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The Board met in public session, with the exception of the times listed below, which were held in executive session. Executive sessions are held to consider matters which, under statute, are confidential (e.g., 1 M.R.S. § 405; 10 M.R.S. § 8003-B; 22 M.R.S. § 1711-C; 24 M.R.S. § 2510; 32 M.R.S. § 3282-A). The Board moved, seconded, and voted the following executive session times. During the public session of the meeting, actions were taken on all matters discussed during executive session.

**EXECUTIVE SESSIONS**

9:43 a.m. - 11:02 a.m.  
Pursuant to 32 M.R.S. §3282-A to conduct an Informal Conference

11:10 a.m. - 11:24 a.m.  
Pursuant to 1 M.R.S. § 405(6)(F) and 10 M.R.S. § 8003-B(1) to discuss pending complaints and confidential patient medical records

**RECESSES**

9:37 a.m. - 9:42 a.m.  
Break

11:02 a.m. - 11:07 a.m.  
Break

12:07 p.m. - 12:32 p.m.  
Lunch

2:55 p.m. - 3:10 p.m.  
Break

**I. Call to Order**

Dr. Gleaton called the meeting to order at 9:08 a.m.
A. Amendments to Agenda (none)

B. Scheduled Agenda Items

1. 9:30 a.m. Informal Conference (CR16-176)
2. 12:30 p.m. Meeting with Correct Care Solutions

II. Licensing

A. Applications for Individual Consideration

1. Initial Applications
   a. Lisa Brown, P.A.
      The Licensure Committee moved to approve Ms. Brown’s license application pending approval of the Plan of Supervision by the Board Chair or Secretary. The motion passed unanimously.
   b. Constance Tambakis-Odom, M.D.
      The Licensure Committee moved to table the application and request that Dr. Tambakis-Odom appear before the committee for an interview. The motion passed unanimously.

2. Reinstatement Applications (none)

3. Renewal Applications
   a. James Melloh, M.D.
      The Licensure Committee moved to approve Dr. Melloh’s renewal application. The motion passed unanimously.
   b. Algis Vydas, M.D.
      The Licensure Committee moved to approve Dr. Vydas’ renewal application and issue an Inactive status license. The motion passed unanimously.
   c. Hilamber Subba, M.D.
      The Licensure Committee moved to approve Dr. Subba’s renewal application. The motion passed unanimously.
d. Rodney Chelberg, Jr., M.D.

The Licensure Committee moved to order that the licensee undergo a § 3286 evaluation. The motion passed 7-0-0-1. Dr. Dumont was recused from this matter and left the room.

4. Requests to Convert to Active Status (none)

5. Requests to Withdraw License/License Application

a. Gloria Romerocaces, M.D.

The Licensure Committee moved to amend the withdrawal list approved on January 10, 2017 to remove Dr. Romerocaces’ name. Subsequent to submitting a request to withdraw her license, she changed her mind and renewed her license online. The motion passed unanimously.

b. Robert Weiss, M.D.

The Licensure Committee moved to approve Dr. Weiss’ request to withdraw his license. The motion passed unanimously.

6. Requests for Supervisory Relationships

a. Stephanie Graves, P.A.

The Licensure Committee moved to table Ms. Graves’ registration application pending further investigation. The motion passed unanimously.

B. Other Items for Discussion

1. Suboxone Waiver Training

The Licensure Committee moved that Suboxone waiver training that is accredited as Category I CME may be counted toward the statutorily required 3 hours of opioid related CME. The motion passed unanimously.

2. Change from Access Code to Password

Staff reported on the recommendation that licensee access to online services through the Agency License Management System (ALMS) database change from an access code to a password system. The change is to enhance security of confidential information.
3. Application Question for Review

The Licensure Committee discussed changes to the question on its licensing applications regarding the practice of telemedicine. The committee requested that staff rewrite the question and present it for review at the next meeting.

C. Withdraw License from Registration

Dr. Barnhart moved to approve the following licensees’ requests to withdraw their licenses from registration. Mr. Ross seconded the motion, which passed unanimously.

<table>
<thead>
<tr>
<th>NAME</th>
<th>LICENSE NUMBER</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bates, Sara</td>
<td>MD19458</td>
</tr>
<tr>
<td>Bergeron, Paul</td>
<td>MD20829</td>
</tr>
<tr>
<td>Johnson, Craig</td>
<td>MD12106</td>
</tr>
<tr>
<td>Potter, Darrell</td>
<td>MD20729</td>
</tr>
<tr>
<td>Walker, Gregory</td>
<td>MD16596</td>
</tr>
</tbody>
</table>

III. Consent Agreements for Review

A. CR16-156 Steven J. Brewster, M.D. [Appendix A]

Dr. Dumont moved to approve the signed consent agreement. Ms. Dench seconded the motion, which passed unanimously.

B. CR14-56 Whitney Houghton, M.D. [Appendix B]

Dr. Sacchetti moved to approve the signed first amendment to consent agreement. Dr. Waddell seconded the motion, which passed 6-0-0-2. Dr. Barnhart and Dr. Gleaton were recused from this matter and left the room.

IV. Complaints

1. CR16-254

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

MOTION: The patient complains about the care he received from an interventional pain management physician. The patient was only seen once in consultation. Although the appointment lasted 75 minutes, the documentation is brief. However, it does outline the difficulties of pain management in a patient with longstanding musculoskeletal pain from previous accidents who can no longer receive narcotics due to breach of a narcotics contract. The treatment plan was unwelcomed, but the care was appropriate. The physician made it clear that the patient did not have disease needing interventional pain treatment.
2. **CR16-259**

Dr. Barnhart moved to set the matter for an adjudicatory hearing and authorize AAG Miller to negotiate a consent agreement to include a reprimand and civil penalty of $1,000.00. Mr. Ross seconded the motion, which passed 7-0-0-1. Dr. Waddell was recused from this matter and left the room.

3. **CR16-197**

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

**MOTION:** The patient complains that the physician verbally attacked her during a difficult discussion about pain medications. The patient also wanted an unusual sleep medication which is dangerous when used with pain medications. The record was reviewed and found satisfactory. The physician’s attempt to discuss alternatives to the patient’s medications was unsuccessful. The physician’s reasoning was standard in approach. These discussions are frequently difficult when the patient and physician are not in agreement. In addition, the patient had medical records concerns which turned out to be a technical issue, not a physician issue. The concern about a sleep study referral not being done was documented as a timely completed referral in the chart.

4. **CR16-104 David Levitt, M.D.**

Ms. Weinstein moved to dismiss the complaint with a letter of guidance. Dr. Sacchetti seconded the motion, which passed unanimously.

**MOTION:** In this case, the Board received a complaint from a patient regarding breach in confidentiality and professionalism during his care at a medical marijuana clinic. The patient believed that the physician was an owner of the clinic. Investigation revealed that although the physician does not co-own the clinic, he appeared on the website and in a video featuring the clinic.

The letter of guidance will remind the physician that: 1) he should be clear and concise with regard to his medical role when appearing on a company website; 2) if/when appearing on social media sites, his affiliation and role in an office or clinic should be articulated clearly to avoid any appearance of a conflict of interest; and 3) referral to a business in which the physician’s family has a financial interest could be considered unprofessional and unethical.

**Executive session regarding CR16-133 and CR16-148**

At 11:10 a.m. Dr. Dumont moved to enter executive session pursuant to 1 M.R.S. § 405(6)(F) and 10 M.R.S. § 8003-B(1) to discuss pending complaints and confidential patient medical records. Dr. Sacchetti seconded the motion, which passed unanimously.
At 11:24 a.m. Ms. Weinstein moved to come out of executive session. Dr. Sacchetti seconded the motion, which passed 7-0-0-1. Dr. Barnhart was recused from this matter and left the room.

Following executive session, the Board made the following motions regarding CR16-133 and CR16-148:

5. **CR16-133**

Dr. Dumont moved to set the matter for an adjudicatory hearing and authorize AAG Miller to negotiate a consent agreement amendment to include extending the physician’s probation for three years and placing conditions on his return to active practice. Dr. Sacchetti seconded the motion, which passed 7-0-0-1. Dr. Barnhart was recused from this matter and left the room.

6. **CR16-148**

Dr. Dumont moved to set the matter for an adjudicatory hearing and authorize AAG Miller to negotiate a consent agreement amendment to include extending the physician’s probation for three years and placing conditions on his return to active practice. Dr. Sacchetti seconded the motion, which passed 7-0-0-1. Dr. Barnhart was recused from this matter and left the room.

7. **CR16-175**

Mr. Ross moved to table the matter. Dr. Dumont seconded the motion, which passed unanimously.

8. **CR16-203**

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

**MOTION:** The patient complains that the physician refused to treat him in the emergency department while he was having difficulty breathing. Review of the record reveals that the initial treatment provided was appropriate and that the patient left before the physician could complete care.

9. **CR16-207**

Dr. Sacchetti moved to dismiss the complaint. Ms. Weinstein seconded the motion, which passed 7-0-0-1. Dr. Gleeton was recused from this matter and left the room.

**MOTION:** A friend of the patient, who was an active participant during her initial consultation for breast reconstruction, complains that inappropriate comments were made in the exam room by the plastic surgeon. The surgeon’s assistant was present throughout the encounter and refutes the allegations. There is insufficient evidence to determine any wrongdoing on the part of the surgeon.
10. CR16-209

Dr. Dumont moved to dismiss the complaint. Dr. Waddell seconded the motion, which passed 6-0-0-2. Dr. Gleaton and Mr. Ross were recused from this matter and left the room.

**MOTION:** An error was made by an emergency department physician assistant in choosing a dose of an anesthetic for a patient in pain, and a higher dose was given than intended. Using a drop-down menu on an electronic medical record, an anesthetic dose was given instead of an analgesic dose. The patient became unresponsive for a brief period of time and had to be monitored for a few hours, but suffered no residual ill effects. The physician assistant recognized and reported the error to her emergency room director, her primary supervisor, and the hospital’s chief medical officer immediately and the emergency department attending physician became involved. However, the patient and her husband were not notified of the error until a subsequent visit with the patient’s primary care physician. A hospital review ensued, and the physician assistant was counseled on her error and the importance of informing the patient and family members present of all interventions, outcomes, and errors. The physician assistant called the patient and talked with the husband. She explained the error, the outcome, and apologized for not telling them at the time of the error. The hospital recognized this as a systems error and had staff undergo training on dosing of this medication and improved the drop-down menu for the medication in the electronic medical record. The physician assistant has been counseled and has apologized appropriately.

11. CR15-163

Dr. Dumont moved to deny the physician’s request for an informal conference in lieu of an adjudicatory hearing and authorize AAG Miller to modify the terms of the consent agreement previously offered to include a reprimand and a civil penalty of $1,000.00. Mr. Ross seconded the motion, which passed unanimously.

12. CR16-210

Dr. Waddell moved to set the matter for an adjudicatory hearing and authorize AAG Miller to negotiate a consent agreement to include a warning and a civil penalty of $500.00. Ms. Dench seconded the motion, which passed unanimously.

13. CR16-215

Dr. Waddell moved to dismiss the complaint. Dr. Dumont seconded the motion, which passed 6-0-0-2. Mr. Ross and Ms. Weinstein were recused from this matter and left the room.

**MOTION:** The patient complains that her dermatologist failed to diagnose skin cancer during a routine visit. More than four months later the patient was seen by a second dermatology practice and two skin cancers were diagnosed and treated. The medical records maintained by the original dermatologist were minimally acceptable, but demonstrate that appropriate care was provided to the patient.
14. CR16-220

Dr. Sacchetti moved to investigate further. Ms. Weinstein seconded the motion, which passed 5-0-0-3. Dr. Barnhart, Dr. Dumont and Dr. Waddell were recused from this matter and left the room.

15. CR16-223

Dr. Sacchetti moved to set the matter for an informal conference. Ms. Dench seconded the motion, which passed unanimously.

Following review of this complaint, Dr. Barnhart moved to issue a complaint (CR17-35) against another physician. Dr. Dumont seconded the motion, which passed 7-0-0-1. Dr. Sacchetti was recused from this matter and left the room.

16. CR16-245

Dr. Dumont moved to deny the complainant’s request to withdraw the complaint and to set the matter for an informal conference. Ms. Weinstein seconded the motion, which passed unanimously.

17. CR16-230

Mr. Ross moved to investigate further. Dr. Dumont seconded the motion, which passed 7-0-0-1. Dr. Waddell was recused from this matter and left the room.

18. CR16-173

Dr. Sacchetti moved to dismiss the complaint. Ms. Dench seconded the motion, which passed 7-0-0-1. Dr. Dumont was recused from this matter and left the room.

**MOTION:** The spouse of a patient complains that her husband’s primary care physician gave him an incorrect diagnosis of dementia and directed him to have an unnecessary driving exam. This new diagnosis and denying him the ability to drive caused worsening depression. A neurologist later determined that the patient’s cognitive difficulty was a case of pseudo-dementia. Certain diseases can masquerade as others, making diagnosis difficult. Failing to diagnose someone with dementia who truly has it can be problematic as well. The primary care physician established adequate suspicion given his observations over time and a positive screening test. Because the patient then left the practice, the physician was unaware of the deterioration in mental health that followed and could not reassess or otherwise assist. The premature diagnosis, though unfortunate, is understandable.

19. CR16-180 Kathleen C. Morris, M.D.

Dr. Dumont moved to dismiss the complaint with a letter of guidance. Dr. Sacchetti seconded the motion, which passed unanimously.
MOTION: In this case, the Board received a complaint from a patient that the offer of a chaperone during her examination was not made and that a rectal exam was done after refusal and without her permission. The physician responded that she misunderstood the conversation about a chaperone and that the rectal exam was medically necessary because she needed to obtain a sample for hemoccult testing to rule out a colon malignancy.

The letter of guidance will advise the physician: 1) a chaperone should be encouraged for any physical exam that is intimate or intrusive in nature. Documentation of this in the medical record is a wise practice; 2) recognize the fact that each patient will have individual anxieties about various parts of their body, and it is a good practice to explain your physical examination as you are doing it. Do not assume that a patient’s professional background prepares them to be a patient or undergo a personal examination; and 3) do not rely on stool hemoccult testing to exclude a malignancy in an adult patient with rectal bleeding. An adult patient with abdominal symptoms and any report of rectal bleeding mandates further gastrointestinal evaluation beyond stool hemoccult testing.

20. CR16-202

Mr. Ross moved to dismiss the complaint. Dr. Sacchetti seconded the motion, which passed 6-0-0-2. Dr. Barnhart and Dr. Dumont were recused from this matter and left the room.

MOTION: The patient complains that the care he received from his provider lacked dignity and respect, and that his rights were disregarded. The patient was advised that he would not be getting medication refills until testing negative for alcohol and other substances. The patient did not follow up with the provider. A review of the medical record shows thorough and reasonable care and attempted follow up with the patient with no response.

21. CR16-206 Thomas C. Hattan, M.D.

Mr. Ross moved to dismiss the complaint with a letter of guidance. Ms. Dench seconded the motion, which passed unanimously.

MOTION: In this case, the Board received a complaint from a patient’s daughter that the physician behaved unprofessionally shortly after the patient requested a transfer to another provider, and his actions were disturbing to the patient. The physician responded that he had joked with the patient but was not aware that it bothered him. When he became aware that his conduct upset the patient he apologized.

The letter of guidance will remind the physician that maintaining professionalism in all forms of communication with patients is required.

22. CR16-217

Ms. Weinstein moved to dismiss the complaint. Mr. Ross seconded the motion, which passed unanimously.
**MOTION:** The patient complains about the care he is receiving in a state facility and lack of referral to an orthopedic physician. After additional questions to the physician, sufficient documentation has been noted showing appropriate care.

23. CR16-221

Dr. Waddell moved to set the matter for an adjudicatory hearing and authorize AAG Miller to negotiate: 1) a consent agreement for voluntary surrender of license; or 2) a consent agreement to include a reprimand, compliance with the terms of the Order of the Arizona Regulatory Board of Physician Assistants, and a $500.00 civil penalty to be paid within six months of resuming employment. Mr. Ross seconded the motion, which passed unanimously.

24. CR16-238

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

**MOTION:** The patient, who has a legal guardian due to a long history of psychiatric illness, complains that the injectable medication she is receiving is unnecessary, causes her side effects, and she wants the doctor to stop ordering it. Review of the medical record shows evidence that the medication is of benefit to the patient with no significant side effects. There is evidence that the patient can and has refused the injection at times, while accepting it at other times. The medical care is thoughtful and reasonable.

25. CR16-239

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

**MOTION:** A mother complains of mistreatment by her child’s pediatrician because the child had to endure certain diagnostic tests. The pediatrician had reason to be concerned for the child’s safety and took important and necessary steps to prioritize the child’s welfare. The tests were appropriate under the circumstances.

26. CR16-242

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

**MOTION:** The patient complains that he was discharged from treatment without notice and his rights to privacy were violated. The records show the patient did not honor his treatment contract, failed to participate in active recovery, submitted false urine samples, and engaged in illicit drug activities. Review of the medical records show that the patient received appropriate care and his rights to privacy were not violated.
27. CR16-243

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

MOTION: The patient complains that the physician’s behavior was unprofessional during their second and last office visit. The patient states that the physician berated him, gave him poor advice and told him that he would be dependent on family members for care if he continued to be noncompliant with medical therapy. Review of the medical record and the physician’s response supports good medical care, and the physician apologized for any concerns he caused the patient.

28. CR16-247

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

29. CR16-248

Dr. Waddell moved to set the matter for an adjudicatory hearing and authorize AAG Miller to negotiate: 1) a consent agreement for voluntary surrender of license; or 2) a consent agreement to include a two-year probation with conditions. Ms. Weinstein seconded the motion, which passed unanimously.

30. CR16-257

Mr. Ross moved to table the matter. Dr. Dumont seconded the motion, which passed unanimously.

31. CR16-265

Dr. Gleaton moved to set the matter for an adjudicatory hearing and authorize AAG Miller to negotiate a consent agreement to include a warning and a $1,000.00 civil penalty. Ms. Dench seconded the motion, which passed unanimously.

32. CR17-11 Harry M. Peddie, M.D. [Appendix C]

Dr. Waddell moved to order an immediate partial suspension suspending the physician’s ability to prescribe controlled substances pending a hearing. Mr. Ross seconded the motion, which passed 7-1.

V. Assessment and Direction
33. AD16-236

Mr. Ross moved to issue a complaint (CR17-33). Dr. Sacchetti seconded the motion, which passed 6-0-0-1. Dr. Dumont was recused from this matter and left the room.

34. AD16-273

Dr. Sacchetti moved to incorporate the information from this investigation into the existing complaint (CR16-220). Ms. Weinstein seconded the motion, which passed 5-0-0-2. Dr. Dumont and Dr. Waddell were recused from this matter and left the room.

35. AD16-212

Dr. Dumont moved to issue a complaint (CR17-34). Ms. Weinstein seconded the motion, which passed unanimously.

36. AD16-267

Dr. Sacchetti moved to close the matter with no further action. Ms. Weinstein seconded the motion, which passed unanimously.

37. Intentionally left blank

38. Intentionally left blank

39. Intentionally left blank

40. Pending Adjudicatory Hearings and Informal Conferences report

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

41. Consumer Assistance Specialist Feedback (none)

42. Other Items for Discussion (none)

VI. Informal Conference CR16-176

At 9:43 a.m. Dr. Dumont moved to enter executive session to conduct an Informal Conference pursuant to 32 M.R.S. § 3282-A. Dr. Waddell seconded the motion, which passed 7-0-0-1. Dr. Sacchetti was recused from this matter and left the room.

At 11:02 a.m. Dr. Barnhart moved to come out of executive session. Mr. Ross seconded the motion, which passed 7-0-0-1. Dr. Sacchetti was recused from this matter and left the room.

Following the informal conference, Dr. Dumont moved to table the matter for six months at which time the Board will review eight patient charts and additional information provided by the
physician. Dr. Waddell seconded the motion, which passed 7-0-0-1. Dr. Sacchetti was recused from this matter and left the room.

VII. Minutes for Approval

Dr. Dumont moved to approve the minutes of the January 10, 2017 meeting. Mr. Ross seconded the motion, which passed 6-0-1-0 with Dr. Sacchetti abstaining.

VIII. Board Orders & Consent Agreement Monitoring

A. Board Orders

1. Charles D. Clemetson, M.D. [Appendix D]

Dr. Dumont moved to approve the Decision and Order. Ms. Dench seconded the motion, which passed 6-0-1-0 with Dr. Sacchetti abstaining.

B. Monitoring Reports

1. Wesley McEldoon, M.D.

Mr. Ross moved to discontinue efforts to recover costs assessed to Dr. McEldoon as the result of a 2012 disciplinary action unless he seeks reinstatement of his Maine license. Dr. Dumont seconded the motion, which passed unanimously.

2. Timothy Wiegand, M.D.

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

3. Reinaldo O. de los Heros, M.D.

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

4. Kevin M. Kendall, M.D.

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

5. Whitney Houghton, M.D.

This material was presented for informational purposes. No Board action was required. Dr. Gleaton was recused from this matter and left the room.

6. Lowell Gerber, M.D.

Ms. Weinstein moved to authorize AAG Miller to negotiate an amendment to the consent agreement revising the chaperone requirements and to set the matter for an adjudicatory
hearing if Dr. Gerber does not agree to the amendment. Ms. Dench seconded the motion, which passed unanimously.

7. Elmer H. Lommler, M.D.

Mr. Ross moved to approve alternative CME courses and additional time for Dr. Lommler to complete the required CME. Dr. Sacchetti seconded the motion, which passed 6-0-0-1. Dr. Dumont was recused from this matter and left the room.

8. Kevin G. Miller, M.D.

Dr. Dumont moved that Dr. Miller is not in compliance with the prescribing conditions imposed by the consent agreement due to prescriptions he has written for Tramadol. Staff was instructed to notify him that he cannot prescribe Tramadol and will have sixty days to transition patients off the medication. Ms. Weinstein seconded the motion, which passed 6-1.

9. Robert Weiss, M.D.

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

10. Jack Flippo, M.D.

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

11. Marc D. Christensen, M.D.

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

12. Intentionally left blank

IX. Adjudicatory Hearing (none)

X. Remarks of Chair (none)

XI. Remarks of Executive Director

A. Proposed Standard Requirements for Board Orders and Consent Agreements

Ms. Weinstein moved to include standard language in all future consent agreements and board orders stating that it is the licensee’s obligation to communicate with and respond directly to board staff within the specified time frame. Failure to respond will be considered a violation of the consent agreement or board order. Ms. Dench seconded the motion, which passed unanimously.
In a separate discussion, Ms. Dench moved that the following four courses be preapproved for licensees required by the Board to obtain education regarding ethics and boundary issues:

- Professional Boundaries, Inc. - *Medical Ethics and Professionalism Course*;
- Case Western Reserve University Continuing Medical Education Program – *Medical Ethics, Boundaries & Professionalism*;
- The Center for Personalized Education for Physicians – *PROBE: Ethics and Boundaries Program – U.S.*; and
- Vanderbilt University – *Maintaining Proper Boundaries*

Ms. Weinstein seconded the motion, which passed unanimously.

XII. Assistant Executive Directors Report

Mr. Terranova reported that he attended the recent MEAPA conference.

A. Legislative Report

Mr. Terranova reported on pending legislation.

B. Complaint Status Report

As of February 1, 2017 there are ninety-one complaints outstanding. Eighteen complaints were opened during the month of January and ten were closed.

C. Feedback

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

XIII. Medical Director’s Report (none)

XIV. Remarks of Assistant Attorney General

AAG Miller reported on the status of a pending appeal.

XV. Rulemaking

A. Emergency DHHS Opioid Prescribing Rule

The Board reviewed the emergency DHHS Opioid Prescribing rule.

B. Draft Chapter 1 Rule Regarding Physicians

The Board reviewed the draft rule and requested that it be placed on an upcoming agenda for further discussion.
XVI. Policy Review (none)

XVII. Requests for Guidance (none)

XVIII. Standing Committee Reports

A. Licensure and CME Committee

1. Licensing Status Report [Appendix E]

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

XIX. Board Correspondence (none)

XX. FSMB Material (none)

XXI. FYI

A. Continued Competency Rule (State of Oklahoma)

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

B. Articles

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

XXII. Other Business 12:30 p.m.

   The Board met with representatives from Correct Care Solutions to discuss mental health treatment protocols in the correctional system.

XXIII. Adjournment 4:20 p.m.

   Dr. Dumont moved to adjourn the meeting at 4:20 p.m. Mr. Ross seconded the motion, which passed unanimously.

Respectfully submitted,

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

In re: STEVEN J. BREWSTER, M.D. ) CONSENT AGREEMENT
Complaint No. CR16-156 )

This document is a Consent Agreement, effective when signed by all parties, regarding disciplinary action against the license to practice medicine in the State of Maine held by Steven J. Brewster, M.D. The parties to the Consent Agreement are: Steven J. Brewster, M.D. ("Dr. Brewster"), 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. Dr. Brewster has held a license to practice medicine in the State of Maine since August 7, 2014 (license number MD20328) and specializes in family practice.

2. On July 11, 2016, the Board initiated a complaint alleging that Dr. Brewster was the supervising physician for a physician assistant, Jessica Cyr, who worked at Concentra Occupational Medical Center without having a registered supervising physician. The Board docketed the complaint as CR16-156, and sent it to Dr. Brewster for a response.

3. By letter dated August 30, 2016, Dr. Brewster responded to the complaint. In his response, he explained that he is employed as the Director of Medical Operations for Northern New England at Concentra Occupational Medical Center ("Concentra"). In January 2016, Dr. Brewster assumed

-1-
supervisory responsibility for Ms. Cyr, a Physician Assistant employed at Concentra, and at that time they completed the necessary supervisory plan and registration form. Dr. Brewster explained that due to a misunderstanding between Ms. Cyr and an administrative assistant, the appropriate paperwork was not filed with the Board.

4. By letter dated November 23, 2016, counsel for Dr. Brewster informed the Board that when the error regarding Ms. Cyr’s registration was brought to Dr. Brewster’s attention, the error was immediately corrected and the required paperwork was filed on May 5, 2016. In addition, it was noted that the complaint did not allege any substantive issue with patient care.

5. Pursuant to 32 M.R.S. § 3282-A(2)(H), the Board may impose discipline for the violation of a Board statute or rule. Board Rule Chapter 2, § 2(B)(4), in effect at the time of the conduct, provided that the physician and the physician assistant shall submit the statement required by § 2(B)(2) at the beginning of the supervisory relationship. Board Rule Chapter 2, § 7(B)(1), and 7(B)(2), in effect at the time of the conduct, required that the physician must be approved by the Board prior to becoming the supervising physician.

6. At its meeting on October 11, 2016, the Board reviewed Complaint CR16-156, and voted to set this matter for an adjudicatory hearing. In addition, the Board voted to offer Dr. Brewster this Consent Agreement to resolve this matter without further proceedings. Absent Dr. Brewster’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 February 14, 2017, the matter will be scheduled for an adjudicatory hearing.

COVENANTS

7. Dr. Brewster admits the facts stated above and that such conduct constitutes grounds for discipline pursuant to 32 M.R.S. § 3282-A(2)(H) (for violation of Board rules).

8. As discipline for the conduct described above, Dr. Brewster agrees to accept, and the Board imposes:

   a. A REPRIMAND for violating Board rules related to the registration of a physician assistant (Board Rule Chapter 2, § 2B(4), which requires submission of the statement required by § 2B(2) at the beginning of the supervisory relationship); and

   b. A CIVIL PENALTY in the amount of Five Hundred Dollars ($500.00), 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.

9. Violation by Dr. Brewster 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.

10. This Consent Agreement is not appealable and is effective until modified or rescinded in writing by the parties hereto.
11. The Board and the Department of the Attorney General may communicate and cooperate regarding Dr. Brewster or any other matter relating to this Consent Agreement.

12. 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.

13. 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.

14. 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.

15. Dr. Brewster 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.

16. Dr. Brewster has been represented by Carol I. Eisenberg, Esq., who has participated in the negotiation of the terms of this Consent Agreement.
17. 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, STEVEN J. BREWSTER, M.D., 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: 01/19/2017

STEVEN J. BREWSTER, M.D.

STATE OF Maine

Cumberland, S.S.

Personally appeared before me the above-named Steven J. Brewster,
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: 01/19/17

MICHIELLE K. SEACORD
NOTARY PUBLIC/ATTORNEY

MY COMMISSION ENDS: __________________________

MICHIELLE K. SEACORD
NOTARY PUBLIC
State of Maine
My Commission Expires
January 27, 2023
STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

DATED: 2/14/17

MAROULLA S. GLEATON, M.D., Chair

STATE OF MAINE DEPARTMENT
OF THE ATTORNEY GENERAL

DATED: February 14, 2017

MICHAEL MILLER
Assistant Attorney General

Effective Date: February 14, 2017
STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

In re: WHITNEY HOUGHTON, M.D. ) FIRST AMENDMENT
Complaint No. CR14-56 ) TO CONSENT AGREEMENT

This document is a First Amendment to a Consent Agreement ("Consent Agreement") effective February 17, 2016, regarding a disciplinary action against the license to practice as a physician in the State of Maine held by Whitney Houghton, M.D. The parties to this First Amendment to Consent Agreement are: Whitney Houghton, M.D. ("Dr. Houghton"), the State of Maine Board of Licensure in Medicine ("the Board"), and the Department of the Attorney General (the "Attorney General"). This First Amendment to Consent Agreement is entered into pursuant to 32 M.R.S. § 3282-A and 10 M.R.S. § 8003(5).

BACKGROUND

1. On February 17, 2016, the parties entered into a Consent Agreement regarding a disciplinary action concerning the license to practice as a physician in the State of Maine held by Whitney Houghton, M.D.

2. On November 8, 2016, the Board reviewed six (6) patient charts in accordance with paragraph 11(c) of the Consent Agreement. Following its review, the Board voted to offer Dr. Houghton this First Amendment to Consent Agreement.
AMENDMENT

3. Dr. Houghton, the Board, and the Department of Attorney General hereby agree to amend the Consent Agreement effective February 17, 2016 as follows:

   By inserting a new paragraph 11(d) as follows:

   d) Dr. Houghton shall engage a physician monitor approved by the Board Secretary or his designee within thirty (30) days of the effective date of this First Amendment to Consent Agreement for a period of at least six (6) months. The physician monitor shall randomly select and review five (5) patient charts every month with Dr. Houghton. The physician monitor shall provide a written report to the Board no later than the 30th day of each month discussing the review of patient charts, Dr. Houghton’s compliance with the requirements of paragraph 11(a) of the Consent Agreement, and identifying any issues regarding Dr. Houghton’s medical practice that may impact patient care. Dr. Houghton shall provide a copy of this First Amendment to Consent Agreement and the Consent Agreement to her physician monitor. Dr. Houghton understands that the physician monitor will be an agent of the Board pursuant to 24 M.R.S. § 2511. After six (6) months of practicing with a physician monitor, the Board shall determine in its sole discretion whether to continue or terminate the requirements imposed by this subparagraph, and may impose any conditions deemed necessary for a specified period.
4. Dr. Houghton acknowledges by her signature hereto that all other terms and conditions of the Consent Agreement effective February 17, 2016, as amended by this First Amendment to Consent Agreement, remain in full force and effect.

5. Dr. Houghton acknowledges by her signature hereto that she has read this First Amendment to Consent Agreement, that she has had an opportunity to consult with an attorney before executing this First Amendment to Consent Agreement, that she executed this First Amendment to Consent Agreement of her own free will and that she agrees to abide by all terms and conditions set forth herein.

6. Dr. Houghton has been represented by Heidi A. Bean, Esq., who has participated in the negotiation of the terms of this Consent Agreement.
I, WHITNEY HOUGHTON, M.D., HAVE READ AND UNDERSTAND THE FOREGOING FIRST AMENDMENT TO CONSENT AGREEMENT AND AGREE WITH ITS CONTENTS AND TERMS. I FURTHER UNDERSTAND THAT BY SIGNING I WAIVE CERTAIN RIGHTS INCLUDING THE RIGHT TO FURTHER HEARINGS REGARDING THIS AMENDMENT. I ALSO WAIVE THE RIGHT TO APPEAL TO THE COURT REGARDING THIS AMENDMENT. KNOWING THIS, I SIGN IT VOLUNTARILY, WITHOUT ANY THREAT OR PROMISE. I UNDERSTAND THAT THIS FIRST AMENDMENT TO CONSENT AGREEMENT, TOGETHER WITH THE CONSENT AGREEMENT, CONTAINS THE ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF ANY KIND, VERBAL, WRITTEN, OR OTHERWISE. I ACKNOWLEDGE THAT I HAVE HAD THE OPPORTUNITY TO DISCUSS THIS AGREEMENT WITH LEGAL COUNSEL PRIOR TO SIGNING IT.

DATED: 1/25/17

WHITNEY HOUGHTON, M.D.

STATE OF MAINE
Cumberland, ss.

Before me this 25th day of JANUARY, 2017, personally appeared Whitney Houghton, M.D., who after first being duly sworn, signed the foregoing First Amendment to Consent Agreement in my presence or affirmed that the signature above is her own.

WILLIAM D. MULLEN
Notary Public/Attorney at Law
My commission expires: 7/18/19

DATED: 1/25/2017

HEIDI A. BEAN, ESQ.
Attorney for Whitney Houghton, M.D.
STATE OF MAINE BOARD OF LICENSURE IN MEDICINE

DATED: 2/17/17

DAVID D. JONES, M.D., Acting Chair

STATE OF MAINE DEPARTMENT OF THE ATTORNEY GENERAL

DATED: February 17, 2017

MICHAEL MILLER
Assistant Attorney General

Effective Date: February 17, 2017
STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

IN RE:
) ) ORDER OF IMMEDIATE PARTIAL
HARRY M. PEDDIE, M.D. ) SUSPENSION
) )
CR No. 2017-11
)

On February 14, 2017, the Maine Board of Licensure in Medicine ("the Board") met and reviewed materials submitted in connection with a complaint filed against Harry M. Peddie, license number MD5232 ("Dr. Peddie"). On the basis of its review of these materials, the Board concludes that the continued ability of Dr. Peddie to practice as a physician in the State of Maine without restriction constitutes an immediate jeopardy to the health and safety of the public who might receive his medical services, and that it is necessary to immediately suspend his ability to prescribe controlled substances pending a hearing in order to adequately respond to this risk.

This suspension is issued pursuant to 5 M.R.S. § 10004(3). Dr. Peddie’s ability to prescribe controlled substances will be suspended effective immediately upon issuance of this Order for a thirty (30) day period ending on March 16, 2017, at 11:59 p.m., pending further Board action at an adjudicatory hearing, which will be scheduled shortly. A formal notice of hearing will be transmitted, which will outline the issues and procedures for that hearing.

PRELIMINARY FINDINGS

Specifically, the Board preliminarily finds for purposes of this Order and pursuant to the materials submitted as follows:

1. On September 14, 2016, the Board received a report from a physician assistant mandated reporter that Dr. Peddie had been prescribing alprazolam to his spouse for many years.

2. On September 18, 2016, the Board received a report from a physician mandated reporter that Dr. Peddie admitted that he had been self-prescribing tramexene and xanax for more than thirty (30) years, and that he also prescribed controlled substances to his spouse.

3. The Board received records from Henry Schein, a pharmaceutical distributor, indicating that Dr. Peddie ordered and received controlled substances and other drugs regularly after his clinic closed through at least May 2016. In response to controlled substance inquiries from Henry Schein, Dr. Peddie falsely stated that none of the controlled substances ordered were for his own personal use, and falsely stated that none of the controlled substances were for family use.

4. By letter dated October 31, 2016, Dr. Peddie informed Board staff that he did not maintain records related to his prescribing of alprazolam to his spouse. Dr. Peddie represented to Board staff that he provides no clinical care other than doing physical examinations at a Methadone Clinic.

5. By letter dated January 13, 2017, Dr. Peddie submitted a November 2, 2016 Psychiatric Diagnostic evaluation that resulted in diagnoses of . During the evaluation Dr. Peddie reported information to the evaluator regarding his use and method of obtaining controlled substances that is contrary to the documentation received by the Board. Dr. Peddie also reported struggling with withdrawal symptoms. The evaluation indicated there may be some cognitive concerns based upon: . In his
letter, Dr. Peddie informed the Board that he was assisting at a Methadone clinic performing histories and physicals, but did not indicate that he was prescribing any controlled substances.

6. By letter dated February 9, 2017, the Board learned from the Medical Director where Dr. Peddie works that he prescribes methadone in his current position which was not disclosed upon Board staff inquiry or in his communications to Board staff.

For the purposes of this Order of Partial Suspension and subject to holding the aforementioned full adjudicatory hearing on this matter to determine if any violations have actually occurred, the Board finds that the actions of Dr. Peddie constitute immediate jeopardy of similar behavior occurring in the future and that delaying imposition of a partial suspension until holding a hearing would not adequately respond to this known risk. It is of great concern that Dr. Peddie may be impaired in his medical judgment and insight and suffering from withdrawal symptoms.

The above conduct constitutes violations of the following provisions applicable to Dr. Peddie’s license to practice as a physician in the State of Maine:

A. 32 M.R.S. § 3282-A(2)(A) – the practice of fraud, deceit or misrepresentation in connection with service rendered within the scope of the license issued.

B. 32 M.R.S. § 3282-A(2)(B) – misuse of alcohol, drugs or other substances that has resulted or may result in the licensee performing services in a manner that endangers the health or safety of patients.

C. 32 M.R.S. § 3282-A(2)(C) – 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.

D. 32 M.R.S. § 3282-A(2)(F) - engaging in unprofessional conduct by violating a standard of professional behavior, including engaging in disruptive behavior, that has been established in the practice of medicine. For purposes of this paragraph, “disruptive behavior” means aberrant behavior that interferes with or is likely to interfere with the delivery of care.

ORDER OF IMMEDIATE PARTIAL SUSPENSION

The Board ORDERS as follows:

Dr. Peddie’s license is partially suspended in that he may not prescribe controlled substances effective immediately upon issuance of this Order in that on February 14, 2017, for a thirty (30) day period ending on March 16, 2017, at 11:59 p.m. pending further Board action at an adjudicatory hearing, which shall be scheduled shortly.

Dated: February 14, 2017

Maroulla S. Gleaton, M.D., Chair
STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

In Re: Charles D. Clemetson, M.D.

Non Compliance with Decision and Order in 14-204

DECISION AND ORDER

I. PROCEDURAL HISTORY

Pursuant to the authority found in 5 M.R.S. §§ 9051 et seq., 10 M.R.S. § 8003(5), and 32 M.R.S. §§ 3269 and 3282-A, the Maine Board of Licensure in Medicine ("Board") met in public session at its offices in Augusta, Maine, on November 8, 2016, and January 10, 2017. The purpose of the meetings was to conduct an adjudicatory hearing to determine whether grounds existed to impose discipline on the medical license of Charles D. Clemetson, M.D., ("Licensee").

On September 19, 2016, a Notice of Hearing was issued setting the hearing for October 11, 2016. On September 30, 2016, a telephonic prehearing conference was convened. A Conference Order was issued on September 30, 2016, setting deadlines for the submission of final witness and exhibit lists. On October 7, 2016, a prehearing telephonic conference was held and the Licensee's request to continue the hearing was granted. A Conference Order was issued on October 11, 2016. On October 14, 2016, an Amended Notice of Hearing was issued setting the hearing in this matter for November 8, 2016. On October 27, 2016, the Licensee filed a motion to partially dismiss the Amended Notice of Hearing. On November 2, 2016, the State filed a response to the Licensee's motion. On November 6, 2016, a Recommended Decision to deny the Licensee's motion was issued. The hearing commenced on November 8, 2016, at the start of which the Board unanimously adopted the Recommended Decision of the Hearing Officer to deny the Licensee's motion to partially dismiss the Notice of Hearing. The hearing did
not conclude on November 8, 2016. A Scheduling Order was issued on November 10, 2017, setting a second day of hearing for January 10, 2017. On January 9, 2017, a telephonic status conference was convened to review additional prehearing submissions of the Licensee. Also on January 9, 2017, a Conference Order was issued regarding the Licensee’s prehearing motions.

A quorum of the Board was in attendance during all stages of the proceedings. Participating and voting Board members were Maroulla Gleaton, M.D., Chair; Susan Dench, Public Member; Christopher Ross, P.A.-C.; Louisa Barnhart, M.D.; David Dumont, M.D.; Lynne Weinstein, Public Member; and Brad Waddell, M.D. Dr. Clemetson was present and represented by Edward MacColl, 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. §§ 9051 et seq.

State Exhibits #1 to #35 were admitted without objection. Licensee Exhibits #1 to #6\(^1\) were admitted without objection. Licensee Exhibits #8, #9, and #12 were admitted over objection. Licensee Exhibits #10, #11, and #13 were excluded.

The admitted exhibits are identified as follows:

State Exhibit #1: Notice of Hearing issued on September 19, 2016
State Exhibit #2: ALMS Licensing Information
State Exhibit #3: March 18, 2016, Letter with March 9, 2016, Decision and Order
State Exhibit #4: March 10, 2016, Emails between the Licensee and Board Staff with Attachment
State Exhibit #5: Licensee as Prescriber Prescription Monitoring Program Report from February 9, 2016, through September 19, 2016 - CONFIDENTIAL
State Exhibit #6: Selected Patient Prescriptions Prescription Monitoring Program Report from March 4, 2016, through July 24, 2016 - CONFIDENTIAL
State Exhibit #7: Emails between the Licensee, Proposed Practice Monitor, and Board Staff dated March 3, 2016, through April 15, 2016
State Exhibit #8: Licensee Letter to Board Staff Member filed on April 20, 2016
State Exhibit #9: Emails between the Licensee, Proposed Practice Monitor, and Board

\(^1\) Licensee Exhibit #7 was not an actual exhibit but was a citation to the State’s exhibits.
Staff dated March 22, 2016, through May 12, 2016
State Exhibit #10: Executive Director Memo to File dated May 26, 2016
State Exhibit #11: Email from Executive Director to Licensee’s Potential Employer dated May 26, 2016
State Exhibit #12: July 1, 2016, Letter from Board Staff Member to Licensee
State Exhibit #13: Licensee Letter to Board Staff Member filed on July 11, 2016
State Exhibit #14: Executive Director Memo to File dated July 19, 2016
State Exhibit #15: Licensee Fax to Board Staff Member filed on July 25, 2016
State Exhibit #16: Letter from Licensee’s Potential Employer to the Board filed on July 25, 2016
State Exhibit #17: Complaint Coordinator Memo to File dated August 8, 2016
State Exhibit #18: Emails between the Licensee and Board Staff Member dated August 11 and 12, 2016
State Exhibit #19: Executive Director Memo to File dated August 17, 2016
State Exhibit #20: Email from the Licensee and Board Staff Member dated August 25, 2016
State Exhibit #21: Letter from Licensee’s Potential Practice Monitor to Board Staff Member filed on August 31, 2016
State Exhibit #22: Board Decision and Order dated July 11, 2013
State Exhibit #23: 32 M.R.S. § 3282-A
State Exhibit #24: 10 M.R.S. § 8003
State Exhibit #25: Notice of Hearing issued on October 14, 2016
State Exhibit #26: Code of Medical Ethics
State Exhibit #27: Licensee as Prescriber Prescription Monitoring Program Report from February 9, 2016, through September 19, 2016, including Date Prescribed – CONFIDENTIAL
State Exhibit #28: Consent Agreement between Licensee and the Board dated September 9, 2002
State Exhibit #29: Board Decision and Order dated June 12, 2001
State Exhibit #30: Prescriptions Written by the Licensee on May 29, 2016, and July 12, 2016 - CONFIDENTIAL
State Exhibit #31: Licensee Patient Notes for Multiple Patients – CONFIDENTIAL
State Exhibit #32: April 28, 2016, Letter from Board Staff Member to Licensee
State Exhibit #33: Board Policy on Decision and Orders
State Exhibit #34: 5 M.R.S. § 10004
State Exhibit #35: Maine Rules of Civil Procedure 80C and 60B
Licensee Exhibit #1: Prescription Monitoring Program Query for dispense dates June 7, 2016, through October 2, 2016 - CONFIDENTIAL
Licensee Exhibit #2: Moby RX Fax Cover and Enclosure re M.T. Prescription – CONFIDENTIAL
Licensee Exhibit #3: Appointment Calendar and Copy of Last Prescription written for M.T. - CONFIDENTIAL
Licensee Exhibit #4: Appointment Calendar and Copy of Last Prescription written for M.B. - CONFIDENTIAL
Licensee Exhibit #5: Appointment Calendar and Copy of Last Prescription written for A.J. - CONFIDENTIAL
Licensee Exhibit #6: List of Prescriptions in Prescription Monitoring Program written after July 27, 2016, with Copies of Prescriptions - CONFIDENTIAL
Licensee Exhibit #8: Public Notice of Judgment in Aube S. Plumbing and Heating v. Licensee
Licensee Exhibit #9: Docket of Appeal AP16-0018
Licensee Exhibit #12: July 6, 2016, Letter to Board Staff Member from William Matuzas, M.D.

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 the following witnesses: Dennis E. Smith, Esq., Executive Director of the Board; Julie Best, Complaint Coordinator for the Board; the Licensee; and Timothy E. Terranova, Assistant Executive Director of the Board. The Licensee presented the following individuals as witnesses: S.W., former patient; P.G., parent of a former patient; A.R., former patient M.T., former patient; E.R., former patient; and M.P., former patient. 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.

II. FINDINGS OF FACTS

1. Dr. Charles D. Clementson was first licensed as a medical doctor by the Board in 1994.
   (State Exh. #2.) His current license expires on April 30, 2017. (State Exh. #2.)

2. On February 9, 2016, the Board held an adjudicatory hearing regarding Complaint Number CR14-204 against the Licensee. (State Exh. #3.) Following the close of evidence, the Board orally deliberated on the allegations against the Licensee and concluded that the Licensee had committed multiple violations. (State Exh. #3.) The Board also orally determined the sanctions it would impose as a result of its finding of violations. (State Exh. #3.) At the conclusion of the hearing, the Licensee requested a
stay of the Board’s decision but withdrew his request before the Board deliberated on it. (State Exh. #3.) On March 9, 2016, the Board issued a written Decision and Order confirming its oral deliberations. (State Exh. #3.)

3. In its March 9, 2016, Decision and Order, the Board found that the Licensee had engaged in misrepresentation and unprofessional conduct and failed to comply with the conditions of probation contained in a July 11, 2013, Decision and Order of the Board. (State Exh. #3.) Although the Board granted the Licensee’s application for renewal of his license, it imposed the following sanctions: a censure and a five year period of probation with terms that limited the Licensee to practicing in a setting with other psychiatrists and required the Licensee to identify and obtain Board approval of a practice monitor. (State Exh. #3.) The Licensee was prohibited from maintaining his own private practice and he was required to close his practice within 90 days of the effective date of the Decision and Order, which was March 9, 2016. (State Exh. #3.) The cover letter sent to the Licensee with the Decision and Order summarized the sanctions and reiterated that the Licensee was required to close his private practice within 90 days of March 9, 2016. (State Exh. #3.)

4. The March 9, 2016, Decision and Order was sent to the Licensee by certified mail, first class mail, and email with a cover letter on March 18, 2016. (State Exh. #3.) The Licensee signed for the certified mail copy of the letter on March 21, 2016. (State Exh. #3.) At hearing, the Licensee testified that he did not recall seeing the cover letter that came with the Decision and Order. (Testimony of Licensee.) The Licensee also testified that he would not have read the cover letter. (Testimony of Licensee.)
5. On March 9, 2016, the Licensee informed several Board staff members by email that he had been offered a position at Protea Integrated Health and Wellness ("Protea"). (State Exh. #4.) Alex Tessmann, CEO of Protea, indicated by letter to the Licensee dated March 3, 2016, that Dr. Ramneesh Trehan would serve as the Licensee’s practice monitor. (State Exh. #4.)

6. On April 15, 2016, the Board’s Executive Director, Dennis E. Smith, Esq., emailed the Licensee to inform him that Board staff members had tried without success to confirm that Dr. Trehan was willing to serve as the practice monitor as required in the Board’s March 9, 2016, Decision and Order. (State Exh. #7.) Mr. Smith’s email reminded the Licensee that it was his responsibility to find a practice monitor and reiterated that the Decision and Order required the Licensee to identify a practice monitor within one month of the effective date of the Decision and Order, which Mr. Smith noted was March 9, 2016. (State Exh. #7.)

7. On April 20, 2016, the Licensee requested a stay of the Board’s March 9, 2016, Decision and Order from the Board. (State Exh. #32.) The same day, April 20, 2016, the Licensee filed an appeal of the Board’s March 9, 2016, Decision and Order in the Cumberland County Superior Court. (Lic. Exh. #9.) The Licensee was represented by Attorney MacColl during his appeal. (Lic. Exh. #9; Testimony of Licensee.)

8. On April 28, 2016, Timothy E. Terranova, Assistant Executive Director of the Board, issued a response to the Licensee indicating that the Board was aware that the Licensee had filed an appeal of the March 9, 2016, Decision and Order and as a result of that appeal, the Board did not have jurisdiction to consider the Licensee’s request for a stay,
and enclosed a copy of a court decision that was consistent with that position. (State Exh. #32.)

9. Prescription Monitoring Program ("PMP") Reports and prescription records showed that the Licensee issued prescriptions after June 9, 2016 and up until July 12, 2016. (State Exh. #6; Testimony of Smith.)

10. By letter dated July 1, 2016, sent by certified mail, Julie Best, Complaint Coordinator for the Board, reminded the Licensee that the March 9, 2016, Decision and Order limited him to practicing medicine in a setting with other psychiatrists, that he was prohibited from maintaining his own private practice, and that he was required to close his practice no later than June 7, 2016, which was 90 days after the March 9, 2016, Decision and Order. (State Exh. #12.) Ms. Best’s letter requested that the Licensee immediately confirm that he had closed his private practice and that he was not practicing in Maine or engaging in group practice in Maine, provide a copy of the letter sent to patients notifying them of his private practice closure, and provide the name and contact information of his proposed practice monitor, if he were practicing in Maine. (State Exh. #12.)

11. On July 6, 2016, the Superior Court dismissed the Licensee’s appeal because he did not file a brief by the deadline set by the Court. (Lic. Exh. #9.)

12. By response filed by July 11, 2016, five days after the Superior Court dismissed his appeal, the Licensee informed Ms. Best that he had received the Board’s letter on July 8, 2016, and he had appealed the Board’s March 9, 2016, decision through counsel. (State Exh. #13.) The Licensee’s letter indicated that although he disagreed with the Board’s March 9, 2016 Decision and Order, he planned to “comply with most components” of
the Decision and Order, without specifying which ones. (State Exh. #13.) He did not specifically confirm that he had closed his practice by the June 9, 2016, deadline, despite Ms. Best’s prior request that he do so. (State Exh. #13; Testimony of Licensee.)

13. On July 15, 2016, the Licensee filed in Superior Court a motion for relief from judgment and to allow late filing of his brief. (Lic. Exh. #9.)

14. On July 19, 2016, Mr. Smith created a memo that went into the Licensee’s file indicating, among other things, that he had run a follow-up PMP query to see if any medications were being dispensed to patients pursuant to prescriptions issued by the Licensee. (State Exh. #14.) The PMP showed medications being dispensed as recently as July 16, 2016, even though the Licensee was supposed to have closed his private practice by June 7, 2016. (State Exh. #14.)

15. On July 25, 2016, the Licensee submitted a fax to Ms. Best, as an updated response to her letter of July 1, 2016. (State Exh. #15.) The Licensee indicated that he took issue with the evidence presented at the hearing and that he felt no purpose was being served by requiring him to close his private practice. (State Exh. #15.) The Licensee reported that although he disagreed with the March 9, 2016, Decision and Order, his letter should be considered assurance that he had closed his private practice, he was not practicing medicine in Maine or any other state and was not engaged in a group practice, and he had written his active patients to notify them of the closure of his private practice. (State Exh. #15.) The Licensee also provided a generic letter, addressed “Dear Patients,” dated July 21, 2016, informing them of the closure of his private practice. (State Exh. #15.) The “Dear Patients” letter indicated that as many of his patients knew, the Board had required him to close his practice and work in a setting with other
psychiatrists, one of whom had to be a practice monitor. (State Exh. #15.) The letter went on to state that the Licensee had taken a position at Protea, he would be glad to continue to care for his patients there, and that his patients should contact Protea to make an appointment and to call him with any questions. (State Exh. #15.) At hearing, the Licensee testified that this letter went to most of his active patients. (Testimony of Licensee.) The Licensee also testified that he last saw patients in his private practice on July 25, 2016, and he did not write any prescriptions after that date. (Testimony of Licensee.) After July 25, 2016, the Licensee continued to have conversations with patients helping them to arrange alternative care. (Testimony of Licensee.) At the time that his practiced closed, the Licensee had between forty and fifty patients. (Testimony of Licensee.)

16. On August 8, 2016, Mr. Terranova issued a memo to Ms. Best indicating that A.F., a patient of the Licensee's, had called him indicating that the Licensee had been treating him for about three years, that the Licensee had informed A.F. four or five months prior that he was involved in some court related issues regarding his practice, that every month when A.F. asked the Licensee if he need to find a new psychiatrist the Licensee kept telling the patient not to worry, that on July 12, 2016, that the Licensee gave A.F. a prescription with a refill even though the Licensee never provided refills, and that the Licensee told A.F. that he was not sure if the prescription would be processed. (State Exh. #17.) The Licensee agreed at hearing that A.F.'s last appointment with him was probably on July 12, 2016. (Testimony of Licensee.)

17. On August 11, 2016, the Licensee emailed Ms. Best to indicate that although he had closed his private practice nearly all of his patients wished to continue seeing him once
he had transitioned to Protea. (State Exh. #18.) The Licensee reported that until the prior day, he was able to manage this reasonably well because many primary care physicians were sympathetic and eager to help by prescribing needed medications, including controlled substances, on a short time basis for their mutual patients. (State Exh. #18.) The Licensee noted that unfortunately some primary care physicians were not willing to write prescriptions for controlled substances and many of his patients did not have primary care physicians, but he had been able to arrange for “vacation” coverage with another psychiatrist, who would issue prescriptions after the Licensee provided him with the patients’ insurance, demographics, and treatment history. (State Exh. #18.) The colleague, however, had informed the Licensee the previous day that he would not continue providing this service. (State Exh. #18.) The Licensee requested that Ms. Best clarify whether he needed Board approval of a practice monitor prior to beginning his practice and that she also look into the possibility of the Board allowing him to write prescriptions for his patients and see those who needed appointments until he signed a contract with Protea, which he believed should occur within a few days. (State Exh. #18.)

18. On August 12, 2016, Ms. Best emailed the Licensee in response and reiterated the terms of the Board’s March 9, 2016, Decision and Order at issue, specifically that the Licensee was limited to practicing medicine in a setting with other psychiatrists, he was prohibited from maintaining a private practice, and his current practice was required to have been closed within 90 days of the effective date of the March 9, 2106, Decision and Order, which meant that his practice was required to be closed no later than June 8, 2016. (State Exh. #18.) Ms. Best stated that the Licensee was not allowed to treat
patients or write prescriptions for any patients after June 8, 2016, unless he was employed with another psychiatrist and had a Board-approved practice monitor. (State Exh. #18.) Ms. Best informed the Licensee that she was not able to contact Board members to seek permission for the Licensee to prescribe drugs to patients from his closed private practice and that the Decision and Order was clear that he could not practice medicine, including writing prescriptions, until he was employed in a setting with another psychiatrist and had a Board-approved monitor. (State Exh. #18.)

19. On August 15, 2016, the Licensee withdrew his motion for relief from judgment and the Superior Court appeal concluded with a dismissal by the Court. (Lic. Exh. #9.)

20. On August 17, 2016, Mr. Smith created a memo that went into the Licensee’s file indicating that on August 12, 2016, the Licensee had called him and again requested permission to continue writing prescriptions to his patients. (State Exh. #19.) Mr. Smith informed the Licensee that his practice was supposed to be closed by June 9, 2016, pursuant to the Board’s March 9, 2016, Decision and Order. (State Exh. #19.) Mr. Smith reminded the Licensee that the Board had allowed him three months to transition his patients. (State Exh. #19.) The Licensee then indicated that he had recently stopped prescribing medications to patients once he realized that he had not obtained a stay of the Board’s March 9, 2016, Decision and Order. (State Exh. #19.) The Licensee stated that he believed that his appeal of the Board’s Decision and Order had stayed it, a statement that Mr. Smith found to be incredible given that the Licensee had initially requested a stay of the Board’s Decision and Order during the hearing on February 9, 2016, indicating that he understood that a stay would be required to put the Decision and Order’s sanctions on hold, and then had withdrawn that request. (State Exh. #19.) Mr.
Smith also reminded the Licensee that he had not requested a stay of the Board’s Decision and Order from the Court in his appeal so his belief that he had obtained a stay was not reasonable. (State Exh. #19.)

21. On August 25, 2016, the Licensee emailed Ms. Best indicating that he had been able to obtain coverage for his patients. (State Exh. #20.)

22. While the Licensee was in the process of securing terms of employment and a practice monitor at Protea, Protea closed. (Testimony of Licensee.)

23. The Licensee testified at hearing that he understood that the Decision and Order imposed a five year period of probation on him and that he was required to close his private practice within 90 days of the effective date of the Decision and Order. (Testimony of Licensee.) The Licensee testified that he believed that the effective date of the Decision and Order was 90 days from the expiration of his 30 day appeal period following the date of signature on the Decision and Order, which would have been July 9, 2016. (Testimony of Licensee.) Nevertheless, the Licensee never indicated to Board staff members that this was his understanding of the effective date of the Decision and Order in his many communications with Board staff members, despite the fact that multiple Board staff member communications to him calculated the 90 days from the date of signature of the Decision and Order, which was June 7, 2016. (Testimony of Licensee; Testimony of Smith.) The Licensee also testified that he thought that the Decision and Order was on hold if he filed an appeal although he also never indicated this understanding to Board staff members in his many communications with them, until his August 12, 2016, phone call with Mr. Smith, at which point his Superior Court
appeal had been dismissed for over a month. (Testimony of Licensee; Testimony of Smith.)

24. Several former patients of the Licensee testified that the Licensee had been a caring and attentive psychiatric care provider. (Testimony of S.W.; Testimony of P.G.; Testimony of A.R.; Testimony of M.T.; Testimony of E.R.; Testimony of M.R.) They also indicated that the Licensee had varying practices with regard to informing his patients of the closure of his practice. (Testimony of S.W.; Testimony of P.G.; Testimony of M.T.; Testimony of E.R.) S.W. testified that received a letter from the Licensee explaining that he was closing his practice and that the Licensee helped him find a new psychiatrist in June or July 2016. (Testimony of S.W.) S.W. last saw the Licensee in June 2016 and had his last prescription written for him by the Licensee on June 13, 2016. (Testimony of S.W.; State Exh. #6.) S.W. experienced a gap in his ability to obtain medications until later in July or the beginning of August when he secured a new provider. (Testimony of S.W.) In April, the Licensee informed P.G. that she should seek another psychiatrist for her child. (Testimony of P.G.) P.G. obtained medication for her child prescribed by the Licensee on July 13, 2016. (Testimony of P.G.) M.T. testified that he was not aware until he testified at the hearing that the Licensee no longer had a private practice. (Testimony of M.T.) E.R. was verbally informed by the Licensee in late spring or early summer that he could not see patients in his private practice anymore. (Testimony of E.R.)

25. The Licensee has previously received discipline from the Board. (State Exh. #22.) In June 2001, the Board issued a Decision and Order finding that the Licensee had engaged in unprofessional conduct and placing him on probation for one year. (State Exh. #29.)
In September 2002, the Licensee entered into a Consent Agreement in which the Licensee acknowledged failure to comply with the Board’s June 2001 Decision and Order, and he agreed to change his license status from “active” to “inactive.” (State Exh. #28.) In July 2013, the Board issued a Decision and Order concluding that the Licensee had engaged in unprofessional conduct by violating a standard of professional behavior by failing to create and maintain adequate medical records that met the standard of care for medical record keeping with regard to seven psychiatric patients under his care. (State Exh. #22.)

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 engaged in the practice of fraud, deceit, or misrepresentation in obtaining a license or in connection with service rendered within the scope of the license issued. 32 M.R.S. § 3282-A(2)(A).

2. The Board may modify, restrict, suspend, revoke, or refuse to renew a license if the licensee engaged in unprofessional conduct. 32 M.R.S. § 3282-A(2)(F). A licensee is considered to have engaged in unprofessional conduct if he violated a standard of professional behavior that has been established in the practice for which he is licensed. 32 M.R.S. § 3282-A(2)(F).

3. The Board may modify, restrict, suspend, revoke, or refuse to renew a license if the licensee engaged in noncompliance with an order of the Board or failed to comply with conditions of probation. 32 M.R.S. § 3282-A(2)(P) & 10 M.R.S. § 8003(5)(A-1)(4).
4. For each violation of applicable statutes or rules, the Board may impose a warning and conditions of probation for such time period as the Board determines appropriate, among other sanctions. 10 M.R.S. § 8003(5)(A-1)(1) & (4).

5. The Board may assess a licensee for all or part of the actual expenses incurred by the Board or its agents for investigation and enforcement duties, including the hourly costs of hearing officers. 10 M.R.S. § 8003-D.

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 Charles D. Clemetson, M.D., and concluded as follows with regard to the allegations in the Notice of Hearing:

1. By a vote of six to one, that the Licensee did not engage in the practice of fraud, deceit, or misrepresentation in obtaining a license or in connection with services rendered within the scope of the license in violation of 32 M.R.S. Section 3282-A(2)(A).

2. By unanimous vote, that the Licensee did not engage in unprofessional conduct in violation of 32 M.R.S. Section 3282-A(2)(F) by violating a standard of professional behavior that has been established in the practice for which he is licensed.

3. By a vote of six to one, that the Licensee did engage in noncompliance with the March 9, 2016, Decision and Order of the Board and failed to comply with the conditions of probation in violation of 32 M.R.S. Section 3282-A(2)(P) and 10 M.R.S. Section 8003(5)(A-1)(4) by continuing his private practice after June 7, 2016.

As discipline for the Licensee’s non-compliance with the Board’s Decision and Order and the conditions of probation, the Board imposes the following sanctions:

a. A warning;
b. Partial payment of the actual expenses of hearing, in the amount of $1,000 in hourly costs of hearing officer services, due within 90 days of the first date of his employment; and

c. Conditions of probation, which shall be in effect for five years from the effective date of this Decision and Order, as follows:

i. The Licensee is prohibited from opening, operating or maintaining his own private medical practice;

ii. The Licensee is limited to practicing medicine in a setting pre-approved by the Board with at least one other psychiatrist who is licensed to practice medicine in Maine, and who must also be pre-approved by the Board;

iii. Before commencing the practice of medicine in a setting with another psychiatrist, the Licensee must identify a practice monitor and receive the Board’s approval for such monitor. The Licensee must ensure that the practice monitor, once approved by the Board, provides reports to the Board every three months from the date upon which the Licensee begins practicing in a setting with another psychiatrist. The reports must include information requested from the monitor by the Board staff, including but not limited to a review of patient charts for legibility, clarity, and medical decision making; and

iv. The Licensee must respond to requests for information from any Board staff members who are monitoring the Licensee’s compliance with this Decision and Order within the time frame requested by the Board staff.

Costs incurred in the performance of terms of probation are borne by the Licensee. M.R.S. § 8003(5)(A-I)(4). Failure to produce, upon the request of the Board, any documents in
the Licensee’s possession or under the Licensee’s control concerning a pending complaint or proceeding or any matter under investigation by the Board, unless otherwise prohibited by state or federal law, is a grounds for disciplinary action. 32 M.R.S. § 3282-A(2)(Q).

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

Dated: February 15, 2017

[Signature]
Maroulla Gleaton, M.D.
Chair, Maine Board of Licensure in Medicine

V. APPEAL RIGHTS

Pursuant to the provisions of 10 M.R.S. § 8003(5) and 5 M.R.S. § 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.
BOARD OF LICENSURE IN MEDICINE

DATE:    FEBRUARY 3, 2017
TO:      BOARD MEMBERS
CC:      
FROM:    TIMOTHY TERRANOVA
RE:      LICENSING STATUS REPORT AND LISTS

The following information is included:

A summary of all new licenses granted in January 2017 by license type (59);
A list of all individuals granted a new license in January 2017 by license type;
A summary of all pending applications by license type (152);
A list of online vs. paper renewals by license type; and
A list of licenses lapsed on February 1, 2017.

We look forward to your feedback.
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**SUMMARY BY LICENSE STATUS**

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**STATE OF MAINE - DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION**

**BOARD OF LICENSURE IN MEDICINE**

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