

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

In The Matter Of:

Docket No.: 17-03

**Gayle Spelman, P.A.
License No.: 0214
(Adjudicatory/Disciplinary Proceeding)**

FINAL DECISION AND ORDER

Before the New Hampshire Board of Medicine ("Board") is the adjudicatory/disciplinary proceeding of Gayle Spelman, P.A. ("Respondent" or "Ms. Spelman").

Background Information:

On or about December 24, 2015 and again on March 30, 2016, Respondent attempted to renew her physician assistant license with the Board. Respondent's attempted license renewals raised questions regarding whether Respondent properly notified the Board of both her termination of employment and changes in her registered supervisory physician and alternate registered supervisory physician. A question was also raised as to whether Respondent worked as a physician assistant when her license was expired. On June 15, 2017, the Board issued a Notice of Hearing. This hearing was conducted on August 2, 2017.

The Board commenced the adjudicatory/disciplinary hearing at 1:00 p.m. with Frank B. Dibble, Jr., M.D., Physician Member, as the Presiding Officer. Other Board members present¹ were:
Emily R. Baker, M.D., Physician Member, Vice Chair
John Wheeler, Physician Member
Daniel P. Potenza, M.D., Physician Member
Gilbert J. Fanciullo, M.D., Physician Member
Mark Sullivan, P.A., Physician Assistant Member

Attorney Matthew Mavrogeorge of the Administrative Prosecutions Unit ("APU") of the Office of the Attorney General served as Hearing Counsel. Ms. Spelman was represented by Attorney Jason Gregoire of Sheehan Phinney Bass & Green, PA. The Parties agreed to Hearing Counsel's exhibits, 1 through 17-g which were accepted into the record of the case. The Respondent did not submit any exhibits for the Board's consideration. The hearing was captured by stenographic record. Additionally, a *Stipulation of Facts & Applicable Law* was agreed to by the parties and submitted to the Board. Hearing Counsel noted

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

that Respondent stipulated to all the facts in the Notice of Hearing. The *Stipulation of Facts & Applicable Law* was accepted and entered into the record. Given the stipulation, hearing counsel presented no witnesses. Ms. Spelman presented testimony on her own behalf discussing what led to the events as outlined in the Order of Notice and explaining life events that may have had bearing on her recognized failures. She stated a "deep and heartfelt apology" and that her actions were not "representative" of her. Ms. Spelman, through counsel, did point out that no patient care was compromised by Ms. Spelman's shortcomings, by failing to renew her license and by failing to have an appropriate responsible supervising physician (RSP).

Findings of Fact:

The Board finds that Ms. Spelman attempted to be forthright in her narrative, and wanted the Board to understand her state of mind as it related to the licensing events.

In light of the exhibits presented, as well as the testimony of Ms. Spelman, the Board finds the following facts:

The Board first granted Ms. Spelman a license to work as a physician assistant in New Hampshire on February 2, 1994. Since that time, the Board has issued Ms. Spelman a Letter of Concern on December 5, 2012 for violating Med 609.03 and Med 602.04(a) in failing to report her termination from Planned Parenthood of Northern New England and her change of supervisory relationships. The letter went on to inform Respondent that the Board retains the right to discipline her in the future for this conduct. Thus, she was aware of the Board's authority in disciplining physician assistants.

In her December 2015 renewal application, Ms. Spelman listed Steven Youngs, D.O. as her RSP and Jay Smith, M.D. as her Alternate RSP. She later, in an email to the Board's Investigator, Dori Lefebvre, on May 11, 2016, acknowledged that in her December application, she should have crossed off the names of the RSP and ARSP, as they were no longer supervising her as of 6/6/15. She further stated in her email from May 11, 2016 that she should have notified the Board of the loss of her position at Health First in June 2015.

Respondent did not report her change in business address or her change in supervisory relationships to the Board in either June or September of 2015.

Since Respondent indicated in her December application that she was not practicing, her renewal fee was refunded and her license was not renewed. Respondent's license expired on December 31, 2015. Ms. Spelman was sent a form letter dated January 5, 2016, which was sent to all physician assistants who did not renew their licenses, which explained that her license had expired because it was not renewed on or before December 31, 2015. The letter went on to state, "Please be advised that, although you have an additional 90 days after the expiration date to renew your license by paying double the renewal fee, you are not permitted to practice as a physician assistant in New Hampshire until your completed renewal application has been received by this office." (emphasis on original)

On March 30, 2016, the last day of the 90 day period following the expiration date, Respondent applied for a renewal of her license ("March application"). In the March application, Respondent crossed out Health First as her employer and wrote in Onsite Drug Testing of NE ("Onsite"). Respondent again noted that her position with Health First "ended on 6/6/15." She also submitted a Change of Supervisory Physician Form in which she listed Peter Loeser, M.D. as her RSP and Paul Friend, M.D. as her ARSP. When submitting her March application, Ms. Spelman certified under the penalty of perjury that all information on the renewal application was currently accurate. The day after Respondent filed her March application, the Board's Administrator, Penny Taylor, called Respondent to discuss her application. Ms. Taylor noted that the effective date on Respondent's supervision form was March 29, 2016, and so she asked Respondent if she had been practicing as a physician assistant since January 1, 2016. Respondent indicated that "Yes" she had. See Exhibit 9. Respondent's license expired on December 31, 2015 and it remained expired until it was renewed on March 30, 2016, therefore, between January 1, 2016 and March 29, 2016, Respondent was not authorized to practice medicine as a physician assistant in New Hampshire. See RSA 328-D:2. Ms. Spelman, in answering a Board member's question about whether she knew she was practicing without a license explained, she did, but she "wasn't thinking clearly." Her testimony indicated that a number of issues, including the death of her parents, and assisting her ailing mother prior to her mother's passing exacerbated the poor decision making.

In a letter to the Ms. Lefebvre, dated February 15, 2017, Respondent states, "I was working during the time period from December 24, 2015 until March 29, 2016, mainly because I did not want to lose my NH PA license, as I know it would have involved a great deal more time and effort to reinstate it

had it lapsed." She further explained that she had been working at Onsite performing DOT medical exams. She added, "I had told the owner of Onsite that I still had my license and that I would keep looking for an RSP." Also in her letter of February 15, 2017, Respondent noted that she had been unable to get a RSP. She stated in part, "I realize now that I should not have been working without a Registered Supervising Physician." Respondent further stated, "While I was working without an RSP, I was merely performing DOT certification exams, not prescribing medications or treating any patients. Of course, I did make recommendations, but only to inform them they needed to see their primary care provider." Respondent apologized for her "lapses in judgment." Records obtained from Onsite pursuant to a Board issued subpoena confirm that Respondent conducted multiple DOT exams between January 1, 2016 and March 29, 2016, while her license was expired.

In an email to Ms. Lefebvre, dated January 24, 2017, Onsite's President Kimberly Reid Argrew noted that the last time that Respondent; "did physicals using her physician assistant license was during the week of March 26-April 1" and last day she worked was March 30, 2016. See Exhibit 14.

Rulings of Law:

Applicable Laws:

RSA 328-D:1, III states in pertinent part:

"Physician assistant" or "P.A." means a person qualified ... to provide patient services under the supervision and direction of a licensed physician in a variety of medical care settings.

RSA 328-D:2, I states:

No person shall practice as or hold himself out to be a physician assistant or use any letters designating himself as a physician assistant unless he is licensed in accordance with this chapter.

RSA 328-D:5 states:

Every person licensed to practice under this chapter shall apply to the board for annual renewal of license on forms provided by the board and shall pay a renewal fee as established by the board. Applications for renewal shall be filed no later than December 31 of each year and shall include a photocopy of the applicant's current national certification card. A license issued under this chapter shall not expire until the board has taken final action upon the application for renewal.

RSA 328-D:5-a, I states:

Any licensee who fails to apply for renewal under RSA 328-D:5 shall pay double the renewal fee, provided the licensee applies and pays the renewal fee no later than 90 days after the expiration date. Any licensee who fails to apply for renewal of his or her license within the 90-day period after expiration, shall have his or her license lapse. A lapsed license shall be reinstated only upon payment of a reinstatement fee as established by the board, and upon showing evidence of professional competence as the board may reasonably require.

Med 602.04 states:

- (a) If, for any reason, a physician assistant discontinues a supervised relationship with the RSP or ARSP, the PA shall immediately report this fact to the board in writing.
- (b) The PA shall not practice until such time as a new registered supervising physician, who shall comply with the requirements for supervision set forth under Med 602.01, has filed a written acceptance of supervisory responsibility with the board.
- (c) If the RSP designates new or additional ARSPs, who shall comply with the requirements for supervision set forth under Med 602.01, then the RSP shall so inform the board in writing.

Med 607.01(a) states:

A 90 day grace period to apply for renewal shall be allowed, subject to an additional late fee. If the renewal application is not received by the grace period date, the license shall be considered lapsed.

Med 609.03 states:

Licensees shall report any change in business or home address within 30 days of such change.

Rulings:

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

1. On or about January 1, 2016 through on or about March 29, 2016, Respondent engaged in professional misconduct under RSA 328-D:6, IX, by willfully and/or repeatedly practicing, and/or holding herself out, as a physician assistant in New Hampshire without having an active license from the Board, in violation of RSA 328-D:2, I; and
2. On or about January 1, 2016 through on or about March 29, 2016, Respondent engaged in professional misconduct under RSA 328-D:6, IV and/or Med 609.01 (a) (5), in the form of dishonest and/or unprofessional conduct, by practicing, and/or holding herself out, as a physician assistant in New Hampshire without having an active license from the Board, in violation of RSA 328-D:2, I; and
3. On or about January 1, 2016 through on or about March 29, 2016, Respondent engaged in professional misconduct under RSA 328-D:6, IV and/or Med 609.01 (a) (5), in the form of dishonest and/or unprofessional conduct, by falsely telling her employer that she had a license when her physician assistant license was expired; and
4. On or about January 1, 2016 through on or about March 29, 2016, Respondent engaged in professional misconduct under RSA 328-D:6, V and/or Med 609.01 (a) (2), by practicing as a

- physician assistant in New Hampshire independent, and outside, of the direction and/or supervision of a registered supervisory physician and/or alternate registered supervisory physician; and
5. On or about January 1, 2016 through on or about March 29, 2016, Respondent engaged in professional misconduct under RSA 328-D:6, IV and/or Med 609.01 (a) (5), in the form of dishonest and/or unprofessional conduct, by practicing as a physician assistant in New Hampshire independent, and outside, of the direction and/or supervision of a registered supervisory physician and/or alternate registered supervisory physician; and
 6. On or about January 1, 2016 through on or about March 29, 2016, Respondent engaged in professional misconduct under RSA 328-D:6, IX, by willfully and/or repeatedly practicing as a physician assistant in New Hampshire prior to an acceptance of supervisory responsibility form being filed with the Board by a registered supervisory physician who meets the requirements set forth in Med 602.01, in violation of Med 602.04 (b); and
 7. In or around December 2015, Respondent engaged in professional misconduct under RSA 328-D:6, I, by knowingly providing false information on her license renewal application by failing to cross off the names of her listed registered supervisory physician and alternate registered supervisory physician, as they were no longer supervising her as of on or around June 6, 2015; and
 8. In or around May/June 2012 and/or on or around September 4, 2015 , Respondent engaged in professional misconduct under RSA 328-D:6, IX, by willfully and/or repeatedly failing to timely report her change in business address due to her employment being terminated by Planned Parenthood and/or Health First, in violation of Med 609.03; and
 9. In or around May/June 2012 and/or on or around September 4, 2015 , Respondent engaged in professional misconduct under RSA 328-D:6, IX, by willfully and/or repeatedly failing to timely report the discontinuation of her supervised relationships with her registered supervisory physicians and her alternate registered supervisory physicians, in violation of Med 602.04 (a) and/or Med 609.01 (a) (7); and

Disciplinary Action:

After making its findings of fact and rulings of law, the Board deliberated on the appropriate disciplinary action. (Notice of Hearing, paragraph 6J - "If any of the above allegations are proven,

whether and to what extent Respondent should be subjected to one or more of the disciplinary sanctions authorized by RSA 328-D:7.”)

Based upon the above, the Board has voted the following:

IT IS ORDERED that the Respondent is Reprimanded.

IT IS FURTHER ORDERED that, within ninety (90) days of the effective date of this Order, Respondent shall secure a RSP and ARSP with a permanent full, unrestricted license in the state of New Hampshire that has been practicing for a minimum of three (3) years.

IT IS FURTHER ORDERED that as soon as the above RSP and ARSP are identified, the RSP or ARSP shall submit quarterly reports to the Board regarding Respondent's progress beginning three (3) months after she begins practicing with the RSP and ARSP, continuing indefinitely. Respondent may petition the Board after three (3) years to remove this restriction.

IT IS FURTHER ORDERED that, within sixty (60) days of the effective date of this Order, Respondent shall be evaluated by the New Hampshire Professionals Health Program (“NH PHP”) and, subsequently, follow all recommendations of the NH PHP.

IT IS FURTHER ORDERED that, within ninety (90) days of the effective date of this Order, Respondent shall complete ten (10) hours of continuing medical education (“CME”) in the area of medical ethics. These hours shall be in addition to the hours required by the National Commission on Certification of Physician Assistants (“NCCPA”).

IT IS FURTHER ORDERED that Respondent shall furnish a copy of this Final Decision and Order to any employer, any state licensing, certifying or credentialing authority to which she may apply for employment and/or privileges or to any current employer or credentialing authority. This must be complied with within 30 days from the effective date of this Final Decision and Order, and continue for as long as she holds a New Hampshire license.

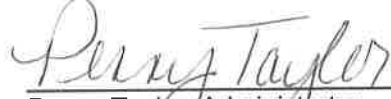
IT IS FURTHER ORDERED that the Respondent's violation of any of the requirements set forth in this Order shall be a separate basis for disciplinary action by the Board and will result in revocation of her New Hampshire license.

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: 9-11-2017

*BY ORDER OF THE BOARD



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

*David Conway, M.D., Board member, recused.