as follows:

Resp. Ex. 1 California Business and Professional Code on Complementary and Alternative Medicine § 2234.1 (Bates Nos. STOLLER000001-000002)

Resp. Ex. 3. NM Immunization Exemption Form and NMDOH Source Website (Bates Nos. STOLLER000083-000089)

Resp. Ex. 4 NMAC 7538 Requirements for Approval of Exemptions from Immunization (Bates Nos. STOLLER000090-000091)

Resp. Ex. 5 NMSA 1978 24-5-2 Unlawful to enroll in school unimmunized unlawful to refuse to permit immunization (Bates No. STOLLER000092)

Resp. Ex. 6 NMSA 1978 24-5-3 Exemption from immunization (Bates No. STOLLER000093)

Resp. Ex. 7 SB277 Amendments in Context (Bates Nos. STOLLER000094-000098)

Resp. Ex. 8 SB277 Bill Analysis Assembly Health (Bates Nos. STOLLER000099-000114)

Resp. Ex. 9 SB277 Full Text (Bates Nos. STOLLER000115-000119)

Resp. Ex. 10 Stoller CA Supreme Court Appeal (Bates Nos. STOLLER000120-000181)

Resp. Ex. 11 Stoller Medical Records Patients 1-10 (Bates Nos. STOLLER000182-000655). **ADMITTED UNDER SEAL**

Resp. Ex. 12 Stoller Policies and Procedures Version 1 (Bates Nos. STOLLER000656-000670)

Resp. Ex. 13 Stoller Policies and Procedures Version 7 (Bates Nos. STOLLER000671-000686)

Resp. Ex. 14 Greg Glaser July 1, 2016 Letter (Bates Nos. STOLLER000687-000689)

Resp. Ex. 15 Greg Glaser June 10, 2016 Letter (Bates Nos. STOLLER000690-000692)

At the evidentiary hearing, an executed copy of Respondent's Exhibit 15 was substituted for the unexecuted copy previously disclosed to the Prosecution. **Tr. 11:13-12-18.**

32. Following presentation of the evidence, the Hearing Officer and counsel for the parties discussed and agreed that a deadline for the submission of written closing arguments and proposed findings of fact would be October 12, 2022. **Tr. 309:8-12.**

33. On October 6, 2022, an unopposed motion was filed by Respondent stating due to an unforeseen error, counsel for the respondent did not receive full transcripts of the evidentiary hearing until October 3, 2022 and requesting an extension of the deadline for proposed findings of fact and a written closing argument to be filed by October 28, 2022.

34. On October 11, 2022, the Hearing Officer entered an Order extending the deadline to October 28, 2022, and providing that the record of the hearing would remain open until written closing arguments and proposed findings of fact were submitted, or until October 28, 2022, whichever first occurred. Both parties filed written closing arguments and proposed findings of fact on October 28, 2022, and the record closed on that date.

35. Veritext Legal Solutions prepared the transcript of the hearing.

I. FINDINGS OF FACT

Based on the evidence presented, the Hearing Officer proposed the following Findings of Fact to the Board.

36. Respondent has been a licensed medical doctor since 1983. **Tr. 40:15-17.** He has been licensed in New Mexico since 1997. **Tr. 29: 19-21.**

37. Currently, Respondent is employed by a family in Montana, operating their private hyperbaric oxygen facility. **Tr. 38:19 to 39:5.**

38. Respondent practiced as a general pediatrician from 1983 until 2001 in California and New Mexico. **Tr. 40:2-7.** Over time, he brought alternative and complementary modalities into his practice. **Tr. 42:4-9.**

39. In 1999, Respondent moved to New Mexico where he took over an integrative pediatric practice and became the pediatrician for the Youth Development Program in Santa Fe.

Tr. 123:9-17.

40. In 2001, he transitioned into an integrative medicine practice treating both children and adults in New Mexico and opened a hyperbaric medical clinic, which he operated until 2013. **Tr. 40:7-8. 42:4-9, 42:18-22.**

41. Respondent moved from New Mexico to California in 2013 where he continued his practice as an integrative physician until 2021. **Tr. 40:2-17.**

42. As an integrative physician, Respondent's practice focused on underlying causes for medical issues, including diet and environmental toxins, and incorporated alternative medical approaches with traditional medical approaches. **Tr. 43:1-25.**

43. Respondent's practice included wound healing and treatment of traumatic brain injuries, fetal alcohol syndrome, Lyme disease, cerebral palsy, and dementia. **Tr. 130:14-25, 131:12-23.**

44. Respondent has held his license to practice medicine in New Mexico since 1997. **Tr. 29:12-21.**

45. Respondent completed a mini sabbatical in neonatology with University of New Mexico Hospital (UNMH) and was a "clinical assistant professor" of pediatrics at UNMH for a few years, which is a title given to clinicians in the community who refer patients to UNMH or work with doctors there. **Tr. 124:1-9.**

46. Respondent was board certified in pediatrics until 2011. **Tr. 124:10-11.**

47. Under California law, children are required to receive certain vaccinations in order to attend school or daycare, subject to limited exceptions. **Resp. Ex. 9, SB277 at 91.**

48. Prior to 2015, parents could exempt their children from the California school vaccination requirements through either a medical exemption or a personal belief exemption.

Resp. Ex. 7, SB277 Amendments in Context at 3, ¶ 120365(a) (2015 amendment removing ability for parents to exempt children based on personal belief); *Id.* at 4, ¶ 120370(a) (allowing medical exemptions from school vaccination requirements).

49. In 2015, SB277 amended California law to 1) remove the personal belief exemption and 2) change the statutory language regarding medical exemptions.

50. Before the passage of SB277, doctors could issue medical exemptions from school vaccination requirements only based on “medical conditions or circumstances that contraindicate immunization.” **Resp. Ex. 7**, SB277 Amendments in Context at 4, ¶ 120370(a).

51. The Center for Disease Control (CDC) publishes a list of vaccine contraindications that are used by the majority of doctors as the criteria for vaccine medical exemptions. **Tr. 75:3-11, 74:4-17, 103:5-7, 182:19-24.**

52. After the passage of SB277, doctors could issue medical exemptions from school vaccination requirements based on “medical condition or circumstances, including but not limited to family history, for which the physician does not recommend immunization.” **Resp. Ex. 7**, SB277 Amendments in Context at 4, ¶ 120370(a). However, as stated in the California legislature’s committee analysis of the California law, doctors did not have unfettered discretion to issue medical exemptions. Rather, any exemption still had to be consistent with the medical standard of care.

A physician must base that decision [to issue a medical exemption] on their professional judgment and the standard of practice for their field. According to the Medical Board of California, the "standard of care" (or "standard of practice") for general practitioners is defined as that level of skill, knowledge and care in diagnosis and treatment ordinarily possessed and exercised by other reasonably careful and prudent physicians in the same or similar circumstances at the time in question. Specialists are held to a standard of skill, knowledge and care, ordinarily possessed and exercised by reasonably careful and prudent specialists in the same or similar circumstances.

Resp. EX-8 at STOLLER000105.

53. Family history is not included in the CDC list of vaccination contraindications.

Tr. 103:5-7.

54. After the passage of SB277 and before issuing any vaccine exemptions to any patients, Respondent contacted the Medical Board of California for guidance regarding this change in the law regarding vaccine exemptions. **Tr. 134:7-13, 135:19-:136:20.**

55. Respondent testified that the Medical Board of California did not respond to his request for information on qualifying conditions or family history qualifying his patients for vaccine exemptions under the new law. *Id.*

56. In 2016, Respondent retained a California attorney, Greg Glaser, to interpret the changes to California law regarding vaccine medical exemptions (SB277) as it applied to Respondent's practice and his patients. **Tr. 87:10-13; Resp. Ex. 15**, June 2016 Greg Glaser Engagement Letter at 1. Mr. Glaser was and is the General Counsel for Physicians for Informed Consent, a California non-profit. **Tr. 82:8-15.**

57. Greg Glaser testified for Respondent as both a fact witness, regarding his legal advice given to Respondent in 2016, and as an expert witness with the following stipulated scope of expertise:

Mr. Glaser is an attorney licensed in California whose practice includes 19 years of healthcare law. Mr. Glaser qualified on the basis of his education, professional experience, and legal research, to testify as an expert regarding legislative history of California Senate Bill 277, Cal. Legis. Serv. Ch. 35 (S.B. 277) (West), the Complementary and Alternative Medicine "CAM" Safe Harbor law in California, Cal. Bus. & Prof. Code §§ 2053.5, 2053.6 (West 2005), the meaning of those laws for doctors in California, and disciplinary actions taken against California doctors for providing vaccine exemptions.

Joint Stipulated Scope of Expertise for Expert Witnesses, filed August 30, 2022; **Tr. 79:19-6.**

58. Mr. Glaser's legal opinion, which he gave to Respondent, was that SB277 granted doctors much broader discretion to issue medical exemptions than they had prior to the 2015

amendments, including the ability of a physician to use family history as a reason to write an exemption. **Tr. 92:6-10; Resp. Ex. 14**, Letter from Greg Glaser at 1.

59. Mr. Glaser advised Respondent that SB277 “puts the focus on what the physician does not recommend rather than on specific contraindications,” which “expressly open[s] to the doctor’s judgment what suffices as a patient’s qualifying medical condition or circumstances.” **Resp. Ex. 14**, Letter from Greg Glaser at 1 (internal quotation marks omitted).

60. To the extent that Mr. Glaser’s opinion suggested that doctors had unfettered discretion to write vaccine exemptions without reference to the medical standard of care, it was unreasonable. It was also incorrect, as determined by the Medical Board of California and the California Courts. **Ex. P-2, Tr. 25:14-23; 117:7-17**.

61. Respondent did not write any vaccine medical exemptions before the passage of SB277 and he voluntarily ceased issuing vaccine medical exemptions after the Medical Board of California’s position on them became clear. **Tr. 133:4-9, 134:22-25**.

62. Respondent wrote about 500 vaccination exemptions in California between 2016 and 2019. **Tr. 50:7-14, 180:5-8**.

63. The parents of the children for whom Respondent provided vaccination exemptions paid him around \$550 for the two visits and exemption write-up, and this was not covered by insurance. **Tr. 180:9-20**.

64. Respondent admitted that the genetic testing he used as a basis for granting vaccination exemptions and the conclusions he drew from it were not generally accepted in the medical profession. **Tr. 181:4-15**.

65. Respondent testified that fewer than five percent of the children for whom he wrote medical exemption letters met the CDC standards. **Tr. 175:8-12**.

66. Between April 2016 and September 2018 Respondent was licensed in New Mexico and subject to New Mexico's laws, rules and regulations applicable to New Mexico licensees of the New Mexico Medical Board. **[Tr. 46:3-10]**

67. When Respondent applied for licensure in New Mexico, he looked up the requirements expected of licensees in the Medical Practice Act, and the New Mexico Medical Board Administrative Code Board Rules. **[Tr. 46:11-15].**

68. Respondent testified that most of the California children for whom he wrote vaccination exemptions had tried unsuccessfully to get an exemption from other doctors. **[Tr. 69:6-20]**

69. Respondent testified that because all vaccines are not identical and it is impossible to know which one the patient is at risk for, Respondent made the clinical call to just say across the board put a moratorium on the vaccines because Respondent didn't know what excipient, or adjunct was causing the problem. That is why Respondent gave blanket exemptions to the vaccines. **Tr. 177:2 to 178:3.**

70. Respondent testified without foundation that the CDC had suppressed information about 99% of adverse events caused by vaccines. This is an extraordinary claim, and in the absence of compelling evidence, which was entirely lacking here, it is not credible. **Tr. 178:4 to 179:7.**

71. Respondent testified that he could not quantify the risks for any particular genetic test result. **Tr. 179:8-15.**

72. Respondent testified that the genetic testing he did and the conclusions he drew from it are not generally accepted in the medical profession. **Tr. 181:4-15.**

73. Respondent's expert witness James Robert Neuenschwander, M.D. testified that

has practiced in integrative medicine for 34 years. **Tr. 261:25 to 262:2.** He is a member of Physicians for Informed Consent, the organization for which Respondent's other expert, Mr. Glaser, serves as General Counsel. **Tr. 296:7-16.** He opined that he did not see that Respondent violated any standards in New Mexico **Tr. 262:20-25** and that none of Respondent's conduct constituted unprofessional or dishonorable conduct. **Tr. 263:1-5.** Dr. Neuenschwander testified that he believes the reasons for which Respondent wrote the medical exemptions were soundly reasoned and met the standard of care for writing vaccine exemptions. **Tr. 263:12-16.**

74. This testimony is entitled to little or no weight because: 1) the purpose of this proceeding is not to re-litigate matters previously decided by the California Board; 2) the California Board's Decision, which was upheld on appeal, concluded that Respondent's exemptions for Patients 1-10 were not soundly reasoned, did not meet the standard of care, and constituted "unprofessional conduct, such as gross negligence, repeated negligence, or incompetence," in connection with issuing medical vaccination exemptions for the ten children; and 3) for the reasons described in paragraphs 75 and 76, below. See, **Ex. P-2.**

75. Dr. Neuenschwander testified that his views concerning the risks of vaccines are not generally accepted in the general medical community. **Tr. 293:9-14.**

76. Dr. Neuenschwander testified that he could not give an opinion on Respondent's reliance on genetic testing which he personally doesn't use. **Tr. 288:8-18.**

77. The Prosecution called Dr. Steven Weiner as an expert witness. Dr. Weiner is an experienced orthopedic surgeon and former member of the New Mexico Medical Board. Dr. Weiner testified that the Medical Practice Act applies to all licensees of the New Mexico Medical Board whether they are in New Mexico or practicing out of New Mexico as long as they have active licenses. **Tr. 204:25 to 205:5.** Dr. Weiner testified that based on his review of

Respondent's medical records [**Resp. Ex. 11**], Respondent did not have adequate doctor-patient relationships with Patients 1-10. **Tr. 232:21-233:1**. Doctor Weiner also testified that Respondent's medical records were inadequate. **Tr. 241:22-232:5**.

78. Finally, Dr. Weiner testified that while not being an immunization or vaccination expert, as a doctor he does feel strongly that there can be potential harm to the patient and some potential harm to the public by not being vaccinated. Dr. Weiner testified that he does not need to be an immunization expert to opine on that. **Tr. 234:3-25**.

78. Dr. Weiner's testimony concerning the application of the MPA to licensees is persuasive. His testimony concerning the inadequacy of Respondent's medical records is entitled to limited weight to the extent that it is inconsistent with the California Board's Decision and to the extent that it seeks to establish violations of the MPA and Board Rules beyond those alleged in the NCA.

79. Section 61-6-15(A) of the MPA provides: "The board may refuse to license and may revoke or suspend a license that has been issued by the board or a previous board and may fine, censure or reprimand a licensee upon satisfactory proof being made to the board that the applicant for or holder of the license has been guilty of unprofessional or dishonorable conduct.

80. Section 61-6-15(D) of the MPA provides:

"Unprofessional or dishonorable conduct", as used in this section, means, but is not limited to because of enumeration, conduct of a licensee that includes the following:

- (12) gross negligence in the practice of a licensee;
- (13) manifest incapacity or incompetence to practice as a licensee;
- (14) discipline imposed on a licensee by another licensing jurisdiction, including denial, probation, suspension or revocation, based upon acts by the licensee similar to acts described in this section. A certified copy of the record of disciplinary action or sanction taken by another

jurisdiction is conclusive evidence of the action;

(19) repeated similar negligent acts or a pattern of conduct otherwise described in this section or in violation of a board rule;

81. On July 29, 2019, the Medical Board of California filed an Accusation (the California equivalent of an NCA) against Respondent. **Ex. P-3.**

82. The Accusation alleged that “respondent issued letters for 10 children between 2016 and 2019 exempting those children from vaccinations that otherwise would have been mandatory under California law for them to congregate with other children in settings such as school or day care.” The Accusation further alleged that “because these vaccination exemptions had no medical basis, they constitute medical negligence and incompetence.” Lastly the Complaint alleged that Respondent had failed to maintain adequate medical records. **Ex. P-3** at NMMB0009.

83. The Accusation alleged that Respondent had violated certain provisions of the California Business and Professions Code by committing gross negligence, repeated negligent acts and incompetence in connection with his issuance of medical exemptions from California’s mandatory vaccination law to ten children identified as Patients 1-10. The Accusation also alleged that Respondent had failed to maintain adequate and accurate records. **Ex. P-3** at NMMB0048-0050.

84. The California mandatory vaccination law in effect during 2016-2019 when Respondent wrote the vaccination exemptions at issue in the California proceeding provided for medical exemptions as follows:

120370. (a) If the parent or guardian files with the governing authority a written statement by a licensed physician to the effect that the physical condition of the child is such, or medical circumstances relating to the child are such, that immunization is not considered safe, indicating the specific nature and probable duration of the medical condition or circumstances,

including, but not limited to, family medical history, for which the physician does not recommend immunization, that child shall be exempt from the [mandatory vaccination] requirements of Chapter 1 (commencing with Section 120325, but excluding Section 120380) and Sections 120400, 120405, 120410, and 120415 to the extent indicated by the physician's statement.

Resp. Ex-7 at Stoller000097.

85. Like California, New Mexico law also has mandatory vaccination requirements for children to attend school or day care. New Mexico law also provides for medical vaccination exemptions for children, but New Mexico imposes a higher standard, under which a physician must certify that a required immunization would “seriously endanger the life or health of the child.” **Resp. Ex-3** at Stoller000084; **Resp. Ex-4** at Stoller000090; **Resp. Ex-5**; **Resp. Ex-6**.

86. On February 16, 2021, following an evidentiary hearing at which Respondent testified and was represented by counsel, the California Board issued a Decision revoking Respondent's California license, effective on March 18, 2021. **Ex. P-2**. The Decision contained a detailed analysis of the evidence concerning Respondent's issuance of vaccine exemptions to the ten children as well as the expert testimony of both the Board's and Respondent's expert witnesses. *Id.*

87. The Decision concluded that while the California Health and Safety Code permitted licensed physicians to exempt children from otherwise mandatory immunization, “[t]he statute's references to a patient's ‘physical condition’ and ‘medical circumstances... including, but not limited to, family medical history’ do not authorized physicians to grant medical exemptions for non-medical reasons. Instead, issuing medical exemptions under Health and Safety Code section 120370 is a medical activity that physicians must perform in a manner consistent with their professional responsibilities.” **Ex. P-2** at NMMB0035.

88. The Decision contains a detailed analysis of Respondent's rationale for writing

vaccination exemptions for each of the 10 children and the expert testimony.

89. The Decision discussed the standard of care for writing pediatric vaccination exemptions, and concluded that, in general, the standard of care is to follow the ACIP¹ Guidelines and AAP Red Book² and that any departure from these publications must be based on medical science. **Ex. P2** at NMMB0027-30. In his expert testimony in the instant matter, the Prosecution’s expert Steven Weiner, MD, agreed. **TR. 233:24-234-25**. A preponderance of the evidence establishes that the standard of care is to follow the ACIP Guidelines and AAP Red Book³ and that any departure from these publications must be based on medical science.

90. The Decision rejected Respondent’s unsupported assertions of a conspiracy between vaccine manufacturers and governments worldwide to bring vaccines to the market without adequate testing and to suppress information about the dangers of vaccines. **Ex. P2** at NMMB0029-30.

91. The Decision found that Respondent’s use of genetic testing was an extreme departure from the standard of care. **Ex. P2** at NMMB0030-32.

92. In the California proceeding, Respondent testified that he did not consider the ACIP Guidelines to offer reliable information for physicians regarding vaccinations. **Ex. P2** at NMMB0028.

93. The Decision found that Respondent’s reliance on unverified “personal and family health history of matters that the ACIP Guidelines and AAP Red Book do not identify as contraindications or precautions to vaccination” was an “extreme departure from the medical standard of care.” **Ex. P2** at NMMB0033.

¹ CDC Advisory Committee on Immunization Practices

² Report of the Committee on Infectious Diseases of the American Academy of Pediatrics

94. The Decision found that even as to personal or family health history matters that were potentially relevant to vaccination, the standard of care requires a doctor to obtain complete, accurate information about those matters before relying on them to make medical decisions. The Decision found that Respondent's uncritical acceptance of his patients' parents' statements about their children's and family members health histories was an extreme departure from this standard. **Ex. P2** at NMMB0033.

95. The Decision concluded that Respondent had "engaged in unprofessional conduct, such as gross negligence, repeated negligence or incompetence" in violation of California Business and Professions Code section 2234, subdivisions (b), (c), and (d) through "his issuance of medical vaccination exemptions for Patients 1 through 10 in reliance on spurious genetic analysis. **Ex P-2** at NMMB0036.

96. The Decision concluded that Respondent had engaged in unprofessional conduct, such as gross negligence, repeated negligence or incompetence in violation of California Business and Professions Code section 2234, subdivisions (b), (c), and (d) through "his issuance of medical vaccination exemptions for Patients 1 through 10 in reliance on unverified and medically irrelevant personal and family health histories." **Ex P-2** at NMMB0036.

97. The Decision concluded that Respondent had engaged in unprofessional conduct, such as gross negligence, repeated negligence or incompetence in violation of California Business and Professions Code section 2234, subdivisions (b), (c), and (d) through "his issuance of baseless lifelong medical vaccination exemptions for Patients 1 and 4 through 10 and baseless exemptions to all vaccination for Patients 1 through 10. **Ex P-2** at NMMB0036.

98. Finally, the Decision concluded that the evidence did not show that Respondent's records were incomplete or false. **Ex P-2** at NMMB0036-0037.

99. Respondent appealed the California Board's decision and the California court(s) upheld the Board's Decision. **Tr. 25:14-23; 117:7-17.**

100. Section 61-6-15(D)(14) provides that unprofessional or dishonorable conduct includes, but is not limited to, "discipline imposed on a licensee by another licensing jurisdiction, including denial, probation, suspension or revocation, based upon acts by the licensee similar to acts described in this section. A certified copy of the record of disciplinary action or sanction taken by another jurisdiction is conclusive evidence of the action."

101. **Ex. P-2** is a certified copy of the disciplinary action taken by another jurisdiction, i.e. the Medical Board of California, and it is conclusive evidence of the California disciplinary action.

102. **Ex. P-2** establishes that the Medical Board of California revoked Respondent's medical license based on "gross negligence, repeated negligence or incompetence."

103. Gross negligence, repeated negligence or incompetence are also grounds for discipline under Sections 61-6-15(D)(12), (13), and (19) of the MPA. **Exhibit P-4.**

104. Section 6-6-15(D)(14) requires the prosecution to establish that Respondent was disciplined by another licensing jurisdiction based upon acts by the licensee similar to acts described in Section 61-6-15. **Ex. P-4** at NMMB0105. A preponderance of the evidence establishes that the acts for which Respondent was disciplined in California are similar to acts described in the MPA.

105. New Mexico law imposes a higher standard for granting vaccination exemptions than the California law at issue in the California Medical Board proceeding. The New Mexico standard requires that a physician must certify that a required immunization would "seriously endanger the life or health of the child." **Resp. Ex's. 3, 4 and 5.**

106. Respondent's gross negligence, repeated negligence and incompetence in issuing vaccine exemptions as determined by the California Board are acts of unprofessional or dishonorable conduct similar to those described in New Mexico's MPA.

107. A preponderance of the evidence at the hearing establishes that Respondent is subject to discipline under Section 61-6-15(D)(14).

108. To the extent that the Prosecution sought to establish any violations of the MPA other than the revocation of Respondent's license by the Medical Board of California, evidence regarding such violations is outside of the scope of the NCA.

II. CONCLUSIONS OF LAW

Based on the record, including the evidence presented during Respondent's evidentiary hearing, the Board makes and adopts the following independent conclusions of law-

- A. As a Doctor of Medicine licensed to practice in the State of New Mexico, Respondent is subject to the Board's jurisdiction.
- B. The Board is authorized to conduct proceedings on the Notice of Contemplated Action (NCA) pursuant to the MPA and ULA.
- C. At all times relevant to this proceeding, the Board has had jurisdiction over Respondent and the subject matter.
- D. Respondent filed a timely request for hearing on the NCA, and therefore was entitled to a hearing under the ULA.
- E. In its proceedings, the Board accorded Respondent all the due process to which he is entitled under the ULA.

- F. The standard of proof to be applied in administrative proceedings is the “preponderance of the evidence” standard. Section 61-1-13. See Foster v. Bd. Of Dentistry of the State of New Mexico, 1986-NMSC-009, 103 N.M. 776, 714 P.2d 580. Proof by a preponderance of the evidence means that that which is sought to be proven is more likely true than not true. See NM UJI 13-304 NMRA.
- G. In a disciplinary action against Respondent, the Board- through its Administrative Prosecutor- bears the burden of proof in showing that the allegations set forth in the NCA are supported by a preponderance of evidence.
- H. A preponderance of the evidence supports the following factual allegations, made in the NCA filed on October 22, 2021 -
- On February 16, 2021, the Medical Board of California, entered an Order to take effect on March 18, 2021, revoking Respondent’s California License to Practice Medicine.
 - The documentary evidence submitted in the Prosecution’s exhibits, the admissions of the Respondent in his testimony during both direct and cross examination, and the testimony of the expert witnesses for both parties proved the NCA allegations beyond a preponderance of the evidence.
- I. Respondent acknowledged and admitted to the discipline taken by California and his license in California was revoked, while licensed in New Mexico.
- J. Respondent’s conduct, as established by a preponderance of the evidence, constitutes conduct contemplated by the non-exclusive definition of “unprofessional and dishonorable conduct, “as defined in the Medical Practice Act and the Board’s Rules-

1. Discipline imposed on a licensee by another state, including denial, probation, suspension or revocation, based upon acts by the licensee similar to acts described in the MPA; *see* Section 61-6-15(D)(14), and
 2. Gross negligence in the practice of a licensee; *see Section* 61-6-15(D)(12),
 3. Manifest incapacity or incompetence to practice as a licensee; *see Section* 61-6-15(D)(13),
 4. Repeated similar negligent acts; *see Section* 61-6-15(D)(19),
 5. Conduct likely to deceive, defraud or harm the public; *see Section* 61-6-15(D)(18),
 6. Conduct unbecoming in a person licensed to practice or detrimental to the best interests of the public; *see Section* 61-6-15(D)(29), and
 7. Violation of Board Regulation, 16.10.8.7 NMAC, a lack of an appropriate physician-patient relationship.
- K. Respondent's violation of the MPA and/or the Board's Rules subjects Respondent to discipline, including the imposition of fine (s), remedial requirements and up to revocation of a license to practice. *See Section* 61-6-15(A).
- L. No basis exists for excusing Respondent from the Uniform Licensing Act's requirement that he reimburse the Board the expenses it incurred investigating and prosecuting his case. *See Section* 61-1-4(G).

III. ORDER

The New Mexico Medical Board, having adopted the findings of fact and reached independent conclusions of law set forth above-

REVOKES Respondent's license to practice in New Mexico, and

ORDERS Respondent to reimburse the Board the costs it incurred in investigating and prosecuting his case, the amount to be decided pursuant to a subsequent order of the Board.

IV. RIGHT OF APPEAL

In accordance with Section 61-1-17 of the ULA, NMSA 1978, Section 39-3-1.1 (1999), and Rule 1-074 NMRA, Respondent may seek judicial review of this Decision and Order by initiating an action in the First Judicial District Court within thirty days following entry of this Decision and Order.

NEW MEXICO MEDICAL BOARD

A handwritten signature in cursive script that reads "Karen Carson".

Karen Carson, M.D., F.A.A.P.
Chair

Certificate of Service

I certify that I sent a copy of this Decision and Order to –

- 1.) Respondent’s counsel, Kate Ferlic and Heather Tanner and their assistant, Becky Josey, by both regular mail *and* certified mail, return receipt requested addressed to –

Kate Ferlic, Esq.
Heather Tanner, Esq.
Becky Josey
123 W. San Francisco St., 2nd Floor
Santa Fe, New Mexico 87501

- 2.) Respondent’s counsel, by email, addressed to Kate@EgolfLaw.com, Heather@EgolfLaw.com, and becky@egolflaw.com and
- 3.) Counsel for the prosecution, Michael Nuñez, by email, addressed to michael.nunez@nmmb.nm.gov.

01/24/2023
Date

Lori Arevalo

Lori Arevalo
Compliance Coordinator

BEFORE THE NEW MEXICO MEDICAL BOARD

**IN THE MATTER OF
KENNETH STOLLER, M.D.**

**License No. 97-382
Respondent.**

**Case No. 2021-025
(Inv. Case No. 2021-C-034)**

NOTICE OF CONTEMPLATED ACTION

YOU ARE HEREBY NOTIFIED that pursuant to provisions of NMSA 1978, Section 61-1-4 of the Uniform Licensing Act (“ULA”), the New Mexico Medical Board (“Board”) has before it sufficient evidence that, if not rebutted or explained, will justify the [B]oard imposing sanctions that could include restricting, revoking or suspending your license to practice as a physician in the State of New Mexico. See NMSA 1978, § 61-1-4(D) (stating the requirements for the Board’s written notice to a licensee); NMSA 1978, § 61-1-3 (requiring written notice before the Board takes action and describing the actions the Board may take).

Board Jurisdiction and Authority

1. You are subject to the Board’s jurisdiction pursuant to the Medical Practice Act (MPA), NMSA 1978, Sections 61-6-1 to -35, and the Uniform Licensing Act (ULA), NMSA 1978, Sections 61-1-1 to -34, because you hold a license to practice in New Mexico or you held a license at the time the Board initiated its investigation into your conduct.

2. The Board has authority to issue this Notice of Contemplated Action (NCA) under Section 61-6-15 of the MPA and Section 61-1-4(D) of the ULA.

Public Action

3. This NCA is a public document, open to public inspection, but its issuance

does not constitute a disciplinary event reportable to the National Practitioner Data Bank (NPDB).

Evidence Supporting Contemplated Action

4. Credible evidence possessed by the Board supports the following factual allegation(s) –

A. On February 16, 2021, the Medical Board of California, entered an Order to take effect on March 18, 2021, revoking your California License to Practice Medicine.

If a preponderance of the evidence establishes the accuracy of any or all of these allegations, the Board may conclude you engaged on conduct subjecting you to discipline under the MPA and the rules and regulations of the Board (“the Board’s Rules”), found at Title 16, Chapter 10, NMAC, such as –

a. Discipline imposed on a licensee by another state, including denial, probation, suspension or revocation, based upon acts by the licensee similar to acts described in the MPA; *see, e.g.*, NMSA 1978, § 61-6-15(D)(14),

5. The Board’s investigation is ongoing. Subject to the requirements of due process, the Board may amend the allegations set forth above at any time prior to the conclusion of any evidentiary hearing that may be held in connection with this NCA to reflect additional evidence supporting the imposition of disciplinary sanctions.

Your Rights

6. Section 61-1-3 of the ULA entitles you to a hearing on the allegation(s) contained in this NCA. You secure your right to a hearing by submitting a request to the Board. Your request must be in writing, addressed to the Board, and delivered by certified mail, return receipt requested. You must deposit your request for a hearing in

the mail *within twenty* days following your receiving service of this NCA. NMSA 1978, § 61-1-4(D)(3).

7. If you do not request a hearing within twenty days following service of this NCA, the Board may take action against your license up to and including revocation of your license to practice in New Mexico. In accordance with Section 61-1-4(E) of the ULA, that action will be final and not subject to judicial review.

8. Section 61-1-8 of the ULA entitles you to certain rights in connection with any hearing that may be held on this matter –

a. At the hearing, you have the right (1) to be represented by counsel or by a licensed member of your profession or both, (2) to present all relevant evidence by means of witnesses, book, papers, documents, and other evidence, and (3) to question all opposing witnesses who may appear on any matter relevant to the issues.

b. Within ten days after you submit a written request to the Board, you are entitled (1) to receive the names and addresses of witnesses the Board will or may call to testify at the hearing, and (2) to inspect or copy any documents or items the Board will or may offer as evidence at the hearing.

c. In advance of the hearing, you have the right to have subpoenas issued to third parties compelling them (1) to produce relevant books, papers, documents, and other evidence, and (2) to appear as witnesses on your behalf. Subpoenas must be presented in an acceptable form and will be issued, absent objection, following your written request to the Hearing Officer assigned to your case. After commencement of the hearing, the issuance of subpoenas is at the discretion of the Hearing Officer.

d. Like the Board, you may take and use depositions, subject to the notice

and use provisions of the Rules of Civil Procedure for the District Courts.

Costs

9. Under Section 61-1-4(G) of the ULA, if the Board takes action against your license as defined in Section 61-1-3 of the ULA, you will be required to reimburse the Board for the costs of its proceedings unless the Board excuses some or all of those costs.

NEW MEXICO MEDICAL BOARD

10/22/2021

Date



Sondra Frank, J.D., Executive Director

Please direct any questions you or your attorney may have to –

Michael Nuñez, Chief Legal Counsel
New Mexico Medical Board
2055 South Pacheco Street, Building 400
Santa Fe, NM 87505
Ph: 505-476-7223
Email: Michael.nunez@state.nm.us

Certificate of Service

I certify-

1. I emailed this NCA to Respondent at kpstollermd@aol.com.
2. I sent the original of this NCA to Respondent via first-class certified mail (return receipt requested) addressed to Respondent at -

Kenneth Stoller, MD
PO Box 502
Lagunitas, CA 94938

3. I emailed a copy of this NCA to the Board's Prosecutor Michael Nunez at micheal.nunez@state.nm.us

10/22/2021

Date

Elishia Lucero

Elishia F. Lucero
Administrative Assistant

BEFORE THE NEW MEXICO MEDICAL BOARD

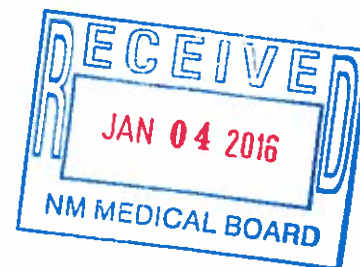
IN THE MATTER OF:

KENNETH STOLLER, M.D

License No. 97-382

Respondent

No. 2014-031



AMENDED STIPULATED SETTLEMENT AGREEMENT

THE PARTIES STIPULATE AND AGREE AS FOLLOWS:

1. **Jurisdiction.** The New Mexico Medical Board ("Board") has jurisdiction over Respondent and the subject matter pursuant to the Medical Practice Act, NMSA 1978, §§ 61-6-1 *et seq.*

2. **Waiver of Rights.** Respondent knowingly, intentionally and voluntarily waives his right to a hearing and the right to judicial appeal.

3. **Resolution.** As full and final resolution of matter # 2014-031, Respondent and the Board agree to the following:

(i) The Board agrees that Respondent has not engaged in conduct which violates the Medical Practice Act.

(ii) The Order of the Board dated August 13, 2015, is hereby set aside.

(iii) The Board agrees to replace its Order of the Board signed August 13, 2015 with an advisory letter. The advisory letter does not constitute discipline.

(iv) The Board agrees to withdraw its Report to the National Practitioners Data Bank within 10 days of execution of this agreement.

(v) Respondent agrees to pay costs in the amount of \$3,496.76 (Three thousand four hundred and ninety six dollars and seventy six cents). Costs will be paid within 30 (thirty) days of execution of this agreement.

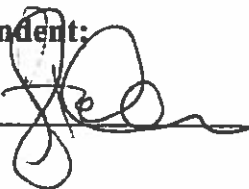
(vi) Respondent agrees to dismiss his appeal filed in D-101-CV-2015-02047, within 10 days of execution of this agreement.

4. **Public Records.** Respondent understands that this Settlement Agreement and other documents related to these proceedings are matters of public record under the Inspection of Public Records Act, NMSA 1978, Sections 14-2-1 to -12.

9. **Full and Complete Settlement.** This Settlement Agreement constitutes a full and complete resolution of all claims and defenses that either party did raise or could have raised with respect to these proceedings and execution of this Settlement constitutes full and final resolution of Medical Board Action #2014-031, In the Matter of Kenneth Stoller, M.D.

IT IS SO STIPULATED AND AGREED:

Respondent:




12/30/15

Date

AND

THE NEW MEXICO MEDICAL BOARD



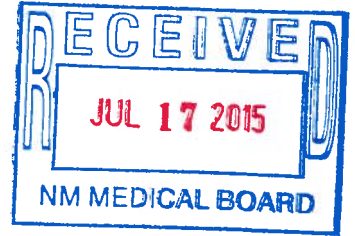
By: Steven Jenkusky M.D.
Chair

1/4/16

Date

BEFORE THE NEW MEXICO MEDICAL BOARD

IN THE MATTER OF
KENNETH STOLLER, M.D.



License No. 97-382

No. 2014-031

Respondent.

REPORT AND RECOMMENDATIONS OF HEARING OFFICER

Pursuant to Section 16.10.5.16 NMAC, the parties conducted a hearing on May 27, 2014 concerning the New Mexico Medical Board's August 14, 2014 Notice of Contemplated Action. The New Mexico Medical Board was represented by Prosecutor Scott Fuqua, and Kenneth Stoller, MD was represented by Kate Ferlic.

The parties presented the following witnesses and exhibits, which have been relied upon by the Hearing Officer to varying degrees:

Witnesses:

1. Leslie Strickler, MD
2. Jaqueline Krohn, MD
3. Penny Davies, MD
4. Giuseppina Feingold, MD
5. Kenneth Stoller, MD

Exhibits: Please see the exhibits submitted by the parties on June 22, 2015 and appended to this report as Attachment A.

Findings of Fact

1. Kenneth Stoller, MD is and, at all times relevant to this proceeding was, a licensee of the New Mexico Medical Board.
2. Dr. Stoller was trained as a pediatrician. (Tr. at p. 268: 9-17). In 2001 Dr. Stoller opened a hyperbaric medical center, at which Dr. Stoller's practice was less focused on

pediatrics. (Tr. at p. 268: 22-24). Dr. Stoller considers himself to be an expert in the area of hyperbarics. (Tr. at p. 269: 19-22).

3. Dr. Stoller treated a minor patient, LW, with hyperbaric oxygen treatments starting in February of 2009, and those treatments continued through the balance of 2009. (Tr. at p. 271: 18; 276: 5-11). The hyperbaric oxygen treatments were sought by LW's mother, VW, upon a referral from LW's pediatrician, Dr. Krohn. (Tr. at p. 271; 273-274).
4. Dr. Krohn continuously served as LW's primary care physician from 2006 to December of 2010. (Tr. at p. 179:5-21). Dr. Krohn describes LW as a medically fragile child, and she testified that she had concerns about the child's various developmental delays and apparent immunosuppression. (Tr. at p. 180:14-16; 179:20-21; 189:18-23). Dr. Krohn testified that she saw LW frequently but that Dr. Krohn felt that the frequency of the visits was appropriate in light of LW's medical issues. (Tr. at p. 184: 15-185:2). Dr. Krohn never felt the need to try to de-escalate LW's care." *Id.*
5. LW was born at full term, but medical records regarding her birth document that she was born with "major issues." (Tr. at p. 71-72).
6. Dr. Stoller was treating LW for developmental delays and colitis. (Tr. at p. 276: 23 – 277: 3).
7. Between February of 2009 and December of 2009, Dr. Stoller treated LW with three rounds of hyperbaric oxygen therapy, ordered one blood test, two liver function tests and a stool sample test, and prescribed four medications, including leucovorin which can be obtained over the counter. (Ex. 1).
8. In mid-2009, because LW presented with chronic diarrhea, Dr. Stoller tested for the presence of pathogens / infection and discovered *Rhodotorula* fungus and blastocystis

- hominis, which he treated with Diflucan, fluconazole and ketoconazole (although not at the same time). (Tr. at p. 278:2-19).
9. According to Dr. Feingold, Ketoconazole and Diflucan are anti-fungals and based on LW's stool samples, appropriate to prescribe for identified fungal infection or presence. (Tr. at p. 243:21-245:10).
 10. According to Dr. Feingold, Leucovorin is folinic acid and commonly-prescribed; it's a vitamin and you can get it anywhere in a health food store. It is not dangerous. (Tr. at p. 241:16-24; 242:20-243:1).
 11. LW's condition appears to have improved during the period in which Dr. Stoller was treating LW. (Tr. at p. 182:17-21).
 12. Dr. Feingold, who was offered as an expert in hyperbarics, testified that Dr. Stoller's treatment of LW was consistent with the accepted standard of care in the area of hyperbarics, both with respect to the conditions that were being addressed and with respect to the frequency and duration of the treatments. (Tr. at p. 235:11-236:17; 245:11-21; 255:24-256-19). Pursuant to stipulation by the Prosecutor, neither the use of hyperbaric oxygen treatment to treat LW nor the duration of or frequency of hyperbaric treatment is at issue in this case. (Tr. at p. 114:14-115: 5).
 13. After Dr. Stoller had ceased providing LW with hyperbaric treatments, Dr. Stoller continued to provide medical consultation to LW's mother, VW, through 2012. (Ex. 1; Tr. at 295:15-296:13). During this time, he sent test results that he had ordered and that other physicians had ordered to treating physicians at their request to assist with diagnosis. (Ex. 1; Tr. at p. 295:15-296:13). From 2010 through 2012, Dr. Stoller prescribed a new nebulizer for LW on one occasion. (Ex. 1; Stoller 0092-0095).

14. Dr. Stoller's uncontroverted testimony is that in July of 2012, he made an effort to convince VW to enlarge LW's very restrictive diet because he believed that the restrictions in LW's diet were too limiting. (Tr. at p. 284:3-285:12). The evidence also reflects that Dr. Stoller refused to provide additional hyperbaric oxygen treatments to LW after December of 2009, despite VW's requests for additional treatments, because Dr. Stoller did not believe that LW would benefit from additional treatments. (Tr. at p. 294:22 – 295:3).
15. The complaining witness in this case is Dr. Leslie Strickler. Dr. Strickler's first contact with LW was in February of 2012 when LW was admitted to the hospital for an acute illness. (Tr. at 21: 4-5). Dr. Strickler treated LW over the course of a weekend in during the February 2012 hospital admission. (Tr. at p. 21: 1-12).
16. In February of 2013, Dr. Strickler was consulted about LW in her role as a physician member of the Child Abuse Response Team, or "CART." (Tr. at p. 21:23 - 22:12). The referral to CART was made because one of LW's providers had concerns that LW was being medically abused by her mother. (Tr. at p. 22:4-12).
17. During Dr. Strickler's interactions with VW during February of 2013, Dr. Stoller and Dr. Strickler had a strained telephone call, in VW's presence. (Tr. at p. 309:1-5).
18. In an effort to investigate the reported suspicion of medical child abuse, Dr. Strickler sought the records of LW's treating physicians. (Tr. at p. 24: 5-14).
19. Dr. Strickler testified that the only one of LW's medical providers who failed to respond to Dr. Strickler's request for medical records was Dr. Stoller. (Tr. at p. 24: 18-23).

20. Dr. Strickler testified that she has requested medical records under similar circumstances approximately 700 to 800 times and that she has never previously had a medical provider refuse to provide her with existing medical records. (Tr. at p. 25:7 – 26:11).
21. Dr. Stoller acknowledges that he understood that Dr. Strickler was seeking medical records in response to a concern about the possibility that VW was medically abusing LW. (Tr. at p. 308:15-20).
22. Dr. Stoller refused to provide his medical records to Dr. Strickler and CART because VW, LW's mother, asked Dr. Stoller not to cooperate with Dr. Strickler's request. (Tr. at p. 308: 7-20; 313:13-16).
23. Dr. Stoller testified that his obligation was to advocate on behalf of LW. (Tr. at p. 309: 1-5). Dr. Stoller further testified that "[He] would have burned [his] medical license before [he] would have said VW was abusing her child." (Tr. at p. 310: 4-5). Dr. Stoller feared that Dr. Strickler would misuse Dr. Stoller's records to substantiate false accusations against VW. (Tr. at p. 310: 1-24).
24. Dr. Stoller clearly doubted Dr. Strickler's motives, and further had a very hostile and negative reaction to Dr. Strickler upon the very first interaction between Dr. Stoller and Dr. Strickler. (Tr. at p. 310: 4 – 313:5).
25. Dr. Strickler did not provide a signed HIPAA release from VW or an agent of the state which had custody of LW when Dr. Strickler requested records from Dr. Stoller. (Tr. at p. 91:5-13; 291:12-17).
26. Dr. Stoller never received a subpoena from a court or an attorney for LW's records. (Tr. at p. 91:5-13; 291:20-292:2). Similarly, there was no written court order requiring Dr. Stoller to produce his medical records to Dr. Strickler, but Dr. Strickler testified that a

judge verbally ordered such an order, albeit not in Dr. Stoller's presence. (Tr. at p. 292:3-6; 79:10-22).

27. Dr. Strickler testified that she believes that there is no obligation on the part of a responding physician to produce medical records in the absence of a court order or subpoena when a patient objects to the production. (Tr. at p. 91:19-24).

28. Dr. Stoller testified that he believed that he was constrained from responding to Dr. Strickler's request for medical records because he believed that it would be a violation of the Health Insurance Portability and Accountability Act (HIPAA) to produce LW's records without the permission of VW. (Tr. at p. 314:3 – 315:2).

29. Dr. Strickler acknowledged that there was nothing of which she was aware that would have required Dr. Stoller to share his medical records with her. (Tr. at p. 91:19-24). However, Dr. Strickler and the Prosecutor offered the opinion that Dr. Stoller's proffered excuse regarding the absence of a HIPAA authorization from VW was baseless. *Id.*

30. Even in the absence of Dr. Stoller's records, Dr. Strickler made a determination that LW was the victim of medical abuse, which resulted in Dr. Strickler testifying against LW's parents in related hearings. (Tr. at p. 87:22 – 88:3).¹

31. Dr. Strickler testified that “[I]n retrospect, most of the physicians who participated in the treatment of the child have ultimately provided unnecessary care.” (Tr. at p. 37:15-23).

¹ Dr. Stoller's counsel elicited testimony about the records that Dr. Strickler had a various different points in the child custody proceeding, and tried to establish, to varying degrees of success, that Dr. Strickler did not have complete responses from all of LW's medical providers at the time Dr. Strickler authored her report concluding that LW was a victim of medical child abuse and at the time the Dr. Strickler testified. This testimony is documented in the transcript at pages 77-90. This testimony does not appear to be entirely relevant to the issues before the Board, except insofar as Dr. Stoller is claiming that Dr. Strickler may have held him to a different standard than that applied to the other responding physicians. Dr. Stoller offered testimony that the motive for this perceived differential treatment was the fact that Dr. Stoller testified in support of VW during the child abuse hearings, and was critical of Dr. Strickler in his testimony. (Tr. at 283:1-13). These facts are not included in the findings of fact section because Dr. Stoller admits that he intentionally did not respond to the request for records, and there are no similar admissions from other physicians on the record. As a result, the testimony regarding the state of compliance of other physicians at various times does not appear relevant.

32. Dr. Strickler's concern regarding Dr. Stoller's interaction with VW in the course of providing medical care for LW was that Dr. Stoller failed to intervene or otherwise de-escalate a pattern of unnecessary medical treatment that VW was pursuing for LW. *Id.*

33. Dr. Strickler further admitted that she did not see anything in the records that suggested that Dr. Stoller's treatment of LW was unnecessary or deficient. (Tr. at p. 145:9-146:2).

34. The April 28, 2015 Amended Notice of Contemplated Action identifies four bases for the summary suspension, including:

- a. At various times from 2009-12, [Dr. Stoller has] repeatedly, unnecessarily, and injudiciously provided medical treatments to a minor child for medical conditions that did not exist, and that [he] should have known did not exist. Such treatments included, but were not limited to "hyperbaric oxygen therapy" and the injudicious prescribing of numerous dangerous drugs, including baclofen, diflucan, ketoconazole, and leucovorin.
- b. The mother of [LW] was subsequently found by the State of New Mexico to have abused and/or neglected her child by fabricating medical conditions for the child, providing inadequate nutrition to the child, other otherwise engaged in "medical child abuse." Such medical child abuse occurred during the entire time that [Dr. Stoller] provided the medical treatment described in A, above.²
- c. [Dr. Stoller's] medical treatment described in A, above, perpetuated the medical child abuse described in B, above, placed the child at unnecessary risk of harm, and furthermore, reflects [Dr. Stoller's] grossly negligent failure to recognize and

² It was determined at the hearing that paragraph (b) as stated herein does not constitute an actionable basis for relief. (Tr. at p. 166:9 – 167:21).

address the medical threats facing the minor child while entrusted to [Dr. Stoller's] care.

- d. [Dr. Stoller] failed to maintain or keep adequate, legible, accurate or complete medical records reflecting [his] treatment of the minor child. [Dr. Stoller] also failed to timely transmit what medical records [he] did have to a requesting physician investigating potential abuse of the child by her mother.

(April 28, 2015 Amended NCA).

Conclusions of Law

1. The New Mexico Medical Board is authorized to conduct this hearing. See NMAC 16.10.6.3 (promulgated pursuant to and in accordance with the Medical Practice Act and the Uniform Licensing Act).
2. The standard of proof to be applied by the Board is by a preponderance of the evidence. NMSA. 1978 § 61-1-13; *Foster v. Board of Dentistry of State of N.M.*, 103 N.M. 776, 777-78, 714 P.2d 580, 581-82 (1986).
3. Proving a fact by a preponderance of the evidence “means to establish that something is more likely true than not true.” UJI 13–304 NMRA 2001.
4. A professional license is a constitutionally protected property right, and professional licensees facing license revocation or suspension must be afforded due process. *Mills v. New Mexico State Bd. of Psychologist Exam'rs*, 1997 NMSC 28, P14, 123 N.M. 421, 426, 941 P.2d 502, 507.
5. The Health Insurance Portability and Accountability Act, Pub. L. 104-191, 110 US Stat. 1936 (codified in various titles of the United States Code) (“HIPAA”) permits, but does not require, a treating physician to share his or her records with another treating

physician. The applicable portion of the provision states: “[A] covered entity may disclose protected health information for treatment activities of a health care provider.”
45 CFR §164.506(c)(2).

6. The Prosecutor met his burden of establishing the following allegations from April 28, 2015 NCA by the preponderance of the evidence:

a. [Dr. Stoller] also failed to timely transmit what medical records you did have to a requesting physician investigating potential abuse of the child by her mother.

7. The Prosecutor did not meet his burden of establishing the following allegations from the April 28, 2015 Amended NCA by the preponderance of the evidence:

a. [Dr. Stoller] failed to maintain or keep adequate, legible, accurate or complete medical records reflecting [his] treatment of the minor child.

b. At various times from 2009 to 2012 [Dr. Stoller] repeatedly, unnecessarily, and injudiciously provided medical treatment to a minor child for medical conditions that did not exist and that [he] should have known did not exist. Such treatments included, but were not limited to, hyperbaric oxygen therapy and injudicious prescribing of numerous potentially dangerous medications, including baclofen, diflucan, ketoconazole, and leucovorin.

c. The medical treatment that [Dr. Stoller] provided to the child perpetuated the mother’s medical child abuse and placed the child at unnecessary risk of harm. It furthermore reflects [his] grossly negligent failure to recognize and address the medical threats facing the minor child while she was [his] patient.

Opinion and Recommendation

The purpose of the May 27, 2015 hearing was to adjudicate the issues presented in the April 28, 2015 Amended Notice of Contemplated Action (Amended NCA). This opinion and recommendation pertains to the issues presented by the Amended NCA, and is intended as a final opinion and recommendation.

This matter is one that appears to have been spawned by a negative and unnecessarily hostile interaction between two physicians, one of whom is the complaining witness in this case and the other who is the Respondent. At the outset, it is important to note that notwithstanding the volumes of testimony and evidence regarding whether hyperbaric oxygen treatment is an effective method of treatment, the Prosecutor conceded that the effectiveness of hyperbaric oxygen therapy is not at issue in this case. Instead, the issues litigated in the hearing³ consist of: 1) whether Dr. Stoller placed the child at issue in harm's way by continuing to treat the child in the face of evidence that the child's mother was potentially medically abusing her child, and 2) whether Dr. Stoller wrongly refused to provide his medical records to Dr. Strickler when Dr. Strickler was investigating possible medical child abuse.⁴

Background

Dr. Stoller is a physician who is formally trained as a pediatrician but who has focused his practice on hyperbarics since 2001. Dr. Stoller treated minor patient LW from February of

³ To the extent the narrative description varies in any significant respect from the April 28, 2015 Amended NCA, the content of the April 28, 2015 Amended NCA control.

⁴ There was no testimony presented on the issue of whether Dr. Stoller failed to keep adequate medical records regarding his treatment of LW with the exception of a very brief excerpt from Dr. Strickler's testimony ("I think notes would be a stretch. They were – they were limited to just a few words. Like for example, a diagnosis – one I recall is blastocystis hominis. And I don't even know that the term recommendation was in there, but the indication that the mother was told to look at a website called badbugs.com, and that was it.") (Tr. at p. 75:21-25.). Furthermore, that issue was not addressed by the Prosecutor in opening, closing or in the closing brief. As a result, the evidence presented on this issue is deemed insufficient.

2009 through December of 2012. Dr. Stoller's treatment of LW was most intense and frequent from February of 2009 through December of 2009, at which time Dr. Stoller was treating LW with hyperbaric oxygen treatments. During that time, Dr. Stoller also prescribed medications to treat various ailments. After December of 2009, Dr. Stoller rarely prescribed medications for the child, and appears to have seen her on four occasions in approximately three years.

By all accounts, LW's mother, VW, was actively involved in her daughter's care. Dr. Krohn and Dr. Stoller both testified about the fact that LW had significant medical issues, and Dr. Krohn acknowledged that she saw LW frequently but that Dr. Krohn felt that the frequency of the visits were appropriate in light of LW's medical issues. The period of time during which Dr. Krohn treated LW overlapped with the period of time during which Dr. Stoller treated LW, and Dr. Krohn testified that she never felt the need to de-escalate LW's medical care for any reason, despite the fact that Dr. Strickler testified that she detected efforts to de-escalate in Dr. Krohn's medical records.

There are two fundamental obstacles to reaching a solid conclusion in this case. First, the record is replete with various opinions by different practitioners about the types and severity of medical conditions that LW experienced during the operative time period and the appropriate course of treatment for those issues. The fact that practitioners disagree on these subjects should come as no surprise – the practice of seeking second opinions from physicians is a time-honored tradition. But the degree of disagreement between and among the various physicians who testified is unsettling. Second, Dr. Strickler and Dr. Stoller have an oddly adversarial relationship that not only contributed to the development of the circumstances leading up to the licensure action but that also colors their testimony and affects their credibility to varying degrees.

Unnecessary Medical Treatment

The evidence on the question of whether Dr. Stoller provided unnecessary medical treatment is a muddled mess, despite the fact that it is the cornerstone of the Amended NCA. It is worth noting that Dr. Stoller's efforts to immunize himself from the allegations of the NCA by arguing that he was not treating the child after December of 2009 are not well-taken. While the record supports his position that his treatment of LW was more intense and frequent during 2009, the evidence shows that Dr. Stoller continued to have a treatment relationship with LW and her mother after 2009. Indeed, the fact that Dr. Stoller was talking to VW on the phone in February of 2013 when Dr. Strickler was confronting VW with her concerns about medical abuse strongly suggests that there was an ongoing treatment relationship between LW and Dr. Stoller after December of 2009.

On the issue of the existence of conditions and the appropriateness of the treatment that Dr. Stoller provided, I have to resolve that issue in favor of Dr. Stoller on the record before me. Dr. Krohn testified that she believes that the conditions that Dr. Stoller endeavored to treat were real conditions; Dr. Krohn actually referred LW to Dr. Stoller for treatment. The record reflects some evidence that the child actually showed signs of improvement during the period of time during which the child was being treated by Dr. Stoller with hyperbaric oxygen. The prosecutor candidly admits that the question of whether Dr. Stoller's treatment of the child was warranted turns on the issue of whether LW had medical conditions that required treatment. Setting aside Dr. Stoller's own testimony, Dr. Stoller presented testimony from Dr. Krohn and from a non-treating expert, Dr. Feingold. Both Dr. Krohn and Dr. Feingold testified that Dr. Stoller's treatment of LW was appropriate. Notably, the Prosecutor relied on a single witness, Dr.

Strickler, to prove the allegations of the Amended NCA, and even Dr. Strickler denied under oath that Dr. Stoller had unnecessarily treated the patient.⁵

The content of the Amended NCA notwithstanding, Dr. Strickler's concern about Dr. Stoller's treatment of LW is not really predicated on the fact that she believes that Dr. Stoller misdiagnosed or unnecessarily treated LW. Instead, Dr. Strickler mainly criticizes Dr. Stoller for allegedly failing to de-escalate LW's mother's pursuit of medical care for her daughter. The record certainly establishes that different physicians had differing opinions regarding the propriety of VW's efforts to obtain care for her daughter. However, the record is also full of evidence concerning the fact that many other physicians, none of whom reported concerns about medical abuse of LW (including Dr. Strickler herself), were providing care to LW over the same period of time as was Dr. Stoller. Moreover, the record supports the notion that Dr. Stoller did make at least one effort to de-escalate the situation by counseling VW to enlarge LW's severely medically restricted diet. Additionally, the evidence shows that Dr. Stoller declined to treat LW with additional hyperbaric oxygen treatments after December of 2009, despite VW's request for additional treatments, because Dr. Stoller did not believe LW would benefit from additional treatments.

Given this evidence of de-escalation, Dr. Strickler's concern that Dr. Stoller failed to respond to VW's apparently insatiable need to subject her child to medical treatment falls flat. It is also difficult to imagine why Dr. Stoller is at fault for failing to recognize signs of medical abuse in 2009 when none of the other practitioners who were treating LW during that time

⁵ Perhaps the most frustrating aspect of this case is that there are some extreme contradictions in Dr. Strickler's testimony. Dr. Strickler accuses Dr. Stoller of unnecessarily treating the child, but then she admits under oath that he had not unnecessarily treated the child. Dr. Strickler complains that she has never seen Dr. Stoller's medical records, but then she opines that Dr. Stoller misdiagnosed the type and severity of the conditions that he was treating, as though she has reviewed the records.

recognized the problem. As a result, I conclude that the Prosecutor has failed to carry his burden of proving items 1 and 3 in the Amended NCA.

Provision of Medical Records

The evidence presented during the hearing conclusively establishes that Dr. Stoller did not provide his records to Dr. Strickler, who was investigating LW's mother, VW, on issues of medical child abuse. The question of whether Dr. Stoller's failure to comply with Dr. Strickler's request for his medical records is actionable turns on whether there was any obligation for Dr. Stoller to comply with Dr. Strickler's request.

The parties appear to agree that there was no subpoena and no written court order that would have dictated compliance by Dr. Stoller. Although Dr. Strickler reported that a judge said something during a hearing in the child abuse proceedings against LW's parents that led Dr. Strickler to believe that Dr. Stoller had been judicially compelled to produce his records, the evidence is clear that Dr. Stoller was not present when the judge's comments were made, and there is no written order in evidence.

The parties also agree that VW, as LW's parent and legal guardian, did not sign any kind of HIPAA compliant authorization directing Dr. Stoller to release medical records to Dr. Strickler. Indeed, the record reflects that VW specifically directed Dr. Stoller to not provide the medical records to Dr. Strickler. Dr. Stoller self-righteously testified that under those circumstances, he was precluded from providing his medical records to Dr. Strickler.

The Prosecutor correctly opines that HIPAA permits medical providers to share medical records for the purpose of providing medical treatment, even in the absence of a HIPAA authorization. In an effort to circumvent this obvious and frequently used exception to the

restrictions set forth in HIPAA, Dr. Stoller argues that Dr. Strickler was an “investigator” for CART rather than a physician engaged in the provision of medical services, and concludes that providing Dr. Strickler with the requested records would have constituted a HIPAA violation. Dr. Stoller’s attempted characterization of Dr. Strickler as an “investigator” constitutes a perversion of the facts – the evidence shows that Dr. Strickler was a treating physician for purposes of the exceptions set forth in HIPAA. It is clear that Dr. Strickler was providing medical care to LW when she was consulted in her capacity as a physician with CART. As a result, Dr. Stoller was free to share his medical records with Dr. Strickler without concern of violating HIPAA.

However, the applicable provision of HIPAA vests discretion in Dr. Stoller regarding whether or not to share his medical records under the circumstances presented by this case. The provision specifically uses the permissive “may” rather than the mandatory “shall” when describing the situations in which medical records can be shared. 45 CFR §164.506(c)(2). (“[A] covered entity may disclose protected health information for treatment activities of a health care provider.”). Accordingly, there was no legal requirement for Dr. Stoller to provide his medical records to Dr. Strickler. Indeed, even Dr. Strickler acknowledged under oath that there was no real legal requirement that obligated Dr. Stoller to share his medical records with her.

That said, it is apparent from the evidence that Dr. Stoller’s refusal to provide his medical records to Dr. Strickler was improperly motivated and constituted a threat to LW’s well-being. Dr. Stoller candidly admitted that he was determined to not turn over his medical records to Dr. Strickler from the moment he first spoke to Dr. Strickler because he questioned her motivations. Despite the fact that Dr. Stoller clearly understood that Dr. Strickler was reviewing records in an effort to ascertain whether LW had been neglected or abused by her mother, Dr. Stoller

acquiesced to the demand of VW to withhold the medical records from Dr. Strickler. The strength of Dr. Stoller's desire to advocate on behalf of his patient is laudable, but in this instance Dr. Stoller's actions rose to the level of blind devotion to VW and actually jeopardized LW's well-being. Indeed, it would seem that Dr. Stoller's determination to withhold LW's medical records was initiated by a desire to protect VW rather than to protect his actual patient: LW. One has to wonder why Dr. Stoller did not believe that he was serving the interests of LW in permitting his records to be reviewed by Dr. Strickler and CART, particularly if he was confident of VW's innocence.

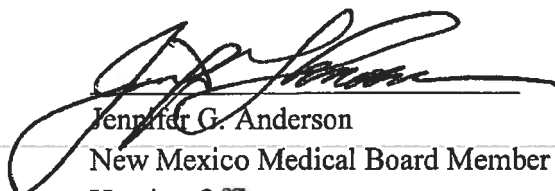
Moreover, it is worth noting that there is an inescapable contradiction in Dr. Stoller's explanations. On one hand, Dr. Stoller argues that he only infrequently interacted with LW and her mother after December of 2009 such that he disclaims the actual existence of a treatment relationship with LW after December of 2009. On the other hand, Dr. Stoller believed that he had such a good grasp on the situation in February of 2013 (more than 3 years after his regular visits with LW ceased) that he could conclude, based on a very short conversation with Dr. Strickler, that there was no basis for concern regarding the suspected medical abuse of LW. In fact, he testified that he was so opposed to the notion that VW was neglecting or abusing her child that he "would have burned [his] medical license before [he] would have said VW was abusing her child."

The Medical Practices Act proscribes "unprofessional or dishonorable conduct" by a licensed physician. Included in the scope of "unprofessional or dishonorable conduct" is "conduct likely to . . . harm the public." Dr. Stoller's frankly rash and unprofessional lack of cooperation with the investigation by Dr. Strickler and CART is troubling. While there was no legal compulsion for Dr. Stoller to cooperate with Dr. Strickler, the reach of the Medical Practice

Act is not limited to those situations where a licensee has neglected a legal obligation. The Act is designed to give the Board discretion to examine troubling circumstances and ascertain whether the conduct of a licensee is compliant with the high standards of practice the Board expects from its licensees. Dr. Stoller's refusal to cooperate with the CART investigation, despite his professed lack of familiarity with the contemporaneous condition of LW, was capricious and fell short of the applicable standard of practice.

Perhaps more so than in any other situation, where there is a suspicion of child abuse, the Board's licensees should be prepared to set aside any differences between them and work together to share information in an effort to aid in a determination regarding the safety and well-being of the suspected victim. Dr. Stoller allowed his disdain for Dr. Strickler to rule the day when he started manufacturing excuses for his unwillingness to cooperate in an investigative process that was designed to protect LW, his patient. Consequently, I find that the Prosecutor met his burden of proving the second half of item 4 in the April 28, 2015 Amended NCA, and satisfactorily established a violation of the Medical Practice Act.

Respectfully Submitted,



Jennifer G. Anderson
New Mexico Medical Board Member
Hearing Officer

July 17, 2015

BEFORE THE NEW MEXICO MEDICAL BOARD

**IN THE MATTER OF
KENNETH STOLLER, M.D.**



License No. 97-382,

Case No. 2014-031

Respondent.

AMENDED NOTICE OF CONTEMPLATED ACTION

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

Nature of the Allegations Against You

This Notice of Contemplated Action is based on the following allegations:

1. At various times from 2009 to 2012 you have repeatedly, unnecessarily, and injudiciously provided medical treatment to a minor child for medical conditions that did not exist, and that you should have known did not exist. Such treatments included, but were not limited to, hyperbaric oxygen therapy and the injudicious prescribing of numerous potentially dangerous medications, including baclofen, diflucan, ketoconazole, and leucovorin.

2. The mother of the minor child referenced in Paragraph 1 above was subsequently found by the State of New Mexico to have abused or neglected her child by fabricating medical conditions allegedly afflicting the child, and to have otherwise engaged in medical child abuse. Such medical child abuse occurred during the time that you provided the medical treatment described in Paragraph 1.

3. The medical treatment that you provided to the child perpetuated the mother's medical child abuse and placed the child at unnecessary risk of harm. It furthermore reflects your grossly negligent failure to recognize and address the medical threats facing the minor child while she was your patient.

4. You failed to maintain or keep adequate, legible, accurate, or complete medical records reflecting your treatment of the minor child. You also failed to timely transmit what medical records you did have to a requesting physician investigating potential abuse of the child by her mother.

Applicable Law

5. The above allegations, if proven, would constitute a violation of the following sections of the Medical Practice Act, NMSA 1978, §§ 61-6-1, *et seq.*:

- a. Section 61-6-15(D)(18), conduct likely to harm the public;
- b. Section 61-6-15(D)(12), gross negligence in the practice of a licensee;

c. Section 61-6-15(D)(33), improper management of medical records, including the failure to maintain timely, accurate, legible, and complete medical records; and

d. Section 61-6-15(D)(26), injudicious prescribing, administering, or dispensing of a drug or medicine.

Your Rights

6. Pursuant to NMSA 1978, § 61-1-4, you have a right to a hearing before the Board concerning these allegations. To exercise that right, you must make a written request to the Board, mailed via certified mail, return receipt requested. You must make that written request within twenty days after your receipt of this Notice of Contemplated Action. If you do not request a hearing within that twenty day period, the Board will take the contemplated action against your license, specifically the imposition of sanctions that could include the revocation or suspension of your license to practice medicine in the State of New Mexico. Action taken by the Board under such circumstances is not subject to judicial review.

7. Pursuant to NMSA 1978, § 61-1-8(A) you have the right to be represented in this proceeding by legal counsel, by a licensed member of your profession, or both. You have the right to present all relevant evidence by means of witnesses, books, papers, documents, and other evidence. You also have the right to examine all opposing

witnesses who may appear on any matter relevant to the issues and have subpoenas duces tecum issued prior to the commencement of the hearing in order to compel the attendance of witnesses or the production of relevant books, papers, documents, and other evidence. The issuance of such subpoenas after commencement of the hearing rests with the discretion of the Board of its Hearing Officer.

8. Pursuant to NMSA 1978, § 61-1-8(B), you have the right to obtain from the Board the names and addresses of any witnesses who may be called to testify at a hearing and to inspect and copy any documents or items that the Board will or may introduce as evidence at a hearing.

9. The issuance of this Notice of Contemplated Action is not a disciplinary event reportable to any data bank, but it is a public document open to public inspection.

10. In the event the Board takes against you or your license a final action as described in NMSA 1978, § 61-1-3, you shall bear all costs of the disciplinary proceeding pursuant to NMSA 1978, § 61-1-4(G) unless excused by the Board from such obligation.

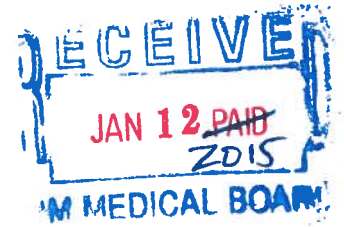
Dated April 28, 2015.

NEW MEXICO MEDICAL BOARD



Debbie Dieterich, Executive Director
2055 South Pacheco, #400
Santa Fe, NM 87505
(505)476-7220

BEFORE THE NEW MEXICO MEDICAL BOARD



IN THE MATTER OF)
KENNETH STOLLER, M.D.)

License No. 97-382)

No. 2014-031

Respondent.)

AMENDED NOTICE OF CONTEMPLATED ACTION

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

1. You are subject to action by the Board pursuant to Sections 61-1-1 et seq. NMSA 1978 of the Uniform Licensing Act and Sections 61-6-1 et seq., NMSA 1978 of the Medical Practice Act.

2. This contemplated action is based on the following allegations:

A. At various times from 2009-12, you have repeatedly, unnecessarily, and injudiciously provided medical treatments to a minor child for medical conditions that did not exist, and that you should have known did not exist. Such treatments included, but were not limited to “hyperbaric oxygen therapy” and the injudicious prescribing of numerous dangerous drugs, including baclofen, diflucan, ketoconazole, and leucovorin.

B. The mother of above minor child was subsequently found by the State of New Mexico to have abused and/or neglected her child by fabricating medical conditions for the child, providing inadequate nutrition to the child, and otherwise engaged in “medical child abuse.” Such medical child abuse occurred during the entire time that you provided the medical treatment described in A, above.

C. Your medical treatment described in A, above, perpetuated the medical child abuse described in B, above, placed the child at unnecessary risk of harm, and furthermore, reflects your grossly negligent failure to recognize and address the medical threats facing the minor child while entrusted to your care.

D. During the practices described in A, above, you failed to maintain or keep adequate, legible, accurate or complete medical records, indeed, practically any medical records of the child's care.

E. You have publically claimed, through a website, to be a diplomat of the American Board of Pediatrics despite a lack of current certification in that specialized field.

F. In your testimony before the State of New Mexico regarding your role in the medical child abuse of the minor, you made several false statements regarding your professional qualifications.

3. The above allegations, if proven, would constitute a violation of the following sections of the Medical Practice Act, Section 61-6-1 et seq.:

- a. Section 61-6-15(D)(18), conduct likely to harm the public;
- b. Section 61-6-15(D)(12), gross negligence in the practice of a licensee,
- c. Section 61-6-15(D)(15), the use of a false, fraudulent, or deceptive statement in a document connected with the practice of a license,
- d. Section 61-6-15(D)(33), improper management of medical records, including failure to maintain timely, accurate, legible and complete medical records;
- e. Section 61-6-15(D)(26), injudicious prescribing, administering or dispensing of a drug or medicine; and,
- f. making false or misleading statements regarding the efficacy or value of the medicine, treatment or remedy prescribed or administered by the licensee or at the direction

of the licensee in the treatment of a disease or other condition of the human body or mind.

4. Please take notice that pursuant to Section 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., imposing sanctions that could include the revocation or suspension of your license to practice medicine in the State of New Mexico, and there will be no judicial review of their decision.

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

6. The issuance of this Notice of Contemplated Action is not a disciplinary event reportable to any data bank but is a public document open to public inspection.

7. In the event that the Board takes a final action against you as specified in Section 61-1-3 of the ULA, you shall bear all costs of disciplinary proceedings pursuant to Section 61-1-4(G) of the ULA unless excused by the Board.

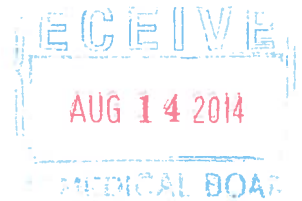
Dated this 12th day of January, 2014.

NEW MEXICO MEDICAL BOARD



Debbie Dieterich, Acting Director
NM Medical Board
2055 S. Pacheco, #400
Santa Fe, New Mexico 87505
(505) 476-7220

BEFORE THE NEW MEXICO MEDICAL BOARD



IN THE MATTER OF)
KENNETH STOLLER, M.D.)
)
License No. 97-382)
)
Respondent.)

No. 2014-031

NOTICE OF CONTEMPLATED ACTION

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

1. You are subject to action by the Board pursuant to Sections 61-1-1 et seq. NMSA 1978 of the Uniform Licensing Act and Sections 61-6-1 et seq., NMSA 1978 of the Medical Practice Act.

2. This contemplated action is based on the following allegations:

A. At various times from 2009-12, you have repeatedly, unnecessarily, and injudiciously provided medical treatments to a minor child for medical conditions that did not exist, and that you should have known did not exist. Such treatments included, but were not limited to "hyperbaric oxygen therapy" and the injudicious prescribing of numerous dangerous drugs, including baclofen, diflucan, ketoconazole, and leucovorin.

B. The mother of above minor child was subsequently found by the State of New Mexico to have abused and/or neglected her child by fabricating medical conditions for the child, providing inadequate nutrition to the child, and otherwise engaged in "medical child abuse." Such medical child abuse occurred during the entire time that you provided the medical treatment described in A, above.

C. Your medical treatment described in A, above, perpetuated the medical child abuse described in B, above, placed the child at unnecessary risk of harm, and furthermore, reflects your grossly negligent failure to recognize and address the medical threats facing the minor child while entrusted to your care.

D. During the practices described in A, above, you failed to maintain or keep adequate, legible, accurate or complete medical records, indeed, practically any medical records of the child's care.

E. You have publically claimed, through a website, to be a diplomat of the American Board of Pediatrics despite a lack of current certification in that specialized field.

F. In your testimony before the State of New Mexico regarding your role in the medical child abuse of the minor, you made several false statements regarding your professional qualifications.

3. The above allegations, if proven, would constitute a violation of the following sections of the Medical Practice Act, Section 61-6-1 et seq.:

- a. Section 61-6-15(D)(18), conduct likely to harm the public;
- b. Section 61-6-15(D)(12), gross negligence in the practice of a licensee,
- c. Section 61-6-15(D)(15), the use of a false, fraudulent, or deceptive statement in a document connected with the practice of a license,
- d. Section 61-6-15(D)(33), improper management of medical records, including failure to maintain timely, accurate, legible and complete medical records; and
- e. Section 61-6-15(D)(26), injudicious prescribing, administering or dispensing of a drug or medicine.

4. Please take notice that pursuant to Section 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., imposing sanctions that could include the revocation or suspension of your license to practice medicine in the State of New Mexico, and there will be no judicial review of their decision.

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

6. The issuance of this Notice of Contemplated Action is not a disciplinary event reportable to any data bank but is a public document open to public inspection.

7. In the event that the Board takes a final action against you as specified in Section 61-1-3 of the ULA, you shall bear all costs of disciplinary proceedings pursuant to Section 61-1-4(G) of the ULA unless excused by the Board.

Dated this 14th day of August, 2014.

NEW MEXICO MEDICAL BOARD



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