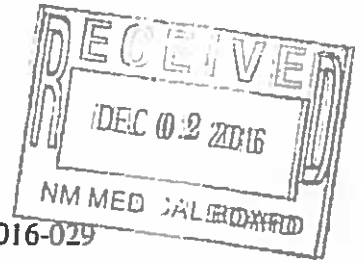


BEFORE THE NEW MEXICO MEDICAL BOARD

**IN THE MATTER OF
WILSON FULLA BERNALES,**

Case No. 2016-029



Respondent.

DECISION AND ORDER OF THE BOARD

This matter came before the New Mexico Medical Board ("Board") for consideration on November 17, 2016.

FINDINGS OF FACT

Having given full consideration to the testimony and evidence presented, having reviewed and become familiar with the entire record on review, including the Hearing Officer's Report dated October 3, 2016, and being otherwise informed on the premises, the Board orders that the Hearing Officer's Report and the Findings of Fact therein are well taken and are adopted in their entirety with the exception of the Hearing Officer's Proposed Findings of Fact Nos. 38 and 39, which the Board finds to be proven by a preponderance of the evidence. The Hearing Officer's Report is incorporated herein and attached hereto.

CONCLUSIONS OF LAW

- A. Respondent filed a timely request for hearing to the Notice of Contemplated Action, and jurisdiction lies over the parties and the subject matter of this matter.
- B. The Board has complied with all notice and hearing requirements of the Uniform Licensing Act and has afforded Respondent all due process rights required by law. This Decision and Order is timely rendered.
- C. The standard of proof to be applied by the Board is a preponderance of the evidence.

Foster v. Board of Dentistry, 1986-NMSC-009, 103 N.M. 776, 714 P.2d 580.

- D. The allegations in the Notice of Contemplated Action have been proven by a preponderance of the evidence.
- E. These findings constitute sufficient evidence supporting grounds for denial of licensure pursuant to:
1. Section 61-6-15(D)(8), Fraud or misrepresentation in...applying for or procuring renewal of a license to practice medicine in this State, based on FOF 9-13, 18-20, 22-23, and 27, 29;
 2. Section 61-6-15(D)(18), Conduct likely to harm the public, based on FOF 21;
 3. Section 61-6-15(D)(29), Conduct unbecoming in a person licensed to practice or detrimental to the best interests of the public, based on FOF 18-21, and 29; and
 4. Section 61-6-15(D)(21)(a), Failure to report to the Board any adverse action taken against the licensee by...another licensing jurisdiction, based on FOF 18-25, 27, 29, and 34;
 5. Title 16, Chapter 10, NMAC including but not limited to Section 16.10.10.13, requirement of licensees to report adverse actions taken against a licensee by another jurisdiction, based on FOF 18-25, 27, 29, and 34; and
 6. Title 16, Chapter 10, NMAC Rule 16.10.8.9, provisions of the Code of Medical Ethics by the American Medical Association (2014-2015 Edition), as adopted by the Board, based on FOF 18-21, and 29.

DECISION AND ORDER

It is therefore **ORDERED** that Respondent's license to practice medicine in the State of New Mexico is **REVOKED**, and not eligible for reinstatement unless the Respondent successfully applies for and is granted relicensure.

RIGHT TO SEEK JUDICIAL REVIEW

Respondent may seek judicial review of this Decision and Order pursuant to NMSA 1978, 61-1-17 and NMSA 1978, 39-3-3-1.1. The time within which to do so is thirty (30) days from the date of the Board's Decision and Order.

Dated: 12/2/16

NEW MEXICO MEDICAL BOARD



Dr. Steven Jenkusky
Chairman
New Mexico Medical Board

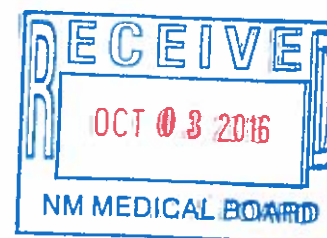
BEFORE THE NEW MEXICO MEDICAL BOARD

**IN THE MATTER OF
WILSON FULLA BERNALES, M.D.**

License No. MD2012-0011

Respondent.

No. 2016-029



HEARING OFFICER'S REPORT

THIS MATTER came before Frank D. Weissbarth, Esq., appointed Hearing Officer for the New Mexico Medical Board ("Board"), on September 8, 2016 for an evidentiary hearing on the merits. Thomas W. Banner entered an appearance as Administrative Prosecutor ("Prosecution"). Respondent, Wilson Fulla Bernales, M.D. ("Respondent"), was present and represented by Gary D. Alsup, Esq. Testifying on behalf of the Prosecution were Amanda Chavez and Barbara Orender. Respondent testified in his own behalf. All witnesses who testified at the hearing were duly sworn, and a verbatim transcript of the proceedings was taken by Ningay Sing, certified court reporter. The hearing was conducted pursuant to and in accordance with the Uniform Licensing Act, NMSA 1978, §§ 61-1-1 through 61-1-33 and the Medical Practice Act, NMSA 1978, §§ 61-6-1-1 through 61-6-35, and all corresponding regulations.

PROPOSED FINDINGS OF FACT

Based upon the testimony of witnesses and documentary evidence introduced at the hearing and having given consideration to the evidence presented, the Hearing Officer submits the following Proposed Findings of Fact.

1. On June 14, 2016, a Notice of Contemplated Action was issued against Respondent. The Notice of Contemplated Action was served on Respondent on or about June 20, 2016. Prosecution Exhibit 1.

2. The Notice of Contemplated Action alleged Respondent had violated the following provisions of NMSA 1978, §61-6-15 (D):

A. (8), Fraud or misrepresentation in ...applying for or procuring renewal of a license to practice medicine in this State;

B. (18), Conduct likely to harm the public;

C. (29), Conduct unbecoming in a person licensed to practice or detrimental to the best interests of the public; and

D. (21) (a), Failure to report to the Board any adverse action taken against the licensee by...another licensing jurisdiction.

The Notice of Contemplated Action also alleged that Respondent had violated:

E. Applicable Board Rules found at Title 16, Chapter 10, NMAC including but not limited to 16.10.10.13 NMAC; which requires licensees to report adverse actions taken against a licensee by another licensing jurisdiction; and

F. Provisions of the Code of Medical Ethics of the American Medical Association (2014-2015 Addition), as adopted by the Board at Rule 16.10.8.9 NMAC.

3. On or about July 11, 2016, Respondent sent an email to the Board requesting a hearing. [Email in administrative file].

4. On or about July 20, 2016, the Board served a Notice of Hearing on Respondent and his attorney, Gary D. Alsup, Esq., setting the matter for hearing on September 8, 2016. [Notice of Hearing in administrative file].

5. A full evidentiary hearing was held on September 8, 2016. All witnesses who testified at the hearing were duly sworn and subject to cross-examination.

6. At the conclusion of the hearing, the Hearing Officer requested that the parties submit proposed findings of fact, and both parties did so on September 28, 2016.

7. At the hearing Board Investigator Amanda Chavez and Board Licensing Manager Barbara Orender testified on behalf of the prosecution. Respondent testified in his own behalf.

8. Respondent was initially licensed to practice medicine in New Mexico in January of 2012.

9. In an Advisory Letter dated January 9, 2012 [Prosecution Exhibit 8], Lynn Hart, the Board's Executive Director informed Respondent that he had been issued a New Mexico license and advised him that:

Although you disclosed the issue you had during your internship at Floyd Medical Center, you did not initially disclose that you were placed on probation during your fellowship at Louisiana State University. Question number 19d on the application for licensure specifically asks if you were ever placed on probation by a medical school of PGT program.

###

Also, you did not initially disclose on your application that there was a "procedural Violation" while taking Step 3 of your USMLE exam in California in 2002.

Exhibit 8.

10. The letter [Prosecution Exhibit 8] quoted the provisions of NMSA 1978, § 61-6-15(D)(8), stating that:

Unprofessional or dishonorable conduct, as used in this section, means, but is not limited to...conduct of a licensee that includes the following:... fraud or misrepresentation in applying for or procuring a license to practice in this state or in connection with applying for or procuring renewal,...

11. The letter [Prosecution Exhibit 8] also said that:

[A]lthough you fully disclosed the issues above after you were asked to submit explanation, the Board considers this a very serious matter. It is imperative that you disclose to the Board any and all irregular circumstances relating to medical practice. The Board expects all licensees to remain informed about the rules of the

Medical Board and to maintain strict compliance with the rules. For your reference, the complete text of Board rules can be found at www.nmmb.state.nm.us.

12. At the hearing, Respondent acknowledged that he had received the letter [Prosecution Exhibit 8]. Tr. 118:16-19.

13. After being licensed in New Mexico, Respondent submitted two applications for renewal to the Board. The first renewal was received by the Board on April 15, 2012, and the second was received by the Board on May 25, 2015. Prosecution Exhibits 2, 9 and 10]; [Tr. 124:5 – 9].

14. The allegations of the Notice of Contemplated Action concern Respondent's answers to Professional Practice Questions 8, 12.a., 12.b. and 13 in his May 25, 2015 renewal application. Prosecution Exhibit 2.

15. Board Investigator Amanda Chavez ("Chavez") testified that she conducted an investigation into the Application submitted to the Board and found that Respondent had been initially licensed to practice medicine in New Mexico in 2012, and had applied for renewal of the license issued to him in that same year. Tr. 73:2-12. *Also see* Prosecution Exhibit 9.

16. Chavez testified that her investigation revealed that on January 9, 2012, the Board issued an Advisory Letter to Respondent [Prosecution Exhibit 8] noting that although he failed to provide complete and accurate information to the Board in his initial application for licensure, the Board had granted his application for licensure. The letter reminded Respondent to "disclose to the Board any and all irregular circumstances relating to medical practice" and that failure to do so constituted unprofessional conduct.

17. Chavez Testified that she learned that Respondent applied to the Virginia Board of Medicine ("VBM") for licensure as a physician in 2012.

18. The VBM denied Respondent's application for licensure in July 2015 based on findings that Respondent had materially misrepresented facts and provided fraudulent, false, and misleading information in his application for licensure to the VBM. Exhibit 3, ¶ 2. The VMB's order denying Respondent application for licensure included findings that:

A. Respondent admitted to having forged signatures on two documents purportedly authored by third-parties that were submitted to the VBM in support of Bernales' application;

B. Respondent admitted lying on his application to the VBM;

C. Respondent failed to disclose all jurisdictions where he was licensed; and

D. Respondent engaged in fraud or deceit.

19. Documents from the VBM indicate that Respondent appeared before the VBM on March 19, 2014 in regards to his application for licensure in Virginia, and that a report of that meeting indicated that Respondent admitted the misconduct described in the VBM's order of denial, but that Respondent had also forged the signature of a third individual. Exhibit 5, ¶ 5.

20. In a letter to the New Mexico Medical Board dated January 20, 2016, Respondent acknowledged that he had forged signatures on letters of reference submitted to the VBM. Prosecution Ex. 6, ¶2(a).

21. Chavez also testified that Respondent was disciplined by the New York State Board for Professional Medical Conduct in March 2016. Documents admitted into evidence from the State of New York's licensing authority show that Respondent signed a consent agreement in February 2016 in which he did not contest charges of professional misconduct, and that Respondent agreed to "cease and desist from engaging in the practice of medicine in the State of

New York” and “to a limitation precluding registration or issuance of any further license.”
Prosecution Ex. 7.

22. Chavez testified that Respondent failed to report the discipline imposed against him in 2016 by the State of New York’s medical licensing authority within 30 days as required by the Medical Practice Act and Board regulation. Tr. 64:20 – 65:13.

23. Chavez testified that the information supplied by Respondent to the NMMB in his Application was “incorrect” in that Respondent answered Professional Practice Questions 8, 12.a., 12.b. and 13 inaccurately. *See e.g.*, Tr. 44:1-47:15; *also see* Prosecution Exhibit 2.

24. Professional Practice Question No. 8 in the Application [Prosecution Exhibit 9] asked: “Since your last renewal, have you been subject to investigation by a governmental entity or Board that either could have resulted or did result in licensure sanction or other adverse actions, irrespective of the outcome?” Respondent answered this question with a “no.” Tr. 73:13 – 74:4. This answer was not true.

25. Professional Practice Question No. 12.a. asked: “Since your last renewal has your application for licensure or license to practice in any jurisdiction been investigated, voluntarily or involuntarily limited, suspended, revoked, surrendered or denied?” Respondent answered this question with a “no.” This answer was not true.

26. Professional Practice Question No. 12.b. asked: “Are any currently held licenses pending investigation or being challenged?” In his May 25, 2015 application, Respondent answered this question with a “no.” This answer was true because Respondent never had a Virginia license and because Prosecution Exhibit 7, p. NMMB000040, ¶ B, indicates that the New York action against Respondent’s New York license was initiated after July 15, 2015, which was after he submitted his New Mexico renewal application [Prosecution Exhibit 2].

27. Professional Practice Question No. 13 asked: "Since your last renewal have you been notified to appear before any licensing agency for a hearing or complaint of any nature?" Respondent answered this question with a "no." This answer was not true.

28. The Board's Licensing Manager, Barbara Orender ("Orender"), testified that Respondent was initially granted a license to practice medicine in New Mexico in 2012, and that Respondent was required to re-apply for licensure the same year. Orender testified that Respondent submitted two applications for renewal to the Board since being initially licensed. The first renewal was received by the Board on April 15, 2012, and the second was received by the Board on May 25, 2015. Prosecution Exhibits. 2, 9 and 10]; Tr. 124:5 – 9.

29. Respondent admitted that he had not disclosed either the discipline imposed by the State of New York, nor the denial of his application for licensure in the State of Virginia, to the NMMB. Tr. 120:1-121:7.

30. On May 25, 2015, Respondent submitted a second application to renew his New Mexico license. Prosecution Exhibit 2.

31. In his May 25, 2015 renewal application [Prosecution Exhibit 2], Respondent answered "N" [No] to questions 8, 12(a), 12(b) and 13, which read as follows:

8. Since your last renewal, have you been subject to investigation by a governmental entity or Board that either could have resulted or did result in licensure sanction or other adverse actions, irrespective of the outcome?

12.a. Since your last renewal has your application for licensure or license to practice in any jurisdiction been investigated, voluntarily or involuntarily limited, suspended, revoked, surrendered or denied?

12.b. Are any currently held licenses pending investigation or being challenged?

13. Since your last renewal have you been notified to appear before any licensing agency for a hearing or complaint of any nature?

32. At the hearing, Respondent testified that he believed that the 2015 renewal of his New Mexico license was the first renewal of that license. Tr. 98:11-99:2. His testimony indicates that he believed that the NMMB was double-charging him for issuing a license to him rather than charging him once in connection with the issuance of his license in January of 2012 and a second time for renewing his license later the same year. Tr. 104:5-12.

33. At the hearing the Respondent testified that he was confused about whether the first renewal of his license in April of 2012 was a renewal or something else. Tr. 107:25-108:12.

34. At the hearing, Respondent offered a variety of explanations for his failure to report the Virginia and New York actions to the NMMB, which included: (i) that he thought that the 2015 New Mexico renewal was the first renewal of his New Mexico license and that as a result, 8, 12(a) and 13 did not apply to him; (ii) that he wanted to appeal the Virginia decision but couldn't get a lawyer; (iii) that he was overworked covering hospitals in four different states; (iv) that he was involved in divorce and custody issues; (v) that his father was dying; (vi) and that he got bad legal advice from his lawyer in New York. Tr. 99:3-102:20. None of these justifications excuse Respondent's failure to disclose the Virginia and New York actions.

35. The preponderance of evidence at the hearing establishes that Respondent's answers to Professional Practice Question Numbers 8, 12.a. and 13 in his 2015 New Mexico renewal application [Prosecution Exhibit 2] were not true.

36. The preponderance of the evidence at the hearing establishes that Respondent violated the following provisions of NMSA 1978, §61-6-15 (D), and the NMMB's rules as charged in the Notice of Contemplated Action:

A. §61-6-15 (D)(8), Fraud or misrepresentation in ...applying for or procuring renewal of a license to practice medicine in this State;

B. §61-6-15 (D)(21)(a), Failure to report to the Board any adverse action taken against the licensee by...another licensing jurisdiction.

C. §61-6-15 (D)(29), Conduct unbecoming in a person licensed to practice or detrimental to the best interests of the public; and

D. 16.10.10.13 NMAC, which requires licensees to report adverse actions taken against a licensee by another licensing jurisdiction.

37. Paragraph 4.B of the Notice of Contemplated Action alleges that Respondent violated §61-6-15 (D)(18), Conduct likely to harm the public. At the hearing the Prosecution did not present any evidence to show that any member of the public was or could have been harmed by Respondent's conduct. As a result, this allegation is unproven.

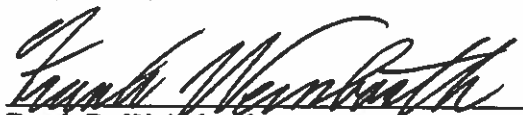
38. Paragraph 4.F of the Notice of Contemplated Action alleges that Respondent violated the Code of Medical Ethics of the American Medical Association. At the hearing the Prosecution did not present any evidence as to which provision of the Code, if any, Respondent allegedly violated. As a result, this allegation is unproven.

39. The preponderance of the evidence at the hearing does not establish that Respondent violated:

A. §61-6-15 (D)(18), Conduct likely to harm the public; or

B. Provisions of the Code of Medical Ethics of the American Medical Association (2014-2015 Addition), as adopted by the Board at Rule 16.10.8.9 NMAC.

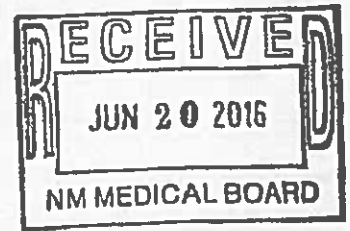
Respectfully submitted,



Frank D. Weissbarth
Hearing Officer

October 3, 2016

BEFORE THE NEW MEXICO MEDICAL BOARD



IN THE MATTER OF)
WILSON FULLA BERNALES, M.D.)
)
License No. MD2012-0011)
)
Respondent.)
_____)

Case No. 2016- 029

To: Wilson Fulla Bernales, M.D.
1539 North Hazeltine Drive
Fayetteville, Arkansas 72704

NOTICE OF CONTEMPLATED ACTION

YOU ARE HEREBY NOTIFIED that pursuant to provisions of NMSA 1978, Section 61-1-4 of the Uniform Licensing Act ("ULA"), the New Mexico Medical Board ("NMMB") has before it sufficient evidence that, if not rebutted or explained, will justify the NMMB imposing sanctions that could include restricting, revoking or suspending your license to practice medicine in the State of New Mexico. In support therefore, the Board alleges as follows:

1. You are subject to action by the Board pursuant to provisions of the ULA and the Medical Practice Act ("MPA"), Chapter 61, Article 6, NMSA 1978.
2. You were initially licensed to practice medicine within the State of New Mexico in 2012. Due to discrepancies in information which you supplied to the Board in 2012, the Board reminded you of your obligation to provide the Board with accurate information and comply with all laws and regulations governing the practice of medicine.
3. This contemplated action is based on the following allegations:
 - A. On August 10, 2015, the NMMB received information that the Virginia Board of Medicine ("Virginia Board") denied your application for licensure in the Commonwealth of Virginia after finding that:
 - i. On or about October 2, 2012, you applied to the Virginia Board (the "Virginia

application”) for a license to practice medicine and surgery.

ii. Your Virginia application materially misrepresented facts and/or provided false or misleading information by, among other things: submitting, or causing to be submitted, at least two (2) evaluations purportedly from past supervisors that contained fraudulent or false information; failing to properly disclose a 2006 suspension from a fellowship program; and failing to properly disclose Nevada as a state that you held licensure in.

iii. On or about July 15, 2015, the Virginia Board entered an order denying your Virginia application.

B. You failed to report the Virginia Board’s adverse action to the NMMB within 30 days as required by New Mexico law. See 16.10.10.13 NMAC and NMSA 1978, 61-6-15(D)(21)(a).

C. After being informed of the Virginia Board’s action, NMMB investigators reviewed your 2015 renewal application and found that information submitted to the NMMB at that time was materially false and misleading. Specifically, the investigation revealed that on May 25, 2015, you answered “no” to the following questions that were submitted in your application for renewal:

8. Since your last renewal, have you been subject to investigation by a governmental entity or Board that either could have resulted or did result in licensure sanction or other adverse actions, irrespective of the outcome?

...

12. a. Since your last renewal has your application for licensure or license to practice in any jurisdiction been investigated, voluntarily or involuntarily limited, suspended, revoked, surrendered or denied?

12. b. Are any currently held licenses pending investigation or being challenged?

...

13. Since your last renewal have you been notified to appear before any licensing agency for a hearing or complaint of any nature?

D. Further, the NMMB’s investigation revealed that:

i. You were informed by a letter dated February 27, 2013, that the Virginia application was the subject of an investigation;

ii. That on or about March 24, 2014, you were informed of a recommended decision by the Virginia Board of Medicine's Credentials Committee to deny the Virginia application;

iii. That you received notice of a hearing to be held on the Virginia application on May 14, 2015; and

iv. On April 21, 2015, you requested a continuance of said hearing.

Therefore, it appears that as of May 25, 2015, you knew or should have known that the answers provided to the NMMB in response to the foregoing questions were materially false and misleading.

E. NMMB's investigation also revealed that you tendered a proposed Consent Agreement to the New York State Board for Professional Medical Conduct (the "New York Board") on February 19, 2016 in which you agreed to "a limitation precluding registration or issuance of any further license" to resolve allegations of professional misconduct levied against you by the New York Board. On March 8, 2016, the New York Board entered a Consent Order adopting and approving the Consent Agreement which resulted in a reduction or restriction of your New York medical license privileges. The terms of the Consent Agreement and Consent Order constitute an adverse action taken against you by the New York Board.

F. You failed to report the New York Board's adverse action to the NMMB within 30 days as required by New Mexico law. See 16.10.10.13 NMAC and NMSA 1978, 61-6-15(D)(21)(a).

4. The allegations set forth in paragraphs 3(A) through paragraph 3(F), if proven, would constitute violations of the following provisions:

A. NMSA 1978, Section 61-6-1 5(D)(8), fraud or misrepresentation in applying for or procuring a license to practice medicine in this state or in connection with applying for or procuring renewal of a license to practice medicine in this state;

B. NMSA 1978, Section 61-6-15(D)(18), conduct likely to harm the public;

C. NMSA 1978, Section 61-6-15(D)(29), conduct unbecoming in a person licensed to practice or detrimental to the best interests of the public;

D. NMSA 1978, 61-6-15(D)(21)(a), failure to report to the board any adverse action taken against the licensee by... another licensing jurisdiction;

E. Applicable Board rules found at Title 16, Chapter 10, NMAC including, but not limited to 16.10.10.13 NMAC which requires licensees to report adverse actions taken against a licensee by another licensing jurisdiction; and/or

F. Provisions of the Code of Medical Ethics of the American Medical Association (2014-2015 Ed.) as adopted by the Board at Rule 16.10.8.9 NMAC.

5. Please take notice that pursuant to NMSA 1978, Section 61-1-4 you may secure a hearing before the Board by depositing in the mail within twenty (20) days after service of this notice a certified return receipt requested letter addressed to the Board and containing a request for a hearing.

If you do not request a hearing within twenty (20) days after service of this notice as described above, the Board will take the contemplated action, i.e., imposing sanctions that could include the revocation or suspension of your license to practice medicine in the State of New Mexico, including retroactive revocation or suspension, and there will be no judicial review of their decision.

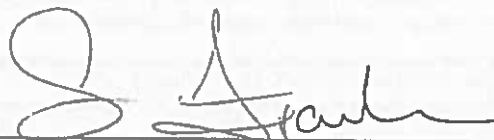
6. Pursuant to NMSA 1978, Section 61-1-8, you have the right to be represented by counsel or by a licensed member of your profession or both, and to present all relevant evidence by means of witnesses, books, papers, documents and other evidence; to examine all opposing witnesses who may appear on any matter relevant to the issues and have subpoenas duces tecum issued as of right prior to the commencement of the hearing, to compel the attendance of witnesses and the production of relevant books, papers, documents and other evidence upon making a written request therefore to the Board. The issuance of such subpoenas after commencement of the hearing rests with the discretion of the Board or Hearing Officer.

7. The issuance of this Notice of Contemplated Action is not a disciplinary event reportable to any data bank but is a public document open to public inspection.

8. In the event that the Board takes a final action against you as specified in NMSA 1978, Section 61-1-3, you shall bear all costs of disciplinary proceedings pursuant to NMSA 1978, Section 61-1-4(G) unless excused by the Board.

Dated this 14th day of June, 2016.

NEW MEXICO MEDICAL BOARD

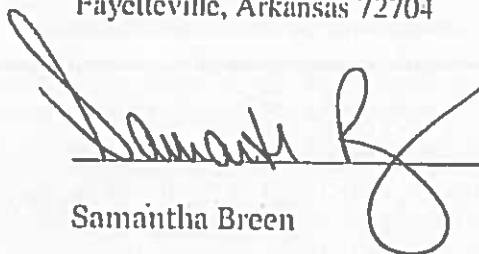


Sondra Frank, Executive Director
New Mexico Medical Board
2055 South Pacheco Street, Building 400
Santa Fe, New Mexico 87505
Tel: 505-476-7220

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the Notice of Contemplated Action was sent via Certified Return Receipt USPS on June 20, 2016.

Wilson Fulla Bernales, MD
1539 North Hazeltine Drive
Fayetteville, Arkansas 72704



A handwritten signature in black ink, appearing to read "Samantha Breen", is written over a solid horizontal line. The signature is stylized and cursive.

Samantha Breen