

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

BOARD OF MEDICINE

In Re: Colleen Ann Murphy, M.D.

Docket No.: 24-MED-003

NOTICE OF DECISION DATED 4/22/2024

Enclosed please find a copy of the Board's Order dated 4/22/2024 relative to:

DISCIPLINARY HEARING FINAL DECISION AND ORDER

PETITIONS FOR REHEARING:

Pursuant to N.H. Code Admin. Rs. Plc 206.31(b), 206.33 ("Rules") and RSA 310:14, II, petitions for rehearing shall be filed within 30 calendar days after service of a final adjudicative order. Pursuant to Rule 206.31(c) and (d), the Petition shall: 1) clearly identify the respondent, by name and license number, and the docket number of the matter for which the petition is being filed, for rehearing in a disciplinary or non-disciplinary remedial proceeding; 2) clearly state whether the petitioner is seeking to have the decision reversed or modified and, if modified, the specific modification(s) sought; 3) clearly identify the specific findings of fact or conclusions of law, or both, that the petitioner asserts are erroneous; 4) contain such argument in support of the petition as the petitioner desires to present, including an explanation of how substantial justice would be done by granting the relief requested; and 5) be served by the petitioner on all other participants in accordance with Plc 206.11. Pursuant to Rule 206.31(e), the petitioner or petitioner's representative shall sign the petition. Pursuant to Rule 206.31(f), such signature shall constitute attestation that: 1) the signer has read the petition for rehearing; 2) the signer is authorized to file the petition for rehearing; 3) to the best of the signer's knowledge, information, and belief, there are good grounds to support the petition for rehearing; and 4) the petition for rehearing has not been filed solely or primarily for purposes of delay or harassment in any pending or contemplated administrative, civil, or criminal proceeding. Pursuant to Rule 206.31(g), no answer to a petition for rehearing shall be required, but any answer or objection filed shall be delivered to the presiding officer's office within 5 working days following receipt of service of the petition for rehearing. Pursuant to RSA 541:5, upon the filing of such petition for rehearing, the Board or Presiding Officer shall within ten days either grant or deny the same, or suspend the order or decision complained of pending further consideration, and any order of suspension may be upon such terms and conditions as the Board or Presiding Officer may prescribe. The Presiding Officer and/or Board shall rule upon a Motion for Rehearing in accordance with Rule 206.32. Pursuant to Rule 206.32(e), a decision on reconsideration shall be issued after fully considering the petition and any responses thereto, which reconsideration shall include a hearing on the factual issues identified in the motion if the board determines a hearing to be necessary to a full consideration of the facts.

RIGHT TO APPEAL:

Pursuant to RSA 310:14, III, appeals from a decision on a petition for rehearing shall be by appeal to the New Hampshire Supreme Court pursuant to RSA 541. Pursuant to RSA 541:6, within 30 days after the application for a rehearing is denied, or, if the application is granted, then within thirty days after the decision on such rehearing, the applicant may appeal by petition to the New Hampshire Supreme Court. Pursuant to RSA 310:14, III, no sanction shall be stayed by the Board during an appeal. *See also* Rule 206.33.

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Docket No.: 24-MED-003

FINAL DECISION AND ORDER – 04/03/24

I. PARTICIPANTS:

Board Members and Support Staff and Counsel:

Dr. Jonathan Eddinger, Board President and Member
Dr. Marc L. Bertrand, Board Vice President and Member
PA Daniel M. Frazee, Board Member
Dr. Richard G. Kardell, Board Member
Dr. Jonathan R. Ballard, Board Member (via Zoom)
Dr. David Goldberg, Board Member
Dr. Emily R. Baker, Board Member
Nina Gardner, Board Member
Linda Tatarczuch, Board Member (via Zoom)

Board Administrators and Counsel:

Michael Gianunzio, OPLC Board Administrator
Charlene Anstead, OPLC Board Administrator

Cassandra Brown, Esq., OPLC Board Counsel

Presiding Officer:

Nikolas Frye, Esq., OPLC Administrative Law Judge

Parties:

Collin Phillips, Esq., Hearing Counsel
Marissa Schuetz, Esq., Hearing Counsel (appeared and present via Zoom but did not participate in the hearing)

Lawrence A. Katz, Esq., Counsel for the Respondent (appeared via Zoom)
Keith Mathews, Esq., Counsel for the Respondent (not present for the hearing)
Dr. Colleen Murphy, Respondent

II. CASE SUMMARY/PROCEDURAL HISTORY:

On 02/01/24, the New Hampshire Office of Professional Licensure and Certification, Division of Enforcement (“OPLC Enforcement”) filed a 01/31/24 “Petition for Emergency Meeting of The New Hampshire Board of Medicine Consistent with RSA 91-A:2, II, and RSA 329:7” with the New Hampshire Board of Medicine (“Board”) relating to Dr. Colleen Ann Murphy (“Respondent”). On 02/01/24, the Board’s Chair and the OPLC Presiding Officer granted prayer A of the Verified Petition and scheduled an emergency meeting pursuant to RSA 91-A:2, II. After an emergency meeting held on 02/01/24, the Board voted to initiate an adjudicatory proceeding to determine whether the Respondent was and/or is engaged in the unlicensed/unlawful practice of medicine. A final hearing in this matter was held on 04/03/24. This final decision and order follows.

III. SUMMARY OF THE PROPOSED EVIDENCE AND EVIDENTIARY RULINGS:

The Board received the following evidence pursuant to RSA 541-A:33 and Plc Rules 206.22 and 206.18(d):

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

Exhibit 1	Complaint 1/26/24	HC 001-002
Exhibit 2	Interview Summary 1/31/24 of Kayla Gallagher, Complainant	HC 002-003
Exhibit 3	MLO Summary	HC 004
Exhibit 4	ME Licensure lookup	HC 005
Exhibit 5	NY Licensure lookup	HC006
Exhibit 6	NH Secretary of State Business Filing	HC 007-008
Exhibit 7	www.diaperspa.com screenshots saved by Goulet 02/12/2024	HC 009-017
Exhibit 8	www.cmurphymd.com screenshots saved by Goulet	HC 018-027

Exhibit 9	02/12/2024 Home Business Application – Town of Atkinson, NH – Zoning Board of Adjustment	HC 028-038
Exhibit 10	NH Secretary of State Application Packet – C Murphy, MD, DD DBA Diaper Spa, LLC	HC 039-046
Exhibit 11	www.meetmonarch.com screen shots saved by Goulet 02/07/2024	HC 047-051
Exhibit 12	02/08/2024 Situation Report – Goulet/Sousa	HC 052-062
Exhibit 13	01/31/2024 Verified Petition - Porter	HC 063-074
Exhibit 14	02/15/2024 Transcript of Interview with Collen Murphy	HC 075-130
Exhibit 15	Screenshots saved by Gallagher	HC 131-152
Exhibit 16	Screenshot of Disclaimer from www.Diaperspa.com by Phillips, C. 03/26/24	
Exhibit 17	Screenshot of Disclaimer from www.CMurphymd.com by Phillips, C. 03/26/24	
Exhibit 18	Screenshot from the diaperdoctor.com by Phillips, C. 04/03/24	

B. Exhibits were submitted by the Respondent and labeled as follows:

- A. Withdrawn
- B. Rhoda Lipscomb CV
- C. Hearing Counsel’s Exhibit 17
- D. Hearing Counsel’s Exhibit 18

C. Sworn testimony was received from:

1. Kayla Gallagher, Complainant (called by Hearing Counsel via offer of proof)
2. Eric Goulet, OPLC Investigator (called by Hearing Counsel via offer of proof)
3. Dr. Colleen Murphy (called by Respondent)
4. Dr. Rhoda Lipscomb (called by Respondent)

Exhibits 1-17 and B-D were fully admitted by the Presiding Officer after a prehearing conference held on 03/26/24. There being no objection from the Respondent, Exhibit 18 was fully admitted by the Presiding Officer at the hearing.

IV. CONDUCT OF THE HEARING AND EVIDENCE PRESENTED:

The hearing was held pursuant to RSA 310:10, RSA 310:13, and RSA 329:24, with the burden of proof, by a preponderance of the evidence, placed upon Hearing Counsel. *See* Plc Rules 202.09 and 206.24(c). The issues before the Board were:

- (1) Whether the Respondent is and/or was engaged in the unlawful practice of medicine (as defined at RSA 329:24, I) and/or the unlicensed practice of medicine (as defined at RSA 310:13), as alleged in the 01/31/24 “Petition for Emergency Meeting of The New Hampshire Board of Medicine Consistent with RSA 91-A:2, II, and RSA 329:7” filed on 02/01/24. *See* RSA 310:13; Rule 202.09; RSA 329:24; RSA 329:1; Med Rule 102.04; Med Rule 102.05.
- (2) If a finding of unlicensed practice and/or unlawful practice is made under issue #1, what if any action the Board should take pursuant to RSA 310:13 and/or RSA 329:24, III, IV, and/or V.

NOH at II.(c).

The Board heard evidence related to these inquiries as summarized below.

HEARING COUNSEL’S CASE-IN-CHIEF:

Kayla Gallagher, Complainant:

The offer of proof explained that Ms. Gallagher is a registered nurse who lives in Atkinson, New Hampshire. According to the offer of proof, she became aware of the Respondent operating a diaper spa in Atkinson, New Hampshire through text message communications she received from someone else living Atkinson. The offer of proof clarified that Ms. Gallagher received screenshots of two websites attributed to the Respondent (www.cmurphynd.com and www.diaperspa.com) from a Sara Lembo, who also lives in Atkinson, New Hampshire. *See* Exh. 15. The offer of proof explained that the red lettering and highlighted markings on these screenshots were made by Ms. Lembo. *See Id.*

According to the offer of proof, upon receiving and reviewing the materials provided by Ms. Lembo, Ms. Gallagher visited the Respondent's websites and searched the OPLC online licensing database to determine if the Respondent was a New Hampshire licensed physician. The offer of proof stated that when Ms. Gallagher saw that the Respondent was not listed as a licensed New Hampshire physician in the online database, she filed a complaint against the Respondent with OPLC and the Board. Ms. Gallagher's complaint generally alleged the Respondent was advertising herself as a licensed physician on her websites, despite not being licensed as such in New Hampshire.

On cross examination, Ms. Gallagher acknowledged that she had participated in one or more media interviews involving the Respondent's spa and had created a change.org petition in which she expressed concern that the Respondent's diaper spa was a threat to the safety and wellbeing of the Atkinson community. Ms. Gallagher agreed that the Respondent's website does not explicitly 1) advertise the Respondent as a New Hampshire physician; or 2) say the Respondent provides medical treatment or care. Nonetheless, Ms. Gallagher clarified that her complaint was based on the totality of the verbiage on the websites, which, among other things, refers to the Respondent's diaper spa as a "physician-run diaper salon" with services in Atkinson, New Hampshire.

Eric Goulet, OPLC Investigator:

The offer of proof explained that Mr. Goulet is the Investigative Paralegal with OPLC Enforcement who was assigned to this case. The offer of proof noted that Mr. Goulet had authored a report of investigation in relation to this matter, which was true and accurate.¹ According to the offer of proof, the report of investigation generally describes the evidence Mr. Goulet collected and reviewed during his investigation and what he learned from it.

¹ Hearing Counsel noted one typographical error on page HC 0056.

According to the offer of proof, the Respondent has never been licensed in the State of New Hampshire as any type of professional, including a physician. Nonetheless, the Respondent is licensed as a physician in the states of Maine and New York. Additionally, the offer of proof revealed that the Respondent's www.diaperspa.com website states, among other things: 1) that her diaper spa is a "physician-run diaper salon" located in Atkinson, New Hampshire where all diaper spa services occur exclusively on site; and 2) her diaper spa offers services in dbt, and cbt.² Likewise, the offer of proof said that the Respondent's website www.cmurphynd.com states, among other things: that she offers counseling for past traumas through various modalities. The offer of proof revealed that Mr. Goulet had also reviewed the Respondent's generated website www.meetmonarch.com; her Atkinson, New Hampshire Zoning Board Adjustment Application for the diaper spa; and her application to the New Hampshire Secretary of State for the Diaper Spa, LLC. According to the offer of proof, these documents invariably referred to the services that would be offered at the diaper spa as including "counseling," "coaching," and "telehealth."

Lastly, the offer of proof informed the Board that Mr. Goulet had interviewed the Respondent. It explained that the Respondent had indicated during this interview that she 1) does not hold any professional license in New Hampshire; 2) opened an adult diaper spa in Atkinson, New Hampshire during the last week of November 2023; 3) saw 1 client per week at the diaper spa thereafter, until Christmas Eve 2023 (when the business location was closed); 4) never conducted home visits with clients or virtual services for New Hampshire clients while operating the business; and 5) she was the sole creator and manager of the content on her websites: www.diaperspa.com and www.cmurphynd.com.

RESPONDENT'S CASE-IN-CHIEF:

Dr. Colleen Murphy/Respondent:

² Dialectical behavior therapy and cognitive behavior therapy.

The Respondent generally testified as to her training and experience and how she came to operate a diaper spa in Atkinson, New Hampshire. She described the services she offers at the spa as “coaching,” which she defined and testified was different from the practice of medicine or therapy. She noted she refers customers of the spa out to licensed practitioners when they need more than “coaching.” The Respondent also addressed her websites. She said that she did not completely understand the artificial intelligence element to the websites, which made some of the google terms noted on Hearing Counsel’s Exhibits visible to the public. She assured the Board that she did not diagnose mental health disorders, review medical/psychological records, or prescribe medications or therapy for clients of the diaper spa.

The Respondent explained that the purpose of the diaper spa was to provide a safe and comforting environment to individuals who seek a non-sexual, playful, or childlike environment. She testified that she interviewed potential clients before allowing them to participate at the diaper spa. She stated that during this interview, she would explain the boundaries of her services and emphasize that she was not there to provide any medical care or cure. She testified that her services at the diaper spa consisted of, among other things, feeding clients; making sure they could reach things on high shelves; and ensuring they were entertained. She described her services as those a mother would do for her child.

The Respondent also stated that in response to public backlash and misunderstanding about the diaper spa, she later included written disclaimers on her websites stating her services were not therapy, medical care, or mental health counseling. The Respondent closed her direct testimony by noting she did not believe she had practiced medicine or advertised herself as engaging in it.

Upon Board questioning, the Respondent further clarified her practices at the diaper spa; her training and experience; and her use of certain terminology on her websites. She also explained her previous applications for a physician’s license in New Hampshire, which were respectively incomplete

and abandoned. On redirect, she clarified for the Board that when she “coaches,” she does not offer a diagnosis, behavior modification, or judgment— she just listens to the client and offers support.

Dr. Rhoda Lipscomb:

Dr. Lipscomb began by reviewing some of her training and experience noted in Exhibit B.³ According to her testimony, she has extensive experience in ABDL “Adult Baby Diaper Lovers,” which is the community to whom the Respondent’s diaper spa is marketed. Dr. Lipscomb explained that she has had conversations with the Respondent about the Respondent’s diaper spa; reviewed the Respondent’s websites; and listened to the testimony at the Respondent’s hearing before the Board. Based upon her training and experience, she testified that it was her expert opinion that the Respondent had not engaged in the practice of medicine, mental health, or therapy, or advertised herself as doing so.

V. DISCUSSION, FINDINGS OF FACTS, AND CONCLUSIONS OF LAW:

Based upon the evidence that was presented, and considering the presentation and demeanor of all the witnesses, the Board makes the following findings of facts:

1. The Board of Medicine hereby adopts Hearing Counsel’s Proposed Findings of Fact numbers 1 – 6, 10, and 12, in their entirety:
 - 1) Colleen Murphy, MD (“Respondent”) does not hold any license issued by a professional licensing board in the State of New Hampshire. *See* Exhibit 3 at HC 004 and Exhibit 14 at HC 077.
 - 2) Respondent holds an active medical doctor license in the State of Maine, license #MD20958. *See* Exhibit 4 at HC 005.
 - 3) Respondent holds an active medical doctor license in the State of New York, license #259710. *See* Exhibit 5 at HC 006.
 - 4) On or about the last week of November 2023, Respondent opened the Diaper Spa at 23 Pope Rd., Atkinson, NH 03811 to receive clients.

³ Dr. Lipscomb is not a licensed New Hampshire physician, a medical doctor, or a doctor of osteopathic medicine. She holds a doctorate in clinical sexology from the American Academy of Clinical Sexologists, Orlando Florida, and is a licensed professional counselor in Colorado. *See* Exh. B.

- 5) On 12/01/2023, Respondent submitted a business application to the State of New Hampshire Secretary of State for a business named “C Murphy, MD, PHD, DD DBA Diaper Spa, LLC” located at 23 Pope Rd, Atkinson, NH 03811 which listed the principal purpose of the business as NAICS Code 62-Health Care and Social Assistance. *See* Exhibit 6 and Exhibit 10 at HC 041.
- 6) On or about 01/23/2024, Respondent submitted a home business application to the Zoning Board of Adjustment in Atkinson, New Hampshire which disclosed the following:
 - a) Respondent described the business as: “Home Occupation – Counseling and coaching services offered for mental health including talk and experiential therapies.” *See* Exhibit 9 at HC 029.
 - b) Respondent described the nature and volume of traffic related to her home business as: “The majority of my services are performed via telehealth or in my client’s homes. I have on average one face to face client per week.” *See* Exhibit 9.
- 10) Respondent advertised the following services on <www.cmurphynd.com>:
 - a) “Work with the Surrogate Relationship Partner and your talk therapist to explore and improve intimacy, sensuality, sexuality, and self-esteem. This is an exceptionally beneficial modality to deal with late-life virginity, poor body image, disability, body transformations, trauma, orgasmic blocks, genital pain, and many other intimacy and relationship issues.” *See* Exhibit 15 at HC 136.
- 12) The following are treatments:
 - a) “Behavioral Therapy”;
 - b) “Family/Marital Therapy”;
 - c) “Cognitive Behavioral Therapy (CBT)”;
 - d) “Dialectical (DBT)”;
 - e) “Group Therapy”;
 - f) “Eye Movement Desensitization & Reprocessing Therapy (EMDR)”
 - g) “Hypnotherapy”;
 - h) “Art Therapy”;

- i) “Somatic.”
- j) Massage.

2. Respondent authored and advertised the following content on website <www.diaperspa.com>:
- a. “The Diaper Spa – Physician-Run Diaper Salon.”
 - b. “We are in a private location in picturesque Southern New Hampshire.”
 - c. “Since its inception, all Diaper Spa services have occurred exclusively on the premises and will continue to do so.”
 - d. “Being in medicine, Dr. Murphy highly values your privacy... We use HIPAA-compliant protective software.”
 - e. “We are the original one and only physician-owned Diaper Spa in the world, and Dr. Murphy’s knowledge, background, and experience all collectively inform her to allow for a fully immersive experience with all the benefits of exclusive experiential services such as Hypnoregression, DBT/CBT, Yoga, and Massage.”
 - f. “The Diaper Spa stands as a professional facility dedicated to providing compassionate care for individuals with unique needs, including combat veterans, those with congenital disabilities, progressive diseases, survivors of traumatic experiences, and others.”
 - g. “Combat veterans facing incontinence due to permanent disabilities resulting from their service to their country find inclusive support at the Diaper Spa.”

3. Respondent authored and advertised the following content on website <www.cmurphymd.com>:
- a. “With a diverse range of specialized treatments, Dr. Murphy strives to enhance relaxation, promote healthy intimacy, and nurture interpersonal relationships. From teaching techniques for intimate touch, setting boundaries, and improving communication to incorporating somatic bodywork, breathwork, and sensate focus, each treatment is thoughtfully tailored to address your unique needs and unlock your fullest intimate potential.”
 - b. “I offer various holistic services, such as counseling regarding safe touch, consent, and boundaries. I support processing of past traumas through various modalities. I provide sacred tantric touch, percussive therapy, and other somatic education and healing methods. I offer surrogate partner therapy, as a therapist in training through the triadic treatment model.”
 - c. “Dr. Murphy is located in beautiful Southern NH area... She can make arrangements to see clients in her region.”

4. The following are diseases or human ailments:
 - a. Paraphilic Infantilism or Autonepiophilia;
 - b. Incontinence;
 - c. Congenital diseases;
 - d. Progressive diseases;
 - e. Sexual dysfunction.

Based upon the findings of fact made by the Board, the Presiding Officer makes the following conclusions of law:

1. Hearing Counsel has established, by a preponderance of the evidence, that the Respondent engaged in unlawful practice as defined at RSA 329:24, I, by advertising that she was practicing medicine (*see* RSA 329:1 and RSA 310:7, I(d)) in New Hampshire, despite not holding a New Hampshire physician's license.
2. Hearing Counsel has established, by a preponderance of the evidence, that the Respondent engaged in unlawful practice as defined at RSA 329:24, I by holding herself out as qualified to practice medicine (*see* RSA 329:1 and RSA 310:7, I(d)) in New Hampshire, despite not holding a New Hampshire physician's license.
3. Hearing Counsel has established, by a preponderance of the evidence, that the Respondent engaged in unlawful practice as defined at RSA 329:24, I by calling herself a physician on her website <www.diaperspa.com>, despite not holding a New Hampshire physician's license (*see* Med Rule 102.05).
4. Hearing Counsel has established, by a preponderance of the evidence, that the Respondent engaged in unlicensed practice as defined at RSA 310:13, by advertising that she was practicing medicine (*see* RSA 329:1 and RSA 310:7, I(d)) in New Hampshire, despite not holding a New Hampshire physician's license.
5. Hearing Counsel has established, by a preponderance of the evidence, that the Respondent engaged in unlicensed practice as defined at RSA 310:13 by holding herself out as qualified to engage in the practice medicine (*see* RSA 329:1 and RSA 310:7, I(d)) in New Hampshire, despite not holding a New Hampshire physician's license.
6. Hearing Counsel has established, by a preponderance of the evidence, that the Respondent engaged in unlicensed practice as defined at RSA 310:13 by calling herself a physician on her website <www.diaperspa.com>, despite not holding a New Hampshire physician's license (*see* Med Rule 102.05).

Regardless of stated intent or practice, words, phrases, and representations have meaning both legally and to the public consuming them. In the area of medicine, the legislature has placed the heavy

burden of protecting the public health, safety, and welfare (including from unlicensed and unlawful practice) on the Board. *See* RSA 329:1-aa and RSA 329:24. The Board's findings of fact establish that the Respondent has used words, phrases, and representations on her websites that have legal significance within the meaning of the Board's professional licensing statutory schemes (*see i.e.* RSA 329:1; RSA 310:7, I(d); and Med Rule 102.05). Further, the Board's findings of fact also establish that the Respondent has used words, phrases, and representations on her websites that the New Hampshire public and Board associate with the practice of medicine.

Upon a finding of unlawful practice made pursuant to RSA 329:24 and unlicensed practice made pursuant to RSA 310:13, the Board takes the following action pursuant to RSA 329:24 and 310:13:

1. Pursuant to RSA 329:24, III(a) and IV, the Respondent is ordered to immediately **CEASE AND DESIST** advertising herself as practicing medicine in New Hampshire; holding herself out as qualified to practice medicine in New Hampshire; and calling herself a New Hampshire physician. This cease and desist order shall be enforceable in superior court.
2. Pursuant to RSA 329:24, V and RSA 310:13, the New Hampshire Attorney General, the Board, or the prosecuting attorney of the county or municipality where the acts of unlawful practice have taken place **MAY MAINTAIN AN ACTION TO ENJOIN** the Respondent from continuing to do acts of unlawful practice. The action to enjoin shall not replace any other civil criminal, or regulatory remedy. An injunction without bond is available for the Board.
3. Pursuant to RSA 329:24, III(b) and RSA 310:13, the Board hereby assesses an **ADMINISTRATIVE FINE** in the amount of **TEN THOUSAND DOLLARS (\$10,000.00)** due and payable to the State of New Hampshire through the New Hampshire Office of Professional Licensure and Certification within 90 days of the below signed date of this order.

VI. CONCLUSION AND DECISION:

Pursuant to RSA 310:10, RSA 329:24, and RSA 310:13, the Board makes the findings of fact contained herein; the Presiding Officer makes the conclusions of unlawful and unlicensed practice made herein; and the Board imposes the action stated herein.

DATED: 4/22/2024

_____/s/ Nikolas K. Frye, Presiding Officer_____

Administrative Law Judge
New Hampshire Office of
Professional Licensure & Certification
7 Eagle Square
Concord, NH 03301