State of New Hampshire
Board of Registration in Podiatry
Concord, New Hampshire

In the Matter of:
Edward P. Newcott, D.P.M.
License No. 0147
(Adjudicatory Proceedings)

Docket No.: 14-06

ORDER OF EMERGENCY LICENSE SUSPENSION AND NOTICE OF HEARING

1. RSA 315:10-b; and RSA 541-A:30, III, authorize the New Hampshire Board of Registration in Podiatry ("Board") to suspend a license to practice medicine for no more than one hundred twenty (120) days 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 10 days after the date of the emergency order. If the Board does not commence the hearing within 10 days, the suspension order shall be automatically vacated. *See,* RSA 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 315:10-b. Postponement of the proceeding is prohibited unless the licensee agrees to continue the suspension pending issuance of the Board's final decision. *See,* RSA 315:10-b.

2. Edward P. Newcott, D.P.M. ("Dr. Edward P. Newcott, DPM" or "Respondent"), holds an active license, No. 0147, to practice podiatry in the State of New Hampshire. Respondent practices podiatry in Concord, New Hampshire and Peterborough, New Hampshire.

3. The Board has received information indicating that the continued practice of podiatry by Dr. Newcott poses an imminent threat to life, safety and/or health, which

warrants the temporary suspension of Dr. Newcott's license to practice podiatry 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. In August 2012, the Board received an anonymous complaint alleging that Respondent's infection control practices were inadequate in that he did not routinely sanitize instruments between patients and did not routinely wash his hands between patients. Additionally, it was alleged that Respondent routinely used out-of-date medications.

B. On December 20, 2012 Board investigators conducted an unannounced inspection of Respondent's Concord practice location. Using the checklist provided by the Centers for Disease Control ("CDC") titled Infection Prevention Checklist for Outpatient Settings: Minimum Expectations for Safe Care, the following deficiencies were observed:

a. No practice manual was available documenting infection prevention policies and procedures.

b. No personal protective equipment, i.e.: disposable gowns, masks and protective eyewear were readily available to the staff.

c. No antimicrobial waterless foaming hand rubs were available, which should be strategically placed throughout the office to encourage hand

cleaning before and after patients are examined. Antimicrobial soap and water should be used if visible debris is noted.

d. Out of date, multiuse, injectable vials were found. Some bottles had been expired for more than one year, and were not disposed of by their expiration date or within 28 days of opening. There was no system in place for tracking expiration dates.

e. Injectable medications were stored in a room with an orthotic grinder. Because an orthotic grinder creates significant airborne dust, these items should not be stored in close proximity.

f. Out of date syringes were noted, which should have been disposed of. There was no system in place for tracking expiration dates.

g. Out of date culture swabs were noted, which should have been disposed of. There was no system in place for tracking expiration dates.

h. Out of date topical medications were noted, which should have been disposed of. There was no system in place for tracking expiration dates.

i. No tissues, masks or resources for hand hygiene were available in the waiting room for patients with a respiratory infection.

j. Bead sterilization was used to disinfect nail cutting instruments. Bead sterilizers are no longer approved by the United Stated Food & Drug Administration. Nailing cutting instruments are considered semi-critical instrumentation and require a minimum of chemical disinfection.

k. No spore testing was being performed on the autoclave.

l. No internal strips were used when processing instruments through the autoclave.

m. Used sharps, both a syringe with needle and scalpel blades, were observed left on the instrument tray for disposal by support staff. These items should be disposed of in a sharps container by the user immediately following their use.

n. No red hazardous waste bags were readily available.

C. On December 21, 2012 APU sent Respondent a letter to express the investigators' high level of concern regarding the uncapped syringe and scalpel left unattended on the exam room counter.

D. On May 31, 2013, APU Counsel sent Dr. Newcott a second letter that outlined in formal detail the infection control areas of concern identified during the inspection.

E. On June 7, 2013, investigators met with Respondent to review the inspection findings on an item-by-item basis. Respondent was strongly encouraged to retain an outside infection control consultant to assist his practice with implementing expected protocols and best practices. A few days after the meeting, Respondent was provided with the name of a consulting company that could assist his practice. He was also encouraged to conduct his own research with regard to retaining an appropriate consultant.

F. On April 8, 2014, the Board received another complaint from a patient alleging concerns with Respondent's infection control practices.

G. In May 2014, Respondent reported that he had not retained an outside consultant, but stated that he had implemented appropriate changes based on the previously outlined inspection findings. Investigators again encouraged Respondent to retain an outside infection control consultant and the Respondent agreed.

H. On June 5, 2014 the consultant retained by Respondent evaluated his practice and provided investigators with a summary of the findings. Using the checklist provided by the Centers for Disease Control ("CDC") titled Infection Prevention Checklist for Outpatient Settings: Minimum Expectations for Safe Care, the following deficiencies were observed:

a. No practice manual was available documenting infection prevention policies and procedures. More specifically, the following were noted:

   i. There was no site specific practice manual, but a copy of the Infection Prevention & Control Guidelines, 2008 was available.

   ii. There was no High Level Disinfection process in place.

   iii. Respondent was not using the correct soaking solution for instrument reprocessing.

   iv. There were no EPA-registered disinfectants available for surface disinfection.

b. There was no personal protective equipment, i.e.: disposable gowns, masks and protective eyewear readily available to the staff.

c. Out of date, multiuse, injectable vials were found. In particular, expired vials of Bupivacaine (expired 11/2013) were found.

d. Out of date syringes were noted, which should have been disposed of. There was no system in place for tracking expiration dates.

e. Out of date culture swabs were noted, which should have been disposed of. There was no system in place for tracking expiration dates.

f. Out of date topical medications were noted which should have been disposed of. There was no system in place for tracking expiration dates.

g. Respondent confirmed that the bead sterilizer was no longer being used.

h. No spore testing was being performed on the autoclave and there was no documentation regarding monthly autoclave maintenance.

i. It was observed that the scalpels were being left in the handles for disposal.

I. On June 6, 2014 investigators discussed the evaluation results with Respondent. Respondent verbally agreed to take immediate corrective action with regard to the findings and stated that his staff was already ordering the necessary products and equipment. He also represented that he had not been using the expired medical supplies and claimed that he was implementing procedures so that his staff monitors expired supplies for discarding. Finally, he agreed to have the consultant return within thirty (30) days to evaluate his corrective action.

J. On August 12, 2014 the consultant retained by Respondent evaluated his practice again and provided investigators with a summary of the findings. Using the checklist provided by the Centers for Disease Control ("CDC")

titled Infection Prevention Checklist for Outpatient Settings: Minimum Expectations for Safe Care, the following deficiencies were observed:

a. No practice manual was available documenting infection prevention policies and procedures. More specifically, the following were noted:

   i. Manual and written policies and procedures were purchased and made available in July 2014. However, they had not been implemented completely.

   There was no High Level Disinfection process in place in that the wrong product, Glutaraldehyde not OPA solution, was being used. Test strips being used were for CIDEX OPA which is not compatible with the product in use.

   ii. Enzymatic detergent was being used in Concord. However, instruments are not fully immersed. It was recommended that an appropriate sized container be used.

b. Gowns, eyewear and two masks were available at time of resurvey. Nurses were wearing appropriate gear for instrument processing.

c. On July 9, 2014 Respondent called the consultant wanting to remove the option of the 28 day expiration on his policy. The consultant reviewed why that was not possible, provided Multi-Dose Vial 28 day expiration calendar to assist the practice date vials and information from One and Only Campaign, "Single-Dose or Multi-Dose?" was also provided. Upon re-evaluation, two (2) multi-dose vials of Lidocaine with the same

strength were found opened. It appeared that the vials had been used, were not dated, and had foil tops still left on.

d. There was a new process and checklist in Concord for out of date syringes, however the process needs to be improved to ensure nothing is outdated at each site.

e. Out of date topical medications were found, which should have been disposed of.

f. Practice is using "Flash Sterilization" for convenience and to save time. However, time, temperature and pressure are not being documented for each load, nor are indicators being used for each load.

g. Spore testing is being conducted in Concord effective June 18. Peterborough office is missing spore testing documentation, which indicates that only two weeks were tested. It was requested that the practice contact the mail away vendor and request copies of their records to ensure that spore testing was/is being done weekly. Autoclave recordkeeping logs in Peterborough are not consistent with what is being done in Concord. Staff competencies need to be conducted.

h. No internal strips were used when flash sterilizing instruments through the autoclave. Instruments should be processed correctly and need to verify sterilization has been achieved.

K. The consultant also noted at the August 12, 2014 inspection that the Respondent still did not understand why he could not use environmental wipes to sterilize reusable semi-critical items instead of a high-level

disinfectant. Respondent stated that he would be contacting the CDC to discuss this issue further.

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 315:10-b, and 541-A:30, III.

6. The purpose of this proceeding will be to determine whether Respondent has engaged in professional misconduct contrary to RSA 315:9, II and RSA 315:10-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 Respondent committed professional misconduct by utilizing substandard infection control procedures, in violation of RSA 315:9, II(c); and/or

B. Whether Respondent has displayed a pattern of behavior incompatible with the basic knowledge and competence expected of persons licensed to practice podiatry by utilizing substandard infection control procedures, in violation of RSA 315:9, II(d); and/or

C. Whether Respondent committed professional misconduct by knowingly or willfully violating the rules by failing to address the

deficiencies in his infection control procedures, in violation of RSA 315:9, II(f); and/or

D. Whether Respondent committed professional misconduct by failing to provide care consistent with established practice guidelines adopted by recognized podiatric medical organizations, in violation of RSA 315:9, II(c), and Pod 501.01; and/or

E. 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 315:9, III.

7. While RSA 315:10-a requires that the Board furnish Respondent at least 15 days' notice of allegations of professional misconduct and the date, time and place of an adjudicatory hearing, RSA 541-A:30, III requires 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 315:10-b. 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 315:10-b, and 541-A:30, III.

THEREFORE, IT IS ORDERED that Respondent's New Hampshire license to practice podiatry 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 315:9, RSA 315:10-a, RSA 315:10-b, and 541-A:30, III. 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 Edward P. Newcott, D.P.M. shall appear before the Board on September 17, 2014 at 1:00 p.m., at the Board's office located at 121 South Fruit Street, Concord, N.H., to participate in an adjudicatory hearing and, if deemed appropriate, be subject to sanctions pursuant to RSA 315:9, III; 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*, or the imposition of disciplinary sanctions without further notice or an opportunity to be heard, or both; and,

IT IS FURTHER ORDERED that Michelle Heaton, Attorney, 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 Jennifer S. Sartori, DPM, 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, and with an additional copy mailed to any party to the proceeding, and to Attorney Amanda Godlewski, 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 three (3) 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; 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 ten (10) 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 Registration in Podiatry, 121 South Fruit Street, 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 Registration in Podiatry, at (603) 271-1203, 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* Pod 403.03. A copy shall also be delivered to Hearing Counsel.

BY ORDER OF THE BOARD/*

Dated: September 11, 2014

Penny Taylor, Administrator
Authorized Representative of the
New Hampshire Board of Registration in Podiatry

/* James H. Dolan, Jr., DPM, Board member, did not participate