

FEB 15 2024

COMMONWEALTH OF KENTUCKY
BOARD OF MEDICAL LICENSURE
CASE NO. 2081

K.B.M.L.

IN RE: THE LICENSE TO PRACTICE MEDICINE IN THE COMMONWEALTH OF
KENTUCKY HELD BY ERIC C. WELLING, M.D., LICENSE NO. C0682, 6599
S. JULIET WAY, SALT LAKE CITY, UTAH 84121

AGREED ORDER

Come now the Kentucky Board of Medical Licensure (hereafter "the Board"), acting by and through its Hearing Panel A, and Eric C. Welling, M.D., (hereafter "the licensee"), and, based upon their mutual desire to fully and finally resolve the pending Complaint without an evidentiary hearing, hereby ENTER INTO the following **AGREED ORDER**:

STIPULATIONS OF FACT

The parties stipulate the following facts, which serve as the factual bases for this Agreed Order:

1. At all relevant times, Eric C. Welling, M.D. ("the licensee"), was licensed by the Board and through the provisions of the Interstate Medical Licensure Compact to practice medicine in the Commonwealth of Kentucky.
2. The licensee's medical specialty is anesthesiology.
3. On or about November 4, 2022, the licensee's license to practice medicine in the State of Wyoming, a member board of the Interstate Medical Licensure Compact, became suspended pursuant to an *Order of Summary Suspension of Eric C. Welling, M.D., Wyoming Physician License No. 100015A, Pending A Contested Case Hearing*, Docket No. 23-12 (Wyoming Board of Medicine) based, in part, upon the following facts:
 - a. On or about October 25, 2021, the Wyoming Board received a National Practitioner Data Bank ("NPDB") report, stating Davis Hospital and

Medical Center in Layton, Utah, suspended the clinical privileges of Dr. Welling, effective September 23, 2021.

b. The NPDB report stated:

Dr. Welling demonstrated a higher-than-average discrepancy rate related to his use of medications, including controlled substances in his anesthesia practice. He was placed on a Focused Review on March 9, 2021, and on Conditional Staff Category on May 25, 2021, due to continued concerns with his drug administration, medical stewardship and medical documentation. On September 21, 2021, at the end of his 6 month FPPE, he disclosed to the MEC that he may have underlying deficits which could be the cause of his substandard performance. He was summarily suspended on September 23, 2021, due to health and safety concerns and was requested to obtain a cognitive assessment. After his suspension went into effect, additional patient safety concerns were raised and an investigation into his performance was initiated on September 30, 2021. At this time, Dr. Welling has not completed all the requirements of his suspension and it has currently been in place for a period longer than 30 days.

c. On or about October 27, 2021, Board staff opened complaint No. 1274, and requested a response from Dr. Welling regarding the NPDB report.

d. On or about November 12, 2021, Dr. Welling emailed a response to the Board office stating:

I am writing to verify that my privileges have been suspended at Davis Hospital pending an investigatory suspension related to anesthesia charting errors. The Davis Hospital Medical Executive Committee required an evaluation at Acumen Assessments in Lawrenceville [sic], KS for neurocognitive testing to diagnosis a medical condition that would explain anesthesia charting errors with relation to the medications removed from the Pyxis drug dispensing system. I suggested that perhaps that a mental illness (ADHD) may explain my the [sic] errors and apparent distraction. The first available appointment at Acumen Assessments was 3 ½ weeks after the suspension. It was also known that Acumen Assessments require 4-6 weeks for completion of their "written review" which is what the Davis Hospital MEC required for their investigatory suspension.

I finished the assessment at Acumen Assessments on October 14. The preliminary report was a diagnosis of Cyclothymia with Anxious Distress. I am seeking consultation with Dr. Benjamin VanLeeuwen, M.D. (Psychiatrist, Layton, UT) who has changed my medication regimen. We are still awaiting the final report from Acumen Assessments at which the Davis Hospital MEC will make their recommendations and treatment plan.

Thank you for your notification of this matter.

e. On or about November 23, 2021, the Wyoming Board received a subsequent NPDB report, stating Davis Hospital and Medical Center in Layton, Utah, extended the previous action regarding Eric C. Welling, M.D., on November 23, 2021.

f. The NPDB report stated:

On November 15, 2021, Dr. Welling requested a medical leave of absence for an indefinite period of time. This was due to the recommendation and findings of Dr. Welling's neurologic cognitive assessment provided by Acumen Assessments in Lawrence, Kansas. His request was approved by the Medical Executive Committee on November 16, 2021, and finalized by the Board of Trustees on November 23, 2021.

g. On or about December 15, 2021, the Board office received the Acumen Assessment report regarding Dr. Welling. The report stated Dr. Welling would be able to safely and skillfully practice only if he followed the recommendations included on the report.

h. On or about December 16, 2021, Dr. Welling was advised that the Board officers appointed Board members Rene' Hinkle, M.D., and Diane Noton, M.D., as Interviewers ("Interviewers") to further investigate this matter.

i. On or about March 2, 2022, after many requests, the Board office received medical records from Dr. Welling's treating physician, Benjamin VanLeeuwen, M.D. The records received indicated that Dr. Welling was going against Acumen Assessments recommendations by changing his own medications, not participating in an intensive partial hospital or day treatment for professionals in crisis, and not taking a leave of absence as recommended until further assessment demonstrates an improvement in his thought organization on the medication.

j. On or about March 25, 2022, the Board's Prosecuting Attorney sent a letter to Dr. Welling asking him to specifically answer how he had strictly complied with each of the seven recommendations made in the Acumen Assessment evaluation.

k. On or about March 29, 2022, Dr. Welling sent an email response detailing each of the recommendations by Acumen Assessments and how he felt he had strictly complied with the recommendations.

l. On or about April 21, 2022, Dr. Welling met for an Informal Interview with the Interviewers and the Board's Prosecuting Attorney.

m. On or about July 6, 2022, the Interviewers and Prosecuting Attorney sent a memo to the Board officers requesting the officers Order a Mental Health Examination on Eric C. Welling, M.D.

- n. On or about July 22, 2022, the Board Officers' *Order for Alcohol, Substance and Mental Health Examination of Eric Welling, M.D., Wyoming Physician License No. 100015A* ("Order"), was filed and served on Dr. Welling via email and First-Class mail.
 - o. Dr. Welling was ordered to confirm attendance at a pre-approved alcohol, substance and mental health examination to the Board no later than 5:00 p.m., Wednesday, August 12, 2022. The Board is concerned that Dr. Welling failed to comply with this portion of the Order.
 - p. Dr. Welling was ordered to initially present for the alcohol, substance and mental health examination no later than Monday, September 5, 2022, and shall be completed no later than Friday, September 9, 2022. The Board is further concerned Dr. Welling failed to comply with this portion of the Order.
 - q. The Board is further concerned that, if proven, the above actions by Dr. Welling would constitute one or more violations of the Wyoming Medical Practice Act, ...
 - r. The Board is led to find that for all the reasons stated above, most especially Dr. Welling's failure to comply with the Order of the Board Officers requiring a reevaluation at Acumen Assessments of his ability to practice safely and skillfully, Dr. Welling's continued possession of a Wyoming physician license, and his ongoing ability to practice medicine in Wyoming using that license, poses an imminent and immediate threat to the public health, safety, and welfare of the people of Wyoming that imperatively requires an immediate summary suspension of his Wyoming physician license.
4. This Board received notice of the Wyoming suspension via a report from the Federation of State Medical Boards. The licensee did not report the Wyoming within ten days as required by 201 KAR 9:081(9)(2)(a)(2). Further, the licensee did not provide this Board a copy of the order issued by the Wyoming Board within ten days of the November 4, 2022 Order.
5. On or about December 21, 2022, the Board's Inquiry Panel B Chair issued an emergency order of suspension against the licensee's license to practice medicine in the Commonwealth of Kentucky pursuant to the Interstate Medical Licensure Compact.

6. In correspondence to the Board, dated on or about January 2, 2023, the licensee disclosed self-prescribing of blood pressure and anti-cholesterol medications.
7. On or about January 6-9, 2023, the licensee submitted to an evaluation at Physicians Renewal Center ("PRC"), in Lawrence, Kansas. PRC confirmed the findings of the Acumen Assessment and recommended, in part, that the licensee not resume clinical practice until such time as he had completed a treatment program at a partial hospitalization or day treatment level of care.
8. On or about February 20, 2023, an Amended Emergency Order of Suspension was issued against the licensee's license to practice medicine in the Commonwealth of Kentucky.
9. On or about December 14, 2023, following an October hearing, the Wyoming Board of Medicine took final action in Docket No. 23-12. The Wyoming Board of Medicine found that the licensee has a manifest incapacity to practice medicine with reasonable skill and safety to patients; possesses a physical or mental disability which renders his practice of medicine unsafe; and was noncompliant with Board directives for evaluations and treatments. The Wyoming Board of Medicine entered a final order suspending the licensee from the practice of medicine until such time as he demonstrates compliance with numerous treatment recommendations. The Wyoming Board of Medicine's findings of fact, conclusions of law and order suspending, Docket No. 23-12, filed December 14, 2023, is attached and incorporated in full herein by reference. (Attachment A)

STIPULATED CONCLUSIONS OF LAW

The parties stipulate the following Conclusions of Law, which serve as the legal bases for this Agreed Order:

1. The licensee's Kentucky medical license is subject to regulation and discipline by the Board.
2. Based upon the Stipulations of Fact, the licensee has engaged in conduct which violates the provisions of KRS 311.595(8), (9) [as illustrated by KRS 311.597(4)], (12), (17) and (21). Accordingly, there are legal grounds for the parties to enter into this Agreed Order.
3. Pursuant to KRS 311.591(6) and 201 KAR 9:082, the parties may fully and finally resolve this pending Complaint without an evidentiary hearing by entering into an informal resolution such as this Agreed Order.

AGREED ORDER

Based upon the foregoing Stipulations of Fact and Stipulated Conclusions of Law, and, based upon their mutual desire to resolve the pending Complaint, the parties hereby ENTER INTO the following AGREED ORDER:

1. The license to practice medicine in the Commonwealth of Kentucky held by Eric C. Welling, M.D., is RESTRICTED/LIMITED FOR AN INDEFINITE PERIOD OF TIME, effective immediately upon the filing of this Agreed Order;
2. During the effective period of this Agreed Order, the licensee's medical license shall be subject to the following terms and conditions:
 - a. The licensee SHALL NOT perform any act within the Commonwealth of Kentucky that constitutes the "practice of medicine," as that term is defined by KRS 311.550(10) – the diagnosis, treatment or correction of any and all human conditions, ailments, diseases, injuries, or infirmities by any and all means, methods, devices, or instrumentalities - unless and until approved to do so by the Panel;
 - b. Pursuant to KRS 311.565(1)(v), the licensee SHALL reimburse the Board's costs in the amount of \$843.75, within six (6) months of the filing of this Agreed Order; and

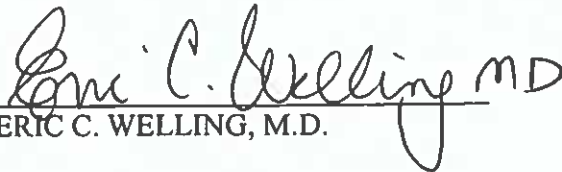
- c. The licensee SHALL NOT violate any provision of KRS 311.595 and/or 311.597.
3. The licensee expressly understands and agrees that he SHALL NOT request and the Board SHALL NOT consider any request to amend, modify or terminate this Agreed Order or any of its terms or conditions, unless and until the Wyoming Board of Medicine lifts or modifies the term of suspension entered upon his license on December 14, 2023 in the State of Wyoming.
4. The licensee expressly understands and agrees that if the Board should allow the licensee to resume the practice of medicine in the Commonwealth of Kentucky in the future, it shall do so contingent upon the licensee entering into an Amended Agreed Order which shall include, at a minimum, the following terms and conditions:
- The licensee SHALL enter into and maintain a contractual relationship with the Kentucky Physicians Health Foundation (KPHF) and SHALL fully comply with all requirements of that contractual relationship;
 - the licensee SHALL establish with a primary care physician who shall be responsible for prescribing and management of any and all of the licensee's medically-necessary medications;
 - The licensee SHALL NOT prescribe any medications, controlled or otherwise, to himself or to members of his immediate family; and
 - Any other terms and conditions deemed appropriate by the Board.
5. The licensee expressly agrees that if he should violate any term or condition of this Agreed Order, the licensee's practice will constitute an immediate danger to the public health, safety, or welfare, as provided in KRS 311.592 and 13B.125. The parties further agree that if the Board should receive information that he has violated any term or condition of this Order, the Panel Chair is authorized by law to enter an Emergency Order of Suspension or Restriction immediately upon a finding of probable cause that a violation has occurred, after an *ex parte* presentation of the relevant facts by the Board's General Counsel or Assistant

General Counsel. If the Panel Chair should issue such an Emergency Order, the parties agree and stipulate that a violation of any term or condition of this Agreed Order would render the licensee's practice an immediate danger to the health, welfare and safety of patients and the general public, pursuant to KRS 311.592 and 13B.125; accordingly, the only relevant question for any emergency hearing conducted pursuant to KRS 13B.125 would be whether the licensee violated a term or condition of this Agreed Order.

6. The licensee understands and agrees that any violation of the terms of this Agreed Order would provide a legal basis for additional disciplinary action, including revocation, pursuant to KRS 311.595(13).

SO AGREED on this 23 day of January, 2024.

FOR THE LICENSEE:



ERIC C. WELLING, M.D.

COUNSEL FOR THE LICENSEE
(IF APPLICABLE)

FOR THE BOARD:



WAQAR A. SALEEM, M.D.
CHAIR, HEARING PANEL A



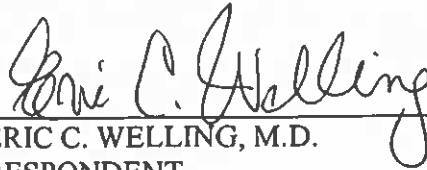
LEANNE K. DIAKOV
General Counsel
Kentucky Board of Medical Licensure
310 Whittington Parkway, Suite 1B
Louisville, Kentucky 40222
(502) 429-7150

WAIVER OF RIGHTS

I, Eric C. Welling, M.D., am presently the Respondent in Kentucky Board of Medical Licensure Case No. 2081. I understand that, under 201 KAR 9:082, I must waive certain rights if I wish to resolve this matter by informal dispensation. Accordingly, I WAIVE my right to raise any constitutional, statutory or common law objection(s) I may have to the Hearing Panel rejecting the proposed informal dispensation or to the curtailment of such a settlement by the Board's General Counsel or Assistant General Counsel.

Furthermore, if the Hearing Panel accepts the proposed Agreed Order as submitted, I WAIVE my right to demand an evidentiary hearing or to raise additional constitutional or statutory objections in this matter. However, if the Hearing Panel should reject the proposed Agreed Order, I understand that further proceedings will be conducted in accordance with KRS 311.530 *et seq*, and I will have the right to raise any objections normally available in such proceedings.

Executed this 23 day of January, 2024.


ERIC C. WELLING, M.D.

RESPONDENT

COUNSEL FOR RESPONDENT
(IF APPLICABLE)

FILED

DEC 14 2023

Wyoming Board
of Medicine

**BEFORE THE
WYOMING BOARD OF MEDICINE**

IN THE DISCIPLINARY MATTER OF:)
Eric C. Welling, M.D., Respondent,)
Wyoming Physician License No. 10015A.)

Docket No. 23-12

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
ORDER LIFTING THE SUMMARY SUSPENSION UPON THE WYOMING
PHYSICIAN LICENSE OF ERIC C. WELLING, M.D.;**
**ORDER SUSPENDING THE WYOMING PHYSICIAN LICENSE OF ERIC C.
WELLING, M.D., WYOMING PHYSICIAN LICENSE NO. 10015A;**
ORDER IMPOSING CIVIL FINE

THIS MATTER having come before a Board of the Wyoming Board of Medicine (Board) consisting of Eric Cubin, M.D.; Ms. Cissy Dillon; Michael Jording, M.D.; Ms. Emily McGrady; Valerie Mockensturm, PA-C; Melinda Poyer, D.O.; and A. Dozier Tabb, M.D.; during a special Board meeting on October 26, 2023, for deliberations following review of the evidentiary record compiled in a contested case hearing upon a *Second Amended Petition and Complaint* (Second Amended Petition) filed by Diane Noton, M.D. (Petitioner) against Eric C. Welling, M.D. (Dr. Welling) alleging multiple violations of the Wyoming Medical Practice Act (Act), Wyo. Stat. Ann. §§ 33-26-101 through -703.

The hearing was conducted by J.C. DeMers, Esq. (Hearing Examiner), State of Wyoming Office of Administrative Hearings. The Petitioner was represented by Bill G. Hibbler, Esq., Board Prosecutor. Dr. Welling appeared *pro se*. The hearing was conducted pursuant to the Act, *Chapter 7 – Rules of Practice and Procedure for Disciplinary*

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Proceedings Against Physicians and Physician Assistants of the Board's administrative rules, and the Wyoming Administrative Procedure Act, Wyo. Stat. Ann. §§ 16-3-107 through -115.

The Board having fully reviewed, in its entirety, the evidentiary record including the videotaped contested case hearing accompanied by the written transcripts, Petitioner's Exhibits A through S and U, Dr. Welling's Exhibits 2 through 11, witness testimony, arguments of the parties, and being otherwise fully advised in the premises, enters the following findings, conclusions, and order:

I. JURISDICTION

The Board is the sole, exclusive, and duly-authorized licensing, regulatory, and administrative agency in the State of Wyoming regarding the practice of medicine as authorized by the Wyoming Medical Practice Act (Act), Wyo. Stat. Ann. §§ 33-26-101 to -703. Wyoming Statute § 33-26-401(e) provides that the Board retains jurisdiction over "those licensees to whom temporary or full licenses were granted and who are subject to ongoing investigation by the board, regardless of whether the license expired, lapsed or was relinquished during or after the alleged occurrence of conduct proscribed by W.S. 33-26-402 by the licensee." Dr. Welling is the holder of Wyoming Physician License No. 10015A issued by the Board. Therefore, Dr. Welling is subject to the Board's jurisdiction.

II. STATEMENT OF THE CASE

On April 24, 2023, Petitioner filed the Second Amended Petition alleging that Dr. Welling violated the following provisions of the Act:

(i) Renewing, obtaining or attempting to obtain or renew a license by bribery, fraud or misrepresentation;

* * *

(x) Violating or attempting to violate or assist in the violation of any provision of this chapter or any other applicable provision of law;

* * *

(xix) A manifest incapacity to practice medicine with reasonable skill and safety to patients;

(xx) Possession of any physical or mental disability including deterioration due to aging which renders the practice of medicine unsafe;

* * *

(xxiii) Failure to submit to an informal interview or a mental, physical or medical competency examination following a proper request by the board pursuant to W.S. 33-26-403;

* * *

(xxxiv) Violating any final order, consent decree or stipulation between the board and the licensee[.]

Wyo. Stat. Ann. § 33-26-402(a)(i), (x), (xix), (xx), (xxiii), (xxxiv).

Petitioner also alleged Dr. Welling violated Wyoming Statute § 33-26-403(b), which provides:

Every licensee is deemed to have consented to and shall submit to a board ordered mental, physical, or medical competency examination and to have waived all objections to the production of the report of the examination to the board and the admissibility of the report of the examination in any board proceedings in which the licensee is or

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may become a respondent. If a licensee fails to submit to an examination when ordered by the board, the board may initiate a disciplinary proceeding against the licensee or amend a pending complaint to include a claim based upon a violation of this section.

Petitioner requested the Board order disciplinary action against Dr. Welling's Wyoming physician license including, but not limited to: revocation, suspension, restrictions/conditions, reimbursement of costs, assessment of costs, assessment of a civil fine, and/or other action deemed proper.

III. ISSUES

The major issue in this case is whether Petitioner proved by clear and convincing evidence that Dr. Welling violated one or more provisions of the Act by:

1. Failing to comply with the *Board Officers' Order for Alcohol, Substance and Mental Health Examination of Eric Welling, M.D., Wyoming Physician License No. 10015A*,
2. Failing to strictly comply with Acumen Assessments (Acumen), Professional Renewal Center (PRC), and/or Professional Recovery Network (PRN) recommendations to practice medicine safely and skillfully, and/or
3. Misrepresenting on his May 2022 renewal application to the Board.

If Petitioner proves by clear and convincing evidence that Dr. Welling violated any provision of the Act, then the issue is what disciplinary sanction(s), if any, is/are appropriate under the facts and circumstances of this case.

IV. FINDINGS OF FACT

A. Documentary Evidence

Jurisdictional Facts

1. On January 23, 2015, the Board initially issued Dr. Welling Wyoming Physician's License No. 10015A to practice medicine in Wyoming.

2. At all times pertinent to the actions complained of in Second Amended Petition in this matter, Dr. Welling held a Wyoming physician license.

Suspension of Dr. Welling's Clinical Privileges at Davis Hospital

3. In 2021, the Davis Hospital and Medical Center (Davis Hospital) in Layton, Utah, employed Dr. Welling as an anesthesiologist. (Ex. A).

4. In 2021, Dr. Welling demonstrated a higher-than-average discrepancy rate related to his use of medications, including controlled substances in his anesthesia practice. (Ex. A).

5. On March 9, 2021, Dr. Welling was placed on a Focused Professional Practice Evaluation (FPPE). (Ex. A).

6. On May 25, 2021, Dr. Welling was placed on Conditional Staff Category due to continued concerns with his drug administration, medication stewardship and medical documentation. (Ex. A).

7. On September 21, 2021, at the end of his six (6) month FPPE, Dr. Welling disclosed to the Medical Executive Committee (MEC) that he may have underlying deficits which could be the cause of his substandard performance. (Ex. A).

8. Dr. Welling failed his FPPE even after multiple interventions were put in place to help him improve his charting methods. (Ex. B)

9. In September 2021, Dr. Welling continued to have discrepancies between documentation in the electronic medical record (EMR) and what was pulled from the cart resulting in fraudulent billing and documentation. (Ex. B).

10. On September 23, 2021, the Davis Hospital suspended Dr. Welling's clinical privileges due to patient health and safety concerns and was requested to obtain a cognitive assessment. (Ex. A).

11. After his suspension went into effect, additional patient safety concerns were raised and Davis Hospital initiated an investigation into his performance. (Ex. A).

12. Dr. Welling did not complete all the requirements of his suspension. (Ex. A).

Dr. Welling Presents to Dr. Van Leeuwen – Psychiatrist

13. Benjamin N. Van Leeuwen, M.D., is a Board-certified Psychiatrist. (Ex. H).

14. On September 23, 2021, the day that Davis Hospital suspended his clinical privileges, Dr. Welling presented to Dr. Van Leeuwen. (Ex. H).

15. On his intake paperwork when asked about being diagnosed with a mental health condition by a medical provider, Dr. Welling handwrote "No diagnosis – Self treated." He disclosed other self-prescribing medications. (Ex. H).

16. Dr. Welling reported to Dr. Van Leeuwen that:

[H]e is here today for help with some issues with inattention. Has really noticed it over the past 3-4 years. Says that he has been really distracted at work. Struggles with being able to pay attention and get

focused at work. He says that he has been told that he has a reputation of not paying attention to his patients. He says that his biggest issue is that he really gets distracted by his phone. Gets all of his work done and then immediately starts looking at his phone.

* * *

Understands that it represents a significant legal liability for the hospital and for himself. He feels that he does have more issues on longer cases. Has significant difficulty focusing. At his worst, states that his error rate was 30-45%, compared to the normal error rate of 0-15%.

* * *

As a result of the failed review, states that the MEC has suspended him, with several stipulations.

* * *

Also, appears that he really has struggled with attention for much of his life. Has been able to compensate, but then changes likely due to age and other changes in work environment (new EMR, etc) have made previously effective compensatory strategies less successful. For now, will make some medication adjustments to target anxiety. Will also consider directed ADHD tx at next visit. Holding off for now pending work-mandated evaluation.

(Ex. H).

17. Dr. Welling presented to Dr. Van Leeuwen on October 18, 2021; November 16, 2021; February 15, 2022; May 9, 2022; December 2, 2022; and May 4, 2023. (Ex. H).

18. Dr. Van Leeuwen noted that Dr. Welling has been diagnosed with cyclothymia (ICD-10 code F34.0) and generalized anxiety disorder (ICD-10 code F41.1).

(Ex. H).

19. On December 7, 2021, after only two (2) appointments, Dr. Van Leeuwen signed a letter for the Utah State Department of Commerce DOPL (Utah Board), which stated that, "[i]t is my opinion that Dr. Welling is currently fit to practice medicine without

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restrictions.” (Ex. U).

20. In a letter dated May 9 and December 2, 2022, Dr. Van Leeuwen noted that:

Please note that I am not a psychotherapeutic provider, and can therefore not comment on whether or not he has engaged with appropriate talk therapy as recommended in the full neuropsychological evaluation completed by Acumen Assessments. Regarding his current ability to work, I cannot say whether he is able to perform adequately as a practicing anesthesiologist as I have not evaluated his performance in this setting, nor could I be considered an expert enough to evaluate his skills and abilities.

(Ex. H).

21. In a letter to the Board dated May 24, 2023, Dr. Van Leeuwen noted that:

It is important to note that as a psychiatrist, my expertise lies primarily in assessing and managing mental health conditions. Therefore, I have not evaluated Dr. Welling’s ability to function as an anesthesiologist, nor could I be expected to do so, given the specialized nature of his field.

* * *

If he continues to maintain his current level of stability and **adheres to the recommendations of his healthcare providers**, it is reasonable to expect that he can function at a level commensurate with his education and training as an anesthesiologist.

* * *

Please note that this letter serves only as a summary of Dr. Welling’s mental health status and **should not be considered a comprehensive evaluation or endorsement of his professional competence in the field of anesthesiology**. In my practice as a psychiatrist, I focus on assessing and managing psychiatric conditions rather than evaluating specific professional abilities. **Should that evaluation be needed, it should be done in a clinic that specializes in forensic evaluation.**

(Ex. H) (emphasis added).

Acumen's Report of Dr. Welling – Unfit to Practice

22. Davis Hospital referred Dr. Welling to Acumen for a *Forensic Professional Fitness to Practice Evaluation*. (Ex. B).

23. On October 6, 2021, before the assessment, Dr. Welling sent an e-mail stating that the problems with his discrepancies and inaccuracies are caused by the systems of documentation being separate and unable to “communicate with each other,” which does not burden the other anesthesiologists. (Ex. B).

24. On October 11-14, 2021, Dr. Welling was evaluated at Acumen by a multidisciplinary team. (Ex. B).

25. Dr. Welling self-reported to Acumen that he has been having difficulty reconciling medications on the Pyxis, anesthesia charting, and the hospital EMR, which do not talk to each other. He also disclosed that he gets distracted by his phone and then will go down the rabbit hole when he's on-call (next cases) or when looking at the news. He also stated that he has sloppy record-keeping. (Ex. B).

26. Collateral information from Davis Hospital indicates that during an audit of Dr. Welling's charts around a year ago, it was discovered that:

- a. He was completing all of his post-anesthesia charts while his patients were still in surgery;
- b. He completed chart entries for some patients on cases that had not even started, meaning that preanesthesia vitals and other pre-op details had already been entered;
- c. This practice of pre-filling entries were on all of his patients for several

weeks;

- d. His notes said that the patient was stable, vitals were normal (and this data was noted to have been contrived), and the patient was recovering nicely; however, these notes were completed even though these patients were still in surgery;
- e. Back to 2019, Dr. Welling was described as disorganized, leaving the room/cart a mess, defensive and insulting regarding oversight, mislabeling syringes, having persistent documentation problems, and concerns regarding infection;
- f. Dr. Welling is noted as having a longstanding problem with charting which he often externalizes blame for his difficulties by blaming his phone, the computer system, hearing problems, external noise in the room, etc.; and
- g. There is a trend of judgment problems, falsifying records, non-compliance with hospital policies and procedures, potential patient care problems due to inaccurate records, and an inability to self-correct.

(Ex. B).

27. Dr. Welling describes situations where he finds himself pinned into a corner by either external challenges that explain why is having problems, but at the same time comes across as a victim to either these things or his distractibility. Dr. Welling indicated that his problems have been phone-related, his addiction to his phone, and his belief that he has ADHD. (Ex. B).

28. Dr. Welling came into the assessment convinced that his issue stemmed from undiagnosed ADHD; however, the results of the evaluation do not support that diagnosis. Instead, Dr. Welling's problems stem from a previously undiagnosed mood disorder, Cyclothymia, with Anxious Distress. (Ex. B).

29. Dr. Welling self-prescribed Prozac (to deal with stress better), Lexapro 30mg qd, Wellbutrin 150 XL qd (started two years ago), Straterra (for three days). Dr. Welling self-prescribed Fluoxetine back in 1995-2000. He obtained a genetic study on his son, which suggested Bupropion may work for him, so he switched himself onto Bupropion. Later, Dr. Welling prescribed his son Lexapro. Dr. Welling has been treating himself (self-prescribing) various antidepressants over the years. (Ex. B).

30. It is clear that Dr. Welling does not understand that prescribing to a family member is considered unethical conduct. (Ex. B).

31. Dr. Welling seems oblivious to his poor judgement, misguided assumptions about his practice and personal life, and the seriousness of his misconduct – fraudulent documentation reported by Davis Hospital. He does not seem to appreciate his grandiose expectations or the illogic of his decisions. His insight into his problems is poor and his judgment has been poor for some time. (Ex. B).

32. During the assessment and testing, Dr. Welling demonstrated a tendency to be distracted by his phone. On multiple occasions, his phone rang during testing. On one occasion, he was observed on his phone while actively engaging in a Rorschach test. When asked about his phone, he indicated that he was trying to make sure his phone was off and he did not realize he had not completed the task. Dr. Welling had his cell phone connected

to his hearing aids. “Why an individual undergoing a fitness to practice evaluation would have their cell phone on during a cognitive testing is an indication of poor judgment.” (Ex. B).

33. After the assessment, Dr. Welling demonstrated the degree to which he is vulnerable to distort reality in the service of his own needs – done so in the service of positive impression management. Some of his e-mails were a bit unhinged and consistent with someone with an untreated mood disorder and Cluster B Personality Disorder – the latter of which includes lapses in reality testing, errors in reasoning, poor judgment, poor insight, the utilization of narcissistic defenses, and argumentativeness. His hypomanic style coupled with anxiety in the direction that suits him rather than sitting back and objectively assessing a given situation. He comes across as more concerned about himself than the patients who could have suffered harm due to the problems noted in the collateral information. (Ex. B).

34. On November 8, 2021, the Acumen issued its *Forensic Professional Fitness to Practice Evaluation* (Acumen Report), which provided:

Diagnoses:

Based on the results of the evaluation, the following diagnoses are offered based on DSM-V criteria:

Cyclothymia, Late-Onset, with Anxious Distress

Cluster B Personality Disorder

Conclusions:

Dr. Welling requires proper medication and psychotherapy to address the problems and challenges outlined above. Until these issues are resolved, where he acquires a stable mood and construct a reasonable plan of action to prevent future documentation and

intraoperative medication management problems, we find him unfit to practice.

It is our understanding that Dr. Welling is under the care of Dr. Van Leeuwen. He is probably in the best position to decide when Dr. Welling can return to work from a psychiatric standpoint. We imagine that he will need to produce a return to work plan approved by Davis Hospital before returning to work.

Recommendations:

Dr. Welling may benefit from a trial of Lamictal as primary mood stabilizer. It will take time to titrate him up to a therapeutic dose, so an augmentation strategy with a second-generation antipsychotic medication may be helpful. It is not clear if Wellbutrin and Buspar are doing much. Dr. Whipple suggests discontinuing these medications to simplify the regimen. At this point, we would address his difficulties as if he is developing a late-life bipolar condition.

1. Dr. Welling should take a leave of absence from work until further assessment demonstrates an improvement in his thought organization on the medication.
2. Dr. Welling would benefit from an intensive partial hospital or day treatment program for professionals in crisis.
3. We recommend that Dr. Welling acquire a local psychologist to address the personality issues noted in this report.
4. We recommend that Dr. Welling sign releases of information to facility sending this report to his providers.
5. We recommend that Dr. Welling refrain from self-prescribing medications.
6. The assessment team recommends that Dr. Welling practice all time in full accordance with relevant federal, state, local, organizational, and professional regulations, ethical guidelines, and best practices. If he ever is unable or unwilling to adhere to these recommendation, we recommend that he disengage himself from the practice of medicine immediately.

(Ex. B).

Procedural History – Board Complaint

35. On October 25, 2021, the Board office received notice regarding Dr. Welling's suspension of his clinical privileges. (Ex. E).

36. On October 27, 2021, Board staff opened complaint No. 1274 and requested a response from Dr. Welling. (Ex. E).

37. On November 12, 2021, the Board office received Dr. Welling e-mailed response:

I am writing to verify that my privileges have been suspended at Davis Hospital pending an investigatory suspension related to anesthesia charting errors. The Davis Hospital Medical Executive Committee required an evaluation at Acumen Assessments in Lawrenceville [sic], KS for neurocognitive testing to diagnosis a medical condition that would explain anesthesia charting errors with relation to the medications removed from the Pyxis drug dispensing system. I suggested that perhaps that a mental illness (ADHD) may explain my the [sic] errors and apparent distraction. The first available appointment at Acumen Assessments was 3 1/2 weeks after the suspension. It was also known that Acumen Assessments require 4-6 weeks for completion of their "written review" which is what the Davis Hospital MEC required for their investigatory suspension.

I finished the assessment at Acumen Assessments on October 14. The preliminary report was a diagnosis of Cyclothymia with Anxious Distress. I am seeking consultation with Dr. Benjamin Van Leeuwen, M.D. (Psychiatrist, Layton, UT) who has changed my medication regimen.

We are still awaiting the final report from Acumen Assessments at which the Davis Hospital MEC will make their recommendations and treatment plan.

Thank you for your notification of this matter.

(Ex. E).

Dr. Welling's Medical Leave of Absence from Davis Hospital

38. On November 15, 2021, Dr. Welling requested a medical leave of absence from Davis Medical for an indefinite period of time. (Ex. U).

39. On November 16, 2021, the Medical Executive Committee approved his request. (Ex. U).

40. On November 23, 2021, the Board of Trustees finalized Dr. Welling's request for an indefinite medical leave of absence. (Ex. U).

Procedural History - Board Order Requiring Mental Health Examination

41. On December 15, 2021, the Board office received the Acumen Report. (Ex. E).

42. On December 16, 2021, René Hinkle, M.D., and Diane Noton, M.D., were appointed as Interviewers (Interviewers) to further investigate this matter. (Ex. E).

43. On or about March 2, 2022, after many requests, the Board office received medical records from Dr. Van Leeuwen. The records indicated that Dr. Welling was going against Acumen Assessments recommendations by changing his own medications, not participating in an intensive partial hospital or day treatment for professionals in crisis, and not taking a leave of absence as recommended until further assessment demonstrates an improvement in his thought organization on the medication. (Ex. E).

44. On March 25, 2022, the Board's Prosecuting Attorney sent a letter to Dr. Welling asking him to specifically answer how he had strictly complied with each of the seven recommendations made in the Acumen Report. (Exs. C and E).

45. On March 29, 2022, the Board office received Dr. Welling's e-mailed response detailing each of the Acumen recommendations and how he felt he had strictly complied with the recommendations:

I am responding to your letter of March 25, 2022. Acumen Assessments made several conclusions based upon their evaluation which you referenced. I have included these recommendations below along with my response of how I have strictly complied with their recommendations and opinions.

Forensic Evaluation Summary Report

1. Dr. Welling may benefit from a trial of Lamictal as a primary mood stabilizer. It will take time to titrate him up to a therapeutic dose, so an augmentation strategy with a second-generation antipsychotic medication may be helpful. It is not clear if Wellbutrin and Buspar are doing much. Dr. Whipple suggests discontinuing these medications to simplify the regimen. At this point, we would address his difficulties as if he is developing a late-life bipolar condition.

What they did not include in these recommendations was their opinion that the antidepressants that I was taking prior to this assessment were, in their opinion, worsening my distraction from the Cyclothymia which they subsequently diagnosed. They suggested an immediate cessation of the antidepressants and administration of the correct treatment, a mood stabilizer. As soon as I received their verbal conclusion of Cyclothymia (October 14, 2021), I called my psychiatrist, Dr. Van Leeuwen, and mentioned to him their findings. In my next appointment with Dr. Van Leeuwen (October 19, 2021), we together reviewed the mood stabilizers and determined that many of them had serious potential side effects and life-threatening risks. He then discontinued the other antidepressants and started me on Abilify which he was using as a mood stabilizer. I quickly noticed the improvement with Abilify. I was able to think more clearly and organize my thoughts better. I did not seem to have the "ups and downs" in my mood that I previously had. In addition, despite having lost my career at Davis Hospital, I seemed to handle that disappointment much better and without incapacitating depression.

2. Dr. Welling should take a leave of absence from work until further assessment demonstrates an improvement in his thought organization on the medication.

I did take a “leave of absence” and did not work in a hospital or healthcare environment for four weeks. There were several weeks in November and December where I did not work at all. I used this time to write notes about the observations that were raised by my peers in the MEC and review areas of their concern and how I could address those problems in the future. At present, I have not worked in an operating room since December 12, 2021. I work everyday in my office trying to find my next position as an Anesthesiologist. So I have complied with the recommended “leave of absence” and have tried to utilize my time efficiently and effectively to find additional employment, but also to improve my anesthesia skills with reviewing anesthesia literature and anesthesia recommendations.

3. Dr. Welling would benefit from an intensive partial hospital or day treatment program for professionals in crisis.

Acumen recommended some type of ongoing care - their specialty is to use the Assessments to self-refer patients for their day treatment programs. This is not only a recommendation but also an advertisement for their services. They spoke with Dr. Van Leeuwen on the phone several times during my assessment and felt that he was an excellent choice to monitor my progress and treatment. I have complied with all visits to Dr. Van Leeuwen. After the initial correction to my medications, I have stabilized and no other adjustments have seemed indicated. I continue to take Abilify and escitalopram as Dr Van Leeuwen originally prescribed.

4. We recommend that Dr. Welling acquire a local psychologist to address the personality issues noted in this report.

I am continuing to see Dr. Van Leeuwen. In addition to monitoring my prescriptions, Dr. Van Leeuwen provides Cognitive Behavioral therapy in his appointments. Initially, our visits were scheduled every month. He has now scheduled a consultation every 4-6 months.

5. We recommend that Dr. Welling sign releases of information to facilitate sending this report to his providers.

I complied with this request and released all my information including the Acumen Assessment report to Dr. Van Leeuwen.

6. We recommend that Dr. Welling refrain from self-prescribing medications.

I do not prescribe any psychiatric medications to myself. I only take the psychiatric medications prescribed by Dr. Van Leeuwen. Dr. Van Leeuwen has reviewed all other prescriptions for chronic medical conditions including medications for adult-onset diabetes, high blood pressure, and hyperlipidemia to insure that there are no drug-drug interactions with his regimen of Abilify and Escitalopram.

7. The assessment team recommends that Dr. Welling practice all times in full accordance with relevant federal, state, local, organizational, and professional regulations, ethical guidelines, and best practices. If he ever is unable or unwilling to adhere to these requirements, we recommend that he disengage himself from the practice of medicine immediately.

My goal is to continually improve my practice and serve my patients and my surgeon colleagues with attentive, accurate and "best practices" in my anesthesia services. I continue to read articles to maintain current in my practice and in hopes that my care (when I start working again) will be consistent with my peers and colleagues. I am motivated to return to medicine and regain the reputation of a skilled, alert and attentive anesthesiologist who provides an excellent, safe anesthetic course for his patients and efficient services for my surgeon colleagues. I do not plan on retiring from medicine for another 10 years. Therefore, have committed to continuous improvement in my anesthesia delivery and services.

I have compiled some recommended "course corrections" from the experience with the Davis Hospital MEC and included many of their suggestions in my future practice. I have also reached out to my former partners at Davis Hospital and asked them for their feedback and observations regarding practice habits that I can improve. I have placed this list of my phone for frequent review and future revisions, if indicated. These "learned lessons" include the following:

1. DISTRACTIONS, Avoid distractions from patient care in the OR. These distractions include my personal cellphone (NOT TO BE USED WHILE IN THE OR). Maintain "work focus" mode on cell phone during cases. Keep cell phone in backpack or locker - not on anesthesia machine or pyxis. Computers and anesthesia charting programs - these can also distract from patient care. Always maintain patient-centric focus.

2. **CHARTING.** Chart all medications immediately when removed from the Pyxis. Reconcile all medications at the beginning of the case, the middle (during free moments) and at the end of the case.

3. **VIGILANCE.** Be vigilant in the OR. When you are not attending to the patient or the patient's chart, keep your eyes on the surgeon. Try to anticipate his needs with the patient's surgical condition.

4. **TIMELINESS.** Arrive 15-30 min early in the OR. Arrive early for all appointments and surgery times.

5. **SEDATION.** Do not sedate patients unless the patient requests sedation. Notify nurses when sedation given. Remain with patient after sedation given to observe effects and depth of sedation. Do not oversedate patients.

6. **ACCOUNTABILITY.** Take responsibility for errors. Be transparent and approachable. Request feedback from surgeons, OR circulating nurse, anesthesia colleagues.

7. **COMMUNICATE.** Seek feedback from surgeons at the beginning of the case to see if there are unusual circumstances that the surgeon anticipates or specific requests from the surgeon. Seek feedback on surgical conditions after the surgery is concluded. Seek feedback on how to improve the surgeon's experience.

8. **ORGANIZATION.** Keep workplace clean and uncluttered. No medication vials or syringes out on anesthesia machine.

9. **ANTICIPATION.** Anticipate end of case and surgeon's needs during the different phases of the procedure.

10. **BE VISIBLE.** Wait in the OR for the next case - not in the lounge. Be visible and easily found. Go to the bathroom before each case. Plan ahead.

I have another two pages of notes and observations that are specific recommendations for how to handle the nuances of the hospital EMR and anesthesia record-keeping system. I will not include those since they are specific to the anesthesia EMR.

So Mr. Hibbler, I have also taken Acumen's recommendations seriously. I had to pay over \$9000 for this assessment and I wanted to get as much benefit from their observations and suggestions as possible. My goal is to continuously improve my medical practice and

the care which I provide patients as well as the services I provide to my surgeon colleagues.

If you have additional feedback or observations that you wish to share, please respond in kind. I have also included my personal cell phone number should you wish to speak with me directly.

I sincerely hope that I've adequately addressed your concerns regarding my Wyoming medical license. Although I have no immediate plans to practice in Wyoming, I love the state and would welcome the opportunity to practice again if an opening for an anesthesiologist occurs.

I look forward to our telephone conference on Thursday, April 21 at 4:30PM.

Best regards,

Eric Welling, MD MBA

(Ex. C) (emphasis added).

46. On April 21, 2022, Dr. Welling met for an Informal Interview with the Interviewers and the Board's Prosecuting Attorney. (Exs. D and E).

47. On July 6, 2022, the Interviewers requested the Board officers order Dr. Welling to submit to an updated mental health examination. (Exs. D and E).

48. On July 22, 2022, the Board Officers¹ entered *Board Officers' Order for Alcohol, Substance and Mental Health Examination of Eric Welling, M.D., Wyoming Physician License No. 10015A* (Mental Health Examination Order). (Ex. D).

49. Pursuant to the Mental Health Examination Order, Dr. Welling was ordered to complete the examination no later than Friday, September 9, 2022. (Ex. D).

¹ Dr. Hinkle, Board President, did not participate in the discussion or deliberations of the Board Officers when considering this matter.

50. On July 22, 2022, Board staff e-mailed Dr. Welling a copy of the Mental Health Examination Order. Board staff also sent a copy via first class mail. (Ex. I).

Dr. Welling's Renewal Application for his Wyoming Physician License

51. On October 27, 2021, the Utah Board began investigating Dr. Welling. (Ex. U).

52. On May 19, 2022, the Board office received Dr. Welling's application for renewal of his Wyoming Physician License. (Ex. S).

53. On his renewal application, Dr. Welling answered "No" when asked:

Question B: Do you at this time have any medical condition which, in any way, impairs or limits, or might impair or limit your ability to safely and skillfully practice as a physician?

Question C: Since you last renewed your license (or this is the first time renewing your license, since the date your license was originally issued) have you been hospitalized for, missed work because of, or been significantly impaired by any mental or emotional condition?

* * *

Question F: Since you last renewed your license (or this is the first time renewing your license, since the date your license was originally issued) have you been under investigation or had or have any adverse charges or complaints filed against you by: any education training program or facility; medical licensing board; local, state, federal or military professional or disciplinary body; any hospital privileging or credentialing body or grievance committee; or any other medical group, including medical societies and specialty boards?

(Ex. S).

54. On his renewal application, Dr. Welling answered "Yes" when asked:

Question E: Since you last renewed your license (or this is the first time renewing your license, since the date your license was originally issued) have you been reprimanded, demoted, disciplined,

cautioned, placed on probation, been placed on or taken leave (except vacation leave), or been terminated by any employer, educational institution or training program for any reason?

* * *

Question G: Since you last renewed your license (or this is the first time renewing your license, since the date your license was originally issued) have you been denied licensure, privileges or membership by any licensing board, hospital medical facility, professional society, specialty board, or medical body?

(Ex. S).

55. On his renewal application, Dr. Welling explained that he was suspended from Davis Hospital for medication discrepancies resulting from new EMR systems. He explained that he felt the length of the suspension because it was reported. He elected to take an indefinite medical leave of absence and decided not to work at Davis Hospital again. (Ex. S).

Dr. Gadbois' Evaluation of Dr. Welling – Unfit to Practice

56. Dr. Welling submitted an application for licensure in Florida. (Ex. L).

57. Professionals Resource Network (PRN) referred Dr. Welling to Brian Gadbois, M.D., a licensed Psychiatrist, for an *Independent Medical Evaluation (IME)* (Dr. Gadbois' Evaluation). (Ex. L).

58. On September 6, 2022, Dr. Welling presented to Dr. Gadbois. (Ex. L).

59. Dr. Gadbois noted that:

- a. The Acumen Report made several recommendations which, upon referral today, it was unclear if they were followed.
- b. Further, upon referral to Florida PRN by the Florida Board of Medicine, Dr.

Welling had not established that he followed the treatment recommendations set forth by Acumen, which is a reputable and established evaluation center specializing in physician impairment.

- c. It is clear from available documentation that Dr. Welling's employer was relying on the Acumen report and seemingly expected Dr. Welling to follow Acumen's recommendations.
- d. Dr. Welling shared that he does not have a current treating primary care physician but has consulted with both his cardiologist, Dr. Daniel Humiston and his psychiatrist, Dr. Van Leeuwen.
- e. Dr. Welling reports he is currently self-prescribing Metformin 500mg 1 tablet PO BID, Amlodipine 100mg 1 tablet daily, Rosuvastatin 10mg 1 tablet PO QHS, Famotidline (OTC) 50mg PO BID, and Niacin (OTC) 500mg 1 tablet PO QHS out of precaution due to daily history.
- f. Depression 40 years old (self-diagnosed) found self to be more irritable with wife and children, found self not as good provider. Put self on Prozac at that time. Helped with more ability to think prior to reacting to stressful situations.

(Ex. L).

60. Dr. Gadbois' Evaluation provided:

IMPRESSION:

One focal point of Dr. Welling's case, at this time, is the extent of his follow through with Acumen's recommendations from 11/8/21. His follow through is summarized below:

1. Medication adjustments (there is ample evidence that this was accomplished and he remains under the care of Dr. Van Leeuwen, his psychiatrist - however it is unclear if Dr. Van Leeuwen was aware of the results of Dr. Welling's evaluation or recommendations from Acumen.)
2. Leave of absence from work until further assessment demonstrates an improvement in his thought organization on the medication (there is evidence from his employer that he requested and was granted an extended leave of absence based on the findings of his assessment from Acumen).
3. **Intensive partial hospitalization or day treatment program for professionals (there is no evidence of treatment or attempted treatment at the PHP level of care or any other level of care).**
4. **Treatment with a psychologist to address personality issues noted (there is no evidence of psychological treatment/psychotherapy since leaving Acumen).**
5. Authorize ROI for the Acumen evaluation report to appropriate parties (unknown, we do know he released the report to us).
6. **Refrain from self-prescribing medications (unknown).**
7. **Practice only within established legal, ethical and professional boundaries (unknown, he has not been under PHP monitoring).**

The other focal point is on evidence of current impairment. Upon referral to Acumen for assessment in 2021, there was never a concern for drug diversion from his employer. Subsequent lab testing also was in favor of no apparent substance use. Dr. Welling however did call attention to potential mental impairment/confusion/deficits that could have caused his ongoing charting problems. **Upon evaluation at Acumen, a diagnosis of cyclothymia, potentially unspecified bipolar as well as clinically significant neurocognitive findings and personality issues led to a determination that Dr. Welling was not safe to immediately return to practice, but rather should engage in an appropriate treatment program.**

Lack of insight is a hallmark of bipolar disorder. At this time Dr. Welling seems to have no insight that he should have followed the recommended plan. Instead he applied for a license in another State which gives the appearance of attempting to get around the recommendations. At this time, given the context of the situation developing with Dr. Welling over the past year, it cannot be said with medical certainty that anything has changed other than he appears to be compliant with medications prescribed by his psychiatrist.

*** * ***

DSM V DIAGNOSIS:

1. Cyclothymia with anxious features
2. Cluster B personality disorder (per Acumen assessments in 2021)
3. Compulsive behavior related to internet (rule-out process addiction)

STATEMENT OF POTENTIAL FOR IMPAIRMENT: With the diagnosis of cyclothymia, with prior related workplace impairment and inadequate follow-through with treatment recommendations, an impairment has been established. The established impairment creates an elevated risk to the public.

SAFETY TO PRACTICE STATEMENT: Eric Welling is not able to practice his profession with reasonable skill and safety at the time of the evaluation. Due to concerns noted in Dr. Welling's neurocognitive testing a year ago and recommendation from Acumen that "Dr. Welling should take a leave of absence from work until further assessment demonstrates an improvement in his thought organization on the medication," repeat neurocognitive testing should be considered as part of this process.

SUMMARY: The recommended course of action for Eric Welling is to enter a PRN-approved longitudinal professionals program, specializing in the treatment of mental health disorders in physicians.

TREATMENT RECOMMENDATIONS:

In the Disciplinary Matter of Eric C. Welling, M.D. -- Docket No. 23-12
Findings of Fact, Conclusions of Law, and Order Lifting the Summary Suspension upon the Wyoming Physician License of Eric C. Welling, M.D.; Order Suspending the Wyoming Physician License of Eric C. Welling, M.D., Wyoming Physician License No. 10015A; Order Imposing Civil Fine

1. Eric Welling should enter and complete a PRN-approved longitudinal professionals program.
2. Comprehensive neurocognitive testing is recommended, as part of the treatment planning and return to work process.
3. Eric Welling should engage in individual outpatient psychotherapy for recovery support and to address personality issues identified in the Acumen assessment.
4. All controlled medications should be discontinued and/or avoided due to inherent abuse/dependence potential. Eric Welling should refrain from self-prescribing medications.
5. Eric Welling is appropriate for PRN monitoring, under mental health contract.

(Ex. L) (emphasis added).

Procedural History - Board Summary Suspension Order

61. Dr. Welling did not comply with the Mental Health Examination Order. (Ex. E).
62. On November 4, 2022, the Board entered an *Order of Summary Suspension of Eric C. Welling, M.D., Wyoming Physician License No. 10015A, Pending a Contested Case Hearing*, fully incorporated herein. (Ex. E).
63. On November 20, 2022, the Board office received Dr. Welling's e-mailed response again detailing each of the Acumen recommendations and how he felt he had strictly complied with the recommendations:

I feel it important to answer some of the Board's questions about my suspension from Davis Hospital and the subsequent investigation, and subsequent Summary Suspension of my Wyoming Medical license by the Wyoming Board of Medicine. I would like to formally appeal the Summary Suspension by the Wyoming Board of Medicine.

1. Shortly after the suspension was reported in the NPDB, I was informed by the Wyoming Board of Medicine of their own

investigation. In my opinion, it would have been reasonable for them to contact the Utah Division of Professional Licensing to inquire about their investigation findings and rulings. I believe it was outside of the purview of the Wyoming Board of Medicine to reinvestigate the same allegations, examinations, and rulings but then arrive at a different conclusion and require another set of examinations and evaluations by Acumen Assessments. I believe it is unreasonable for the Wyoming Board of Medicine to mandate where I go for treatment. The Wyoming Board did not make the diagnosis. They should not prescribe the therapy or to whom I go for the therapy. I believe that a repeat investigation months after the events at Davis Hospital which resulted in the suspension constitutes a sort of "double jeopardy." I also believe that they are interfering with my treatment by ordering me back to Acumen Assessments instead of allowing me to pursue treatment from other therapists (acceptable to Dr. Van Leeuwen and Dr. Stacy).

2. The suspension from Davis Hospital and my subsequent indefinite medical leave of absence was thoroughly investigated by the Utah Department of Professional Licensing and interviewed me, Brittany Dietrich (Davis Hospital Medical Staff Coordinator), Dr. Stacy of Acumen Assessments, and Dr. Van Leeuwen, psychiatrist, Tanner Clinic. The matter was investigated and adjudicated by Shari Scheeler, investigator and Elizabeth Sorenson, counsel, for the Utah Board of Medicine. The ruling from the Board of Medicine was that since this suspension did not involve any type of diversion, but involved a treatable mental health condition, that as long as I complied with psychiatric treatment and followed the recommendations of my psychiatrist and that I did not repeat the behaviors which resulted in the investigation at Davis Hospital, that my medical license with the State of Utah would continue to be valid and in good standing.

These are the original conclusions and recommendations from Acumen Assessments:

Recommendations of Acumen Assessments:

1. Dr. Welling may benefit from a trial of Lamictal as a primary mood stabilizer. It will take time to titrate him up to a therapeutic dose, so an augmentation strategy with a second-generation antipsychotic medication may be helpful. It is not clear if Wellbutrin and Buspar are doing much. Dr. Whipple suggests discontinuing these medications to simplify the regimen. At this point, we would address his difficulties as if he is developing a late- life bipolar

condition.

2. Dr. Welling should take a leave of absence from work until further assessment demonstrates an improvement in his thought organization on the medication.
3. Dr. Welling would benefit from an intensive partial hospital or day treatment program for professionals in crisis.
4. We recommend that Dr. Welling acquire a local psychologist to address the personality issues noted in this report.
5. We recommend that Dr. Welling sign releases of information to facilitate sending this report to his providers.
6. We recommend that Dr. Welling refrain from self-prescribing medications.
7. The assessment team recommends that Dr. Welling practice all times in full accordance with relevant federal, state, local, organizational, and professional regulations, ethical guidelines, and best practices. If he ever is unable or unwilling to adhere to these requirements, we recommend that he disengage himself from the practice of medicine immediately.

I have followed, or am in the process of following, all of these recommendations including the following:

1. Acumen Assessment agreed with my choice of Benjamin Van Leeuwen, DO, Psychiatrist at the Tanner Clinic, for follow-up and medication management. Dr. Van Leeuwen is the only physician managing my psychiatric medications. After examining the Acumen Assessment report, discussing my case with Dr. Stacy (AA), Dr. Van Leeuwen recommended Abilify 4mg as a mood stabilizer and the antidepressant, Escitalopram 30mg. I have seen Dr. Leeuwen for the past year and have been compliant with the medication and with my appointments.

In addition, I met with Dr Brian Gadbois, Psychiatrist, Board Prep Recovery Center, Tampa, FL. Part of this evaluation was a forensic toxicology screen including blood, urine and hair analysis. All of these results demonstrated no exposure to ANY illegal or controlled substances.

After I informed the Wyoming Board of Medicine my decision to

consult with Dr Gadbois, the Wyoming Board of Medicine stated that they would not accept my consultation with Dr. Gadbois as an acceptable physician to monitor my progress and stated that they required that I return to Acumen Assessments for follow-up and another evaluation. Acumen Assessments did not require me to return to AA for follow-up or treatments. They recommended continuing sessions with Dr. Van Leeuwen and a local psychologist for therapy. It is unreasonable that the Wyoming Board of Medicine go against the counsel of Scott Stacy, Director of Acumen Assessments by requiring me to return to Acumen for ongoing therapy.

2. I took a nearly 7 month leave of absence from Anesthesia from December 12, 2021 until June 15, 2022. During this leave of absence, I continued to meet with Dr. Van Leeuwen and continued to take my medications as prescribed by Dr. Van Leeuwen. I rested, healed, and looked for future employment opportunities.

3. I found and met with a mental health counselor in Salt Lake City, Jeffrey Riekhof. I had a preliminary meeting with him after being on a waiting list to see him for two months. I share with him the Acumen Assessment report. Upon further examination, I learned that Dr. Riekhof was not a Psychologist, but rather a mental health counselor (Sociologist). Wanting to comply with Acumen Assessment's recommendations, I asked Dr. Stacy at Acumen Assessments to share with me a list of approved Psychologists that were experienced with Medical Staff issues. He provided me with several resources. I have struggled to find a psychologist with whom to meet during Covid, but have since found several options.

4. I have refrained from writing any psychiatric medications for myself. My only prescriber for these medications is Dr. Benjamin Van Leeuwen.

5. Allegations of Alcohol and/or drug use. During my focused review at Davis Hospital, I was tested for drugs on several occasions. All of these tests were negative. Despite Davis Hospital having their suspicions satisfied that there was no alcohol use or drug diversion, Acumen Assessments again tested me for drugs (all testing was negative) and administered a lie detector test (which was also negative when questioned about drug diversion). During an evaluation in September 2022, I was again given a toxicology screen including blood, urine and hair sample analysis. None of these samples were positive for drugs. The Davis Hospital suspension did not involve drugs or alcohol. It was the result of a mental disorder

which made it difficult for me to do my anesthesia charting on confusing and incompatible EMRs.

What is more important is the following:

a. That I am compliant with the original recommendations made by Acumen Assessments - which I am.

b. That I am compliant with the medications prescribed by Dr. Van Leeuwen – which I am. My next appointment with Dr. Van Leeuwen (first available) is 1/13/2023.

c. That I have taken some time off work to heal and to consider the counsel and treatment that I have been given – I took 6 months off from work from December 2021 to June 2022.

d. I have had a difficult time in finding a psychologist therapist that would be able to work with Dr. Van Leeuwen. The psychologist in Dr. Van Leeuwen's office left for another position and his position with Tanner Clinic remains vacant. I continue to look for another therapist and have found an option that may satisfy that stipulation particularly now that I have moved to Las Vegas, NV to work.

e. Most important that the prescribed medications and therapy resulted in improvement in my mood and ability to practice medicine. I have successfully worked at a Surgery Center (Northern Michigan Surgery Suites, Boyne City, MI) and a hospital system (Sunrise Hospital, Flamingo Surgery Center, Las Vegas, NV). I've noticed an improvement in my attention and work quality. I have worked with several new computer charting systems and have experienced no errors in anesthesia charting or medication reconciliation. I have had several compliments from the surgery centers and how they enjoy working with me as well as surgeons who have been complimentary of my work.

f. I do not prescribe my own medications, with the exception of blood pressure and anti-cholesterol medications.

Most importantly, I feel that my evaluation at Acumen brought to my attention some areas where I needed to improve in my personality and in my work habits. I have tried to be objective and teachable about these areas of needed improvement and have tried to address each one individually. I feel that I have been successful in implementing the needed improvements demonstrated by my

successful work in a hospital and several surgery centers. It is my professional goal to continue to provide safe and competent care to my patients. I will continue to be compliant with the recommendations of Acumen Assessments and Dr. Van Leeuwen.

(Ex. G).

PRC's Assessment of Dr. Welling – Unfit to Practice

64. On January 6 through 9, 2023, Dr. Welling presented to PRC for the comprehensive multidisciplinary evaluation requested by the Board. (Ex. J).

65. PRC issued an *Assessment Discharge Summary* (PRC Report).

66. In its report, PRC noted that:

- a. Throughout the evaluation Dr. Welling demonstrated difficulty maintaining a cohesive and sequential narrative of his work history and elements of his behavior that others might consider to be problematic.
- b. He provided PRC with a resume, which was not consistent with information he provided to PRC clinicians during clinical interviews including one that focuses on occupational history.
- c. He provided confusing and sometimes contradictory information.
- d. During clinical interviews he tended to rationalize, justify, deny, and was defensive.
- e. He also demonstrated a tendency to externalize blame.

(Ex. J).

67. When he was asked about reasons for not following through with the Acumen recommendation that he participate in a professionals program he initially said

that he and his psychiatrist viewed this as not necessary. He later reported to PRC clinical staff that he did not participate in the recommended programming because he could not afford such a program. In correspondence with the Board, he asserted that Acumen was self-referring, implying he had no actual need for such services. (Ex. J).

68. Another example of problematic behavior is that despite having discussions with clinical staff at Acumen and the Board around prescribing, he continues to call in prescriptions for family members. Per his report, Dr. Welling will write/call in his own medications after consulting with his cardiologist who he views as his primary care provider. (Ex. J).

69. Additional areas of concerns are related to his communication and engagement with the Board. PRC noted that Dr. Welling has not been consistently timely in responding to them, has not been honest in some of the information provided about obtaining an evaluation, and has not been compliant with the Acumen aftercare recommendations. (Ex. J).

70. Dr. Welling had started individual psychotherapy (although he only attended two sessions in 2022, six months apart and was not in compliance with the therapist's expectation of frequency of treatment visits) and he had made substantial changes in his work environment. (Ex. J).

71. PRC noted that given his history of self-prescribing it is questionable whether he has a primary care physician. (Ex. J).

72. The PRC report noted:

MENTAL STATUS EXAMINATION:

In the Disciplinary Matter of Eric C. Welling, M.D. -- Docket No. 23-12
**Findings of Fact, Conclusions of Law, and Order Lifting the Summary
Suspension upon the Wyoming Physician License of Eric C. Welling, M.D.;
Order Suspending the Wyoming Physician License of Eric C. Welling, M.D.,
Wyoming Physician License No. 10015A; Order Imposing Civil Fine**

According to PRC's consulting psychiatrist: His speech was quite rapid. He was inconsistent in his answers to questions and often provided answers in a defensive and rationalizing manner. He would make comments that were unclear and required clarification. Upon further discussion there seemed to be externalizing of blame and variable assumption of responsibility. He was unclear about specifics, particularly Acumen's recommendations. He also made comments he could not afford services Acumen was offering. Dr. Welling apparently felt that seeing a community psychiatrist and getting medication was sufficient to meet Acumen's recommendation. Additionally, he thought he was getting therapy from his psychiatrist, which his psychiatrist later explained was not the case, rather he would need to get therapy from a provider other than his psychiatrist. Per his report, he indicated his psychiatrist has been reporting to the Wyoming Board of Medicine.

* * *

Medical Concerns: Information about his medical history was not consistent as he provided different information on his client information form and clinical interviews. Dr. Welling reported during clinical interviews that he has not been diagnosed with specific medical conditions; however, he is treating himself for high blood pressure and cholesterol. He stated he consults with his cardiologist and then self-prescribes his medications. He is currently self-prescribing Amlodipine 10 mg, Metformin 500 mg

BID, Rosuvastatin 10 mg, Niacin 500 mg, COQ enzyme 200 mg, Famotidine 100 mg b.i.d., and Acyclovir 400 mg. He stated he self-prescribed Acyclovir as he read research that indicated there may be association between taking an antiviral medication and reducing the risk of developing Alzheimer's dementia.

* * *

Psychiatric Concerns: Dr. Welling reported he historically has had concerns related to depression. He reported he started to self-prescribe psychiatric medication such as Prozac and then shifting to Wellbutrin and Lexapro. Reportedly, he started seeing a psychiatrist in September of 2021. He reported his psychiatrist prescribes and writes his (Dr. Welling's) psychiatric medication prescriptions. Per Dr. Welling's report, he is prescribed Lexapro 30 mg and Ability 5 mg. According to records provided by the psychiatrist, Ability is prescribed at 2 mg. It is PRC's consulting psychiatrist's clinical opinion that these dosages are not at an optimal level. . .

In addition to seeing the community psychiatrist he (Dr. Welling) meets with approximately once every three months, Dr. Welling reported he started seeing an individual psychotherapist. Per Dr. Welling's report, the first session occurred in June of 2022. Seeing a therapist was one of the recommendations made by Acumen. Dr. Welling stated he again met with his therapist in December of 2022. Both progress notes from these sessions indicate the therapist's intention was to see Dr. Welling on a more regular basis.

* * *

Overall results of the current evaluation were consistent with neuropsychological findings obtained during the Acumen evaluation.

* * *

Dr. Welling's difficulties with compliance mentioned above, including his continuing to work when recommended not to and his lack of tending to his own health and wellbeing are seen as major deficiencies in the ABMS core competency area of Professionalism. During the evaluation at PRC, the PRC clinical team observed other deficiencies in Professionalism as he demonstrated behaviors similar to behaviors observed at Acumen. During clinical interviews at PRC tended to rationalize, justify, deny, or was defensive. He had difficulty accepting responsibility for his behaviors, would tend to externalize blame and demonstrated poor insight into the causes and potential effects of the problematic behavior. In response to the PRC clinical team's inquiries about why he did not follow through with Acumen's recommendation to participate in a professionals program he initially stated it was because his psychiatrist reviewed his records and decided it was unnecessary, although later in the evaluation process he reported that his primary motivation for not completing the professionals program was because of cost.

Another area of concern indicative of deficiencies in the ABMS core competency area of Professionalism is that he engages in poor self-care and has a lack of recognition of how his physical and mental wellbeing might impact patient care. For example, he does not appear to have appropriate downtime pre or post call. This in turn may be at least partially a symptom of his underlying Bipolar Spectrum Disorder as he may be overly goal directed.

* * *

Dr. Welling's struggles to recognize and manage both internal and external triggers. He has poor self-reflective awareness, demonstrates poor judgment, and fails to anticipate the consequences of his actions. These factors likely contribute to him making poor decisions and engaging in behaviors that are not in his best interest in the long term (for example, not responding to the Wyoming Board of Medicine communications/orders timely).

His willingness to seek out treatment or engage in the change process appears to be primarily externally motivated. He had been prescribing himself psychiatric medications until recently. When he eventually sought psychiatric assistance, he was somewhat reluctant in following the psychiatrist's and Acumen's recommendations that he establish a relationship with a therapist, engage in individual psychotherapy, and he delayed following through with this recommendation by at least six months. When he finally did engage in psychotherapy, he did so secondary to the Wyoming Board of Medicine's concern about his lack of compliance with the Acumen recommendations. He has only seen his individual psychotherapist twice in 2022 and there were approximately six months between sessions. Dr. Welling's reluctance to comply, his tendency to either withhold, minimize, and/or distort information are all concerning and would suggest that he is in the pre-contemplative stage of change.

* * *

It is likely that Dr. Welling will continue to struggle with elements of his behavior without more extensive assistance. While he reported he has sought out psychiatric and psychological treatment, collateral data indicate his participation in therapy has been minimal. As he is a poor historian it might be difficult for his psychiatrist to be fully aware of all the issues that Dr. Welling has been experiencing.

* * *

FITNESS TO PRACTICE AND RECOMMENDATIONS:

Results of the current evaluation are similar to findings obtained during his Acumen evaluation in October of 2021. Data indicate he has demonstrated poor judgment in both his personal and professional life. Information obtained through collateral sources

indicates that Dr. Welling has a long history of difficulties at the workplace.

* * *

Recommendations:

1. Participation in treatment in a treatment program at the partial hospital or day treatment level of care **prior to** a return to the clinical practice of medicine. Important components of his treatment would include psychiatric oversight/medication management as well as participation in individual and group therapy sessions. The treatment program should have familiarity in working with medical professionals with similar issues (mood disorders, professionalism concerns, personality characteristics, etc.) We would recommend that Dr. Welling discuss appropriate facilities with the Board **prior to** initiating treatment.
2. It will be important that following the completion of the treatment mentioned above he has a comprehensive aftercare plan including regular psychiatric follow up and regular psychological follow-up. It will be important that he fully complies with all aftercare recommendations.
3. Dr. Welling needs to establish a relationship with a primary care provider who should be responsible for writing all Dr. Welling's prescriptions.
4. Dr. Welling need to refrain from self-prescribing medications and refrain from writing prescriptions for family members.
5. The team would be happy to provide this report to his treaters with appropriate releases in place.
6. He needs to comply with all recommendations and requirements as set forth by the Wyoming Board of Medicine.

(Ex. J).

Dr. Welling Presents to Dr. Bone – Psychologist

73. Jonathan Bone, Psy. D., is a Licensed Psychologist. (Ex. N).
74. On February 16, 2023, Dr. Welling presented to Dr. Bone. They discussed

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"[e]xercise; avoiding burnout; continue to make it back to SLC every other month; ordered Rapt - present focus book; walking[.]" (Ex. N).

75. On February 23, 2023, Dr. Welling presented to Dr. Bone. They discussed "Burn out; board issues; need for a new psychiatrist." (Ex. N).

76. On March 2, 2023, Dr. Welling presented to Dr. Bone. They discussed "Corrective behaviors; maintaining stable mood; upcoming hearing on March 13 and need to prepare documentation; direction; need for self-care[.]" (Ex. N).

77. On March 9, 2023, Dr. Welling presented to Dr. Bone. They discussed "Pre-hearing document; treatment needs; addressing burnout; self-care." (Ex. N).

Mr. Chase's Assessment of Dr. Welling – Conditional Fitness to Practice

78. In March 2023, Dr. Welling presented to Mark Chase for a Psychological Assessment. The Nevada State Board of Medical Examiners requested a psychological and fitness-to-practice assessment of Dr. Welling. (Ex. M).

79. Mark Chase is the Clinical Program Director for PRN. He holds M.A. and M.B.A. He is a Doctoral Candidate in Neuropsychology. (Ex. M).

80. Mr. Chase noted:

DASS-21 Assessment: The DASS 21 is a self-report questionnaire designed to measure the severity of a range of symptoms common to depression, anxiety, and stress. The DASS-21 assessment completed by Eric for general anxiety, stress, and depression indicated very little symptomatology for anxiety, depression, or stress.

Novaco Anger Assessment: The disposition of anger has been considered cognitive, arousal, and behavioral. It describes someone's ability to regulate anger when provoked and anger is aroused. Eric scored well on the assessment, making him more peaceful than average.

Adult ADHD (ASRS-V1.1) Assessment: Eric did not meet the adult attention hyperactivity disorder criteria.

Behavioral Observations: Throughout the evaluations, Eric demonstrated a cohesive and sequential narrative of his educational, work, and personal life history. During the discussion about the event that had prompted this assessment, Eric never rationalized or justified the facts but was straightforward in his explanation. Eric expressed regret about not following through with ensuring the Wyoming Board had the requested information and felt the whole situation was a wake-up call to him about work-life balance. No narcissistic behaviors or attitudes were observed during the evaluation.

(Ex. M).

81. Mr. Chase provided the following recommendations:

Recommendations:

1. Eric will participate in the PRN Professionals Aftercare/Monitoring Program for twelve months. Weekly meetings with other professionals will allow Eric to develop a robust support system with other physicians who share similar challenges in the workplace. Furthermore, monthly one-on-one meetings will give Eric an additional resource to process personal and professional stressors.
2. Eric will identify and continue to work with his psychiatrist on medical management, agreeing to meet at least every six months. Eric has identified Dr. Benjamin Van Leeuwen as his treating psychiatrist; however, that may change soon.
3. Eric will identify and continue to work with his psychologist on anxiety and behavioral issues to refine his professionalism, particularly when it comes to dual relationships. Eric needs to meet at least monthly with his psychologist. Eric has identified Jonathan Bone as his treating psychologist.
4. Eric will identify a primary care provider and have that provider be responsible for writing all of Dr. Welling's non-psychiatric medications. Eric will refrain from self-prescribing medications. At present, Eric has identified Craig Harmon as his treating primary care provider.

5. Eric will work with PRN in developing and refining an appropriate self-care plan to improve his mental and physical well-being. Dr. Welling has given self-care greater importance in his life and has already seen positive results. In the past six months at Sunrise Hospital, he has reconciled all medications exactly, has no charting errors, and his interpersonal communications and relationships with co-workers have been pleasant and professional.

Fitness To Practice: Psychological Dr. Eric Welling is safe to practice and can exercise hospital privileges without restrictions as long as he complies with the recommendations presented in this report.

(Ex. M).

Dr. Welling Presents to Dr. Harmon – Primary Care Provider

82. Craig Harmon, M.D., is a licensed physician in family internal medicine.

(Ex. 8).

83. On April 4, 2023, Dr. Welling presented to Dr. Harmon. (Ex. 8).

Dr. Welling Presents to Dr. Caten – Psychiatrist

84. Eric Caten, M.D., is a Licensed Psychiatrist. (Ex. R).

85. On May 25, 2023, Dr. Welling presented to Dr. Caten. Dr. Caten recommended that Dr. Welling see a psychologist in Las Vegas because Dr. Bone is located in Utah and Dr. Welling is unable to see him as frequently as he should (on a biweekly basis). He recommended individual, family or group therapy. (Ex. R).

86. When asked about his current medications, Dr. Welling responded, "I put myself on those medication but now Craig Harmon gives them to me." (Ex. R).

Dr. Welling's Non-Compliance with Treatment Recommendations

87. On October 18, 2021, Dr. Welling presented to Dr. Van Leeuwen. He

reported that “he has stopped the Wellbutrin as well as the buspirone as he does not think that it was doing anything for him. Has also reduced the dose of the Lexapro as well.” (Ex. H).

88. On November 16, 2021, Dr. Welling presented to Dr. Van Leeuwen. He reported that he is “planning on resigning from DH today, and will be working out of state for some time.” (Ex. H).

89. On February 15, 2022, Dr. Welling presented to Dr. Van Leeuwen. He reported that he “[h]as not been able to find a job for 5 months” which “has really been frustrating for him.” (Ex. H).

90. On May 9, 2022, Dr. Welling presented to Dr. Van Leeuwen. Dr. Van Leeuwen noted:

Has picked up rx for Abilify, but has not picked up rx for Lexapro since January 2022. Do not know why he is being deceitful about this. For now, will continue with meds at current doses. Strongly encouraged pt to find a therapist as was recommended by the Acumen evaluation. Made clear to pt that our intermittent visits do not nor have they ever constituted psychotherapy.

(Ex. H) (emphasis added).

91. On August 1, 2022, Dr. Welling became employed at U.S. Anesthesia Partners in Las Vegas, Nevada, full-time. (Exs. L and 9).

92. On December 2, 2022, Dr. Welling presented to Dr. Van Leeuwen. He reported that recently started seeing a therapist, Jeffrey Riekhof, Licensed Clinical Social Worker (LCSW). He is also in the process of getting in with a forensic psychologist. He is working in Las Vegas full time. (Ex. H).

93. On February 7, 2023, the Board Prosecutor e-mailed Dr. Welling, approving Jonathan Bone, Psy. D., Licensed Psychologist, as a psychological provider. The Board Prosecutor did not approve Mr. Chase to manage Dr. Welling's medication because Mr. Chase does not hold a medical license (M.D. or D.O.), rather he is doctoral level "candidate." Additionally, Dr. Welling was advised that "meeting once per week does not satisfy a 'day treatment level' as required." (Ex. K).

94. On March 9, 2023, Dr. Welling e-mailed Dr. Scott Stacy from Acumen regarding the recommendation for a partial hospitalization treatment program. Dr. Stacy stated, "Since you have been working since last June, I assume you underwent another fitness-for-duty evaluation after medication changes/treatment and psychotherapy (Recommendations #1 and #4)." (Ex. 3).

Procedural History Leading to Contested Case Hearing Deliberations

Prompt Initiation of Proceedings to Resolve Summary Suspension

95. On November 23, 2022, Petitioner promptly initiated proceedings against Dr. Welling by filing a *Petition and Complaint*[,] *Notice of Opportunity to Answer*[,] *Notice of Procedure*[, and] *Notice of Opportunity for Informal Resolution* charging Dr. Welling with violations of the Act.

96. The matter was set for a contested case hearing on January 27, 2023. The Hearing Examiner ordered the parties to file disclosures identifying exhibits and witnesses.

97. Petitioner filed the required disclosure statements identifying exhibits and witnesses. Dr. Welling did not.

98. On January 12, 2023, Petitioner filed a *First Amended Petition and Complaint* removing a charged violation.

Dr. Welling Delays Prompt Determination

99. On January 27, 2023, before the contested case was convened, Dr. Welling requested a continuance, which was granted.

100. The matter was reset for a contested case hearing on April 7, 2023. The Hearing Examiner ordered the parties to file disclosures identifying exhibits and witnesses.

101. Petitioner filed the required disclosure statements identifying exhibits and witnesses. Dr. Welling did not.

102. On March 21, 2023, the Hearing Examiner conducted a pre-hearing conference with the parties. The parties agreed to continue the matter due to discovery issues.

103. The matter was reset for a contested case hearing on May 24 and 26, 2023. The Hearing Examiner ordered the parties to file disclosures identifying exhibits and witnesses.

104. On April 17, 2023, the Board office received Dr. Welling's *Request for Ruling of Summary Judgement (sic) and Reinstatement of the Respondent's Wyoming Medical License*.

105. On April 24, 2023, Petitioner filed the Second Amended Petition adding additional charges.

106. On May 5, 2023, the Hearing Examiner held a status conference with the

parties. Dr. Welling withdrew his motion for summary judgment. It was determined that the parties needed additional time to conduct and comply with discovery.

107. The matter was reset for a contested case hearing on June 26 and 27, 2023. The Hearing Examiner ordered the parties to file disclosures identifying exhibits and witnesses.

Contested Case Hearing

108. On June 26, 2023, the Hearing Examiner conducted a contested case hearing in this matter.

B. Testimonial Evidence

Witness Testimony – Dr. Fielden (Deposition)

109. Scott Fielden, M.D., submitted to a deposition on May 17, 2023. (Ex. P).

110. Dr. Fielden testified he has been employed with U.S. Anesthesia Partners since 2016. He is the chairman of the clinical governing board. Depo Transcript, pp. 5-6.

111. When asked why Dr. Welling does not practice in Utah despite his family living there, Dr. Fielden stated, “I think because he does not have a license there.” Depo Transcript, p. 9.

112. Dr. Fielden was not aware of the reason for the Davis Hospital suspension of Dr. Welling’s clinical privileges. He was aware that Dr. Welling lost his licensure in multiple states, but did not know which jurisdictions or why. He was not aware of the recommendations following the three different psychological evaluations. He is not aware of whether Dr. Welling complied with those recommendations. He does not have any knowledge of Dr. Welling’s present psychological or mental health status. Depo

Transcript, pp. 10-14.

Witness Testimony – Dr. Magnus (Deposition)

113. Dustin Magnus, M.D., submitted to a deposition on May 17, 2023. (Ex. Q).

114. Dr. Magnus testified he is employed with U.S. Anesthesia Partners and he is the Chief of Anesthesia at Sunrise Hospital in Nevada. Depo Transcript, p. 5.

115. Dr. Magnus was not aware of why Dr. Welling lost his privileges at Davis Hospital. He was aware that Dr. Welling's physician license was suspended and lost in several states. He did not ask for copies of the different jurisdictions' disciplinary actions. He has not reviewed the Acumen Report. He only reviewed the evaluation that said Dr. Welling was fit for practice. Depo Transcript, pp. 9-16.

Witness Testimony – Dr. Welling

116. Dr. Welling described his professional interactions with Dr. Van Leeuwen as Dr. Van Leeuwen "acquiesc[ing] to my suggestions and thought it was a good idea that we wait until we got a diagnosis before he issued treatment." At the time of the Acumen evaluation, he was on two different antidepressants. It was suggested that he speak to his psychiatrist regarding a change in his medications. He claimed to be meeting with Dr. Van Leeuwen "every week or every two weeks[.]" He did not believe Buspar was helping, so he told Dr. Van Leeuwen that he preferred to stay on the medications recommended by Acumen. Hr'g Transcript, pp. 26-27, 29.

117. He worked at Doctors Medical Center of Modesto concurrently with his employment at Davis Hospital. He continued to practice until December 2021. He started working locums in June 2022. He testified that during that six month period he was not

employed, he was actively looking for work. Hr'g Transcript, pp. 40-41, 58-59.

118. Dr. Welling saw Jeffrey Riekhof, LCSW, starting in June 2022. He saw Mr. Riekhof three (3) times over the next seven (7) months. Hr'g Transcript, pp. 29, 65-66.

119. He admitted that he delayed in having the neuropsychological assessment requested by the Board until January 2023 because he did not know if they would find differently from Acumen. Hr'g Transcript, p. 31.

120. He testified that when Nevada became aware of the proceedings in Wyoming, the Nevada Board of Medicine wanted to follow up with their own evaluation, so he complied. Hr'g Transcript, pp. 60-61.

121. He believes that letters of support are the ultimate test of fitness to practice medicine. Hr'g Transcript, p. 36.

122. Dr. Welling claims that if there would have been a day treatment program or intensive partial hospital program in Utah, he would have attended. Later, he claims that Acumen and PRC offered programs, but he thought they were self-serving. Hr'g Transcript, pp. 68, 165.

123. On December 5, 2021, Dr. Welling signed a stipulation with the state of Utah voluntarily agreeing not to practice in Utah. His license was later reinstated. Hr'g Transcript, pp. 70-71.

124. Dr. Welling testified that he did not give Mr. Chase Dr. Gadbois' Evaluation because he didn't think it was relevant. Likewise, he did not provide Dr. Caten medical records for Dr. Van Leeuwen, Dr. Gadbois' Evaluation, or Mr. Chase's assessment because it was not relevant. Hr'g Transcript, pp. 160, 171.

125. He withdrew his application in Florida because “they kept throwing out things that it wanted me to do that I thought were redundant.” After being hired at Sunrise Hospital, he did not need the locums assignments. Hr’g Transcript, p. 160.

126. Dr. Welling admitted he answered Question F on his application incorrectly. Hr’g Transcript, pp. 182-84.

Witness Testimony – Connie Schepp, Board Investigator

127. Connie Schepp is the Board’s Investigator. Hr’g Transcript, p. 190.

128. She rebutted Dr. Welling’s statements that he contacted her at various stages of the investigation. Hr’g Transcript, pp. 190-91.

C. Procedural History – Following Contested Case Hearing

Dr. Welling’s Motions to Reopen Evidence – Newly Discovery Evidence

129. On June 27, 2023, Dr. Welling filed his *Motion to Admit as Evidence Mark Chase’s Attendance Records and Practice Notes for April, May and June 2023*.

130. On June 28, 2023, Dr. Welling filed his *Motion to Admit as CME Evidence Showing Fitness to Practice*.

131. On June 28, 2023, Dr. Welling filed his *Motion to Admit as Evidence All Exhibits related to Board Stipulation Compliance*, which is a request to keep the evidentiary record open to continuously receive practice notes and weekly attendance records.

132. On August 4, 2023, the Board held a motions hearing on Dr. Welling’s motions. The Board voted to deny the motions.

133. On September 7, 2023, the Board entered an *Order Denying Dr. Welling’s*

Motion to Reopen Evidence, fully incorporated herein.

Complied Evidentiary Record Provided to the Board for Review and Deliberations

134. On August 4, 2023, the Board was provided the videotaped contested case hearing accompanied by the written transcripts, Petitioner's Exhibits A through S and U, and Dr. Welling's Exhibits 2 through 11.

135. The Board reviewed the entire evidentiary record.

136. On October 26, 2023, the Board convened to deliberate on this matter.

V. Parties' Arguments

137. Petitioner alleges Dr. Welling violated the Act by failing to comply with the Mental Health Examination Order. Petitioner further alleges that Dr. Welling failed to strictly comply with Acumen, PRC, and/or PRN's recommendation. Lastly, Petitioner alleges that Dr. Welling misrepresented his May 2022 renewal application by failing to disclose the investigation by the Utah Board.

138. Petitioner asserts that the evidence presented establishes, by clear and convincing evidence, that Dr. Welling's conduct violated the Act. Petitioner requests disciplinary action deemed by the Board to be appropriate.

139. Dr. Welling argues that he strictly complied with the Acumen recommendations as follows:

- a. He has been compliant with all medications and medication changes prescribed by Dr. Van Leeuwen.
- b. He took a six-month leave of absence from work (December 2021 to June

2022).

- c. He did not do an intensive partial hospital or day treatment program because he did not believe it was for mental health disorders and it was only a “beneficial recommendation” and was not intended to be a stipulation.
- d. He presented to Jeffrey Riekhof, LCSW, and later presented to Dr. Bone for the requirement that he acquire a local psychologist to address the personality issues identified in the Acumens Report and is seeing Mr. Chase.
- e. He has signed releases of information to facilitate sending the Acumen Report to his providers.
- f. He has refrained from self-prescribing medications because he began consulting with Dr. Harmon for all his regular medications and Dr. Van Leeuwen for all his psychiatric medications.
- g. He has observed and followed completely (except for the recommendation for an intensive partial hospital or day treatment program).

140. Dr. Welling further argues that he did not comply with the Mental Health Examination Order because it was redundant, expensive, and outside the purview of the Board since he completed the investigation in Utah.

141. Dr. Welling further argues that his fitness to practice should be judged by his present work performance and his peers/co-workers. He has successfully practiced in Nevada since August 2022, so clearly he is fit to practice and he can safely and skillfully practice medicine. The fact that he has not completely followed the recommendations of Acumen or PRC is irrelevant regarding his fitness to practice.

VI. CONCLUSIONS OF LAW

142. The Findings of Fact, paragraphs 1 – 136, are fully incorporated herein.

A. Jurisdiction

Principles and Rules of Law

143. “Licensure acts such as the [Act] are passed for the express purpose of affording the public protection” *Allhusen v. State by and through Wyo. Mental Health Professions Licensing Bd.*, 898 P.2d 878, 885 (Wyo. 1995) (citing *Mapes v. Foster*, 266 P. 109, 116 (Wyo. 1928)).

144. The Act provides:

The board retains jurisdiction over only those licensees to whom temporary or full licenses were granted and who are subject to ongoing investigation by the board, regardless of whether the license expired, lapsed or was relinquished during or after the alleged occurrence of conduct proscribed by W.S. 33-26-402 by the licensee.

Wyo. Stat. Ann. § 33-26-401(e).

Application of Principles and Rules of Law to Facts

145. The Board is the sole, exclusive, and duly authorized licensing, regulatory, and administrative agency in the State of Wyoming regarding the practice of medicine as authorized by the Wyoming Medical Practice Act, Wyo. Stat. Ann. §§ 33-26-101 to -703.

146. On January 23, 2015, the Board initially issued Dr. Welling Wyoming Physician’s License No. 10015A to practice medicine in Wyoming. At all times pertinent to the actions complained of in the Second Amended Petition this matter, Dr. Welling held a Wyoming physician license.

147. Accordingly, the Board has jurisdiction to hear and decide this matter.

B. Credibility and Weight of Witness Testimony

Principles and Rules of Law – Fact Witnesses

148. The Wyoming Administrative Procedure Act establishes the evidentiary standards for contested cases, and in the pertinent parts provide:

(a) In contested cases irrelevant, immaterial or unduly repetitious evidence shall be excluded and no sanction shall be imposed or order issued except upon consideration of the whole record or such portion thereof as may be cited by any party and unless supported by the type of evidence commonly relied upon by reasonably prudent men in the conduct of their serious affairs. Agencies shall give effect to the rules of privilege recognized by law. Subject to these requirements and agency rule if the interests of the parties will not be prejudiced substantially testimony may be received in written form subject to the right of cross-examination as provided in subsection (c) of this section.

(b) Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given the opportunity to compare the copy with the original.

Wyo. Stat. Ann. § 16-3-108(a), (b).

149. The Board, as the trier of fact, is the “sole judge of the credibility of the witnesses[.]” *Morgan v. Olsten Temp. Serv.*, 975 P.2d 12, 15 (Wyo. 1999). “If the hearing record demonstrates ambiguities or inconsistencies that require weighing the evidence and assessing the credibility of witnesses, the [Board] has the sole responsibility for those functions.” *Id.*

150. Credibility refers to that quality in a witness’s evidence, testimony or opinion that renders it worthy of belief. *Credibility*, *Black’s Law Dictionary* (11th ed.

2019).

151. A witness's credibility or veracity may be impeached. Impeachment is a process which calls into question the veracity of a witness, including his evidence, testimony or opinion, by presenting proof that the witness is unworthy of belief. *See Impeach, Black's Law Dictionary* (11th ed. 2019). A witness may be impeached utilizing several means, including presentation of prior inconsistent statements and contradiction of facts. W.R.E. 607 and 613.

152. Prior inconsistent statements can be used to impeach a witness's testimony by demonstrating contradiction.

[Rule 613] applies when two statements—one made at trial and one made previously—are irreconcilably at odds. . . . The purpose of this type of impeachment evidence is to show a witness to be generally capable of making errors in his testimony. . . . [I]t is used as a tool to compare both statements and conclude that the [witness] has erred in making one or the other without determining which statement is erroneous.

Seward v. State, 2003 WY 116, ¶ 37, 76 P.3d 805, 821 (Wyo.2003) (citations omitted).

153. The Board is charged with resolving conflicting testimony. *Stewart v. State ex rel. Wyo. Workers' Safety and Comp.*, 2007 WY 58, ¶ 16, 155 P.3d 198, 203 (Wyo. 2007).

154. The Board must also weigh evidence that is not directly contradicted:

Where the testimony of a disinterested witness is not directly contradicted but there are circumstances which controvert the testimony or explain it away, or if such testimony is clouded with uncertainty and improbability, or otherwise appears to be unreliable or unworthy of belief, the trier of fact is not bound to accept it. Justice does not require [the Board] to accept as an absolute verity any statement of a witness merely because it is not directly or specifically contradicted by other testimony, and there are many things which

may properly be considered in determining the weight that should be given the direct testimony of a witness even though no adverse verbal testimony is adduced. If such testimony is evasive, equivocal, confused, or otherwise uncertain, it may be disregarded. If it is improbable, physically impossible, contrary to physical facts or to the laws of nature or scientific principles, or is opposed to common knowledge, inconsistent with other circumstances established in evidence, or contradictory within itself, it is without any value and may be disregarded.

Krause v. State ex rel. Wyo. Workers' Comp. Div. (In re Matter of Krause), 803 P.2d 81, 83 (Wyo. 1990) (citing 30 Am. Jur. 2d *Evidence* § 1083 (1967)).

Application of Principles and Rules of Law to Facts – Fact Witnesses

155. The Board finds and concludes the testimony of Dr. Fielden to be credible. Dr. Fielden provided little factual testimony that amounted to him not knowing anything about Dr. Welling's disciplinary history or mandated evaluations. Accordingly, Dr. Fielden's testimony is given some weight related to its limited nature.

156. The Board finds and concludes the testimony of Dr. Magnus to be credible. Dr. Magnus provided little factual testimony that amounted to him not knowing anything about Dr. Welling's disciplinary history and limited knowledge of one of his mandated evaluations. Accordingly, Dr. Magnus's testimony is given some weight related to its limited nature.

157. The Board finds and concludes the testimony of Dr. Welling not to be credible. Dr. Welling provided factual testimony that was contradicted by documentary evidence. He provided various inconsistent statements and was impeached. His appearance before the Board was consistent with his presentation at Acumen, PRC, and Dr. Gadbois. Accordingly, Dr. Welling's testimony is given little weight.

158. The Board finds and concludes the testimony of Ms. Schepp to be credible. She provided little factual testimony that amounted to refuting Dr. Welling's claims of communication with Board staff. Accordingly, Ms. Schepp's testimony is given some weight related to its limited nature.

Principles and Rules of Law – Expert Witnesses

159. The Board must also weigh evidence presented by experts:

When presented with medical opinion testimony, the [Board], as the trier of fact, is responsible for determining relevancy, assigning probative value, and ascribing the relevant weight to be given to the testimony. In weighing the medical opinion testimony, the [Board] considers: (1) the opinion; (2) the reasons, if any, given for it; (3) the strength of it; and (4) the qualifications and credibility of the witness or witnesses expressing it.

Baxter v. Sinclair Oil Corp., 2004 WY 138, ¶ 9, 100 P.3d 427, 431 (Wyo. 2004) (citations and quotations omitted).

160. The Board “may disregard a medical expert’s opinion if it is unreasonable, inadequately supported by the facts upon which it purportedly rests, or based upon an incomplete or inaccurate medical history.” *Middlemass v. State ex rel. Wyo. Workers’ Safety & Comp. Div.*, 2011 WY 118, ¶ 29, 259 P.3d 1161, 1168 (Wyo. 2011).

161. Deficiencies in qualifications of an expert go to the weight accorded the witness’ testimony. It is the function of the Board as the fact finder to sort out the weaknesses and the strengths of expert testimony. *Seivewright v. State*, 2000 WY 134, ¶¶ 21-23, 7 P.3d 24, 31 (Wyo. 2000).

Application of Principles and Rules of Law to Facts – Expert Witnesses

162. The Board was presented with competing expert opinions regarding Dr. Welling's fitness to practice medicine offered by Acumen, Dr. Gadbois, PRC, and Mr. Chase. The Board has considered all the opinions; however, the weight given to each expert opinion varies in this case.

163. The Board finds Acumen and PRC's opinions/reports to be a comprehensive and thorough evaluation of Dr. Welling's mental state and fitness to practice. Acumen and PRC's opinions/reports were representative of a multidisciplinary team's comprehensive evaluation of Dr. Welling over several days of observation, testing, and interactions. Additionally, Acumen and PRC reviewed extensive collateral information. Acumen and PRC's multidisciplinary team's specific qualifications are impressive. The Board finds and concludes the Acumen and PRC's opinions/reports to be credible, fair, honest, and objective. Accordingly, the Board concludes the Acumen and PRC's opinions/reports are to be given great weight.

164. The Board finds Dr. Gadbois' Evaluation to be a comprehensive and thorough evaluation of Dr. Welling's mental state and fitness to practice. Dr. Gadbois performed an *Independent Medical Examination* based on observation, testing, and interactions. Dr. Gadbois reviewed collateral information. As a psychiatrist with a specialty in general psychiatry and addiction medicine, Dr. Gadbois has the appropriate credentials to perform such an evaluation. The Board finds and concludes Dr. Gadbois' Evaluation to be credible, fair, honest, and objective. Accordingly, the Board concludes Dr. Gadbois' Evaluation is to be given great weight.

165. The Board finds Mr. Chase's assessment to be lacking. It is not a comprehensive and thorough evaluation of Dr. Welling's mental state and fitness to practice. Mr. Chase's assessments/testing performed focused on self-reporting and he had limited collateral information. As a doctoral candidate, Mr. Chase has limited credentials. The Board finds and concludes Mr. Chase's assessment to be limited. Accordingly, the Board concludes Mr. Chase's assessment is to be given less weight.

C. Burden and Standard of Proof

166. The Act provides that in "any disciplinary proceeding against a licensee, the board shall bear the burden of proving a violation of this act by clear and convincing evidence." Wyo. Stat. Ann. § 33-26-407(b).

167. Clear and convincing evidence has been defined to be the "kind of proof which would persuade a trier of fact that the truth of the contention is highly probable." *Greene v. State, ex rel. Wyo. Bd. of Chiropractic Exam'rs (In re Greene)*, 2009 WY 42, ¶ 10, 204 P.3d 285, 290 (Wyo. 2009) (citing *Dorr v. Wyo. Bd. of Cert. Pub. Accountants*, 2006 WY 144, ¶ 13, 146 P.3d 943, 949 (Wyo. 2006)).

D. Evaluation of Conduct – Count I (Failure to Comply with Mental Health Examination Order)

Principles and Rules of Law

168. The Act identifies prohibited conduct for which a licensee may be disciplined, including:

- (x) Violating or attempting to violate or assist in the violation of any provision of this chapter or any other applicable provision of law;

* * *

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(xxiii) Failure to submit to an informal interview or a mental, physical or medical competency examination following a proper request by the board pursuant to W.S. 33-26-403;

* * *

(xxxiv) Violating any final order, consent decree or stipulation between the board and the licensee[.]

Wyo. Stat. Ann. § 33-26-402(a)(x), (xxiii), (xxxiv).

169. The Act also provides:

Every licensee is deemed to have consented to and shall submit to a board ordered mental, physical, or medical competency examination and to have waived all objections to the production of the report of the examination to the board and the admissibility of the report of the examination in any board proceedings in which the licensee is or may become a respondent. If a licensee fails to submit to an examination when ordered by the board, the board may initiate a disciplinary proceeding against the licensee or amend a pending complaint to include a claim based upon a violation of this section.

Wyo. Stat. Ann. § 33-26-403(b).

Application of Principles and Rules of Law to Facts

170. The Board incorporates the facts from paragraphs ¶¶ 1-136 into this paragraph.

171. Dr. Welling admits, for multiple reasons, he did not comply with the Mental Health Examination Order. Through the order, Dr. Welling was given several weeks to submit to the examination, but he failed to do so. The Board notes Dr. Welling's eager willingness to submit the evaluation requested by the Nevada Board shortly after submitting to the PRC; however, he chose not to comply with the Mental Health Examination Order because he perceived it would be redundant. It appears Dr. Welling's

compliance is dependent upon whether he perceives the outcome to be convenient and beneficial to him.

172. The Board finds and concludes that Petitioner proved by clear and convincing evidence Dr. Welling violated Wyoming Statutes §§ 33-26-402(a)(x), (xxiii), (xxxiv) and 33-26-403(b).

E. Evaluation of Conduct – Count II (Unable to Practice Safely)

Principles and Rules of Law

173. The Act identifies prohibited conduct for which a licensee may be disciplined, including:

(x) Violating or attempting to violate or assist in the violation of any provision of this chapter or any other applicable provision of law;

* * *

(xix) A manifest incapacity to practice medicine with reasonable skill and safety to patients;

(xx) Possession of any physical or mental disability including deterioration due to aging which renders the practice of medicine unsafe[.]

Wyo. Stat. Ann. § 33-26-402(a)(x), (xix), (xx).

Application of Principles and Rules of Law to Facts

174. The Board incorporates the facts from paragraphs ¶¶ 1-136 into this paragraph.

175. At Davis Hospital, Dr. Welling had a higher-than-average discrepancy rate related to his use of medications, including controlled substances in his anesthesia practice. He failed his FPPE and his privileges were ultimately suspended and he later

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took an indefinite leave of medical absence. Dr. Welling attributed his inability to reconcile his administration of medications in part to what he thought was ADHD, his inability to focus, and his addiction to his phone.

176. Davis Hospital required him to submit to a comprehensive fitness for duty evaluation at Acumen. Based on the results of the evaluation, Acumen diagnosed Dr. Welling with Cyclothymia, Late-Onset, with Anxious Distress, and Cluster B Personality Disorder. Acumen concluded that Dr. Welling required proper medication and psychotherapy to address the problems and challenges outlined at Davis Hospital. Until these issues were resolved, where Dr. Welling acquired a stable mood and constructed a reasonable plan of action to prevent future documentation and intraoperative medication management problems, Acumen found him unfit to practice. Acumen made recommendations related to determination that he is unfit to practice. These recommendations included: medication (primary mood stabilizer), a leave of absence to demonstrate an improvement in this thought organization on the medication, an intensive partial hospital or day treatment program for professionals in crisis, acquiring a local psychologist to address the personality issues noted in the report, that Dr. Welling sign releases of information to facility sending this report to his providers, and that he refrain from self-prescribing medications. The Acumen multidisciplinary team also noted that if he ever is unable or unwilling to adhere to these recommendations, they recommend that he disengage himself from the practice of medicine immediately.

177. In November 2021 following a multiday comprehensive multidisciplinary

evaluation, Acumen issued its assessment of Dr. Welling. Dr. Welling's compliance with the Acumen recommendations were complied with if and when Dr. Welling determined it would be beneficial to him. He negotiated with Dr. Van Leeuwen regarding Dr. Van Leeuwen's prescribing practices for him. Rather than disengaging from the practice of medicine immediately while he titrated his psychiatric medications, he continued to work in California. His break in service was treated as an opportunity to seek further employment, not to demonstrate an improvement in this thought organization on the medication. In fact, he returned to work without complying with all of Acumen's recommendations. In March 2023, he eventually presented to a local psychologist, Dr. Bone. His efforts previously were half-hearted by presenting to a LCSW a few times. He would only provide information to his providers that he deemed relevant. He continued to self-prescribe medications that he deemed appropriate for himself. He has failed to submit to an intensive partial hospital or day treatment program for professionals in crisis. Overall, Dr. Welling has not complied with the Acumen Report despite his subjective belief and assertions that he has strictly followed each recommendation. As such, he is unfit to practice with reasonable skill and safety to patients.

178. Contrary to Dr. Welling's assertion, the Board notes that not having negative or bad patient outcomes is not the standard for determining fitness for practice. Additionally, co-workers and peers are also not the medical standard for determining fitness for practice. A comprehensive evaluation with appropriate testing methods and observations by a qualified evaluator is the medical standard for determining fitness for practice. Close calls, inattentive practice by an anesthesiologist administering controlled

substances, mislabeling syringes, completing post-anesthesia charts while patients are still in surgery, and prefilling chart entries including vitals, medication administration, and other medical information is not safe practice regardless of any patient outcome.

179. In September 2022 following an IME, Dr. Gadbois issued his evaluation of Dr. Welling. Dr. Gadbois noted Dr. Welling's non-compliance with the Acumen recommendations. Dr. Gadbois stated that with the diagnosis of cyclothymia, with prior related workplace impairment and inadequate follow-through, and with treatment recommendations, an impairment has been established. That established impairment creates an elevated risk to the public. He determined that Dr. Welling is not able to practice his profession with reasonable skill and safety at the time of the evaluation. He recommended that Dr. Welling: enter a PRN-approved longitudinal professionals program, specializing in the treatment of mental health disorders in physicians; comprehensive neurocognitive testing is recommended, as part of the treatment planning and return to work process; engage in individual outpatient psychotherapy for recovery support and to address personality issues identified in the Acumen assessment; refrain from self-prescribing medications; and PRN monitoring, under mental health contract. Overall, Dr. Welling has not complied with Dr. Gadbois' Evaluation. As such, he is unfit to practice with reasonable skill and safety to patients.

180. In January 2023 following a multiday comprehensive multidisciplinary evaluation, PRC issued its assessment of Dr. Welling. The results of the PRC evaluation were similar to findings obtained during his Acumen evaluation. PRC recommended that Dr. Welling participate in treatment in a treatment program at the partial hospital or day

treatment level of care prior to a return to the clinical practice of medicine. Important components of his treatment would include psychiatric oversight/medication management as well as participation in individual and group therapy sessions. The treatment program should have familiarity in working with medical professionals with similar issues (mood disorders, professionalism concerns, personality characteristics, etc.). Afterward, PRC recommended that Dr. Welling have a comprehensive aftercare plan including regular psychiatric follow up and regular psychological follow-up. PRC further recommended that Dr. Welling: establish a relationship with a primary care provider who should be responsible for writing all Dr. Welling's prescriptions, refrain from self-prescribing medications, and refrain from writing prescriptions for family members. Overall, Dr. Welling has not complied with the PRC's Report. As such, he is unfit to practice with reasonable skill and safety to patients.

181. In March 2023, Mr. Chase opined that Welling is safe to practice and can exercise hospital privileges without restrictions as long as he complies with the recommendations presented in his report. Mr. Chase recommended that Dr. Welling: participate in the PRN Professionals Aftercare/Monitoring Program for twelve months, identify and continue to work with his psychiatrist on medical management (meeting at least every six months), identify and continue to work with his psychologist on anxiety and behavioral issues to refine his professionalism (meeting monthly), identify a primary care provider and have that provider be responsible for writing all of Dr. Welling's non-psychiatric medications, refrain from self-prescribing medications, and work with PRN in developing and refining an appropriate self-care plan to improve his mental and

physical well-being. It is unclear whether Dr. Welling has complied with Mr. Chase's recommendations. As such, he is unfit to practice with reasonable skill and safety to patients.

182. The Board finds and concludes that Petitioner proved by clear and convincing evidence Dr. Welling violated Wyoming Statute § 33-26-402(a)(x), (xix), and (xx).

F. Evaluation of Conduct – Count III (Misrepresentation on 2022 Renewal Application)

Principles and Rules of Law

183. The Act identifies prohibited conduct for which a licensee may be disciplined, including “[r]enewing, obtaining or attempting to obtain or renew a license by bribery, fraud or misrepresentation[.]” Wyo. Stat. Ann. § 33-26-402(a)(i).

Application of Principles and Rules of Law to Facts

184. The Board incorporates the facts from paragraphs ¶¶ 1-136 into this paragraph.

185. Dr. Welling admits his answers on his May 2022 renewal application were not correct. He had been investigated by the Utah Board and had received the Acumen Report that indicated that he was not fit to practice. He requested a medical leave of absence for several months before submitting his renewal application.

186. The Board finds and concludes that Petitioner proved by clear and convincing evidence Dr. Welling violated Wyoming Statute § 33-26-402(a)(i).

G. Determination of Appropriate Sanction(s)

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Principles and Rules of Law

187. “Licensure acts such as the [Act] are passed for the express purpose of affording the public protection[.]” *Allhusen v. State by and through Wyo. Mental Health Profs. Licensing Bd.*, 898 P.2d 878, 885 (Wyo. 1995) (citing *Mapes v. Foster*, 266 P. 109, 116 (Wyo. 1928)).

188. The Act establishes the general powers and authority of the Board. Specifically, the Board is empowered and directed to “[g]rant, refuse to grant, suspend, restrict, revoke, reinstate or renew licenses to practice medicine [.]” Wyo. Stat. Ann. § 33-26-202(b)(i).

189. The Act establishes that following a contested case hearing, the Board may take one or more of the following actions:

(iv) Impose a civil fine not exceeding twenty-five thousand dollars (\$25,000.00);

(v) Suspend the license;

* * *

(ix) Take other action as the board in its discretion finds proper[.]

Wyo. Stat. Ann. § 33-26-405(a)(iv), (v), (ix).

Application of Principles and Rules of Law to Facts

190. The Board finds and concludes Dr. Welling continued practice presents a danger to the public. Multiple evaluators have determined that Dr. Welling is not fit to practice medicine. The Board agrees with those evaluators.

191. The Board finds and concludes Dr. Welling’s conduct in this case is serious and violated multiple provisions of the Act.

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192. The Board finds and concludes the summary suspension upon Dr. Welling's Wyoming Physician's license should be LIFTED.

193. Given Dr. Welling's non-compliance with treatment recommendations, the Board finds and concludes Dr. Welling's Wyoming Physician's license should be IMMEDIATELY SUSPENDED until he is compliant with the following recommendations:

- a. Enter an intensive partial hospital or day treatment program for professionals in crisis (important components of his treatment would include psychiatric oversight/medication management as well as participation in individual and group therapy sessions. The treatment program should have familiarity in working with medical professionals with similar issues (mood disorders, professionalism concerns, personality characteristics, etc.)) OR PRN-approved longitudinal professionals program, specializing in the treatment of mental health disorders in physicians;
- b. Demonstrate an established psychiatric relationship with a Board-approved psychiatrist medical management (meeting at least every six months);
- c. Demonstrate an established psychotherapeutic relationship with a Board-approved local psychologist to work on anxiety, behavioral, and personality issues to refine his professionalism (meeting monthly);
- d. Demonstrate an established primary care relationship with a Board-approved physician (meeting as necessary for appropriate prescribing non-

psychiatric medications);

- e. Verification that Dr. Welling has refrained from self-prescribing medications; and
- f. Verification that Dr. Welling has refrained from prescribing medications to friends and family members.

194. The Board finds and concludes a civil fine of two thousand five hundred dollars (\$2,500.00) shall be imposed upon Dr. Welling.

H. Final Board Order

195. The Act provides, following a contested case hearing, the Board “shall enter its order and findings pursuant to the Wyoming Administrative Procedure Act.” Wyo. Stat. Ann. § 33-26-405(a).

196. The Act requires the Board to disseminate final Board orders:

(c) Final findings of fact, conclusions of law, orders of the board entered and any consent decree, stipulation or agreement to which the board is a party in any disciplinary docket of the board are public documents. . . .

(d) The board shall promptly report and provide all final orders entered by it to the chief of the medical staff and hospital administrator of each hospital in which the licensee has medical staff privileges and to all appropriate agencies including the federation of state medical boards, the national practitioner data bank and other state medical boards.

Wyo. Stat. Ann. § 33-26-408(c), (d).

197. The Wyoming Medical Practice Act provides for “[j]udicial review of the findings of the board may be obtained pursuant to the Wyoming Administrative Procedure Act.” Wyo. Stat. Ann. § 33-26-407(a).

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198. The Wyoming Administrative Procedures Act also provides for judicial review of agency action for an aggrieved party:

[A]ny person aggrieved or adversely affected in fact by a final decision of an agency in a contested case, or by other agency action or inaction, or any person affected in fact by a rule adopted by an agency, is entitled to judicial review in the district court for the county in which the administrative action or inaction was taken, or in which any real property affected by the administrative action or inaction is located, or if no real property is involved, in the district court for the county in which the party aggrieved or adversely affected by the administrative action or inaction resides or has its principal place of business.

Wyo. Stat. Ann. § 16-3-114(a); *See also* W.R.A.P. 12.01.

199. Wyoming Rules of Appellate Procedure requires the aggrieved party to seek judicial review within thirty (30) days after service of the final decision. W.R.A.P. 12.04(a).

ORDER

IT IS HEREBY ORDERED, based upon the foregoing Findings of Fact and Conclusions of Law, that the *Order of Summary Suspension of Eric C. Welling, M.D., Wyoming Physician License No. 10015A, Pending a Contested Case Hearing* shall be **VACATED**.

IT IS FURTHER ORDERED that the **SUMMARY SUSPENSION** upon Dr. Welling's Wyoming Physician License 10015A shall be **LIFTED**.

IT IS FURTHER ORDERED that Dr. Welling's Wyoming Physician License 10015A shall be **IMMEDIATELY SUSPENDED**.

IT IS FURTHER ORDERED that Dr. Welling shall not be eligible for seeking reinstatement until he demonstrates compliance with the following treatment recommendations:

- a. Enter a Board-approved intensive partial hospital or day treatment program for professionals in crisis (important components of his treatment would include psychiatric oversight/medication management as well as participation in individual and group therapy sessions. The treatment program should have familiarity in working with medical professionals with similar issues (mood disorders, professionalism concerns, personality characteristics, etc.)) OR PRN-approved longitudinal professionals program, specializing in the treatment of mental health disorders in physicians;
- b. Demonstrate an established psychiatric relationship with a Board-approved

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- psychiatrist medical management (meeting at least every six months);
- c. Demonstrate an established psychotherapeutic relationship with a Board-approved local psychologist to work on anxiety, behavioral, and personality issues to refine his professionalism (meeting monthly);
 - d. Demonstrate an established primary care relationship with a Board-approved physician (meeting as necessary for appropriate prescribing non-psychiatric medications);
 - e. Verification that Dr. Welling has refrained from self-prescribing medications; and
 - f. Verification that Dr. Welling has refrained from prescribing medications to friends and family members.


IT IS FURTHER ORDERED that Dr. Welling shall pay a civil fine in the amount of **Five Thousand Dollars (\$5,000.00)**, payable to the "State of Wyoming," **within ninety (90) days.**

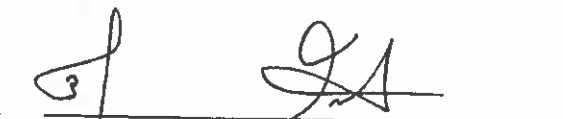
IT IS FURTHER ORDERED this order shall constitute a final order of the Board. Additionally, this order is a public document.

DATED this 14th day of December 2023.

FOR THE BOARD:

APPROVED AS TO FORM:


Valerie Mockensturm, PA-C
Board President


Jessica Frint, Esq.
Board Counsel

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of December, 2023, a true and correct copy of the foregoing *Findings of Fact, Conclusions of Law, and Order Lifting the Summary Suspension upon the Wyoming Physician License of Eric C. Welling, M.D.; Order Suspending the Wyoming Physician License of Eric C. Welling, M.D.; Wyoming Physician License No. 10015A; Order Imposing Civil Fine* was served as indicated below and addressed to the following:

Eric C. Welling
6599 S. Juliet Way
Salt Lake City, UT 84121

- via Regular U.S. Mail
- via electronic mail (PDF) to welling.eric@gmail.com

Bill G. Hibbler – Attorney for Petitioner
Special Assistant Attorney General
Bill G. Hibbler, P.C.
P.O. Box 2143
Cheyenne, Wyoming 82003

- via Regular U.S. Mail

Jessica Frint – Attorney for Board
Senior Assistant Attorney General
2424 Pioneer Avenue, 3rd Floor
Cheyenne, Wyoming 82002

- via electronic mail (PDF) to jessica.frint@wyo.gov

Office of Administrative Hearings
State of Wyoming
1800 Carey Avenue, 5th Floor
Cheyenne, Wyoming 82002

- via State of Wyoming Interoffice Mail
- via electronic mail (PDF) to oah-team@wyo.gov



Kevin Bohnenblust
Wyoming Board of Medicine

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