

STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

IN RE:

MERYL J. NASS, M.D.
COMPLAINT NOS. CR21-191,
CR21-210, AND CR22-4

**MOTION FOR WITHDRAWAL AND
MODIFICATION OF
THE DECISION AND ORDER**

The Board of Licensure in Medicine (“Board”) deliberated on September 19, 2023 and made its decision in this matter. The Board adopted its written decision on December 12, 2023. Board Staff files this motion to request corrections to the Decision and Order to fully and accurately reflect the Board’s deliberations and decisions and also to correct some typographical errors. Board Staff seeks the withdrawal of the decision adopted on December 12, 2023 until the Hearing Officer and/or Board address this motion. As previously represented to the Hearing Officer and Licensee, Board Staff expressly waives any argument that the Maine Administrative Procedure Act appeal period with respect to final agency action is running during the pendency of this Motion for Withdrawal and Modification of Decision and Order. In the interests of timeliness and administrative and judicial efficiency, Board Staff seeks to resolve these administrative errors immediately at the agency level. The Board retains the jurisdiction to modify its decision until a Rule 80(C) appeal is filed. *York Hosp. v. Dep't of Health & Hum. Servs.*, 2008 ME 165, ¶ 33, 959 A.2d 67 (citing *Gagne v. City of Lewiston*, 281 A.2d 579 (Me. 1971)).

Board Staff seeks modification of the Decision and Order to make several corrections, understanding that this was a complex case. First, the Decision and Order’s heading contains only the Complaint No. CR-4 and footnote 1 about the removal of the other two case numbers from the heading. This issue was already argued and considered, and the Hearing Officer ruled in her Evidentiary Order of October 24, 2022 that the three Case Nos. 21-191, 21-210, and 22-4 would remain part of the case, finding that “all three complaints have been consolidated into the

present matter regardless of whether certain facts alleged in prior versions of the Notice of Hearing have been withdrawn.” The Hearing Officer opened the hearing reading all three case numbers and reiterated all three of them again at the start of the final day, September 19, 2023. Tr. Oct. 11, 2022, 4; Tr. Sept. 19, 2023, 1587. The Board did not discuss or vote to eliminate any case numbers. The three case numbers remained consolidated throughout the hearing, regardless of whether the facts alleged under prior versions of the Notice of Hearing were introduced at hearing. Board Staff therefore requests the heading be corrected to include all three case numbers and that footnote 1 be deleted.

Next, Board Staff requests corrections to some typographical errors. The Decision and Order on page 16 discusses Court XIV (14). This Count was brought under 32 M.R.S. § 3282-A(2)(A). See Third Amended Notice of Hearing, Board Staff Exhibit 1, page 3. When the Board voted on this Count, they recited that the allegation was of a violation of 32 M.R.S. § 3282-A(2)(A) and voted on a finding of deceit and misrepresentation. Tr. Sept. 19, 2023, 1661-1674. This is also reflected in the Decision and Order on page 10. The discussion on page 16 brings the Telemedicine rule into the discussion of Count XIV (14), though the rest of the relevant paragraph addresses the lie to the pharmacist as the basis of Count XIV (14). Board Staff requests that the second paragraph on page 16 be corrected to refer solely to 32 M.R.S. § 3282-A(2)(A).

Further, on page 16 in the third paragraph is the list of counts for which the Board did not find violations. That list includes Count XVII (17). It should be XVIII (18), as XVIII (18) was voted on and XVII (17) was withdrawn. See Third Amended Notice of Hearing, Board Staff Exhibit 1, page 3; Tr. Sept. 19, 2023, 1674-1683. Similarly, on page 17 in the first paragraph are listed the grounds for the Board’s reprimand. The Count for failing to refer Patient 2 to an acute care facility was Count VIII (8), not VII (7). See Third Amended Notice of Hearing, Board Staff

Exhibit 1, page 2; Tr. Sept. 19, 2023, 1768:24-25 (Hearing Officer summary states Count 8).

Board Staff requests these references be corrected.

Finally, Board Staff requests clarification of the terms of suspension and probation on page 17 and 18 to fully and accurately reflect the Board's decision. First, the Decision and Order states that "the Board suspended the Licensee's license for a total of 39 months." This does not accurately reflect the deliberations or vote of the Board. The transcript of those deliberations instead indicates that after extensive discussion of both the length and the start and end dates of the period of suspension, the Board voted on a period of "suspension to April of 2025." See Tr. Sept. 19, 2023, 1781:18-24. Related to the effective date of the Decision and Order's terms, including the suspension, the Board voted to adopt the Hearing Officer's proposal "that this decision and order will be effective when it's issued." See Tr, Sept. 19, 2023, 1787:7-8. The Board never voted to adopt a "39 month" period of suspension. The only time that period of time was mentioned directly during deliberations was when raised by the Hearing Officer during an explanation that included that timeframe and the advice that the Board did not "have to give credit for the time that she's already been in suspension." See Tr. Sept. 19, 2023, 1762:20-1763:2. The Board did originally discuss a "time-served" approach to the suspension that took into account the voluntary ongoing suspension in effect at the time of deliberations, but then switched to tying the suspension they were imposing to the Licensee's operative renewal period. See, *e.g.*, Tr. Sept. 19, 2023, 1759:22-1760:4; & 1762:15-18 (HO: "If you were doing a license suspension that went from the date of the decision and order, let's say to April '25, that's a year and a half."); & 1763:13-15 Chair Gleaton: "The simplest thing is to tie it to the renewal but it's longer than we had all talked about.; & 1764:10-23 (Chair Gleaton summarizing)). Accordingly, Staff requests the Decision and Order be modified to reflect those terms of suspension voted on and adopted by the Board during deliberations: a suspension through April of 2025 effective on the date the Decision and Order is issued.

The second issue related to the suspension language is that the Decision and Order does not clearly state the relationship between the various conditions of probation and the stay of the suspension. On page 17, the Decision and Order states, “the suspension will be lifted upon the Licensee’s completion of the conditions of probation” and then states that “the Board imposed a two-year period of probation during which the following conditions are in effect.” See Decision and Order, page 17. The first listed condition is the requirement of a practice monitor. Taken together, these three statements impose, or seem to impose, the condition that the Licensee have a practice monitor in place, monitoring her medical practice, for a period of at least one, and up to two years, *before* her suspension is stayed. The Board’s deliberations indicate that they instead imposed preliminary conditions of probation requiring that the Licensee retain a Board-approved practice monitor, and meet conditions 2-4 (CME, a telemedicine plan, and a competency evaluation) (Decision and Order, pages 17-18) before the suspension would be stayed and she could resume practice, thereafter the Board imposed a two-year probationary period during which the Licensee must work with the Board-approved practice monitor. See, *e.g.*, Tr. Sept. 19, 2023, 1760:4-10 (“once the practice monitor is in place or once the education has been done and we’ve heard back from her, you know that checklist, then –then the—the suspension is automatically stayed so she can start practicing”). As written the Decision and Order does not accurately reflect those requirements and on its face imposes higher sanctions than were adopted by the Board during deliberations. Board Staff therefore requests the Decision and Order be corrected to clearly state the preliminary conditions of probation the Board determined must be met for the Licensee’s suspension to be stayed, and, following the stay, the imposition of a two-year period of probation, including the requirement the Licensee work with the practice monitor.

Accordingly, to ensure that the Board's written decision is accurate, complete, and unambiguous, Board Staff respectfully requests the Hearing Officer withdraw the Decision and Order, modify it to make the requested corrections, and submit the modified and corrected Decision and Order for approval and adoption by the Board.

Dated this 14th day of December 2023.

/s/ Jennifer Willis
Lisa Wilson, AAG
Jennifer Willis, AAG
Office of the Attorney General
6 State House Station
Augusta, ME 04333
jennifer.willis@maine.gov
207.626.8800