

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

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**BOARD OF MEDICINE**

**In Re: David Lapides,  
Med. License # 20979**

Docket No.: 22-MED-003

**FINAL ORDER AND DECISION - 04/06/22**

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**I. ATTENDEES:**

David Conway, Board President  
Nina Gardner, Board Member  
Emily Baker  
Richard Kardell  
Jonathan Ballard  
David Goldberg  
Susan Finerty  
Linda Tatarczuch, Board Member  
Nikolas Frye, Presiding Officer  
Attorney John Garrigan, Hearing Counsel  
David Lapides, Licensee (via Zoom)  
Attorney Michael Haley, Board Counsel  
Victoria Davies, OPLC Fraud Investigator  
Christine Senko, Administrator Supervisor  
Jessica Kennedy, Board Administrator

**II. CASE SUMMARY/PROCEDURAL HISTORY:**

On 03/01/22, the Board of Medicine ("Board") learned that David Lapides ("Licensee") had self-reported to the Office of Professional Licensure and Certification, Division for Enforcement ("OPLC Enforcement") that he had been arrested in July of 2021 on felony charges of distribution of child pornography in the State of Virginia. OPLC Enforcement investigative staff conducted an expedited investigation and learned the Licensee had plead guilty to these charges. On 03/11/22, after deliberating

on the matter, the Board voted to commence an adjudicative proceeding to determine whether the Licensee's conduct constitutes professional misconduct. On 04/06/22 a disciplinary adjudicatory hearing was held. This final order and decision follows.

### **III. SUMMARY OF THE EVIDENCE:**

The Board received the following evidence pursuant to RSA 541-A:33 and Rule 206.09:

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

1. Licensee Email to OPLC Enforcement with self-report statement, dated 03/02/22
2. Licensee self-report statement, dated 03/01/22
3. Certified court records from the Circuit Court for the City of Charlottesville, Virginia
4. Letter from Fred S. Berlin, M.D. re: David Lapidès, dated 03/10/22
5. Practitioner profile and Interstate Compact records for David Lapidès

b. Testimony was received from:

1. Attorney John Garrigan (offer of proof)(witness present was Victoria Davies, OPLC Fraud Investigator)
2. David Lapidès, MD

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

The issues presented in this disciplinary adjudicatory hearing are as follows: 1) whether the Licensee violated RSA 329:17, VI(c) where he distributed child pornography and was arrested and convicted of same in Virginia; 2) whether the Licensee violated RSA 329:17, VI(d) where he distributed child pornography and was arrested and convicted of same in Virginia; 3) whether the Licensee violated RSA 329:17, VI(d) where he was arrested for distribution of child pornography in July of 2021, convicted of same in Virginia on 01/18/22, released to home confinement on 02/10/22, and failed to report his conduct to the Board until 03/01/22; 4) whether the Licensee violated RSA 329:17, VI(j) where he has been convicted on felony charges of distribution of child pornography in Virginia; and 5) if the Board makes a finding of misconduct, what if any discipline should it impose pursuant to RSA 329:17, VII. Pursuant to Rule 206.10(a), Hearing Counsel has the burden of proving its case by a preponderance of the

evidence. The Board admitted all evidentiary exhibits and allowed Hearing Counsel to present his case via an offer of proof in lieu of witness testimony.<sup>1</sup> The credible evidence presented at the hearing allows the Board to find the following facts.

Victoria Davies, OPLC Fraud Investigator was sworn in under oath as the sole witness for Hearing Counsel's offer of proof. Ms. Davies performed the investigation in this matter and reviewed Exhibits 1 through 5 in relation to it. Her investigation yielded the following. Respondent holds License #20979 and is part of the multistate compact with New Hampshire as his State of Principal License.<sup>2</sup> Exhibit 5. On or about 03/02/22, the Licensee sent an email to the Board self-reporting a recent felony conviction for distribution of child pornography in the state of Virginia. *See* Exhibit 1. Included with the email were a written statement from the Licensee and a copy of multiple court filings related to the conviction. *See* Exhibits 2 and 3. On or after 03/10/22, Ms. Davies also received a letter from Dr. Fred S. Berlin, M.D., Ph.D., which had been referenced in Licensee's written statement. *See* Exhibit 4.

The information provided by Licensee shows that in July of 2021 he was arrested and later charged on two felony counts of distribution of child pornography in the State of Virginia. Exhibits 2 and 3. The factual allegations related to the arrest were that the Licensee was accused of having a video containing child pornography on his smartphone, which he shared in a chat application on 03/21/21 and 03/29/21. Exhibit 3. On 01/18/22, the Circuit Court of the City of Charlottesville, Virginia accepted Licensee's plea of guilty to two counts of distribution of child pornography in relation to this matter. *Id.* Further orders were later entered by the Court scheduling the case for sentencing in May of 2022 and placing Licensee on home electronic incarceration with significant restrictions, including but not limited to: 1) residing at his home except for verified medical appointments for himself, to attend court or to see his attorney; 2)

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<sup>1</sup> The Licensee had no objection to Hearing Counsel's Exhibits or allowing Hearing Counsel to present via an offer of proof. The Presiding Officer reserved Licensee's right to cross examine the witness.

<sup>2</sup> Through the compact, he is licensed in more than 20 states.

supervised visitation only with his children; 3) no contact with any other children under the age of 18; 4) no children under the age of 18 at his home; and 5) limited use of the internet for employment or therapy with supervision. *Id.*

Hearing Counsel explained Licensee has sought psychiatric treatment in relation to his use of child pornographic material through Dr. Fred S. Berlin, who continues to provide him care. Dr. Berlin wrote a letter in support of the Licensee to the Board stating he has “found no evidence that he [Licensee] would pose a risk to other patient’s [sic] in the future”. Exhibit 4. The letter further explains that Licensee has a diagnosed recognized psychiatric condition and then espouses that Licensee could practice medicine without posing a risk to others. Dr. Berlin further suggests that if the Board deems necessary, it could also limit Licensee’s practice to adults over the age of 18.

The Licensee presented his case-in-chief solely through his sworn testimony and the documents he had provided to the Board, and which are labeled Hearing Counsel’s Exhibits 1 through 4. He opened by apologizing to the Board and taking responsibility for his actions. He explained he has a psychiatric condition and is undergoing appropriate treatment under the supervision of Dr. Berlin, who is a leading expert in the field of treating individuals with sexual disorders. Licensee referenced the letter Dr. Berlin had written on his behalf and then explained that those suffering from his psychiatric condition have an approximately 96% chance of non-recidivism. He elaborated further on his treatment, which also consists of addictions counseling, sex addictions counseling, a sex addiction workshop, and sex addicts anonymous.

Licensee’s testimony then focused on his practice in neurology, which he explained did not involve patients under 18. He expressed humility in asking the Board to allow him to continue practicing in and an openness to any sort of license restriction the Board thought appropriate. Finally, the Licensee acknowledged there was only so much he could do for the victim of his crimes, but he was dedicated to

continuing treatment through the rest of his life. He stated neurology was his passion and the crimes he committed were not work related, involved no patients, and were outside of a health care setting. His testimony also revealed he has no prior legal, malpractice or board complaint.

Upon cross examination by Hearing Counsel, Licensee stated the Board can trust he will not reoffend because 1) he is engaged in treatment with Dr. Berlin, who is a world expert and does not believe Licensee is a danger; and 2) he only practices telemedicine in New Hampshire. Board questioning revealed the Licensee was open to any sort of restriction on his license relating to him being supervised, only working in telemedicine and/or only working with adult patients. The Licensee also testified that he delayed notifying the Board due to his incarceration. He had asked his criminal attorney to assist him in reporting sooner, but she was uncomfortable doing so. Finally, Board questioning helped clarify that Licensee has never been in any physical contact with any children or created pornography; his conduct was strictly related to viewing and sharing the films via a message sharing app. He explained that he had a voyeuristic diagnosis that could be managed.

At the close of evidence, Licensee admitted he made poor decisions and accepted that he had faced consequences as a result. He noted he had a psychiatric condition that was manageable, was open to a restricted license, and did not believe he would be a risk to patients and the community. Hearing Counsel directed the Board to the relevant statutes cited in the issues presented of the notice of hearing. He explained that he thought the Board should not make a finding that the Licensee's conduct indicates incompetence to practice but should make a finding on all other misconduct issues. He then directed the Board to look at the nine factors enumerated in Rule 408.03 in deciding what discipline was appropriate. He argued the Board should place significant weight on the factors of the seriousness of the offense and harm when evaluating this case. He said an evaluation of the factors indicates Licensee's license should

be revoked. After Hearing Counsel's recommendation, the Board presented an opportunity for Licensee to respond, who reiterated much of what he had already stated to the Board.

**V. DISCUSSION AND FINDINGS OF FACTS / CONCLUSIONS OF LAW:**

After reviewing all the evidence and accounting for the presentation and demeanor of all the witnesses, the Board finds, by a preponderance of the evidence, that the Licensee has committed professional misconduct. The central findings of fact in this case, are undisputed: 1) the Licensee was arrested and charged on two counts of felony child pornography distribution charges in July of 2021 after knowingly viewing and twice sharing a child pornography video in March of 2021 on a chat application on his cell phone; 2) the Licensee was convicted on those two counts of felony child pornography distribution in January of 2022; 3) the Licensee did not report any of the aforementioned conduct to the Board of Medicine until March of 2022, after he was placed on home release. Those findings of fact, along with the others made herein, support the following conclusions of law:

- 1). The Licensee did **not** commit professional misconduct by violating RSA 329:17, VI(c) when he distributed child pornography and was arrested and convicted of same in Virginia; and
- 2) The Licensee committed professional misconduct by violating RSA 329:17, VI(d) when he distributed child pornography and was arrested and convicted of same in Virginia; and
- 3) The Licensee committed professional misconduct by violating RSA 329:17, VI(d) when he was arrested for distribution of child pornography in July of 2021, convicted of same in Virginia on 01/18/22, released to home confinement on 02/10/22, and failed to report his conduct to the Board until 03/01/22;<sup>3</sup>
- 4) The Licensee committed professional misconduct by violating RSA 329:17, VI(j) when he was convicted on felony charges of distribution of child pornography in Virginia.
- 5) Pursuant to RSA 329:17, VII, and upon the findings of professional misconduct noted herein and after considering the factors noted in Rule 408.03, the Board hereby **REVOKES** licensee's license.

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<sup>3</sup> In addition to the findings of fact made herein, the Board takes notice of the fact that incarcerated individuals can write letters and communicate otherwise with the outside world. Significant time elapsed between when Licensee was arrested in July of 2021 and when the report to the Board was made on 03/02/22. That period provided ample opportunity to inform the Board of the arrest.

In determining to revoke the Licensee's license, the Board considered the factors enumerated in Rule 408.03(c): 1) seriousness of the offense; (2) the licensee's prior disciplinary record; (3) The licensee's state of mind at the time of the offense; (4) The licensee's acknowledgment of his or her wrongdoing; (5) The licensee's willingness to cooperate with the board's investigation; (6) The purpose of the rule or statute violated; (7) The potential harm to public health and safety; (8) The deterrent effect upon other practitioners; and (9) The nature and extent of the enforcement activities required of the board as a result of the offense. The Board acknowledges that factors 2, 4, 5, and 9 weigh in favor of a lesser form of punishment, but the rest weigh in favor of more severe sanctioning. The Board gives significant weight to factors 1, 6, 7, and 8, with specific emphasis on factors 1 and 7 for the following reasons. The New Hampshire legislature has made clear that children are a vulnerable member of society that must be protected, *See* RSA 169-C:1, I, and that possessing and distributing child pornography is an extremely serious offense, both in the criminal and child protection context. *See, i.e.,* RSA 649-A, RSA 649-B, and RSA 169-C:3, II(a) *and* RSA 169-C:3, XXVII-b. The Board agrees with the legislature and notes that those are universal propositions. In this case, the harm (and potential harm) caused by the Licensee's conduct of distributing the pornography is immeasurable, as his action set off a potential ripple effect of distribution and exploitation of vulnerable members of society. Further, his conduct violates the necessary trust between physicians and the society they serve with respect to a vulnerable segment of the population. While the Board is happy to learn that the Licensee is doing well in treatment and wishes him continued success in his endeavors, revocation is the appropriate sanction.

#### **VI. CONCLUSION AND DECISION:**

Pursuant to RSA 329:17, VI and VII and Rule 408.03, the Board hereby finds David Lapidès has committed professional misconduct and **REVOKES** his license to practice medicine.

DATED: 04/08/22

\_\_\_\_/s/ Nikolas Frye, Esq.\_\_\_\_\_  
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