

STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

In re:) CONSENT AGREEMENT
DAVID B. NAGLER, M.D.)
Complaint No. CR18-169)

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 David B. Nagler, M.D. The parties to the Consent Agreement are: David B. Nagler, M.D. (“Dr. Nagler”), 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. Nagler has held a license to practice medicine in the State of Maine since May 19, 1993 (license number MD13521) and specializes in psychiatry.
2. On July 27, 2018, the Board received a complaint alleging that Dr. Nagler prescribed controlled substances to an addicted patient which it was alleged were misused by the patient, and resulted in rage, delusions, and a hospitalization that negatively impacted the patient’s family. The Board docketed that complaint as CR18-169 and sent it to Dr. Nagler for a response.
3. By letter dated August 27, 2018, Dr. Nagler responded to the complaint. In his response, Dr. Nagler explained that he had been treating the patient since 2011 for Attention-Deficit/Hyperactivity Disorder (“ADHD”). After

a death of a relative in 2016, the patient began using marijuana, alcohol and excessive “daily doses of his Adderall” which resulted in paranoid symptoms and his hospitalization. Dr. Nagler explained the course of the patient’s medical treatment over the next two years, and the patient’s relapse with Vyvanse overuse and resulting hospitalization in 2018.

4. By letter dated November 29, 2018, the Board requested that Dr. Nagler provide a written plan on how he would incorporate universal precautions into his medical practice, explain why he added Vyvanse to the patient’s medications, and review articles on dopamine elevating medications and their relationship to psychosis.

5. By letter dated January 23, 2019, Dr. Nagler responded to the Board’s request and provided guidelines including universal precautions that he planned to follow in the treatment of ADHD. Following its review of Dr. Nagler’s representations, the Board voted to conduct further review of Dr. Nagler’s patient records in six months.

6. On August 22, 2019, the Board subpoenaed 10 patient records from Dr. Nagler. Review of the patient records raised continuing concerns regarding Dr. Nagler’s use of universal precautions, prescribing practices, and medical recordkeeping.

7. On December 13, 2019, Dr. Nagler took a Board pre-approved continuing medical education course on medical recordkeeping.

8. On February 17-19, 2020, Dr. Nagler took a Board pre-approved Intensive Course in Controlled Substance Prescribing.

9. On November 9, 2020, the Board subpoenaed 11 patient records from Dr. Nagler. Review of the patient records raised continuing concerns regarding Dr. Nagler's use of universal precautions, prescribing practices, and medical recordkeeping.

10. On January 1, 2021, Dr. Nagler filed an application to renew his Maine medical license. Pursuant to Board policy, Dr. Nagler's renewal application was pended due to open complaint CR18-169. Pursuant to 5 M.R.S. § 10002 Dr. Nagler's existing license has not expired.

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

12. On February 9, 2021, the Board reviewed complaint CR18-169 and voted to set the matter for an adjudicatory hearing. In addition, the Board voted to offer Dr. Nagler this Consent Agreement to resolve the matter without further proceedings. Absent Dr. Nagler'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 April 10, 2021, the matter will be scheduled for an adjudicatory hearing.

COVENANTS

13. Dr. Nagler admits the facts stated above and agrees that such conduct constitutes grounds for discipline pursuant to 32 M.R.S. § 3282-A(2)(F) for engaging in unprofessional conduct.

14. As discipline for the foregoing conduct, Dr. Nagler agrees to accept, and the Board imposes:

a) For a period of at least two (2) years Dr. Nagler shall comply with the following:

Within thirty (30) days of the effective date of this Consent Agreement, Dr. Nagler shall submit for approval by the Board Chair or designee the name of a Physician Practice Monitor. The Physician Practice Monitor must specialize in psychiatry and the treatment of substance use disorders. Until probation or the requirements of this subparagraph are terminated by the Board, Dr. Nagler shall not practice medicine more than thirty (30) consecutive calendar days without an approved Physician Practice Monitor. Dr. Nagler must cease active practice immediately upon conclusion of thirty (30) consecutive calendar days without an approved Physician Practice Monitor and may not practice thereafter until he has received approval for a Physician Practice Monitor as required by this subparagraph. Dr. Nagler and an approved Physician Practice Monitor must notify the Board within five (5) business days of the termination of the monitoring of Dr. Nagler by the Physician Practice Monitor or if for any reason the monitoring required by this subparagraph has ceased.

The Physician Practice Monitor shall monitor Dr. Nagler's compliance with prescribing and medical recordkeeping standards. The monitoring and medical record review contemplated by this subparagraph may NOT occur solely by telephone and must at least quarterly include in person communication or via HIPAA compliant shared portal access or interface. The Physician Practice Monitor must randomly select and review at least ten (10) patient charts each month. The Physician Practice Monitor shall submit written reports to the Board every month following his/her approval. In the reports to the Board, the Physician Practice Monitor shall provide a summary of his or her monitoring activities, Dr. Nagler's compliance with universal precautions and controlled substance prescribing and medical recordkeeping standards (including monitoring of vital signs for patients prescribed stimulants), and shall identify any issues with medical decision-making or documentation.

Dr. Nagler understands that the Physician Practice Monitor is an agent of the Board pursuant to 24 M.R.S. § 2511. Dr. Nagler shall permit the Physician Practice Monitor full access to his medical practice, including but not limited to all patient information. After receipt by the Board of no fewer than (6) Physician Practice Monitor reports, if recommended by the Physician Practice Monitor, Dr. Nagler may request bi-monthly or quarterly reporting. Upon receipt of such request, the Board shall review all information, and in its sole discretion, may grant or deny such request. After a period of monitoring that is not less than one (1) year, and upon the recommendation of the Physician

Practice Monitor, Dr. Nagler may request that the Board modify or eliminate the requirements of this subparagraph. Upon receipt of such request, the Board shall review all information, and in its sole discretion, may maintain, modify, or eliminate the requirements of this subparagraph for any remaining period of probation. Requests to modify or eliminate the requirements of this subparagraph may be made in six-month intervals after the first year of monitoring.

b) Upon a Board determination that Dr. Nagler is in material noncompliance of any requirement related to the conditions of probation without having sought and received prior approval for noncompliance from the Board, Dr. Nagler's license to practice medicine may be suspended and shall remain suspended until compliance has been achieved as determined by the Board.

15. Upon execution of this Consent Agreement, the Board shall renew Dr. Nagler's license contingent upon his meeting all other licensure requirements.

16. Dr. Nagler acknowledges that while this Consent Agreement is in effect he must communicate directly 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.

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

18. Violation by Dr. Nagler 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.

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

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

21. 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.

22. 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.

23. 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.

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

25. Dr. Nagler has been represented by Kenneth W. Lehman, Esq., who has participated in the negotiation of the terms of this Consent Agreement.

26. 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, DAVID B. NAGLER, 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: 22 March 2021

David B. Nagler M.D.
DAVID B. NAGLER, M.D.

STATE OF Maine
Cumberland, S.S.

Personally appeared before me the above-named David B. Nagler, M.D., and swore to the truth of the foregoing based upon his own personal knowledge, or upon information and belief, and so far as upon information and belief, he believes it to be true.

DATED: March 22, 2021

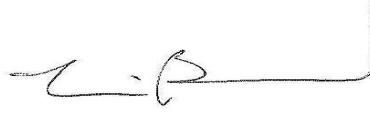
KW
NOTARY PUBLIC / ATTORNEY
~~MY COMMISSION ENDS:~~ _____
ME BAR #3283

DATED: March 22, 2021

KW
KENNETH W. LEHMAN, Esq.
Counsel for David B. Nagler, M.D.

STATE OF MAINE BOARD
OF LICENSURE IN MEDICINE

DATED: April 13, 2021



LOUISA BARNHART, M.D., Chair

STATE OF MAINE DEPARTMENT
OF THE ATTORNEY GENERAL

DATED: April 14, 2021



MICHAEL MILLER
Assistant Attorney General

Effective Date: April 14, 2021