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  27. Intentionally left blank

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34. Intentionally left blank
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<thead>
<tr>
<th>Time</th>
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<tbody>
<tr>
<td>11:05 a.m. – 11:42 a.m.</td>
<td>Informal Conference</td>
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**RECESSES**

<table>
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<tr>
<td>10:37 a.m. – 10:48 a.m.</td>
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<td>11:55 a.m. – 12:53 p.m.</td>
<td>Lunch</td>
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<tr>
<td>2:15 p.m. – 2:36 p.m.</td>
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<tr>
<td>3:56 p.m. – 4:05 p.m.</td>
<td>Recess</td>
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I. **Call to Order**

Dr. Jones called the meeting to order at 9:00 a.m.

A. Amendments to Agenda (none)

B. Scheduled Agenda Items

1. 11:00 a.m. Informal Conference CR15-34
2. 1:00 p.m. Informal Conference CR15-135
C. Introduction of new Consumer Assistance Specialist

Mr. Terranova introduced Savannah Okoronkwo, the Board’s new Consumer Assistance Specialist.

II. Consent Agreements for Review

A. CR15-146 James Grossman, P.A.-C [Appendix A]

Mr. Ross moved to accept the signed Consent Agreement. Dr. Dumont seconded the motion, which passed unanimously.

B. Jack Flippo, M.D. [Appendix B]

Dr. Barnhart moved to accept the signed Consent Agreement for Licensure. Dr. Sacchetti seconded the motion, which passed unanimously.

III. Complaints

1. CR16-26

Dr. Dumont moved to dismiss the complaint. Dr. Waddell seconded the motion, which passed unanimously.

MOTION: This is a case of an infant who was born 3 months prematurely who had multiple complications of his prematurity, but who lived for 20 days before succumbing to sepsis. The complainant alleges that Peripherally Inserted Central Catheters that were used to give nutrition and medications were placed incorrectly and that this was never detected causing the child to develop sepsis and die. Review of extensive medical records is not able to confirm this allegation. The catheters did have to be manipulated and changed on occasion, but this is expected. No other quality issues were noted.

2. CR16-27

Dr. Dumont moved to dismiss the complaint. Dr. Waddell seconded the motion, which passed unanimously.

MOTION: This is a case of an infant who was born 3 months prematurely who had multiple complications of his prematurity, but who lived for 20 days before succumbing to sepsis. The complainant alleges that Peripherally Inserted Central Catheters that were used to give nutrition and medications were placed incorrectly and that this was never detected causing the child to develop sepsis and die. Review of extensive medical records is not able to confirm this allegation. The catheters did have to be manipulated and changed on occasion, but this is expected. No other quality issues were noted.
3. **CR16-28**

Dr. Dumont moved to dismiss the complaint. Dr. Waddell seconded the motion, which passed unanimously.

**MOTION:** This is a case of an infant who was born 3 months prematurely who had multiple complications of his prematurity, but who lived for 20 days before succumbing to sepsis. The complainant alleges that Peripherally Inserted Central Catheters that were used to give nutrition and medications were placed incorrectly and that this was never detected causing the child to develop sepsis and die. Review of extensive medical records is not able to confirm this allegation. The catheters did have to be manipulated and changed on occasion, but this is expected. No other quality issues were noted.

4. **CR16-29**

Dr. Dumont moved to dismiss the complaint. Dr. Waddell seconded the motion, which passed unanimously.

**MOTION:** This is a case of an infant who was born 3 months prematurely who had multiple complications of his prematurity, but who lived for 20 days before succumbing to sepsis. The complainant alleges that Peripherally Inserted Central Catheters that were used to give nutrition and medications were placed incorrectly and that this was never detected causing the child to develop sepsis and die. The physician acted in a specialty consultation role and had no involvement in the insertion, care, or management of the catheters.

5. **CR16-30**

Dr. Dumont moved to dismiss the complaint. Dr. Waddell seconded the motion, which passed unanimously.

**MOTION:** This is a case of an infant who was born 3 months prematurely who had multiple complications of his prematurity, but who lived for 20 days before succumbing to sepsis. The complainant alleges that Peripherally Inserted Central Catheters that were used to give nutrition and medications were placed incorrectly and that this was never detected causing the child to develop sepsis and die. Review of extensive medical records is not able to confirm this allegation. The catheters did have to be manipulated and changed on occasion, but this is expected. No other quality issues were noted.

6. **CR16-31**

Dr. Dumont moved to dismiss the complaint. Dr. Waddell seconded the motion, which passed unanimously.

**MOTION:** This is a case of an infant who was born 3 months prematurely who had multiple complications of his prematurity, but who lived for 20 days before succumbing to sepsis. The complainant alleges that Peripherally Inserted Central Catheters that were used to give nutrition and medications were placed incorrectly and that this was never
detected causing the child to develop sepsis and die. Review of extensive medical records is not able to confirm this allegation. The catheters did have to be manipulated and changed on occasion, but this is expected. No other quality issues were noted.

7. **CR16-22**

Dr. Nyberg moved to set the matter for an Adjudicatory Hearing and authorize AAG Miller to negotiate a consent agreement to include a reprimand and a $1,000 civil penalty. Dr. Dumont seconded the motion, which passed unanimously.

8. **CR16-23**

Dr. Nyberg moved to dismiss the complaint. Dr. Sacchetti seconded the motion, which passed 8-0-0-1. Dr. Barnhart was recused from this matter and left the room.

**MOTION:** The question is whether the physician intentionally misrepresented on his license renewal application the conditions under which he voluntarily surrendered his clinical privileges before entering semi-retirement. It appears that he was not “under investigation” even though a colleague’s concerns were being discussed with the physician’s employer, who stipulated that no investigation or evaluation was underway, and none would be in the future. The physician made a good faith effort to clarify this issue with Board staff the day after he submitted his application.

9. **CR16-35**

Dr. Barnhart moved to investigate further. Mr. Ross seconded the motion, which passed unanimously.

10. **CR16-51**

Mr. Ross moved to dismiss the complaint. Dr. Sacchetti seconded the motion, which passed unanimously. Dr. Barnhart was not present.

**MOTION:** A patient complains that the physician did not act professionally and altered her medical record. The physician responded that she provided appropriate care and the subsequent documentation was appropriate. Review of the record reveals that the patient received reasonable care.

11. **CR16-52**

Mr. Ross moved to dismiss the complaint. Ms. Weinstein seconded the motion, which passed unanimously. Dr. Barnhart was not present.

**MOTION:** A patient complains that the physician did not provide appropriate care and did not respond in a timely manner. The physician responded that her communication and decisions were medically appropriate. Review of the record reveals that the patient received reasonable care.
12. CR16-53

Dr. Barnhart moved to investigate further. Mr. Ross seconded the motion, which passed unanimously.

13. CR16-68

Dr. Waddell moved to dismiss the complaint. Dr. Sacchetti seconded the motion, which passed unanimously.

**MOTION:** The patient complains that the specialist physician did not complete an appropriate workup in a timely manner and failed to diagnose her chronic pain condition properly. She also complains of communication issues involving the physician’s office. Review of the record demonstrates an appropriate and thorough workup which ultimately led to the final diagnosis by a second specialist. Records also reveal that the office staff was communicating with the patient during the workup process. Nevertheless, the physician has apologized for the patient’s unsatisfactory experience.

14. CR16-40

Dr. Sacchetti moved to dismiss the complaint. Mr. Ross seconded the motion, which passed unanimously.

**MOTION:** A daughter complains that her mother’s primary care physician reduced and then discontinued opioid medication leaving her mother with uncontrolled pain. The physician based this decision on evidence that the patient was requiring far less pain medication than was being prescribed and ultimately out of concern for the patient’s safety. The physician provided the patient with a prescription for an alternative pain medication and arranged for a referral to a pain management specialist.

15. CR16-45

Dr. Barnhart moved to investigate further. Ms. Weinstein seconded the motion, which passed unanimously.

16. CR16-57

Dr. Barnhart moved to investigate further. Ms. Weinstein seconded the motion, which passed unanimously.

17. CR16-114

Dr. Barnhart moved to investigate further. Ms. Weinstein seconded the motion, which passed unanimously.
18. **CR16-46**

Dr. Dumont moved to investigate further. Dr. Barnhart seconded the motion, which passed unanimously.

19. **CR16-47**

Ms. Corbin moved to dismiss the complaint. Mr. Ross seconded the motion, which passed unanimously.

**MOTION:** The patient complains that the doctor reduced her dose of Ambien without increasing the dose of Clonazepam and it would make her ill. The physician responded that it was not good practice to have the patient on that combination of medications and that she made a plan with the patient to wean off Zolpidem and consider treatment with other medications. This is well documented in the notes. A review of the medical record shows appropriate and reasonable care.

20. **CR16-60**

Dr. Waddell moved to dismiss the complaint. Dr. Barnhart seconded the motion, which passed 8-0-0-1. Ms. Weinstein was recused from this matter and left the room.

**MOTION:** The patient complains that his surgeon did not complete a workup for postoperative pain in a timely manner. Furthermore, the patient complains that the surgeon’s staff did not handle insurance pre-authorizations properly. Review of the records reveals an appropriate workup done in a reasonable timeframe. Confusion regarding insurance pre-authorization for a subsequent cyst aspiration procedure is explained by the fact that the patient was referred to a pain specialist for the procedure. An outpatient consultation was reasonably required by the insurance company before the cyst aspiration procedure itself could be authorized and scheduled. The patient abruptly terminated his relationship with both involved physicians and sought care elsewhere.

21. **CR16-63**

Ms. Weinstein moved to dismiss the complaint. Dr. Nyberg seconded the motion, which passed unanimously.

**MOTION:** The complaint alludes to many medical and nonmedical issues. As far as the Board is concerned, one issue stands out. The complainant is living with a self-diagnosis of heavy metal toxicity and has chosen continuing chiropractic manipulation as a means for dealing with his symptoms. He alleges that the physician, who was engaged to provide an Independent Medical Evaluation (IME) report, did not take his self-diagnosis into account and denied that chiropractic manipulation was medically relevant in this case. In conducting his examination, his review of the medical records, and relying on his knowledge of the salient literature, the physician found no evidence of heavy metal toxicity and no rationale for continuing chiropractic manipulation. The IME report appears to be competent, accurate, and fair.
22. CR16-122

Mr. Ross moved to allow the complainant to withdraw the complaint. Dr. Nyberg seconded the motion, which passed 8-0-0-1. Dr. Dumont was recused from the matter and left the room.

23. Intentionally left blank

24. Intentionally left blank

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26. Intentionally left blank

27. Intentionally left blank

IV. Assessment and Direction

28. AD16-115

Dr. Dumont moved to issue a complaint (CR16-138). Dr. Waddell seconded the motion, which passed 7-0-0-2. Dr. Sacchetti and Ms. Corbin were recused from this matter and left the room.

29. AD16-118

Dr. Dumont moved to issue a complaint against the physician assistant (CR16-155). Dr. Nyberg seconded the motion, which passed unanimously.

Dr. Dumont moved to issue a complaint against the physician assistant’s primary supervising physician (CR16-156). Dr. Nyberg seconded the motion, which passed unanimously.

30. AD16-117

Dr. Dumont moved to issue a complaint (CR16-154). Dr. Nyberg seconded the motion, which passed unanimously.

31. AD16-108

Dr. Jones moved to close the matter with no further action. Dr. Dumont seconded the motion, which passed unanimously.

32. AD16-103

Dr. Dumont moved to close the matter with no further action. Dr. Nyberg seconded the motion, which passed unanimously.
33. Intentionally left blank

34. Intentionally left blank

35. Pending Adjudicatory Hearings and Informal Conferences report

This material was presented for informational purposes. No Board action was required.

36. Consumer Assistance Specialist Feedback

The Consumer Assistance Specialist provided feedback from a complainant. No Board action was required.

37. Other Items for Discussion (none)

V. Informal Conferences

A. CR15-34

At 11:05 a.m. Dr. Dumont moved to enter executive session to conduct an Informal Conference pursuant to 32 M.R.S. § 3282-A. Dr. Barnhart seconded the motion, which passed 8-0-0-1. Dr. Waddell was recused from this matter and left the room.

At 11:42 a.m. Mr. Ross moved to come out of executive session. The motion passed 8-0-0-1. Dr. Waddell was recused from this matter.

Following the Informal Conference, Mr. Ross moved to dismiss the complaint. Ms. Weinstein seconded the motion, which passed 8-0-0-1. Dr. Waddell was recused from this matter.

MOTION: The patient complains that the physician was unprofessional in dealing with an insurance issue after ordering a CT scan. The physician stated that he provided the appropriate diagnostic code and that it was a clerical issue. Following review of the information and medical record it appears appropriate care was provided.

B. CR15-135

The Informal Conference was held in public session at the request of the physician.

Following the Informal Conference, Dr. Jones moved to authorize AAG Miller to negotiate a Consent Agreement to include successful completion of an in person CME course of 20 – 24 hours in length approved by the Board regarding medical management of surgical patients; and either acceptance in and successful completion of a surgical fellowship or license probation with conditions. Dr. Nyberg seconded the motion, which passed 8-0-0-1. Dr. Dumont was recused from this matter and left the room.
VI. Minutes for Approval

Dr. Nyberg moved to approve the minutes of the May 10, 2016 meeting. Dr. Dumont seconded the motion, which passed unanimously.

VII. Board Orders & Consent Agreement Monitoring and Approval

A. Board Orders

1. Robert S. LaMorgese, M.D. [Appendix C]

Dr. Barnhart moved to accept the Decision and Order. Dr. Sacchetti seconded the motion, which passed unanimously. AAG Miller was recused from this matter and left the room.

B. Consent Agreement Monitoring (none)

VIII. Adjudicatory Hearing (none)

IX. Remarks of Chairman (none)

X. Remarks of Executive Director

A. Board Member Orientation

Mr. Smith gave a presentation regarding the structure of the Board, the purpose of the Board, Board member status as “executive employees”, conflict of interest, the Maine Freedom of Access Act, and Board member demeanor.

XI. Assistant Executive Director’s Monthly Report

Mr. Terranova provided an update on the status of rulemaking initiatives and current staff projects.

A. Complaint Status Report

As of June 1, 2016 there are seventy-four complaints outstanding. Sixty-seven have been received year-to-date and fifty have been closed so far this year.

B. Feedback (none)

XII. Medical Director’s Report (none)

XIII. Remarks of Assistant Attorney General (none)
XIV. Secretary’s Report

A. Licenses Issued

1. M.D. Licenses Issued

The following license applications have been approved by Board Secretary, David D. Jones, M.D. without reservation.

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<thead>
<tr>
<th>NAME</th>
<th>SPECIALTY</th>
<th>LOCATION</th>
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<tr>
<td>Ahmed, Mahmuda M.</td>
<td>Pediatrics</td>
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Orwitz, Jonathan I. Psychology & Neurology Telemedicine
Parrino, Michael Pediatrics Lewiston
Patel, Ruchir P. Internal Medicine Augusta
Penalver, Alberto A. Psychiatry Telemedicine
Ramey, Joel P. Emergency Medicine Bangor
Rasmussen, Jeffrey F. Orthopedic Surgery Rockport
Rauf, Muhammad A. Surgery Millinocket
Saberski, Lloyd R. Anesthesiology not specified
Sauer, William J. Anesthesiology Portland
Sawhney, Victor Psychiatry Telemedicine
Siddiqi, Saif H. Diagnostic Radiology Teleradiology
Simon, Emese Physical Medicine & Rehabilitation Augusta
Starnbach, Aileen Anesthesiology Portland
Steinour, William J. Emergency Medicine Pittsfield
Stewart, Jeffrey D. Ob/Gyn Bar Harbor
Talakshi, Farouk Internal Medicine Lewiston
Tam, Yong Yong Emergency Medicine Ellsworth
Tarlo, Sara C. Pediatrics Lewiston
Thibodeau, Gregory S. Family Medicine Lewiston
Trachimowicz, Gina M. Pediatrics Portland
Turner, Christopher G. Surgery Portland
Woodrow, Virginia C. Psychiatry not specified
Yapundich, Robert A. Neurology Dartmouth

2. P.A. Licenses Issued

The following physician assistant license applications have been approved by Board Secretary, David D. Jones, M.D. without reservation.

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<td>Sturgill, Alecia</td>
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</table>

B. Applications for Individual Consideration

1. Nathalie Kremer, M.D.

The Licensure Committee moved to grant the licensee’s request for a waiver of the requirement to complete 3 years of ACGME accredited post-graduate training. The motion passed 8-0-1-0 with Dr. Waddell abstaining.

2. Karl W. Hubbard, M.D.

The Licensure Committee moved to table the application pending receipt of further information. The motion passed unanimously.
C. Applications for Reinstatement

1. Applications for Reinstatement

The following license reinstatement application has been approved by Board Secretary, David D. Jones, M.D. without reservation.

<table>
<thead>
<tr>
<th>NAME</th>
<th>SPECIALTY</th>
<th>LOCATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Diener, Jakow G.</td>
<td>Oncology</td>
<td>Lewiston</td>
</tr>
</tbody>
</table>

2. Applications for Reinstatement – Individual Consideration

1. Fabio C. Figueiredo, M.D.

The Licensure Committee moved to deny the license application with leave to withdraw. The motion passed 8-0-0-1. Dr. Waddell was recused from this matter and left the room.

D. Withdrawals

1. Withdraw License Application (none)

2. Withdraw License from Registration

Dr. Dumont moved to approve the following licensees’ requests to withdraw from registration. Dr. Sacchetti seconded the motion, which passed unanimously.

<table>
<thead>
<tr>
<th>NAME</th>
<th>LICENSE NUMBER</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bhargava, Mukesh</td>
<td>MD14252</td>
</tr>
<tr>
<td>Gelinas, Lauren D.</td>
<td>PA1410</td>
</tr>
<tr>
<td>Koch, Marc E.</td>
<td>MD18492</td>
</tr>
<tr>
<td>Quigley, Michael</td>
<td>MD10275</td>
</tr>
<tr>
<td>Pastrana, Apolinario C.</td>
<td>MD20243</td>
</tr>
<tr>
<td>Santos, Carah Bernice</td>
<td>MD20146</td>
</tr>
</tbody>
</table>

3. Withdraw License from Registration – Individual Consideration (none)

E. Licenses to Lapse by Operation of Law

The following licenses lapsed by operation of law effective June 6, 2016.

<table>
<thead>
<tr>
<th>NAME</th>
<th>LICENSE NUMBER</th>
</tr>
</thead>
<tbody>
<tr>
<td>Attala, Srinath R.</td>
<td>MD19313</td>
</tr>
<tr>
<td>Aronson, Richard A.</td>
<td>MD16079</td>
</tr>
<tr>
<td>Bedway, Joseph J.</td>
<td>MD20091</td>
</tr>
<tr>
<td>Burns, Jay P.</td>
<td>MD11528</td>
</tr>
</tbody>
</table>
F. Licensees Requesting to Convert to Active Status

1. **John G. Costa, M.D.**

   The Licensure Committee moved to preliminarily deny Dr. Costa’s renewal application requesting an active status license. The motion passed unanimously.

G. Renewal Applications for Review

1. **André Benoit, M.D.**

   The Licensure Committee moved to preliminarily deny Dr. Benoit’s renewal application and authorize AAG Miller to negotiate a consent agreement to include license probation and conditions. The motion passed 6-0-0-3. Dr. Jones, Dr. Dumont, and Ms. Corbin were recused from this matter and left the room.

2. **James C. Lancaster, M.D.**

   The Licensure Committee moved to table the application pending receipt of further information. The motion passed unanimously.

H. Physician Assistant Schedule II Authority Requests
1. Applications to Renew Schedule II Authority

The following renewal requests for Schedule II prescribing authority have been approved by Board Secretary, David D. Jones, M.D. without reservation.

<table>
<thead>
<tr>
<th>NAME</th>
<th>PSP</th>
<th>LOCATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bacchiocchi, Angela</td>
<td>Turner, James</td>
<td>Bangor</td>
</tr>
<tr>
<td>Barnes, Margaret</td>
<td>Dionne, Andrew</td>
<td>Augusta</td>
</tr>
<tr>
<td>Bennett, Tracy</td>
<td>Starks, Michael</td>
<td>Bangor</td>
</tr>
<tr>
<td>Benter, Morgan</td>
<td>Lever, Thomas</td>
<td>Bangor</td>
</tr>
<tr>
<td>Borges, Erin</td>
<td>Fenwick, Amy</td>
<td>Bangor</td>
</tr>
<tr>
<td>Bosinske, Amy</td>
<td>Curtis, Michael</td>
<td>Brunswick</td>
</tr>
<tr>
<td>Charleston, Tiffany</td>
<td>Ricci, Michael</td>
<td>Lewiston</td>
</tr>
<tr>
<td>Daggett-Medrano, Ellen</td>
<td>Bergeron, Michael</td>
<td>Auburn</td>
</tr>
<tr>
<td>Desroches, Caroline</td>
<td>Collins, William Douglas</td>
<td>Bridgton</td>
</tr>
<tr>
<td>Giggey, Abigail</td>
<td>Marino, Richard Jr.</td>
<td>Portland</td>
</tr>
<tr>
<td>Gilbert-Lord, Sandra</td>
<td>Dionne, Andrew</td>
<td>Augusta</td>
</tr>
<tr>
<td>Grygiel, Kate</td>
<td>Edwards, Nina</td>
<td>Lewiston</td>
</tr>
<tr>
<td>Haynes, Nathan</td>
<td>White, Raymond</td>
<td>Portland</td>
</tr>
<tr>
<td>Livengood, Kathleen</td>
<td>Cushing, Brad</td>
<td>Portland</td>
</tr>
<tr>
<td>Maniates, Charity</td>
<td>Hallen, Sarah</td>
<td>Portland</td>
</tr>
<tr>
<td>McKennon-Leach, Essie</td>
<td>Maidman, Patrick</td>
<td>Norway</td>
</tr>
<tr>
<td>Neer, Terri</td>
<td>Krevans, Julius Jr.</td>
<td>Bar Harbor</td>
</tr>
<tr>
<td>O’Brien, Kathleen</td>
<td>Carr, Suzanne</td>
<td>Portland</td>
</tr>
<tr>
<td>Olsen, Kevin</td>
<td>Herbert, Daniel</td>
<td>Millinocket</td>
</tr>
<tr>
<td>Olsen, Kevin</td>
<td>Cornelio, Marco</td>
<td>Lincoln</td>
</tr>
<tr>
<td>Osenton, Mary-Ellen</td>
<td>Hulefeld, Robert</td>
<td>York</td>
</tr>
<tr>
<td>Payne, David</td>
<td>Crocker, Benjamin</td>
<td>Westbrook</td>
</tr>
<tr>
<td>Roberts, Jesse</td>
<td>Barth, Konrad</td>
<td>Scarborough</td>
</tr>
<tr>
<td>Schimmack, Gregory</td>
<td>Robaczewski, David</td>
<td>Portland</td>
</tr>
<tr>
<td>Silcox, Erik</td>
<td>Hulefeld, Robert</td>
<td>York</td>
</tr>
<tr>
<td>Steinbarger, Everett</td>
<td>Krevans, Julius Jr.</td>
<td>Bar Harbor</td>
</tr>
</tbody>
</table>

2. Applications for New Schedule II Authority

The following new requests for Schedule II prescribing authority have been approved by Board Secretary, David D. Jones, M.D. without reservation.

<table>
<thead>
<tr>
<th>NAME</th>
<th>PSP</th>
<th>LOCATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Casey, Kristen</td>
<td>Tippie, Tracy</td>
<td>Lewiston</td>
</tr>
<tr>
<td>Cheng, Kai</td>
<td>Fagles, Nina</td>
<td>Orono</td>
</tr>
<tr>
<td>DeCristoforo, Bart</td>
<td>Wierman, Heidi</td>
<td>Portland</td>
</tr>
<tr>
<td>Dunn, Joel</td>
<td>Tippie, Tracy</td>
<td>Lewiston</td>
</tr>
</tbody>
</table>
3. Applications for Schedule II Authority – Individual Consideration (none)

I. Other Items for Discussion (none)

XIV. Rulemaking

A. Chapter 2 Joint Rule Regarding Physician Assistants

Mr. Ross moved to approve the Basis Statement and Response to Comments and to provisionally adopt the Chapter 2 Joint Rule Regarding Physician Assistants pending approval from the Governor’s Office. Dr. Dumont seconded the motion, which passed unanimously.

XV. Policy Review

A. Public Complaints Against Staff

Dr. Barnhart moved to approve corrections made by staff to the Public Complaints Against Staff policy. Dr. Nyberg seconded the motion, which passed unanimously.

XVI. Requests for Guidance

A. Unlicensed Assistive Personnel

The Board reviewed an e-mail from a physician at an occupational health practice inquiring if unlicensed personnel working in the office can perform technical functions, such as injections, if they are trained and supervised by the Medical Director. After
discussion, the Board instructed staff to refer the physician to applicable statutes and recommend that he seek advice from his legal counsel.

XVII. Standing Committee Reports

A. Licensure Committee

1. Licensing Status Report

This information was presented for informational purposes. No Board action was required.

2. MeAMMS Conference

Tracy Morrision, MD Licensure Specialist, reported on her recent attendance at the MeAMMS Conference.

3. Category I CME

The Board reviewed information gathered by staff regarding CME requirements in other states. After discussion, the Board instructed staff to eliminate the requirement for Category II CME when drafting changes to the Chapter 1 rule regarding physician licensure.

XVIII. Board Correspondence

This material was presented for informational purposes. No Board action was required.

XIX. FSMB Material (none)

XX. FYI

This material was presented for informational purposes. No Board action was required.

XXI. Other Business

A. Maine Quality Counts

Lisa Letourneau, M.D., Executive Director of Maine Quality Counts (MQC) and Gordon Smith, Esq., Executive Vice President of the Maine Medical Association (MMA), gave a presentation to the Board regarding Caring for ME. Caring for ME is a collaborative effort by MQC and the MMA to promote educational resources and tools for health care providers to utilize in dealing with patients with substance use disorders. After discussion, Dr. Dumont moved to authorize staff to pursue a contract for $32,000 to support the Caring for ME Webinar series, the Chronic Pain Playbook, and the Online Educational Modules on Opioid Prescribing and Regulations. Mr. Ross seconded the motion, which passed unanimously.
XXII. Adjournment 4:28 p.m.

Respectfully submitted,

Maureen S. Lathrop
Administrative Assistant
STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

In re: JAMES GROSSMAN, P.A. ) CONSENT AGREEMENT
Complaint No. CR15-146 )

This document is a Consent Agreement, effective when signed by all parties, regarding disciplinary action against the license to render medical services in the State of Maine held by James Grossman, P.A. The parties to the Consent Agreement are: James Grossman, P.A. ("Mr. Grossman"), the State of Maine Board of Licensure in Medicine ("the Board") and the State of Maine Department of the Attorney General. This Consent Agreement is entered into pursuant to 10 M.R.S. § 8003(5)(B) and 32 M.R.S. § 3282-A.

STATEMENT OF FACTS

1. Mr. Grossman has held a license to render medical services in the State of Maine since March 16, 1977 (license number PA44). Mr. Grossman has no prior disciplinary actions in Maine.

2. On August 21, 2015, the Board received a report from a Nurse Practitioner regarding a patient under the Nurse Practitioner's care who had been receiving a tapering dose of narcotics. The Nurse Practitioner alleged that a check of the patient's prescription monitoring report ("PMP") indicated that Mr. Grossman had recently prescribed both zolpidem and oxycodone to the patient who was not under his care. The Nurse Practitioner further alleged that she called Mr. Grossman, and he told her that the patient was a friend, that she is suffering, and that she "appeals to him." She alleged that he also
acknowledged that he was aware that the patient likely had an opioid use disorder.

3. On August 22, 2015, Mr. Grossman filed an application to renew his license. On his application he responded "yes" to a question which asked "have you furnished prescription drugs to or written a prescription for anyone without having a legitimate physician-patient relationship?" On his application he also answered "yes" to a question which asked whether he has "prescribed any controlled substances for yourself or family/household members?" He provided the following explanation for those responses: "I renewed a prescription for zolpidem for my domestic partner in the past. I was NOT adjudicated in any proceedings. I provided a prescription for pain medication to a friend while she was awaiting enrollment into my office practice group. I have not been adjudicated in any proceedings."

4. A review of the patient's PMP records indicated that Mr. Grossman had prescribed oxycodone to the patient on 4 occasions during May through August 2015, zolpidem on one occasion in July 2015, and hydrocodone-acetaminophen 10-325 on one occasion in January 2015.

5. On September 9, 2015, the Board received copies of the patient's medical records from the Nurse Practitioner. The records showed that the Nurse Practitioner was treating the patient for pain. In March 2015, the patient was hospitalized for pneumonia with acute respiratory failure and acute delirium, and with suspicion that the patient had been abusing her opioid medication intranasally. The medical records reflected that the patient
had a “boyfriend” who was a physician assistant and that he provided the patient with a “Z-Pak” just prior to her hospitalization. He was present when the Nurse Practitioner visited the patient in the hospital on March 24, 2015. In April 2015, the Nurse Practitioner initiated a controlled taper of medications to wean the patient off opioids.

6. Following review of the above information, the Board initiated a complaint on October 20, 2015. The Board docketed that complaint as CR15-146, and sent it to Mr. Grossman for a response.

7. By letter dated December 18, 2015, Mr. Grossman responded to the complaint. In his response, Mr. Grossman admitted that he prescribed zolpidem and oxycodone to “a friend” who was not a patient of his. Mr. Grossman stated that he met the patient through an online dating site, but that the relationship had never been sexual. He discussed their relationship and acknowledged that he had also prescribed a “Z-Pak” for her in the spring, and that he visited her when she was hospitalized. He reported to the Board that the patient had recently changed her care to the Nurse Practitioner who was cutting her medication “way back.” The patient complained to him that one medication that was changed made her feel excessively sedated, and that she had nausea and was vomiting. Mr. Grossman felt that she was suffering the effects of rapid withdrawal. He stated that she “begged me to give her some medication to tide her over until we could get her into our practice and slowly taper her off the narcotics. [He] prescribed her what [he] considered an equianalgesic dose of oxycodone.” He reported that the patient did eventually
establish care with his practice, but there had been obstacles. Mr. Grossman admitted to the Board that his “actions were wrong” and this was a “major lapse of judgment on [his] part.”

8. The patient’s records were received by the Board and reflect that she initially was seen by Mr. Grossman to establish care on October 8, 2015. In addition, patient records for 5 randomly selected patients were also received and reviewed by the Board.

9. Pursuant to 32 M.R.S. § 3282-A(2)(E), the Board may impose discipline for incompetence. A licensee is considered to have engaged in incompetence if the licensee has engaged in conduct that evidences a lack of ability or fitness to discharge the duty owed by the licensee to a client or patient or the general public, or that evidences a lack of knowledge or inability to apply principles or skills to carry out the practice for which the licensee is licensed.

10. Pursuant to 32 M.R.S. § 3282-A(2)(F), the Board may impose discipline for unprofessional conduct. A licensee is considered to have engaged in unprofessional conduct if the licensee violates a standard of professional behavior that has been established for the practice of medicine.

11. On April 12, 2016, the Board reviewed CR 15-146 and voted to set this matter for an adjudicatory hearing. In addition, the Board voted to offer Mr. Grossman this Consent Agreement to resolve this matter without further proceedings. Absent Mr. Grossman’s acceptance of this Consent Agreement by signing and dating it in front of a notary and mailing it to Maine Board of
Licensure in Medicine, 137 State House Station, Augusta, Maine 04333-0137 on or before May 28, 2016, the matter will be scheduled for an adjudicatory hearing.

COVENANTS

12. Mr. Grossman admits the facts stated above and agrees that such conduct constitutes grounds for discipline pursuant to 32 M.R.S. §§ 3282-A(2)[E] and (F), for engaging in conduct that evidences a lack of ability or fitness to discharge the duty owed by the licensee to a patient and for unprofessional conduct.

12 As discipline for the foregoing conduct, Mr. Grossman agrees to accept the following:

a) A REPRIMAND for engaging in unprofessional conduct by prescribing controlled substances outside an established physician/patient relationship.

b) A LICENSE PROBATION for no less than ten (10) months during which the following is required:

1) Mr. Grossman shall within four (4) months of the effective date of this Consent Agreement take an in person continuing medical education course of not less than twenty (20) hours in length approved by the Board Secretary or his designee on the subject of professional boundaries and submit written evidence of course completion to the Board;

2) Mr. Grossman shall within four (4) months of the effective date of this Consent Agreement take an in person continuing medical
education course of not less than six (6) hours in length approved by the Board Secretary or his designee on the subject of prescribing opioids and the use of universal precautions and submit written evidence of course completion to the Board; and

3) Mr. Grossman is not currently rendering medical services in Maine. Upon commencement of the rendering of medical services in Maine, Mr. Grossman shall notify the Board in writing of any practice location(s) within ten (10) calendar days. Six (6) months after the commencement of rendering medical services in Maine and at least six (6) months after the completion of the continuing medical education courses required in subparagraphs 1 and 2 above, Mr. Grossman shall submit at least five (5) patient charts as requested by the Board for review. Following review of the patient charts, the Board shall determine based upon the review, and in its sole discretion, whether to terminate probation or to continue probation for a specified period, and whether to impose any additional requirements.

c) A CIVIL PENALTY in the amount of One Thousand Dollars ($1,000.00), payment of which shall be made by certified check or money order made payable to “Treasurer, State of Maine,” and remitted to Maine Board of Licensure in Medicine, 137 State House Station, Augusta, Maine 04333-0137, within thirty (30) days of the execution of this Consent Agreement.

13. Violation by Mr. Grossman of any of the terms or conditions of this Consent Agreement shall constitute grounds for discipline, including but not
limited to modification, suspension, or revocation of licensure or the denial of re-licensure.

14. This Consent Agreement is not appealable and is effective until modified or rescinded in writing by the parties hereto.

15. The Board and the Department of the Attorney General may communicate and cooperate regarding Mr. Grossman or any other matter relating to this Consent Agreement.

16. This Consent Agreement is a public record within the meaning of 1 M.R.S. § 402 and will be available for inspection and copying by the public pursuant to 1 M.R.S. § 408-A.

17. This Consent Agreement constitutes discipline and is an adverse licensing action that is reportable to the National Practitioner Data Bank (NPDB), the Federation of State Medical Boards (FSMB), and other licensing jurisdictions.

18. Nothing in this Consent Agreement shall be construed to affect any right or interest of any person not a party hereto. If any clause of this Consent Agreement is deemed illegal or invalid, then that clause shall be deemed severed from this Consent Agreement.

19. Mr. Grossman acknowledges by his signature hereto that he has read this Consent Agreement, that he has had an opportunity to consult with an attorney before executing this Consent Agreement, that he executed this Consent Agreement of his own free will and that he agrees to abide by all terms and conditions set forth herein.
20. Mr. Grossman has been represented by Sandra L. Rothera, Esq., who has participated in the negotiation of the terms of this Consent Agreement.

21. For the purposes of this Consent Agreement, the term "execution" means the date on which the final signature is affixed to this Consent Agreement.

I, JAMES GROSSMAN, P.A., HAVE READ AND UNDERSTAND THE FOREGOING CONSENT AGREEMENT AND AGREE WITH ITS CONTENTS AND TERMS. I FURTHER UNDERSTAND THAT BY SIGNING THIS AGREEMENT, I WAIVE CERTAIN RIGHTS, INCLUDING THE RIGHT TO A HEARING BEFORE THE BOARD. I SIGN THIS CONSENT AGREEMENT VOLUNTARILY, WITHOUT ANY THREAT OR PROMISE. I UNDERSTAND THAT THIS CONSENT AGREEMENT CONTAINS THE ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF ANY KIND, VERBAL, WRITTEN OR OTHERWISE.

DATED: 5/23/2014

JAMES GROSSMAN, P.A.

STATE OF Maine

________________________, S.S.

Personally appeared before me the above-named James Grossman, P.A., and swore to the truth of the foregoing based upon his own personal knowledge, or upon information and belief, and so far as upon information and belief, he believes it to be true.

DATED: 5/23/16

NOTARY PUBLIC/ATTORNEY

MY COMMISSION ENDS: 2/22/21
DATED: May 29, 2014

SANDRA L. ROTHERA, ESQ.
Attorney for James Grossman. P.A.

STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

DATED: 5/16/10

MAROULLA S. GLEATON, M.D., Chairman

STATE OF MAINE DEPARTMENT
OF THE ATTORNEY GENERAL

DATED: June 16, 2016

MICHAEL MILLER
Assistant Attorney General

Effective Date:

June 16, 2016
STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

In re: )
Jack L. Flippo, M.D. ) CONSENT AGREEMENT FOR LICENSURE
) 

This document is a Consent Agreement, effective when signed by all parties, regarding the pending application for permanent licensure in the State of Maine of Jack L. Flippo, M.D. The parties to the Consent Agreement are: Jack L. Flippo, M.D. ("Dr. Flippo"), the State of Maine Board of Licensure in Medicine ("the Board") and the State of Maine Department of the Attorney General. This Consent Agreement is entered into pursuant to 10 M.R.S. § 8003(5)(B) and 32 M.R.S. § 3282-A.

STATEMENT OF FACTS

1. On February 16, 2016, the Board received Dr. Flippo’s application for permanent licensure (pending License number MD 21015). On his application, Dr. Flippo disclosed that he had been diagnosed with a mental health and substance abuse disorder. Dr. Flippo also disclosed that he entered into a consent order with the North Carolina Medical Board on December 2, 2015, following an incident that occurred in September 2014 when he took too much of a prescribed medication resulting in an emergency room visit at the hospital where he worked.

2. In the December 2, 2015 Consent Order, the North Carolina Medical Board found that Dr. Flippo had a history of alcohol use disorder, that on September 22, 2014, he self-referred to the North Carolina Physicians
Health Program ("NCPHP"), and that his hospital privileges had been temporarily suspended based upon suspected substance abuse. After concluding that Dr. Flippo possessed a mental health and substance abuse disorder that when left untreated rendered him unable to practice medicine and surgery with reasonable skill and safety to patients, the North Carolina Medical Board imposed a license suspension which was immediately stayed on terms and conditions including a requirement that he maintain and comply with his NCPHP monitoring contract.

3. By letter dated March 22, 2016, the Maine Medical Professionals Health Program ("MPHP") informed the Board that Dr. Flippo signed an out of state monitoring agreement with the MPHP, and that coordination of monitoring had been arranged with the NCPHP.

4. Pursuant to 32 M.R.S. § 3271(5), an applicant may not be licensed unless the Board finds that the applicant is qualified and no cause exists, as set forth in section 3282-A, that may be considered grounds for disciplinary action against a licensed physician or surgeon.

5. Pursuant to 32 M.R.S. § 3282-A(2)(B), the Board may refuse to issue, or impose other discipline for misuse of alcohol, drugs or other substances that has resulted or that may result in the licensee performing services in a manner that endangers the health or safety of patients.

6. Pursuant to 32 M.R.S. § 3282-A(2)(M), the Board may refuse to issue, or impose other discipline when disciplinary action has been imposed by
another state if the conduct resulting in disciplinary action, if committed in this State, constitutes grounds for discipline.

7. On April 12, 2016, the Board reviewed the foregoing information and voted to preliminarily deny Dr. Flippo's application for permanent licensure. In lieu of the denial, the Board also voted to offer Dr. Flippo this Consent Agreement. Should Dr. Flippo decide to accept this Consent Agreement, he should sign it and date it in front of a notary and return it to the Maine Board of Licensure in Medicine, 137 State House Station, Augusta, Maine 04333-0137 on or before June 16, 2016. Should Dr. Flippo decide not to accept this Consent Agreement and wish to appeal the preliminary denial of his application for permanent licensure, Dr. Flippo must submit a written request for an adjudicatory hearing to the Board within thirty (30) days of receipt of the Notice of Preliminary Denial of License Application or the preliminary denial of his application will become final.

COVENANTS

8. Dr. Flippo admits the foregoing facts and that such conduct constitutes grounds for denial of licensure and imposition of other discipline pursuant to 32 M.R.S. §§ 3282-A(2)(B) and (2)(M).

9. As discipline for his conduct, Dr. Flippo agrees to the following terms and conditions:

a) Dr. Flippo shall comply with all terms and conditions of the December 2, 2015 Consent Order of the North Carolina Medical Board.
b) Dr. Flippo shall maintain and comply with all requirements of his March 1, 2015 five-year monitoring contract with NCPHP and his out of state monitoring contract with MPHP. Coordinated monitoring between NCPHP and MPHP is required and shall include immediate notification of any positive or problematic toxicology test. So long as Dr. Flippo holds a license to practice medicine in Maine, he shall have a monitoring contract in effect with MPHP or its successor, which may not be terminated prior to March 1, 2020.

c) Dr. Flippo shall refrain from the use or possession of alcohol, controlled substances, and all mood-altering or mind-altering substances, including but not limited to sedatives, stimulants, and pain medications, whether illicit or not, unless lawfully prescribed for him. Dr. Flippo may not self-prescribe any controlled substance or any mood-altering or mind-altering substances, including but not limited to sedatives, stimulants, and pain medications, and shall not prescribe such substances to family or household members except for a bona fide emergency.

d) Dr. Flippo shall notify the Board in writing of any change in his personal contact information, including his address, telephone number, and email, within ten (10) days of the change.

e) Upon commencement of any practice of medicine in the state of Maine, Dr. Flippo shall notify the Board in writing within ten (10) days of all practice location(s). In addition, Dr. Flippo agrees to notify the Board in writing within ten (10) days of any change regarding his practice location(s).
f) Upon report that any urine, blood, hair, or other bodily fluid or tissue sample test is positive in violation of subparagraph c above, Dr. Flippo agrees that his license to practice medicine shall be automatically and immediately suspended, which suspension shall continue until the Board holds a hearing on the matter, unless the Board, or the Board Executive Secretary in consultation with the Executive Director and the Board's assigned Assistant Attorney General, earlier determine that the report is without merit. The suspension shall become effective at the time that Dr. Flippo receives actual notice from the Board that a report of violation(s) has been made. Actual notice can be provided by telephone, in person, or in writing. The Board will hold a hearing within 60 days of any automatic suspension or as soon thereafter as practicable (unless both Dr. Flippo and the Board agree to hold the hearing later).

g) Dr. Flippo expressly authorizes and agrees to execute any release necessary for the Board, Board staff, and the Board's assigned Assistant Attorney General to communicate directly with and obtain information from MPHP and NCPHP.

10. The Board voted at its April 12, 2016 meeting that upon execution of this Consent Agreement it shall issue a license to Dr. Flippo contingent upon his meeting all other licensure requirements.

11. Violation of any of the terms or conditions of this Consent Agreement by Dr. Flippo shall constitute unprofessional conduct and grounds for additional discipline of his Maine medical license by the Board, including
but not limited to imposition of civil penalties, or modification, suspension, and revocation of licensure.

12. This Consent Agreement is not appealable, constitutes disciplinary action, is reportable to the National Practitioner Data Bank, the Federation of State Medical Boards, and other licensing jurisdictions, and is effective until modified or rescinded in writing by all of the parties hereto.

13. The Board and the Department of Attorney General may communicate and cooperate regarding any matter related to this Consent Agreement.

14. This Consent Agreement is a public record within the meaning of 1 M.R.S. § 402 and will be available for inspection and copying by the public pursuant to 1 M.R.S. § 408-A.

15. Nothing in this Consent Agreement shall be construed to affect any right or interest of any person not a party hereto.

16. For the purposes of this Consent Agreement, the term “execution” means the date on which the final signature is affixed to this Consent Agreement.
I, JACK L. FLIPPO, M.D., HAVE READ AND UNDERSTAND THE FOREGOING CONSENT AGREEMENT. I UNDERSTAND THAT BY SIGNING IT, THAT I WAIVE CERTAIN RIGHTS. I SIGN THIS CONSENT AGREEMENT VOLUNTARILY, WITHOUT ANY THREAT OR PROMISE. I UNDERSTAND THAT THIS CONSENT AGREEMENT CONTAINS THE ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF ANY KIND, VERBAL, WRITTEN OR OTHERWISE.

DATED: 05/20/2016

JACK L. FLIPPO, M.D.

STATE OF North Carolina

S.S. (County)

Personally appeared before me the above-named Jack L. Flippo, M.D., and swore to the truth of the foregoing based upon his own personal knowledge, or upon information and belief, and so far as upon information and belief, he believes it to be true.

DATED: 05/20/2016

NOTARY PUBLIC

COMMISSION ENDS: March 12, 2017

DATED: 5/23/16

MAROULLA S. GLEATON, M.D.,
Chairperson
MAINE BOARD OF LICENSURE IN MEDICINE

DATED: Dec 16, 2016

MICHAEL MILLER, Assistant Attorney General
DEPARTMENT OF THE ATTORNEY GENERAL

APPROVED
EFFECTIVE: June 16, 2014
STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

In Re: Robert S. LaMorgese, M.D. )
) )
Complaint CR 14-125 & Appeal from Preliminary )
Denial of Application for Relicensure )

DECISION AND ORDER

I. PROCEDURAL HISTORY

Pursuant to the authority found in 5 M.R.S. Sections 9051 to 9064, 10 M.R.S. Section 8003(5), and 32 M.R.S. Sections 3269 and 3282-A, the Maine Board of Licensure in Medicine ("Board") met in public session at its offices in Augusta, Maine, on May 10, 2016. The purpose of the meeting was to conduct an adjudicatory hearing to determine whether grounds existed to impose discipline on the medical license of Robert S. LaMorgese, M.D., ("Licensee") and whether to grant his application for renewal of his license.

By letter dated March 4, 2016, the Licensee was notified that the hearing in this matter would be held on May 10, 2016. On March 21, 2016, a telephonic prehearing conference was convened and a Conference Order was issued setting deadlines for the submission of final exhibit and witness lists.

A quorum of the Board was in attendance during all stages of the proceedings. Participating and voting Board members were Louisa Barnhart, M.D.; Lee Corbin, Public Member; David D. Jones, M.D.; David H. Dumont, M.D.; David Nyberg, Ph.D., Public Member; Christopher R. Ross, P.A.-C.; Peter J. Sacchetti, M.D.; Brad E. Waddell, M.D.; Lynne M. Weinstein, Public Member; and Chair Maroulla S. Gleaton, M.D. Dr. LaMorgese was present and was represented by Arthur J. Greif, Esq. Michael Miller, Esq., Assistant Attorney General, represented the State of Maine.
Rebekah Smith, Esq., served as Hearing Officer. The hearing was held in accordance with the requirements of the Maine Administrative Procedure Act, 5 M.R.S. Sections 9051 to 9064.

State Exhibits #1 to #8 and #11 to #20 and Licensee Exhibits A, B, C, and E were admitted without objection. State Exhibits #9 and #10 were withdrawn. The admitted exhibits are identified as follows:

State Exhibit #1: Notice of Hearing dated March 4, 2015
State Exhibit #2: ALMS Licensing Information
State Exhibit #3: April 14, 2014, Katahdin Valley Health Center Letter to Board
State Exhibit #4: April 29, 2014, Board Staff Letter to Licensee
State Exhibit #5: May 1, 2014, Summary of Phone Conversation between Board Staff and Licensee
State Exhibit #6: May 28, 2014, Licensee Letter to Board
State Exhibit #7: July 24, 2014, Board Complaint
State Exhibit #11: April 2, 2015, Neuropsychological Evaluation Report by Robert Riley, Psy.D., ABPP-CN
State Exhibit #12: June 29, 2015, Renewal Application
State Exhibit #13: July 7, 2015, Letter to Licensee From Board
State Exhibit #14: July 21, 2015, Licensee Letter to Board
State Exhibit #15: August 13, 2015, Administrative Fine Payment
State Exhibit #16: September 14, 2015, Board Staff Letter to Licensee
State Exhibit #17: September 18, 2015, Licensee Letter to Board
State Exhibit #18: November 19, 2015, Preliminary Denial of Licensee’s Application to Renew License
State Exhibit #19: 32 M.R.S. § 3280-A
State Exhibit #20: 32 M.R.S. § 3282-A
Licensee Exhibit A: Progress Notes of Julie Racine, PMHNP, dated March 18, 2014, through April 20, 2015
Licensee Exhibit C: AMA Physician’s Recognition Award with Commendation
Licensee Exhibit E: Test from Robert Riley, Psy.D., ABPP-CN, Evaluation

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. Each party presented an opening statement. The State presented Robert

1 No Licensee Exhibit D was offered.
Riley, Psy.D., ABPP-CN, and the Licensee as witnesses. The Licensee did not present any additional witnesses. Each party made a closing statement. The Board then deliberated and made the following findings of fact and conclusions of law by a preponderance of the credible evidence regarding the allegations against the Licensee and his eligibility for licensure.

II. FINDINGS OF FACTS

1. Robert A. LaMorgese was granted a Maine license as a medical doctor in February 2012. (State Exh. #2.) The Licensee is certified by the American Board of Internal Medicine. (Testimony of Licensee.) Although the Licensee previously possessed medical licenses in New York and New Jersey, they are lapsed. (Testimony of Licensee.) The Licensee does not currently hold a DEA registration, required to prescribe opioids. (Testimony of Licensee.)

2. In January 2014, the Licensee experienced a fall outside his home that resulted in a concussion. (Testimony of Licensee.) He underwent an MRI at the time of his concussion that showed some general atrophy. (Testimony of Licensee.)

3. The Licensee has not practiced medicine since the January 2014 fall. (Testimony of Licensee.) He had experienced significant conflict with his employer in the period leading up to his fall because his employer had ceased to employ the scribe who had helped him maintain electronic health records. (Testimony of Licensee.)

4. On April 3, 2014, James D. Thomas, Ph.D., issued a neuropsychological evaluation report regarding the Licensee. (State Exh. #8.) The Licensee was referred for the evaluation by his primary medical provider for an assessment of his neurocognitive functioning to rule out cerebral dysfunction and to provide appropriate treatment recommendations given a concern of cognitive impairments following the Licensee’s concussion. (State Exh. #8.) The Licensee reported to Dr. Thomas that he was misplacing his wallet and keys, that his
recent memory was more impaired, that he had gotten lost driving near his house in the
dark, and that his wife told him that he was forgetting things. (State Exh. #8.) The
Licensee indicated that he had poor organizational ability and some difficulty with
multitasking. (State Exh. #8.) He reported that he was experiencing increasing clumsiness
in his right hand and that his forgetfulness, which started when he was about 40 years old,
had been getting worse. (State Exh. #8.) The Licensee’s wife reported that he forgot where
he put things, a problem that was getting worse, that he forgot what she told him relatively
frequently, and that he made small memory mistakes nearly daily. (State Exh. #8.) The
Licensee’s wife indicated that for the prior six weeks he had experienced difficulty
remembering plans that they had made, that about three to six months prior he had begun
needing help recalling the names of people that he knew, and that he was having difficulty
retrieving common words. (State Exh. #8.)

5. Dr. Thomas concluded that the Licensee exhibited evidence of frontal lobe/executive
system impairment and memory impairment. (State Exh. #8.) Dr. Thomas also noted
some evidence of attentional impairment, visuospatial impairment, and motor impairment.
(State Exh. #8.) Dr. Thomas concluded that the findings were consistent with an
underlying cognitive disorder of unclear cause and the pattern of scores was suggestive of
bilateral cerebral dysfunction that was anterior in its distribution. (State Exh. #8.) He
indicated that if the information reported by the Licensee and his wife was correct, some
cognitive problems were present before the Licensee’s head injury but had worsened after
the injury. (State Exh. #8.) Dr. Thomas noted that the Licensee’s January 2014 head injury
was described as relatively mild and that it was unlikely to be the sole cause of the
cognitive problems identified in the Licensee’s testing. (State Exh. #8.)
6. Dr. Thomas diagnosed the Licensee with cognitive disorder, not otherwise specified, and postconcussional syndrome. (State Exh. #8.) Due to the Licensee's history of anxiety and depression and the work-related stress that was identified, Dr. Thomas also diagnosed the Licensee with adjustment disorder with depressed and anxious features. (State Exh. #8.) Dr. Thomas suggested that the Licensee be reevaluated within one to two years. (State Exh. #8.)

7. Following Dr. Thomas's evaluation, the Licensee began to receive short-term disability insurance payments. (Testimony of Licensee.)

8. By letter dated April 14, 2014, Katahdin Valley Health Center informed the Board that the Licensee had been out on medical leave and it was unknown when or if he would return. (State Exh. #3.)

9. On May 1, 2014, the Licensee spoke with a Board staff member and indicated that he was no longer working for Katahdin Valley Health Center, he had experienced memory loss, and he would be meeting with a neurologist the following month. (State Exh. #5.) The Licensee hoped to maintain his Maine license in the event that the neurologist advised that he could return to work in a year or two. (State Exh. #5.)

10. On May 29, 2014, Jose Tungol, MD., issued a visit note indicating that the Licensee had discussed his neuropsychological testing with him and he concluded that the Licensee was experiencing significant work-related stressors. (State Exh. #8.) He also opined that the Licensee was experiencing ongoing anxiety and depression prior to the concussion that could be the etiology for what Dr. Tungol termed "pseudo-dementia." (State Exh. #8.) Dr. Tungol indicated that he had advised the Licensee that he should continue with medication management with his psychiatric practitioner and he should participate in counseling. (State Exh. #8.) He did not recommend medication for memory impairment and he
indicated that no further work up was needed at that time. (State Exh. #8.) This visit, to review the neuropsychological testing by Dr. Thomas, was the Licensee’s only visit with Dr. Tungol. (Testimony of Licensee.)

11. On June 4, 2014, the Licensee filed a letter with the Board indicating that he was experiencing post-concussion syndrome and his recollection of events was impaired. (State Exh. #6.)

12. By letter dated July 24, 2014, the Board informed the Licensee that it had voted to initiate a complaint against him based on his reported memory loss, which could impact his ability to practice medicine safely. (State Exh. #7.)

13. On April 2, 2015, Robert Riley, Psy.D., ABPP-CN, issued a neuropsychological evaluation report regarding the Licensee following a referral from the Board to assess the Licensee’s cognitive functioning as well as his emotional and interpersonal functioning. (State Exh. #11.) Dr. Riley found that the Licensee was functioning in the range of average intellectual ability, below what was likely his baseline level of ability. (State Exh. #11.) He found that the Licensee demonstrated mild and relative weaknesses for some tasks of processing speed, complex attention, speeded verbal fluency, and a less structured memory task involving recalling words. (State Exh. #11.) He also noted that the Licensee was able to perform in the average range or better on several other tests of memory. (State Exh. #11.)

14. Dr. Riley concluded that the Licensee had likely experienced some reductions in his general cognitive efficiency and processing speed, which had led to a generalized reduction in his overall levels of intellectual ability. (State Exh. #11.) He also found that the Licensee had some difficulty learning new, unstructured information, and his ability to

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2 Dr. Thomas’s report was not available to Dr. Riley at the time of his evaluation although he had reviewed it prior to his testimony at hearing. (State Exh. #11; Testimony of Riley.)
retain the information was limited. (State Exh. #11.) Dr. Riley concluded that the Licensee’s cognitive functioning suggested some relative decrease in several areas which was likely consistent with the residual effects of the concussion or mild traumatic brain injury that Appellant sustained in 2014. (State Exh. #11.) Dr. Riley also opined that some of the Licensee’s cognitive weaknesses were related to more transient factors such as stress, anxiety, fatigue, and chronic pain, noting that the finding of generalized atrophy on an MRI also raised the possibility that there had been a general age-related decline in the Licensee’s functioning. (State Exh. #11.)

15. Dr. Riley concluded that the results of the Licensee’s examination did not suggest absolute or broad impairments that were consistent with a diagnosable cognitive disorder. (State Exh. #11.) He also opined that it did not appear that the Licensee had cognitive or emotional impairments of such severity that he would be unable to demonstrate clinical competence in areas in which he had long-term expertise and knowledge. (State Exh. #11.) Dr. Riley noted that the Licensee was seeking appropriate treatment for his chronic pain, anxiety, and depression, and that he would not recommend any additional mental health treatment. (State Exh. #11.)

16. Dr. Riley opined that the Licensee’s poorer performance in his April 2014 neuropsychological testing was likely affected by the fact that he was in the acute stage of a concussion. (Testimony of Riley.) He believed that the cognitive disorder, not otherwise specified, diagnosed by Dr. Thomas had essentially resolved, noting that by the time of his own testing, the Licensee showed significant improvement and thus that diagnosis would no longer have been appropriate. (Testimony of Riley.) Dr. Riley also did not believe that the term “pseudo-dementia” as used by Dr. Tungol was applicable based on Dr. Thomas’s evaluation because the term is usually used to reference subjective concerns of
psychological changes with no objective findings; Dr. Riley also would not have used that term to describe the Licensee's status based on his own testing. (Testimony of Riley.) Dr. Riley recommended a reevaluation in one to two years. (State Exh. #11.)

17. On June 29, 2015, the Licensee submitted an application for renewal of his Maine medical license. (State Exh. #12.)

18. The Licensee's license expired on June 30, 2015. (State Exh. #2.)

19. By letter dated November 15, 2015, the Board notified the Licensee that it had preliminarily denied his application for renewal of his medical license. (State Exh. #18.) The Licensee filed a timely notice of appeal. (Administrative File.) The Licensee's license remained active pending a final determination on his appeal by the Board. (State Exh. #2.)

20. Since January 2014, the Licensee has taken 40 to 50 online continuing education courses on a range of topics. (Testimony of Licensee.) The Licensee received a physician's recognition award with commendation from the American Medical Association for his participation in on-line continuing medical education. (Lic. Exh. C.)

21. The Licensee began to receive mental health treatment from Carol Westerdahl, LCSW, in October 2014. (Lic. Exh. B.) At the time of hearing, he continued to treat with Julie Racine, PMHNP, for medication management. (Lic. Exh. A; Testimony of Licensee.)

III. GOVERNING STATUTES AND RULES

1. The Maine Board of Licensure in Medicine may modify, restrict, suspend, revoke, or refuse to renew a license if the licensee has a professional diagnosis of a mental or physical condition that has resulted or may result in the licensee performing services in a manner that endangers the health or safety of patients. 32 M.R.S. § 3282-A(2)(C).

2. The Board may modify, restrict, suspend, revoke, or refuse to renew a license if the licensee exhibits incompetence in the practice for which he is licensed. 32 M.R.S. § 3282-A(2)(E).
A licensee is considered to exhibit incompetence if he engages in conduct that evidences a lack of ability or fitness to discharge the duty owed by the licensee to a client or patient or the general public. 32 M.R.S. § 3282-A(2)(E)(1).

3. For each violation of applicable statutes or rules, the Board, among other sanctions, may impose conditions of probation upon a licensee for such time period as the Board determines appropriate, among other sanctions. 10 M.R.S. § 8003(5)(A-1).

IV. CONCLUSIONS OF LAW

The Board, considering the above facts and those alluded to in the record but not referred to herein, determined that it had jurisdiction over Licensee Robert S. LaMorgese, M.D., unanimously approved his application for renewal of licensure, and concluded as follows with regard to the allegations in the notice of hearing:

1. By unanimous vote, that the Licensee does not have a professional diagnosis of a mental or physical condition that may result in the Licensee performing services in a manner that endangers the health or safety of patients, which would have subjected him to discipline pursuant to 32 M.R.S. Section 3282-A(2)(A).

2. By unanimous vote, that the Licensee has exhibited incompetence in the practice for which he is licensed by engaging in conduct that evidences a lack of ability or fitness to discharge the duty owed by the Licensee to patients by not actively engaging in the practice of medicine since early 2014, subjecting him to discipline pursuant to 32 M.R.S. Section 3282-A(2)(E)(1).

3. By unanimous vote, that the Licensee is subject to the following terms of probation:
a. Prior to his first patient contact, the Licensee must engage a Board-approved practice monitor who will meet with the Licensee every two weeks to review patient charts and who will report to the Board every month for a period of six months. The Licensee may meet with the practice monitor via telemedicine.

b. The Licensee must obtain a neurologic evaluation by a Board-approved neurologist whose report will be provided to the Board and whose recommendations the Licensee must follow. The Licensee must provide the Board with names of potential neurologic evaluators, to be approved by the Board Chair and Board Secretary, within one month of the effective date of this Decision and Order and must arrange the evaluation as soon as possible thereafter.

c. If the Licensee seeks to activate his DEA registration, he must complete an in-person continuing education course of at least eight hours on the topic of prescribing opioids.

Dated: 6/16 __, 2016  
Maroulla S. Gleaton, M.D.  
Chair, Maine Board of Licensure in Medicine

V. APPEAL RIGHTS

Pursuant to the provisions of 10 M.R.S. Section 8003(5) and 5 M.R.S. Section 11002(3), 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 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 in Medicine, all parties to the agency proceedings, and the Attorney General.