

STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

In re Meryl J. Nass, M.D.)
)
Complaint No. CR22-4)

DECISION AND ORDER

I. PROCEDURAL HISTORY

Pursuant to the authority found in 10 M.R.S. Section 8003(5) and 32 M.R.S. Section 3282-A, the Maine Board of Licensure of Medicine (“Board”) met in public session on October 11, 2022; October 25, 2022; January 31, 2023; March 2, 2023; May 30, 2023; July 28, 2023; and September 19, 2023. The hearing was held by remote videoconference pursuant to 1 M.R.S. Section 403-B and the Board’s remote Board Member participation policy. The purpose of the meeting was to determine whether to impose discipline upon the license of Meryl J. Nass, M.D., (“Licensee”) to practice medicine in the State of Maine.¹

A Third Amended Notice of Hearing was issued on September 30, 2022, confirming that the first day of hearing was scheduled for October 11, 2022. The Third Amended Notice of Hearing withdrew several allegations from previous Notices of Hearing. During the procedural course of the hearing, the following orders were issued:

1. A Conference Order on February 1, 2022.
2. A Conference Order on August 29, 2022.
3. A Conference Order on August 11, 2022.
4. A Scheduling Order on September 21, 2022.
5. A Conference Order on October 5, 2022.
6. An Evidentiary Order on October 5, 2022.
7. An Order on Motion to Apply Clear and Convincing Evidence Standard on October 10, 2022.
8. An Evidentiary Order on October 24, 2022.
9. An Amended Evidentiary Order on January 25, 2023.
10. An Order on Subpoenas Requested by the Licensee on February 14, 2023.

¹ Although the matter initially involved Complaints No. CR21-191 and CR21-210 as well, the allegations arising from those complaints were not involved in the Amended Notice of Adjudicatory Hearing of September 30, 2022.

11. An Evidentiary Order on February 24, 2023.
12. An Order on Motion to Exclude or Limit Expert Testimony on February 24, 2023.
13. An Amended Evidentiary Order Regarding Licensee Rebuttal Exhibits excluding some licensee evidence due to lack of relevance or untimely filing on February 27, 2023.
14. A Conference Order on March 9, 2023.
15. An Order on Board Staff Motion to Permit Absent Board Member to Continue to Participate on May 1, 2023.
16. An Order on Licensee Motion for Disclosure on July 27, 2023.
17. An Order on Board Staff Motion for Procedural Order on July 27, 2023.
18. An Order on Pending Motions on September 11, 2023.

A quorum of the Board was in attendance during all stages of the proceedings. Participating and voting Board members were Holly Fanjoy, M.D.; Renee Fay-LeBlanc, M.D.; Gregory Jamison, R.Ph.; Noah Nesin, M.D.,² Brad Waddell, M.D.; Lynne Weinstein, Public Member; and Chair Maroulla Gleaton, M.D.

The Licensee was present and represented by Gene Libby, Esq., and Tyler Smith, Esq. Timothy Steigelman, Esq., Lisa Wilson, Esq., and Jennifer Willis, Esq., Assistant Attorneys General, represented Board Staff. Rebekah Smith, Esq., served as Presiding Officer pursuant to a contract with the Board. The hearing was held in accordance with the requirements of the Maine Administrative Procedure Act, 5 M.R.S. Section 9051 to Section 9064. The Board made its determinations regarding the allegations in the Notice of Hearing by a preponderance of the evidence.

The Board took notice of its statutes and rules and confirmed that no participating member had any conflict of interest or bias that would prevent him or her from rendering an impartial decision in this matter. Prior to the first day of hearing, the parties presented written opening statements. During the hearing, Board Staff presented the following witnesses; the Licensee; Thomas Courtney, M.D., expert witness; and Jeremy Faust, M.D., expert witness. The Licensee

² Noah Nesin, M.D., was present for the first three days of hearing but was not able to attend the March 2, 2023, hearing date due to a scheduling conflict and thereafter did not participate.

presented the following witnesses; Harvey Risch, M.D., Ph.D., expert witness; Nancy Mahoney, Patient 1; Michael Balos, Patient 2; Angela Balos, patient of the Licensee and spouse of Patient 2; Sarah Bishop, Patient 3; Paul Marik, M.D., expert witness; Steven Katsis, M.D., expert witness; and Pierre Kory, M.D., expert witness. All testimony was taken under oath. The parties made closing arguments regarding whether the allegations had been proven by a preponderance of the evidence. The Board then deliberated and made the following findings of fact and conclusions of law regarding the allegations against the Licensee. The parties then made closing arguments regarding what sanction the Board should impose. The Board then deliberated and determined a set of appropriate sanctions.

II. FINDINGS OF FACT

The Board makes the following findings of fact by a preponderance of the credible evidence.

Licensee Medical Practice. The Licensee was first licensed to practice medicine in the State of Maine on August 22, 1997. (Board Staff Exh. #2.) The Licensee specialized as an internist in Ellsworth, Maine, focused on patients with chronic illnesses. (Board Staff Exh. # 2; Testimony of Nass, Tr. I 131). The Licensee filed an application for renewal of her medical license on May 30, 2023. (Board Staff Exh. #171.)

Procedural History. On January 11, 2022, the Board voted to file a complaint against the Licensee, identified as Complaint Number CR22-4, partially on the basis of her treatment of Patients 1, 2, and 3 and to suspend the Licensee's license on an emergency basis. (Board Staff Exh. #3 & #97.) On January 12, 2022, the emergency suspension of the Licensee's license was issued. (Board Staff Exh. #3.) As indicated in the February 1, 2022, Conference Order, the Licensee agreed that her licensure suspension would remain in effect until the Board made a final decision in this

matter.³ On May 30, 2023, the Licensee filed an application for renewal of her medical license, which remains pending. (Board Staff Exh. #171.)

Patient 1. Patient 1 located the Licensee's name on a website directory of physicians who would treat COVID. (Testimony of Patient 1, Tr. VI 1282.) On September 28, 2021, Patient 1 had a telehealth visit with the Licensee to consult about potential treatment of COVID. (Board Staff Exh. #8 & #9; Testimony of Nass, Tr. I 43.) The Licensee did not meet with Patient 1 in person. (Testimony of Nass, Tr. I 44; Testimony of Patient 1, Tr. VI 1285.) Patient 1 already had a prescription for hydroxychloroquine but was seeking resources for treatment if she were to contract COVID, against which she was not vaccinated. (Testimony of Patient 1, Tr. VI 1284-85.) During the phone call, the Licensee asked Patient 1 what medications she was taking. (Testimony of Patient 1, Tr. VI 1287.)

In a one-page handwritten visit note, the Licensee noted that Patient 1 was unvaccinated and had hydroxychloroquine on hand at home. (Board Staff Exh. #9.) She noted Patient 1's weight. (Board Staff Exh. #9.) She indicated that Patient 1's sister had gotten very sick very quickly with COVID and Patient 1's husband had Lyme disease. (Board Staff Exh. #9.) The Licensee did not indicate Patient 1's medical history or her current medications. (Board Staff Exh. #9.) The same day, the Licensee prescribed ivermectin to Patient 1. (Board Staff Exh. #8 & #9.) The Licensee charged Patient 1 and her husband \$120 for telehealth COVID consultation visits. (Board Staff Exh. #8.)

Patient 1 understood that she could contact the Licensee if she was experiencing symptoms of COVID. (Testimony of Patient 1, Tr. VI 1288.) In early December, at her request, Patient 1's

³ Under the agreement, the Licensee's suspension would have concluded prior to the issuance of this Decision and Order if a court had adjudicated the validity of the Order of Immediate Suspension and vacated or terminated the Order, which has not occurred.

husband contacted the Licensee because she was experiencing symptoms including a splitting headache. (Testimony of Patient 1, Tr. VI 1291.)

On December 15, 2021, Patient 1's son texted the Licensee indicating that he, Patient 1, and his father (Patient 1's husband) were all suffering. (Board Staff Exh. #16.) By December 17, 2021, Patient 1's son reported to the Licensee that his father was borderline delirious, moaned with every exhale, and was not making sense. (Board Staff Exh. #16.) He indicated that his father's breathing was shallow and he coughed with each breath. (Board Staff Exh. #16.) Patient 1's son asked when they should consider going to the emergency room and whether his father should take more ivermectin. (Board Staff Exh. #16.) He indicated that Patient 1 was not doing well either. (Board Staff Exh. #16.) Patient 1's son indicated that his own oxygen level was 85. (Board Staff Exh. #16.) On December 17, 2021, the Licensee added a handwritten note to the one-page record of Patient 1's September telehealth visit; it indicated that Patient 1 had just turned a corner on Day 11 of COVID and did not need any further prescriptions. (Board Staff Exh. #9.)

On December 18, 2021, Patient 1's son reported that he had passed out the night before and had a bump on his head and soreness. (Board Staff Exh. #16.) He again asked whether he should go to the emergency room. (Board Staff Exh. #16.) Around this time, the Licensee recommended that they all go to the emergency room. (Testimony of Patient 1, Tr. VI 1296.)

Patient 1's son subsequently reported on December 18 that he had gone to the emergency room and received a cat scan with negative results. (Board Staff Exh. #16.) Later on December 18, Patient 1's son asked to speak with the Licensee, expressing concern that it was time to take Patient 1 and his father to the doctor because they were very weak with no signs of improvement. (Board Staff Exh. #16.)

On December 19, 2021, Patient 1 was admitted to Pen Bay Medical Center. (Board Staff Exh. #7.) Patient 1's son contacted the Licensee to report that Patient 1 was being admitted and her

oxygen levels were in the 80s. (Board Staff Exh. #16.) The Licensee responded with a list of possible causes of Patient 1's low oxygen levels. (Board Staff Exh. #16.) On December 19, 2021, the Licensee wrote on a blank piece of lined paper that she had consulted with the patient on December 17, 18, and 19 and that Patient 1 had symptoms of dry cough, dizziness, weakness, poor appetite for two weeks, and no bowel movement for several days. (Board Staff Exh. #9.) She indicated in the note that Patient 1 had been admitted to Pen Bay Medical Center. (Board Staff Exh. #9.)

At Pen Bay Medical Center, Patient 1 was diagnosed with COVID, with symptom onset 13 days prior, as well as acute respiratory failure with hypoxia. (Board Staff Exh. #17.) Her Pen Bay Medical Center record noted her allergy to penicillin. (Board Staff Exh. #17.) The same day that Patient 1 was admitted, Madeline Martindale, M.D., the attending hospitalist at Pen Bay Medical Center, filed a report with the Board pursuant to 24 M.R.S. Section 2505 expressing concern that the Licensee had diagnosed Patient 1 with COVID approximately two weeks prior and had prescribed ivermectin. (Board Staff Exh. #7.) Dr. Martindale noted that Patient 1 was therefore not provided outpatient examination or prescription of other potential medications for COVID. (Board Staff Exh. #7.) Patient 1 was receiving supplemental oxygen for COVID pneumonia and her husband was also diagnosed with COVID. (Board Staff Exh. #7.)

On December 20, 2021, Patient 1's son texted the Licensee that he and his father were still hospitalized and Patient 1 remained in the intensive care unit. (Board Staff Exh. #16.) He expressed concern that the Licensee was being harassed for prescribing approved medications and asked if she was accepting donations for her legal issues. (Board Staff Exh. #16.) The Licensee responded that she knew some "crack attorneys" and was "hoping to make a public spectacle of an investigation." (Board Staff Exh. #16.) She later indicated that she did not mind "fighting with bullies." (Board Staff Exh. #16.)

On December 24, 2021, Patient 1's son updated the Licensee regarding the conditions of Patient 1 and her husband. (Board Staff Exh. #8.) Patient 1's son reported to the Licensee on December 25, 2021, that Patient 1's husband had come off sedation and was improving. (Board Staff Exh. #8.) Patient 1 was discharged from Pen Bay Medical Center on December 25, 2021. (Board Staff Exh. #17.)

Patient 2. Prior to moving to Maine in 2021, Patient 2 had received a prescription for Ivermectin from a physician in Texas whom he had located on a website. (Testimony of Patient 2, Tr. VI 1346.) When Patient 2 and his wife moved to Maine, they consulted the same website to locate a physician who would prescribe the medications they wanted in the event they contracted COVID. (Testimony of Patient 2, Tr. VI 1351.)

On September 2, 2021, Patient 2 and his wife had telephone consultations with the Licensee regarding treatment for COVID should symptoms arise. (Testimony of Patient 2, Tr. VI 1349.) The Licensee asked Patient 2 about his medical conditions, medications, and weight. (Testimony of Patient 2, Tr. VI 1349.) The Licensee created a visit note that indicated Patient 2's weight and his medications. (Board Staff Exh. #21.) The Licensee described a plan of hydroxychloroquine and an antibiotic. (Board Staff Exh. #21.) Patient 2 was at high risk for having a severe case of COVID due to multiple diagnoses including diabetes, hypertension, obstructive sleep apnea, obesity, and a heart murmur. (Board Staff Exh. #23; Testimony of Nass, Tr. I 73-74.) The Licensee prescribed Patient 2 ivermectin to be taken if he contracted COVID. (Testimony of Patient 2, Tr. VI 1350; Board Staff Exh. #21.) The Licensee charged Patient 2 and his wife \$120 for the consultations. (Testimony of Patient 2's Spouse, Tr. VI 1409.)

On December 7, 2021, Patient 2 contracted COVID. (Testimony of Patient 2, Tr. VI 1353; Board Staff Exh. #23.) Patient 2's wife began communicating with the Licensee via text and telephone about the symptoms she and Patient 2 were experiencing. (Board Staff Exh. #21.) On

December 11, 2021, the Licensee informed Board Staff that she had provided a false diagnosis of Lyme disease to a pharmacy to obtain a prescription for hydroxychloroquine for Patient 2 when the pharmacist called to ask for Patient 2's diagnosis. (Board Staff Exh. #8; Testimony of Nass, Tr. I 160.) The Licensee texted Patient 2's wife that she had told Board Staff about lying to the pharmacy, concluding, "Let's see what they do with that." (Board Staff Exh. #8.)

On December 15, 2021, the Licensee recommended a chest x-ray for Patient 2 after Patient 2's spouse reported that Patient 2 had a fever of 102.9, oxygen saturation of 89 percent, heart rate of 111 to 115, colored sputum, sweating, and chills. (Testimony of Nass, Tr. I 87-88; Board Staff Exh. #8 & #21.) Patient 2 had been experiencing COVID symptoms for nine days. (Board Staff Exh. #8.) When discussing a prescription, the Licensee asked Patient 2's spouse for her name in a text, stating, "I cannot remember your name, town, and DOB. I do remember lying to the pharmacy." (Board Staff Exh. #8.) The Licensee also suggested holding off on the additional medications she was going to prescribe for Patient 2 until the x-ray had occurred. (Testimony of Patient 2's Spouse, Tr. VI 1421; Board Staff Exh. #21.)

On December 16, 2021, Patient A was admitted to the hospital with acute respiratory failure with hypoxia, COVID, and pneumonia due to COVID. (Board Staff Exh. #23.) Patient 2 had completed a course of ivermectin prescribed by the Licensee. (Board Staff Exh. #23.) On December 20, 2021, Patient 2 was intubated. (Board Staff Exh. #23.) Patient 2 was discharged from the hospital on approximately January 2, 2022. (Testimony of Patient 2's Spouse, Tr. VI 1425.)

Patient 3. Patient 3, who was pregnant, took a PCR test on September 19, 2021, and learned she was positive for COVID late in the day on September 20, 2021. (Board Staff Exh. #25.) Patient 3 began to look for someone who could treat her if her symptoms worsened. (Testimony of Patient 3, Tr. VI 1437.) She found the Licensee's name on a website. (Testimony of Patient 3, Tr.

VI 1437.) On September 21, 2021, Patient 3's husband contacted the Licensee for treatment of Patient 3's COVID. (Board Staff Exh. #25; Testimony of Patient 3, Tr. VI 1439.) Prior to her call with the Licensee, Patient 3 believed that hydroxychloroquine would be a beneficial medication for her based on her husband's research. (Testimony of Patient 3, Tr. VI 1446.)

During the phone call with Patient 3, the Licensee asked about Patient 3's height and weight. (Testimony of Patient 3, Tr. VI 1439.) She also asked what medications Patient 3 was taking. (Testimony of Patient 3, Tr. VI 1439.) Patient 3 informed the Licensee that she was taking her husband's prescription for Montelukast in hopes that it would relieve her symptoms. (Testimony of Patient 3, Tr. VI 1439.) The Licensee advised Patient 3 to cease taking the Montelukast. (Testimony of Patient 3, Tr. VI 1439.) The Licensee asked about Patient 3's blood pressure; Patient 3's husband reported that her blood pressure was good but did not provide the actual blood pressure reading. (Testimony of Patient 3, Tr. VI 1449.) The Licensee did not ask Patient 3 about any of her other vital signs other than whether she had a fever. (Testimony of Patient 3, Tr. VI 1449.)

The Licensee created a consultation note in which she indicated the Patient's weight and her current medication list. (Board Staff Exh. #28.) The note did not include information about Patient 3's medical history or indicate that the Licensee had asked Patient 3 about her medical history. (Testimony of Patient 3, Tr. VI 1452; Board Staff Exh. #28.) The note indicated that Patient 3 was pregnant and positive for COVID. (Board Staff Exh. #28.) Under the Assessment and Plan portion of the note, the Licensee indicated she had instructed Patient 3 to stop taking Montelukast and she had prescribed hydroxychloroquine and a course of antibiotics as well as fluids and rest. (Board Staff Exh. #28; Testimony of Licensee, Tr. I 99-100.)

On December 31, 2021, Renata Morse, Certified Nurse Midwife at Northern Light Maine Coast, filed a report with the Board regarding the Licensee pursuant to 24 M.R.S. Section 2505. (Board Staff Exh. #25.) Ms. Morse indicated that Patient 3 had contacted her office on September

22, 2023, regarding treatment for COVID. (Board Staff Exh. #25.) Ms. Morse spoke with Patient 3, who reported that she was taking hydroxychloroquine as prescribed by the Licensee. (Board Staff Exh. #25.) Ms. Morse, who had been providing Patient 3's prenatal care, was concerned that the Licensee had not consulted her in treating Patient 3 for acute COVID, had prescribed a medication not approved for COVID, and had undermined Patient 3's trust in her and the medical system. (Board Staff Exh. #25.)

III. GOVERNING STATUTES AND RULES

1. The Board's sole purpose is to protect the public health and welfare. 10 M.R.S. § 8008.
2. The Board may impose discipline upon a licensee for the practice of deceit or misrepresentation in connection with services rendered within the scope of the license issued. 32 M.R.S. § 3282-A(2)(A).
3. The Board may impose discipline upon a licensee who engages in incompetency by engaging in conduct that evidences a lack of knowledge or inability to apply principles and skills to carry out the practice for which the licensee is licensed. 32 M.R.S. § 3282-A(2)(E)(2).
4. The Board may impose discipline upon a licensee who violates a Board statute or rule. 32 M.R.S. § 3282-A(2)(H).
5. A licensee who provides telemedicine is held to the same standards of care and professional ethics as licensees providing traditional in-person health care. 02-373 C.M.R. Ch. 6 § 1(3).
6. Failure to conform to the appropriate standards of care and professional ethics while using telemedicine in providing health care may subject the licensee to potential discipline by the Board. 02-373 C.M.R. Ch. 6 § 1(4).
7. A licensee who uses telemedicine in providing health care shall be held to the same standards of care and professional ethics as a licensee using traditional in-person encounters

with patients. Failure to conform to the appropriate standards of care or professional ethics while using telemedicine may be a violation of the laws and rules governing the practice of medicine and may subject to the licensee to potential discipline by the Board. 02-373 C.M.R. Ch. 6 § 3(3).

8. Generally, a licensee shall perform an in-person medical interview and physical examination for each patient. However, the medical interview and physical examination may not be in-person if the technology utilized in a telemedicine encounter is sufficient to establish an informed diagnosis as though the medical interview and physician examination had been performed in-person. Prior to providing treatment, including issuing prescriptions, electronically or otherwise, a licensee who uses telemedicine in providing appropriate health care shall interview the patient to collect the relevant medical history and perform a physical examination, when medically necessary, sufficient for the diagnosis and treatment of the patient. An internet questionnaire that is a static set of questions provided to the patient, to which the patient responds with a static set of answers, in contrast to an adaptive interactive and responsive online interview, does not constitute an acceptable medical interview and physical examination for the provision of treatment, including issuance of prescriptions, electronically otherwise, by the licensee. 02-373 C.M.R. Ch. 6 § 3(7).
9. A licensee who uses telemedicine in providing health care shall ensure that the patient provides appropriate informed consent for the health care services provided, including consent for the use of telemedicine to examine, consult, diagnose and treat the patient, and that such informed consent is timely documented in the patient's medical record. 02-373 C.M.R. Ch. 6 § 3(9).

10. A licensee who uses telemedicine in providing health care shall refer a patient to an acute care facility or an emergency department when referral is necessary for the safety of the patient or in the case of an emergency. 02-373 C.M.R. Ch. 6 § 3(12)(B).
11. A licensee who uses telemedicine in providing health care shall ensure that complete, accurate and timely medical records are maintained for the patient when appropriate, including all patient-related electronic communications, records of past care, physician-patient communications, laboratory and test results, evaluations and consultations, prescriptions, and instructions obtained or produced in connection with the use of telemedicine technologies. The licensee shall note in the patient's record when telemedicine is used to provide diagnosis and treatment. The licensee shall ensure that the patient or another licensee designated by the patient has timely access to all information obtained during the telemedicine encounter. The licensee shall ensure that the patient receives, upon request, a summary of each telemedicine encounter in a timely manner and in accordance with applicable law. 02-373 C.M.R. Ch. 6 § 3(13).
12. A licensee who uses telemedicine in providing health care shall ensure that all telemedicine encounters comply with the privacy and security measures of the Health Insurance Portability and Accountability Act and applicable law to ensure that all patient communications and records are secure and remain confidential. Written protocols shall be established that address the following: privacy; health care personnel who will process messages; hours of operation; types of transactions that will be permitted electronically; required patient information to be included in any communication, including patient name, identification number and type of transaction; archiving and retrieval; and quality oversight mechanisms. 02-373 C.M.R. Ch. 6 § 3(14).

13. For each violation of applicable laws, rules or conditions of licensure, the Board may issue a reprimand, suspend a license for up to 90 days for each violation of applicable laws, rules, and conditions of licensure, and may impose conditions of probation. 10 M.R.S. § 8003(5)(A-1)(1), (2) & (4).
14. The Board may assess all or part of the actual expenses incurred by the Board for the investigation and enforcement duties performed. 10 M.R.S. § 8003-D.

IV. CONCLUSIONS OF LAW

The Board, keeping in mind its sole purpose to protect the public health and welfare and considering the above facts and those alluded to in the record but not referred to herein, concluded that it had jurisdiction over the Licensee and found as follows with regard to the allegations against the Licensee by unanimous vote.

With regard to Count II, the Board found that the Licensee exhibited incompetency by engaging in conduct that evidenced a lack of knowledge and an inability to apply principles and skills to carry out the practice for which she was licensed, subjecting her to discipline pursuant to 32 M.R.S. Section 3282-A(2)(E)(2). The Licensee's treatment model included patients doing their own research and determining what prescriptions they wanted before reaching out to the Licensee. Patients 1, 2, and 3 found the Licensee's name on a website listing physicians who would provide on demand prescriptions for certain medications. A telemedicine visit would then occur, during which the Licensee would consistently do only two things. First, the Licensee would obtain a medication list and cross-reference it for drug interactions. The Licensee utilized the medication list as a substitute for obtaining a medical history, which was insufficient, particularly because some medications are used to treat multiple different conditions. Second, the Licensee obtained the patient's weight, which was necessary for the dosing of one of the prescriptions. Each patient received the prescriptions that they came to the appointment requesting. The Licensee did

not engage in a practice of obtaining records from other care providers of the patients or in sharing her own records with such providers. The Licensee's practice model was not comprehensive and was unsafe for patients. In particular, the Licensee's failure to escalate Patient 2's care in a timely manner was indicative of a lack of knowledge. In addition, the Licensee did not consider the opportunity cost of providing the requested medications, which resulted in a failure to evaluate what more effective treatments might have been available. Further, her actions potentially led to an erosion of trust in the profession. The Board expressed concern that when asked at hearing whether she saw any problems with her telemedicine model after the fact, the Licensee was adamant that there was no problem with her model. The Board noted that although physicians receive significant training, it is important to continue learning and being open-minded about different ways to treat patients that could be more helpful.

With regard to Count IV, the Board found that the Licensee violated Board Rules Chapter 6, Telemedicine Standards of Practice, Sections 1(3), 1(4), and 3(3), by failing to conform to the appropriate standards of care while using telemedicine for Patients 1, 2, and 3, subjecting her to discipline pursuant to 32 M.R.S. Section 3282-A(2)(H). The Licensee failed to obtain appropriate medical histories for Patients 1, 2, and 3, which were required regardless of the fact that the visit was conducted by telemedicine.

With regard to Count V, the Board found that the Licensee violated Board Rules Chapter 6, Telemedicine Standards of Practice, Section 3(7), by failing to conduct an appropriate medical review to obtain relevant medical history for Patients 1, 2, and 3, subjecting her to discipline pursuant to 32 M.R.S. Section 3282-A(2)(H). As discussed above, the Licensee failed to conduct appropriate interviews to obtain relevant medical histories.

With regard to Count VIII, the Board found that the Licensee violated Board Rules Chapter 6, Telemedicine Standards of Practice, Section 3(12)(B), by failing to refer Patient 2 to

an acute care facility or an emergency department when referral was necessary for the safety of the patient, subjecting her to discipline pursuant to 32 M.R.S. Section 3282-A(2)(H). The Licensee failed to escalate Patient 2's care when Patient 2 began to decline even though he was at high risk, hypoxic, and confused. The Licensee's decision-making in the situation was concerning.

With regard to Count XI, the Board found that the Licensee violated Board Rules Chapter 6, Telemedicine Standards of Practice, Section 3(9), by failing to ensure that an appropriate informed consent was timely documented in the medical records of Patients 1, 2, and 3, subjecting her to discipline pursuant to 32 M.R.S. Section 3282-A(2)(H). Although Patients 1, 2, and 3 wanted telemedicine visits and understood that they were receiving telemedicine care, the medical record did not document that the patients provided informed consent to receive telemedicine care as required.

With regard to Count XII, the Board found that the Licensee violated Board Rules Chapter 6, Telemedicine Standards of Practice, Section 3(13), by failing to ensure that complete records for Patients 1, 2, and 3 were maintained and that accurate medical records for Patient 1 were maintained, subjecting her to discipline pursuant to 32 M.R.S. Section 3282-A(2)(H). The Licensee's medical records for Patients 1, 2, and 3 were incomplete, including a lack of a broader medical history, documentation of dates and content of conversations with the patients, and substantive medical decision-making. In addition, Patient 1's record was inaccurate with regard to her allergies.

With regard to Count XIII, the Board found that the Licensee violated Board Rules Chapter 6, Telemedicine Standards of Practice, Section 3(14), by failing to have in place and follow mandatory written protocols to ensure that all telemedicine encounters were secure and confidential, by sharing patient details with persons who were not the relevant patients, without written authorization from the relevant patients, subjecting her to discipline pursuant to 32

M.R.S. Section 3282-A(2)(H). The Licensee did not have in place and did not follow appropriate mandatory written protocols to ensure that encounters were secure and confidential. The Licensee's text messages did not meet the appropriate standard, particularly evident when she sent texts asking with whom she was communicating.

With regard to Count XIV, the Board found that the Licensee violated Board Rules Chapter 6, Telemedicine Standards of Practice, Sections 1(3), 1(4), and 3(3) by failing to conform to the appropriate standards of care and professional ethics while using telemedicine for Patient 2 to whom she had prescribed hydroxychloroquine by lying to a pharmacist regarding Patient 2's diagnosis, subjecting her to discipline pursuant to 32 M.R.S. Section 3282-A(2)(H). The Licensee acknowledged that she lied intentionally, which was unnecessary, done without consideration of the impact to others, and was likely intended to require the Board to take action against her, given that the Licensee widely disseminated the fact that she had provided misinformation to the pharmacist. The impact of a physician lying to another medical professional included that Patient 2 was pulled into this matter perhaps unwillingly, that a conflict was potentially created between Patient 2 and the pharmacist, who was vilified, and that Patient 2 himself was encouraged to lie to the pharmacist. Although the other violations that the Board found could be redressed, willful, unnecessary lying to another medical professional and then indicating that it was required when it was not, and not considering that the matter could have been handled differently in retrospect is of great concern to the Board and is difficult to redress through sanctions.

The Board found that the Licensee had not committed a violation with regard to allegations I, VI, IX, XVII, and XIX.

Although the Board renewed the Licensee's pending renewal application, it imposed several sanctions as a result of the violations found. First, the Board imposed a reprimand for violations that the Board found reflected poor decision-making by the Licensee: exhibiting incompetence by

engaging in conduct that evidenced a lack of knowledge and an inability to apply principles and skills to carry out the practice for which the licensee is licensed in providing care to Patients 1, 2 and 3 (Count II); failing to refer Patient 2 to an acute care facility when referral was necessary for the safety of Patient 2 (Count VII); and engaging in deceit and misrepresentation in connection with service rendered within the scope of the license issued for lying to a pharmacist that a prescription for hydroxychloroquine was being prescribed for Lyme disease (Count XIV).

Second, the Board suspended the Licensee's license for a total of 39 months, although the suspension will be lifted upon the Licensee's completion of the conditions of probation. The Board noted that the Licensee's lengthy term of practice indicated that her record keeping practices should have been more appropriate and she should have been aware of the need to communicate honestly with fellow medical providers. The Board observed that the Licensee's telemedicine practice model was not comprehensive and included limited interaction with patients and insufficient record keeping and therefore was unsafe for patients. The Board also noted that the Licensee's lie to the pharmacist regarding the hydroxychloroquine was intentional as well as unnecessary.

Third, the Board imposed a two-year period of probation during which the following conditions are in effect:

1. The Licensee must engage a practice monitor focused on record keeping and clinical decision-making. The Licensee may request termination of this condition of probation upon completion of one year of use of the practice monitor. The practice monitor must be approved by the Board Chair. The Licensee must ensure that the practice monitor provides quarterly reports summarizing outcomes of the practice monitoring and including a summary of the practice monitor's monthly review of 10 patient charts chosen by Board Staff.

2. The Licensee must complete 8 to 12 hours of ethics courses and 4 to 6 hours of record keeping courses, to include telemedicine record keeping. Such courses to be approved by the Board Chair. The courses must be completed within 120 days of the effective date of this Decision and Order.

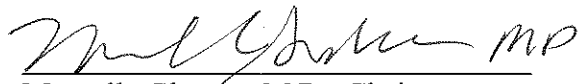
3. The Licensee must submit a telemedicine plan consistent with Board Rules Chapter 6, Telemedicine Standards of Practice, Section 3(14). The telemedicine plan must be submitted within 120 days of the effective date of this Decision and Order.

4. The Licensee must participate in a competency evaluation to be performed by a competency evaluator previously approved by the Board. The evaluation must be completed within 120 days of the effective date of this Decision and Order and must be submitted to the Board. In addition, the Licensee must follow the recommendations of the evaluator.

Finally, the Board found that the Licensee had the ability to pay the costs of hearing and imposed half of the costs of hearing, up to a maximum of \$10,000. Because the costs of hearing have exceeded \$20,000, \$10,000 in costs is imposed, payable within six months of the effective date of this Decision and Order. Payment of the Board costs shall be remitted to the attention of the Board Investigative Secretary, Faith McLaughlin, Maine Board of Licensure in Medicine, 137 State House Station, Augusta, Maine 04333-0035, by check or money order payable to the Treasurer, State of Maine.

The effective date of this Decision and Order is the date on which it is signed by the Board Chair.

Dated: 12/12, 2023


Maroulla Gleaton, M.D., Chair
State of Maine Board of Licensure in Medicine

V. APPEAL RIGHTS

Pursuant to the provisions of 10 M.R.S. Section 8003(5-A) and 5 M.R.S. Sections 11001 to 11003, any party that appeals this Decision and Order must file a Petition for Review in the Superior Court within 30 days of receipt of this Decision and Order. The petition shall specify the person seeking review, the manner in which they are aggrieved, and the final agency action which they wish reviewed. It shall also contain a concise statement as to the nature of the action or inaction to be reviewed, the grounds upon which relief is sought, and a demand for relief. Copies of the Petition for Review shall be served by certified mail, return receipt requested, upon the State of Maine Board of Licensure of Medicine, all parties to the agency proceedings, and the Attorney General.