

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

In The Matter Of:
Susan M. Hare, M.D.
License No.: 11415
(Adjudicatory/Disciplinary Proceeding)

Docket No.: 11-01

FINAL DECISION AND ORDER

Before the New Hampshire Board of Medicine ("Board") is an adjudicatory/disciplinary proceeding of Susan M. Hare, M.D. ("Respondent" or "Dr. Hare").

Background Information:

On September 8, 2010, the Board issued a Settlement Agreement in *In The Matter of Susan M. Hare, M.D. docket number 10-03*. The Board received information that Dr. Hare failed to comply with the terms of the Settlement Agreement by failing to pay the administrative fine. On January 10, 2011, the Board issued a Notice of Hearing and Order to Show Cause. This hearing occurred on April 6, 2011.¹

On Wednesday, April 6, 2011, at 1:00 p.m., the Board was ready to commence with the adjudicatory/disciplinary hearing in the above captioned matter. Board members present² were:

Gail Barba, Public Member, Presiding Officer
Robert Andelman, Physician Member, President
Robert Vidaver, Physician Member
Nick Perencevich, Physician Member

¹ For the record it should be noted that the Board has recently issued two other hearing notices captioned *In the Matter of Susan M. Hare, M.D.* One, docketed 11-04, had an adjudicatory/disciplinary hearing commence on the same date of April 6, 2011 and was recessed to resume, and was concluded on April 15, 2011. The other, docketed 11-06, was scheduled to commence on April 6, 2011, but was continued prior to that date. Those cases are not considered here.

² These same Board members also voted on this Final Decision and Order except Board Member Morrissey.

John Wheeler, Physician Member
Mark Sullivan, Physician Assistant Member
Daniel Morrissey, Public Member
Edmund Waters, Jr., Public Member

The prosecution was represented by Hearing Counsel Attorney Sarah Blodgett of the Administrative Prosecutions Unit ("APU") of the Office of the Attorney General. Dr. Hare was represented by Attorney Kenneth Bartholomew of Rath, Young and Pignatelli, P.C. Although Hearing Counsel and Respondent's counsel were timely present, the Respondent did not arrive at the Board's office until 1:15 p.m. The Board, however, waited for the Respondent's presence to commence the proceeding.

Hearing Counsel presented one witness who was cross-examined by Respondent's counsel. Hearing Counsel presented six exhibits (Exhibits 1 through 6) that were not objected to and admitted. The sole witness was Penny Taylor, the Board's Administrator. The Board found Taylor to be professional, forthright and credible. The Respondent presented one exhibit (Exhibit A) that was not on the Respondent's exhibit list, and was admitted. The Respondent did not present any witnesses.

Findings of Fact:

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

As a result of allegations of professional misconduct, the Respondent and APU negotiated a settlement agreement. (Exhibit 1). The Respondent signed the settlement agreement on August 25, 2010 and her counsel signed it on September 3, 2010. (Exhibit 1: page 27). The Board approved the settlement agreement in September and it was issued on September 8, 2010. (Exhibit 1: page 27). The settlement agreement stated in pertinent part:

Respondent is assessed an ADMINISTRATIVE FINE in the amount of five thousand dollars (\$5,000.00). Respondent shall pay this fine in five installments of one thousand dollars (\$1,000.00) each. The first payment shall be due within thirty days of the effective date of this *Settlement Agreement*. The remaining payments shall be due within thirty days of the previous payment. All payments shall be made in the form of a money order or bank check made payable to "Treasurer, State of New Hampshire" and delivered to the Board's office at 2 Industrial Park Drive, Suite 8, Concord, NH 03301."

(Exhibit 1: paragraph 8F)(capitals and italics in original). The effective date of the settlement agreement was September 8, 2010. (Exhibit 1: paragraph 19). The first payment was due on or before October 8, 2010. (Exhibit 1: paragraph 8F "within thirty days of the effective date"). The

Board did not receive a payment on or before October 8, nor did it receive a payment on or before November 8.

On November 18, 2010, the Board received its first check. (Exhibit 2). This was check #152 dated November 10, 2010, in the amount of \$1,000. In the memo notation on the bottom left corner of the check, Dr. Hare wrote that it was the second payment and that only a balance of \$3,000 remained. (Exhibit 2). The Board's Administrator did not immediately deposit the check because the legal status of the notation was unclear.

The Board's Administrator notified Hearing Counsel of the late single check and its notation. Hearing Counsel apparently notified the Respondent's counsel. (Exhibit 5). On Tuesday, November 30, 2010, the Respondent's counsel notified Hearing Counsel that "Dr. Hare indicated that she would get a replacement check to the Board for her first payment this week." (Exhibit 5). That week ended on Friday, December 3, 2010. Dr. Hare did not provide another check to the Board that week.

On December 27, 2010, the Board received a second check. (Exhibit 3). This was check #157 dated December 14, 2010, in the amount of \$1,000. In the memo notation on the bottom left corner of the check, Dr. Hare wrote that it was the third payment and that only a balance of \$2,000 remained. (Exhibit 2). Again, the Board's Administrator did not immediately deposit the check because the legal status of the notation was unclear.

As stated above, on January 10, 2011, the Board issued a Notice of Hearing and Order to Show Cause ("Notice") for failing to comply with the terms of the settlement agreement by failing to pay the administrative fine. On January 13, 2011, the Respondent physically came to the Board's office³ and presented two checks. (Exhibit 4). One check was check #159 dated January 6, 2011, in

³ The Notice was mailed to the Respondent's counsel and to the Respondent. The name of the person who signed for the certified mail sent to the Respondent was not Respondent's name. At the Board's office on the 13th, in response to a question, Dr. Hare claimed that she did not yet receive or know about the Notice of Hearing and Order to Show Cause issued three days prior. For the purposes of this Order, the Board finds that prior to January 13th the Respondent may not have known that the Notice was issued. This does not affect the Board's analysis.

the amount of \$1,000. In the memo notation on the bottom left corner of the check, Dr. Hare wrote that it was the fourth payment and that only a balance of \$1,000 remained. (Exhibit 4). The other check was check #161 dated January 11, 2011, in the amount of \$1,000. In the memo notation on the bottom left corner of the check, Dr. Hare wrote that it was a replacement check for the first check.

The following day, on January 14, 2011, the Board's Administrator deposited the four checks. One of the checks was returned for insufficient funds. (Exhibit 6). To date, the Respondent has not tendered another check to cover the check that was returned.

To date, the Respondent has not paid the fifth installment required by her settlement agreement.

Analysis of Facts:

- Check 2:

The effective date of the settlement agreement was September 8. The first check was due on or before October 8. (Exhibit 1: paragraph 8F - "The first payment shall be due within thirty days of the effective date of this *Settlement Agreement*"). The Board received the first payment on November 18, 2010. This payment was received 40 days late. Assuming for the sake of argument that the Respondent's first check was lost, the second check was due on or before November 8. (Exhibit 1: paragraph 8F - "The remaining payments shall be due within thirty days of the previous payment."). The "second" check, however, (dated November 10) was received on November 18 – over one week past the latest due date. The Board finds that it is unquestionable that the "second" check was late.

- Check 3:

As stated above, the "second" check was received on November 18. Thus, the next check was due on or before December 18. (Exhibit 1: paragraph 8F - "The remaining payments shall be due within thirty days of the previous payment."). Assuming for the sake of argument that the Respondent's first check was lost and that this was the third check, it was only received on December 27 – over one week past the latest due date. Even if the Board were to use the dates the Respondent wrote on the checks (check #152 is dated November 10 and check #157 is dated

December 14), the later check was written over thirty days past the previous payment. The Board finds that it is unquestionable that the "third" check was late.

- Check 1:

The first check was due on or before October 8. The Board did not receive any checks from the Respondent on or before October 8. Assuming for the sake of argument that the Respondent did not know that the first check was not timely received at the Board's office, the Board finds that as of November 30, she knew that the Board had not received her first check. (Exhibit 5). The Respondent did not provide the Board with a replacement check until forty-four (44) days later, on January 13. The Board finds that it is unquestionable that the first check was late.

At this juncture and in light of the evidence presented, the Board makes an affirmative finding that the Respondent never tendered a "first" check to the Board on or before October 8. The Board finds that the replacement check, tendered on January 13, was ninety-seven (97) days late.

- Check 4:

On January 13, the Respondent tendered the "fourth" check to the Board's office in person. On the following day, January 14, the Board's Administrator deposited the four checks which the Respondent had dated: 11/10/11; 12/14/11; 1/6/11 and 1/11/11. One check was returned for insufficient funds. While the Respondent's exhibit shows that there were sufficient funds in her account in December (Exhibit A), it is uncontested that the Respondent's spending exceeded her funds and one check bounced. (Exhibit 6). Assuming for the sake of argument that the check received on December 27 was the "third" check, then the "fourth" check would have been due on or before January 27. To date, the Respondent has not provided the Board coverage for the bounced check. Thus, the Board finds that it is unquestionable that the fourth check was late; moreover, it is still owing.

- Check 5:

To date, the Respondent has not provided the Board with a fifth \$1,000 monthly installment. In fact, the Respondent has paid only \$3,000 of her fine. The administrative fine should have been paid in full on or before February 8, 2011 (i.e. 5 months from the effective date of the settlement agreement). As of the date of the hearing on April 6, 2011, a \$2,000 balance yet remained. Thus,

the Board finds that it is unquestionable that the fifth check was late; moreover, it is still owing.

Rulings of Law:

The settlement agreement states in pertinent part:

Respondent's breach of any terms or conditions of this *Settlement Agreement* shall constitute unprofessional conduct pursuant to RSA 329:17, VI(d), and a separate and sufficient basis for further disciplinary action by the Board, in addition to the potential consequence set forth in Paragraph 8(C), above.

(Exhibit 1: paragraph 9) (italics in original). It also states:

Respondent consents to the Board imposing the following discipline, pursuant to RSA 329:17, VII: A. Respondent's license to practice medicine is SUSPENDED FOR FIVE YEARS, OF WHICH TWO YEARS ARE IMPOSED upon the effective date of this *Settlement Agreement* and THREE YEARS ARE HELD IN ABEYANCE FOR FIVE YEARS from the effective date of this *Settlement Agreement*, provided all other terms of this *Agreement* are met.

(Exhibit 1: paragraph 8A) (capitals and italics in original).

The Board recognizes the Respondent's counsel's claim during his closing at the adjudicatory/disciplinary hearing that Respondent is undergoing financial hardship and that she recently closed her medical practice. The Board, however, is un-persuaded by this claim because, as pointed out by Hearing Counsel, the Respondent has never petitioned for a waiver of the fine and has only raised this claim after bouncing a check tendered to the Board.

The Board finds that the Respondent has violated paragraph 8F of the September 8, 2010 Settlement Agreement on five separate occasions as all five payments were untimely (two of those payments are still outstanding). The Board further finds that the Respondent has violated RSA 329:17, VI(d) and has engaged in unprofessional conduct as all five payments of her administrative fine to the Board were either paid late or not at all.

Disciplinary Action:

Based upon the Findings of Facts and Rulings of Law above, the Board has voted to order the following:

IT IS ORDERED that the Respondent is assessed an ADMINISTRATIVE FINE in the amount of ten thousand dollars (\$10,000).

IT IS FURTHER ORDERED that the Respondent must still pay the two thousand dollar (\$2,000) fine which, in accordance with the September 8, 2010 Settlement Agreement, is still

outstanding.

IT IS FURTHER ORDERED that the Respondent pay this entire sum of twelve thousand dollars (\$12,000) within one year (12 months) of the effective date of this Final Decision and Order. The entirety of the payment is due on or before May 6, 2012. The payment shall be made in the form of a money order or bank check made payable to "Treasurer, State of New Hampshire" and delivered to the Board's office at 2 Industrial Park Drive, Suite 8, Concord, NH 03301.

IT IS FURTHER ORDERED that the Respondent's failure to comply with any terms or conditions imposed by this Final Decision and Order shall constitute unprofessional conduct pursuant to RSA 329:17, VI(d), and a separate and sufficient basis for further disciplinary action by the Board against the Respondent.

IT IS FURTHER ORDERED that this Final Decision and Order shall become a permanent part of the Respondent's file, which is maintained by the Board as a public document.

IT IS FURTHER ORDERED that this Final Decision and Order shall take effect as an Order of the Board on the date an authorized representative of the Board signs it.

Date: May 6, 2011

*\BY ORDER OF THE BOARD

Penny Taylor
(Signature)
PENNY TAYLOR
(Print or Type Name)
Authorized Representative of the
New Hampshire Board of Medicine

*\ Board members Amy Feitelson, M.D. and Robert Cervenka, M.D. recused. Board member Louis Rosenthal, M.D. did not participate.

