

**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.: 11-04**

**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 engaging in the practice of medicine during her suspension. On February 4, 2011, the Board issued a Notice of Hearing and Order to Show Cause. This hearing commenced on April 6, 2011;<sup>1</sup> it continued and was closed on April 15, 2011.

On Wednesday, April 6, 2011, at 2:00 p.m., the Board commenced with the adjudicatory/disciplinary hearing in the above captioned matter. Board members present<sup>2</sup> were:

Gail Barba, Public Member, Presiding Officer  
Robert Andelman, Physician Member, Chair  
Robert Vidaver, Physician Member

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<sup>1</sup> 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 11-01, had an adjudicatory/disciplinary hearing before the Board on the same date of April 6, 2011, which was concluded on that date. The other, docketed 11-06, was scheduled to commence on April 6, 2011, but was continued prior to that date. These proceedings are separate.

<sup>2</sup> These same Board members also deliberated voted on this Final Decision and Order except Board Member Morrissey who was not present at the April 15 continuation.

Nick Perencevich, Physician Member  
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. On April 6, Dr. Hare was represented by Attorney Kenneth Bartholomew of Rath, Young and Pignatelli, P.C.; she was also represented by Attorney Paul Maggioto of Maggiotto & Belobrow, PLLC, who filed an appearance with the Board that morning. When the hearing continued on Friday, April 15, 2011, the Respondent was represented by Attorney Maggioto.

In accordance with the Notice of Hearing, both parties submitted Witness and Exhibit lists at least three days prior to the 4/6 hearing. Hearing Counsel's witness list included three witnesses, none of whom were Gayle Spelman. The Respondent's witness list included only two witnesses: the Respondent and Gayle Spelman. The Respondent did not submit any exhibits.

On the hearing date, prior to the hearing, Hearing Counsel moved to amend her witness list, claiming an oversight, asking to add Spelman as a witness. The Respondent's counsel objected, claiming that he was not intending to call Spelman as a witness and that to cross-examine Spelman he would have prepared differently and would have submitted exhibits. Hearing Counsel had subpoenaed Spelman for that date and Spelman was present. The Board voted to allow Hearing Counsel to call Spelman as a witness on that date and to recess the hearing after her testimony to allow the Respondent's counsel adequate time to prepare a cross-examination; accordingly, the hearing was recessed until Friday, April 15<sup>th</sup>.

On April 13, the Respondent submitted an updated witness list and an updated exhibit list including four (4) exhibits not previously stated. Hearing Counsel objected to the updated lists as untimely. The Board voted to allow the witnesses and exhibits to the extent it would be relevant to Spelman's cross-examination and/or impeachment. The Board ultimately accepted all the

Respondent's exhibits. Additionally, the Board accepted Exhibit E into evidence where one<sup>3</sup> of the Respondent's 'new' witnesses could not attend the hearing.

The following exhibits were introduced into evidence and accepted into the record:

- Hearing Counsel's exhibits: 1 through 9.
- The Respondent's exhibits: A through E.

#### **Findings of Fact:**

On 4/6, the Board heard the direct and cross examination of Kathy Evans (A.E.'s grandmother). Evans' granddaughter has been the Respondent's patient for at least the past three years. Evans' was clearly bonded with the Respondent, her testimony was admittedly reluctant, at times emotional, and she was protective of the Respondent. As she stepped off the witness stand, Evans walked over to the Respondent, hugged her and stated that the Respondent was in her prayers. The Board finds Evans' testimony was forthright and credible. The Board's findings rely heavily and primarily on this witness's testimony.

On 4/6, the Board heard direct and cross examination of Todd Flanagan (APU Investigator). The Board finds Flanagan's testimony was professional, credible and forthright.

On 4/6, the Board heard the direct examination of Gayle Spelman (Physician Assistant). Spelman had worked for the Respondent at Riverfront Medical Practice. At some point the Respondent and Spelman's relationship became acrimonious. The Board finds Spelman's testimony on 4/6 was forthright and credible.

On 4/15, the Board heard the cross-examination and rebuttal examinations of Spelman.

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<sup>3</sup> A second witnesses was not present and/or available to testify. A third witness, Evans, was not re-called to the witness stand because Hearing Counsel and the Respondent's counsel stipulated to remove relevant issues, including Hearing Counsel's removal of paragraph 6C of the Notice of Hearing, from the Board's consideration.

While the Board notes Spelman's animosity towards the Respondent, the Board found Spelman credible.

On 4/15, the Board heard additional testimony from Todd Flanagan. The Board disregards Flanagan's "expert" opinion. In this matter, the Board, as the decision-maker, is a body specially composed to decide administrative proceedings concerning the practice of medicine. The ability to evaluate the writer of the SOAP notes is within the competence of this Board.

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 7). The respondent signed the settlement agreement on August 25, 2010 and her counsel signed in on September 3, 2010. (Exhibit 7: page 27). The Board approved the settlement agreement in September and it was issued on September 8, 2010. (Exhibit 7: page 27). The settlement agreement stated in pertinent part:

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 7: paragraph 8A) (capitals and italics in original). The Respondent's suspension began on September 8, 2010. (Exhibit 7: paragraph 19).

Gail Spelman, a physician assistant at Riverfront Medical Group ("Riverfront"), stopped working there on a full-time basis on or about November 5, 2010. Shortly thereafter, she began working at Riverfront part-time: only on Mondays and Thursdays from 9:00 a.m. to 1:00 p.m.

In 2008, a court awarded the custody of A.E., a minor, to her grandmother, Kathy Evans. A.E. was a patient at Riverfront prior to 2008. Since receiving custody in 2008, Evans brought A.E. regularly to Riverfront for various ailments. A.E. was seen many times by the Respondent who knew of A.E.'s transfer of custody to Evans in 2008. A.E. was also seen by Spelman on some visits. After September 2010, Evans became aware that the Respondent ceased practicing due to a suspension; however, she continued to bring A.E. to Riverfront as a patient and saw other care providers. A.E.

had an appointment scheduled at Riverfront for January 18, 2011 for routine follow-up care in conjunction with her Attention-Deficit-Disorder ("ADD") symptoms.

On Tuesday, January 18, 2011, a major winter snowstorm hit New Hampshire, and the region in which Riverfront is located. (Exhibit 8). Riverfront cancelled all patient appointments and the office closed because of the snowstorm. Kathy Evans apparently never received a cancellation message because she arrived at Riverfront for A.E.'s scheduled appointment. The office door was locked and Evans knocked. The Respondent answered the door and told Evans that the office was closed because of the snowstorm. Evans explained that she was there not just because of the ADD care but that A.E. was sick and asked if someone could examine A.E.

The Respondent was alone in the office. The Respondent did not advise Evans to take A.E. to the nearest urgent medical facility (Franklin Hospital), which was about two and a half miles away. (Exhibit 9). A.E.'s symptoms were a slightly elevated temperature, a cough and a poor appetite. The Respondent offered to examine A.E. Evans questioned whether the Respondent was allowed to do that. The Respondent misleadingly replied: "why wouldn't I be?" Although the Respondent advised Evans that she could provide medical care to A.E. as she was sick, the Respondent told Evans that she could not see A.E. for the ADD issue and that Evans would have to call back the next business day to schedule another appointment.

The Respondent led Evans and A.E. to an examination room. The Respondent did not have A.E.'s medical record in the exam room. The Respondent took A.E.'s temperature. The Respondent took A.E.'s blood pressure and other vitals. The Respondent examined A.E. with a stethoscope; she listened to A.E.'s lungs, chest, and heart. The Respondent asked Evans which pharmacy she would like a prescription sent to in the event A.E. needed one. Evans told her. The Respondent asked whether A.E. had allergies to any medications; Evans replied: "not to my knowledge."

The Respondent diagnosed A.E. as having bronchitis. The Respondent told Evans that she would prescribe A.E. with the antibiotic Zithromax and would call it in to A.E.'s pharmacy. She advised Evans to take one dose of Zithromax in the morning and one in the evening of the first day

and then only once a day for the following days.

The Respondent created a Subjective, Objective, Assessment, and Plan ("SOAP") note for A.E. (Exhibit 2). The Respondent did not create this SOAP note in her own name; rather, she falsely created it and signed it under Gayle Spelman's name. (Exhibit 2). The Respondent also generated a prescription via computer (an "e-script") for Zithromax for A.E. and sent it to the pharmacy. (Exhibit 3). Again, the Respondent did not generate the e-script under her own name; rather, she falsely created it and signed it under Spelman's name. (Exhibit 3).

As Gayle Spelman did not work on Tuesdays, she was not in the office at all that day. She did not see A.E. or Evans that day. She did not examine or diagnose A.E. that day. She did not prescribe or contact the pharmacy that day for any prescriptions for A.E.

Right after A.E.'s appointment with the Respondent on January 18, 2011, Evans went to her pharmacy and the prescribed Zithromax was available for A.E.

Two days later, on or about Thursday, January 20<sup>th</sup>, the office manager contacted Spelman and told her that the Respondent had seen A.E. two days prior but that A.E. still needed an ADD appointment with Spelman. This is when Spelman first learned that A.E.'s treatment note was falsely in Spelman's name.

#### Rulings of Law:

##### Applicable Laws:

- The September 8, 2010 settlement agreement states in pertinent part:

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).

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).

- RSA 329:17, VI states in pertinent part:

The board, after hearing, may take disciplinary action against any person licensed by it upon finding that the person: ...

(d) Has engaged in dishonest or unprofessional conduct or has been grossly or repeatedly negligent in practicing medicine or in performing activities ancillary to the practice of medicine or any particular aspect or specialty thereof, or has intentionally injured a patient while practicing medicine or performing such ancillary activities.

(e) Has employed or allowed an unlicensed person to practice in the licensee's office. ...

- RSA 329:24, I states:

Whoever, not being licensed or otherwise authorized according to the law of this state, shall advertise oneself as practicing medicine, or shall practice medicine, according to the meaning of RSA 329, or in any way hold oneself out as qualified so to do, or call oneself a "physician," or whoever does any such acts after receiving notice that such person's license has been revoked is engaged in unlawful practice.

- The Board's Administrative Rule Med 501.02 (d) states:

A licensee shall maintain a complete and accurate medical record of all patient encounters.

#### Rulings:

The Board makes the following findings by a preponderance of the evidence:

1. In accordance with paragraph 6A of the Notice of Hearing ("NOH"), the Board finds that on January 18, 2011, the Respondent engaged in professional misconduct by practicing medicine while her license was suspended in violation of RSA 329:17, VI (d). The Respondent's suspension pursuant to the settlement agreement was in effect and the Respondent violated the settlement agreement by examining, diagnosing, and treating/prescribing for A.E. while her practice privileges were suspended.
2. In accordance with paragraph 6A of the NOH, the Board finds that on January 18, 2011, the Respondent engaged in professional misconduct by practicing medicine while her license was suspended in violation of RSA 329:24. The Respondent's suspension pursuant to the settlement agreement was in effect and the Respondent engaged in unlawful practice when she practiced medicine on A.E while suspended.
3. In accordance with paragraph 6B of the NOH, the Board finds that the Respondent engaged in professional misconduct by advising Evans that she could provide medical care for A.E. in

violation of RSA 329:17, VI (d).

4. The parties heavily dispute whether the Respondent wrote the SOAP note. (Exhibit 2). The Respondent provided Exhibits A and B to show: (1) that the Plan ("P") portion of the note was inconsistent with the Respondent's habit, thus she did not write the note; and (2) that Spelman did create SOAP notes on the computer, thus Spelman may have written the note. In reviewing the "S", "O", and "A" portions of the SOAP note, along with Exhibits A and B, the Board relied on its members' knowledge of reading their own and colleagues' SOAP notes. The New Hampshire Board of Medicine is composed of members uniquely competent to adjudicate matters concerning the practice of medicine and activities performed ancillary to the practice of medicine. Moreover, primarily based upon Evans' testimony, the Board finds that the Respondent created the SOAP note. Based on some Board members' experiences as practicing licensees and on Spelman's testimony, it appears that the "P" portion was copied and pasted from another medical record (which may or may not have been A.E.'s). In accordance with paragraph 6D of the NOH, the Board finds that the Respondent engaged in professional misconduct by creating a SOAP note under another practitioner's name in violation of RSA 329:17, VI(d).

5. In accordance with paragraph 6D of the NOH, the Board finds that the Respondent engaged in professional misconduct by creating a SOAP note under another practitioner's name in violation of Med 501.02 as discussed in the previous paragraph.

6. In accordance with paragraph 6E of the NOH, the Board finds that the Respondent engaged in professional misconduct by ordering a prescription under another practitioner's name in violation of RSA 329:17, VI(d). The Respondent wrote a prescription for Zithromax for A.E., falsely using Spelman's name and prescribing authority, and forwarded it to the pharmacy.

7. In accordance with paragraph 6E of the NOH, the Board finds that the Respondent engaged in professional misconduct by ordering a prescription under another practitioner's name in violation of Med 501.02 as discussed in the previous paragraph.

### **Disciplinary Action:**

The Respondent has moved<sup>4</sup> to postpone this Board's proceedings and/or stay its rulings until after related criminal proceedings are concluded as the Respondent invoked her 5<sup>th</sup> amendment right against self-incrimination. The Board has declined to postpone or stay this matter as it is unknown when, and more importantly if, the Respondent would be charged criminally. The Board is also cognizant of Hearing Counsel's claim that it might be difficult to locate witnesses if the matter is so delayed. Finally, the Board disagrees with the Respondent's counsel's claim that the public is protected during such a stay because the Respondent's license is suspended from practice during the stay. The Board disagrees because the allegation was, and now has been found, that the Respondent practiced medicine despite her signed agreement to the suspension of her practice privileges. Notwithstanding, despite the Board's ability to infer a negative inference from the Respondent's invocation of her 5<sup>th</sup> amendment right not to testify in this administrative proceeding, the Board has chosen not to make a negative finding or inference.

After making its findings of fact and rulings of law, the Board deliberated on the appropriate disciplinary action. RSA 329:17, VII ("The board, upon making an affirmative finding under paragraph VI, may take disciplinary action in any one or more of the following ways:..."). In this deliberation, the Board considered two aggravating factors.

- (1) the Respondent's September 8, 2010 Settlement Agreement (docket 10-03) (Exhibit 7, paragraph 10: "Additionally, the Board may consider the fact that discipline was imposed by this Order as a factor in determining appropriate discipline should any further misconduct be proven against Respondent in the future."); and
- (2) the Board's Final Decision and Order issued on May 6, 2011 (docket 11-01).

Based upon the above the Board has voted the following:

IT IS ORDERED that the Respondent's license be REVOKED.

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<sup>4</sup> Prior to the commencement of the hearing, the Respondent moved to continue in writing. The Respondent renewed this request orally at the hearing.

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 10, 2011

\*BY ORDER OF THE NEW HAMPSHIRE  
BOARD OF MEDICINE

Penny Taylor  
(Signature)

PENNY TAYLOR  
(Print or Type Name)

Authorized Representative of the  
New Hampshire Board of Medicine

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