

**STATE OF MAINE  
BOARD OF LICENSURE IN MEDICINE  
137 STATE HOUSE STATION  
161 CAPITOL STREET  
AUGUSTA ME 04333-0137  
MEETING OF FEBRUARY 12, 2008  
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STATE OF MAINE  
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137 STATE HOUSE STATION  
161 CAPITOL STREET  
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MEETING OF FEBRUARY 12, 2008

**BOARD MEMBERS PRESENT**

Sheridan R. Oldham, M.D., Chairman  
Gary R. Hatfield, M.D., Board Secretary  
Cheryl D. Clukey  
Maroulla Gleaton, M.D.  
Kimberly K. Gooch, M.D.  
Bettsanne Holmes  
David Nyberg, Ph.D.  
Daniel K. Onion, M.D.

**BOARD STAFF PRESENT**

Randal C. Manning, Executive Director  
Jean M. Greenwood, Administrative Assistant  
Timothy Terranova, Consumer Assistant  
Dan Sprague, Assistant Executive Director

**ATTORNEY GENERAL'S OFFICE**

Dennis Smith, Assistant Attorney General  
Detective Peter Lizanecz, Attorney General's Office

George K. Dreher, M.D. was excused

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The Board meets in public session with the exception of the times listed below which are held in executive session. Executive sessions are held to consider matters which, under statute, are confidential (1 M.R.S.A. §405). The Board moved, seconded, and voted the following executive session times. All voting takes place in public session.

**EXECUTIVE SESSIONS**

9:10 a.m. – 10:13 a.m.  
10:23 a.m. – 10:40 a.m.  
10:52 a.m. – 12:23 p.m.

**PURPOSE**

Assessment & Direction, Progress Reports & New Complaints  
Progress Reports & New Complaints  
Progress Reports & New Complaints

**PUBLIC SESSIONS**

9:09 a.m. – 9:10 a.m.  
10:13 a.m. – 10:23 a.m.  
12:59 p.m. – 4:25 p.m.

Call to Order  
Public Discussion  
Public Discussion

**RECESS** *The Board voted to stand in recess during the following times.*

12:23 a.m. – 12:59 p.m.  
10:40 a.m. – 10:52 a.m.  
2:09 p.m. – 2:16 p.m.  
3:46 p.m. – 3:57 p.m.

NOON MEAL

I. CALL TO ORDER

A. AMENDMENTS TO AGENDA

1. Amend Michael R. DeVita, M.D. to Section XIII Secretary's Report, List F

**EXECUTIVE SESSION**

II. ASSESSMENT & DIRECTION

A. AD 07-359

MOTION was made by Dr. Nyberg to file AD 07-359. Dr. Gooch seconded the motion which passed 7-1.

B. AD 08-003 (CR 08-051)

MOTION was made by Dr. Gooch to issue a complaint in the matter of AD 08-003 (CR 08-051). Dr. Gleaton seconded the motion which passed by unanimous vote.

C. AD 08-008

MOTION was made by Dr. Gooch to investigate further AD 08-008. Ms. Holmes seconded the motion which passed by unanimous vote.

D. AD 08-026 (CR 08-052)

MOTION was made by Dr. Hatfield to issue a complaint in the matter of AD 08-026 (08-052) based on fraud in application and unprofessional conduct and to order a 3286 evaluation. Dr. Nyberg seconded the motion which passed unanimously.

E. AD 07-389

MOTION was made by Dr. Onion to file AD 07-389. The motion was seconded by Dr. Nyberg and passed unanimously.

F. AD 07-398 (CR 08-053)

MOTION was made by Dr. Gleaton to issue a complaint in the matter of AD 07-398 (CR 08-053) based on fraud in application. The motion was seconded Dr. Hatfield and passed unanimously.

III. PROGRESS REPORTS

A. CR 07-243

MOTION was made by Ms. Holmes to investigate further CR 07-243. The motion was seconded by Dr. Nyberg and passed by unanimous vote.

B. CR 07-326

MOTION was made by Dr. Onion to dismiss (CR 07-326). Dr. Gooch seconded the motion.

The complainant alleges the physician did not appropriately follow up and treat his severe medical condition. The physician responded that he ordered testing that needed to be completed before definitively treating the complainant's medical condition and that the medical condition was not as severe as the complainant alleged.

A review of the investigative records indicates the physician provided appropriate medical care.

The motion passed unanimously.

C. CR 06-326 WILLIAM H. HOLT, M.D.

MOTION was made by Dr. Gleaton to reconsider (CR 06-326) because the Board in its original action to dismiss acted on a partially or incompletely informed basis. New evidence and information compels us to reconsider. The Board strives for excellence and improvement. We are committed to availing ourselves of increasing outside consultant expertise in reviewing cases. The motion was seconded by Ms. Holmes and passed unanimously.

MOTION was made by Dr. Gleaton to dismiss with a letter of guidance (CR 06-326) in the matter of William S. Holt, M.D. Ms. Clukey seconded the motion.

Originally, the patient complained to the Board that the physician and his office did not provide adequate informed consent before performing LASIK surgery on 7/14/2006. Based on evidence supplied by the physician, the Board dismissed the complaint. The complainant filed a complaint with the American Academy of Ophthalmology (AAO). In September 2007, the Academy issued a private reprimand in Alternative Disposition after finding the physician agreed, in retrospect, that the video and informed consent documents were inadequate. Laudably, the physician has updated and improved his informed consent process in response to the recommendations from the AAO. However, the physician should realize that he needs to improve his physician-patient relationship and establish trust before electively operating on a patient's eyes. Specifically, the doctor should personally take the time and effort to discuss risks, benefits and alternatives of refractive surgery that is tailored to each patient's clinical exam and not delegate this ethical responsibility. This recommendation is critical in refractive surgery because of the emotional/psychological importance patient's place on their eyesight and the elevated expectations of results by media advertising that are promised but may not be fulfilled.

The motion passed by unanimous vote.

D. CR 07-329 WILNER BONHOMME, M.D.

MOTION was made by Ms. Holmes to unset the Adjudicatory Hearing in the matter of (CR 07-329) Wilner Bonhomme, M.D. Dr. Hatfield seconded the motion which passed unanimously.

The Board held a discussion with legal counsel and decided to reset the Adjudicatory Hearing in the matter of (CR 07-329) Wilner Bonhomme, M.D.

MOTION was made by Dr. Onion to reset the Adjudicatory Hearing in the matter of (CR 07-329) Wilner Bonhomme, M.D. Ms. Holmes seconded the motion and passed 5-3.

E. CR 07-332

MOTION was made by Dr. Hatfield to dismiss (CR 07-322). Dr. Nyberg seconded the motion.

In this case it was reported to the Board that the physician had appeared impaired during a single shift at work. The physician also has a consent agreement limiting his hours of work hour to that allowed a resident physician by the Accreditation Council for Graduate Medical Education (ACGME).

The physician responds that his apparent impairment was due to a change in his prescription medications; he also states he did not work in excess of his allowed hours. The physician's pain specialist confirmed to the Board a change in medication that he believes was responsible for the physician's behavior. The physician reported his impairment immediately to this pain specialist who then relieved that physician from medical duty for seven weeks until his medications were adjusted and no further impairment was present.

A review of work shifts verified by the hospitals where the physician was employed shows that the physician did not violate the ACGME standards for duty hours.

The motion passed by unanimous vote.

F. CR 07-368 & 07-403 ADMINISTRATIVELY CLOSED

G. COMPLAINT STATUS REPORT

The complaint status report was reviewed and accepted.

H. REVIEW LETTERS OF GUIDANCE

The Board reviewed, edited and approved letters of guidance.

I. CONSUMER ASSISTANT FEEDBACK

Mr. Terranova provided the Board with responses he had received from complainants in closed complaints.

IV. NEW COMPLAINTS

Complaint Review Committee Recommendations

A. CR 07-337

MOTION was made by Dr. Nyberg to dismiss (CR 07-337). Ms. Clukey seconded the motion.

The patient claims the doctor was physically abusive during a social security disability examination and lied in the doctor's response to the Board. Review of the medical records shows the doctor's exam findings to be similar to the treating physician's exam. The exam seems to have been performed in a professional manner. The patient's allegations cannot be confirmed.

The motion passed unanimously.

B. CR 07-374

MOTION was made by Dr. Nyberg to dismiss (CR 07-374). Ms. Holmes seconded the motion.

A patient complains of multiple areas of disagreement and improper care. A review of the records reveals the patient with multiple significant diseases. There is good documentation of the patient's unwillingness to comply with physician recommendations. There is mention of the patient's inappropriate interactions with the staff and a copy of his discharge letter stating that he is being discharged because of this behavior. While there is mention of referral to another institution, there is no documentation pro or con on the issue of finding a new provider. Nothing in the record supports further Board action.

The motion passed unanimously.

C. CR 07-375

MOTION was made by Dr. Nyberg to dismiss CR 07-375. Dr. Gooch seconded the motion.

The patient alleges three problems. First, the doctor rendered improper or no care, due to the patient's inability to pay. Second, he asserts a violation of confidentiality. Third, he claims a failure to get informed consent.

The records show appropriate care. In fact, because of the patient's financial problems the doctor arranged social service consultation while the patient was in the hospital. The record contains appropriate informed consent signed by the patient at a time when he was deemed competent. With regard to confidentiality, the doctor did speak with the neighbors who brought the patient to the hospital only with the intent to find a next of kin. The minimal medical information needed to convey the gravity of the condition was given them.

Finally, the records document interactions with Maine Department of Health and Human Services (DHHS) attempting to secure financial help. While the patient did not receive help for the physician's charges, he did receive help for his hospital bill, limiting his exposure to

less than 4% of total cost. This is in direct contradiction to his statements regarding the hospital's demands.

In summary, the complaint is without evidence to support any of the allegations.

The motion passed unanimously.

D. CR 07- 385

MOTION was made by Dr. Nyberg to dismiss CR 07-385. Ms. Holmes seconded the motion.

The patient alleges that the physician failed to provide him proper care for his allergies and violated his Health Insurance Portability and Accountability Act (HIPAA) rights by sending a letter to Bangor Hydro. Investigation reveals that: (1) the complainant has been a patient at the physician's practice since 2006, and during that time, the physicians' practice saw and treated the complainant on multiple occasions for his medical issues, including allergies; (2) the physician's practice made a timely referral to an allergy specialist and the complainant cancelled that appointment with the allergist; (3) the physician's office received a phone message from the complainant asking that a letter be sent to Bangor Hydro; and (4) the physician sent a letter to Bangor Hydro. Therefore, the committee recommends the complaint be dismissed.

The motion passed unanimously.

BOARD COMPLAINT REVIEW

E. CR 07- 365 WEEZA MATTHIAS, M.D.

MOTION was made by Dr. Gooch to seek summary suspension in the matter of Weeza Matthias, M.D. (CR 07- 365) as she represents an imminent threat to the public. Dr. Gleaton seconded the motion which passed 7-1.

MOTION was made by Dr. Gooch to order an Adjudicatory Hearing in the matter of Weeza Mathias. Dr. Gleaton seconded the motion which passed by unanimous vote.

F. CR 07- 267 DONALD L. SCHAASBERGER, M.D.

MOTION was made by Ms. Holmes to dismiss (CR 07-267) in the matter of Dr. Donald Schassberger, with a letter of guidance urging accurate medical records, using written informed consent and "before and after photos." Dr. Gleaton seconded the motion.

The complaint was filed against a plastic surgeon by a patient who had multiple procedures and was not satisfied with the results. An independent plastic surgeon reviewed the case and stated that the surgical results appeared adequate.

The motion passed 4-3-0-1. Dr. Oldham was recused.

G. CR 07- 315

MOTION was made by Ms. Holmes to dismiss (CR 07-315). Dr. Nyberg seconded the motion.

The complaint was made against a plastic surgeon by a patient who had a procedure and was not satisfied by the results. The doctor redid the procedure, at no cost, but still did not meet the patient's expectations. An independent plastic surgeon reviewed the case and stated that the care given was appropriate and that no questionable medical practices occurred.

The motion passed 7-0-0-1. Dr. Oldham was recused.

H. CR 07- 373

MOTION was made by Dr. Onion to investigate further (CR 07-373). Dr. Nyberg seconded the motion which passed unanimously.

I. CR 07- 380

MOTION was made by Dr. Hatfield to dismiss (CR 07-380). Dr. Gleaton seconded the motion.

In this case the daughter of the patient feels that the physician did not follow her father appropriately while her father was in a rehabilitation facility and then a skilled nursing facility and did not manage an infection appropriately. She also feels that he transferred the patient from the emergency room back to the rehabilitation facility when the patient should have been hospitalized, and failed to communicate adequately with other physicians and with the family.

A review of extensive records revealed that the patient had several complications of surgeries but there was no evidence of inappropriate care. Some of the complainant's understanding of what occurred during her father's course appears to be faulty, including when the infection occurred, how and when it should be managed, and also the circumstances of her father's emergency room visit. There is evidence the physician was responsive to other physicians' requests for consultation and there was documentation in the notes of conversations with the family both pre and postoperatively.

The motion passed unanimously.

J. CR 07- 381

MOTION was made by Dr. Hatfield to dismiss (CR 07-381). Dr. Nyberg seconded the motion.

In this case the patient's daughter feels that the physician of whom she is complaining did not effectively communicate with other physicians when her father's care was signed over to him. A review of the medical records shows that the physician received a complete sign out of the patient's problems and had an excellent understanding of the patient's medical issues. Documentation is appropriate and complete.

The motion passed unanimously.

K. CR 07-391 CARLOS A. AHUMADA, M.D.

MOTION was made by Ms. Clukey to summarily suspend the license of Carlos A. Ahumada, M.D. and order an adjudicatory hearing for habitual substance abuse and unprofessional behavior. Ms. Holmes seconded the motion which failed 4-4.

MOTION was made by Ms. Clukey to order an adjudicatory hearing in the matter of Carlos A. Ahumada, M.D. Dr. Nyberg seconded the motion which passed unanimously.

MOTION was made by Ms. Clukey to summarily suspend the license of Carlos A. Ahumada, M.D. The motion was seconded by Dr. Onion.

Dr. Onion stated his concern is that the Board has indirect evidence that this physician is engaged in substance abuse and is practicing while under the influence and for the Board to wait for the normal process of an adjudicatory hearing and allow continued practice until this is resolved is potentially dangerous to the public and therefore he recommends suspension until the adjudicatory hearing.

Dr. Oldham stated that the alleged misconduct is known to the other physicians who practice in the community. The Board has evidence that the community is aware of the allegations and

in this small community summary suspension, with allegations which at this point are alleged, may make it difficult to receive appropriate medical care.

Dr. Gooch stated that the Board does not have solid evidence of the diagnosis of substance abuse because of the lack of an evaluation and at this point believes it would be premature to make assumptions and take action.

Ms. Holmes stated that she thinks that “the buck stops” at the Board of Licensure in Medicine and the community should not be held responsible for what this physician may or may not do; and there is no guarantee of what the physician is likely to do or not do, The Board of Licensure in Medicine has the responsibility to protect the public and that is why she supports summary suspension.

Ms. Clukey stated that she also feels there will be no guarantee of oversight of this physician especially working with other pediatricians in that he spent most of his time blaming other people for his disengagement from the Physician’s Health Program Contract and, Ms. Clukey believes he is a danger because he does his own interpretation of what’s best for him.

Dr. Onion stated he wants to make it clear that the Board understands that this physician has been offered evaluation of this problem and he has rejected it and continues to reject that sort of evaluation by this Board. He pointed out that because of the mutual dependency of physicians in those communities it is often difficult for the physicians in small communities to serve as the whistle blowing function which has been discussed as being adequate safeguard in those communities.

The motion failed 4-4.

V. INFORMAL CONFERENCE (NONE)

**PUBLIC SESSION**

VI. MINUTES OF JANUARY 8, 2008

MOTION was made by Dr. Nyberg and seconded by Dr. Gleaton to approve the minutes of January 8, 2008 as amended. The motion passed unanimously.

VII. NEW BUSINESS (VOTING)

VIII. BOARD ORDERS & CONSENT AGREEMENTS FOR APPROVAL OR MONITORING REPORTS

A. BOARD ORDERS FOR APPROVAL

1. CR 07-319 SCOTT L. DIERING, M.D. [See Appendix A]

MOTION was made by Dr. Onion to approve the edited version of the Board Order presented in the matter of Scott L. Diering, M.D. to resolve CR 07-319. Ms. Clukey seconded the motion which passed unanimously.

B. CONSENT AGREEMENTS FOR APPROVAL OR MONITORING REPORTS

1. CR 06-319 SARAH E. BABINE, M.D. ADJUDICATORY HEARING SCHEDULED (FYI)

2. CR 07-127 KARL SITTERLY, M.D.

Dr. Sitterly’s Consent Agreement dated April 10, 2007 states that he must obtain his prescription medications from a single primary care physician (PCP) approved by the Board.

The Board rejected the first two proposals because they were both in the same practice as Dr. Sitterly. Dr. Sitterly has proposed James G. Baldwin, D.O. to serve as his PCP. The Board reviewed a letter from Dr. Sitterly dated January 8, 2008, Dr. Baldwin's CV, license status printouts for both Dr. Baldwin and Dr. Sitterly and the April 10, 2007 Consent Agreement.

MOTION was made by Dr. Nyberg to approve James G. Baldwin, D.O. to serve as Dr. Sitterly's PCP. Dr. Gooch seconded the motion which passed unanimously.

3. CR 06-225 ELLEN MICHALOWSKI, M.D.

Dr. Ellen Michalowski's Consent Agreement dated April 10, 2007 states that she must have a covering physician approved by the Board. Dr. Michalowski's previously approved covering physician is relocating to Pennsylvania. Dr. Michalowski is proposing George H. Conover III, M.D. to complete the role of covering physician to her primary physician Dr. Stephen Wood.

The Board reviewed information documenting the request.

MOTION was made by Dr. Gooch to approve George H. Conover III, M.D. to complete the role of covering physician to her primary physician Dr. Stephen Wood. Dr. Gleaton seconded the motion which passed unanimously.

4. CR 02-112 ANDREW NICHOLSON, M.D.

Dr. Nicholson signed a Consent Agreement with the Board of Licensure in Medicine in January 2003 after self-reporting that he had ordered child pornography from a "sting" website. The Agreement stated that (1) Dr. Nicholson would restrict his practice of medicine to adults over the age of eighteen (18). (2) Dr. Nicholson would participate in ongoing therapy with a therapist with experience in sexual offenses. (3) Dr. Nicholson will be on probation.

In June 2006, Dr. Nicholson requested the Board lift the restriction placed on his license. After review, the Board voted to deny the request. Dr. Nicholson then filed a petition in superior court to review the Board's decision.

After review, the superior court agreed with Dr. Nicholson the Board was required by statute to fix a period to his probation, and the one year period had expired. However, the court concluded that they lacked jurisdiction to modify or vacate the Consent Agreement and the age limit restriction was a separate restriction of his license. The superior court then ruled that this term of the agreement was not subject to the one year term.

Dr. Nicholson has appealed a decision of the Board of Bar Examiners for denying his application for admission to the Maine Bar.

Board staff received a letter from Dr. Nicholson dated January 15, 2008 requesting the Board lift the restriction placed on his license to treat only those patients over the age of eighteen (18).

The Board reviewed all relevant materials and Dr. Nicholson, who was present, was allowed to briefly state his case.

MOTION was made by Dr. Nyberg to deny Dr. Nicholson's request to lift the restriction of only treating patients over the age of (18). Ms. Holmes seconded the motion which passed unanimously.

5. CR 07-367 DAVID B. GAMMON, M.D. [SEE APPENDIX B]

MOTION was made by Dr. Gleaton and seconded by Dr. Gooch to accept a consent agreement, as amended, to allow Dr. Gammon to perform Independent Medical Examinations (IME) and chart reviews. The motion passed 7-0-0-1. Dr. Onion was recused.

6. CR 03-001 WALTER N. HEARN, PA-C (FYI)

A report from the Physician Health Program (PHP) was reviewed and filed.

IX. ADJUDICATORY HEARING(S) (none)

X. REMARKS OF THE CHAIRMAN

A. MEETING WITH THE DEPARTMENT OF CORRECTIONS (DOC)

Dr. Oldham and Mr. Manning, met with Denise Lord and Kathy Plant, representatives from the Department of Correction (DOC) regarding observations the Board had about healthcare within the prison system.

DOC is aware of the problems identified and are planning a peer review of their medical program assisted by Maine Medical Association. It is time for DOC to renew their contract for medical services and Chairman Oldham volunteered members of the Board to help with the peer review.

XI. EXECUTIVE DIRECTOR'S REPORT

A. DRAFT RULE FOR ADMINISTRATIVE LICENSE (FYI)

The Board reviewed a proposed amendment to Chapter 1 rules defining a new category of license called the "Administrative Medicine License". The Board suggested some amendments and gave directions to go forward.

B. CONCURRENT LICENSE RENEWAL FOR PA LICENSING & SCHEDULE II PRESCRIBING

(FYI – POLICY PREVIOUSLY APPROVED)

C. MEETING WITH U.S. ATTORNEY

The Executive Director reported on his attendance at a meeting called by US Attorney Paula Silsby on February 16. The meeting was the second in a series, involving many interested parties, regarding concerns relating to the availability and use of illicit drugs "on the street", and how availability could be curtailed or eliminated. A report was provided by Marcia Sorg PhD summarizing her recent study about the apparent high levels of methadone involvement in unexpected deaths caused by "street drugs". Questions were discussed, including the value and level of use by practitioners of the DHHS prescription monitoring program (PMP), and the level of active involvement of federal DEA staff in addressing the concerns. Ms. Silsby asked the BOLIM to consider mandating use of the PMP by treating physicians. After discussion the Board determined that while it supports in strong terms the PMP and its use by practitioners it would not be appropriate to mandate usage of the PMP. As the Chapter 11 pain rule is revised this summer language will be inserted to reinforce the Board's support for the prescription monitoring program.

XII. REMARKS OF ASSISTANT ATTORNEY GENERAL

Mr. Dennis Smith gave a brief outline regarding the history of medical records laws and how the procedures for releasing them have changed over the years.

XIII. BOARD SECRETARY'S REPORT

A. LIST A – LICENSE APPLI CATIONS RECOMMENDED FOR RATIFICATION BY THE BOARD SECRETARY

1. MEDICAL DOCTOR LIST A

The following license applications have been approved by Board Secretary Gary R Hatfield, MD without reservation:

<u>NAME</u>	<u>SPECIALTY</u>	<u>LOCATION</u>
Arroyo, Pedro J.	Surgery	Not Listed
Bianco, Anthony C.	Child/Adolescent Psychiatry	Not Listed
Bronaugh, Thomas B	Emergency Medicine	Bangor/Presque Isle
Col, Nananda F.	Internal Medicine	Portland
DeRoo, Teresa A.	Diagnostic Radiology	Teleradiology
Foster, Laura	Emergency Medicine	Not Listed
Genta, Robert Galen V.	Anatomic Pathology	Texas/Reading slides
Henderson, Galen V	Neurology	York Hospital
Holla, Padmini V.	Pathology	Not Listed
Inkovlova, Polina K.	Internal Medicine	Not Listed
Jao, Henry C.	Orthopedic Surgery	Dover-Foxcroft
Karandikar, Abhijay P	Occupational Medicine	Aroostook County
Kumin, Michael C.	Family Medicine	York/Cumberland Counties
Mendel, Jeffrey B.	Radiology/Nuclear Medicine	Not Listed
Nielsen, James W.	Psychiatry	Unknown at this time
Nwobi, Obinna U.	General Surgery	Skowhegan
Oalican, Rodisendo P	Orthopedics	Farmington
Pesch, Theodor	Family Medicine	Presque Isle
Smith, Dana J.	Anesthesiology	Locum Tenens
Smith, Steven A.	Family Practice	Winthrop
Soule, Helen M.	Internal Medicine	Not Listed
Stulc, Jaroslav P.	General Surgery	Skowhegan
Taylor, Edwin T.	Pediatrics	Not Listed
Tefo, Richard A.	Anesthesiology	Not Listed
Williams, Cathy	Psychiatry	Bangor
Zapp, John A	Family Medicine	Topsham/Brunswick

MOTION was made by Dr. Gleaton to ratify the physicians appearing on List A above. The motion was seconded by Dr. Gooch and passed 6-2.

2. PHYSICIAN ASSISTANT LIST A

The following requests for Schedule II prescribing authority have been approved by the Board Secretary Gary R. Hatfield, MD.

<u>NAME</u>	<u>LICENSE</u>	<u>PSP</u>	<u>LOCATION</u>
David Auer, PA-C	Active	Jean Benson, MD	Penobscot Comm. Healthcare
Linda Christensen, PA-C	Active	Christopher Ritter, MD	Old Town Family Practice
Erika Valtinson, PA-C	Active	Daniel Harrigan, MD	Pines Health Services
Matthew Cowan, PA-C	Active	Philip McFarlane, MD	Houlton Family Practice
Jennifer Landry, PA-C	Active	Gina Gomez, MD	Redington Fairview General
Jennifer Landry, PA-C	Active	Mirle Kellett, MD	Maine Medical Center

MOTION was made by Dr. Gooch to ratify the names of PA List A above. The motion was seconded by Dr. Gleaton and passed unanimously.

B. LIST B APPLICATIONS FOR INDIVIDUAL CONSIDERATION

1. PAUL S. BAXT, M.D.

Dr. Baxt's permanent application is being presented for review because of yes answers to questions # 1 and 7. Dr Baxt has consent agreements with Florida, Colorado and New York. He has a history of substance and legal issues for which Dr. Baxt failed to provide information.

MOTION was made by the Licensure Committee to preliminarily deny the application of Paul S. Baxt, M.D. with leave to withdraw his application. The motion passed unanimously.

2. JOSEPH P. FAHEY, M.D.

Dr. Fahey has applied for a permanent license. Dr. Fahey has a five year agreement with the State of Massachusetts as of July of 2007 for monitoring under the Massachusetts Physician Health Program (PHP). The Licensure Committee recommends that if Dr. Fahey is willing to sign a consent agreement here in Maine under the same terms as his agreement in Massachusetts with the Maine PHP they would grant licensure under those conditions.

MOTION was made by the Licensure Committee to offer Dr. Fahey a substance abuse consent agreement essentially identical to the Massachusetts PHP Agreement. Dr. Fahey would have to be willing to sign the Maine Consent Agreement in order to be eligible for licensure. The motion passed unanimously.

3. ROBERT S. GORDON, M.D.

Dr. Gordon's permanent application is being presented for review. Dr. Gordon requested and was granted a waiver of the 3 attempt limit for USMLE at the December 11, 2007 Board meeting. The Board requested an explanation of why it took him so long to pass Step 2, even with accommodations. Dr. Gordon's response was reviewed.

MOTION was made by Dr. Nyberg to table the application of Robert S. Gordon. Dr. Nyberg seconded the motion. The motion passed unanimously.

4. GEORGE R. KUNHARDT, M.D.

Dr. Kunhardt's permanent application is being presented for review. Dr Kunhardt previously made application for licensure. His application for permanent application was presented to the Board at its January meeting, and was preliminarily denied with leave to withdraw. Dr. Kunhardt withdrew his previous application and has now submitted a new application.

MOTION was made by the Licensure Committee to order a 3286 evaluation at Dr. Kunhardt's expense. The motion passed unanimously.

5. PREMJIT SARANGI, M.D.

Dr. Sarangi's permanent application is being presented for review. He is requesting a waiver of the 7-year rule for USMLE.

MOTION was made by the Licensure Committee to grant a waiver of the 7-year rule for USMLE and approve his license application. The motion passed unanimously.

6. PETER J. PLASSE, M.D.

Dr. Plasse's permanent application is being presented because of a negative reference received from S. B. Symonds, from the Department of the Navy, in Newport RI.

MOTION was made by the Licensure Committee to preliminarily deny Dr. Plasse's permanent application based on fraud in application with leave to withdraw his application. The motion passed unanimously.

7. VIJAICHAND S. SAND, M.D. (Temporary Application)

Dr. Sand's temporary application is being presented because of a yes answer to question #4a which asks "Have you EVER been denied registration or had your ability to prescribe or dispense controlled substances modified, restricted, suspended, revoked, or voluntarily suspended by (a) U.S. Drug Enforcement Administration (DEA)."

Dr. Sand is unable to provide a notarized copy of his medical school diploma. In its place we have a copy of the original documents provided to the New Mexico State Board of Medicine.

MOTION was made by the Dr. Hatfield to approve the temporary application of Dr. Sand. Dr. Gleaton seconded the motion. The motion passed 7-0-1-0.

8. RUTH E. O'MAHONY, M.D. (Information Only)

C. REINSTATEMENT LIST C.

1. RECOMMENDED BY BOARD SECRETARY FOR RATIFICATOPM

The following license reinstatement applications have been approved by Board Secretary Gary R. Hatfield, M.D. without reservation.

<u>NAME</u>	<u>SPECIALTY</u>
Fletcher, Andrew J.	Family Practice
Charle, Edwin L.	Family Practice

MOTION was made by Dr. Gooch and seconded by Dr. Nyberg to ratify the physicians on List C above for reinstatement. The motion passed 6-0-0-2. Dr. Onion and Dr. Gleaton were recused.

2. REINSTATEMENT APPLICATIONS FOR INDIVIDUAL CONSIDERATION (NONE)

D. LIST D WITHDRAWALS

1. LIST D (1) WITHDRAW LICENSE APPLICATION (none)

2. List D (2) WITHDRAW LICENSE FROM REGISTRATION (none)

3. LIST D (3) WITHDRAW LICENSE FROM REGISTRATION INDIVIDUAL CONSIDERATION (none)

E. LIST E LICENSES LAPSED BY OPERATION OF LAW

The following physician licenses lapsed by operation of law effective February 3, 2008

<u>NAME</u>	<u>LICENSE NO.</u>
Bhatt, Apurva A.	017025
Cole, Harry C.	015838

Dibiasio, Armando G.	005210
Diering, Scott L.	016678
Lamba, Sanjay	014586
Lee, Kyang Chan	007775
Norris, Barbara G.	017327
Troung, Hans H.	017322
Wadhwa, Vinod K	007445
Zeh, Cynthia M	016103

F. LIST F LICENSES REQUESTING TO CONVERT FROM INACTIVE TO ACTIVE STATUS

1. MICHAEL R. DEVITA, M.D.

Dr. DeVita is requesting conversion of his inactive license to active status. Dr. DeVita retired as an active ob/gyn practitioner in 1988.

Dr. DeVita has been interviewed by a sub-committee of the Licensure Committee and was directed, according to Chapter 1 of the Rules governing the practice of medicine in Maine, to successfully pass the Special Purpose Examination (SPEX) or participate in an approved mini residency.

Dr. DeVita has been unsuccessful in securing a mini residency and requests that the Board waive the Rules requirements and grant him active status.

MOTION was made by the Licensure Committee to issue Dr. DeVita a letter explaining that it does not have the authority to waive the conversion requirements established by rule and that the Board will afford him the opportunity for a hearing to demonstrate that he meets the conversion requirements pursuant to the rule – if he requests such a hearing within the next 30 days. The motion passed by unanimous vote.

G. LIST G RENEWAL APPLICATIONS FOR REVIEW

1. MAHMOUD MAHAMED, M.D.

Dr. Mahamed's application for renewal was brought before the Licensure Committee in January for a yes answer to question 14.7 "Have you been charged, summonsed, indicted, arrested, or convicted of any criminal offense (including motor vehicle offenses but not including minor traffic or parking violations)?" He is being brought back to the Licensure Committee with further information regarding his arrest.

MOTION was made by the Licensure Committee to order a 3286 evaluation at Dr. Mahamed's expense. The motion passed unanimously.

2. ROGELIO NARANJA, M.D.

Dr. Naranja's license renewal is being presented to the Licensure Committee because of a \$1,000,000 malpractice settlement on his behalf.

MOTION was made by Dr. Gleaton to table Dr. Naranja's renewal. Ms. Holmes seconded the motion which passed unanimously.

H. LIST H BOARD SECRETARY'S RECOMMENDATIONS DELEGATED PRACTITIONER SCHEDULE II FOR RATIFICATION

The following requests for Schedule II prescribing authority have been approved by the Board Secretary Gary R. Hatfield, M.D. and are presented for ratification.

<u>NAME</u>	<u>PSP</u>	<u>LOCATION</u>
James Carroll, PA-C	Patrick J. Tangney, MD	Biddeford
Nancy Cassella, FNP	Darin Peck, MD	Greenville
Mary Lamstein, APRN	William Gilbert, MD	Kittery
Mary Elsa Theobald, APRN	Richard B. Read, MD	Stockton Springs
Nadine McCall, APRN	Edward McAbee Jr., MD	Kittery

MOTION was made by Ms. Holmes to ratify the Delegated Practitioner Schedule II Requests listed above. Dr. Gooch seconded the motion which passed unanimously.

XIV. STANDING COMMITTEE REPORTS

A. PERSONNEL & ADMINISTRATION COMMITTEE

The Board reviewed the second quarter financial report which, according to Ms. Holmes, shows the Board to be right on target.

B. LEGISLATIVE & REGULATORY

C. PUBLIC INFORMATION COMMITTEE

D. LICENSURE COMMITTEE (SECRETARY'S REPORT)

E. PHYSICIAN ASSISTANT ADVISORY COMMITTEE

F. CME COMMITTEE

G. ETHICS COMMITTEE

H. SPECIAL PROJECTS COMMITTEE

XV. BOARD CORRESPONDENCE

XVI. FYI

XVII. FSMB MATERIAL

XVIII. OTHER BUSINESS

A. ANNUAL REPORT FROM THE PHYSICIANS HEALTH PROGRAM (PHP)

Dr. David Simmons, Director of Maine PHP and Mr. Gordon Smith, Executive Vice President of Maine Medical Center presented the annual report of the PHP.

Mr. Smith reported a successful committee with their first year with a full time director (Dr. Simmons). This has given the PHP an opportunity to do more outreach with medical staffs. The program is working on bringing in the pharmacists and continues to work with the Maine Nurses Association to explore the possibility of bringing the nurses into the program. This would expand the program and require hiring new staff so cost is a factor for consideration. They are about to hire a case manager for the first time.

The PHP has been exploring last year's goal of developing a Quality Assurance Program. They will be developing a peer review program by having a review by a program from another state and working toward performance measures "matrix."


Dr. Simmons gave his clinical and statistical report for the PHP and answered questions from the Board.

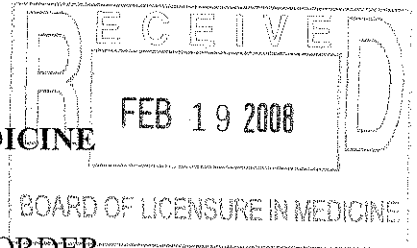
The PHP is asking the Board to consider increasing our contribution to the program in the next budget.

XIX. ADJOURNMENT 4:24 P.M.

MOTION was made by Dr. Gooch and seconded by Dr. Nyberg to adjourn. The motion passed unanimously.

Respectfully submitted,

  
Jean M. Greenwood, Administrative Assistant  
Board Coordinator



MAINE STATE BOARD OF LICENSURE IN MEDICINE

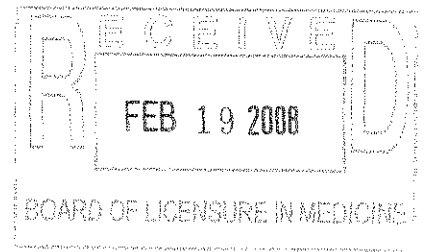
IN RE: Scott Diering, M.D. ) DECISION AND ORDER
Complaint No. CR 07-112- Disciplinary Action )

I. PROCEDURAL HISTORY

Pursuant to the authority found in 32 M.R.S. Sec. 3263, et seq., 5 M.R.S. Sec. 9051, et seq., and 10 M.R.S. Sec. 8001, et seq., the Board of Licensure in Medicine (Board) met in public session at the Board's offices located in Augusta, Maine on January 8, 2008. The purpose of the meeting was to conduct an adjudicatory hearing to determine whether Scott Diering, M.D.'s Maine medical license was subject to discipline based on the allegations contained in the revised Notice of Hearing. A quorum of the Board was in attendance during all stages of the proceedings. Participating and voting Board members were Chairman Sheridan Oldham, M.D., Bettsanne Holmes (public member), Kimberly K. Gooch, M.D., Gary Hatfield, M.D., George Dreher, M.D., David Nyberg, Ph. D. (public member), , Cheryl Clukey (public member), Daniel Onion, M.D., and Maroulla S. Gleaton, M.D. Dennis Smith, Ass't. Attorney General, represented the State. Dr. Diering appeared and was represented by Charles E. Gilbert III, Esq. James E. Smith, Esq. served as Presiding Officer.

The exhibits consisted of the Board's statutes and Rules, and respondent's Exhibits 1-8, State's Exhibits 1-8, 10, 11, 15 (1st two pages), 16-30. Exhibits 2, 5, 15, 16-17 were admitted over the objections of the respondent. By agreement of the parties, Exhibits 9, 12, 13, and 14 were admitted into the record but not shared with the Board members.

The Presiding Officer and Board determined that there were no conflicts of interest to disqualify any Board member from hearing this matter. Following the parties' opening statements, admission of exhibits, testimony and closing argument/comments, the Board deliberated and made the following findings of fact by a preponderance of the credible evidence and conclusions of law regarding the allegations in the Notice of Hearing.



**II.**

**FINDINGS OF FACT**

**A. Preliminary Findings**

1. Scott Diering, M.D., DOB November 15, 1961, is currently living in Columbia, Missouri where he practices medicine as a resident in neurosurgery pursuant to a temporary license. Dr. Diering had previously graduated from medical school in 1992 with a specialty in emergency medicine.

2. Dr. Diering applied for licensure in the State of Maine pursuant to an application dated November 26, 2002 and received by the Board on December 2, 2002. On that application, Dr. Diering answered "No" to question 6, which asked "Have you EVER suffered from any physical, psychiatric, or addictive disorder that would impair or require limitations on your functioning as a physician, or that resulted in the inability to practice medicine for more than 30 days?"

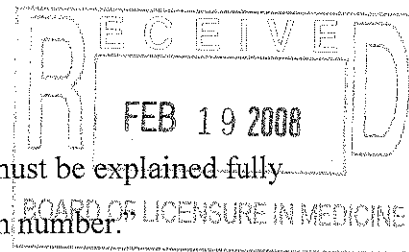
3. Dr. Diering then signed the following affidavit, which, in relevant part reads:

I have carefully read the questions in this application and have answered them completely, without reservations of any kind, and declare under penalty of perjury that my answers and all statements made by me herein are true and correct. Should I furnish any false information in this application, I hereby agree that such act shall constitute cause for the denial, suspension or revocation of my license to practice medicine and surgery in the state of Maine, or other discipline as the Board may determine.

4. The Board first issued a medical license to Dr. Diering on November 16, 2004. Dr. Diering practiced medicine in Maine at the Aroostook Medical Center in Presque Isle, Maine for a total of 2 shifts on December 10 and 11, 2004.

5. On November 7, 2005, the Board received an application for re-licensure from Dr. Diering signed and dated October 30, 2005.

6. On his application for re-licensure, Dr. Diering circled the word "Yes" in response to question number 15-5, which asked, "Since last renewal, have you had any of the following occurrences: Suffered from any physical, psychiatric, or addictive disorder that would impair or require limitations on your functioning as a physician or resulted in the inability to engage in the practice of medicine for more than 30 days?"



7. The application for re-licensure mandated that any “Yes’ response must be explained fully on a separate, attached 8 x 11 sheet of paper cross-referenced by the question number.

8. Dr. Diering attached a separate, attached sheet of paper to his application for re-licensure to explain his “Yes” response to question 15-5. Dr. Diering’s explanation indicated that he had been hospitalized in February 2005 for “aspiration pneumonitis and Adult Respiratory Distress Syndrome,” that he was scheduled for “ventral hernia repair on November 17, 2005” and expected “to make a full recovery.” Finally, Dr. Diering indicated that he was under care for depression.

9. The renewal application required Dr. Diering to execute an affidavit which read in part:

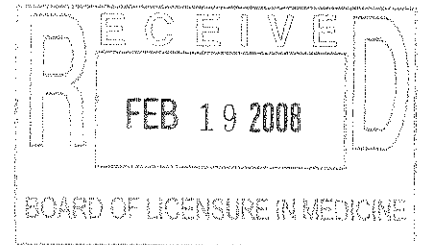
I affirm under penalties of perjury that all information entered and responses given on this application are true and accurate to the best of my knowledge and belief. I understand that any false statement may be found to be grounds for discipline of my license to practice medicine in Maine pursuant to 32 M.R.S.A. § 3282-A(2).

10. On his application for re-licensure, Dr. Diering circled the word “No” in response to question number 15-6, which asked, “Have you ever been indicted, arrested or convicted of any criminal offense (including motor vehicle offenses but not including minor traffic or parking violations).”

11. On December 1, 2005, the Board renewed Dr. Diering’s Maine medical license based upon Dr. Diering’s representations on his application for re-licensure. His current license expires on November 30, 2007.

12. On or about February 16, 2007, the Board staff received a copy of an Order issued by the Missouri State Board of Registration For the Healing Arts (Missouri Board) dated February 2, 2007. According to that order, Dr. Diering: (a) had “a past history of alcohol abuse which culminated in his experimenting with cocaine in 2005;” (b) overdosed on cocaine in February 2005; (c) enrolled in Crossroads Centers for chemical dependency in July 2005; and (d) was placed on criminal probation for eighteen (18) months on August 23, 2005, for the criminal charge of paraphernalia possession.

13. On March 9, 2007, the Board received a letter from Dr. Diering. In that letter, Dr. Diering stated in part:



I am also notifying you that my license in Missouri is in disciplinary status. As I informed you in the past, I suffered complications from my chemical dependency in February, 2005... I have notified all states in which I am licensed about my chemical dependency and my actions in 2005...

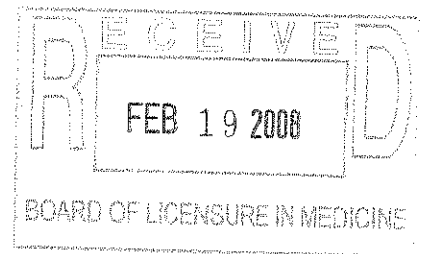
14. The Board staff reviewed all of the information previously provided to it by Dr. Diering, and discovered that Dr. Diering had not notified it of his chemical dependency. On or about April 18, 2007, the Board reviewed the foregoing information, and voted to initiate a complaint against Dr. Diering's Maine medical license for fraud or deceit in obtaining a license. The Board docketed the complaint as CR07-112.

15. On May 11, 2007, the Board received Dr. Diering's response to Complaint No. CR07-112. In his response, Dr. Diering asserted that he did not intend to commit fraud or deceit. Dr. Diering conceded that his "explanation was brief," and denied practicing "habitual substance abuse." Dr. Diering admitted that he did "experiment with substance abuse."

16. On or about July 26, 2007, the Board received information from the District Court of Maryland For Frederick County that indicated that on August 23, 2005, Dr. Diering pled guilty to "Possess - Not Marijuana" and was sentenced before judgment to probation for 18 months. Dr. Diering had apparently overdosed on a prescription grade cocaine solution in his home on February 8, 2005.

17. On or about September 10, 2007, the Board received a copy of the transcript from the State of Missouri Administrative Hearing Commission regarding Dr. Diering's appeal of the Missouri Board's February 2, 2007 Order. According to the transcript, Dr. Diering admitted that in 2001, he had abused alcohol and opiates and admitted himself to Harmony House, a 28 day in-patient treatment program. Moreover, Dr. Diering admitted that he had tried cocaine in college a couple of times, and that he used it again in later 2004 and early 2005. He further admitted that he was a recovering alcoholic, had experimented with marijuana, and had overdosed on cocaine in 2005.

18. At all times relevant to the complaint, Dr. Diering was licensed as a physician in the State of Maine.



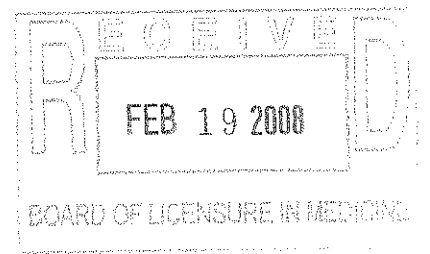
## **B. Dr. Diering's Testimony**

At the hearing in this matter, Dr. Diering explained that he had ingested alcohol for the first time at the age of 7. He continued to experiment with alcohol and drugs in high school and was a cocaine user in college. Thereafter, he became psychologically addicted to prescription drugs. The drug of choice was Vicodin which he obtained from his former wife. The addiction resulted in his in-house treatment at Harmony House in 2001. He was discharged from that facility in September of 2001 with a diagnosis of polysubstance abuse. Subsequently, the licensee attended AA meetings and a program to support recovering addicts.

Thereafter, during his employment at a hospital emergency room in Maryland during 2004-2005, Dr. Diering had access to liquid cocaine which may be used to limit bleeding. The cocaine was left over from treating patients in the emergency room and Dr. Diering stole the drug on 5-6 occasions rather than destroy the remaining doses. Eventually, as above noted, on February 8, 2005, he over-dosed at home and narrowly avoided death.

Dr. Diering testified that he had never practiced medicine while under the influence although admitted that there was a "remote possibility" that harm had occurred to his patients. He has never been sued for malpractice. Dr. Diering stated that the overdose and near death experience was a life changing event. As a result, he enlisted in the Physician's Health Program in Maryland which he is currently attending in Missouri. He resumed his medical practice in Maryland without restrictions after the overdose and currently holds a Drug Enforcement Agency license. Dr. Diering apparently moved to Missouri to become a neurosurgeon where he is currently in his 3<sup>rd</sup> year of residency, which program he will complete in 2010.

As regards the complaint before this Board, the licensee testified that he received no formal disciplinary action by the medical board in Maryland for his substance abuse. Additionally, the Missouri Board granted him a temporary license. His efforts to become licensed in the latter state were supported by an experienced substance abuse counselor, Dr. Diering's treating psychiatrist, the chief of the residency program at the University of Missouri's School of Medicine, Division of Neurosurgery, and a representative of the Missouri Physician's Health Program. Of great importance is the fact that there have been no reports of a reversion to his previous drug/alcohol seeking habits as evidenced by random testing for prohibited substances.



### **C. The Board's Concerns**

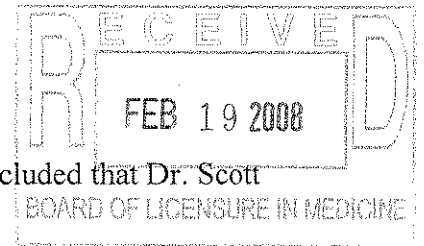
The Board was concerned that Dr. Diering was less than forthcoming regarding whether he had violated the Board's statutes and Rules as alleged in the Notice of Hearing. More specifically, several of his answers could be accurately described as "the truth, but not the whole truth." For example, he felt that he had violated the "spirit" but not the letter of the law by answering "No" to the question on his original license application regarding: "Have you EVER suffered from any physical, psychiatric, or addictive disorder that would impair or require limitations on your functioning as a physician, or that resulted in the inability to practice medicine for more than 30 days?" His opinion was based on the fact that he was admitted to a residential treatment center for only 28 days.

Additionally, Dr. Diering did not admit to having been arrested or convicted regarding the theft of cocaine or the possession of cocaine for the following reasons. First, he was taken to a hospital following the overdose and not thereafter arrested. Second, even though he pled guilty to possession of cocaine and received a "criminal fine \$1,000, \$800 suspended" and 18 months probation, the actual verdict was in the form of "Probation Before Judgment" which usually results in the expungement of the criminal record at a time certain following the successful completion of the terms of probation. The Board rejected this assertion since the licensee filed for his renewal license subsequent to his guilty plea but before the expiration of the probationary period and therefore knew that he remained in a "convicted" status when he applied to the Board.

The Board was also frustrated in Dr. Diering's refusal to acknowledge that he intended to deceive the Board in his applications by his answers and omissions. Rather, he viewed his actions as choosing to answer the license application questions "in narrow terms." After being challenged by the Board, Dr. Diering relented and admitted that he should have included all the details and that "I don't really have a good answer [why I didn't]."

### **III. CONCLUSIONS OF LAW**

The Board, utilizing its training, experience, and expertise, and having observed the demeanor of the licensee, and based on the exhibits and testimony and additional evidence and



reasons on the record not specifically referred to herein, by a vote of 9-0 concluded that Dr. Scott Diering violated the following provisions of Board statutes.

1. 32 M.R.S. Sec. 3282-A(2)(A) by engaging in the practice of fraud or deceit in obtaining a license under this chapter or in connection with service rendered within the scope of the license issued.

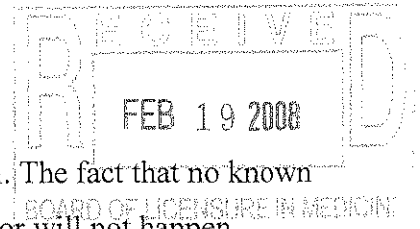
More specifically, Dr. Diering committed fraud or deceit in obtaining his original Maine medical license by denying on his original application dated November 26, 2002, and approved on November 16, 2004, the fact that he had "EVER suffered from any physical, psychiatric, or addictive disorder that would impair or require limitations on his functioning as a physician, or that resulted in the inability to practice medicine for more than 30 days." In fact, Dr. Diering had been addicted to alcohol and/or opiates for which he was hospitalized for 28 days at a clinic in 2001 for chemical dependency. The Board inferred that he was addicted long before the 28 days, especially with his history of substance abuse.

Additionally, Dr. Diering committed fraud or deceit in obtaining the renewal of his Maine medical license by denying on his application for relicensure dated October 30, 2005, and approved on January 5, 2006, that since his last renewal, he had not suffered from any physical, psychiatric, or addictive disorder that would impair or require limitations on his functioning as a physician, or that resulted in the inability to practice medicine for more than 30 days. " In fact, Dr. Diering had been addicted to alcohol and/or cocaine, complications from which he was hospitalized in February 2005. He was not able to resume the practice of medicine for several months as a direct consequence of that self-administered cocaine overdose. The Board again inferred that he was addicted long before the 28 day rehabilitation program, especially with his history of substance abuse.

Dr. Diering also practiced deceit by not admitting on his renewal application that he had been convicted of any criminal offense. In fact, on August 23, 2005, Dr. Diering pled guilty to the crime of "Possession – Not Marijuana" in the District Court of Maryland for Frederick County.

2. 32 M.R.S. Sec. 3282-A(2)(B) by engaging in habitual substance abuse that has resulted or is foreseeably likely to result in the licensee performing services in a manner that endangers the health or safety of patients.

Dr. Diering violated the above provision as demonstrated by his long history of substance



abuse which, by any measure, was foreseeably likely to cause patient harm. The fact that no known patient has complained of harm does not mean that such has not occurred or will not happen.

Moreover, Dr. Diering's theft of liquid cocaine may very well have resulted in his administering a lower than recommended dosage to a patient in order to have leftovers for his own use.

Additionally, Dr. Diering's testimony that, at the time of the thefts, he did not realize that he was being unprofessional raises concerns about what other harmful acts in his practice were committed with an equal lack of comprehension.

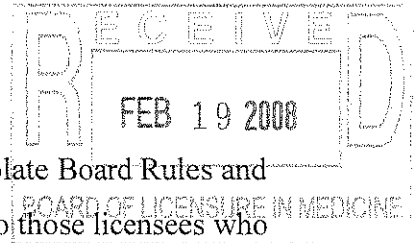
3. 32 M.R.S. Sec. 3282-A(2)(F) by engaging in unprofessional conduct. A licensee is considered to have engaged in unprofessional conduct if the licensee violates a standard of professional behavior that has been established in the practice for which the licensee is licensed.

More specifically, Dr. Diering's theft of cocaine on 5 or 6 occasions from the emergency room at Washington County Hospital where he was employed as a physician and/or his use of the cocaine for non-medical purposes are *per se* violations of a standard of behavior established in the practice of medicine. Dr. Diering also was most likely practicing medicine as an addict when he stole the cocaine which also constitutes unprofessional conduct and posed a threat of harm to the public.

#### IV. SANCTIONS

The Board, utilizing its training, experience, and expertise, and based on the exhibits and testimony, by a vote of 9-0 concluded that there are grounds to sanction Dr. Scott Diering. Wherefore,

1. Dr. Diering shall receive a **REPRIMAND** for the above violations.
2. Dr. Diering shall **pay the Board's costs of this hearing not to exceed \$7,000** by February 12, 2009. (see attached for itemized costs) Dr. Diering shall also pay the Hearing record and transcription costs in the event of an appeal by him. Payment shall be by certified check or money order **made payable to: "Maine Board of Licensure in Medicine"** and remitted to Randal C. Manning, Executive Director, 137 State House Station, Augusta, Maine. 04333-



0137. This sanction is ordered based on the premise that those who violate Board Rules and statutes should be responsible for the costs of the hearing as opposed to those licensees who obey such laws. The ordering of costs consistent with past Board practice.

- 3. Dr. Diering's license to practice medicine in the State of Maine shall be permitted to lapse. The Board considered revoking his license, but instead reasoned that the license is effectively in a state of suspension for a short period of time until it lapses. Moreover, any threat to the public is substantially reduced since Dr. Diering is currently being monitored for prohibited substances in Missouri and his past actions are well known to this Board's counterpart in that state. Additionally, Dr. Diering's treating psychiatrist, chief of the residency program at the University of Missouri School of Medicine, Division of Neurosurgery, and a representative of the Missouri Physician's Health program have all rendered their agreement that Dr. Diering is performing well and should, by inference, be allowed to continue in his residency.

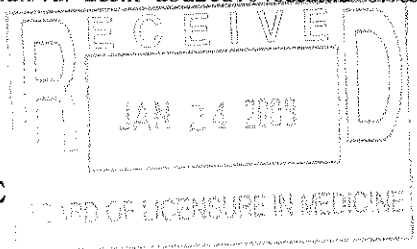
SO ORDERED.

Dated: February 12, 2008

*Sheridan Oldham, M.D.*  
Sheridan Oldham., M.D. Chairman  
Maine Board of Licensure in Medicine

V. RIGHTS OF APPEAL

Pursuant to the provisions of 5 M.R.S.A. Sec. 10051.3 and 10 M.R.S.A. Sec. 8003, any party that appeals this Decision and Order must file a Petition for Review in the Superior Court within 30 days of receipt of this Order. The petition shall specify the person seeking review, the manner in which they are aggrieved and the final agency action which they wish reviewed. It shall also contain a concise statement as to the nature of the action or inaction to be reviewed, the grounds upon which relief is sought and a demand for relief. Copies of the Petition for Review shall be served by Certified Mail, Return Receipt Requested upon the Maine State Board of Licensure in Medicine, all parties to the agency proceedings and the Attorney General.



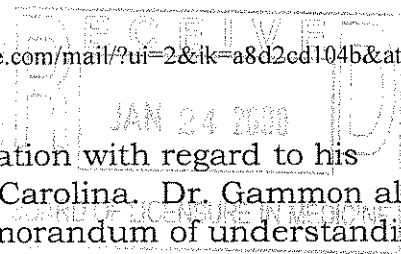
STATE OF MAINE  
BOARD OF LICENSURE IN MEDICINE

In re: ) CONSENT AGREEMENT  
David B. Gammon, M.D. ) FOR CONDITIONAL LICENSURE  
Application for Licensure )  
CR 07-367 )

This document is a Consent Agreement, effective when signed by all parties, that grants David B. Gammon, M.D. a conditional<sup>1</sup> license to practice medicine in the State of Maine. The parties to the Consent Agreement are: David B. Gammon, M.D. ("Dr. Gammon"), the State of Maine Board of Licensure in Medicine ("the Board") and the State of Maine Department of the Attorney General. This Consent Agreement is entered into pursuant to 10 M.R.S.A. § 8003(5)(B) and 32 M.R.S.A. § 3282-A.

**STATEMENT OF FACTS**

1. On June 7, 2007, the Board received an application for a permanent Maine medical license from Dr. Gammon. The Board could not immediately grant his application for permanent licensure because it did not have the required verifying documentation.
2. On August 7, 2007, the Board received an application for a temporary<sup>2</sup> Maine medical license from Dr. Gammon. On August 10, 2007, the Board issued Dr. Gammon a temporary Maine medical license for six months based upon a letter of need from Maine General Medical Center and Dr. Gammon's full and unrestricted licensure in South Carolina. Dr. Gammon specializes in internal medicine.
3. During the course of gathering information regarding Dr. Gammon's application for a permanent Maine medical license, the Board received information from the Drug Enforcement Administration (DEA). The information from the DEA indicated that on or about February 1, 2001, Dr. Gammon had entered into a memorandum of understanding with the DEA following its investigation of his prescribing practices in South Carolina.
4. On November 13, 2007, the Board reviewed the information received from the DEA and voted to initiate a complaint against Dr. Gammon's temporary Maine medical license. The Board docketed that complaint as CR 07-367.
5. On November 30, 2007, the Board received a response from Dr. Gammon to the Board-initiated complaint. In his response, Dr. Gammon admitted that in



November of 2000 he was the subject of a DEA investigation with regard to his prescribing practices while in private practice in South Carolina. Dr. Gammon also admitted that in January of 2001 he entered into a memorandum of understanding with the DEA, which provided guidelines for his future prescribing of controlled substances. Dr. Gammon also described the measures that he had implemented in his private medical practice to comply with the memorandum of understanding. In addition, Dr. Gammon indicated that in late June of 2007<sup>3</sup>, he met with the DEA in South Carolina regarding his narcotic prescribing practices in general, and his narcotic prescribing practices specifically regarding a patient who experienced a drug overdose. Finally, Dr. Gammon indicated that, since obtaining his temporary Maine medical license, he had been working as a “hospitalist” at Maine General Medical Center in Augusta, Maine, a structured setting within which he would not be managing chronic pain patients.

6. On January 8, 2008, the Board reviewed complaint CR 07-367, and a DEA report of investigation. According to the DEA report of investigation, Dr. Gammon admitted that while in private practice in South Carolina, he permitted his nursing staff to renew patient prescriptions for controlled substances in his absence. According to the DEA report of investigation, Dr. Gammon admitted that this conduct was improper but that he did not want his patients to be without their medication. In addition, Dr. Gammon stated that he only permitted his nursing staff to renew prescriptions for controlled substances for existing patients whom he had previously seen.<sup>4</sup>

7. On January 8, 2008, following its review of this matter, the Board voted to schedule complaint 07-367 for an adjudicatory hearing, and authorized the Board’s legal counsel to offer Dr. Gammon a consent agreement in order to resolve complaint CR 07-367 without hearing.

8. This Consent Agreement has been negotiated between legal counsel for Dr. Gammon and the Board’s legal counsel in order to resolve complaint CR 07-367 without further proceedings.

9. By signing this Consent Agreement, Dr. Gammon waives, in his personal capacity and through legal counsel, any and all objections to, and hereby consents to allow the Board’s legal counsel to present this Consent Agreement to the Board for possible ratification. Dr. Gammon waives, in his personal capacity and through legal counsel, forever any arguments of bias or otherwise against any of the Board members in the event that the Board fails to ratify this Consent Agreement.

10. Absent ratification of this Consent Agreement by a majority vote of the Board, the matter will proceed to an adjudicatory hearing.

### **COVENANTS**

11. Dr. Gammon admits that the Board has sufficient evidence from which it could reasonably conclude that, while in private practice in South Carolina, he had

permitted his nursing staff to renew prescriptions for controlled substances for patients in his absence. Dr. Gammon admits that such conduct constitutes unprofessional conduct and grounds for discipline and/or the denial of his application for a permanent Maine medical license pursuant to 32 M.R.S.A. § 3282-A(2)(F).

12. In light of Dr. Gammon's admission in paragraph 11 above, the Board agrees to issue, and Dr. Gammon agrees to accept, a conditioned/restricted active license to practice medicine in this State following the execution<sup>5</sup> of this Consent Agreement. Dr. Gammon's restricted medical license shall be subject to the following conditions:

a. Dr. Gammon shall limit his practice of medicine in Maine to being a "hospitalist" in a hospital duly licensed in the State of Maine;

b. Dr. Gammon shall not practice medicine in any other setting outside of a duly licensed hospital. More specifically, Dr. Gammon shall not practice medicine (*i.e.* examine or treat patients in any manner) in a private office or private practice setting.

c. Dr. Gammon shall not issue any prescription(s) for any medication(s) for any patient(s) who is/are not in-patient(s) of the hospital where he practices medicine as a "hospitalist."

d. Dr. Gammon may issue one-time-only prescriptions (no re-fills permitted) to a patient upon the patient's discharge from the hospital and for the sole purpose of transitioning the patient back to his/her primary care provider.

e. Dr. Gammon shall provide a copy of this Consent Agreement to the Chief Executive Officer (CEO) of any hospital with whom he seeks or obtains employment.

13. Dr. Gammon acknowledges and agrees that his failure to comply with any of the terms or conditions of this Consent Agreement shall constitute grounds for additional disciplinary action against his Maine medical license, including but not limited to an order, after hearing, modifying, suspending, or revoking his license.

14. Dr. Gammon waives his right to a hearing before the Board or any court regarding all facts, terms and conditions of this Consent Agreement. Dr. Gammon agrees that this Consent Agreement is a final order resolving complaint CR 07-367. This Consent Agreement is not appealable and is effective until modified or rescinded by the parties hereto. This Consent Agreement cannot be amended orally. It can only be amended by a writing signed by the parties hereto and approved by the Office of Attorney General.

15. The term of this Consent Agreement is indefinite from the date of execution, and remains in full force and effect so long as Dr. Gammon is licensed with the Board, complies with the terms and conditions of this Consent Agreement, and

does not otherwise pose a risk to the public.

16. Two (2) years following the execution of this Consent Agreement, Dr. Gammon may request that the Board amend the terms and conditions of this Consent Agreement. Any requests for amendments by Dr. Gammon shall be made in writing and submitted to the Board. Upon making such a request, Dr. Gammon shall bear the burden of demonstrating that the Board should amend the Consent Agreement. The Board shall have the discretion to: (a) deny Dr. Gammon's; (b) grant Dr. Gammon's request; and/or (c) grant Dr. Gammon's request in part as it deems appropriate to ensure the protection of the public. Any decision by the Board as a result of Dr. Gammon's request to modify this Consent Agreement need not be made pursuant to a hearing and is not appealable to any court.

17. The Board and the Office of the Attorney General may communicate and cooperate regarding Dr. Gammon or any other matter relating to this Consent Agreement.

18. This Consent Agreement is a public record within the meaning of 1 M.R.S.A. § 402 and will be available for inspection and copying by the public pursuant to 1 M.R.S.A. § 408.

19. Nothing in this Consent Agreement shall be construed to affect any right or interest of any person not a party hereto.

20. The Board and Dr. Gammon agree that no further agency or legal action will be initiated against him by the Board based upon the facts described herein, except or unless he fails to comply with the terms and conditions of this Consent Agreement.

21. Dr. Gammon acknowledges by his signature hereto that he has read this Consent Agreement, that he has had an opportunity to consult with an attorney before executing this Consent Agreement, that he executed this Consent Agreement of his own free will and that he agrees to abide by all terms and conditions set forth herein.

22. Dr. Gammon has been represented by Kenneth W. Lehman, Esq., who has participated in the negotiation of the terms of this Consent Agreement.

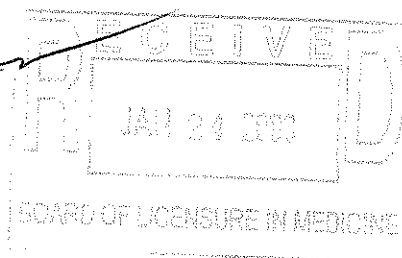
**I, DAVID B. GAMMON, M.D., HAVE READ AND UNDERSTAND THE FOREGOING CONSENT AGREEMENT AND AGREE WITH ITS CONTENTS AND TERMS. I FURTHER UNDERSTAND THAT BY SIGNING THIS AGREEMENT, I WAIVE CERTAIN RIGHTS, INCLUDING THE RIGHT TO A HEARING BEFORE THE BOARD. I SIGN THIS CONSENT AGREEMENT VOLUNTARILY, WITHOUT ANY THREAT OR PROMISE. I UNDERSTAND THAT THIS CONSENT AGREEMENT CONTAINS THE ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF ANY KIND, VERBAL, WRITTEN OR OTHERWISE.**

DATED: 1-24-08 David B. Gammon

DAVID B. GAMMON, M.D.

STATE OF Maine

Kennebec, S.S.



- Personally appeared before me the above-named David Gammon, M.D., and swore to the truth of the foregoing based upon her own personal knowledge, or upon information and belief, and so far as upon information and belief, she believes it to be true.

DATED: 1/24/08 Pamela S. Chiswick

NOTARY PUBLIC/~~ATTORNEY~~

MY COMMISSION ENDS: 1/24/09

STATE OF MAINE

BOARD OF LICENSURE IN MEDICINE

DATED: 2/12/08 Sheridan R. Oldham, MD

SHERIDAN R. OLDHAM, M.D., Chairman

STATE OF MAINE DEPARTMENT

OF THE ATTORNEY GENERAL

DATED: 2/12/08 [Signature]

DENNIS E. SMITH

Assistant Attorney General

Effective Date: