

STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

IN RE:)	
)	
Meryl J. Nass, M.D.)	THIRD AMENDED
Complaint Nos. CR21-191, CR21-)	NOTICE OF HEARING
210, & CR22-4)	

On October 11, 2022 at 1 p.m., the Maine Board of Licensure in Medicine (“the Board”) will conduct an adjudicatory hearing pursuant to 32 M.R.S. §§ 3269, 3282-A and 10 M.R.S. § 8003(5), to hear evidence regarding Complaint Nos. CR21-191, CR21-210, and CR22-4, and determine whether grounds exist for the Board to impose discipline upon Dr. Nass’s license to practice medicine in the State of Maine. The hearing will be held in the conference room of the Board’s offices located at 161 Capitol St, Augusta, Maine, unless directed to be held virtually via ZOOM in accordance with 1 M.R.S. § 403-B and the Board Member Remote Participation Policy. The hearing will be continued on additional dates as necessary.

GROUND FOR DISCIPLINARY ACTION

Pursuant to 10 M.R.S. § 8008, the sole purpose of the Board is to protect the public health and welfare, and the Board carries out this purpose by ensuring that the public is served by competent and honest practitioners. At the hearing, the Board will determine whether by a preponderance of the evidence grounds exist to impose discipline as follows:

A. Patient Care and Competence to Practice Medicine

- I. Pursuant to 32 M.R.S. § 3282-A(2)(E)(1) for incompetence by engaging in conduct that evidences a lack of ability or fitness to discharge the duty owed by the licensee to a patient in providing care for Patients 1, 2, and/or 3.
- II. Pursuant to 32 M.R.S. § 3282-A(2)(E)(2) for incompetence by engaging in conduct that evidences a lack of knowledge or inability to apply principles and skills to carry out the practice for which the licensee is licensed in providing care for Patients 1, 2, and/or 3.
- III. [withdrawn]
- IV. Pursuant to 32 M.R.S. § 3282-A(2)(H) for violation of Board statute or rule, specifically Chapter 6 Telemedicine Standards of Practice, § 1(3 & 4) and § 3(3) for failure to conform to the appropriate standards of care

and professional ethics while using telemedicine for Patients 1, 2 and/or 3.¹

- V. Pursuant to 32 M.R.S. § 3282-A(2)(H) for violation of Board statute or rule, specifically Chapter 6 Telemedicine Standards of Practice, § 3(7) for failure to conduct an appropriate medical interview to obtain relevant medical history and/or to perform an appropriate examination for Patients 1, 2 and/or 3.
- VI. Pursuant to 32 M.R.S. § 3282-A(2)(H) for violation of Board statute or rule, specifically Chapter 6 Telemedicine Standards of Practice, § 3(9) for failure to provide appropriate informed consent for the health care services provided for Patients 1, 2 and/or 3 via telemedicine.
- VII. [withdrawn]
- VIII. Pursuant to 32 M.R.S. § 3282-A(2)(H) for violation of Board statute or rule, specifically Chapter 6 Telemedicine Standards of Practice, § 3(12)(B) for failing to refer Patients 1, 2, and/or 3 to an acute care facility or an emergency department when referral was necessary for the safety of the patient or in case of an emergency.
- IX. Pursuant to 32 M.R.S. § 3282-A(2)(H) for violation of Board statute or rule, specifically Chapter 6 Telemedicine Standards of Practice, § 3(20) for prescribing to Patients 1, 2, and/or 3 based solely on a telephone evaluation in the absence of a valid physician-patient relationship.

B. Medical Recordkeeping

- X. [withdrawn]
- XI. Pursuant to 32 M.R.S. § 3282-A(2)(H) for violation of Board statute or rule, specifically Chapter 6 Telemedicine Standards of Practice, § 3(9) for failure to ensure that an appropriate informed consent was timely documented in the medical records of Patients 1, 2, and/or 3.
- XII. Pursuant to 32 M.R.S. § 3282-A(2)(H) for violation of Board statute or rule, specifically Chapter 6 Telemedicine Standards of Practice, § 3(13) for failing to ensure that complete, accurate and timely medical records for Patients 1, 2, and/or 3 were maintained.

¹ This rule reference is to 02-373 C.M.R. Ch. 6, effective Dec. 10, 2016 (amended and redesignated as Ch. 11, July 24, 2022). All further references to Board Rule Chapter 6 refer to the prior rule, in effect at the time of the relevant conduct alleged in this matter. Chapter 6 is Board Staff's proposed exhibit 116.

XIII. Pursuant to 32 M.R.S. § 3282-A(2)(H) for violation of Board statute or rule, specifically Chapter 6 Telemedicine Standards of Practice, § 3(14) for failing to have in place and/or follow mandatory written protocols to ensure that all telemedicine encounters are secure and confidential, by sharing patient details with persons who were not the relevant patient(s), without written authorization from the relevant patient(s).

C. Truth-Telling and Misrepresentation

XIV. Pursuant to 32 M.R.S. § 3282-A(2)(A) for the practice of fraud, deceit or misrepresentation in connection with service rendered within the scope of the license issued for lying to a pharmacist that a prescription for hydroxychloroquine was being prescribed for Lyme disease.

XV. [withdrawn]

D. Additional Alleged Violations

XVI. [withdrawn]

XVII. [withdrawn]

XVIII. Pursuant to 32 M.R.S. § 3282-A(2)(R), for failing to timely respond to a complaint notification sent by the Board.

XIX. Pursuant to 32 M.R.S. § 3282-A(2)(P) & (Q) for failing to timely respond to and comply with Board-issued subpoenas.²

ALLEGED FACTS

The alleged facts include but are not limited to the following:

1. Dr. Nass was first issued a license to practice medicine in Maine on August 22, 1997 (license number MD14575). Dr. Nass's license to practice medicine was suspended pursuant to an Order of Immediate Suspension issued on January 12, 2022. Dr. Nass specializes in internal medicine in Ellsworth, Maine.

2. On December 19, 2021, the Board received a report pursuant to 24 M.R.S. § 2505 from Madeleine Martindale, M.D. Dr. Martindale reported that she had admitted Patient 1 to her hospitalist service on December 19, 2021, and that the patient complained of dyspnea, cough, and fatigue for a period of

² Dr. Nass purported to challenge these subpoenas by filing a lawsuit in Kennebec County Superior Court, which lawsuit was docketed as AUGSC-CV-22-38. This allegation may be affected by the Court's ruling in that lawsuit.

two weeks. Dr. Martindale reported that the patient told her that Dr. Nass diagnosed the patient “over the phone” with COVID on December 7, 2021 and prescribed 5 days of Ivermectin which is not indicated for treatment of COVID. Dr. Martindale expressed concern that the patient did not “have the benefit of a real diagnostic test ..., nor the benefit of outpatient COVID medications such as monoclonal antibodies.” Dr. Martindale reported that the patient and her family were unvaccinated, and Patient 1 was hospitalized requiring supplemental oxygen for COVID-19 pneumonia.

3. When transmitting the medical records for Patient 1 to Board staff on January 4, 2022, Dr. Nass stated that Patient 1’s son “[t]exted [her] regarding himself and his two parents, all of whom had Covid at the same time and all three wound up eventually in the hospital. The texts are intermingled for all three patients.” With this email, Dr. Nass attached texts associated with Patient 2’s spouse rather than texts associated with Patient 1’s son.

4. On September 28, 2021, Dr. Nass prescribed Ivermectin for Patient 1 “for Covid.” Dr. Nass’s September 28, 2021 progress note contains no patient medical history, no physical examination, no chief complaint, no coordination of care or set follow-up care, no medical decision-making, no diagnosis – including no diagnosis of Patient 1 having COVID on September 28, 2021, no patient informed consent, and no assessment and plan other than identifying Ivermectin 27 mg/d x 5, Zinc 30 mg/d, Vitamin C 500 mg/d, and aspirin 325 mg/d. The note fails to indicate whether Patient 1 was seen in person or via video or phone. Dr. Nass’s September 28, 2021 progress note contains a brief additional note almost two months later dated December 17 “[j]ust beginning to turn a corner Day 11. Doesn’t need additional rx.”

5. Dr. Nass’s medical records for Patient 1 include handwritten notes dated December 19, 2021 on notebook paper referencing Patient 1’s admission to the hospital and multiple “conversations” on December 17, December 18, and December 19, but no substantive notes associated with the conversations including who the conversations were with or what they were about. The note appears to have been written with two different pens. Dr. Nass’s medical records for Patient 1 do not include any written authorization for Dr. Nass to disclose information to any other person(s).

6. As part of the medical records for Patient 1, Dr. Nass provided text messages with Patient 1’s son and include December 10, 2021 communications regarding his treatment with Ivermectin and hydroxychloroquine. Patient 1’s son texted Dr. Nass on December 15, 2021 that his father was “borderline delirious. He moans on every exhale and he says snippets of things that don’t make any sense. He’s coherent once he’s awake and in a conversation.” Dr. Nass did not respond to the text directly. Patient 1’s son next texted Dr. Nass on December 17, 2021, “Dr. Nass my parents aren’t doing very well. My dad’s breathing is very shallow and when he

tries to breathe deeply he begins to cough violently. I don't see any signs of improvement. When do I need to consider taking him to the ER? Should we be taking more ivermectin?" Dr. Nass did not respond to the text directly. On December 19, 2021 at 1:20 pm, Patient 1's son texted Dr. Nass, "I think it might be time to take my parents to the ER. They are getting very weak. I don't see any symptoms improving. Can you talk?" Dr. Nass responded, "My son's family is just getting ready to leave. Can we talk at 2 PM?" The text messages included a text from Dr. Nass on or about December 20, 2021, stating "Btw I got a subpoena today by email from the board of registration in medicine requesting your mom's medical records." On or about December 21, 2021, Patient 1's son texted to Dr. Nass : "It is so upsetting how you are being harassed and persecuted for your work. For prescribing FDA approved drugs. Are you accepting donations for your legal support?" Dr. Nass: "Does she have a diagnosis yet? How is she struggling? I only got the email about 430 [sic] today. But I know some crack attorneys. I certainly was hoping to make a public spectacle of an investigation. Hopefully the attorneys will allow that. I haven't even thought about details like payment. Let's see where this is going."

7. On December 11, 2021, Dr. Nass emailed Board staff and stated "one of my complex, high risk patients for Covid just got Covid. The patient [Patient 2] and I wanted him treated with hydroxychloroquine. I reviewed his dozen or so medications and discussed all potential drug interactions and how to ameliorate them, and we decided to proceed. But the problem was finding a pharmacist willing to dispense the drug. I was eventually forced, when the pharmacist called a few minutes ago and asked me for the diagnosis, to provide misinformation: that I was prescribing the drug for Lyme disease, as this was the only way to get a potentially life-saving drug for my patient."

8. Dr. Nass referred to her interaction with a pharmacist during a December 14, 2021 ZOOM meeting with members of the Maine State Legislature. She stated, "I lied and I said the patient had Lyme disease which is another legitimate reasons to get this drug, and so the pharmacist dispensed the medication only because I lied"

9. On January 4, 2022, Dr. Nass emailed the medical records for the patient [Patient 2] associated with her December 11, 2021 email regarding providing misinformation to a pharmacist and stated: "[t]his is the gentleman for whom I prescribed hydroxychloroquine and was forced to inform the pharmacist was for a non-Covid diagnosis. That is because I was following the ethical principles of the AMA and other ethical codes of my profession."

10. Dr. Nass's medical records for Patient 2 indicate that on September 2, 2021 she prescribed Patient 2 Ivermectin. Her handwritten September 2, 2021 progress note for Patient 2 identifies 21 medications and supplements without dosages, and contains no patient history, no physical examination, no chief complaint, no medical decision-making, no diagnosis – including no diagnosis

of Patient 2 having COVID on September 2, 2021, no patient informed consent, and no assessment and plan other than “High Risk” and a reference to the Ivermectin script which was mailed. In the middle of the September 2, 2021 progress note and outlined by hand is another note dated December 11, 2021- “[Patient 2] is high risk + needs HCQ rx. Must [decrease] diltiazem and watch for hypoglycemia” and notes the prescribing of azithromycin and hydroxychloroquine, with “call in 3 wks”. The medical records for Patient 2 do not include any written patient authorization for Dr. Nass to disclose information to any other person(s).

11. As part of the medical records for Patient 2, Dr. Nass provided text messages that occurred with Patient 2’s spouse. On December 11, 2021, Dr. Nass texted Patient 2’s spouse “The pharmacy called me back and question [sic] me for the reason for the prescription and I told him Lyme disease.” Patient 2’s spouse replied “Thank you for letting us know. We picked up the medication.” Dr. Nass texted back “Good. And I wrote a letter to the board of medicine telling them they had forced me to miss inform [sic] a pharmacy today in order to get a life-saving medicine to a patient. Let’s see what they do with that.” Dr. Nass engaged in a series of texts with Patient 2’s spouse on December 15, 2021 regarding medications for Patient 2 and Dr. Nass texts “I cannot remember your name, town, and date of birth. I do remember lying to the pharmacy. Please send me that information. Texting does not provide me names.”

12. On December 31, 2021, the Board received a report pursuant to 24 M.R.S. § 2505 from Certified Nurse Midwife (“CNM”) Renata Moise. Ms. Moise reported that earlier in 2021 one of her pregnant patients became ill and tested positive for COVID. The patient [Patient 3] contacted CNM Moise’s office on September 22, 2021, for advice about COVID-19 care and told CNM Moise that she was on hydroxychloroquine. CNM Moise reported that she was shocked. Patient 3 told CNM Moise that the hydroxychloroquine had been prescribed by Dr. Nass. CNM Moise reported her concerns that Dr. Nass prescribed a medication which was not an approved or recommended treatment for COVID-19 and did not consult with the obstetric/midwifery practice prior to doing so.

13. On September 21, 2021 Dr. Nass prescribed hydroxychloroquine and a “z-pak” for Patient 3. Dr. Nass’s September 21, 2021 progress note for Patient 3 indicated that Patient 3 was “28 yo 6 mos pregnant”, referenced a positive test at urgent care, and stated that the assessment and plan was “stop montelukast, HCQ, Z-pak, fluids, rest”. The progress note contains no patient history, no physical examination, no medical decision-making, no patient informed consent, no coordination of care, and no recommended follow-up.

14. On June 15, 2020, the United States Food and Drug Administration (“FDA”) revoked the Emergency Use Authorization for chloroquine phosphate (CQ) and hydroxychloroquine sulfate (HCQ) based on information that the drug

may not be effective to treat COVID-19 and that the drug's potential benefits for such use do not outweigh its known and potential risks.

15. The FDA has not authorized or approved the use of Ivermectin for use in preventing or treating COVID-19 in humans.

16. [withdrawn]

17. [withdrawn]

18. Board Rules Chapter 6 establishes Telemedicine Standards of Practice. Physicians using telemedicine in providing health care will be held to the same standards of care and professional ethics as those providing traditional care, §§ 1(3), 3(3). Chapter 6 sets forth practice guidelines associated with obtaining a medical history and physical examination § 3(7), informed consent § 3(9), coordination of care § 3(10), follow-up care § 3(11), medical records § 3(13), privacy and security § 3(14), disclosure and functionality § 3(16), patient access and feedback § 3(17). Absent a valid physician-patient relationship, a licensee's prescribing to a patient based solely on a telephonic evaluation is prohibited. § 20.

19. [withdrawn]

20. [withdrawn]

21. [withdrawn]

22. On December 9, 2021, Dr Nass represented to the Board that "everything I say in public is accurate."

23. [withdrawn]

24. [withdrawn]

25. On January 12, 2022, the Board issued two document subpoenas to Dr. Nass, seeking appointment calendars, a list of patients, and particular patient records.

26. On January 13, 2022, the Board sent Dr. Nass a notice of complaint by letter in case number CR22-4, listing relevant facts and potential bases for discipline. Separately, the Board sent Dr. Nass a list of additional questions to answer relating to case CR22-4. The January 13, 2022 notice of complaint, and separate list of questions, requested a response within 30 days.

27. On January 24, 2022, the Board issued a Notice of Hearing in Complaint Nos. CR21-191, CR21-210, and CR22-4.

28. On January 25, 2022, Dr. Nass (through counsel) requested an extension of time to respond to the Board's January 12th subpoenas and January 13th notice of complaint and list of questions. Board Staff granted extensions on January 26, 2022.

29. On February 16, 2022, Dr. Nass (through counsel) filed a lawsuit against the Board and its Executive Director, in an attempt to challenge the Board-issued subpoenas. That subpoena lawsuit remains pending at this writing.³

30. By email on March 4, 2022, Dr. Nass (through counsel) informed the Board that Dr. Nass refused to respond to the Board's January 13, 2022 notice of complaint and list of questions.

31. On March 22, 2022, an amended notice of hearing issued in this matter.

32. On June 17, 2022, Board Staff (through counsel) requested financial documents from Dr. Nass (*see infra* regarding potential imposition of costs). Dr. Nass responded (through counsel) on July 21, 2022, declining to provide any financial documents.

33. On September 26, 2022, a second amended notice of hearing issued in this matter.

POTENTIAL DISCIPLINARY SANCTIONS

If the Board finds by a preponderance of the evidence admitted at hearing that there are one or more grounds for imposing discipline against Dr. Nass's license, the Board may impose any discipline permitted under 10 M.R.S. § 8003(5)(A-1) and 32 M.R.S. § 3282-A(2), in any combination, including:

- A. Refuse to issue or renew, modify or restrict a license.
- B. Issue a Warning, Reprimand, or Censure.
- C. Suspend a license up to 90 days for each violation of applicable law, rule or condition of licensure or registration. License suspensions may be set to run concurrently or consecutively. Execution of all or any portion of a term of suspension may be stayed pending successful completion of conditions of probation.
- D. Impose a civil penalty up to \$1,500 for each violation of applicable law, rule or condition of licensure.
- E. Impose conditions of probation which may run for such time period as the Board determines appropriate. Probation may include conditions such as additional continuing medical education, medical, psychiatric or

³ See fn. 2 above.

mental health consultations or evaluations, mandatory professional supervision, and other conditions that the Board deems appropriate.
F. Revoke a license.

In addition, if the Board finds that Dr. Nass committed a violation, the Board may assess all or part of the actual expenses incurred by the Board for investigation and enforcement duties performed pursuant to 10 M.R.S. § 8003-D. Such expenses include, but are not limited to, travel expenses and the proportionate part of the salaries and other expenses of investigators or inspectors, hourly costs of hearing officers, expert witness costs, costs associated with record retrieval, and the costs of transcribing or reproducing the administrative record. If claiming an inability to pay assessed costs, Dr. Nass must prove such inability at hearing.

THIRD AMENDED NOTICE OF HEARING

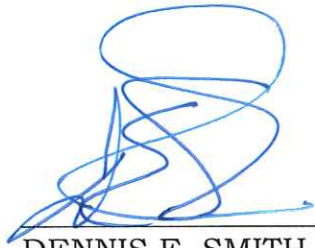
This Third Amended Notice of Hearing is now the operative notice in these related matters, and completely displaces the prior notices of hearing issued on January 24, 2022, March 22, 2022, and September 26, 2022.

HEARING PROCESS

The hearing shall be held pursuant to the Maine Administrative Procedures Act, 5 M.R.S. §§ 9051-9064. The Board has contracted with a Hearing Officer who will advise the Board at the hearing and rule on procedural issues prior to the hearing. Board staff with the assistance of an assistant attorney general will facilitate the presentation of this matter to the Board by gathering and offering evidence, examining witnesses, filing appropriate motions, and responding to motions and objections. Dr. Nass shall have the right to be represented by legal counsel of her choosing at her expense. Dr. Nass may testify before the Board, call other witnesses to testify, cross-examine witnesses, and enter documents into evidence. The hearing will be held in public session of the Board subject to the provisions of 5 M.R.S. § 9057(6). Applications for intervention pursuant to 5 M.R.S. § 9054 will be accepted up to the commencement of the hearing.

Failure to appear at the scheduled hearing may result in a hearing in absentia or disposition by default, and information obtained or evidence presented may be used in subsequent legal proceedings. Any such default may be set aside for good cause shown.

Dated: September 30, 2022



DENNIS E. SMITH
Executive Director
Board of Licensure in Medicine