

STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

In Re: Jessica L. Cyr, P.A.

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DECISION AND ORDER

CR16-155

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I. PROCEDURAL HISTORY

Pursuant to the authority found in 10 M.R.S. Section 8003(5) and 32 M.R.S. Sections 3269, 3270-C and 3282-A, the Maine Board of Licensure in Medicine (“Board”) met in public session at its offices in Augusta, Maine, on September 12, 2017. The purpose of the meeting was to determine whether to impose discipline upon the physician assistant license of Jessica L. Cyr and whether to grant Ms. Cyr’s application for renewal of licensure.

By letter dated May 30, 2017, the Licensee was notified that the hearing in this matter would be held on September 12, 2017. On August 9, 2017, a prehearing conference was held and a Conference Order was issued setting deadlines for the filing of exhibit and witness lists. The State bears the burden to prove by a preponderance of the evidence any violation that would form the basis of discipline as well as any violation that would be the basis for a denial of licensure. The parties stipulated that the Licensee was eligible for renewal of licensure but for the pending matter.

A quorum of the Board was in attendance during all stages of the proceedings. Participating and voting Board members were Louisa Barnhart, M.D.; Susan Dench, Public Member; David Dumont, M.D.; Christopher Ross, P.A.-C.; Michael Sullivan, M.D.; Brad Waddell, M.D.; Lynne Weinstein, Public Member; and Maroulla Gleaton, M.D., Chair. The Licensee was present and was represented by Christopher Taintor, Esq. Michael Miller, Esq., Assistant Attorney General, represented the State of Maine. Rebekah Smith, Esq., served as Presiding Officer. The hearing was

held in accordance with the requirements of the Maine Administrative Procedure Act, 5 M.R.S. Section 9051 to Section 9064.

State Exhibits #1 to #16 were admitted without objection. Licensee Exhibits #1 and #2 were admitted without objection. The admitted exhibits are identified as follows:

- State Exhibit #1: Notice of Hearing dated May 30, 2017
- State Exhibit #2: ALMS Licensing Information
- State Exhibit #3: July 8, 2016, Board Complaint
- State Exhibit #4: July 21, 2016, Complaint Response
- State Exhibit #5: February 21, 2015, Renewal Application
- State Exhibit #6: July 22, 2015, Practice Closing Notice
- State Exhibit #7: Physician Assistant/Primary Supervising Physician Plan of Supervision dated August 4, 2015
- State Exhibit #8: May 5, 2016, Email from Assistant Attorney General to Board Staff Member
- State Exhibit #9: Physician Assistant/Primary Supervising Physician Plan of Supervision dated January 15, 2016
- State Exhibit #10: May 6, 2016, Letter from Steven Brewster, M.D., to Board
- State Exhibit #11: 32 M.R.S. § 3270-C
- State Exhibit #12: 32 M.R.S. § 3270-E
- State Exhibit #13: 32 M.R.S. § 3282-A
- State Exhibit #14: 10 M.R.S. § 8003
- State Exhibit #15: Board Rules Chapter 2 in effect through July 17, 2016
- State Exhibit #16: American Academy of Physician Assistants Guidelines for Ethical Conduct for the Physician Assistant Profession
- Licensee Exhibit #1: Emails between the Licensee and Dr. Steven Brewster between July 30, 2015, and August 13, 2015
- Licensee Exhibit #2: Email from Dr. Steven Brewster to the Licensee dated July 30, 2015

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 Steven Brewster, M.D., and the Licensee as witnesses. The Licensee did not present any additional witnesses. Each party made a closing argument. 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 her eligibility for renewal of licensure.¹

II. FINDINGS OF FACTS

1. Jessica L. Cyr, P.A.-C., was initially licensed as a physician assistant - clinical, in Maine on October 3, 2012. (State Exh. #2.) On February 21, 2015, the Licensee filed an application for renewal of her license, which was granted and which identified Catherine Crute, M.D., as her supervising physician. (State Exh. #5.) The Licensee's current license expired on December 31, 2016, but she filed a timely renewal application on December 29, 2016. (State Exh. #2; Administrative File.) Her license remains active pursuant to 5 M.R.S. Section 10002 pending a final determination by the Board regarding her renewal application. (State Exh. #2.)
2. The Licensee worked in the private practice of Dr. Crute from the time that she was licensed in the fall of 2012 until September 30, 2015, when Dr. Crute's practice closed. (Testimony of Licensee.) Dr. Crute was registered as the Licensee's primary supervising physician throughout the period of the Licensee's employment in Dr. Crute's practice. (Testimony of Licensee.) While the Licensee was employed by Dr. Crute, staff members in Dr. Crute's office filed all of the Licensee's licensing documents with the Board on her behalf. (Testimony of Licensee.)
3. On July 3, 2015, the Licensee began the training process to work at Concentra Occupational Medical Centers ("Concentra") as a per diem physician assistant. (Testimony of Licensee.) On approximately July 10, 2015, the Licensee was offered a full-time position at Concentra,

¹ On September 20, 2017, the Licensee filed a motion to reconsider the instruction given to the Board regarding whether it could issue a letter of guidance after it had found a violation. The State filed a response on September 27, 2017. The Hearing Officer issued an order denying the Licensee's motion on October 4, 2017.

which she accepted with the condition that she could not begin full-time work until September 2015. (Testimony of Licensee; State Exh. #6.)

4. Throughout the month of July 2015, the Licensee engaged in training at Concentra, although not seeing patients, while working part-time at Dr. Crute's practice. (Testimony of Licensee.)
5. On July 30, 2015, Dr. Brewster emailed the Licensee, indicating that they needed to transition her supervisory relationship with a physician at Concentra to Jeanne Scheddel, D.O. (Lic. Exh. #2.) Dr. Brewster stated that he had attached the necessary forms, which included the Plan of Supervision that Dr. Brewster had drafted, identifying Dr. Scheddel as the Licensee's supervising physician, and Form C, a Board form. (Lic. Exh. #2.) Dr. Brewster indicated that Concentra would pick up the cost of that process, presumably referencing filing the documents with the Board. (Lic. Exh. #2.) Dr. Brewster requested that the Licensee complete the forms the following day and give them to Sue Britting, Executive Assistant at Concentra, indicating that Dr. Scheddel would sign the forms the next time she was in the office. (Testimony of Brewster.) Dr. Brewster had contacted Board staff to ensure that the Plan of Supervision had all the necessary elements, at which time he was informed that he should not allow the Licensee to see patients until the supervising physician was registered with the Board. (Testimony of Brewster.) The Licensee was the first physician assistant that Dr. Brewster had hired in Maine. (Testimony of Brewster.)
6. On July 31, 2015, Dr. Brewster indicated in an email to the Licensee that he had sent her another email with attachments, referencing his July 30, 2015, email, and indicated that if she could put all of it together that day, "we can submit that to the [s]tate of Maine Board of Medical Licensing and we'll be set." (Lic. Exh. #1.) The Licensee understood Dr.

Brewster's email to mean that Concentra administrative staff would forward the paperwork related to her registration and supervision plan to the Board. (Testimony of Licensee.)

7. On August 2, 2015, the Licensee informed Dr. Brewster by email that she had completed the physician supervisor paperwork and left it on Ms. Britting's desk. (Lic. Exh. #1.) The Licensee asked Concentra staff several times if there was anything else that she needed to do, particularly because she knew she was being supervised by two physicians in two different practices. (Testimony of Licensee.) The Licensee was told that Ms. Britting would finalize the paperwork after the Licensee had signed it. (Testimony of Licensee.) The Licensee assumed that Concentra staff had forwarded the documents to the Board. (Testimony of Licensee.) The Licensee did not receive a copy of the fully executed Plan of Supervision, which was maintained by Concentra once it had been signed by the supervising physician. (Testimony of Brewster; Testimony of Licensee.)
8. The Licensee began to see patients at Concentra in the beginning of August 2015. (Testimony of Licensee.) The Licensee did not begin seeing patients at Concentra until after the Plan of Supervision was in effect, having been executed by Dr. Scheddel on August 4, 2015. (Testimony of Brewster; State Exh. #7.) Pursuant to an internal policy, the Plan of Supervision had to be approved by Concentra's credentialing committee before the Licensee could begin seeing patients. (Testimony of Brewster.)
9. The Licensee began as a full-time employee at Concentra on September 4, 2015, continuing to see some patients in Dr. Crute's office until September 30, 2015, when the practice closed. (Testimony of Licensee; State Exh. #6.) The Licensee did not file a notice with the Board that Dr. Crute was no longer a supervising physician for her after September 30, 2015. (Testimony of Licensee.)

10. In January 2016, Dr. Brewster became the medical director at Concentra and became the Licensee's supervising physician at Concentra pursuant to a Plan of Supervision executed on January 15, 2016. (Testimony of Licensee; State Exh. #9.) While he was the Licensee's supervising physician, Dr. Brewster met with the Licensee routinely, saw her patients in follow up appointments, conducted formal chart reviews, and ensured that she had completed all training requirements. (Testimony of Licensee.)
11. In early May 2016, the Licensee received a phone call from the Board indicating that her certificate of registration was not up to date. (Testimony of Licensee.) The Licensee was shocked and went to Concentra immediately to obtain the documents from administrative staff. (Testimony of Licensee.)
12. On May 5, 2016, the Board received a Physician Assistant/Primary Supervising Physician Plan of Supervision identifying Dr. Brewster as the Licensee's supervising physician effective January 15, 2016. (State Exh. #9.)
13. By letter dated May 6, 2016, Dr. Brewster apologized that the Licensee did not have paperwork on file with the Board identifying him as her supervising physician. (State Exh. #10.) He noted that the Licensee had completed her application and supervisory plan in July 2015 and had given the originals to Concentra's administrative assistant, assuming that she would submit the paperwork to the Board. (State Exh. #10.) The administrative assistant, however, Dr. Brewster reported, thought that the Licensee was submitting the paperwork herself. (State Exh. #10.)
14. Dr. Brewster reported that he had oriented the Licensee to Concentra in July 2015 and had drafted her supervisory plan with her at the time. (State Exh. #10.) Dr. Brewster indicated that he had worked with the Licensee continuously since that time and when he was not in the office in person he was available to her via phone. (State Exh. #10.) He also noted that

the Licensee had worked closely with three other physicians in the office - Dr. Joseph Castorina, Dr. Jeanne Scheddel, and Dr. Alan Bean - and had been supervised in her practice at all times. (State Exh. #10.) Dr. Brewster reported that the procedural failure in the organization had been addressed to ensure that in the future providers submitted required paperwork in a timely manner. (State Exh. #10.)

15. On June 14, 2016, the Board voted to initiate a complaint against the Licensee based on information it received that although she had been registered under the supervision of Dr. Crute until May 5, 2016, Dr. Crute had closed her practice effective September 30, 2015, and the Licensee began working at Concentra Occupational Medicine Centers (“Concentra”) in July 2015. (State Exh. #3.)
16. On July 15, 2016, the Licensee responded to the complaint. (State Exh. #4.) She indicated that she had always been under appropriate supervision as a physician assistant. (State Exh. #4.) The Licensee provided the Physician Assistant/Primary Supervising Physician Plan of Supervision that had been finalized on August 4, 2015, indicating that Dr. Scheddel was her supervising physician at Concentra as well as a newer Plan of Supervision identifying Dr. Brewster as her supervising physician effective January 15, 2016. (State Exh. #4.) She stated that with regard to both plans, she believed that Concentra’s administrative staff was forwarding the plans to the Board for approval. (State Exh. #4.)
17. On December 29, 2016, Dr. Joseph Castorina became the Licensee’s supervising physician at Concentra. (Testimony of Licensee; State Exh. #2.)
18. The Licensee testified at hearing that she understands that it is her personal responsibility to ensure that her licensure documents are filed with the Board. (Testimony of Licensee.) She acknowledged that she should not have assumed that Dr. Crute would provide the Board

with notice that she was no longer supervising the Licensee once her practice closed and should have filed all the necessary documents herself. (Testimony of Licensee.)

III. GOVERNING STATUTES AND RULES

1. The Board may refuse to issue, modify, restrict, suspend, revoke, or refuse to renew a license if the licensee engaged in unprofessional conduct. A licensee is considered to have engaged in unprofessional conduct if he or she violates a standard of professional behavior that has been established in the practice for which the licensee is licensed. 32 M.R.S. § 3282-A(2)(F).
2. The Board may refuse to issue, modify, restrict, suspend, revoke, or refuse to renew a license if the licensee violates a provision of the Board statute at Title 32, Chapter 48, or a Board rule. 32 M.R.S. § 3282-A(2)(H).
3. A physician assistant may not render medical services until issued a certificate of registration by the Board. 32 M.R.S. § 3270-E(1).
4. In order to practice as a physician assistant, an individual must have both a license and a certificate of registration. An individual may not practice until granted a license and a certificate of registration by the Board. To obtain a certificate of registration, among other items, an individual must provide a signed statement from the primary supervising physician agreeing to provide supervision. (02-373) Rules of Board of Licensure in Medicine (“Board Rules”) Chapter 2, § 2(B).
5. A physician assistant must be supervised continuously. Board Rules Chapter 2, § 7.
6. A physician assistant must notify the Board within 14 days of the effective date of any change in his or her supervising physician, as well as the reason for any termination. Board Rules Chapter 2, § 9.

7. Among other forms of discipline, the Board may issue a warning to a licensee. 10 M.R.S. § 8003(5)(A-1)(1).

IV. CONCLUSIONS OF LAW

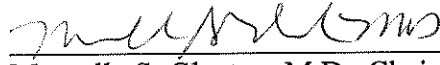
The Board, considering the above facts and those alluded to in the record but not referred to herein, concluded that it had jurisdiction over Jessica L. Cyr, P.A., and found as follows by unanimous vote with regard to the statutory and rule violations alleged:

1. The Licensee did not commit unprofessional conduct by violating a standard of professional behavior that has been established in the practice for which the Licensee is licensed by representing to the public and Concentra Occupational Medical Centers patients that she held a valid certification of registration issued by the Board from August 2015 until May 5, 2016, in violation of the Guidelines for Ethical Conduct for the Physician Assistant Professional regarding Professional Identity.
2. The Licensee committed a violation of the Board statute at 32 M.R.S. Section 3270-E by rendering medical services without a certificate of registration from August 2015 to May 5, 2016, subjecting her to discipline pursuant to 32 M.R.S. Section 3282-A(2)(H).
3. The Licensee committed a violation of Board Rule Chapter 2, Section 2(B) and Section 7, in effect during the period July 2015 until May 5, 2016, by practicing as a physician assistant without the approval by the Board of the primary supervising physician and without obtaining a certificate of registration from August 2015 to May 5, 2016, subjecting her to discipline pursuant to 32 M.R.S. Section 3282-A(2)(H).
4. The Licensee committed a violation of Board Rule Chapter 2, Section 9, in effect during the period July 2015 until May 5, 2016, requiring notification to the Board of any change, including termination, of her supervising physician within 14 days of the effective date of the change by not notifying the Board of the termination of Dr. Crute's supervision on

September 30, 2015; the initiation of Dr. Scheddel's supervision at Concentra on August 4, 2015; and the transfer to Dr. Brewster's supervision at Concentra on January 15, 2016, subjecting her to discipline pursuant to 32 M.R.S. Section 3282-A(2)(H).

The Board unanimously imposed a warning as discipline upon the Licensee for the three violations as an appropriate sanction and approved the Licensee's December 29, 2016, application for renewal of licensure.

Dated: October 10, 2017


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

V. APPEAL RIGHTS

Pursuant to the provisions of 10 M.R.S. Section 8003(5-A) and 5 M.R.S. 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.