BEFORE THE BOARD OF MEDICAL LICENSING

BOARD OF INDIANA
CAUSE NO. 2022 MLB 0024

IN THE MATTER OF THE LICENSE OF:	)
	)
CAITLIN BERNARD, M.D.	)
	)
LICENSE NO. 01078719A	)

FILED
APR 25 2023
Indiana Professional Licensing Agency

MOTION FOR CONTINUANCE OF MAY HEARING DATE AND EXTENSION OF DEADLINES

Petitioner, by counsel, respectfully asks the Medical Licensing Board ("Board") to continue the hearing currently set in the above-captioned matter for May 25, 2023, to August 24, 2023, and reset the deposition and Final Witness and Exhibit deadlines and allow limited follow up discovery. Petitioner requests the continuance and extension of deadlines for the following reasons:

1. This matter was filed on November 30, 2022. Respondent submitted her answer on December 27, 2022. By Order dated February 10, 2023, the Board set the hearing on the Administrative Complaint for May 25, 2023. A case management plan was submitted and ordered on March 17, 2023.

2. During the last two months, the parties have exchanged written discovery responses and Petitioner recently has taken three depositions in preparation for Hearing before the Board. Despite such diligence, several items are outstanding and require extension of the deadline to complete depositions, the deadline to file the Final Witness and Exhibit List, and the Hearing date. In addition, Petitioner seeks to reopen written discovery for the limited purpose of following up on prior written discovery or deposition answers.

3. The items that remain outstanding are as follows:

- Dr. Bernard's Motion for Protective Order to deny in whole or in part Petitioner's attempts to depose her and quash deposition subpoena for any communications with the reporter. Petitioner will file an opposition contending good cause does not exist to grant the motion, particularly as it relates to a licensee regulated by the Board.
- The parties need to confer about Dr. Bernard's written discovery responses served on April 18, 2023. Petitioner believes they are deficient and supplementation may be necessary.
- On April 20, 2023, Dr. Bernard disclosed the name of a physician with whom she spoke contemporaneously with talking to the IndyStar Reporter. The name was requested previously through questioning in the Preliminary Injunction Hearing (*Bernard v. Rokita*, Case no. 49D01-2211-MI-038101) and not provided because of a sustained objection. The name also was not provided in response to Petitioner's interrogatories in this matter. Petitioner needs time to depose this individual.
- Petitioner noticed the deposition of the Reporter, Shari Rudavsky, for April 20, 2023. Counsel, Tracy Betz, contacted undersigned on April 19, 2023, to indicate representation. By agreement, the deposition date was taken off to provide counsel time to confer with her client and determine how she will respond to the notice. Counsel has yet to respond.
- Undersigned will be attending a pre-scheduled trip with his son's class to Washington D.C. May 10-14.
- The parties have agreed to May dates for deposition of Dr. Bernard (should her motion be denied) and Ohio social worker, Melissa Hoffman. Undersigned counsel also intends to depose Respondent's identified expert. The parties are working to

set a date for Respondent's expert but have not yet agreed to a date. As noted above, Petitioner intends to take the deposition of Shari Rudavsky and the disclosed physician. Finally, Petitioner is considering disclosing an expert, and Respondent has indicated if this occurs, she wishes to take the expert's deposition. There are then potentially six depositions outstanding. Deposition transcripts likely will not be available in a form acceptable to use at the May hearing even if the parties were able to complete the depositions.

- On April 18, 2023, as part of her discovery responses, Respondent disclosed a document in support of her position that she has been absolved of wrongdoing by her employer. Petitioner needs additional time to conduct discovery to assess the underpinnings of such document. Conceivably, such discovery could be confined to identification of persons with knowledge and depositions of the same.

4. On April 21, 2023, undersigned contacted Respondent's counsel requesting counsel's position concerning the proposed continuance and citing to the outstanding items. Counsel for the Respondent indicated objection to the motion to continuance and wishes to proceed to hearing on May 25. Respondent expressed that she would like to be heard about this motion at the April 27, 2023, hearing.

5. This Motion is not made for the purpose of delay but out of necessity so that the parties may develop and present a full case to the Board for its consideration and judgment.

WHEREFORE, for the foregoing reasons, the State respectfully requests that the Board GRANT its Motion for Continuance and reset the Hearing to August 24, 2023, or a later date convenient for the Board and reset the deposition and Final Witness and Exhibit Deadline and allow limited follow up discovery.

Respectfully submitted,

THEODORE E. ROKITA
Attorney General of Indiana
Attorney No. 18857-49

/s/ Cory C. Voight
By: Cory C. Voight, Atty. No. 23180-49
Director of Complex Litigation

CERTIFICATE OF SERVICE

I hereby certify that on April 25, 2023, I served on the following persons via USPS and email:

John David Hoover (7945-49)
Alice M. Morical (18418-49)
Clara P. Gutwein (36838-49)
HOOVER HULL TURNER LLP
111 Monument Circle, Suite 4400
PO Box 44989
Indianapolis, IN 46244-0989
Tel: (317) 822-4400
Fax: (317) 822-0234
jdhoover@hooverhullturner.com
amorical@hooverhullturner.com
cgutwein@hooverhullturner.com

/s/Cory C. Voight
Cory C. Voight
Director of Complex Litigation

OFFICE OF THE INDIANA ATTORNEY GENERAL
Indiana Government Center South, 5th Floor
302 West Washington Street
Indianapolis, IN 46204-2770
Phone: (317) 234-7132
Fax: (317) 232-7979
Email: Cory.Voight@atg.in.gov