

Public

STATE OF NEW YORK DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER

OF

MARK DAVID WEINREB, M.D.
CO-12-02-0455-A

COMMISSIONER'S
SUMMARY
ORDER

TO: MARK DAVID WEINREB, M.D.
REDACTED

The undersigned, Sue Kelly, Executive Deputy Commissioner of Health, pursuant to New York Public Health Law §230, upon the recommendation of a Committee on Professional Medical Conduct of the State Board for Professional Medical Conduct, has determined that the duly authorized professional disciplinary agency of another jurisdiction, the State of New Hampshire, Board of Medicine, has made a finding substantially equivalent to a finding that the practice of medicine by **MARK DAVID WEINREB, M.D.**, Respondent, New York license number 188427, in that jurisdiction, constitutes an imminent danger to the health of its people, as is more fully set forth in the Order of Emergency License Suspension and Notice of Hearing, dated January 27, 2012, attached, hereto, as Appendix "A," and made a part, hereof.

It is, therefore:

ORDERED, pursuant to New York Public Health Law §230(12)(b), that effective immediately, **MARK DAVID WEINREB, M.D.**, shall not practice medicine in the State of New York or in any other jurisdiction where that practice is predicated on a valid New York State license to practice medicine.

ANY PRACTICE OF MEDICINE IN THE STATE OF NEW YORK IN VIOLATION OF THIS ORDER SHALL CONSTITUTE PROFESSIONAL MISCONDUCT WITHIN THE MEANING OF NEW YORK EDUCATION LAW §6530(29) AND MAY CONSTITUTE UNAUTHORIZED MEDICAL PRACTICE, A FELONY DEFINED BY NEW YORK EDUCATION LAW §6512.

This Order shall remain in effect until the final conclusion of a hearing which shall commence within thirty (30) days after the final conclusion of the disciplinary proceeding in New Hampshire.

The hearing will be held pursuant to the provisions of New York Public Health Law §230, and New York State Administrative Procedure Act §§301-307 and 401. The hearing will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct on a date and at a location to be set forth in a written Notice of Referral Proceeding to be provided to the Respondent after the final conclusion of the New Hampshire proceeding. Said written Notice may be provided in person, by mail, or by other means. If Respondent wishes to be provided said written notice at an address other than that set forth above, Respondent shall so notify, in writing, both the attorney whose name is set forth in this Order, and the Director of the Office of Professional Medical Conduct, at the addresses set forth below.

RESPONDENT SHALL NOTIFY THE DIRECTOR OF THE OFFICE OF PROFESSIONAL MEDICAL CONDUCT, NEW YORK STATE DEPARTMENT OF HEALTH, RIVERVIEW CENTER, 150 BROADWAY – SUITE 355, ALBANY, NEW YORK 12204-2719, VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED OF THE FINAL CONCLUSION OF THE PROCEEDING IMMEDIATELY UPON SUCH CONCLUSION.

THESE PROCEEDINGS MAY RESULT IN A DETERMINATION THAT YOUR
LICENSE TO PRACTICE MEDICINE IN NEW YORK STATE BE REVOKED OR
SUSPENDED AND/OR THAT YOU BE FINED OR SUBJECT TO OTHER
SANCTIONS SET FORTH IN NEW YORK PUBLIC HEALTH LAW §230-a.
YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN
THIS MATTER.

DATE: Albany, New York
Sept. 13, 2012

REDACTED

Sue Kelly
Executive Deputy Commissioner of Health
New York State Department of Health

Inquires should be directed to:

Michael G. Bass
Assistant Counsel
Bureau of Professional Medical Conduct
Corning Tower – Room 2512
Empire State Plaza
Albany, New York 12237
(518) 473-4282

**State of New Hampshire
Board of Medicine
Concord, New Hampshire**

In the Matter of:
Mark D. Weinreb, MD
License No. 9507
(Adjudicatory Proceedings)

Docket No. 12-01

**ORDER OF EMERGENCY LICENSE SUSPENSION
AND NOTICE OF HEARING**

1. RSA 329:18-b; RSA 541-A:30, III, and New Hampshire Board of Medicine Administrative Rule (“Med”) 409.01 authorize the New Hampshire Board of Medicine (“Board”) to suspend a license to practice medicine pending completion of an adjudicatory proceeding, in cases involving imminent danger to life or health. In such cases, the Board must commence a hearing not later than 120 days after the date of the emergency order. *See* RSA 329:18-b. The Board does not commence the emergency hearing within 10 days. *See*, 541-A:30, III. The Board may not continue such a hearing without the consent of the licensee to the continuation of the emergency suspension. *See*, RSA 329:18-b and Med 409.01. Postponement of the proceeding is prohibited unless the licensee agrees to continue the suspension pending issuance of the Board’s final decision. *See*, RSA 329:18-b and Med 409.01.

2. Mark D. Weinreb, MD (“Dr. Mark D. Weinreb, M.D.” or “Respondent”), holds an active license, No. 9507, issued on July 5, 1995, to practice medicine in the State of New Hampshire. Respondent practices medicine at Weinreb Pediatrics in Franklin, New Hampshire.

3. The Board has received information indicating that the continued practice of medicine by Dr. Weinreb poses an imminent threat to life, safety and/or health, which warrants the temporary suspension of Dr. Weinreb's license to practice medicine pending a hearing on whether permanent and/or temporary disciplinary sanctions should be imposed. An investigation was conducted and a Report of Investigation was provided to the Board.

4. In support of this *Order of Emergency License Suspension and Notice of Hearing*, the Board alleges the following facts:

- A. On or about December 12, 2011, the Board received a complaint from a pediatric psychiatrist, voicing concerns over Respondent's prescribing for mutual patients. The complaint specifically dealt with the prescribing of psychotropic medications. The psychiatrist questioned the validity of Respondent's diagnoses. The psychiatrist also questioned the variety and doses of the medications Respondent prescribed.
- B. Respondent had been treating patient T.P. for the past several years. A review of T.P.'s prescription profile revealed that over the course of an 11-month period, Respondent prescribed T.P. over 2,000 tablets of oxycodone. If taken as prescribed, these quantities and dosages could have been fatal.
- C. T.P.'s treatment record did not document justification for the oxycodone prescribing. Other medical providers had informed

- Respondent of concerns about T.P.'s oxycodone use. After T.P. was found to be non-compliant with a pain contract with an earlier provider, Respondent agreed to take over T.P.'s pain management.
- D. Respondent continued prescribing for T.P. even after learning that DCYF had initiated an investigation based on T.P.'s use of pain killers.
- E. Respondent failed to provide T.P.'s complete treatment record to Board investigators. A December 15, 2010 letter from another physician, advising Respondent about concerns about T.P.'s pain medication use, was not included in the record that was submitted to the Board.
- F. Respondent has been treating D.P. for the last several years. A review of D.P.'s prescription profile revealed that over the course of an 10-month period, Respondent prescribed D.P. over 1,200 tablets of oxycodone. If taken as prescribed, these quantities and dosages could have been fatal.
- G. D.P.'s treatment record did not document justification for the oxycodone prescribing. Although Respondent noted that D.P. suffered from back pain, there are no documented imaging studies, no documented orthopedic consult and no documented pain clinic consult.
- H. Respondent was Facebook friends with T.E. (mother to D.P. and T.P.). Respondent was also Facebook friends with D.P. Respondent and T.E. texted on numerous occasions. T.E. would request controlled drug

prescriptions for her children via text message. This behavior occurred after a former employer directed Respondent to take a boundaries course after complaints about excessive texting with the mothers of various pediatric patients.

- I. Respondent acknowledged prescribing oxycodone to H.L. H.L. was not a patient, but her child was. Respondent prescribed this controlled drug to H.L. without forming a valid physician/patient relationship.
- J. While attending a party at a female staff member's home, Respondent advised M.F., a pediatric patient of his and a party guest, that if she continued to misbehave he would increase her medication dosage. This comment was overheard by numerous other guests.
- K. Respondent treated nine-year old Patient C.M. for various mental health issues. Respondent and C.M. were Facebook friends. After becoming angry over a Facebook message from C.M., Respondent cancelled refills for C.M.'s maintenance medications. He advised C.M. that he would refill the prescriptions if she apologized.
- L. Respondent repeatedly hugged a female staff member in the office. Respondent had previously resigned his privileges at a Massachusetts hospital after the mother of a pediatric patient complained that he had hugged during her child's appointment.

5. Based upon the above information, the Board finds that the case involves imminent danger to life and/or health. Further, the Board believes there is a reasonable basis for both immediately suspending Respondent's license on a temporary basis, and for commencing an expedited disciplinary proceeding against Respondent pursuant to RSA 329:18-b, 541-A:30, III, and Med 409.01.

6. The purpose of this proceeding will be to determine whether Respondent has engaged in professional misconduct contrary to RSA 329:17, VI and RSA 329:18-b, which warrants the continued imposition of a temporary license suspension, the imposition of permanent disciplinary sanctions, or both. The specific issues to be determined in this proceeding are:

- A. Whether, on or between January 1, 2011 and January 1, 2012, Respondent committed professional misconduct by inappropriately prescribing psychotropic medications to pediatric patients, in violation of RSA 329:17, VI (c); and/or RSA 329:17, VI (d); and/or
- B. Whether on or between January 1, 2011 and January 15, 2012 Respondent committed professional misconduct by inappropriate and excessive (more than 2,000 tablets over 11 months) prescribing of oxycodone to Patient TP, in violation of RSA 329:17, VI (c); and/or RSA 329:17, VI (d); and/or Med 501.02 (i) (2) and/or
- C. Whether on or between January 1, 2011 and January 15, 2012 Respondent committed professional misconduct by inappropriate and excessive (more than

1,200 tablets over 10 months) prescribing of oxycodone to Patient DP, in violation of RSA 329:17, VI (c); and/or RSA 329:17, VI (d); and/or Med 501.02 (i) (2) and/or

- D. Whether on or between August 1, 2011 and January 15, 2012, Respondent committed professional misconduct by prescribing oxycodone to the mother of a pediatric patient without forming a valid physician/patient relationship, in violation of RSA 329:17, VI (c); and/or RSA 329:17 (l); and/or
- E. Whether on or between August 1, 2011 and January 1, 2012, Respondent committed professional misconduct by disclosing confidential information about pediatric patient M.F. at a party, in violation of RSA 329:17, VI (d); and/or
- F. Whether on or between August 1, 2011 and January 24, 2012, Respondent committed professional misconduct by “friending” pediatric patients and the mothers of pediatric patients on Facebook, in violation of RSA 329:17, VI (d); and/or
- G. Whether on or around September 24, 2011, Respondent committed professional misconduct by refusing to refill maintenance medication for a pediatric patient with mental health issues, because Respondent was angry with the patient over a Facebook comment, in violation of RSA 329:17, VI (c); and/or RSA 329:17, VI (d); and/or

- H. Whether on or between August 1, 2011 and October 1, 2011, Respondent committed professional misconduct by displaying poor physical boundaries with a female member of his staff, in violation of RSA 329:17, VI (d); and/or
- I. Whether on or between January 1, 2012 and January 24, 2012, Respondent committed professional misconduct by failing to provide Board investigators with a complete copy of T.P.'s medical record, in violation of RSA 329:17, VI (d); and/or Med 501.02 (b); and/or
- J. 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 329:17, VII.
7. While RSA 329:18-a requires that the Board furnish Respondent at least fifteen days' notice of allegations of professional misconduct and the date, time and place of an adjudicatory hearing, RSA 541-A:30, III and Med 409.01 require the Board to commence an adjudicatory hearing within ten (10) days after the date of an immediate, temporary license suspension order.
8. The Board intends to complete this adjudicative proceeding within the one hundred twenty (120) day time period provided by RSA 329:18-b and Med 409.01. Accordingly, neither the date of the initial evidentiary hearing nor the date for concluding this proceeding shall be postponed or extended unless Respondent agrees to continue the suspension period pending issuance of the Board's final decision in this matter. *See* RSA 329:18-b, 541-A:30, III, and Med 503.01.

THEREFORE, IT IS ORDERED that Respondent's New Hampshire license to practice medicine is immediately suspended until further order of the Board; and,

IT IS FURTHER ORDERED that an adjudicatory proceeding be commenced for the purpose of resolving the issues articulated above pursuant to RSA 329:17; 329:18-a; 329:18-b; 541-A:30, III; and Med 409.01. To the extent that this order or the Board's rules do not address an issue of procedure, the Board shall apply the New Hampshire Department of Justice Rules, Part 800; and,

IT IS FURTHER ORDERED that Mark D. Weinreb, MD shall appear before the Board on February 1, 2012 at 8:30 a.m., at the Board's office located at 2 Industrial Park Drive, Concord, N.H., to participate in an adjudicatory hearing and, if deemed appropriate, be subject to sanctions pursuant to RSA 329:17, VII; and,

IT IS FURTHER ORDERED that if Respondent elects to be represented by counsel, at Respondent's own expense, said counsel shall file a notice of appearance at the earliest date possible; and,

IT IS FURTHER ORDERED that Respondent's failure to appear at the time and place specified above may result in the hearing being held *in absentia* and disciplinary sanctions imposed without further notice or an opportunity to be heard; and,

IT IS FURTHER ORDERED that Sarah T. Blodgett, 33 Capitol Street, Concord, N.H., 03301 is appointed to act as Hearing Counsel in this matter with all the authority within the scope of RSA Chapter 329 to represent the public interest. Hearing Counsel shall have the status of a party to this proceeding; and,

IT IS FURTHER ORDERED that Edmund J. Waters, Jr., Board Member, shall act as presiding officer in this proceeding; and,

IT IS FURTHER ORDERED that any proposed exhibits, motions or other documents intended to become part of the record in this proceeding, be filed by the proponent with the Board, in the form of an original and nine (9) copies, and with an additional copy mailed to any party to the proceeding, and to Assistant Attorney General Elyse Alkalay, Counsel to the Board, N.H. Department of Justice, 33 Capitol Street, Concord, New Hampshire 03301. All responses or objections to such motions or other documents are to be filed in similar fashion within ten (10) days of receipt of such motion or other document unless otherwise ordered by the Board; and,

IT IS FURTHER ORDERED that a witness and exhibit list and any proposed exhibits, pre-marked for identification only, shall be filed with the Board no later than two (2) days before the date of the hearing. Respondent shall pre-mark his exhibits with capital letters, and Hearing Counsel shall pre-mark her exhibits with Arabic numerals; and,

IT IS FURTHER ORDERED that unless good cause exists, all motions shall be filed at least three (3) days before the date of any hearing, conference, event or deadline which would be affected by the requested relief, except any motion seeking to postpone a hearing or conference, which shall be filed at least ten (10) days before the hearing or conference in question; and,

IT IS FURTHER ORDERED that the entirety of all oral proceedings be recorded verbatim by the Board. Upon the request of any party made at least two (2) days prior to the

proceeding or conference or upon the Board's own initiative, a shorthand court reporter shall be provided at the hearing or conference and such record shall be transcribed by the Board if the requesting party or agency shall pay all reasonable costs for such transcription; and,

IT IS FURTHER ORDERED that all documents shall be filed with the Board by mailing or delivering them to Penny Taylor, Administrator, N.H. Board of Medicine, 2 Industrial Park Drive, Suite 8, Concord, New Hampshire 03301; and,

IT IS FURTHER ORDERED that routine procedural inquiries may be made by contacting Penny Taylor, Administrator, N.H. Board of Medicine, 2 Industrial Park Drive, Suite 8, Concord, New Hampshire 03301, (603) 271-1204, but that all other communications with the Board shall be in writing and filed as provided above. *Ex parte* communications are forbidden by statute and the Board's regulations; and,

IT IS FURTHER ORDERED that a copy of this Notice of Hearing shall be served upon Respondent by certified mail addressed to the office address he supplied to the Board in his latest renewal application and/or by in-hand service. *See*, RSA 329:18, VI, Med. 409.01 and RSA 329:16 (f). A copy shall also be delivered to Hearing Counsel.

BY ORDER OF THE BOARD/*

Dated: January 27, 2012

REDACTED

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

/* Robert P. Cervenka, M.D., Board member, recused.