BEFORE THE NEW MEXICO MEDICAL BOARD

IN THE MATTER OF

Elias Said, M.D.,

Respondent

Case No 2006-004

FINDINGS OF FACT, CONCLUSIONS OF LAW
DECISION AND ORDER
NOTICE OF RIGHT TO AN APPEAL

THIS MATTER came before a quorum of the New Mexico Medical Board
("Board") on November 16, 2006 on Respondent's Motion to Reopen Case and
Reconsider Decision. Being advised, the Board withdraws its decision and order dated
September 29, 2006 and substitutes in its place this decision and order

Procedural History

An evidentiary hearing on the merits of the allegations contained in the Amended
Notice of Contemplated Action (Amended NCA) was held before Allan Haynes, Jr.,
M.D., duly appointed Hearing Officer, on July 26, 2006. Respondent Elias Said, M.D.
("Respondent") was present and was represented by J. Edward Hollington, Attorney at
Law. The Administrative Prosecutor was G.T.S. Khalsa Corliss Thalley, Assistant
Attorney General, was present to advise the Hearing Officer. A verbatim record of the
proceedings as made by a court reporter and a transcript of the hearing, including hearing
exhibits, was available to all board members participating in the decision

The Hearing Officer's Report containing Recommended Findings of Fact was
timely submitted to the Board on August 21, 2006
Board members Prakash M Ranka, M.D., Steven Weiner, M.D., and Becky Cochran, public member, are recused and did not participate in hearing, deliberations, or decision in this matter.

Paul J Kovnat, M.D., was absent and did not participate in the deliberation and decision reached on September 29, 2006.

On October 10, 2006, Respondent filed a motion to Reopen Case and Reconsider Decision pursuant to NMSA 1978, §61-1-21. The Administrative Prosecutor filed a written response on October 13, 2006. The Board granted Respondent's motion to reopen and reconsider on October 23, 2006. The Board set the case for hearing on November 16, 2006. Respondent filed a petition for review of the decision to the district court on October 24, 2006. Thereafter, Respondent filed an objection to hearing on his own motion to reopen, asserting that the district court now has jurisdiction over this matter. The Administrative Prosecutor filed a written response. The Board chair issued an order ruling that based on the sequence of the pleadings filed, the Board order granting Respondent's motion to reopen was entered before the petition for review was filed and the Board had jurisdiction to hold a hearing and render a decision pursuant to §61-1-21.

The Board heard oral argument on Respondent's motion to reopen and reconsider from the Respondent and the Administrative Prosecutor on November 16, 2006. Respondent raised the issue of the change in composition of the Board since the deliberation and decision on September 29, 2006. John Lauriello, M.D., was appointed to replace Allan Haynes, Jr., M.D. Paul J Kovnat, M.D., was not present on September 29, 2006 and is present on November 16, 2006. Dr. Lauriello and Dr. Kovnat each stated on the record that he had familiarized himself with the entire record, including the
verbatim transcript, the exhibits admitted into evidence, and all post-hearing papers and pleadings, before deliberating on the case

DECISION

A quorum of the Board members, having thoroughly familiarized itself with the entire record of the proceedings, including the testimony of the witness, the exhibits admitted into evidence at the hearing, the Hearing Officer's report, and post-hearing pleadings, and having heard oral argument, makes the following findings of fact, reaches the following conclusions of law, and renders this decision and order.

BOARD'S ACTIONS AFFIRMING HEARING OFFICER'S RULINGS ON PREHEARING AND POSTHEARING MOTIONS

The Board, being advised, considered and affirmed the Hearing Officer's rulings on the following pre-hearing and post-hearing motions

1. Administrative Prosecutor's Motion to Amend the Notice of Contemplated Action GRANTED

2. Respondent's Motion to Dismiss DENIED

3. Administrative Prosecutor's Second Motion to Amend the Notice of Contemplated Action DENIED

4. Administrative Prosecutor's Motion to Reopen the Hearing DENIED

BOARD'S ACTION TO GRANT RESPONDENT'S MOTION TO REOPEN AND RECONSIDER

A quorum of the Board, being polled pursuant to §61-1-21, grants Respondent's Motion to Reopen Case and Reconsider Decision on October 23, 2006

BOARD'S ACTION REGARDING ADMISSION OF RESPONDENT'S EXHIBIT O AND EXHIBIT P
The Board, having heard argument and being advised, makes the following rulings regarding admission of Respondent's Exhibits O and P.

1. Exhibit O is ADMITTED
2. Exhibit P is NOT ADMITTED

FINDINGS OF FACT

Based on the evidence presented at the hearing, including Exhibit O, the Board, by a unanimous vote of 6-0, adopts the Hearing Officer's recommended Findings of Fact numbered 1 through 78, except the following specific findings of fact are modified to read as follows:

8. Delete the word "abuse" and insert the word "use"

56. MTP cannot confirm Respondent's abstinence from alcohol during the time Respondent was tested for alcohol using the EtG test, when the result of the EtG was 1,160. Tr 96

57. MTP cannot confirm Respondent's abstinence from alcohol during the period from February 2004 to late summer 2005. Tr 177

59. Based on Respondent's knowing use of the snore relief spray, MTP cannot confirm Respondent's abstinence from alcohol. Tr 177. Respondent's knowing use of a product clearly marked containing 7.5 percent alcohol without telling the MTP leads to doubt whether or not Respondent has been abstinent from alcohol. Tr 187

A copy of the Hearing Officer's Report is attached hereto.

The Board makes the following additional findings of fact, numbered sequentially:
The Board acknowledges the Advisory that the ETG should not be the sole
criterion for the Board's evaluation of Respondent's compliance with abstinence from
alcohol. Respondent's ETG result is not the sole criterion for the Board's findings.

Respondent has not met the requirement of eighteen months of confirmed
abstinence from drugs and alcohol confirmed by the MTP as required by the Board's
October 5, 2004 Order.

CONCLUSIONS OF LAW

Based on the findings of fact, the Board, by a unanimous vote of 6-0, reaches the
following conclusions of law:

1. The Board has jurisdiction over the Respondent and the subject matter
The Board has jurisdiction to reopen the case pursuant to § 61-1-21.

2. 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. The Decision and Order is timely rendered.

3. Pursuant to § 61-6-15(A) and (D), the Board has authority to refuse a
license upon satisfactory proof being made to the Board that an applicant has been guilty
of unprofessional or dishonorable conduct.

4. The Administrative Prosecutor proved by a preponderance of the evidence
in the record that Respondent applied for a license in September 2005 and that the
Monitored Treatment Program has not confirmed Respondent's abstinence from drugs
and alcohol for eighteen months prior to reapplication in violation of the Board's October
5, 2004 Order. Respondent's violation of the Board's Order constitutes unprofessional or
dishonorable conduct as alleged in ¶ 2(A) of the Amended NCA.
5. The Administrative Prosecutor proved by a preponderance of the evidence in the record that Respondent did not disclose taking substances that contain alcohol and ephedrine to staff at the Professional Renewal Center (PRC) before Respondent discovered he was being tested for alcohol by an ethylglucuronide (EtG) test. Respondent's conduct constitutes unprofessional or dishonorable conduct as alleged in ¶ 2(B) of the Amended NCA.

6. The Administrative Prosecutor proved by a preponderance of the evidence in the record that Respondent disclosed to PRC staff he was using products that contain alcohol and ephedrine only after Respondent discovered he being tested for ethylglucuronide (EtG) and that he tested positive for ephedrine. Respondent's conduct constitutes unprofessional or dishonorable conduct as alleged in ¶ 2(C) of the Amended NCA.

7. The Administrative Prosecutor proved by clear and convincing evidence in the record that Respondent was dishonest when he made statements to the PRC staff that the only possible source of alcohol allowing for a positive test for ethylglucuronide (EtG) was a product called "Breath Right Snore Relief" as alleged in ¶ 2(D) of the Amended NCA. Dishonestly constitutes unprofessional or dishonorable conduct in violation of § 61-6-15(D)(29) and Rule 16 10 8 8(H) NMAC.

8. Pursuant to Rule 16 10 8 8(H) NMAC, unprofessional or dishonorable conduct includes dishonesty.

9. The Board has sufficient evidence in the record to deny Respondent a license to practice medicine in New Mexico.
ORDER

Based on the above findings of fact and conclusions of law, the Board renders this order

IT IS ORDERED that Respondent is denied a license to practice medicine in New Mexico. Respondent may reapply for licensure after five (5) years of confirmed abstinence from drugs and alcohol, commencing from May 9, 2005, as confirmed by the New Mexico Monitored Treatment Program and other testing performed by entities in connection with board-approve comprehensive psychiatric evaluation as described herein, proof of current competence, if required, and a comprehensive psychiatric evaluation by a board-approved source addressing the issues that led to the license denial. The comprehensive psychiatric evaluation shall be within three (3) months of the new application for licensure.

This Decision and Order shall be served upon Respondent in accordance with the Uniform Licensing Act, including § 61-1-21. A NOTICE informing Respondent of his right to seek judicial review and the time within which review must be brought is attached.

Paul J. Kovnat, M.D., is designated to sign the Decision and Order of the Board.

FOR THE NEW MEXICO MEDICAL BOARD

DATE: November 17, 2006

Paul J. Kovnat, M.D.
Chairman
BEFORE THE NEW MEXICO MEDICAL BOARD

IN THE MATTER OF

Elias Said, M D ,

Respondent

Case No. 2006-004

FINDINGS OF FACT, CONCLUSIONS OF LAW
DECISION AND ORDER
NOTICE OF RIGHT TO AN APPEAL

THIS MATTER came before a quorum of the New Mexico Medical Board
("Board") for deliberation and decision on September 28, 2006. An evidentiary hearing
on the merits of the allegations contained in the Amended Notice of Contemplated Action
(Amended NCA) was held before Allan Haynes, M D , duly appointed Hearing Officer,
on July 26, 2006. Respondent Elias Said, M D ("Respondent") was present and was
represented by J Edward Hollington, Attorney at Law The Administrative Prosecutor
was G T S Khalsa Corliss Thalley, Assistant Attorney General, was present to advise
the Hearing Officer A verbatim record of the proceedings as made by a court reporter
and a transcript of the hearing, including hearing exhibits, was available to all board
members participating in the decision.

The Hearing Officer's Report containing Recommended Findings of Fact was
timely submitted to the Board on August 21, 2006.

Board members Prakash M Ranka, M D , Steven Weiner, M D , and Becky
Cochran, public member, are recused and did not participate in hearing, deliberations, or
decision in this matter Paul J Kovnat, M D , was absent and did not participate in the
decision.
DECISION

The Board, having thoroughly familiarized itself with the record of the proceedings, including the testimony of the witness, the exhibits admitted into evidence at the hearing, and the Hearing Officer's report, makes the following findings of fact, reaches the following conclusions of law, and renders this decision and order.

BOARD'S ACTIONS AFFIRMING HEARING OFFICER'S RULINGS ON PREHEARING AND POSTHEARING MOTIONS

The Board, being advised, considered and affirmed the Hearing Officer's rulings on the following pre-hearing and post-hearing motions

1. Administrative Prosecutor's Motion to Amend the Notice of Contemplated Action  GRANTED

2. Respondent's Motion to Dismiss   DENIED

3 Administrative Prosecutor's Second Motion to Amend the Notice of Contemplated Action  DENIED

4. Administrative Prosecutor's Motion to Reopen the Hearing.  DENIED

FINDINGS OF FACT

Based on the evidence presented at the hearing, the Board, by a unanimous vote of 5-0, adopts the Hearing Officer's recommended Findings of Fact numbered 1 through 78, with the following correction: Finding of Fact # 8, page 2: Delete the word "abuse" and insert the word "use."

A copy of the Hearing Officer's Report is attached hereto

CONCLUSIONS OF LAW
Based on the findings of fact, the Board, by a unanimous vote, reaches the following conclusions of law:

1. The Board has jurisdiction over the Respondent and the subject matter.

2. 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. The Decision and Order is timely rendered.

3. Pursuant to § 61-6-15(A) and (D), the Board has authority to refuse a license upon satisfactory proof being made to the Board that an applicant has been guilty of unprofessional or dishonorable conduct.

4. The Administrative Prosecutor proved by a preponderance of the evidence in the record that Respondent applied for a license in September 2005 and that the Monitored Treatment Program has not confirmed Respondent's abstinence from drugs and alcohol for eighteen months prior to reapplication in violation of the Board's October 5, 2004 Order. Respondent's violation of the Board's Order constitutes unprofessional or dishonorable conduct as alleged in ¶ 2(A) of the Amended NCA.

5. The Administrative Prosecutor proved by a preponderance of the evidence in the record that Respondent did not disclose taking substances that contain alcohol and ephedrine to staff at the Professional Renewal Center (PRC). Respondent's conduct constitutes unprofessional or dishonorable conduct as alleged in ¶ 2(B) of the Amended NCA.

6. The Administrative Prosecutor proved by a preponderance of the evidence in the record that Respondent disclosed to PRC staff he was using products that contain alcohol and ephedrine only after Respondent discovered he being tested for
ethylglucuronide (EtG) and that he tested positive for ephedrine. Respondent's conduct constitutes unprofessional or dishonorable conduct as alleged in ¶2(C) of the Amended NCA.

7. The Administrative Prosecutor proved by clear and convincing evidence in the record that Respondent was dishonest when he made statements to the PRC staff that the only possible source of alcohol allowing for a positive test for ethylglucuronide (EtG) was a product called "Breath Right Snore Relief" as alleged in ¶2(D) of the Amended NCA. Dishonestly constitutes unprofessional or dishonorable conduct in violation of § 61-6-15(D)(29) and Rule 16.10.8.8(H) NMAC.

8. Pursuant to Rule 16.10.8.8(H) NMAC, unprofessional or dishonorable conduct includes dishonesty.

9. The Board has sufficient evidence in the record to deny Respondent a license to practice medicine in New Mexico.

ORDER

Based on the above findings of fact and conclusions of law, the Board renders this order.

IT IS ORDERED that Respondent is denied a license to practice medicine in New Mexico. Respondent may reapply for licensure after five (5) years of confirmed abstinence from drugs and alcohol, commencing from May 9, 2005, as confirmed by the New Mexico Monitored Treatment Program and other testing performed by entities in connection with a board-approved comprehensive psychiatric evaluation as described herein, proof of current competence, if required, and a comprehensive psychiatric evaluation by a board-approved source addressing the issues that led to the license denial.
The comprehensive psychiatric evaluation shall be within three (3) months of the new application for licensure.

This Decision and Order shall be served upon Respondent in accordance with law. A NOTICE informing Respondent of his right to seek judicial review and the time within which review must be brought is attached.

Reza Ghadimi, P A, is designated to sign the Decision and Order of the Board.

FOR THE NEW MEXICO MEDICAL BOARD

DATE: September 29, 2006

[Signature]

Reza Ghadimi, P A
Board Member
BEFORE THE NEW MEXICO MEDICAL BOARD

IN THE MATTER OF

Elias Said, M.D.
Respondent.

No. 2006-004

AMENDED NOTICE OF CONTEMPLATED ACTION

YOU ARE HEREBY NOTIFIED that pursuant to provisions of §61-1-4 NMSA 1978 of the Uniform Licensing Act (ULA), the New Mexico Medical Board ("Board") has before it sufficient evidence that, if not rebutted or explained, will justify the Board denying your application for a license to practice medicine in the State of New Mexico.

1. Respondent is subject to the Board pursuant to the ULA, §61-1-1 et seq., NMSA 1978, and the Medical Practice Act, §61-6-1 et seq., NMSA 1978.

2. This contemplated action is based on the following allegations:

A. On or about October 5, 2004, the Board issued an Order denying your application for a license to practice medicine in New Mexico. The Order stated, in part, that you "may reapply for licensure after eighteen (18) months of confirmed abstinence from drugs and alcohol as confirmed by the New Mexico Monitor Treatment Program."

On or about September 13, 2005, you reapplied for a license to practice Medicine in New Mexico. The New Mexico Monitored Treatment Program has not confirmed your abstinence from drugs and alcohol for the eighteen months prior to your reapplication for licensure.
These allegations would be a violation of the requirements for licensure as set forth in the Board's October 5, 2004 Order and would be a violation of §61-6-15(D) NMSA 1978, unprofessional or dishonorable conduct.

B. On or about May 9, 2005, you submitted to a multidisciplinary assessment at the Professional Renewal Center (PRC) in Lawrence, Kansas. During an interview at the PRC, you were asked to disclose your current substance use. You did not disclose that you were taking substances that contained alcohol and ephedrine.

These allegations would be a violation of §61-6-15(D) NMSA 1978, unprofessional or dishonorable conduct in that they would be a violation of Rule 16 10 8 8(H), dishonesty.

C. Only after you discovered that you were being tested for ethylglucuronide (Etg) did you disclose to the staff at PRC that you were using a product that contained alcohol. In addition, only after you were informed that you had tested positive for ephedrine did you disclose to the staff at PRC that you were taking a substance that would cause you to test positive for ephedrine.

These allegations would be a violation of §61-6-15(D) NMSA 1978, unprofessional or dishonorable conduct.

D. After you were told by the PRC staff that you tested positive for ethylglucuronide, you told the PRC staff that the only possible source of alcohol was in a product commonly referred to as "Breath Right Snore Relief." When you made the statement, you knew that it was not true.

This allegation would be a violation of §61-6-15(D)29 NMSA 1978,
conduct unbecoming a person licensed to practice medicine in that it would be a violation of Rule 16 10 8 8(H), dishonesty.

Please take notice that pursuant to §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., deny your application to practice medicine in the State of New Mexico. Such action shall be final and not subject to judicial review.

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

Dated: June 28, 2006

Respectfully Submitted,

(Signature)
Lynn S. Hart, Executive Director
NM Medical Board
2055 S. Pacheco, Building 400
Santa Fe, New Mexico 87505
(505) 476-7220
BEFORE THE NEW MEXICO MEDICAL BOARD

IN THE MATTER OF

Elias Said, M.D.
Respondent.

No. 2006-004

NOTICE OF CONTENDED ACTION

YOU ARE HEREBY NOTIFIED that pursuant to provisions of §61-1-4 NMSA 1978 of the Uniform Licensing Act (ULA), the New Mexico Medical Board ("Board") has before it sufficient evidence that, if not rebutted or explained, will justify the Board denying your application for a license to practice medicine in the State of New Mexico.

1. Respondent is subject to the Board pursuant to the ULA, §61-1-1 et seq. NMSA 1978, and the Medical Practice Act, §61-6-1 et seq. NMSA 1978

2. This contemplated action is based on the following allegations:

A. On or about October 5, 2004, the Board issued an Order denying your application for a license to practice medicine in New Mexico. The Order stated, in part, that you "may reapply for licensure after eighteen (18) months of confirmed abstinence from drugs and alcohol as confirmed by the New Mexico Monitor Treatment Program."

On or about September 13, 2005, you reapplied for a license to practice Medicine in New Mexico. The New Mexico Monitored Treatment Program has not confirmed your abstinence from drugs and alcohol for the eighteen months prior to your reapplication for licensure.
These allegations would be a violation of the requirements for licensure as set forth in the Board's October 5, 2004 Order and would be a violation of §61-6-15(D) NMSA 1978, unprofessional or dishonorable conduct.

B. On or about May 9, 2005, you submitted to a multidisciplinary assessment at the Professional Renewal Center (PRC) in Lawrence, Kansas.

During an interview at the PRC, you were asked to disclose your current substance use. You did not disclose that you were taking substances that contained alcohol and ephedrine.

These allegations would be a violation of §61-6-15(D) NMSA 1978, unprofessional or dishonorable conduct in that they would be a violation of Rule 16 10 8 8(H), dishonesty.

C. After blood tests at PRC were taken that later revealed the presence of ethylglucuronide and ephedrine, you asked the staff at PRC to change the list of substances you told them you were taking to add substances that included ethylglucuronide and ephedrine.

These allegations would be a violation of §61-6-15(D) NMSA 1978, unprofessional or dishonorable conduct.

Please take notice that pursuant to §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., deny your application to practice medicine in the State of New Mexico. Such action shall be final and not subject to judicial review.
Pursuant to §61-1-8 NMSA 1978, you have the right to be represented by counsel or by a licensed member of your profession, or both; to present all relevant evidence by means of witnesses and books, papers, documents and other evidence; to examine all opposing witnesses who appear on any matter relevant to the issues; and to have subpoenas and subpoenas duces tecum issued as of right prior to the commencement of the hearing to compel discovery and the attendance of witnesses and the production of relevant books, papers, documents and other evidence upon making written request therefore to the Board or Hearing Officer. The issuance of such subpoenas after commencement of the hearing rests in the discretion of the Board or Hearing Officer.

Dated: January 26, 2006

NEW MEXICO MEDICAL BOARD

[Signature]
Barbara Mohler, Acting Executive Director
NM Medical Board
2055 S. Pacheco, Building 400
Santa Fe, New Mexico 87505
(505) 476-7220

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BEFORE THE NEW MEXICO MEDICAL BOARD

IN THE MATTER OF

Elias Said, M.D.,

Respondent. Case No. 2004-010

FINDINGS OF FACT, CONCLUSIONS OF LAW DECISION AND ORDER NOTICE OF RIGHT TO AN APPEAL

THIS MATTER came before a quorum of the New Mexico Medical Board ("Board") for deliberation and decision on October 4, 2004. An evidentiary hearing on the merits was held before Maureen Boshier, duly appointed Hearing Officer, on August 12, 2004. Respondent Elias Said, M.D. ("Respondent") was present and was represented by K. Lee Peifer and Jane Gagne, Attorneys at Law. The Administrative Prosecutor was G.T.S. Khalsa. Corliss Thalley, Assistant Attorney General, was present to advise the Hearing Officer. A verbatim record of the proceedings as made by a court reported.

The Hearing Officer's Report containing Recommended Findings of Fact was timely submitted to the Board on September 13, 2004.

Board members Prakash M. Ranka, M.D., and Steven Weiner, M.D., are recused and did not participate in hearing, deliberations, or decision in this matter.

RESPONDENT'S REQUESTS TO APPEAR BEFORE THE MEDICAL BOARD

Respondent filed post-hearing requests dated September 16, 19, and 27, 2004, seeking permission for counsel and Respondent to address the Board prior to its deliberation. The Administrative Prosecutor filed two responses on September 17, 2004 and September 27, 2004 asking that Respondent's requests be denied.
Pursuant to authority under Rule 16.10.6.24 (C) NMAC and hearing no objections, Dr. Romine granted Respondent's request. Respondent, through his counsel of record, and the Administrative Prosecutor were allowed ten minutes each to address the Board.

The Board denied Respondent's request to address the Board directly.

DECISION

The Board, having thoroughly familiarized itself with the record of the proceedings, including the testimony of the witness, the exhibits admitted into evidence at the hearing, the Hearing Officer's report, and argument, makes the following findings of fact, reaches the following conclusions of law, and renders this decision and order.

FINDINGS OF FACT

Based on the evidence presented at the hearing, the Board by a unanimous vote of 6 to 0 accepts the Hearing Officer's recommended Findings of Fact 1 through 54 in their entirety.

CONCLUSIONS OF LAW

Based on the findings of fact, the Board, by a unanimous vote of 6 to 0, reaches the following conclusions of law:

1. The Board has jurisdiction over the Respondent and the subject matter.

2. 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. The Decision and Order is timely rendered.
3. Pursuant to § 61-6-15(A), the Board has authority to refuse a license upon satisfactory proof being made to the Board that an applicant has been guilty of unprofessional or dishonorable conduct.

4. Pursuant to § 61-6-15(D)(6), unprofessional or dishonorable conduct includes conviction of an offense punishable by incarceration in a state penitentiary or federal prison.

5. Pursuant to § 61-6-15(D)(8), unprofessional or dishonorable conduct includes fraud or misrepresentation in applying for a license to practice medicine in New Mexico.

6. Pursuant § 61-6-15(D)(14), unprofessional or dishonorable conduct includes discipline imposed on a licensee by another state, based upon acts by the licensee similar to acts that would constitute ground for discipline in New Mexico.

7. Pursuant to § 61-6-15(D)(30), unprofessional or dishonorable conduct includes voluntary surrender of a license before another state licensing board while an investigation or disciplinary action is pending before that board for acts or conduct similar to acts that would constitute grounds for discipline in New Mexico.

8. Pursuant to Rule 16.10.8.8(H) NMAC, unprofessional or dishonorable conduct includes dishonesty.

9. The Administrative Prosecutor proved by a preponderance of the evidence in the record that Respondent violated § 61-6-15(D)(14), as alleged in ¶ 3 of the NCA, in that Respondent had discipline imposed by the Virginia Board of Medicine, based upon acts by Respondent in Virginia that are similar to acts that would be grounds for
discipline in New Mexico, such as sexual misconduct with a patient, which is ground for
discipline in New Mexico.

10. The Administrative Prosecutor proved by a preponderance of the evidence
in the record that Respondent violated § 61-6-15(D)(14), as alleged in ¶¶ 5, 7, and 8 of
the NCA, in that Respondent had discipline imposed by the Georgia Composite State
Board of Medical Examiners ("Georgia Medical Board"), based upon acts by Respondent
in Georgia that are similar to acts that would be grounds for discipline in New Mexico.
Specifically, the Administrative Prosecutor proved that Respondent had discipline
imposed for the following acts: substance abuse (habitual or excessive use of drugs), and
failure to comply with terms of probation (violations of the Georgia Medical Board’s
Order), which are grounds for discipline in New Mexico.

11. The Administrative Prosecutor proved by a preponderance of the evidence
in the record that Respondent violated § 61-6-15(D)(6), in that Respondent has been
convicted of offenses punishable by incarceration in a state penitentiary or federal prison
as alleged in ¶ 6 of the NCA. Specifically, Respondent has seven (7) felony convictions
for violations of the Georgia Controlled Substances Act, obtaining controlled substances
by fraud.

12. The Administrative Prosecutor proved by a preponderance of the evidence
in the record that Respondent violated § 61-6-15(D)(30) unprofessional or dishonorable
conduct as alleged in ¶ 9, in that Respondent voluntarily surrendered his license (did not
renew) while an investigation or disciplinary action was pending in Georgia for violation
of the terms of probation.
13. The Administrative Prosecutor proved by preponderance of the evidence in the record that Respondent violated § 61-6-15(D)(8), unprofessional or dishonorable conduct that includes misrepresentation in connection with applying for a license and Rule 16.10.8.8 NMAC, dishonesty. Specifically, the Administrative Prosecutor proved that Respondent committed misrepresentation and dishonesty as set forth below in ¶¶ (a)-(i) below.

(a). Respondent committed misrepresentation and dishonesty as alleged in ¶ 12 and 13 of the NCA, regarding the allegations contained in ¶ 2(N)(2) of the NCA.

(b). Respondent committed misrepresentation and dishonesty as alleged in ¶¶ 14 and 15 of the NCA, regarding the allegations contained in ¶ 2(N)(3) of the NCA.

(c). Respondent committed misrepresentation and dishonesty as alleged in ¶¶ 16 and 17 of the NCA, regarding the allegations contained in ¶ 2(N)(4) of the NCA.

(d). Respondent committed misrepresentation and dishonesty as alleged in ¶¶ 18 and 19 of the NCA, regarding the allegations contained in ¶ 2(N)(5) of the NCA.

(e). Respondent committed misrepresentation and dishonesty as alleged in ¶¶ 20 and 21 of the NCA, regarding the allegations contained in ¶ 2(N)(6) of the NCA.

(f). Respondent committed misrepresentation and dishonesty as alleged in ¶¶ 24-33 of the NCA, regarding the allegations contained in ¶¶ 2(O)(1)-(5) of the NCA.

(g). Respondent committed misrepresentation and dishonesty as alleged in ¶¶ 34-37 and 40-41 of the NCA, regarding the allegations contained in ¶¶ 2(P)(1), (2), and (4) of the NCA.

(h). Respondent was dishonest as alleged in ¶¶ 42, 44, 45, 47, and 48 of the NCA, regarding the allegations contained in ¶¶ 2(Q) (1), (4), (6), (7), and (8) of the NCA.
(i). Respondent was dishonest as alleged in ¶ 49 of the NCA, regarding the
allegation contained in ¶ 2(R) of the NCA.

  14. The Administrative Prosecutor failed to prove that Respondent violated §
61-6-15(D)(14) as alleged in ¶ 4 of the NCA, regarding the allegation contained in ¶ 2(B)
of the NCA.

  15. The Administrative Prosecutor failed to prove that Respondent committed
fraud, misrepresentation, or dishonesty as alleged in ¶¶ 10 and 11 of the NCA, regarding
the allegation contained in ¶ 2(N)(1) of the NCA.

  16. The Administrative Prosecutor failed to prove that Respondent committed
misrepresentation or dishonesty as alleged in ¶¶ 38-39 of the NCA, regarding the
allegations contained in ¶ 2(P)(3) of the NCA.

  17. The Administrative Prosecutor failed to prove that Respondent was
dishonest as alleged in ¶¶ 43 and 46 of the NCA, regarding the allegations contained in ¶¶
2(Q)(2) and (6) of the NCA.

  18. The Administrative Prosecutor failed to prove fraud as alleged in ¶¶ 12,
14, 16, 18, 20, 22, 24, 26, 28, 30, 32, 34, 36, 38, and 40 of the NCA. The Administrative
Prosecutor proved that Respondent made untrue statements, that Respondent made untrue
statements recklessly or with knowledge that the statements were untrue, and that the
Respondent intended the Board would rely on the untrue statements. The Administrative
Prosecutor failed to prove by clear and convincing evidence that the Board relied on
Respondent's false statements to its detriment.

  19. The Board has sufficient evidence in the record to deny Respondent a
license to practice medicine in New Mexico.
ORDER

Based on the above findings of fact and conclusions of law, the Board, by a unanimous vote of 6 to 0, renders this order.

IT IS ORDERED that Respondent is denied a license to practice medicine in New Mexico. The Respondent may reapply for licensure after eighteen (18) months of confirmed abstinence from drugs and alcohol as confirmed by the New Mexico Monitored Treatment Program, proof of current competence if required, and a comprehensive psychiatric evaluation by a board-approved source addressing the issues that led to the license denial. The psychiatric evaluation shall be within three (3) months of the new application for licensure.

This Decision and Order shall be served upon Respondent in accordance with law. A NOTICE informing Respondent of his right to seek judicial review and the time within which review must be brought is attached.

C. Grant La Farge, M.D., is designated to sign the Decision and Order of the Board.

FOR THE NEW MEXICO MEDICAL BOARD

DATE: October 5, 2004

C. Grant La Farge, M.D.
Secretary-Treasurer
BEFORE THE NEW MEXICO MEDICAL BOARD

IN THE MATTER OF  )
)  )
Elias Said, M.D.   )
Respondent.  )  )  No. 2004-010

NOTICE OF CONTEMPLATED ACTION

YOU ARE HEREBY NOTIFIED that pursuant to provisions of §61-1-4 NMSA 1978 of the Uniform Licensing Act (ULA), the New Mexico Medical Board ("Board") has before it sufficient evidence that, if not rebutted or explained, will justify the Board denying your application for a license to practice medicine in the State of New Mexico.

1. Respondent is subject to the Board pursuant to the ULA, §61-1-1 et seq. NMSA 1978, and the Medical Practice Act, §61-6-1 et seq. NMSA 1978.

2. This contemplated action is based on the following allegations:

   A. On or about October 5, 1990, the Virginia Board of Medicine disciplined you for inappropriate sexual activity with three female patients.

   B. On or about October 6, 1992, you applied for a license to practice medicine in Georgia, and the Georgia Board of Medicine denied your application.

   C. You were thereafter granted a license to practice medicine in Georgia.

   D. On or about October 18, 1996, you were charged with public indecency after having been arrested.

   E. On or about September 1, 1999, you were arrested for driving under the influence of drugs, illegal possession of drugs, illegally leaving the scene of an
accident (hit and run), reckless driving and battery. On or about November 15, 2001, you pled guilty to illegally leaving the scene of an accident, reckless driving and battery charges.

F. On or about May 15, 2000, the Georgia Board of Medicine entered an Order suspending your Georgia license to practice medicine because of substance abuse.

G. On or about October 19, 2000, you were excluded from participation in the Medicaid and Medicare programs.

H. On or about December 18, 2000, you pled guilty to seven felony counts of controlled substance violations in Georgia.

I. On or about March 2, 2001, the Georgia Board of Medicine entered an Order lifting the suspension and permitted you to practice under certain terms and conditions.

J. On or about July 21, 2003, the Georgia Board of Medicine entered a Final Order finding that you had violated the Board’s March 2, 2001 Order and, among other things, fined you $10,000.00.

K. On or about September 30, 2003, the Georgia Board of Medicine entered an Amended Final Decision upholding its July 21, 2003 Final Order.

L. On or about December 8, 2003, the Georgia Board of Medicine entered an Order of Summary Suspension based on information that you had violated the March 2, 2001 Order by self-prescribing testosterone.

M. On or about March 5, 2004, you voluntarily surrendered your Georgia license to practice medicine while a disciplinary action was pending against you.
N. On or about August 8, 2003, you filed an application for a license to practice medicine with the New Mexico Medical Board. You signed an oath which stated, in part, “All statements I have made herein are true”. With respect to the application:

1. You answered “No” to Question No. 5 “Have you ever had any sanctions imposed by Medicare and/or Medicaid?” When you answered the question, you knew that the answer was not true because you were excluded from the program in 2000.

2. You answered “No” to Question No. 6 “Have you ever been arrested, convicted of, or pled no contest to a crime or have you ever been named as a defendant in any criminal proceedings, convicted of a felony or subject to investigation by a governmental entity that could result in sanctions or license adverse actions?” When you answered the question, you knew that the answer was not true. You knew that you were arrested, charged and tried for public indecency, arrested for driving under the influence of drugs, illegal possession of drugs, leaving the scene of an accident, reckless driving and battery, pled guilty to leaving the scene of an accident, reckless driving and battery charges, pled guilty to seven felony offenses for controlled substance violations and had been investigated by the Virginia and Georgia Medical Boards.

3. You answered “No” to questions No. 10, “Has your license to practice in any jurisdiction ever been investigated, voluntarily or involuntarily limited, suspended or revoked, or are any currently held licenses pending investigation or being challenged?” When you answered the question, you knew that the answer was not true. You knew that you had been disciplined by the
Virginia Medical Board on one occasion and by the Georgia Medical Board on multiple occasions.

4. You answered “No” to Question No. 11, “Have you ever been notified to appear before any licensing agency for a hearing or complaint of any nature?” When you answered the question, you knew that your answer was not true. You knew that you had been notified to appear before the Virginia and Georgia Medical Boards.

5. You answered “No” to Question No. 12, “Has your federal or state narcotics registration certificate in any jurisdiction ever been voluntarily or involuntarily limited (stipulations), suspended, revoked, restricted, or are there currently challenges to any of these items?” When you answered the question, you knew that your answer was not true. You knew that the Georgia Medical Board had restricted the use of your DEA registration.

6. You answered “No” to Question No. 15, “Do you use illegal drugs or have you illegally used drugs in the past five years?” When you answered the question, you knew that the answer was not true. You knew that during that period of time you illegally used narcotics.

7. You answered “No” to Question No. 3 on the applicant oath page, “Have you ever withdrawn from, or been suspended, suspended, dismissed or expelled from a medical school or postgraduate training program...?” When you answered the question, you knew that the answer was not true. You knew that you resigned from the Riverside Family Practice Residency Program at the Riverside Regional Medical Center to avoid termination from the program because of your disruptive behavior.
O. On or about August 1, 2003, you wrote a letter to the Board in support of your application for a license to practice medicine in New Mexico regarding your personal history. You made the following assertions in the letter:

1. "There are no legal pending issues..." When you made the statement, you knew that the statement was not true. At the time you made the statement, you knew that you were on probation as a result of an Order entered on or about December 18, 2000 in the Criminal Division of the Superior Court of Gwinnett County, Georgia.

2. There was "no criminal record of any sort." When you made the statement, you knew that the statement was not true. At the time you made the statement, you knew that you had been arrested for public indecency in 1996, arrested for driving under the influence of drugs, illegal possession of drugs, leaving the scene of an accident, reckless driving and battery; and pled guilty to leaving the scene of an accident, reckless driving and battery charges; and pled guilty to seven felony offenses for controlled substance violations on or about December 18, 2000.

3. There were "no convictions of any kind." When you made the statement, you knew that the statement was not true. You knew that you had pled guilty to seven felonies on or about December 18, 2000.

4. When you wrote that there were "no convictions of any kind," you knew that the statement was not true. You knew that you had pled guilty to leaving the scene of an accident, reckless driving and battery on or about November 15, 2001.
5. You stated in the letter that “My medical license and DEA unrestricted license were both reinstated on February of 2001...” When you wrote the statement, you knew that it was not true. In the Order of Reinstatement by the Georgia Medical Board, the Order specifically restricted the use of your DEA registration.

P. On or about October 12, 2003, you wrote another letter to the Board in support of your application for a license to practice medicine. In the letter you made the following assertions:

1. “There are no criminal convictions whatsoever.” When you made the statement, you knew that it was not true. You knew that you had pled guilty to seven felonies in Georgia on or about December 18, 2000.

2. When you wrote that there were “no convictions of any kind,” you knew that the statement was not true. You knew that you had pled guilty to leaving the scene of an accident, reckless driving and battery on or about November 15, 2001.

3. “My total probation time is three years – from December 18, 2000 until November 18, 2003.” When you made the statement, you knew that it was not true. You knew that the probation for the felony offenses was for eight years and has not been modified to three years.

4. You made the same dishonest statements in the letter that you had previously made in the August 1, 2003 letter as more specifically set forth in above paragraph O.

Q. On or about April 16, 2004, you met with Dr. Jaye Swoboda and
Mary Miesem of the New Mexico Monitered Treatment Program. During the interview, you were asked, among other things, about any legal problems you have had. You failed to disclose the following information in response to the questions:

1. That you were disciplined by the Virginia Medical Board for inappropriate sexual activities with three female patients.

2. That you were arrested, charged and tried for public indecency on or about 1996.

3. That you pled guilty to seven felony charges for controlled substance violations in Georgia in 2000.

4. That you were, at the time of the interview, on probation with the Criminal Court in Georgia.

5. That on or about July 21, 2003, you were disciplined by the Georgia Board for violation of an existing Board Order.

6. That you had been excluded from the Medical and Medicare programs.

7. That on or about September 1, 1999, you were arrested for driving under the influence of drugs, illegal possession of drugs, illegally leaving the scene of an accident (hit and run), reckless driving and battery. On or about November 15, 2001, you pled guilty to illegally leaving the scene of an accident, reckless driving and battery charges.

8. That you resigned from the Riverside Family Practice Residency Program at the Riverside Regional Medical Center to avoid termination from the program because of your disruptive behavior.
R. During the same meeting with Dr. Swoboda and Ms. Miesem, you made the statement that the charges regarding the use of opiates were “dropped.” When you made the statement, you knew it was not true. You knew that you had pled guilty to the seven felony counts that you were charged with in Georgia.

3. The allegations in Paragraph 2(A) would be a violation of §61-6-15(D)14 NMSA 1978, discipline imposed by another state licensing board that would be the basis for disciplinary action by this Board.

4. The allegations in Paragraph 2(B) would be a violation of §61-6-15(D)14 NMSA 1978, discipline imposed by another state licensing board that would be the basis for disciplinary action by this Board.

5. The allegations in Paragraph 2(F) would be a violation of §61-6-15(D)14 NMSA 1978, discipline imposed by another state licensing board that would be the basis for disciplinary action by this Board.

6. The allegations in Paragraph 2(H) would be a violation of §61-6-15(D)6 NMSA 1978, conviction of offenses punishable by incarceration in a state penitentiary would be the basis for disciplinary action by this Board.

7. The allegations in Paragraph 2(J) would be a violation of §61-6-15(D)14 NMSA 1978, discipline imposed by another state licensing board that would be the basis for disciplinary action by this Board.

8. The allegations in Paragraph 2(L) would be a violation of §61-6-15(D)14 NMSA 1978, discipline imposed by another state licensing board that would be the basis for disciplinary action by this Board.
9. The allegations in Paragraph 2(M) would be a violation of §61-6-15(D)30 NMSA 1978, surrender of a license to practice medicine in another state while disciplinary actions are pending in that state would be the basis for disciplinary action by this Board.

10. The allegations in Paragraph 2(N)1 would be a violation of §61-6-15(D)8 NMSA 1978, fraud or misrepresentation in applying for a license to practice medicine in New Mexico.

11. The allegations in Paragraph 2(N)1 would also be a violation of §16.10.8.8(H) NMAC 1978, dishonesty.

12. The allegations in Paragraph 2(N)2 would be a violation of §61-6-15(D)8 NMSA 1978, fraud or misrepresentation in applying for a license to practice medicine in New Mexico.

13. The allegations in Paragraph 2(N)2 would also be a violation of §16.10.8.8(H) NMAC 1978, dishonesty.

14. The allegations in Paragraph 2(N)3 would be a violation of §61-6-15(D)8 NMSA 1978, fraud or misrepresentation in applying for a license to practice medicine in New Mexico.

15. The allegations in Paragraph 2(N)3 would also be a violation of §16.10.8.8(H) NMAC 1978, dishonesty.

16. The allegations in Paragraph 2(N)4 would be a violation of §61-6-15(D)8 NMSA 1978, fraud or misrepresentation in applying for a license to practice medicine in New Mexico.

17. The allegations in Paragraph 2(N)4 would also be a violation of §16.10.8.8(H) NMAC 1978, dishonesty.

18. The allegations in Paragraph 2(N)5 would be a violation of §61-6-15(D)8 NMSA 1978, fraud or misrepresentation in applying for a license to practice medicine in New Mexico.

19. The allegations in Paragraph 2(N)5 would also be a violation of §16.10.8.8(H) NMAC 1978, dishonesty.
20. The allegations in Paragraph 2(N)6 would be a violation of §61-6-15(D)8 NMSA 1978, fraud or misrepresentation in applying for a license to practice medicine in New Mexico.

21. The allegations in Paragraph 2(N)6 would also be a violation of §16.10.8.8(H) NMAC 1978, dishonesty.

22. The allegations in Paragraph 2(N)7 would be a violation of §61-6-15(D)8 NMSA 1978, fraud or misrepresentation in applying for a license to practice medicine in New Mexico.

23. The allegations in Paragraph 2(N)7 would also be a violation of §16.10.8.8(H) NMAC 1978, dishonesty.

24. The allegations in Paragraph 2(O)1 would be a violation of §61-6-15(D)8 NMSA 1978, fraud or misrepresentation in applying for a license to practice medicine in New Mexico.

25. The allegations in Paragraph 2(O)1 would also be a violation of §16.10.8.8(H) NMAC 1978, dishonesty.

26. The allegations in Paragraph 2(O)2 would be a violation of §61-6-15(D)8 NMSA 1978, fraud or misrepresentation in applying for a license to practice medicine in New Mexico.

27. The allegations in Paragraph 2(O)2 would also be a violation of §16.10.8.8(H) NMAC 1978, dishonesty.

28. The allegations in Paragraph 2(O)3 would be a violation of §61-6-15(D)8 NMSA 1978, fraud or misrepresentation in applying for a license to practice medicine in New Mexico.

29. The allegations in Paragraph 2(O)3 would also be a violation of §16.10.8.8(H) NMAC 1978, dishonesty.

30. The allegations in Paragraph 2(O)4 would be a violation of §61-6-15(D)8 NMSA 1978, fraud or misrepresentation in applying for a license to practice medicine in New Mexico.

31. The allegations in Paragraph 2(O)4 would also be a violation of §16.10.8.8(H) NMAC 1978, dishonesty.
32. The allegations in Paragraph 2(O)5 would be a violation of §61-6-15(D)8 NMSA 1978, fraud or misrepresentation in applying for a license to practice medicine in New Mexico.

33. The allegations in Paragraph 2(O)5 would also be a violation of §16.10.8.8(H) NMAC 1978, dishonesty.

34. The allegations in Paragraph 2(P)1 would be a violation of §61-6-15(D)8 NMSA 1978, fraud or misrepresentation in applying for a license to practice medicine in New Mexico.

35. The allegations in Paragraph 2(P)1 would also be a violation of §16.10.8.8(H) NMAC 1978, dishonesty.

36. The allegations in Paragraph 2(P)2 would be a violation of §61-6-15(D)8 NMSA 1978, fraud or misrepresentation in applying for a license to practice medicine in New Mexico.

37. The allegations in Paragraph 2(P)2 would also be a violation of §16.10.8.8(H) NMAC 1978, dishonesty.

38. The allegations in Paragraph 2(P)3 would be a violation of §61-6-15(D)8 NMSA 1978, fraud or misrepresentation in applying for a license to practice medicine in New Mexico.

39. The allegations in Paragraph 2(P)3 would also be a violation of §16.10.8.8(H) NMAC 1978, dishonesty.

40. The allegations in Paragraph 2(P)4 would be a violation of §61-6-15(D)8 NMSA 1978, fraud or misrepresentation in applying for a license to practice medicine in New Mexico.

41. The allegations in Paragraph 2(P)4 would also be a violation of §16.10.8.8(H) NMAC 1978, dishonesty.

42. The allegations in Paragraph 2(Q)1 would be a violation of §16.10.8.8(H) NMAC 1978, dishonesty.

43. The allegations in Paragraph 2(Q)2 would be a violation of §16.10.8.8(H) NMAC 1978, dishonesty.
44. The allegations in Paragraph 2(Q)4 would be a violation of §16.10.8.8(H) NMAC 1978, dishonesty.

45. The allegations in Paragraph 2(Q)5 would be a violation of §16.10.8.8(H) NMAC 1978, dishonesty.

46. The allegations in Paragraph 2(Q)6 would be a violation of §16.10.8.8(H) NMAC 1978, dishonesty.

47. The allegations in Paragraph 2(Q)7 would be a violation of §16.10.8.8(H) NMAC 1978, dishonesty.

48. The allegations in Paragraph 2(Q)8 would be a violation of §16.10.8.8(H) NMAC 1978, dishonesty.

49. The allegations in Paragraph 2(R) would be a violation of §16.10.8.8(H) NMAC 1978, dishonesty.

Please take notice that pursuant to §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., deny your application to practice medicine in the State of New Mexico. Such action shall be final and not subject to judicial review.

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

Dated: May 26th, 2004

NEW MEXICO MEDICAL BOARD

Charlotte Kinney, Executive Director
NM Medical Board
491 Old Santa Fe Trail
Santa Fe, New Mexico 87501
(505) 827-5022

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was mailed by certified mail to:

Elias Said, MD
c/o Lee Peifer
108 Wellesley, SE
Albuquerque, New Mexico 87106-1444

Certified # 7000 1530 0000 3030 4163

on this 26th day of May, 2004.

(signed)