MINUTES
Special Meeting
MEDICAL LICENSURE COMMISSION OF ALABAMA
Meeting Location: 848 Washington Avenue
Montgomery, Alabama

March 4, 2020

MEMBERS PRESENT

George C. Smith, Sr., M.D., Chairman
Craig H. Christopher, M.D., Vice Chairman
James H. Walburn, M.D.
Paul M. Nagrodzki, M.D.
L. Daniel Morris, Esq.

MEMBERS NOT PRESENT

Gary Hill, D.O.
Pamela Varner, M.D.
Jorge A. Alsip, M.D.

OTHERS PRESENT
Judge William Gordon
Karen H. Silas, MLC (Recording Secretary)
Wallace D. Mills, MLC Legal Counsel
Randy Dixon - Security
Stephen Lavender - Security
Rebecca Daniels - Security
Scott Sides - Security
Buddy Chavez - Security
Devon Whittle - Security

Call to Order: 9:01 a.m.

Prior notice having been given in accordance with the Alabama Open Meetings Act, and with a quorum of five members present, Commission Chairman, George C. Smith Sr., M.D., convened the special meeting of the Alabama Medical Licensure Commission.

EXECUTIVE SESSION

Chairman Smith requested a motion to enter into executive session to discuss the general reputation and character, physical condition, professional competence, or mental health of an individual and to hear, deliberate and discuss evidence presented during any contested case

hearings. A motion was made by Commissioner Christopher with a second by Commissioner Nagrodzki to enter into executive session. The motion carried by unanimous approval. Chairman Smith announced that the Alabama Medical Licensure Commission would reconvene in public session at the end of Dr. Gayle's hearing which was scheduled for multiple days.

The Commission entered into executive session at 9:02 a.m.

Following the executive session, Commission Chairman, George C. Smith, Sr., M.D. reconvened the public meeting of the Alabama Medical Licensure Commission.

The Commission reconvened in public session at 11:27 a.m.

HEARINGS

Francene Aretha Gayle, M.D. The Commission received evidence during a confidential hearing over a three day period. After consideration of all testimony and evidence a motion was made by Commissioner Nagrodzki with a second by Commissioner Walburn to issue an Order. The motion carried by unanimous vote. A copy of such Order is attached hereto as Exhibit "A".

MEETING NOTICE: Chairman Smith announced the next meeting of the Alabama Medical Licensure Commission for March 25, 2020 at 9:00 a.m.

Meeting Adjourned at 11:40 a.m.

BCG

GEORGE C. SMITH, SR., M.D., Chairman
Alabama Medical Licensure Commission

Karen H. Silas, Executive Assistant,
Recording Secretary

April 22, 2020
Date Signed

EXHIBIT A

BEFORE THE MEDICAL LICENSURE COMMISSION OF ALABAMA

ALABAMA STATE BOARD OF MEDICAL EXAMINERS, Complainant, vs. FRANCENE ARETHA GAYLE, M.D. Respondent.	Case No. 15-209

FINAL ORDER

This cause came before the Medical Licensure Commission of Alabama on the administrative complaint filed against Francene Aretha Gayle, M.D. by the Alabama State Board of Medical Examiners in the above-numbered case seeking to revoke Dr. Gayle's license to practice medicine in Alabama, to impose a fine, and for costs. A hearing was held on March 2, March 3, and March 4, 2020 at which the Commission received oral testimony and documentary evidence. Dr. Gayle was present for the entirety of the hearing and was unrepresented.

Based upon the evidence presented at the hearing, the Commission hereby finds as follows:

1. That Dr. Gayle operated three clinics; one in Huntsville, Alabama, one in Killen, Alabama, and one in Athens, Alabama; that the Huntsville clinic was approximately thirty miles and a forty-five minute drive from the Athens clinic; and that the Killen clinic was in excess of thirty miles further on, beyond the Athens clinic;

2. That Dr. Gayle was the only physician working in the three clinics; that the Killen clinic would see as many as forty-seven patients per day; that the Huntsville clinic would see as

many as forty-nine patients per day, and that the Athens clinic would see approximately ten to twelve patients per day; that, collectively, the three clinics would see as many as one hundred seven patients per day, there having been that number of patients seen by the three clinics on July 27, 2016;

3. That Dr. Gayle set up and used her electronic medical records in such a way as to only allow billing under her National Practitioner Identifier (NPI) number; that Dr. Gayle employed a number of certified registered nurse practitioners (CRNP), but billed every visit attended to by a CRNP as if Dr. Gayle had personally seen the patient; that it was exceptionally rare that Dr. Gayle ever saw a patient who was also seen by one of her CRNPs; that the result of said billing scheme was a payment of an extra fifteen percent (15%) by third-party payors; that Dr. Gayle ignored multiple warnings from Blue Cross and Medicaid to change her billing such that patients whom she had not actually seen would not be billed under her NPI number, but under the NPI number of the healthcare professional who actually saw the patient; that Dr. Gayle did these things intentionally for the purpose of falsely inflating her billing to Blue Cross and Medicaid;

4. That Dr. Gayle failed to set up her electronic medical records in such a way that the CRNPs could close or complete an office visit note or include their electronic signature on the office visit note such that it could be readily determined who saw the patient, if not Dr. Gayle, and the evidence established that she saw only a limited number of patients personally; that Dr. Gayle did not close or complete her medical records in such a way as to preclude later changing of the records, sometimes for years; that Dr. Gayle did this despite requests from her CRNPs and medical and billing assistants to allow the CRNPs to close and sign records;

5. That Dr. Gayle applied a billing code modifier, known as a code 25 modifier, to every bill she submitted to Blue Cross, and that she did so for the purpose of bypassing internal controls in the third-party payor systems called "edits" in an attempt to prevent the third-party payor from auditing the said records; that she applied the code twenty-five (25) modifier when the procedures actually performed did not warrant the application of the modifier; that this activity was part of the broader scheme of Dr. Gayle's to falsely inflate her billings to Blue Cross;

6. That ninety-two percent (92%) of Dr. Gayle's bills to third-party payors were for what is known as level four (4) visits or level five (5) visits, billed, correspondingly, under the billing codes 99214 and 99215; that a level four (4) visit required twenty-five (25) to fifty (50) minutes of the physician's or CRNP's time actually spent with the patient[1]; that a level five (5) visit required at least forty-five (45) minutes of time actually spent with the patients; that Dr. Gayle, having billed all of her visits under her NPI number as though she—as opposed to one of the CRNPs—had seen the patient could not and did not spend the requisite period of time with patients to justify such billing; that, again, this was done for the purpose of falsely inflating Dr. Gayle's billing to third-party payors;

7. That Kari Forsyth, an untrained medical assistant, worked for Dr. Gayle in her Killen clinic without the supervision of Dr. Gayle or any other trained healthcare professional for three months; that during that three-month period, Dr. Gayle was present for one day per week or less, and on those occasions, Dr. Gayle's presence was for less than the whole day; that Dr. Gayle allowed Forsyth and other medical assistants—trained and not—to see patients, diagnose patients, and treat patients, which included the administration of prescription medications, such

[1] There was evidence showing that Dr. Gayle did not employ other healthcare professionals, such as Registered Nurses or Physician's Assistants.

as Rocephin, Klonopin, Toradol, Phenergan, and other injectables, and the x-raying of patients; that these medications were administered by staff without knowledge of side effects and without any trained medical personnel or equipment on site to treat life-threatening complications;

8. That Dr. Gayle instructed the staff at her clinics to administer Coumadin checks on each patient, regardless of its medical necessity, for the purpose of falsely inflating her billing;

9. That Dr. Gayle set up and administered a scheme to defraud third-party payors by way of pass-through billing; that, more particularly, Dr. Gayle entered into a scheme with a drug testing company known as Castle Medical Group (Castle) whereby Dr. Gayle would refer each of her patients for urinary drug screens, regardless of the medical necessity; that Castle would perform the drug screens; that Dr. Gayle would pay Castle approximately two hundred fifty dollars ($250) for the drug screens, but then bill Blue Cross for as much as one thousand two hundred dollars ($1,200) as if the drug screens had been performed by her staff in her clinics; that Dr. Gayle was paid in excess of two million dollars ($2,000,000) by third-party payors in 2014 and 2015 for these drug screens that were not performed by her clinics, and Dr. Gayle was in the top twenty of Blue Cross providers of urinary drugs screens during that time; that Dr. Gayle profited by this scheme by approximately one million seven hundred thirty eight thousand six hundred six dollars ($1,738,606.00);

10. That Dr. Gayle later entered into an agreement with a drug screen company named "Zenith" whereby Dr. Gayle ordered urinary drug screens for all of her patients regardless of the medical necessity; that Dr. Gayle would, further, order qualitative drug screens as follow-ups to quantitative drug screens on each of the patients tested, including where such follow-ups were not warranted; that ninety percent (90%) of Medicaid's claims from Zenith for the relative

period were for Dr. Gayle's patients; that in 2015 and 2016, Medicaid paid over one million dollars ($1,000,000) for drug screens performed on Dr. Gayle's patients; that often, Dr. Gayle's ordered drug screens did not even include testing for the drugs the patient had been prescribed; that Dr. Gayle did this, again, for the purpose of falsely inflating her billing to third-party payors;

11. That Dr. Gayle pre-signed blank prescription forms and gave them to medical assistants in her clinics for their use in prescribing controlled substances and other prescription medications to patients; that Dr. Gayle allowed untrained medical assistants, such as Kari Forsyth to determine the quantities and duration of narcotic prescriptions to patients, including making decisions about whether to "put the patient on probation," which meant altering or changing the prescriptions of narcotics; that Dr. Gayle routinely wrote prescriptions for patients in advance of their appointments and distributed those prescriptions to untrained medical staff to give to patients whom she did not see, and whom were seen by the untrained medical staff instead;

12. That Dr. Gayle routinely prescribed narcotic pain medications in amounts and in combinations with other drugs which were dangerous to her patients; that, more particularly, Dr. Gayle would prescribe opioid pain medications in combination with benzodiazepines and Soma (carisoprodol), a combination highly sought after as a street drug and known as "the Holy Trinity"; that the value of and demand for this drug combination on the street puts it at a high risk of being diverted to non-prescribed users; that this combination exposed Dr. Gayle's patients as well as potential non-prescribed users to an unnecessarily high risk of respiratory depression and death; that Dr. Gayle ignored letters from Blue Cross warning of the risks of prescribing this combination of drugs to patients and continued to prescribe "the Holy Trinity";

13. That Dr. Gayle routinely prescribed opioid pain medications to patients in daily morphine milligram equivalents (MMEs) which far exceeded the federally-recommended threshold of ninety (90); that from 2014 to 2018, Dr. Gayle repeatedly and habitually prescribed eighty-four (84) oxycodone thirty (30) milligram tablets to her patients every twenty-eight (28) days; that this is the equivalent to one hundred thirty-five (135) daily MMEs; that Dr. Gayle often prescribed this in combination with eighty-four (84) hydrocodone 10, three hundred twenty-five (325) milligram tablets every twenty-eight (28) days; that this combination was equivalent to one hundred sixty-five (165) daily MMEs; that these levels of opioids exposed Dr. Gayle's patients to an unnecessarily high risk of respiratory depression and death;

14. That Dr. Gayle, by example, prescribed patient K.A. successive prescriptions for narcotics with daily MMEs of one hundred forty (140), one hundred twenty (120), one hundred twenty (120), and one hundred thirty-five (135), respectively;

15. That Dr. Gayle, by further example, prescribed patient M.A. prescriptions with MMEs of one hundred eighty (180); that Dr. Gayle prescribed patient C.A. successive oxycodone prescriptions with MMEs of one hundred thirty-five (135); that Dr. Gayle prescribed patient C.A. oxycodone with MMEs of one hundred eighty (180); that Dr. Gayle prescribed D.M. prescriptions with MMEs of one hundred thirty-five (135); that Dr. Gayle prescribed patient D.H. successive prescriptions with MMEs of two hundred forty (240), one hundred thirty (130), and two hundred forty (240), respectively; that Dr. Gayle prescribed T.H. successive prescriptions of one hundred thirty five (135) and one hundred eighty (180) MMEs; that Dr. Gayle gave D.M. a prescription for oxycodone with a daily MME of one hundred thirty-five (135); that Dr. Gayle gave K.S. a prescription for oxycodone with a daily MME of one hundred eighty (180); that Dr. Gayle gave T.S. a prescription for oxycodone with a daily MME of one

hundred thirty-five (135); that Dr. Gayle gave D.W. a prescription for Methadone with a daily MME of three hundred sixty (360); that Dr. Gayle wrote several prescriptions for Methadone with over one thousand (1000) daily MMEs;

16. That of the prescriptions Dr. Gayle wrote which had daily MMEs of over ninety (90), the average MME for those prescriptions was just over one hundred ninety-five (195) MMEs;

17. That from May of 2014 to December 31, 2018, fifty-eight percent (58%) of the total prescriptions written by Dr. Gayle were for narcotics, and thirty-seven percent (37%) of the total prescriptions written were for sedatives;

18. That in 2015, according to the Prescription Drug Monitoring Program's database, Dr. Gayle was ranked eleventh (11th) in the state of Alabama among nineteen thousand six hundred fifty (19,650) prescribers in the total number of controlled substances prescribed; that despite the investigation by the Board of Medical Examiners and the various warning and instruction letters sent to her by various third-party payors, Dr. Gayle was still ranked twenty-second (22nd) among all Alabama prescribers for the total number of prescriptions for controlled substances at the time of the hearing in this case;

19. That Dr. Gayle routinely schedule one day per week in her Huntsville clinic for the purpose of seeing pain patients, which day she described as "pain day"; that between ninety and ninety-five percent (90% - 95%) of the prescriptions for narcotics given on those days were pre-printed as long as a week in advance, the stack of which prescriptions are described as being a foot to a foot-and-a-half thick; that she charged cash-paying patients two hundred twenty-five dollars ($225) per visit for those visits; that the average patient was prescribed one hundred twenty (120) oxycodone ten milligram (10 mg) tablets; that on a number of occasions, Dr. Gayle

wrote two prescriptions for the same narcotics on the same day to one patient—one which was billed to Medicaid and one which was paid for in cash by the patient; that, in addition to exposing her patients to unnecessarily high risks of overdose, this activity is indicative of possible diversion of these drugs to non-prescribed users.

20. That, when the Board of Medical Examiners subpoenaed records from Dr. Gayle, it took Dr. Gayle fifty-four (54) days to produce the records; that, when the Board's investigator traveled to her office to pick up documents during normal business hours, the office was closed; that when Medicaid requested medical records from Dr. Gayle as part of its investigation, Dr. Gayle submitted office notes that were electronically signed approximately two years after the dates of service and immediately prior to her turning the records over; that the drug screen company, Zenith, sent records which were nearly identical to Dr. Gayle's, but showed that Dr. Gayle had altered the medical records prior to sending them to Medicaid; that Dr. Gayle and her staff (at her direction) falsified medical records, changed medical records, and created medical records for patients where none existed for submission to Medicaid and the Board of Medical Examiners;

Based upon those findings, the Medical Licensure Commission concludes as a matter of law as follows:

1. That Francene Aretha Gayle, M.D. committed professional misconduct in violation of Ala. Code § 34-24-360(2) (1975) as follows:

a. By the commission or omission of acts that are detrimental or harmful to the patient of the physician and harmful to the health, safety, and welfare of the public, and which violate the high standards of honesty, diligence, prudence and ethical integrity demanded from

physicians and osteopaths licensed to practice in the state of Alabama as set out in Ala. Admin. Code § 545-X-4-.06;

b. By engaging in conduct which is dishonorable and which shows a disposition to lie, cheat, or defraud as set out in Ala. Admin. Code § 545-X-4-.06(10);

c. By failing or refusing to maintain adequate records on a patient or patients as set out required by Ala. Admin. Code § 545-X-4-.06(11);

d. By signing blank, undated or predated prescription forms as set out in Ala. Admin Code § 545-X-4-.06(13);

e. By failing to furnish information in a timely manner to the Board if requested by the Board as set out in Ala. Admin. Code § 545-X-4-.06(19).

2. That Francene Aretha Gayle, M.D. practiced medicine or osteopathy in such a manner as to endanger the health of her patients in violation of Ala. Code § 34-24-360(3) (1975);

3. That Francene Aretha Gayle, M.D. performed unnecessary diagnostic tests and medical services in violation of Ala. Code § 34-24-360(11);

4. That Francene Aretha Gayle, M.D. intentionally filed, or caused to be filed, false and fraudulent claims for medical services to both private and government third party payors having a legal or contractual obligation to pay such claims on behalf of a patient in violation of Ala. Code § 34-24-360(12) (1975);

5. That Francene Aretha Gayle, M.D. aided or abetted the practice of medicine by persons not licensed by the Commission in violation of Ala. Code § 34-24-360(13) (1975);

6. That Francene Aretha Gayle, M.D. failed to maintain for her patients medical records which (1) contain adequate identification of the patient, (2) indicate the date any professional service was provided, (3) contain pertinent information concerning the patient's condition, (4)

reflect examinations, vital signs, and tests obtained, performed, or ordered and the findings or results of each, (5) indicate the initial diagnosis of the patient, (6) indicate medications prescribed, dispensed, or administered and the quantity and strength of each, (7) reflect the treatment performed or recommended, and (8) document the patient's progress during the course of treatment, all in violation of Ala. Code § 34-24-360(22) (1975) as set out in Ala. Admin. Code § 545-X-4-.09(3-10).

It is, therefore, ORDERED as follows:

1. That the license to practice medicine in the state of Alabama issued to Francene Aretha Gayle, M.D. shall be and is hereby REVOKED.

2. That Francene Aretha Gayle, M.D. be and is hereby fined ten thousand dollars ($10,000) for each of the violations of the Alabama Code sections cited above for a total of sixty thousand dollars ($60,000); and

3. That Francene Aretha Gayle, M.D. shall pay the costs, fees, and expenses incurred by the Alabama Board of Medical Examiners in this action. The Board of Medical Examiners is directed to submit a bill of costs, fees, and expenses within thirty (30) days of this order, along with a verification that such costs, fees, and expenses were necessary for the prosecution of the case, which bill and verification shall be served by the Board upon Respondent.

Done this 19th day of March, 2020.

George C. Smith Sr MD

George C. Smith, Sr., M.D., Chairman
Medical Licensure Commission of Alabama