

State of New Hampshire
Board of Medicine
Concord, New Hampshire

In the Matter of:

**Mary L. Fudge, M.D.
Docket #: 20-MED-0013
License No.: 14621
(Adjudicatory Proceeding)**

FINAL DECISION AND ORDER

Before the New Hampshire Board of Medicine ("Board") is an adjudicatory/disciplinary proceeding In the Matter of Mary L. Fudge, M.D. in Docket Number 20=MED-0013.

Background Information

The New Hampshire Board of Medicine ("Board") first granted a license to practice medicine in the State of New Hampshire to Mary Fudge, MD. ("Dr. Fudge" or "Respondent") on October 7, 2009. Respondent holds license number 14621. Respondent practices general surgery in a practice based out of Exeter, New Hampshire.

In and around November 2018, the Board received a notice of a claim being made against Respondent for alleged negligent and unnecessary hernia repair surgery.

The Board commenced an investigation pursuant to RSA 329:18 to determine whether Respondent committed professional misconduct pursuant to RSA 329:17, VI.

Based upon the information gathered during the investigation as outlined herein, the Board found that there was a reasonable basis for commencing an

adjudicatory/disciplinary proceeding against Respondent pursuant to RSA 329:17, I, RSA 329:18-a, and Medical Administrative Rule ("Med") 206.

The Board held an adjudicatory hearing on June 2, 2021. The parties submitted an agreed statement of facts, and Dr. Fudge testified and answered questions from Board members. The Board found Dr. Fudge's testimony to be open, honest, and credible.

Findings of Fact

- A. On or about July 17, 2018, a seventy-one-year-old male patient ("Patient") had AMS 800 Sphincter placement done for urinary incontinence. Following that procedure, Patient reported incisional pain and swelling to his primary care provider on July 26, 2018. His primary care provider noted that Patient exhibited moderate scrotal edema and heavy bruising. The primary care provider referred Patient to a surgeon for evaluation for a possible right inguinal hernia.
- B. On or about July 27, 2018, Patient was seen by Respondent for a chief complaint of hernia. In her office note, Respondent documented that Patient had a prior hernia repair approximately fifteen years ago, but did not document that Patient had recent urological surgery, any of Patient's symptoms in relation to his recent surgery, whether that surgery was performed in an open or laparoscopic manner, or how any of that information might impact any surgical decision making on her part.
- C. Respondent documented that Patient was taking Xeralto, but did not include a separate "Medications" section in her office note; nor did she document any allergies that Patient has.
- D. Respondent documented that there was a hernia on exam, but she did not document the side of the body where she palpated what she believed to be a

hernia on physical examination. There also was no documentation of any scars, an exam of the genitalia, or her observations of Patient limping and holding his groin.

- E. Both Patient's wife and Respondent confirmed that Respondent performed a brief ultrasound examination of the area, which Respondent believed was consistent with an inguinal hernia. Respondent did not document the ultrasound in her notes; nor did she document consideration of further imaging, such as CT, given the complicating factor of recent urological surgery.
- F. Respondent's assessment was that Patient had an incarcerated inguinal hernia. Respondent recommended a right inguinal hernia repair with mesh and booked the surgical case for three days later. There was no documented discussion of the surgical options, including a laparoscopic approach for a potential recurrent hernia.
- G. The scheduling sheet mentioned requesting information from Patient's primary care physician's office, but there is no documentation as to whether such records were received or reviewed prior to the surgery. Respondent acknowledged that she did not identify the sphincter hardware that had been placed by Patient's urologist.
- H. Respondent documented that she discussed the risks and benefits of the surgery with Patient, but the specific risks and benefits were not documented in the record.
- I. On or about July 30, 2018, Patient was taken to surgery for a right inguinal hernia repair. No hernia was found, but there was "a ruptured implant bulb and seroma." Dr. Fudge contacted the treating urology team from the operating room and followed their instructions for irrigating the area and closing the incision. Dr. Fudge apologized to Patient and informed him that

- there was no hernia. Dr. Fudge documented the mistake in her operative note and arranged for Patient's follow-up with his treating urologist.
- J. On or about August 28, 2018, Patient underwent surgery by his urologist to remove and replace the artificial sphincter's reservoir, which was malfunctioning.
 - K. Dr. Fudge admitted her mistake in her response letter to the Board, dated February 8, 2019.
 - L. On July 24, 2020, Dr. Fudge was deposed in the subsequent civil case brought by Patient and his wife. Dr. Fudge admitted liability in her deposition. She testified, under oath, that before proceeding to surgery, she should have spoken to the urologist or reviewed his operative note to confirm the hardware placement. If neither of those opinions was available, she should have obtained a CT scan to confirm the hardware location.
 - M. Dr. Fudge instructed her medical malpractice insurer to settle the civil case. The case settled at mediation in January 2021. The insurer filed a National Practitioner Data Bank entry for the settlement. Allocating the entire amount to Dr. Fudge.
 - N. Dr. Fudge has admitted to changing her practice as a result of this case, both in how she documents and how she evaluates patients for surgery when the surgical field has been previously operated on.
 - O. Dr. Fudge has voluntarily completed multiple Continuing Education courses and materials on hernia surgery and ultrasound interpretation.

Rulings of Law

RSA 329:17, VI provides, in pertinent part, that the Board, after hearing, may take disciplinary action against a person license by it upon finding that the person:

(c) Has displayed medical practice which is incompatible with the basic knowledge and competence expected of persons licensed to practice medicine or any particular aspect or specialty thereof.


(d) Has engaged in dishonest or unprofessional conduct or has been grossly or repeatedly negligent in practicing medicine or in performing activities ancillary to the practice of medicine or any particular aspect or specialty thereof . . .

Based on the findings of fact set forth above, the Board rules that Dr. Fudge did not engage in professional misconduct under RSA 329:17, VI (c) or (d) in her treatment of Patient on July 30, 2018. In reaching this decision, the Board places significant weight on the fact that Dr. Fudge recognized her error immediately, consulted the urology team that performed the previous surgery for advice, was candid with the Patient and his wife about her error, and admitted her mistake in her response letter to the Board.

THEREFORE, IT IS ORDERED that the adjudicatory/disciplinary proceeding in Docket No. 20-MED-0013 is DISMISSED.

BY ORDER OF THE BOARD*

Dated: June 17, 2021


Christine Senko, Administrator
Authorized Representative of the
New Hampshire Board of Medicine