

STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

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

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DECISION AND ORDER

Complaint CR 14-204

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 February 9, 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 Charles Clemetson, M.D., (“Licensee”) and whether to grant his application for renewal of his license.

By letter dated November 5, 2015, the Licensee was notified that the hearing in this matter would be held on December 8, 2015. On November 16, 2015, a telephonic prehearing conference was convened and a Conference Order was issued on November 17, 2015, setting deadlines for the submission of final exhibit and witness lists. A second telephonic prehearing conference was held on November 20, 2015, at the Licensee’s request. A Conference Order was also issued on November 20, 2015. On November 30, 2015, a Scheduling Order was issued granting the Licensee’s request for a continuance of the hearing date in this matter. By letter dated December 10, 2015, the Licensee was notified that the hearing in this matter had been rescheduled for February 9, 2016. On January 4, 2016, a Scheduling Order was issued setting deadlines for the submission of final exhibit and witness lists based on the new hearing date. On January 29, 2016, a final telephonic prehearing conference was convened and a Conference Order was issued addressing the

Licensee's motion to remove the matter to District Court and his motion for recusal of two Board members. On February 3, 2016, an Evidentiary Order was issued addressing the State's objections to the Licensee's witnesses and proposed exhibits and notifying the parties that the two Board members that the Licensee had moved to recuse themselves had declined to do so. On February 5, 2016, an Evidentiary Order was issued addressing the Licensee's objections to the State's proposed exhibits.

A quorum of the Board was in attendance during all stages of the proceedings. Participating and voting Board members were Louisa Barnhart, M.D.; David Nyberg, Ph.D., Public Member; Christopher Ross, P.A.-C.; Peter Sacchetti, M.D.; Lynne Weinstein, Public Member; and Acting Chair David D. Jones, M.D. Dr. Clemetson was present and represented himself. 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 #8, #10, #13, #15 to #21, and #25 to #33 were admitted without objection.¹ State Exhibits #12 and #22 to #24 were admitted over objection. Licensee Exhibits #1 to #5 and #7 to #12 were excluded. Licensee Exhibit #6 was admitted without objection. State Exhibits #27 to #32 were not provided to the Board until after it found that the Licensee had committed statutory violations.

The admitted exhibits are identified as follows:

- State Exhibit #1: December 1, 2015, Revised Notice of Hearing
- State Exhibit #2: ALMS Licensing History for Dr. Charles D. Clemetson
- State Exhibit #3: April 30, 2013, Application for Renewal of Licensure Submitted by Dr. Clemetson
- State Exhibit #4: July 11, 2013, Decision and Order of the Board
- State Exhibit #5: October 8, 2013, Fax to the Board from Dr. Clemetson
- State Exhibit #6: October 16, 2013, Email to the Board from Dr. Clemetson

¹ State Exhibits #9, #11, and #14 were withdrawn.

State Exhibit #7: November 13, 2013, Letter from the Board to Dr. Clemetson
 State Exhibit #8: January 10, 2014, Fax to the Board from Dr. Clemetson
 State Exhibit #10: February 3, 2014, Letter from Dr. Clemetson to the Board
 State Exhibit #12: December 29, 2014, Complaint Number 14-204 against Dr. Clemetson
 State Exhibit #13: March 2, 2015, Response from Dr. Clemetson to Complaint Number 14-204
 State Exhibit #15: May 27, 2015, Letter from the Board to Dr. William Matuzas
 State Exhibit #16: July 6, 2015, Letter from Dr. Matuzas to the Board
 State Exhibit #17: July 7, 2015, Letter from Dr. Clemetson to the Board and July 9, 2015, Email from Dr. Clemetson to the Board
 State Exhibit #18: August 20, 2015, Letter from Dr. Clemetson to the Board
 State Exhibit #19: September 9, 2015, Letter from the Board to Dr. Clemetson
 State Exhibit #20: USPS Tracking Information for September 9, 2015, Letter from the Board to Dr. Clemetson
 State Exhibit #21: October 6, 2015, Letter from Dr. Clemetson to the Board
 State Exhibit #22: July 1, 2013 to December 31, 2013 Prescription Monitoring Program Records - CONFIDENTIAL
 State Exhibit #23: January 1, 2014 to November 20, 2014 Prescription Monitoring Program Records - CONFIDENTIAL
 State Exhibit #24: February 1, 2015, to April 15, 2015 Prescription Monitoring Program Records - CONFIDENTIAL
 State Exhibit #25: 10 M.R.S. § 8003
 State Exhibit #26: 32 M.R.S. § 3282-A
 State Exhibit #27: June 21, 2001, Decision and Order of the Board
 State Exhibit #28: May 16, 2002, Notice of Emergency License Suspension
 State Exhibit #29: September 10, 2002, Consent Agreement for Inactive Status
 State Exhibit #30: November 10, 2004, Consent Agreement for Conditional License
 State Exhibit #31: February 13, 2007, First Amendment to Consent Agreement for Conditional Licensure
 State Exhibit #32: November 30, 2007, Letter from the Board to Dr. Clemetson
 State Exhibit #33: December 7, 2015, Email from the Board to Dr. Clemetson and October 15, 2015, Notice of Preliminary Denial
 Licensee Exhibit #6: April 1, 2014, Letter from Board to Dr. Clemetson

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 Licensee and Dr. Edward Pontius, former practice monitor of 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. Dr. Charles D. Clemetson was first licensed as a medical doctor by the Board in 1994. (State Exh. #2.) His most recent license was issued on April 20, 2011, and was due to expire on April 30, 2013. (State Exh. #2.) The Licensee filed a timely application for renewal of his license; as such, his license has remained active pursuant to 5 M.R.S. Section 10002 pending a final determination on that application by the Board. (State Exhs. #2 & #3.)
2. On July 11, 2013, the Board issued a Decision and Order in Complaint Numbers 11-511 and 12-24 in which it concluded that the Licensee had engaged in unprofessional conduct by violating a standard of professional behavior by not meeting the standard of care for medical record keeping. (State Exh. #4.) As a result of the violation, the Board imposed a five-year period of probation during which the Licensee was to be monitored by a practice monitor who would review all aspects of the Licensee's practice including record keeping, time management, and appropriate psychiatric care. (State Exh. #4.) The Licensee was also required to take a course in medical record keeping within three months of the Decision and Order. (State Exh. #4.) The Licensee was required to identify for the Board's approval the individual who would service as a practice monitor and the record keeping course he would take within one month of the Decision and Order. (State Exh. #4.)
3. At hearing, the Licensee testified that he initially telephoned all his colleagues who might serve as a practice monitor but did not have any luck until a colleague put his request on a list serve. (Testimony of Clemetson.) Eventually, Dr. Clemetson received an indication of interest from Dr. Edward Pontius and a couple of other individuals. (Testimony of

Clemetson.) Although he talked to one or two of the individuals who had indicated an interest in serving as his monitor, Dr. Pontius was the only individual whom the Licensee interviewed. (Testimony of Clemetson.)

4. Since July 2013, the Licensee has maintained a private practice in an office in his home in Cumberland, Maine. (Testimony of Clemetson.) As of July 2013, the Licensee estimated that he saw seven to eight patients a week. (Testimony of Clemetson.) At the time of hearing, the Licensee saw between eight and ten patients per week. (Testimony of Clemetson.)
5. On August 27, 2013, the Licensee met with Dr. Pontius to discuss the possibility of Dr. Pontius serving as his practice monitor. (Testimony of Pontius.) After the meeting, Dr. Pontius sent the Licensee an email detailing their discussion, including the setting of an hourly rate of \$150 and Dr. Pontius's recommendation that they meet in two hour blocks to conduct the monitoring work. (Testimony of Pontius.) The Licensee agreed to the monitoring terms suggested by Dr. Pontius. (Testimony of Pontius.)
6. Although the Licensee did not travel between August 27 and October 3, 2013, he did not meet with Dr. Pontius during that time. (Testimony of Clemetson.)
7. Dr. Pontius then met with the Licensee for their first monitoring meeting on October 3, 2013. (Testimony of Pontius.) The Licensee explained that he hoped to be relieved of the probationary requirement of a practice monitor within a year rather than the five years imposed by the Board's Decision and Order. (Testimony of Pontius.) The Licensee showed Dr. Pontius paper records he was maintaining for his patients and Dr. Pontius recommended various software tools to help the Licensee develop an electronic medical records system. (Testimony of Pontius.) There was no evidence that the Licensee was already using an electronic medical records system. (Testimony of Pontius.)

8. Dr. Pontius noted that it was not possible to determine how many active patients the Licensee had because his paper charts included active patients, former patients, and patients who had not been seen for some time whose status was in question. (Testimony of Pontius.) Although Dr. Pontius asked the Licensee for a list of the medical records courses he was considering taking in order to comply with that aspect of the Board's Decision and Order, he did not receive such a list from the Licensee. (Testimony of Pontius.) Dr. Pontius developed significant concern that he would not be able to help the Licensee successfully reach his goal of a successful private practice for multiple reasons. (Testimony of Pontius.) First, the Licensee represented that he did not have the funds to purchase software or other tools to help organize his practice. (Testimony of Pontius.) Second, the Licensee indicated that he was planning to have periods of several weeks or months when he would be out of state to visit his critically ill brother, which Dr. Pontius felt would not be conducive to building up and maintaining a private practice. (Testimony of Pontius.) The Licensee indicated that he would take new referrals but would have a colleague treat the new patients while he was away. (Testimony of Pontius.) Dr. Pontius suggested to the Licensee that perhaps a different goal than building a private practice might be appropriate; the Licensee did not welcome this advice. (Testimony of Pontius.)
9. At the end of the October 3, 2013, meeting, Dr. Pontius discussed scheduling the next meeting with the Licensee. (Testimony of Pontius.) They agreed that the Licensee would contact Dr. Pontius regarding next steps. (Testimony of Pontius.) Although Dr. Pontius left messages for the Licensee regarding a follow up meeting, and the Licensee left one message for Dr. Pontius, no further meetings were set up. (Testimony of Pontius.) The Licensee also did not ask Dr. Pontius to file a report within the three month deadline of

October 11, 2013, but did provide him with a copy of the Board's July 11, 2013, Decision and Order. (Testimony of Clemetson.)

10. Although his identification of a practice monitor was due on August 11, 2013, by letter filed on October 8, 2013, the Licensee informed the Board of his October 3 meeting with Dr. Pontius, requesting that Dr. Pontius be approved as his practice monitor and stating that the delay in identifying his practice monitor was unavoidable, due to the fact that no one he asked initially had any interest in helping him. (State Exh. #5.) In his letter, the Licensee also said he had chosen a medical record keeping course, indicating that the delay in his identification of the course was also unavoidable because he did not have the funds to pay for the course, the travel, and hotel accommodations until a few days prior. (State Exh. #5.)
11. On October 16, 2013, Dr. Pontius emailed the Board to indicate that he had met with the Licensee on August 23, for a general informational meeting, and on October 3, to begin to review the Licensee's practice. (State Exh. #6.) Dr. Pontius indicated that he was concerned that from what he had had discerned thus far, he was not sure it was an achievable goal to support the Licensee in having a successful private practice and opined that instead the Licensee should consider a responsible transition to close his private practice and seek alternative employment. (State Exh. #6.) Dr. Pontius noted that he was not sure whether the Licensee had contacted the Board to request his approval as a practice monitor. (State Exh. #6.)
12. At hearing, the Licensee testified that he did not know when he was going to be able to take the record keeping course, which was why he did not set another meeting with Dr. Pontius. (Testimony of Clemetson.) He also testified that he did not contact Dr. Pontius because he was not able to pay for the monitoring services, while disclosing that he had significant real estate assets. (Testimony of Clemetson.) The Licensee acknowledged that even after

taking the record keeping course in November 2013, he never again contacted Dr. Pontius to continue Dr. Pontius's monitoring of his practice. (Testimony of Clemetson.) He also admitted that after the October 3, 2013, meeting he knew he was not going to engage Dr. Pontius again. (Testimony of Clemetson.) The Licensee testified that he did not make any efforts to obtain another practice monitor after October 2013. (Testimony of Clemetson.) Although he denied earlier understanding, the Licensee acknowledged that by 2015, he had been told by Board staff that he should not see patients without a practice monitor in place. (Testimony of Clemetson.) The Licensee continued to see patients through the date of hearing, while knowing he was in violation of the Board's Decision and Order. (Testimony of Clemetson.)

13. By letter dated November 13, 2013, the Board informed the Licensee that it had approved his request to have Dr. Pontius serve as his practice monitor as well as the record keeping course he had identified in Atlanta, Georgia, which was to be held on November 16 and 17, 2013. (State Exh. #7.)
14. The Licensee attended the record keeping course in Atlanta on November 16 and 17, 2013, after which he visited with his brother, who was a patient in a hospital in Pittsburgh, Pennsylvania. (Testimony of Clemetson.) The Licensee's brother died shortly thereafter. (Testimony of Clemetson.)
15. On January 10, 2014, the Licensee provided the Board with proof that he had attended the November 16 and 17, 2013, record keeping course. (State Exh. #8.)
16. By letter dated February 3, 2014, the Licensee provided additional information regarding the delay in his locating a practice monitor and a record keeping course; he also indicated that he had been using an electronic health records program, Practice Fusion/Kareo, since July 11, 2013, although when Dr. Pontius met with the Licensee in October 2013, there was

no indication that he was using an electronic record keeping system. (State Exh. #10; Testimony of Pontius.) In his letter, the Licensee indicated that Dr. Pontius had helped him set up his electronic medical record system and ancillary computer programs and equipment, which was not consistent with the testimony of Dr. Pontius at hearing. (State Exh. #10; Testimony of Pontius.)

17. By letter dated April 1, 2014, the Board confirmed that the Licensee had applied for renewal of his Maine medical license and as such his existing license had not expired on its stated date of April 30, 2013, and remained active pending the Board's final action on the application. (Lic. Exh. #6.)

18. By letter dated December 29, 2014, the Board informed the Licensee that it had initiated a complaint, CR 14-204, against him for his failure to comply with the terms of probation in the July 11, 2013, Decision and Order, noting that he was required to have his practice monitor provide his or her first report to the Board within three months and also to complete a record keeping course within three months. (State Exh. #12.) The Board indicated a concern that the Licensee had violated the Decision and Order by seeing patients from July 2013 to November 2013 without having a Board-approved practice monitor, by dismissing Dr. Pontius without informing the Board, and by continuing to see patients thereafter, from November 2013 to November 19, 2014. (State Exh. #12.)

19. On March 2, 2015, the Licensee filed a 30-page response to the complaint with the Board. (State Exh. #13.) In his response, the Licensee responded to the specific allegations and also indicated that he would be contacting Dr. Pontius to see if he could restart as his practice monitor when he had funds available and would complete the process of transferring his patient records from January 1, 2013, onward into a digital typed electronic medical records format. (State Exh. #13.) The Licensee also provided extensive discussion

of his dissatisfaction with his prior involvement with the Board. (State Exh. #13.) The Licensee did not contact Dr. Pontius about resuming his practice monitor role. (Testimony of Clemetson; Testimony of Pontius.)

20. At hearing, the Licensee testified that he ceased using an electronic records system in late 2014 and began to use Word documents and dictation tools to maintain patient records. (Testimony of Clemetson.)
21. Between May 2015 and October 2015, there was communication between the Board and the Licensee regarding a review of his medical records that was conducted by Dr. William Matuzas. (State Exhs. #15-#21.) Dr. Matuzas concluded that although there were some areas of concern within the records reviewed, in general they met the applicable standards of care and exhibited significant improvement over previous reviews. (State Exh. #16.)
22. By letter dated September 9, 2015, the Board requested that the Licensee provide the Board with the name and curriculum vitae of his current or proposed practice monitor within three business days. (State Exh. #19.) The certified letter was delivered on September 14, 2015. (State Exh. #20.)
23. By letter dated October 6, 2015, the Licensee informed the Board that he did not have a practice monitor at that time due to financial problems. (State Exh. #21.) He indicated that despite calling some of his senior colleagues who could potentially serve as a monitor, he had not received return phone calls. (State Exh. #21.) The Licensee requested that Complaint CR14-204 be dismissed on the basis that his records were found to have met the standard of care. (State Exh. #21.)
24. By letter dated October 15, 2015, the Board informed the Licensee that on October 13, 2015, it had denied his application for the renewal of his medical license received on April 30, 2013, based on his failure to comply with the Board's July 11, 2013, Decision and

Order. (State Exh. #33.) The Licensee filed a timely appeal of the preliminary denial.
(Administrative File.)

25. At hearing, the Licensee acknowledged that he had not timely complied with the probation requirements of the Board's July 2013 Decision and Order. (Testimony of Clemetson.)

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. 32 M.R.S. § 3282-A(2)(P).
4. The Board may impose discipline upon a licensee who fails to comply with conditions of probation. 10 M.R.S. § 8003(5)(A-1)(4).
5. For each violation of applicable statutes or rules, the Board may impose a censure and 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)(1)-(4).

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 five to one, that the Licensee engaged in misrepresentation in connection with the practice for which he was licensed by requesting the approval of Dr. Edward Pontius as his practice monitor on October 8, 2013, while knowing that he was unlikely to continue working with Dr. Pontius, and by not subsequently informing the Board that he had ceased using Dr. Pontius's monitoring services after just one meeting on October 3, 2013, subjecting him to discipline pursuant to 32 M.R.S. § 3282-A(2)(A).
2. By unanimous vote, that the Licensee engaged in unprofessional conduct by violating a standard of professional behavior in the practice of medicine by practicing without a practice monitor in effect for a period of 31 months after the issuance of the Decision and Order on July 11, 2013, not communicating the status of his practice monitor to the Board, and falsely representing that he was using an electronic records system as of July 2013, subjecting him to discipline pursuant to 32 M.R.S. § 3282-A(2)(F).
3. By unanimous vote, that the Licensee failed to comply with the conditions of probation in the July 11, 2013, Decision and Order of the Board that required him to engage a practice monitor and have him report to the Board within three months and to complete a record keeping course within three months, subjecting him to discipline under 32 M.R.S. § 3282-A(2)(P) and 10 M.R.S. § 8003(5)(A-1)(4).²

After granting the Licensee's application for renewal of his license by a vote of five to one, the Board imposed the following sanctions for the Licensee's violations of the Board's governing statutes:

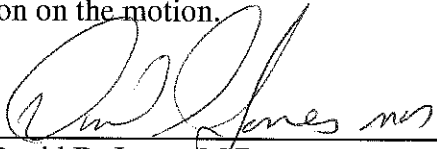
- a. A censure.
- b. Conditions of probation, to be in effect for five years, as follows:
 - i. The Licensee is limited to practicing medicine in a setting with other psychiatrists;

² The Board merged the violations identified in the Notice of Hearing as C and D.

- ii. The Licensee is prohibited from maintaining his own private practice and his current practice must be closed within 90 days of the effective date of this Decision and Order; and
- iii. After closing his private practice, upon beginning practice in a setting with other physicians, the Licensee must identify a practice monitor for the Board's approval within one month of the effective date of this Decision and Order and ensure that the practice monitor provides reports to the Board every three months.

Although the Licensee moved that the Board stay the Decision and Order, the Licensee withdrew his request prior to Board deliberation on the motion.

Dated: March 9, 2016



David D. Jones, M.D.
Acting 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.