

**State of New Hampshire
Board of Medicine
Concord, New Hampshire**

In the Matter of:
Matthew J. Masewic, MD
License No. 12217
(Adjudicatory Proceedings)

Docket No. 16-04

**ORDER OF EMERGENCY CONDITIONAL LICENSE SUSPENSION
AND NOTICE OF HEARING**

1. RSA 329:18-b; RSA 541-A:30, III, and New Hampshire Board of Medicine Administrative Rule (“Med”) 503.01 authorize the New Hampshire Board of Medicine (“Board”) to suspend a license to practice medicine for no more than one hundred twenty (120) days pending completion of an adjudicatory proceeding, in cases involving imminent danger to life or health. In such cases, the Board must commence a hearing not later than 10 days after the date of the emergency order. If the Board does not commence the hearing within 10 days, the suspension order shall be automatically vacated. *See*, RSA 541-A:30, III. The Board may not continue such a hearing without the consent of the licensee to the continuation of the emergency suspension. *See*, RSA 329:18-b and Med 503.01. Postponement of the proceeding is prohibited unless the licensee agrees to continue the suspension pending issuance of the Board’s final decision. *See*, RSA 329:18-b and Med 503.01.

2. Matthew J. Masewic, MD (“Dr. Masewic” or “Respondent”), holds an active license, No. 12217, issued on February 4, 2004, to practice medicine in the State of New Hampshire. Respondent practices medicine at the Hillsborough County Department of

Corrections (“HCDOC”) in Manchester, New Hampshire, and at New Hampshire Hospital in Concord, New Hampshire.

3. The Board has received information indicating that the continued practice of medicine by Dr. Masewic at the HCDOC poses an imminent threat to life, safety and/or health, which warrants the temporary conditional suspension of Dr. Masewic's license to practice medicine for any correctional facility in this New Hampshire pending a hearing on whether permanent and/or temporary disciplinary sanctions should be imposed. An investigation was conducted and a Report of Investigation was provided to the Board.

4. In support of this *Order of Emergency License Restriction and Notice of Hearing*, the Board alleges the following facts:

- A. On November 4, 2011, JP became incarcerated at HCDOC. JP had a history of heart problems, depression, and chronic pain. JP had been taking a number of prescription medications including Klonopin, Dilaudid, and Methadone. Respondent discontinued all of JP's prescriptions and placed JP on a “detox watch.” Respondent had not met, examined, or discussed discontinuing these medications with JP. Over the next several days, JP repeatedly asked for his medications.
- B. On November 8, 2011, JP was transferred to the emergency room after developing chest pain radiating down his left arm and staff was unable to reach Respondent. JP was admitted to the hospital for a cardiac work up as he had cardiac risks. On November 9, 2011, JP was returned to HCDOC with orders for Dilaudid 4 mg, Klonopin 0.5 mg,

methadone 10 mg for pain, and Colace 100 mg. Despite being was notified of these orders, Respondent again stopped all medications for JP except the Colace.

- C. Respondent saw JP for the first time on November 10, 2011, during which time he noted that JP complained of chronic back pain and withdrawals from narcotics. Respondent explained narcotic withdrawal symptoms and their expected duration. Respondent prescribed clonidine and continued the detox watch until November 16, 2011, on which date, an RN, and not Respondent, provided a Physical Assessment of JP.
- D. On July 12, 2012, WR became incarcerated at the HCDOC. On July 24, 2012, WR submitted a Health Services Request Form noting, "Back pain for the last two days. Can't climb up and down from second bunk, Pain level 10." In a Nursing Evaluation Note, an LPN documented in the Objective section that WR was ambulating with difficulty, moaning, and had facial grimacing. The Assessment section stated, "Acute (?chronic) pain." The Plan section documented placing WR on lower bunk and full rest. There is no documentation in the records that the Respondent was notified or provided any orders.
- E. On August 1, 2012, WR submitted another Health Services Request Form and reported having problems going to the bathroom. In the Nursing Assessment, an RN noted in the Objective section, "Small BM

yesterday. Small BM two days ago. Positive bowel sounds right upper and lower quadrant. Hypobowel sounds left upper and lower quadrant.

Abdomen soft, nondistended.” The Plan section states, “get up and move around. Drink more po fluid. Colace as directed x5 days.”

There is no documentation in the records that the Respondent was notified or provided any orders.

- F. On August 5, 2012, WR submitted a Health Services Request Form in which he requested Preparation H. It is documented that WR was provided with Preparation H for hemorrhoids and other complaints.
- G. On August 8, 2012, WR complained of not feeling well and having difficulty sitting down due to hemorrhoids. It is also noted that his lower left lip is red, swollen, and warm to the touch. It is documented that, upon assessment by nursing staff, no hemorrhoids were visualized but that both buttocks had 4 inch round, red areas that were warm to touch. The record noted that WR was encouraged to take warm showers and rest and that a call was made to Respondent. Respondent, who never examined WR and did not have his records available for review at the time of the call, reported that he felt the likely diagnosis was a prison assault, but also ordered antibiotics for possible cellulitis.
- H. On August 9, 2012, an Interdisciplinary Progress Note documented that WR was noted to be tremulous, diaphoretic, pale and was reporting difficulty voiding. His pulse was documented as 156 and he reported

lower abdominal pain. Respondent was notified and WR was transferred to the emergency room. WR was subsequently diagnosed with pelvic and epidural abscesses, which resulted in complications of paraplegia.

- I. On December 16, 2014, AK was treated in a hospital emergency room for a periurethral cyst. At the time AK was 30 1/7 weeks pregnant. AK was prescribed clindamycin and sitz baths to treat the periurethral cyst. AK was discharged to the Rockingham County Department of Corrections.
- J. The next day, AK was transferred to HCDOC. AK reported that she had been treated for a ruptured ovarian cyst, but her records from both the emergency room and Rockingham County Department of Corrections clearly describe an infected vulvar cyst. AK's prescription for clindamycin was not filled and instead was placed in her personal belongings storage. On this date, Respondent was contacted by phone regarding AK, who was described as a pregnant patient with concerns for withdrawal and an apparent need to treat her with antibiotics for a rupture ovarian cyst. Respondent gave phone orders for prenatal vitamins and a referral to a methadone clinic. However, the methadone clinic was not able to take AK at the time and AK was placed on a waiting list.

- K. On December 18, 2014, Respondent was contacted again by phone regarding AK, a pregnant patient that may be going through withdrawals. A nurse documented “no visible or measurable signs of withdrawal.” That night, Respondent evaluated AK for symptoms of withdrawal. Respondent stated that at the time of this evaluation, nursing staff was actively attempting to get the records regarding AK’s recent treatment and the need for antibiotics, but that the patient made no complaint of symptoms at the time.
- L. On December 22, 2014, AK reported that she was not feeling the normal amount of baby movement and requested a check of the fetal heartbeat.
- M. On December 28, 2014, AK submitted a “sick slip” requesting to see the doctor immediately and was complaining of heartburn, dry, cracked skin and leaking fluids. She was requesting her antibiotics and treatment for her cyst, which was painful and getting bigger. It was also noted that AK had not felt the baby move all day. An LPN documented a “strong and steady” fetal heart rate of 137 bpm. It was also documented that the patient was pushing on right Skenes gland with drainage and that there was a “sick slip for MD to review.” Respondent stated he was called on this day and it was reported that AK was complaining of an infected cyst and that the area appeared swollen. Respondent stated that the LPN reported that after evaluation

AK and the fetus were “stable.” Respondent decided not to prescribe any antibiotics until he evaluated her the next day.

- N. The next day, on December 29, 2014, the LPN documented that at 11:00 am, AK complained of abdominal pain that started at 10:15 am and the feeling of having to pass a bowel movement. It was documented that AK said she could not sit due to the pain. The LPN documented that AK was able to talk and carry on a conversation with no tears, and so she was encouraged to take deep breaths and try to relax. At 11:05 am, it was documented that AK was seen sitting on the toilet with no difficulty. She was instructed to drink water and increase fluid intake and was given Colace. There is no documentation in the records that the Respondent was notified or provided any orders.
- O. At 5:25 p.m. on December 29, 2014, it was documented that AK continued to complain of constant lower abdominal pain radiating into her back, which improved when she moved around. AK was placed on the MD list. At 5:30 p.m., AK complained of feeling the baby in her vagina and so she was brought to medical. The baby was noted to be crowning and 911 was called. The baby was delivered stillborn at HCDOC. Upon being transferred to the hospital, a CBC revealed that AK had a white blood cell count of 28.58.
- P. MY was an inmate in the HCDOC, who had made multiple visits to the medical clinic over a period of a year and a half for various complaints

including migraine headaches with blurred vision and nausea, back pain, fungal infection, depression, and hearing voices.

- Q. Between March and May of 2015, MY made repeated requests to see a doctor for severe headaches and for medication. At various times, MY was given aspirin, Tylenol, and Motrin by the nursing staff.
- R. On July 6, 2015, Respondent performed an annual exam on MY. Respondent documented a diagnosis of migraine headaches.
- S. Between July 11, 2015 and August 8, 2015, MY submitted seven “sick slips” with complaints of a headache. MY was treated on six separate days and received six separate doses of either Motrin or Tylenol.
- T. On August 29, 2015, MY requested to be seen by the doctor for his migraine headaches. The nursing evaluation note documented “Chart in for MD review.” At the bottom of the page, Respondent signed a note stating, “DC all pain meds for six months due to medication rebound headaches.”
- U. On September 2, 8, and 13, 2015, MY submitted “sick slips” requesting treatment for migraine headaches. On September 18, 2015, MY again requested treatment for a severe headache with blurry vision and nausea. A Nursing Assessment for that date noted that MYs chart was given to the doctor for review. Respondent documented at the bottom of the Nursing Assessment that “Resolution of med overuse headaches takes up to six months.”

- V. During the Board's investigation, Respondent explained that he is a contract physician to HCDOC and sees inmates at the jail two evenings a week for a total of 8 clinical hours. He stated that he is also available for phone consultation as necessary. Respondent acknowledged that he is responsible for the acute and chronic medical care of 600 inmates.
- W. Respondent explained, "Inmates put in a 'sick slip' and are then evaluated by a nurse. If the nurse finds that the inmate has a significant medical need or is unsure, either the slip and chart are placed on [his] desk for review, the inmate is given an appointment in [his] clinic, or [he is] called (depending on the acuity of the need)."
- X. Respondent reported that when he receives phone calls from the nurses he does not take notes in that he anticipates that the nurse will record the pertinent details of their conversation.
- Y. Respondent informed the Board that "If a nurse provides medical care that I have ordered, then I am responsible for that care, provided they administer the care in accordance with my orders and in compliance with nursing standards. If they provide nursing care within their scope of practice then they and/or the facility are responsible for the delivery of that care."

5. Based upon the above information, the Board finds that Respondent's continued practice at a correctional facility involves imminent danger to life and/or health. Further, the Board believes there is a reasonable basis for both immediately conditionally

suspending Respondent's license on a temporary basis to preclude him from practicing medicine at any correctional facility in this state, and for commencing an expedited disciplinary proceeding against Respondent pursuant to RSA 329:18-b, 541-A:30, III, and Med 503.01.

6. The purpose of this proceeding will be to determine whether Respondent has engaged in professional misconduct contrary to RSA 329:17, VI and RSA 329:18-b, which warrants the continued imposition of a temporary conditional license suspension, the imposition of permanent disciplinary sanctions, or both. The specific issues to be determined in this proceeding are:

- A. Whether Respondent committed professional misconduct by failing to provide JP with adequate care in violation of RSA 329:17, VI (d); and/or
- B. Whether Respondent committed professional misconduct by failing to provide adequate care to WR in violation of RSA 329:17, VI (d); and/or
- C. Whether Respondent committed professional misconduct by failing to provide adequate care to AK in violation of RSA 329:17, VI (d); and/or
- D. Whether Respondent committed professional misconduct by diagnosing MY with medication overuse in violation of RSA 329:17, VI (c) and/or (d); and/or
- E. Whether Respondent committed professional misconduct by failing to order prophylactic medication to treat MY in violation of RSA 329:17, VI (d); and/or
- F. Whether Respondent committed professional misconduct by failing to provide adequate care to MY in violation of RSA 329:17, VI (d); and/or

- G. Whether Respondent committed professional misconduct by prescribing drugs to patients without establishing a proper physician-patient relationship in violation of RSA 329:1-c and RSA 329:17, VI (d); and/or
 - H. Whether Respondent committed professional misconduct by failing to appropriately supervise nursing staff at HCDOC in violation of RSA 329:17, VI (d); and/or
 - I. Whether Respondent committed professional misconduct by allowing the nursing staff at HCDOC to engage in the unauthorized practice of medicine by diagnosing and treating patients in violation of RSA 329:1, and RSA 329:17, VI (d); and/or
 - J. Whether Respondent committed professional misconduct by failing to maintain adequate documentation in violation of RSA 329:17, VI (k); and/or
 - K. If any of the above allegations are proven, whether and to what extent, Respondent should be subjected to one or more of the disciplinary sanctions authorized by RSA 329:17, VII.
7. While RSA 329:18-a requires that the Board furnish Respondent at least 15 days' notice of allegations of professional misconduct and the date, time and place of an adjudicatory hearing, RSA 541-A:30, III and Med 503.01 require the Board to commence an adjudicatory hearing within ten (10) days after the date of an immediate, temporary license suspension order.
8. The Board intends to complete this adjudicative proceeding within the one hundred twenty (120) day time period provided by RSA 329:18-b and Med 503.01.

Accordingly, neither the date of the initial evidentiary hearing nor the date for concluding this proceeding shall be postponed or extended unless Respondent agrees to continue the conditional license suspension period pending issuance of the Board's final decision in this matter. *See* RSA 329:18-b, 541-A:30, III, and Med 503.01.

THEREFORE, IT IS ORDERED that Respondent's New Hampshire license to practice medicine is immediately conditionally suspended such that he is precluded from practicing medicine in any correctional facility in New Hampshire until further order of the Board; and,

IT IS FURTHER ORDERED that an adjudicatory proceeding be commenced for the purpose of resolving the issues articulated above pursuant to RSA 329:17; 329:18-a; 329:18-b; 541-A:30, III; and Med 503.01. To the extent that this order or the Board's rules do not address an issue of procedure, the Board shall apply the New Hampshire Department of Justice Rules, Part 800; and,

IT IS FURTHER ORDERED that information gathered during the investigation and information set forth in the Report of Investigation shall remain confidential and exempt from public disclosure, unless specifically referred to in this Notice of Hearing, unless and until such time as an adjudicatory hearing commences, at which time such information may become evidence in or the subject of the adjudicatory hearing; and

IT IS FURTHER ORDERED that the identity of the patients shall remain confidential and the patients shall be referred to by initials only. All identifying information for the patients shall be redacted from all documents and the patient's medical records shall remain

confidential and be exempt from the provisions of RSA 91-A and that they be sealed following the hearing; and,

IT IS FURTHER ORDERED that Matthew J. Masewic, M.D. shall appear before the Board on May 4, 2016 at 1:00 p.m., at the Board's office located at 121 South Fruit Street, Concord, N.H., to participate in an adjudicatory hearing and, if deemed appropriate, be subject to sanctions pursuant to RSA 329:17, VII; and,

IT IS FURTHER ORDERED that if Respondent elects to be represented by counsel, at Respondent's own expense, said counsel shall file a notice of appearance at the earliest date possible; and,

IT IS FURTHER ORDERED that Respondent's failure to appear at the time and place specified above may result in the hearing being held *in absentia*, or the imposition of disciplinary sanctions without further notice or an opportunity to be heard, or both; and,

IT IS FURTHER ORDERED that Attorneys Matthew Mavrogeorge, Michelle Heaton and/or other counsel from the Administrative Prosecutions Unit, if deemed necessary, from 33 Capitol Street, Concord, N.H., 03301, are appointed to act as Hearing Counsel in this matter with all the authority within the scope of RSA Chapter 329 to represent the public interest. Hearing Counsel shall have the status of a party to this proceeding; and,

IT IS FURTHER ORDERED that Edmund Waters, or any other person whom the Board may designate, shall act as presiding officer in this proceeding; and,

IT IS FURTHER ORDERED that any proposed exhibits, motions or other documents intended to become part of the record in this proceeding, be filed by the proponent with the Board, in the form of an original and nine (11) copies, and with an additional copy mailed to

any party to the proceeding, and to Attorney Lynmarie Cusack, Counsel to the Board, N.H. Department of Justice, 33 Capitol Street, Concord, New Hampshire 03301.

IT IS FURTHER ORDERED that a witness and exhibit list and any proposed exhibits, pre-marked for identification only, shall be filed with the Board no later than two (2) days before the date of the hearing. Respondent shall pre-mark his exhibits with capital letters, and Hearing Counsel shall pre-mark her exhibits with Arabic numerals; and,

IT IS FURTHER ORDERED that unless good cause exists, all motions shall be filed at least three (3) days before the date of any hearing, conference, event or deadline which would be affected by the requested relief; and that all responses or objections to such motions or other documents are to be filed, in similar fashion as the motion or other document, within three (3) days of receipt of such motion or other document unless otherwise ordered by the Board; and,

IT IS FURTHER ORDERED that the entirety of all oral proceedings be recorded verbatim by the Board. A shorthand court reporter shall be provided at the hearing by the Board and such record shall be transcribed by the Board if the requesting party or agency shall pay all reasonable costs for such transcription; and,

IT IS FURTHER ORDERED that all documents shall be filed with the Board by mailing or delivering them to Penny Taylor, Administrator, N.H. Board of Medicine, 121 South Fruit Street, Concord, New Hampshire 03301; and,

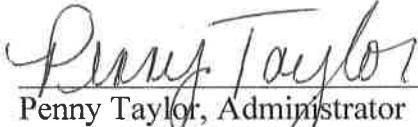
IT IS FURTHER ORDERED that routine procedural inquiries may be made by contacting Penny Taylor, Administrator, N.H. Board of Medicine, 121 South Fruit Street, Concord, New Hampshire 03301, (603) 271-1203, but that all other communications with

the Board shall be in writing and filed as provided above. *Ex parte* communications are forbidden by statute and the Board's regulations; and,

IT IS FURTHER ORDERED that a copy of this Notice of Hearing shall be served upon Respondent by certified mail addressed to the office address he supplied to the Board in his latest renewal application as well as provided to Respondent's attorney. *See*, RSA 329:18, VI, Med. 501.02 (c) and RSA 329:16 (f). A copy shall also be delivered to Hearing Counsel and complainants.

BY ORDER OF THE BOARD/*

Dated: April 28, 2016



Penny Taylor, Administrator
Authorized Representative of the
New Hampshire Board of Medicine

/* Louis Rosenthal, M.D. Board member, recused.