

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

In The Matter Of:
Robert A. Norman, D.O.
(Adjudicatory Proceeding)

Docket No.: 11-12

FINAL DECISION AND ORDER

Before the New Hampshire Board of Medicine ("Board") is an adjudicatory proceeding in The Matter of Robert A. Norman, D.O. ("Respondent" or "Dr. Norman") in Docket Number 11-12.

Background Information:

On or about November 2010, the Board received a form signed by the Respondent indicating that he was assuming responsibility for supervision for the work of a New Hampshire licensed physician assistant practicing at that time in New Hampshire. 8/5/11 NOH, ¶2. The Respondent is not licensed to practice medicine in the State of New Hampshire. The Board commenced an investigation. 8/5/11 NOH ¶2. On August 5, 2011, the Board issued a Notice of Hearing ("8/5/11 NOH"). On February 6, 2012, the Board issued an Amended Notice of Hearing. This hearing occurred on April 4, 2012.

On Wednesday, April 4, 2011, at 1:00 p.m., the Board commenced with the adjudicatory hearing in the above captioned matter. Board members present¹ were:

Louis Rosenthal, Physician Member, Presiding Officer
Robert Andelman, Physician Member, President
Mark Sullivan, Physician Assistant Member, Vice-President
Gail Barba, Public Member
Nick Perencevich, Physician Member
Edmund Waters, Jr., Public Member
John Wheeler, Physician Member
Daniel Morrissey, O.P., Public Member
Robert Vidaver, M.D., Physician Member
Robert Cervenka, M.D. Physician Member

¹ These same Board members also deliberated and voted on this Final Decision and Order.

The prosecution was represented by Hearing Counsel Attorney Sarah Blodgett of the Administrative Prosecutions Unit ("APU") of the Office of the Attorney General. Dr. Norman was represented by Attorney Mark Franco of Thompson & Bowie, LLP.

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

- Hearing Counsel's exhibits: 1-8.
- The Respondent's exhibits: A-G.

Relevant Law:

Statutes:

329:24 Unlawful Practice

I. 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do, or call oneself a "physician," or whoever does any such acts after receiving notice that such person's license has been revoked is engaged in unlawful practice.

Administrative Rules:

Med 601.01

"Alternate registered supervisory physician (ARSP)" means a physician licensed to practice in New Hampshire under RSA 329 who is responsible for the supervision and performance of a physician assistant in lieu of the registered supervisory physician.

Med 604.01

(a) Applicants for licensure as a physician assistant shall file an application supplied by the board which includes the following: ...

(4) Certification from the RSP and all ARSPs that he or she has accepted supervisory responsibility for the physician assistant, including the proposed date on which the relationship will commence....

Findings of Fact:

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

1. Dr. Norman is licensed in Florida.² He holds Florida license number OS-4442.³

² Tr. 19; 22-23.

³ Tr. 40-41 and 109 (Norman's testimony); Exhibit 4, page 7; Exhibit D.

2. Dr. Norman owns/operates a medical-related Florida business for which he employs lots of medical personnel in several states.⁴
3. In 2006, Dr. Norman applied for a New Hampshire license from the New Hampshire Board of Medicine.⁵
4. In March 2008, Dr. Norman filed a formal request to withdraw his license application from the New Hampshire Board of Medicine.⁶
5. In April 2008, the Board voted to accept Dr. Norman's request to withdraw his license application.⁷
6. Dr. Norman was notified that the Board accepted his request to withdraw.⁸
7. Dr. Norman had actual knowledge that he was not licensed or otherwise authorized to practice medicine in New Hampshire.
8. In early November 2010, Dr. Norman hired Spelman, a New Hampshire licensed physician assistant ("PA") who was practicing in New Hampshire.⁹
9. To practice in New Hampshire, physician assistants must provide the Board with a written certification from both a registered supervisory physician ("RSP") and an alternate registered supervisory physician ("ARSP") that these physicians have "accepted supervisory responsibility for the physician assistant." Med 604.01(a)(4). The law also requires the supervisory physician to include the date on which the relationship will commence. Med 601.01(a)(4).
10. Dr. Norman, as one of the supervisory physicians, filled out this form that is clearly marked to be filed with a New Hampshire state agency, namely the Board of Medicine. See Exhibit F.¹⁰
11. The body of the form states in total:

⁴ Tr. 15; 20; 28 (Norman's testimony); Exhibit D.

⁵ Tr. 46-50 (Norman's testimony); Exhibit 4.

⁶ Tr. 47, 111 (Norman's testimony); Exhibit 5.

⁷ Tr. 47, 53, 111-112 (Norman's testimony); Exhibit 5.

⁸ Tr. 112 (Norman's testimony).

⁹ Tr. 9; 20-21; 23-24; 27 (Norman's testimony); Exhibit C; Exhibit D.

¹⁰ See Exhibit F or Exhibit 1 (both parties provided identical exhibits).

In accordance with RSA 328-D and regulations issued thereunder, I certify that Gayle Spelman, P.A. assists me professionally and that I assume responsibility for supervision of his/her professional activities.

12. Dr. Norman signed this document above the line that indicates 'ARSP signature.'¹¹

13. Dr. Norman wrote his name above the line that states 'print or type name.'¹²

14. Dr. Norman wrote his address above the line that states 'professional address.'¹³

15. Dr. Norman wrote November 12, 2010 above the line that states 'effective date of supervision.'¹⁴

16. Dr. Norman wrote what appears to be a six-digit number above the line that states 'NH license number.'¹⁵

17. Notably, Dr. Norman did not indicate that this was his Florida license number.¹⁶

18. Equally of note, Dr. Norman did not indicate that this was not a New Hampshire license number.¹⁷

19. In light of the paucity of words on the form, and the clarity in which it is written, the Board finds that Dr. Norman's explanation that he was too busy to read the form when he signed it is not credible.¹⁸

20. Dr. Norman's testimony that he both does not remember signing the form but that he remembers that his assistants brought him the form to sign quickly without reading is contradictory and not credible.¹⁹

21. This form was effective on November 12, 2010.

22. This form remained on file with the Board until November 22, 2010.²⁰

¹¹ Tr. 11; 108 (Norman's testimony); Exhibit 1; Exhibit F.

¹² Tr. 109 (Norman's testimony); Exhibit 1; Exhibit F.

¹³ Tr. 109 (Norman's testimony); Exhibit 1; Exhibit F.

¹⁴ Tr. 27; 108 (Norman's testimony); Exhibit 1; Exhibit F.

¹⁵ Tr. 14; 40; 109 (Norman's testimony); Exhibit 1; Exhibit F. The six-digit number appears to be zero-five-four-four-four-two; that the first two digits are '05'. Tr. 40-41. Dr. Norman testified that the first two digits were in fact the letters "OS".

¹⁶ Tr. 39-41; 109 (Norman's testimony); Exhibit 1; Exhibit F.

¹⁷ Exhibit 1; Exhibit F.

¹⁸ Tr. 23 (Norman's testimony: "but again, I don't have a memory of signing that actual form because I sign forms all day long."); Tr. 24 ("I don't recall anything, to be honest with you, about the form."); Tr. 36 ("I do not have a memory of signing the form"); But see next footnote from Tr. 22.

¹⁹ Tr. 22 (Norman's testimony: "and at the time I signed this, they put this paper in front of me and said "sign it" basically. I did read it, you know, both verbally and in writing and stated I'm not licensed in New Hampshire, I'm licensed in Florida"); see previous footnote from Tr. 23.

23. Dr. Norman was unaware that a replacement form was filed and that he was relieved of his supervisory responsibility as of November 22, 2010.²¹

Rulings of Law:

The charging document in this case, the Amended Notice of Hearing dated February 6, 2012, states that the specific issues before the Board at the adjudicatory hearing were:

- A. Whether, on or around November 12, 2010, Respondent committed professional misconduct by holding himself out as qualified to practice medicine in New Hampshire when he was not licensed or otherwise authorized to do so, in violation of RSA 329:24, I and/or Med 601.01; and/or
- B. Whether around or between November 9, 2010 and December 23, 2010, Respondent portrayed himself as a New Hampshire physician when he was not licensed or otherwise authorized to do so, in violation of RSA 329:24, I

These charges recognize that the statute RSA 329:24, I, not only outlaws the practice medicine by persons who are not authorized to practice in this state, but it also outlaws holding oneself out as qualified to practice medicine if that person is not authorized to practice in this state. Much ado was made at the hearing by both parties as to whether Dr. Norman actually engaged in the unauthorized practice of medicine in November and December of 2010. While it may be that the 8/5/11 NOH charged him with unlawful practice based upon an allegation of practicing medicine in this State, the Amended Notice of Hearing charges him with unlawful practice by "holding himself out as qualified to practice medicine in New Hampshire" (paragraph 6A) and by "portraying himself as a New Hampshire physician" (paragraph 6B).

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

- I. On 11/12/10, the Respondent engaged in unlawful practice by holding himself out as qualified to practice medicine in New Hampshire when he was not licensed or otherwise authorized to do so, in violation of RSA 329:24, I. Specifically, the Respondent filled out a New Hampshire Board of Medicine document where he certified that he assumed responsibility for a New Hampshire PA's professional responsibilities; where he signed the document with impunity; where he used his professional status as a physician in that he recorded his Florida license number; and where he

²⁰ Tr. 117; Exhibit E.

²¹ Tr. 109-110 (Norman's testimony).

misled all who relied on this document as he did not indicate that it was not a New Hampshire license number despite being marked as a New Hampshire license number.

II. Between November 12 and November 22, 2010, the Respondent engaged in unlawful practice by portraying himself as a New Hampshire physician when he was not licensed or otherwise authorized to do so, in violation of RSA 329:24, I. Specifically, the Respondent filled out this form clearly intended to be filed with a New Hampshire state agency, namely, the New Hampshire Board of Medicine for others to rely on PA Spelman's licensed care (as she could only be licensed if she had an ARSP on file and he portrayed himself as an eligible supervisory physician despite knowing that he was not licensed in this State); where he wrote his name on the indicated line; where he entered information on the line indicated for "NH License Number," (emphasis added); and where he signed his name on the line reserved for alternate registered supervisory physicians; and he let that form remain on file with the Board.

Disciplinary Action:

Once concluding that an administrative sanction is appropriate, the Board considered the following mitigating and aggravating factors:

Mitigating Factors:

None – The Board finds Dr. Norman's testimony that he was too busy to know what he was signing²² was self-serving and, as stated above, contradicted by his other testimony. The Board finds that Dr. Norman's testimony that he would have signed such a form, including his name and license number, without reading it – especially where it was one short paragraph – is not credible.²³

Aggravating Factors:

1. The Board issued the original notice of hearing in this case on August 5, 2011.²⁴ On February 15, 2012, Dr. Norman requested to participate in the hearing via telephone.²⁵ There were

²² Tr. 22; but see Tr. 22.

²³ Tr. 38.

²⁴ 8/5/11 NOH.

²⁵ 2/15/12 Entry of Appearance and Request to Participate via Telephone.

no reasons given or circumstances provided.²⁶ On March 12, 2012, the Board issued a detailed order denying Dr. Norman's request.²⁷ At the scheduled time for the hearing on April 4, 2012, the Board learned that despite its order, Dr. Norman unilaterally chose not to appear before the Board for a hearing.²⁸

- Dr. Norman's actions speak volumes to his disregard for this Board's proceedings and for the Board's ability to regulate the practice of medicine within the State of New Hampshire.

2. At the hearing, Dr. Norman's attorney, Attorney Franco, asked the Board to allow Dr. Norman to participate in the adjudicatory proceeding via telephone.²⁹ Attorney Franco provided an amplifying speakerphone device that attached to his personal iphone.³⁰ The Board granted Dr. Norman permission to both participate and testify at the hearing via this telephone.³¹ When asked why he was not able to attend the hearing in person, Dr. Norman stated that he had a busy schedule.³²

- The original notice of hearing was issued eight (8) months before the hearing. The Amended Notice of Hearing was issued two months prior to the hearing, providing Dr. Norman with over eight (8) weeks' notice of the actual hearing date and time. Dr. Norman's practice is a private practice of geriatric/nursing home dermatology consultations.³³ The Board finds that it is not a practice that cannot accommodate rescheduling. Dr. Norman also has a large staff, including medical staff, working for him.³⁴ Dr. Norman's unwillingness to rework his schedule to appear for this proceeding displays a modicum of disrespect for the Board's regulatory powers.

3. Dr. Norman had not printed out the parties' exhibits. During the proceeding, Dr. Norman apparently used a computer to review these exhibits.³⁵ Dr. Norman's inability to properly follow

²⁶ Id.

²⁷ 3/12/12 Order Denying Request to Participate via Telephone. Tr. 10.

²⁸ Tr. 10-11.

²⁹ Tr. 10-11.

³⁰ Tr. 11.

³¹ Tr. 12; 17.

³² Tr. 19.

³³ Tr. 20; Exhibit D.

³⁴ Tr. 22.

³⁵ Tr. 22; 50.

caused delay to the proceedings.³⁶ At times, an irritable noise, amplified by the speakerphone, was disruptive to the proceedings – it appears that this noise was caused by Dr. Norman conducting business other than that which was before the Board at the hearing.³⁷

- This conduct is indicia of Dr. Norman's marked disregard for the New Hampshire Board of Medicine.

4. At one point during the hearing, Dr. Norman stopped communicating with the proceeding. When his lawyer called out to him, he did not respond.³⁸ Shortly thereafter, another call came into Attorney Franco's telephone; Attorney Franco, believing his phone had dropped his client's call, took the call in the middle of the hearing only to learn that it was an unrelated caller.³⁹ It turned out that Dr. Norman's call was not dropped; rather, the Respondent was not tuned into the proceeding.⁴⁰

- These rude behaviors were disruptive to the Board's proceeding and evidenced blatant disrespect for the gravity of the Board's hearing.

5. At another point during the hearing, the parties' behavior became obstreperous.⁴¹ The Board recessed the proceedings to allow calmer emotions to prevail.⁴² When Attorney Franco returned to the Board's hearing room, he stated that his client, Dr. Norman, refused to participate further in these proceedings and would not be rejoining the hearing by telephone unless he was recalled as a witness.⁴³ When Attorney Franco wished to speak to his client, outside the presence of the Board, the attorney merely picked up his iphone and walked out of the room conversing on this cell phone, without saying anything to the Board.⁴⁴ Later, when Dr. Norman was recalled as a

³⁶ Transcript.

³⁷ Tr. 14; 35; 43 (Dr. Norman: "Somebody came in to tell me about the time for doing her training, so I was just confirming the dates."); 124.

³⁸ This is not apparent from the transcript which stopped at that time and re-started after Dr. Norman re-joined the hearing.

³⁹ See previous footnote.

⁴⁰ See previous footnote.

⁴¹ Tr. 61 ("Ms Blodgett: Can you please stop sighing, Mark? Mr. Franco: No, I won't. I won't. I reserve the right to sigh. ... I would like the record to reflect that I'm sighing.").

⁴² Tr. 62-63.

⁴³ Tr. 65.

⁴⁴ Tr. 100.

witness and rejoined the hearing via telephone, he testified that he had a busy schedule and that he was seeing patients during the time that he absented himself from the hearing.⁴⁵

- Either explanation is untenable. If the Board is to believe the former excuse, it shows that the Respondent exhibited a contemptuous mockery of the proceeding by physically removing himself when the adjudicator did not rule in his favor on an objection. If the Board is to believe the latter excuse, it shows continuing contempt as the Respondent could not be bothered to reschedule patients for the few hours that he was the subject of (and a witness in) an adjudicatory proceeding in New Hampshire - namely whether he committed unlawful conduct: a misdemeanor in this State.

6. The Board finds that the events as described above expose a total disregard to the process and a complete disrespect for the authority of the New Hampshire Board of Medicine. This is consistent with the finding that Dr. Norman engaged in unlawful practice by purposefully signing Spelman's forms, holding himself out as qualified to practice in New Hampshire, and portraying himself as a New Hampshire physician, so that Spelman could begin to work for his company and he could conduct business in New Hampshire.

Based upon the Findings of Facts and Rulings of Law⁴⁶ above, the Board has voted to order the following:

IT IS ORDERED that the Respondent is assessed an ADMINISTRATIVE FINE in the amount of twenty thousand dollars (\$20,000.00) due within thirty (30) days of the effective date of this Order. The Board's authorization for such action is RSA 329:24. See RSA 329:24, III(b) and Amended Notice of Hearing, paragraph 6C. The payment shall be made in the form of a money order or certified 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.

⁴⁵ Tr. 99; 101-102; 116 ("Actually, I had a room full of patients on the other side and I asked him would it be okay to attend that and come right back, and he said yes...").

⁴⁶ The Board has reviewed the Respondent's proposed order, which is inconsistent with the findings above and therefore is not approved. Because of that document's structure, the Board is unable to rule individually on each finding of fact and ruling of law. The Board has reviewed the Hearing Counsel's proposed findings of fact and rulings of law. To the extent they are consistent with the above order, they are granted; to the extent they are not consistent, they are denied. Specifically, paragraphs 1, 2, 3, 4, 5, 10, 11, 13, 14, 18, 20, 21, and 22 are granted; no paragraphs are denied; paragraphs 6, 7, 8, 9, 12, 15, 16, 17, and 19 are neither granted nor denied.

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 and/or unlawful practice and/or unlawful conduct, and a separate and sufficient basis for further 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 8, 2012

*\BY ORDER OF THE NEW HAMPSHIRE
BOARD OF MEDICINE

Penny Taylor
(Signature)

PENNY TAYLOR
Penny Taylor, Administrator
Authorized Representative of the
New Hampshire Board of Medicine

*\ Amy Feitelson, M.D., Board member, recused.