

STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

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

DECISION AND ORDER

I. PROCEDURAL HISTORY

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

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

A quorum of the Board was in attendance during all stages of the proceedings. Participating and voting Board members were Louisa Barnhart, M.D.; Lee Corbin, Public Member; David D. Jones, M.D.; David H. Dumont, M.D.; David Nyberg, Ph.D., Public Member; Christopher R. Ross, P.A.-C.; Peter J. Sacchetti, M.D.; Brad E. Waddell, M.D.; Lynne M. Weinstein, Public Member; and Chair Maroulla S. Gleaton, M.D. Dr. LaMorgese was present and was represented by Arthur J. Greif, Esq. Michael Miller, Esq., Assistant Attorney General, represented the State of Maine.

Rebekah Smith, Esq., served as Hearing Officer. The hearing was held in accordance with the requirements of the Maine Administrative Procedure Act, 5 M.R.S. Sections 9051 to 9064.

State Exhibits #1 to #8 and #11 to #20 and Licensee Exhibits A, B, C, and E¹ were admitted without objection. State Exhibits #9 and #10 were withdrawn. The admitted exhibits are identified as follows:

- State Exhibit #1: Notice of Hearing dated March 4, 2015
- State Exhibit #2: ALMS Licensing Information
- State Exhibit #3: April 14, 2014, Katahdin Valley Health Center Letter to Board
- State Exhibit #4: April 29, 2014, Board Staff Letter to Licensee
- State Exhibit #5: May 1, 2014, Summary of Phone Conversation between Board Staff and Licensee
- State Exhibit #6: May 28, 2014, Licensee Letter to Board
- State Exhibit #7: July 24, 2014, Board Complaint
- State Exhibit #8: August 12, 2014, Response to Complaint, with April 3, 2014, Neuropsychological Evaluation Report by James D. Thomas, Ph.D., and May 29, 2014, Visit Note of Joseph Tungol, M.D.
- State Exhibit #11: April 2, 2015, Neuropsychological Evaluation Report by Robert Riley, Psy.D., ABPP-CN
- State Exhibit #12: June 29, 2015, Renewal Application
- State Exhibit #13: July 7, 2015, Letter to Licensee From Board
- State Exhibit #14: July 21, 2015, Licensee Letter to Board
- State Exhibit #15: August 13, 2015, Administrative Fine Payment
- State Exhibit #16: September 14, 2015, Board Staff Letter to Licensee
- State Exhibit #17: September 18, 2015, Licensee Letter to Board
- State Exhibit #18: November 19, 2015, Preliminary Denial of Licensee's Application to Renew License
- State Exhibit #19: 32 M.R.S. § 3280-A
- State Exhibit #20: 32 M.R.S. § 3282-A
- Licensee Exhibit A: Progress Notes of Julie Racine, PMHNP, dated March 18, 2014, through April 20, 2015
- Licensee Exhibit B: Initial Assessment of Carol Westerdahl, L.C.S.W., dated October 21, 2014, and Billing Notes of January 23, January 29, and March 9, 2015
- Licensee Exhibit C: AMA Physician's Recognition Award with Commendation
- Licensee Exhibit E: Test from Robert Riley, Psy.D., ABPP-CN, Evaluation

The Board took notice of its statutes and rules and confirmed that no participating member had any conflict of interest or bias that would prevent him or her from rendering an impartial decision in this matter. Each party presented an opening statement. The State presented Robert

¹ No Licensee Exhibit D was offered.

Riley, Psy.D., ABPP-CN, and the Licensee as witnesses. The Licensee did not present any additional witnesses. Each party made a closing statement. The Board then deliberated and made the following findings of fact and conclusions of law by a preponderance of the credible evidence regarding the allegations against the Licensee and his eligibility for licensure.

II. FINDINGS OF FACTS

1. Robert A. LaMorgese was granted a Maine license as a medical doctor in February 2012. (State Exh. #2.) The Licensee is certified by the American Board of Internal Medicine. (Testimony of Licensee.) Although the Licensee previously possessed medical licenses in New York and New Jersey, they are lapsed. (Testimony of Licensee.) The Licensee does not currently hold a DEA registration, required to prescribe opioids. (Testimony of Licensee.)
2. In January 2014, the Licensee experienced a fall outside his home that resulted in a concussion. (Testimony of Licensee.) He underwent an MRI at the time of his concussion that showed some general atrophy. (Testimony of Licensee.)
3. The Licensee has not practiced medicine since the January 2014 fall. (Testimony of Licensee.) He had experienced significant conflict with his employer in the period leading up to his fall because his employer had ceased to employ the scribe who had helped him maintain electronic health records. (Testimony of Licensee.)
4. On April 3, 2014, James D. Thomas, Ph.D., issued a neuropsychological evaluation report regarding the Licensee. (State Exh. #8.) The Licensee was referred for the evaluation by his primary medical provider for an assessment of his neurocognitive functioning to rule out cerebral dysfunction and to provide appropriate treatment recommendations given a concern of cognitive impairments following the Licensee's concussion. (State Exh. #8.) The Licensee reported to Dr. Thomas that he was misplacing his wallet and keys, that his

recent memory was more impaired, that he had gotten lost driving near his house in the dark, and that his wife told him that he was forgetting things. (State Exh. #8.) The Licensee indicated that he had poor organizational ability and some difficulty with multitasking. (State Exh. #8.) He reported that he was experiencing increasing clumsiness in his right hand and that his forgetfulness, which started when he was about 40 years old, had been getting worse. (State Exh. #8.) The Licensee's wife reported that he forgot where he put things, a problem that was getting worse, that he forgot what she told him relatively frequently, and that he made small memory mistakes nearly daily. (State Exh. #8.) The Licensee's wife indicated that for the prior six weeks he had experienced difficulty remembering plans that they had made, that about three to six months prior he had begun needing help recalling the names of people that he knew, and that he was having difficulty retrieving common words. (State Exh. #8.)

5. Dr. Thomas concluded that the Licensee exhibited evidence of frontal lobe/executive system impairment and memory impairment. (State Exh. #8.) Dr. Thomas also noted some evidence of attentional impairment, visuospatial impairment, and motor impairment. (State Exh. #8.) Dr. Thomas concluded that the findings were consistent with an underlying cognitive disorder of unclear cause and the pattern of scores was suggestive of bilateral cerebral dysfunction that was anterior in its distribution. (State Exh. #8.) He indicated that if the information reported by the Licensee and his wife was correct, some cognitive problems were present before the Licensee's head injury but had worsened after the injury. (State Exh. #8.) Dr. Thomas noted that the Licensee's January 2014 head injury was described as relatively mild and that it was unlikely to be the sole cause of the cognitive problems identified in the Licensee's testing. (State Exh. #8.)

6. Dr. Thomas diagnosed the Licensee with cognitive disorder, not otherwise specified, and postconcussional syndrome. (State Exh. #8.) Due to the Licensee's history of anxiety and depression and the work-related stress that was identified, Dr. Thomas also diagnosed the Licensee with adjustment disorder with depressed and anxious features. (State Exh. #8.) Dr. Thomas suggested that the Licensee be reevaluated within one to two years. (State Exh. #8.)
7. Following Dr. Thomas's evaluation, the Licensee began to receive short-term disability insurance payments. (Testimony of Licensee.)
8. By letter dated April 14, 2014, Katahdin Valley Health Center informed the Board that the Licensee had been out on medical leave and it was unknown when or if he would return. (State Exh. #3.)
9. On May 1, 2014, the Licensee spoke with a Board staff member and indicated that he was no longer working for Katahdin Valley Health Center, he had experienced memory loss, and he would be meeting with a neurologist the following month. (State Exh. #5.) The Licensee hoped to maintain his Maine license in the event that the neurologist advised that he could return to work in a year or two. (State Exh. #5.)
10. On May 29, 2014, Jose Tungol, MD., issued a visit note indicating that the Licensee had discussed his neuropsychological testing with him and he concluded that the Licensee was experiencing significant work-related stressors. (State Exh. #8.) He also opined that the Licensee was experiencing ongoing anxiety and depression prior to the concussion that could be the etiology for what Dr. Tungol termed "pseudo-dementia." (State Exh. #8.) Dr. Tungol indicated that he had advised the Licensee that he should continue with medication management with his psychiatric practitioner and he should participate in counseling. (State Exh. #8.) He did not recommend medication for memory impairment and he

indicated that no further work up was needed at that time. (State Exh. #8.) This visit, to review the neuropsychological testing by Dr. Thomas, was the Licensee's only visit with Dr. Tungol. (Testimony of Licensee.)

11. On June 4, 2014, the Licensee filed a letter with the Board indicating that he was experiencing post-concussion syndrome and his recollection of events was impaired. (State Exh. #6.)
12. By letter dated July 24, 2014, the Board informed the Licensee that it had voted to initiate a complaint against him based on his reported memory loss, which could impact his ability to practice medicine safely. (State Exh. #7.)
13. On April 2, 2015, Robert Riley, Psy.D., ABPP-CN, issued a neuropsychological evaluation report regarding the Licensee following a referral from the Board to assess the Licensee's cognitive functioning as well as his emotional and interpersonal functioning. (State Exh. #11.)² Dr. Riley found that the Licensee was functioning in the range of average intellectual ability, below what was likely his baseline level of ability. (State Exh. #11.) He found that the Licensee demonstrated mild and relative weaknesses for some tasks of processing speed, complex attention, speeded verbal fluency, and a less structured memory task involving recalling words. (State Exh. #11.) He also noted that the Licensee was able to perform in the average range or better on several other tests of memory. (State Exh. #11.)
14. Dr. Riley concluded that the Licensee had likely experienced some reductions in his general cognitive efficiency and processing speed, which had led to a generalized reduction in his overall levels of intellectual ability. (State Exh. #11.) He also found that the Licensee had some difficulty learning new, unstructured information, and his ability to

² Dr. Thomas's report was not available to Dr. Riley at the time of his evaluation although he had reviewed it prior to his testimony at hearing. (State Exh. #11; Testimony of Riley.)

retain the information was limited. (State Exh. #11.) Dr. Riley concluded that the Licensee's cognitive functioning suggested some relative decrease in several areas which was likely consistent with the residual effects of the concussion or mild traumatic brain injury that Appellant sustained in 2014. (State Exh. #11.) Dr. Riley also opined that some of the Licensee's cognitive weaknesses were related to more transient factors such as stress, anxiety, fatigue, and chronic pain, noting that the finding of generalized atrophy on an MRI also raised the possibility that there had been a general age-related decline in the Licensee's functioning. (State Exh. #11.)

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

16. Dr. Riley opined that the Licensee's poorer performance in his April 2014 neuropsychological testing was likely affected by the fact that he was in the acute stage of a concussion. (Testimony of Riley.) He believed that the cognitive disorder, not otherwise specified, diagnosed by Dr. Thomas had essentially resolved, noting that by the time of his own testing, the Licensee showed significant improvement and thus that diagnosis would no longer have been appropriate. (Testimony of Riley.) Dr. Riley also did not believe that the term "pseudo-dementia" as used by Dr. Tungol was applicable based on Dr. Thomas's evaluation because the term is usually used to reference subjective concerns of

psychological changes with no objective findings; Dr. Riley also would not have used that term to describe the Licensee's status based on his own testing. (Testimony of Riley.) Dr. Riley recommended a reevaluation in one to two years. (State Exh. #11.)

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

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

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

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

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

III. GOVERNING STATUTES AND RULES

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

A licensee is considered to exhibit incompetence if he engages in conduct that evidences a lack of ability or fitness to discharge the duty owed by the licensee to a client or patient or the general public. 32 M.R.S. § 3282-A(2)(E)(1).

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

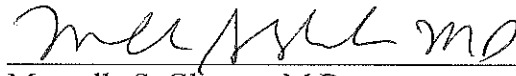
IV. CONCLUSIONS OF LAW

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

1. By unanimous vote, that the Licensee does not have a professional diagnosis of a mental or physical condition that may result in the Licensee performing services in a manner that endangers the health or safety of patients, which would have subjected him to discipline pursuant to 32 M.R.S. Section 3282-A(2)(A).
2. By unanimous vote, that the Licensee has exhibited incompetence in the practice for which he is licensed by engaging in conduct that evidences a lack of ability or fitness to discharge the duty owed by the Licensee to patients by not actively engaging in the practice of medicine since early 2014, subjecting him to discipline pursuant to 32 M.R.S. Section 3282-A(2)(E)(1).
3. By unanimous vote, that the Licensee is subject to the following terms of probation:

- a. Prior to his first patient contact, the Licensee must engage a Board-approved practice monitor who will meet with the Licensee every two weeks to review patient charts and who will report to the Board every month for a period of six months. The Licensee may meet with the practice monitor via telemedicine.
- b. The Licensee must obtain a neurologic evaluation by a Board-approved neurologist whose report will be provided to the Board and whose recommendations the Licensee must follow. The Licensee must provide the Board with names of potential neurologic evaluators, to be approved by the Board Chair and Board Secretary, within one month of the effective date of this Decision and Order and must arrange the evaluation as soon as possible thereafter.
- c. If the Licensee seeks to activate his DEA registration, he must complete an in-person continuing education course of at least eight hours on the topic of prescribing opioids.

Dated: 6/16, 2016


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

V. APPEAL RIGHTS

Pursuant to the provisions of 10 M.R.S. Section 8003(5) and 5 M.R.S. Section 11002(3), any party that appeals this Decision and Order must file a Petition for Review in the Superior Court within 30 days of receipt of this Order. The petition shall specify the person seeking review, the manner in which they are aggrieved, and the final agency action which they wish reviewed. It shall also contain a concise statement as to the nature of the action or inaction to be reviewed, the grounds upon which relief is sought, and a demand for relief. Copies of the Petition for Review shall be served by certified mail, return receipt requested, upon the State of Maine Board of Licensure in Medicine, all parties to the agency proceedings, and the Attorney General.