

STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

In re:) CONSENT AGREEMENT
MIA H. MARIETTA, M.D.)
Complaint Nos. CR17-198, CR18-91)

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 Mia H. Marietta, M.D. The parties to the Consent Agreement are: Mia H. Marietta, M.D. (“Dr. Marietta”), 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. Marietta has held a license to practice medicine in the State of Maine since September 14, 2011 (license number MD18931), and specializes in general surgery.

2. On October 31, 2017, the Board issued a complaint following a report from Mid Coast Hospital (“Mid Coast”) stating that Dr. Marietta’s employment was terminated effective May 26, 2017. Mid Coast reported that the decision was based on a review of cases, Dr. Marietta’s clinical performance during surgery, and the lack of an appropriate response to post-operative complications involving a 33 year-old patient. In addition, it was alleged that Dr. Marietta submitted an application to renew her license to the Board on August 21, 2017, and answered “no” to a question which asked whether she

had been terminated or suspended from any employment. The Board docketed that complaint as CR17-198, and sent it to Dr. Marietta for a response.

3. By letter dated November 6, 2017, Dr. Marietta responded to the complaint. In her response, Dr. Marietta explained that her employment with Mid Coast ended pursuant to a mutual agreement and that she was told the end of her employment was not going to be reported. Dr. Marietta explained that based on her understanding she believed that her answer on the renewal application was correct. She stated that a community based hospital was probably not the ideal choice for a young surgeon straight out of training. Dr. Marietta stated that there was no mentorship program or regular performance review at Mid Coast. Dr. Marietta informed the Board that she would be focusing going forward on outpatient services.

4. On February 17, 2018, the Board received an independent outside expert review of the care provided by Dr. Marietta to several surgical patients at Mid Coast. The independent outside reviewer concluded that the cases demonstrated a lack of experience and oversight, poor documentation, and delays in diagnosis and treatment of expected complications in complex cases.

5. On June 7, 2018, the Board issued a complaint following a report from a registered nurse. The nurse reported that a resident at an assisted living facility had received prescriptions in the mail from an out of state pharmacy that the resident did not have orders for. The nurse reported that Dr. Marietta issued the prescriptions for this resident but when contacted by the nurse denied having any knowledge of them. In addition, the nurse

reported that the patient has some dementia and also denied knowledge of the prescriptions. The complaint further alleged that Dr. Marietta told the Board of Pharmacy investigator that she had a telemedicine encounter with the patient through a “cyber-intermediary” and that she spoke with the patient by phone. Despite numerous requests, Dr. Marietta failed to produce the medical records created by her that were associated with the telemedicine prescriptions. The Board docketed the complaint as CR18-91, and sent it to Dr. Marietta for a response.

6. By letter dated June 15, 2018, Dr. Marietta responded to the complaint. In her response, Dr. Marietta stated that she had been participating in “limited telemedicine” for the past several months, and that she believed that she had been compliant with the Board rules regarding the practice of telemedicine. Dr. Marietta stated that each contact and subsequent prescription “involve[d] a detailed phone call.” Dr. Marietta produced what medical records she had for the patient encounter and provided contact information for the telemedicine company.

7. Pursuant to 32 M.R.S. § 3282-A(2)(A), the Board may impose discipline for fraud, deceit or misrepresentation in obtaining a license or in connection with service rendered within the scope of the license issued.

8. Pursuant to 32 M.R.S. § 3282-A(2)(E), the Board may impose discipline if the licensee has engaged in conduct that evidences a lack of ability or fitness to discharge the duty owed by the licensee to a client or patient or

the general public, or that evidences a lack of knowledge or inability to apply principles or skills to carry out the practice for which the licensee is licensed.

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

10. Pursuant to 32 M.R.S. § 3282-A(2)(H), the Board may impose discipline for a violation of Board rules. Board Rules Chapter 6 "Telemedicine Standards of Practice" provides that a licensee who uses telemedicine in providing health care shall be held to the same standards of care and professional ethics as a licensee using traditional in-person encounters with patients and failure to conform to the appropriate standards of care or professional ethics while using telemedicine may subject the licensee to discipline by the Board. Board Rules Chapter 6, § 3(3). Generally, a licensee shall perform an in-person medical interview and physical examination for each patient. However, the medical interview and physical examination may not be in-person if the technology utilized in a telemedicine encounter is sufficient to establish an informed diagnosis as though the medical interview and physician examination had been performed in-person. Prior to providing treatment, including issuing prescriptions, electronically or otherwise, a licensee who uses telemedicine in providing health care shall interview the patient to collect the relevant medical history and perform a physical examination, when medically necessary, sufficient for the diagnosis and

treatment of the patient. Board Rules Chapter 6, § 3(7). The licensee shall provide a copy of the medical records to the treating physician(s). Board Rules Chapter 6, § 3(10).

11. On April 10, 2018, and August 14, 2018, the Board reviewed complaints CR17-198 and CR18-91, and voted to set this matter for an adjudicatory hearing. In addition, the Board voted to offer Dr. Marietta this Consent Agreement to resolve this matter without further proceedings. Absent Dr. Marietta'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 November 1, 2018, the matter will be scheduled for an adjudicatory hearing.

COVENANTS

12. Dr. Marietta admits the facts stated above and agrees that such conduct constitutes grounds for discipline pursuant to 32 M.R.S. §§ 3282-A(2)(A) (for misrepresentation in obtaining a license), (2)(E) (for lack of ability or fitness to discharge the duty owed by the licensee to a client or patient or the general public, or that evidences a lack of knowledge or inability to apply principles or skills to carry out the practice for which the licensee is licensed), (2)(F) (for engaging in unprofessional conduct), and (2)(H) (for violation of Board rules).

13. As discipline for the foregoing conduct, Dr. Marietta agrees to accept the following:

a) A PRACTICE LIMITATION: Dr. Marietta shall limit her surgical medical practice to minor outpatient office-based procedures involving local anesthesia only with no sedation. Dr. Marietta shall be required to obtain Board approval following additional specialized training or a Clinical Competence Assessment from The Center for Personalized Education for Professionals (“CPEP”), in order to engage in surgical practice broader than the limitation contained in this subparagraph; and

b) A period of PROBATION of not less than two (2) years during which Dr. Marietta shall obtain pre-approval of her engaging in any practice that is located in Maine or that provides health care to Maine patients. Dr. Marietta shall submit written notification to the Board of her proposed practice together with a proposed plan for oversight and mentorship (“mentorship plan”). Approval of the proposed practice and mentorship plan may be granted by the Board, Board Chair, Case Reporter, or Board designee. After a period of probation of not less than two (2) years, Dr. Marietta may request that the Board terminate or modify the requirement of probation. Upon receipt of such request and any information requested by the Board in connection with such request, the Board shall determine, in its sole discretion whether to maintain, modify, or eliminate the requirements of probation.

14. Dr. Marietta acknowledges that while this Consent Agreement is in effect she must directly communicate with the Board or Board staff and has the obligation to respond to any request for information or documentation within the timeframe specified or requested. Failure to comply with or respond

to any request shall be considered unprofessional conduct and a violation of this Consent Agreement.

15. Any conduct of Dr. Marietta described herein may be considered in future Board action(s) as evidence of a pattern of misconduct.

16. Violation by Dr. Marietta 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.

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

18. The Board and the Department of the Attorney General may communicate and cooperate regarding Dr. Marietta or any other matter relating to this Consent Agreement.

19. 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.

20. 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.

21. 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.

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

23. 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, MIA H. MARIETTA, 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: 10/31/18


MIA H. MARIETTA, M.D.

STATE OF Maine

9348, S.S.

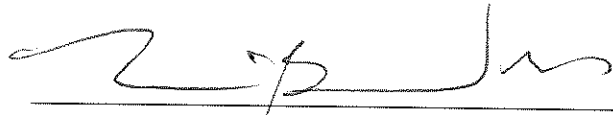
Personally appeared before me the above-named Mia H. Marietta, M.D., and swore to the truth of the foregoing based upon her own personal knowledge, or upon information and belief, and so far as upon information and belief, she believes it to be true.

DATED: 10/31/18


NOTARY PUBLIC/ATTORNEY
MY COMMISSION ENDS: _____

STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

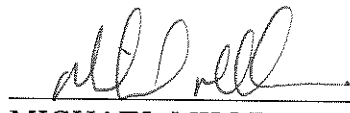
DATED: 11-13-18



MARY LOUISA BARNHART, M.D.,
Acting Chair

STATE OF MAINE DEPARTMENT
OF THE ATTORNEY GENERAL

DATED: November 13, 2018



MICHAEL MILLER
Assistant Attorney General

Effective Date: