

**STATE OF NEW HAMPSHIRE
OFFICE OF PROFESSIONAL
LICENSURE AND CERTIFICATION**

BOARD OF MEDICINE

**In Re: Douglas Moran, M.D.
Lic. # 7793**

Docket No.: 23-MED-020

NOTICE OF DECISION DATED 2/16/2024

Enclosed please find a copy of the Board's Order dated 2/16/2024 relative to:

HEARING FINAL DECISION AND ORDER

MOTIONS/PETITIONS FOR RECONSIDERATION OR REHEARING:

Pursuant to N.H. Code Admin. R. Plc 206.29(a) ("Rules") and RSA 310:14, II, motions/petitions for reconsideration or rehearing shall be filed within 30 calendar days after service of a final adjudicative order. Pursuant to Rule 206.29(b), the Motion/Petition shall: 1) clearly identify points of law or fact that the movant asserts the Board and/or Presiding Officer has overlooked or misapprehended; 2) contain such argument in support of the motion as the movant desires to present; and 3) be served by the movant on all other participants in accordance with Rule 206.11. Pursuant to Rule 206.29, no answer to a motion/petition for reconsideration or rehearing shall be required, but any answer or objection filed shall be delivered to the Presiding Officer's Office within 5 working days following receipt of service of the motion/petition for reconsideration. Pursuant to RSA 541:5, upon the filing of such motion/petition for rehearing or reconsideration, the Board or Presiding Officer shall within ten days either grant or deny the same, or suspend the order or decision complained of pending further consideration, and any order of suspension may be upon such terms and conditions as the Board or Presiding Officer may prescribe.

RIGHT TO APPEAL:

Pursuant to RSA 310:14, III, appeals from a decision on a rehearing and/or motion for reconsideration shall be by appeal to the New Hampshire Supreme Court pursuant to RSA 541. Pursuant to RSA 541:6, within 30 days after the application for a rehearing is denied, or, if the application is granted, then within thirty days after the decision on such rehearing, the applicant may appeal by petition to the New Hampshire Supreme Court. Pursuant to RSA 310:14, III, no sanction shall be stayed by the Board during an appeal.

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Docket No.: 23-MED-020

FINAL DECISION AND ORDER – 01/29/24

I. PARTICIPANTS:

Board Members and Support Staff and Counsel:

Dr. Jonathan Eddinger, Board President and Member (via Zoom)¹
Dr. Marc L. Bertrand, Board Vice President and Member
Dr. David Goldberg, Board Member
Nina Gardner, Board Member
Linda Tataarczuch, Board Member

Board Administrators and Counsel:

Charlene Anstead, OPLC Board Administrator
Shane Goulet, Esq., OPLC Board Counsel
Cassandra Brown, Esq., OPLC Board Counsel

Presiding Officer:

Nikolas Frye, Esq., OPLC Hearings Examiner
Thomas Pappas, Jr., OPLC Hearings Clerk

Parties:

Marissa Schuetz, Esq., Hearing Counsel
Collin Phillips, Esq., Hearing Counsel
Michael Connelly, Esq., Counsel for the Licensee
Kathleen Mahan, Esq., Counsel for the Licensee

¹ The Board voted pursuant to RSA 91-A:2, IV to allow Dr. Jonathan Eddinger to participate remotely via Zoom video and audio conferencing. He could see and hear and be seen and heard throughout the hearing. The Board followed the requirements of the statute when voting.

Dr. Douglas Moran, Licensee

II. CASE SUMMARY/PROCEDURAL HISTORY:

On or about 12/06/21, the Office of Professional Licensure and Certification, Division of Enforcement (“OPLC Enforcement”), acting on behalf of the Board of Medicine (“Board”), received a complaint alleging concerns that Douglas Moran, MD (“Licensee”) had touched the Complainant in a sexual manner while performing post-operative physical exams on her on 06/18/18 and 08/07/18. After investigation by OPLC Enforcement, the Board voted to initiate a disciplinary proceeding on an expedited basis. A final hearing in this matter was held on 01/29/24. This final decision and order follows.

III. SUMMARY OF THE PROPOSED EVIDENCE AND EVIDENTIARY RULINGS:

The Board received the following evidence pursuant to RSA 541-A:33 and Plc Rules 206.22 and 206.18(d):

A. Exhibits were submitted by Hearing Counsel, numbered as follows:

1. 12/03/21 Complaint **Redacted**
2. 01/04/22 Response
3. Relevant VV Medical Records **Redacted**
4. 06/27/23 Summary of Interview with VV
5. 09/14/23 Written Statement of Dr. Strapko
6. 10/16/23 Summary of Interview with RV
7. 10/25/23 Summary of Conversation with Dr. Strapko
8. 11/14/23 Summary of Interview with LPN LaPointe
9. 11/07/23 Concord Orthopaedics Subpoena Response and 11/14/23 supplemental page **Redacted**
10. 12/20/23 Additional Information provided by Concord Orthopaedics
11. Prior Complaints Involving Licensee **Redacted and Sealed**
12. 11/09/23 Report of Investigation, Eric Goulet **Redacted**
13. 06/27/23 Audio/Video Recording of VV’s Interview
14. 10/18/23 Audio/Video Recording of Licensee’s Interview
15. 11/13/23 Audio/Video Recording of Interview with LNA Simard (**A portion excluded via instruction.**)

B. Exhibits were submitted by the Licensee and labeled as follows:

- A. 03/05/21 Demand Letter
- B. 05/03/21 VV Email to Attorney Peter Meyer
- C. 05/14/23 Memorandum from Emily Baker, MD

- D. 08/01/23 Verified Petition for Emergency Temporary Suspension of Licensure Pursuant to RSA 310:12, IV and NH Code Admin. R. Title Plc 206.07
- E. 08/31/23 Letter from Attorney Rose Marie Joly to Attorney Marissa Schuetz
- F. 09/12/23 Email Exchange between Attorney Rose Marie Joly and Attorney Marissa Schuetz
- G. 10/18/23 Dr. Moran's Motion for Subpoena of Dr. Strapko's records relating to VV.
- H. 12/20/23 Additional Emailed Subpoena Response of Concord Orthopaedics
- I. 01/11/24 Report of Jillian Kalosky
- J. 01/11/24 Report of Lara Bricker (re: Dr. Strapko)
- K. **Withdrawn**
- L. **Excluded**
- M. **Excluded**
- N. **Excluded**
- O. 11/27/23 Report of Lara Bricker (re: Rodney Vermeulen)
- P. Concord Orthopaedics patient shorts
- Q. **Excluded**

C. Sworn testimony was received from:

- 1. Valerie Vermeulen, Complainant (called by Hearing Counsel)
- 2. Eric Goulet, OPLC Investigator (called by Hearing Counsel)
- 3. Faith LaPointe (called by Licensee)
- 4. Dr. Douglas Moran (called by Licensee)
- 5. Addy Harwood (called by Licensee)

The Presiding Officer handled the admissibility of Exhibits prior to the final hearing in this matter.

The Presiding Officer fully admitted all Exhibits, except those noted as withdrawn or excluded above.

Some of the Exhibits were also partially redacted pursuant to RSA 91-A:5, IV to protect personal identification information upon approval by the Presiding Officer. Exhibit 11 was sealed pursuant to an order issued on 01/25/24. A portion of the Complainant's testimony was held in non-public pursuant to RSA 310:10, XIII(c). After the Hearing had closed, the Licensee also sought to admit supplemental written evidence and proposed findings of fact, which the Presiding Officer denied.

IV. **CONDUCT OF THE HEARING AND EVIDENCE PRESENTED:**

The hearing was held pursuant to RSA 310:10 with the burden of proof, by a preponderance of the evidence, placed upon Hearing Counsel.² *See* Rule 206.07(e) *and* Rule 206.24(c). The issues before the Board were:

- (1) Whether the Licensee has engaged in professional misconduct as defined at RSA 329:17, VI(d) and/or RSA 329:17(i) (*See* Med Rules 501.01 and 501.02(h) and Code of Medical Ethics: Current Opinions with Annotations (June 2016 Edition) as adopted by the American Medical Association, i.e. Principles I, II, III, IV and/or VIII and Opinions 9.1.1 and/or 9.1.3) by allegedly touching a patient in a sexual manner while performing post-operative physical exams on the individual in 2018.
- (2) If the Presiding Officer makes a finding of misconduct, what if any discipline should it impose pursuant to RSA 329:17, VII and/or RSA 310:12.

NOH at II.(c).³

The Board heard evidence related to these inquiries as summarized below.

HEARING COUNSEL'S CASE-IN-CHIEF:

Valerie Vermeulen, Complainant:

The Complainant testified that during two separate post-operative examinations on her knee in 2018, the Licensee moved one of his hands quickly up her thigh and stroked and lightly penetrated her vagina with his fingers.⁴ She said that after the second visit at which the Licensee touched her vagina, she asked her husband to accompany her to the next appointment, which he did. The Complainant described the Licensee as being cold toward her at that visit, engaging only with her husband. According to her testimony, no inappropriate touching occurred at the visit with her husband, or any visit that preceded the two incidents when the Licensee touched her vagina. Nonetheless, the Complainant stated

² The Presiding Officer instructed the Board that the burden of proof for Hearing Counsel is clear and convincing evidence if seeking revocation of a license. *See* Rule 206.24(g).

³ The Notice of Hearing was amended by a prehearing conference order to change "Board" to "Presiding Officer" in order to comport with RSA 310:10.

⁴ The Licensee had performed a knee surgery on the Complainant for a root tear meniscus.

the Licensee had made some comments to her about her appearance during those other office visits. She characterized these comments as inappropriate. She also acknowledged that her knee surgery was successful.⁵

During cross examination, she acknowledged that she may have, on separate occasions, provided some inconsistent details regarding what occurred at the two visits where she testified that the Licensee touched her vagina. The Complainant also explained that the traumatic impact of the events affected how she responded to them. She denied that her primary goal in pursuing and hiring attorneys to address what had occurred was to obtain a financial settlement; recounted the difficulties she had in finding an attorney to assist her; and noted she was averse to litigating the matter. She stated she wanted to hold the Licensee accountable for his actions and to protect other female patients. There were also multiple questions the Complainant was asked to which she responded she could not recall given the passage of time.

Eric Goulet, OPLC Investigator:

Mr. Goulet generally testified to his investigation in this matter and the contents of his report of investigation. He explained that the complaint came to his attention in June of 2023. He clarified that it was filed in 2021 and had previously been with the Board's Medical Review Subcommittee. He stated he was unaware of why it took so long for the complaint to reach him. Upon cross examination, Mr. Goulet was questioned about the "08/01/23 Verified Petition for Emergency Temporary Suspension of Licensure Pursuant to RSA 310:12, IV and NH Code Admin. R. Title Plc 206.07". He explained that he did not author or file the Verified Petition, although he had read it. He further explained that the Board had denied

⁵ The record showed the Complainant had post-operative visits on 5/15/2018, 6/18/2018, 8/7/2018, and 10/29/2018. *See i.e.*, Exh. A. The Complainant's testimony indicated the visits where she said the Licensee stroked and lightly penetrated her vagina with his fingers occurred on 06/18/18 and 08/07/18. Her testimony also indicated that her husband attended the 10/29/18 visit.

the request for an emergency suspension of the Licensee's license, initiated a disciplinary proceeding, and requested the final hearing be scheduled for its October regular meeting (which it originally was).⁶

Mr. Goulet was also cross examined about two other female complainants who had previously filed complaints against the Licensee alleging sexual misconduct.⁷ His testimony revealed that the investigators who worked on those cases determined there was no credible evidence to proceed with either complaint. He explained that the Board therefore dismissed both those complaints without ever initiating a disciplinary proceeding. In addition to those two complaints, Mr. Goulet answered questions about his conversations with Rodney Vermeulen, who is the Complainant's husband. He testified that Mr. Vermeulen corroborated Ms. Vermeulen's position that she wore medical gowns during her office visits with the Licensee by stating that she had worn a gown when he attended an appointment with her. Counsel for the Licensee also highlighted during cross examination that Mr. Goulet's written summary of his conversation with Mr. Vermeulen stated in part: "Mr. Vermeulen reported that he was not sure if his wife had been sexually assaulted or not by Dr. Moran but was concerned." Exh. 6 at HC0052.

Mr. Goulet also acknowledged on cross examination that after he wrote his report of investigation, he learned new information related to this matter, which was contained in a 01/11/24 report authored by the Licensee's private investigators. *See* Exh. I.⁸ According to his testimony, the report stated that Concord Orthopaedics had conducted internal investigations related to Ms. Vermeulen's complaint,⁹ as well as the previous complaints involving the Licensee that were filed in 1995 and 2019 respectively. Mr. Goulet explained that in October of 2023 he had sent a subpoena to Concord Orthopaedics that should

⁶ The final hearing was rescheduled multiple times.

⁷ The two other complaints were filed in 1995 and 2019, respectively, and did not involve the Complainant in this matter.

⁸ Exhibit 11 is a report generated after an independent investigation into Ms. Vermuelen's complaint conducted by private investigators hired by the Licensee.

⁹ As a point of clarity, there were three investigations into the Complainant's allegations: OPLC's, *see* Exh. 12; the Licensee's investigators', *see* Exhs. I, J, and O; and Concord Orthopaedics', *see* reference to same in Exh. I (any written reports produced as part of these investigations were not provided as exhibits by either party).

have resulted in him receiving information related to the internal investigations referenced in the report authored by the Licensee's private investigators, but did not. Mr. Goulet also acknowledged that he had tried to obtain the Complainant's 2021 mental health records pertaining to the allegations in this case. He said the Complainant's therapist first answered his request by providing a 09/14/23 emailed statement in which she summarized her care for the Complainant. *See* Exh. 5. Mr. Goulet explained that when he requested the actual mental health records, the therapist informed him she had retired and had shredded all her client records, including the Complainant's. *See* Exh. 7.

LICENSEE'S CASE-IN-CHIEF:

Faith LaPointe:

Ms. LaPointe testified that she was a medical assistant for the Licensee in 2018. She described the Licensee as "a creature of habit" and explained that he was strict about following his office protocols, including those requiring patients to wear loose fitting shorts during knee visits. She also said that the Licensee typically dictated his visit notes in the examination room in front of a patient in case he or she had any questions. According to her testimony, the Licensee never asked a patient to dress a certain way for an examination and relied upon his medical assistant to know his schedule and ensure patients were in proper attire before he came into the examination room. Upon Board questioning, she clarified that the Licensee had no idea what patient was in an examination room until he picked up the written chart outside the door right before the visit.

Licensee:

The Licensee denied the Complainant's testimony that in 2018 he had stroked and lightly penetrated her vagina with his fingers during two of the post-operative examinations he had conducted on her. He stated he had no independent recollection of the Complainant until he received a demand letter from her attorney in 2021. The Licensee said that his protocol for post-operative knee examinations was

that the patient wear loose fitting shorts or loose fitting pants (such as stretchy pants). The Licensee also demonstrated the general examination procedure for the hip palpitations he had conducted on the two previous patients whose complaints had been dismissed by the Board without a disciplinary proceeding. He explained that one of these patients later returned for his care. His testimony also revealed that the Concord Police Department never brought charges against him in relation to the other of these patients because they found her not to be credible. The Licensee then demonstrated the procedures he would have conducted on the Complainant in this case during the two post-operative examinations in question. He explained that the highest his hands would have reached would be her mid-thigh when checking for potential blood clots.

The Licensee also addressed what he thought were inconsistencies in the Complainant's statements. He stated that she would not have been placed in a gown but instead shorts, per his written protocol. He also stated that he would not have viewed X-rays in her presence, as she stated during her testimony, because his computer is in his counseling room, not a patient examination room. His testimony also contextualized comments he had made to the Complainant, which she had testified to be inappropriate. The Licensee also affirmed that he routinely dictates his notes in front of his patient toward the end of the visit, which contradicted the Complainant's testimony that she had not observed him dictate some of the notes in her medical records. Later, upon Board examination, however, the Licensee acknowledged it is possible that he did not take some notes in front of the Complainant but explained that it was unlikely because it was his routine to do so.

Addy Harwood:

Ms. Harwood testified that she was a medical assistant supervisor at Concord Orthopaedics from 2012 to 2022. According to her testimony, she worked with the Licensee at Concord Orthopaedics offices

in New London and Concord, New Hampshire. She also affirmed that she never put knee patients in a gown and that patients were required to wear shorts or loose fitting pants (such as leggings or yoga pants).

CLOSING ARGUMENTS:

The Licensee argued basic standards of fairness were not met in investigating and prosecuting the complaint against the Licensee. The Licensee also contended 1) that there were multiple inconsistencies in the Complainant's testimony and previous statements; 2) the Complainant's motive was bringing an action for money 3) there was a lack of merit to the previous complaints filed against the Licensee; 4) there were statements from the Complainant's husband that were unreliable; and 5) the Licensee had an unblemished record of serving patients over a 43-year career where he had handled over 150,000 patient examinations. The Licensee requested the Board dismiss the case without a finding of professional misconduct.

Hearing Counsel argued the inconsistencies in the Complainant's statements were inconsequential and that the Board should focus on the consistency in the statements made that matter— that the Licensee had sexually assaulted her. She also contended that the Complainant's motive is to ensure the Licensee is held responsible for his actions and to protect other female patients. She claimed her motive is demonstrated by the fact that she is still pursuing this matter with the statute of limitations having passed and without her having obtained any financial gain. Hearing Counsel asked the Board and Presiding Officer to make a finding of professional misconduct and for the Board to administer what it thought were appropriate sanctions.

V. DISCUSSION, FINDINGS OF FACTS, AND CONCLUSIONS OF LAW:

Based upon the evidence that was presented to the Board at the hearing, and considering the presentation and demeanor of all the witnesses, the Board makes the following findings of facts:

1. Douglas Moran, M.D. ("Dr. Moran") is a licensed physician in the State of New Hampshire, practicing under license number 7793.

2. Complainant Valerie Vermeulen was referred to Dr. Moran for knee pain.
3. Dr. Moran assessed Ms. Vermeulen and scheduled her for surgery of her left knee to repair a root tear of the meniscus.
4. Ms. Vermeulen had post-surgery follow up appointments with Dr. Moran on 5/15/2018, 6/18/2018, 8/7/2018, and 10/29/2018.
5. Ms. Vermeulen testified that she was sexually assaulted by Dr. Moran at two separate visits, on 6/18/2018 and 8/7/2018.
6. Ms. Vermeulen testified her vagina was digitally stroked and lightly digitally penetrated by Dr. Moran on 6/18/2018 and 8/7/2018 during the course of his examination of her knee.
7. Ms. Vermeulen brought her husband to the 10/29/2018 appointment as she felt uncomfortable with Dr. Moran.
8. Ms. Vermeulen's husband Rodney Vermeulen spoke with Investigator Eric Goulet on 10/16/2023.
9. Mr. Vermeulen reported he was not sure if Ms. Vermeulen had been sexually assaulted or not.
10. There were several inconsistencies between Ms. Vermeulen's hearing testimony and her prior interview, and within the record presented.
11. Dr. Moran has no independent recollection of Ms. Vermeulen as a patient.
12. Dr. Moran testified that he absolutely, categorically denied sexually assaulting Ms. Vermeulen.
13. Dr. Moran's testimony regarding his standardized practices was not fully supported by the written record.
14. The duration of time between the alleged incidents and the adjudication of this matter resulted in a deterioration of eyewitness accounts.
15. The investigations into the Complainant's allegations were incomplete.
16. Ms. Vermeulen's mental health records were destroyed by her mental health care provider.

Based upon the findings of fact made by the Board, the Presiding Officer makes the following conclusions of law and renders the following legal opinions:

1. Hearing Counsel has failed to establish, by a preponderance of the evidence, that the Licensee engaged in professional misconduct as defined at RSA 329:17, VI(d), as alleged in the Notice of Hearing.
2. Hearing Counsel has failed to establish, by a preponderance of the evidence, that the Licensee engaged in professional misconduct as defined at RSA 329:17, VI(i), as alleged in the Notice of Hearing.
3. Because there is no conclusion that Hearing Counsel established, by a preponderance of the evidence, that the Licensee engaged in professional misconduct, Issue Presented #2 in the Notice of Hearing is moot.
4. Because there is no conclusion that Hearing Counsel established, by a preponderance of the evidence, that the Licensee engaged in professional misconduct, this matter should be dismissed, and the case closed without further action.

“‘Proof by a preponderance of the evidence’ means a demonstration by admissible evidence that a fact or legal conclusion is more probable than not to be true.” Jus Rule 802.01.¹⁰ The New Hampshire Supreme Court has also explained that “... proof by preponderance ‘means that evidence, taken as a whole, shows that [the] fact or cause shown to be proven is more probable than not.’” *Petition of Preisendorfer*, 143 N.H. 50, 54 (1998)(internal citations and quotations omitted). The Presiding Officer cannot, as a matter of law, conclude that the Board’s Findings of Fact demonstrate Hearing Counsel has established, by a preponderance of the evidence, that the Licensee has engaged in professional misconduct as alleged in the notice of hearing. The Presiding Officer renders this conclusions after having read the entirety of the Board’s Findings of Fact (*see, i.e.*, Findings of Fact 7, 9, 10,11, 12, 14, 15, and 16) in conjunction with their specific Findings of Fact that 1) Ms. Vermeulen testified that she was sexually assaulted by the Licensee; and 2) Ms. Vermeulen testified that she had her vagina digitally stroked and lightly digitally penetrated by the Licensee. While the Board confirmed Ms. Vermeulen testified to these things happening, the Board did not find the admissible evidence presented at the hearing was sufficient to find

¹⁰ The Plc 200s have no definition of preponderance of the evidence. Hence the Presiding Officer defaults to the New Hampshire Department of Justice 800 rules definition pursuant to the orders in the Notice of Hearing. *See* NOH at II(b).

that it is more probable than not that they did happen. *Compare* Findings of Fact 1, 2, 3, 4, 7, 8, 9, 11, and 16 *with* Findings of Fact 5 and 6.

VI. CONCLUSION AND DECISION:

Pursuant to RSA 310:10 and RSA 329, the Presiding Officer and Board hereby **DISMISSES** this matter without a finding of professional misconduct or imposing sanctions. Case closed.

DATED: 2/16/2024

____/s/ Nikolas K. Frye, Presiding Officer_____
Presiding Officer
New Hampshire Office of
Professional Licensure & Certification
7 Eagle Square
Concord, NH 03301