

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

**In the Matter of:
Ralph Sloan Wilson, M.D.
License No.: N/A
(Adjudicatory/Disciplinary Proceeding)**

Docket #: 13-05

FINAL DECISION AND ORDER

Before the New Hampshire Board of Medicine (“Board”) is an adjudicatory/disciplinary proceeding in the matter of Ralph Sloan Wilson, M.D. (“Respondent” or “Dr. Wilson”).

Background Information

In January of 2013 the Board received information that the Respondent, in his capacity as a physician licensed in the State of Arkansas, was self-prescribing non-controlled substances and filling those prescriptions at a retail pharmacy in Portsmouth, New Hampshire. As a result of this information, the Board commenced an investigation to determine whether the Respondent violated RSA 329:1 and RSA 329:24.

The investigation was initially completed on March 21, 2013 and then supplemented on June 20, 2013. Based upon the information gathered during the investigation the Board determined that there was a reasonable basis for commencing an adjudicatory hearing pursuant to RSA 329:24. The matter was therefore referred to the Administrative Prosecution Unit (APU) of the Office of the Attorney General on July, 9, 2013. The referral alleged concern over whether Dr. Sloan was engaged in the practice of medicine in New Hampshire without a license, a violation of RSA 239:24.

A Notice of Hearing was issued on November 12, 2103 scheduling the adjudicatory hearing for January 8, 2014 at 1:00 p.m. at the offices of the Board of Medicine. The Notice of

Hearing alleged that according to data provided by Wal-Mart concerning the Respondent's prescribing profile for the period between January 1, 2010 through December 31, 2012, the Respondent wrote numerous prescriptions for non-controlled substances and filled those prescriptions at the Wal-Mart pharmacy located at 2460 Lafayette Road, Portsmouth, New Hampshire. Specifically, pursuant to the data contained in the prescribing profile, the Respondent wrote at least ten (10) unique prescriptions in 2010, at least four (4) unique prescriptions in 2011 and at least four (4) unique prescriptions in 2012. Many of those prescriptions permitted multiple refills.

The Notice further indicated that on December 11, 2012, the Respondent wrote a prescription in New Hampshire which the Portsmouth, Wal-Mart Pharmacy (pharmacy) refused to fill because it was identified as being self-prescribed. Thereafter, on or about March 29, 2013, the Respondent wrote to the pharmacy indicating he intended to submit a new prescription to replace the prescription that the pharmacy refused to fill and threatening legal action if the prescription was denied. This letter was copied to the Board. The prescription was ultimately filled.

The Notice also specified the issues to be determined at the adjudicatory hearing and included:

- A. Whether between approximately January of 2010 and April 30, 2013, the Respondent unlawfully practiced medicine by writing prescriptions for non-controlled substances in New Hampshire, an alleged violation of RSA 329:1 and RSA 329:24; and
- B. If the above allegation is proven, whether and to what extent the Respondent should be subjected to one or more of the sanctions authorized by RSA 329:24, III.

The hearing commenced just after 1:00 p.m. on January 8, 2014. The APU was represented by Senior Assistant Attorney General Jeffrey Cahill. Dr. Wilson was represented by Attorney David Slawsky of the law firm Nixon, Vogelman, Barry, Slawsky & Simoneau, P.A.

The APU presented two witnesses Doris Lefebvre, Board Investigator; and Peg Clifford, Chief Compliance Investigator for the NH Board of Pharmacy. The APU also submitted the following exhibits:

1. Walmart Pharmacy Prescription Report
2. Dr. Wilson issued prescription dated December 11, 2012
3. Email from Dr. Wilson to Investigator Lefebvre dated January 8, 2013
4. Investigator Lefebvre letter to Dr. Wilson dated January 25, 2013
5. Dr. Wilson letter to Board dated January 28, 2013
6. Dr. Wilson letter to Board dated March 25, 2013
7. Dr. Wilson letter to Walmart Pharmacy dated March 29, 2013
8. Dr. Wilson issued prescription dated April 1, 2013
9. Dr. Wilson letter to NH Pharmacy Board dated April 1, 2013
10. Dr. Wilson letter to Board received December 12, 2013
11. Seven Prescription Images, various dates, written by R. Sloan Wilson, M.D. on Retinal Group, Ltd. Prescription pad and issued to Sloan Wilson of Rye, N.H.

The Respondent testified on his own behalf and did not present any other witness. He submitted the following exhibits:

- A. Nine Page Document consisting of type written Biographical Sketch, Introductory Remarks, Chronological Order of Events, Survey of other state medical board synopsis, and list of questions.

With Attachments:

- A. Arkansas Prescription – blank
- B. 7 Questions to NHBOM and Reply dated 1/8 and 1/10 2013
- C. Letter to Holly Rousseau of Wal-Mart dated 1/11/13 and letter to BOP dated 1/17/13
- D. Letter from NHBOM dated 1/28/13

- E. Reply to NHBOM dated 1/28/13
- F. Letter to Holly Rousseau of Wal-Mart dated 3/25/13
- G. Notice of Hearing dated 11/20/13
- H. Reply to NHBOM dated 12/8/13
- I. NHBOM Proposed Settlement dated 12/19/13

The Parties stipulated to the introduction and admissibility of all exhibits.

The Board Members present for the hearing included:

Mark Sullivan, P.A.
John H. Wheeler, D.O.
Amy Feitelson, M.D.
Robert J. Andelman, M.D.
Robert M. Vidaver, M.D.
Michael Barr, M.D.
Gail Barba, Public Member
Daniel Morrissey, O.P., Public Member
Edmund J. Waters, Jr., Public Member

Mr. Waters served as the presiding officer. The parties were cautioned to present only relevant evidence and to watch for repetitious testimony.

Ms. Lefebvre, was sworn under oath and testified about her position as investigator and how she came to investigate the issue. She testified that she understands that a licensee in New Hampshire cannot write prescriptions for themselves for long-term maintenance and that it “occurred to her” that Dr. Sloan might be practicing medicine in New Hampshire where he appears to have written the prescriptions in New Hampshire for himself, to be filled in New Hampshire.

Ms. Lefebvre went on to provide testimony and explain Exhibits 1, 3, 4, 5, 6, 7. She addressed the Wal-Mart prescription report and the timing of the fill date, the sold date, and the types of drugs prescribed. Ms. Lefebvre also described her interaction with Dr. Sloan and his

incredulity over the fact that Wal-Mart had denied him the uncontrolled prescription where he had been acting as his own physician for over 50 years and Wal-Mart had been filling his prescriptions for over ten of those years. On cross examination she was questioned as to whether she contacted the Arkansas medical board to determine if licensees there could self prescribe. Ms. Lefebvre was also asked whether a referral had been made to Arkansas, to which she replied that it had not, as the New Hampshire case was not closed.

The APU also offered the testimony of Margaret Clifford, the chief compliance inspector for the Board of Pharmacy. Ms. Clifford was sworn in as a witness and offered testimony regarding Exhibit 11. Ms. Clifford noted that she contacted the Wal-Mart HQ and obtained the scanned images of the prescriptions filled by Dr. Wilson at the Portsmouth pharmacy. She noted that the address for the prescription was Dr. Wilson's in Rye, New Hampshire, walked through the dates of the seven prescriptions and also explained that the prescriptions were not "transfers." She explained that the prescriptions did not appear to be written in Arkansas and simply filled here – as that would constitute a transfer.

Ms. Clifford further testified that there were unique and distinct prescriptions filled in 2010 (10 different) and in 2011 (4 or 5 different ones). She explained that the Board received a complaint from Dr. Wilson about the Portsmouth pharmacy and the Board dismissed the complaint with "no further action." On cross-examination, Ms. Clifford agreed that this was not a case regarding a concern over diverting meds or a concern over prescribing controlled medications. She also agreed that NH pharmacies fill prescriptions written by doctors licensed in other states. There was also discussion about Dr. Wilson acting as his own primary care physician.

Dr. Wilson took the stand on his own-behalf. He explained that he was a practicing retina surgeon for over 30 years and had never been sued, had served as an expert witness in many cases and practiced in other states other than Arkansas. He went on to explain that he retired 15 years ago but kept his Arkansas license specifically so that he could write prescriptions.

Dr. Wilson also testified, incredibly, that Arkansas encourages those licensees who have retired but who keep the license to self-prescribe. He asserted that he never had a problem until he got the very “peculiar letter” from the Board relating to his “practicing medicine” in New Hampshire. He explained that he appreciated what the Board does but feels strongly that he is not practicing medicine in New Hampshire but simply having an out of state prescription filled in New Hampshire. He additionally explained that the prescriptions should be considered Arkansas prescriptions because they were written on an “Arkansas pad.”

On examination by the Board, Dr. Wilson admitted that he does not regularly see or have a primary care physician. He has hypertension and gout issues but manages them with the self-prescriptions. Dr. Wilson also admitted that he spends the majority of his time in New Hampshire and the prescription pad is for a defunct organization; i.e. that Retinal Group Ltd, is no longer an operating organization. Dr. Wilson presented no documentary proof that the State of Arkansas encourages its licensees to self-prescribe. He also provided inconsistent testimony regarding whether he wrote the prescriptions at issue in New Hampshire or in Arkansas, but did admit that it was possible that one or more of those prescriptions could have been written in New Hampshire.

The parties were given an opportunity to present brief closing remarks and submit any additional remarks or findings of fact to the Board within 10 days. Both parties provided closing

statements. On January 13, 2014, the Respondent submitted a Post-Hearing pleading containing a request for twenty-two (22) findings of fact and seven (7) rulings of law. Hearing Counsel also submitted sixteen (16) findings of fact and six (6) rulings of law on January 27, 2014.

Discussion and Conclusion

A. Findings and Rulings

The Board considered all of the testimony presented and all the exhibits entered. In reviewing the Respondent's proposed findings of facts the Board notes that Exhibit A, Biographical Sketch, reflects that Dr. Wilson was born in 1937 and obtained a degree from Davidson College in 1959. The exhibit reflects that he received a medical degree in 1963 from University of Arkansas Medical School and completed a program at Harvard Medical School in 1965.

Dr. Wilson also testified that he was licensed in Arkansas and continues to maintain that license in active/retired status. Thus, the Board accepts and acknowledges the additional biographical information as contained in Exhibit A and findings of fact paragraphs 1 through 8.

Dr. Wilson also testified that the sole reason he maintains his license is so he can continue to prescribe himself medications for his own health maintenance. As such, proposed finding of fact # 9 is admitted. The Board, however, finds incredible the testimony that the Arkansas Board actually encourages retired licensees to self-prescribe. The Respondent did not submit any proof of this from the Arkansas Board of Medicine and likewise failed to submit any Arkansas law or rule that would substantiate the statement.

To the contrary, the Board recognizes that the American Medical Association Code of Ethics indicates that physicians should not generally treat themselves. Here, Dr. Wilson indicated that he regularly treats himself, as he has no primary care physician, but will from time

to time call a physician friend or former colleague to consult if necessary. Dr. Wilson described that he monitors himself, and knows how to control his gout flare-ups. He, however, admitted that he does not regularly review his hypertension and further does no regular testing related to this mild and persistent high blood pressure. Such a practice is concerning to the Board, but this does not amount to the unlicensed practice of medicine in New Hampshire.

The issue, instead, relates to whether Dr. Wilson's writing of prescriptions in New Hampshire where he is not licensed amounts to the unlicensed practice of medicine in this state. Respondent argues that none of the prescriptions he prescribes for himself are narcotics. *See* Proposed finding of fact #10. We admit that no evidence was presented that Dr. Wilson was self-prescribing a controlled substance. Nonetheless, the continued pattern of prescribing maintenance related non-controlled drugs to oneself in New Hampshire is not only problematic but alarming. When treating oneself a physician may be inclined to treat medical problems that go beyond their experience or training. Additionally, a physician that has retired may not be keeping up with best practices and may do more harm than good. The habit of continually writing prescriptions in New Hampshire to oneself to refill or start a new medical regimen without any third -party practitioner monitoring is inconsistent with sound professional judgment, especially where the Respondent admits that he keeps no medical record on himself, but simply has the information in his head.

The evidence reveals that Dr. Wilson spends a majority of his time in New Hampshire, he testified at least one day more than 6 months each year. Proposed finding #12. He thus, considers himself a resident of New Hampshire. Regardless of the fact that he may have written prescriptions for himself for decades, the mere fact that there is a history does not make the practice prudent or for that matter lawful.

The Board also finds unpersuasive, Dr. Wilson's testimony about where he writes the prescriptions. At best, Dr. Wilson's memory was inexact. He could not say if prescriptions were written in Arkansas or New Hampshire. Although, evidence revealed there was a matter of hours, in one instance, from the date on the prescription, to when it was called in and then eventually picked up. Additionally, Dr. Wilson admittedly writes the prescription using his Arkansas license on a prescription pad for a practice that is no longer a "going-concern."

Given this evidence the Board also admits the proposed findings of fact numbers 9 through 16, 18, 21 and 22. The Board neither admits nor denies the proposed findings in paragraph 17, 19, 20. The Board cannot determine what Dr. Wilson's understanding may have been, nor can it say what Arkansas considers unethical as there was no documentary evidence submitted. Interestingly, Respondent's Exhibit A, while containing a purported "survey of states" does not include any information from Arkansas.

Also noteworthy, while not evidence, but nonetheless persuasive, is the fact that Dr. Wilson, through counsel admits that he "probably has" "violated the letter of the law." He, however, contends that his argument is principled – that he is battling on "behalf of the practice of medicine."

RSA Chapter 329 is the state law of New Hampshire that regulates Physicians and Surgeons in New Hampshire. The statute at RSA 329:1 refers to "practice" and reads,

Any person shall be regarded as practicing medicine under the meaning of this chapter who shall diagnose, treat, perform surgery, or prescribe any treatment of medicine for any disease or human ailment.

RSA 329:24, I defines unlawful practice and states that "whoever, not being licensed or otherwise authorized according to the law of this state, ... shall practice medicine...is engaged in the unlawful practice."

The statute goes on to establish that a person who engages in the unlawful practice, shall be guilty of a misdemeanor. RSA 329:24, II. The Board is authorized after hearing and affirmatively finding someone is engaged in the unlawful practice to take action by any number of means including the issuance of a cease and desist. RSA 329:24, III (a).

Likewise, N.H. Admin Rule Med 102.04 defines the “practice of medicine” citing to RSA 329:1, and also defines at Med 102.05 a “physician.” A “physician” in N.H. means a doctor of medicine or doctor of osteopathy who holds a *current license* to practice issued by the Board pursuant to RSA 329.” [emphasis added].

While the Board acknowledges that the “primary responsibility and obligation of the board of medicine is to protect the public;” (RSA 329:1-aa), (see Respondent’s proposed rulings of law#23), this does not negate that the practice of medicine in New Hampshire is a privilege granted according to the “laws enacted by the legislature.” Under those laws no person may prescribe a treatment of medicine without being licensed in this state. This does not relate to the filling of an out-of-state prescribed medication.

The Board recognizes that Dr. Wilson may write a prescription in Arkansas and have it filled in another state – even New Hampshire. The problem, in this case, however is created where it is difficult to discern in which jurisdiction the prescription was written.

After reviewing the additional proposed rulings of law, the Board denies paragraphs 24, 25, 28 and 29. The Board neither admits nor denies paragraph 26, as no support for that conclusion was provided at the hearing. The Board admits that it is authorized to, within its discretion, after a hearing an affirmative finding, issues a cease and desist order to any person engaged in the unlawful practice of medicine. RSA 329:24, III (a), and IV. Likewise, the Board is authorized to impose an administrative fine for the continuation of an unlawful practice in the

amount of \$1,000 per day for each day the activity continues after notice from the Board that the activity shall cease. RSA 329:24, III (c).

As to Hearing Counsel's proposed Findings of Fact and Rulings of Law, the Board accepts Findings 1-3, 5-15. The Board accepts in part Finding of Fact #4 and neither accepts nor rejects Finding of Fact #16. As to Hearing Counsel's Rulings of Law, the Board accepts paragraphs 1, 2, 4, 5 and 6, and neither accepts or rejects paragraph 3 as submitted.

B. Conclusion

While the Board appreciates the principled nature of Dr. Wilson's argument, we find that Dr. Wilson is not a physician in New Hampshire under its laws and regulations, yet he admittedly prescribes a treatment of medicine for a disease or human ailment. As such, Dr. Wilson has engaged in the unlawful practice of medicine in New Hampshire where he writes a prescription in this State for his continued maintenance medical issues.

It is therefore ORDERED, that the Respondent shall,

A. Cease and Desist from writing prescriptions in New Hampshire unless he becomes a licensed physician in this State; and it is

FURTHER ORDERED, that Respondent

B. Be subject to the imposition of an administrative fine in the amount of \$1,000.00 for any violation that is brought to the Board's attention.

*BY ORDER OF THE BOARD

DATED: 2/12/2014

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

*Board Member Louis Rosenthal, M.D. recused.