

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

In the Matter of:

Docket #: 13-04

**ANTON HEINS, III, M.D.
License No.: 12382
(Show Cause Proceeding)**

FINAL DECISION AND ORDER

Before the New Hampshire Board of Medicine (“Board”) is a show cause proceeding in the matter of Anton Heins, III M.D. (“Respondent” or “Dr. Heins”) for license reinstatement. The issue before the Board is whether Respondent possesses the appropriate character and competency to possess a New Hampshire license. After a hearing on May 7, 2014, held at the Board of Medicine on Fruit Street in Concord, the Board finds and states the following:

I. Background Information and Procedural History

Respondent first obtained his license to practice medicine in New Hampshire in July 2004. In October 2007, following receipt of a complaint of professional misconduct, the Board began an investigation which ultimately led to additional complaints and a New Hampshire license suspension for a five year period, by consent agreement (“Agreement” or “Consent Order”) dated February 9, 2010.

On August 25, 2009, prior to the New Hampshire suspension, Dr. Heins pled guilty to a misdemeanor level unsworn falsification charge in Merrimack County Superior Court for submitting a false claim to the State's Medicaid program. He likewise settled with the State, agreeing to pay \$43,536.60 on allegations that he improperly billed the Medicaid program and that he improperly collected cash payments from Medicaid beneficiaries.

The February, 2010 Agreement allowed Respondent to petition for a stay of the last three years of suspension, after one year from the effective date of the Agreement. Additionally, the Agreement required Respondent to certify that he would conduct his practice in accordance with

Board-approved compliance and monitoring, as well as contract with a compliance monitor. *See* Consent Order, pp. 15-26. The Consent Order additionally imposed a \$10,000 administrative fine against Dr. Heins, based on evidence related to his care of patients and his record keeping practices. The Consent Order, by its terms, did not address, settle or resolve Dr. Heins' conduct related to billing under the Medicaid program and of Medicaid beneficiaries.

In February 2010 Respondent, moreover, voluntarily surrendered his license to practice medicine in Massachusetts in lieu of going through a disciplinary proceeding there. He likewise surrendered his American Board of Internal Medicine Certification.

Respondent's New Hampshire medical license lapsed on June 30, 2010, during the suspension period. On July 6, 2010, the Board sent Dr. Heins a letter reminding him that his license had lapsed, and that he had until September 28, 2010 to renew it. The letter made clear that if his license was not renewed by the date specified, he would need to file for reinstatement pursuant to N.H. Admin. Rule Med 301.04. Respondent did not attempt to renew his license by the deadline.

At the end of December 2010, Dr. Heins entered into a Settlement Agreement with the Massachusetts Executive Office of Health and Human Services in which he agreed to pay \$40,000 for allegedly improperly billing under laws governing the MassHealth program. In April 2011, Dr. Heins next surrendered his license to practice medicine in New York rather than face disciplinary proceedings. The next year, on March 26, 2012, Dr. Heins surrendered his DEA license/registration.

After serving two (2) years of his suspension, Respondent applied for a stay of his suspension. The Board reviewed his request on September 5, 2012 at its monthly meeting and in an Order dated September 11, 2012, granted the stay, thereby lifting the suspension. *See* Board

Order in Docket 09-01, dated September 11, 2012. Respondent's license, however, had lapsed at that time.

The Board received an application for reinstatement of license to practice medicine from Dr. Heins on January 2, 2013. The Board initially considered the application but noted that the application was incomplete as it failed to include a letter from the New Hampshire Medical Review Society stating that Respondent had met the Continuing Medical Education ("CME") criteria. The Board received verification from the Medical Review Society on March 1, 2013.

As such, the application was deemed complete on that day and in its next regularly scheduled meeting, on March 6, 2013, the Board reviewed the application and agreed that an investigation was necessary under Board rules and laws to determine whether Respondent had the necessary character and competency requirements for license reinstatement pursuant to RSA 329:14. Based upon the information provided in the Respondent's application (including a four page Addendum attached to it which admitted that Respondent's prescribing practices and recording keeping had been previously poor) and obtained during the investigation, the Board voted on July 3, 2013 to issue a Notice of Hearing to Show Cause pursuant to Medical Administrative Rule ("Med") 301.04(e). *See* Show Cause Notice dated July 23, 2013.

The Notice scheduled a hearing for Wednesday, August 7, 2013, at 3:00 pm. for Respondent to show that he possesses the necessary character and competency under RSA 329:14 and Med 301.04(e) to reinstate his license. Respondent was reminded that he had the burden of proof in the matter.

Respondent, along with Hearing Counsel, asked for a continuance on July 26, 2013 until on or after October 2, 2013. The assented to motion was submitted by Brendan Mitchell, Esq., Respondent's former counsel. The Board issued an Order on July 31, 2013, granting the continuance and rescheduling the hearing to December 4, 2013 at 1 pm. A prehearing conference was scheduled for November 18, 2013. Additional continuances were sought and granted for

hearings scheduled in December and March. *See* Orders dated Nov. 25, 2013 and Feb. 13, 2014.

Due to this history, Respondent has not had an active NH license for four and a half years – just six months shy of the maximum five year suspension.

During the pre-hearing phase, the Parties engaged in discovery and filed Motions to Compel Production of Documents and a Further Motion to Compel Production of Documents. The hearing took place on May 7, 2014. Prior to the hearing, the attorneys from the Administrative Prosecution Unit submitted a prehearing Memorandum of Law, dated April 30, 2014. Respondent's counsel also filed a Memorandum of Law, dated May 2, 2014.

Following the hearing, Respondent presented the Board with a letter dated June 3, 2014 advising that the NH Professionals Health Program (NPHP) could monitor his practice and report on such practice as required by the Board.

II. May 7, 2013 Hearing

The hearing was held with the following Board Members in attendance:

Mark Sullivan, P.A., President of the Board
John H. Wheeler, D.O., Vice President of the Board
Robert M. Vidaver, M.D., DHHS Commissioner's Designee
Robert J. Andelman, M.D.
Michael Barr, M.D.
Emily R. Baker, M.D.
Gail Barba, Public Member
Daniel Morrissey, O.P., Public Member
Edmund J. Waters, Jr., Esq., Public Member¹

Respondent was represented by Cinde Warmington, Esq. of Shaheen & Gordon, P.A.

Hearing Counsel from the Office of the Attorney General were Attorney Michelle Heaton and Senior Assistant Attorney General Jeffrey Cahill.

The Parties agreed to the introduction of all exhibits found on their respective lists of witnesses and exhibits. Hearing Counsel submitted the following exhibits:

¹ Mr. Waters served as the presiding officer of the hearing.

1. Complaints received by the New Hampshire Board of Medicine regarding Dr. Anton Heins; including complaints from Mary Anne Agostino dated September 20, 2007; Joan Moquin dated May 15, 2008; Natalie Vuletich dated May 28, 2008; Judith Ward dated June 6, 2008; William L. Wescott received June 30, 2008; and an e-mail from Grafton County Department of Corrections dated May 29, 2008.
2. DEA Reports of Investigation including March 13, 2008 "Anonymous call to the Boston Diversion Office regarding Dr. Anton Heins III;" May 6, 2008 "On-Site Inspection and meeting; and May 12, 2008 "Patient files returned to Anton A. Heins III,"
3. Report of an interview with Dr. Kenneth Slater regarding reports from former patients of Anton Heins, III, M.D., conducted May 27, 2008
4. Report from Dr. Michael McGee regarding review of records of patients of Anton Heins, III, M.D., received June 2, 2008
5. Letter to David A. Garfunkel, Esq. from Philip B. Bradley, Assistant Attorney General dated May 20, 2009 with twenty-seven witness interview reports
6. Unsworn Falsification conviction, August 25, 2009; as well as Press Release from the Attorney General regarding State v. Dr. Anton A. Heins, III dated August 26, 2009; Return From Superior Court in Merrimack County dated August 25, 2009 with information; signed Acknowledgment and Waiver of Rights by Anton Heins dated August 25, 2009; Settlement Agreement with the New Hampshire Attorney General signed by Anton Heins dated September 11, 2009
7. Consent Order with the New Hampshire Board of Medicine dated February 9, 2010
8. Resignation of License to Practice Medicine in Massachusetts signed by Dr. Anton Heins dated February 18, 2010
9. Letter from Board to Dr. Heins dated July 6, 2010
10. Settlement Agreement with the Massachusetts Attorney General and the Massachusetts Executive Office of Health and Human Services signed by Anton Heins on December 1, 2010
11. Anton Heins' Addendum to Application for Reinstatement of Medical License received January 2, 2013

Respondent submitted the following exhibits:

- A. Reinstatement Application dated December 12, 2013
- B. February 9, 2010 Consent Order

- C. Compliance Contract with Affiliated Monitors, Inc. (“AMI”), dated October 12, 2009
- D. Second Amendment to Monitoring Contract – Education Plan, dated March 31, 2012
- E. Correspondence between AMI and Board, dated January 9, 2012
- F. Correspondence between Board and AMI, regarding approval of Compliance Plan
- G. CPEP Assessment, dated August 9-10, 2010
- H. Office Policies and Procedures prepared by AMI
- I. Correspondence from Debbie Waugh of AMI to Board, dated May 25, 2012
- J. The Applied Education Program – Clinical Knowledge, AMI
- K. Spreadsheet of Addiction Medicine Resources
- L. Correspondence from James Anliot of AMI to Board, dated August 21, 2012 re compliance with consent order.
- M. Board Order dated September 11, 2012
- N. CME credits for Dr. Heins
- O. Forensic Professional Fitness to Practice Evaluation, dated April 23, 2104 by Acumen Assessments, LLC.
- P. MRSC Report of Investigation, Complaint #2007-281.
- Q. Addendum to ROI, dated August 25, 2009, September 2009.
- R. MRSC Report of Investigation, Complaint #2013-50

Respondent additionally presented the testimony of Sally Garhart, M.D., Medical Director, NH Professionals Health Program (“NH PHP”) and James Anliot of AMI. He also provided testimony on his own behalf. Hearing Counsel presented the testimony of Dori Lefebvre, Investigator to the Board and Philip B. Bradley, Esq., Assistant Attorney General.

The Board found Dr. Garhart, Ms. Lefebvre and Attorney Bradley to be credible and convincing in their testimony. While Ms. Lefebvre and Mr. Bradley presented facts about Respondent’s past behavior and problems, Dr. Garhart focused more on her recent meeting with

Respondent which occurred in approximately March of 2014. She indicated that while she believed Dr. Heins was incredibly naive, she was struck by his articulate and poised responses in his interview with her and believed that with appropriate monitoring and safeguards Dr. Heins could service a population of patients that would not otherwise receive treatment.

Dr. Garhart testified that she recommended Respondent engage in a forensic evaluation at Acumen Assessments, LLC ("Acumen") for an assessment of his fitness and character to practice. She testified that Acumen was her "provider of choice" and that she prefers to use them to get an accurate sense of the medical professional she is working with. Respondent agreed to the evaluation which occurred during the week of April 7-10, 2014. The evaluation was presented as Respondent's Exhibit O. Dr. Garhart acknowledged that she agreed with the assessment and that she believed it was crucial that appropriate measures be implemented to control Respondent's practice.

Considerable attention during the hearing was focused on Exhibit O and in particular the Acumen recommendations for Dr. Heins' successful practice and best care for his patients. In fact, Exhibit O concludes that in the opinion of the Acumen evaluators, Respondent is "fit to practice medicine," "as long, as he adheres to ... very stringent recommendations. ... Dr. Heins appeared to do well in the past when structure was in place and in order to successfully practice in the future, structure and accountability will be paramount." *See Ex. O, p.14.*

Mr. Anliot of AMI also provided factual testimony about the compliance and monitoring of Respondent and the Office Policies and Procedure Manual found at Exhibit H. Dr. Heins entered into a Compliance Contract with AMI in October of 2009, prior to the imposition of discipline by the Board. Mr. Anliot indicated that he had been working with Dr. Heins for approximately four and one half years and they had established appropriate standards of procedure to be used in the medical office.

In particular, Exhibit H, the Office Policies and Procedures Manual was produced as a guide to promote compliance with applicable state and federal law, as well as to improve the quality of patient care. Additionally, Dr. Heins submitted evidence that the following improvements had been implemented prior to his suspension:

1. Expanded physician notes including a functional assessment at each patient visit including the taking of blood pressure at each visit (Ex S, p. 1-2);
2. Maintaining a record of any prescription written by Dr. Heins including a photocopy of the prescription (Ex S, p. 1-2);
3. The implementation of additional office hours (Ex S, tab B);
4. The implementation of a physician intake; physical exam form (Ex S, tab E);
5. Patient meetings were conducted only on-site (Ex S, p. 1); and
6. Random drug screens were implemented.

Dr. Heins testified about his character and fitness to once again practice and be licensed in New Hampshire. He indicated he graduated from medical school in 1977 and practiced successfully for many years in the area of internal and addiction medicine. Dr. Heins completed his residency in Internal Medicine in 1980. He practiced and served as Medical Director for various addiction treatment programs and had an otherwise essentially unblemished career until he opened a private practice here in New Hampshire in 2004, when complaints started to appear in 2007. Respondent had previously worked in New Hampshire in the mid-1990's without any issue.

Testimony and exhibits presented by Respondent and Mr. Anliot demonstrated that Respondent worked to satisfy the components of the 2010 Consent Order and also underwent a global competency evaluation at the Center for Personalized Education for Physicians. Testimony was presented to also demonstrate that Respondent attempted to fill in any competency gaps.

Ms. Lefebvre and Mr. Bradley provided testimony regarding Respondent's conduct related to his criminal misdemeanor conviction, the allegations that he exchanged prescriptions for money,

his conduct relating to patients he was treating in Massachusetts, prescribing a controlled substance in Massachusetts without a license to do so, and his civil settlement with the New Hampshire Medicaid Fraud Unit. Hearing Counsel's position was that these items, where they had never been part of the basis for the Consent Order, should be taken into consideration when analyzing character and fitness for license reinstatement. *See* Hearing Counsel's Pre-Hearing Memorandum of Law.

Testimony, here, focused on Respondent's failure to properly establish a true physician-patient relationship with most of his patients. Evidence was presented that Dr. Heins' medical records showed little evidence of obtaining a medical history, making a diagnosis, documenting a treatment plan, or documenting the prescribing of drugs. In some cases, Respondent only met with patients, in public places, briefly before prescribing a controlled substance. The testimony also established that Respondent was treating far more patients than appropriate under his DEA license, and that those he did treat, he did not take vital signs, request toxicology screenings, or request medical records from a patient's primary care physician. Hearing Counsel attempted to show that evidence from the New Hampshire Medicaid Fraud Unit's investigation also suggested that Respondent was still attempting to treat patients for pain management, after he was forced to reduce the number of patients he treated for opioid addictions.

The Acumen Report, at Exhibit O, addressed some of these issues, citing particular concern of an "unsettling" nature, to include allegations that he exchanged Suboxone prescriptions for money; that he saw upwards of 70 patients a day; and had no formal treatment process for Suboxone patients. Ex. O, pp. 1-2. Acumen requested that Dr. Heins submit to a polygraph examination regarding these issues and he agreed. *Id.*, p. 13. Essentially, Respondent denied all of the following allegations: 1) seeing upwards to 70 patients per day in New Hampshire; 2) agreeing to provide controlled substances for money without a formal treatment process; and 3) meeting patients in a park and charging them \$2500. The so-called forensic polygraph results

indicated Respondent had “no indication of trying to deploy deception” in responding to these questions. The Acumen Report did, however, suggest that Respondent had an “overly-relaxed appreciation of rules and regulations.” *Id.* It also suggested that because of his particular personality traits that he pursue an employed position, rather than self-employed practice. *Id.*, at p. 14.

At the hearing, Respondent persisted in his denial of seeing upwards of 70 patients in a single day and testified that the DEA Report was inaccurate. He suggested that he treated half of his opioid patients less than weekly. Regardless of the testimony and the Acumen recommendation, Dr. Garhart opined, however, that because of his situation Respondent would likely be able to obtain work only as a solo-practitioner.

III. Analysis and Rulings of Law

The question before the Board is whether Respondent possesses the necessary education, character and other professional qualifications to practice medicine and whether any circumstances exist which would be grounds for disciplinary action. *See* RSA 329:14. In making this determination, the Board is free “to consider a broad range of factors bearing on professional competence, including allegations of dishonesty and unprofessional and negligent conduct.” *Appeal of Dell*, 140 N.H. 484, 491 (N.H. 1995). Because RSA 329 was enacted “to protect the public from persons unfit to practice medicine,” the Board, in its discretion, may consider past allegations of negligence and misconduct when determining a physician’s professional competence. *Id.* at 491, 497.

It first must be noted that we are at this stage because the Respondent allowed his license to lapse while he was under suspension in docket 2007-281. Pursuant to RSA 329:16-e, failure to renew a license within the statutory period of time results in the automatic lapse of the license. *See* RSA 329:16-e. Once the license has lapsed, it can only be reinstated upon payment of the reinstatement fee and a showing by the applicant “of such evidence of professional competence as

the board may require.” *Id.* It is Respondent who carries the burden to prove by a preponderance of the evidence that the basis for the original disciplinary action has been satisfactorily remediated, that no additional charges of misconduct are pending, and that he meets all the character and competency requirements of an applicant for initial licensure. N.H. Admin. R. Med 031.04 (e).

Stripped to its core, this case is one where Hearing Counsel contends that Respondent does not possess the necessary character to be reinstated to the practice of medicine given the patient care concerns (particularly patients on Suboxone), inadequate record keeping, inappropriate billing, and limited office appointments. Respondent, on the other hand, contends that while he had a slipshod documentation practice and failed to appropriately bill he has met every requirement the Board imposed through the Consent Order. Respondent further asserts that he has the competence to practice as determined by CPEP and affirmed by the monitor, as well as being found fit to practice by Acumen. He additionally contends that the Board has already acknowledged that he satisfactorily remediated his past practice and actions when it stayed the suspension of his license.

In evaluating character and competence, we evaluate an applicant’s honesty and professionalism. In this instance we reject the notion put forward by Respondent that because he “passed” a polygraph he must be telling the truth. We need not, however, resolve the issue of whether Dr. Heins exchanged prescriptions for cash. Those issues were part of the previous conduct, which while we take into consideration; we do not place all the evidentiary weight. We also reject Respondent’s claims that his memory may be faulty given the passage of time, as well as the claim that he has taken full responsibility for his past conduct. Dr. Heins still contends he simply was over accommodating to his patients’ needs; rather than lazy, excessively casual and unprofessional in the past. That said, his poor judgment and his failure to appreciate regulatory requirements or dismissive attitude towards rules certainly give us pause.

We look nonetheless at his actions in moving forward with monitoring and evaluations as ordered and his willingness to remain under a monitoring program with the NHPHP. While Dr.

Heins' past actions are very troubling, he has been vouched for by Dr. Garhart, for whom we have the utmost respect. Dr. Garhart has expressed her opinion that with appropriate safeguards, Dr. Heins has the ability to successfully provide for his patients. So too, the Acumen Report reflects that when employed in a setting where others have administrative oversight Respondent was able to function well. Acumen opines with direct guidance Respondent is capable of insight and will be able, with oversight, to manage his practice appropriately.

The evidence suggests that Respondent meets the educational and training requirements under New Hampshire law. He previously held a license in New Hampshire, as well as Massachusetts and New York. CPEP has opined that Respondent demonstrated competency in the area of addiction medicine, with a few gaps. A plan of remediation was put in place and with the assistance of AMI, educational objectives were accomplished. The basis for the original discipline has been successfully remediated, based on the information as supplied by AMI. We, likewise, know of no other disciplinary charges currently pending against the Respondent

The question, therefore, is one of character and competence, not in the sense of medical knowledge, but more in the ability to successfully care for his patients by complying with law and regulation and the ethics of billing. In reviewing the evidence, we are not entirely convinced or persuaded that Respondent has either the character or competence to run a successful practice independent of supervision. Consequently, the Board will grant a restricted license on the foregoing basis:

- Respondent will continue to abide by the AMI compliance plan and contract with NHPHP.
- All aspects of the compliance program must be maintained for as long as Respondent continues to practice in New Hampshire. Additionally, Respondent will have Dr. Garhart and/or NHPHP provide input into his hiring of staff, and he shall hire a fulltime, qualified office manager, knowledgeable with Opioid Addiction Treatment.
- Respondent will have only one commercial office location, where he see patients only at that location. The Policy and Procedure Standards at Exhibit H, reveal that Respondent can come up with a plan of action on this front.

- Follow all practice protocols as provided in the Procedure Manual developed by AMI, and use any new best practice protocols that have been developed after the drafting of the Manual.
- Respondent will be monitored by NHPHP or its equivalent for as long as he continues a New Hampshire practice. He will comply with all recommendations made by the NH PHP. Failure to comply will be considered separate grounds for discipline by the Board.
- Respondent may also provide any other recommendations for solo-practice, which we would need to be approved and adopted by NHPHP.

It is therefore ORDERED, that Respondent be given a Restricted License to practice where he meets the above conditions.

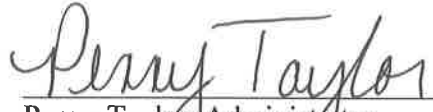
Should Respondent become affiliated with an established medical practice, he will be monitored for one year of that practice, but once no longer employed in a practice with others, monitoring must resume.

IT IS FURTHER ORDERED that the Respondent meaningfully participate in 15 hours of continuing medical education in the areas of (a) medical ethics (including an understanding of what and how one defines a patient-physician relationship under NH law and practice); (b) boundary training and proper prescribing training. These hours shall be in addition to the hours required by the Board for renewal of licensure and shall be completed within one year of the effective date of this Order. If Respondent has already completed coursework in the areas within the last year as described above, Respondent may submit proof of completion of said courses as soon as possible and no later than three months from effective date of this Order. The Board will review the course outlines, and proof of Respondent's attendance at said courses if Respondent has completed any course work prior to issuance of this Order.

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.

DATED: 8/18/2014

BY ORDER OF THE BOARD*



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

*Board Members, Louis Rosenthal, M.D. and Amy Feitelson, M.D., recused.

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