

State of New Hampshire  
Board of Medicine  
Concord, New Hampshire

In the Matter of:

Robert E. Eberhart, M.D.  
License No.: 7386  
(Adjudicatory/Disciplinary Proceeding)

Docket No. 19-05

**ORDER**

Now pending before the New Hampshire Board of Medicine ("Board") is the adjudicatory/disciplinary proceeding in the matter of Robert E. Eberhart, M.D. ("Dr. Eberhart" or "Respondent") based on a "wrong-site" surgery Dr. Eberhart performed on RG on September 21, 2017. At the Board's regularly scheduled meeting on May 1, 2019, the Board reviewed three documents: (1) a *Motion to Bring Forward New Evidence And For Reconsideration of the Board's Determination to Proceed with Discipline* ("Motion"), dated April 16, 2019, submitted by Jonathan A. Lax, Esq., on behalf of Dr. Eberhart; (2) *Hearing Counsel's Response to Respondent's Motion to Bring Forward New Evidence And For Reconsideration of the Board's Determination to Proceed with Discipline*, dated April 23, 2019; (3) *Reply to Hearing Counsel's Response to Respondent's Motion for Reconsideration*, dated April 25, 2019, submitted by Attorney Lax. The Motion from Attorney Lax requests:

"that the Board reconsider its prior determination that disciplinary action is warranted" and "issue a confidential letter of concern."

At the May 1, 2019 meeting, the Board voted to grant Dr. Eberhart's request that the Board consider the new evidence presented in his motion and reconsider its decision to proceed with discipline. After considering the new evidence presented, the Board voted not to pursue discipline and dismiss the adjudicatory/disciplinary proceeding in Docket No. 19-05.

To be clear, the Board does not condone Dr. Eberhart performing a "wrong-site" surgery on RG on September 21, 2017. Nevertheless, in accordance with the Medical Practice Act, RSA chapter 329, the primary purpose of the Board is to protect the public, and the new evidence presented established that Dr. Eberhart's conduct did not rise to the level of misconduct as defined in RSA 329:17, VI.

**THEREFORE IT IS ORDERED** that the adjudicatory/disciplinary proceeding in Docket No. 19-05 is DISMISSED.

BY ORDER OF THE BOARD/\*

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

Dated: May 8, 2019

/\* Linda Tatarczuch, Public Member, recused.