

**Board of Licensure in Medicine**  
**137 State House Station, (mailing)**  
**161 Capitol Street (physical address)**  
**Augusta, Maine 04333-0137**  
**Minutes of June 9, 2009**

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**Board of Licensure in Medicine  
137 State House Station, (mailing)  
161 Capitol Street (physical address  
Augusta, Maine 04333-0137  
Minutes of June 9, 2009**

**BOARD MEMBERS PRESENT**

Gary R. Hatfield, M.D., Board Secretary  
Cheryl Clukey  
George K. Dreher, M.D.  
Maroulla Gleaton, 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  
Dan Sprague, Assistant Executive Director  
Maria MacDonald, Board Investigator

**ATTORNEY GENERAL'S OFFICE**

Dennis Smith, Assistant Attorney General  
Det. Peter Lizanecz

Dr. Oldham and Dr. Dumont were excused from the meeting.  
Ms. Clukey was excused at 3:12 p.m.

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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. During the public session portions of the meeting actions are taken on all matters discussed during executive session. Discussions are projected on a screen by power point projection.

**PUBLIC SESSIONS**

9:10 a.m. – 9:12 a.m.  
10:20 a.m. – 10:21 a.m.  
10:41 a.m. – 11:13 a.m.  
12:22 p.m. – 12:23 p.m.  
1:06 p.m. – 1:07 p.m.  
2:47 p.m. – 3:08 p.m.  
3:10 p.m. – 3:11 p.m.  
4:30 p.m. – 4:31 p.m.  
4:43 p.m. – 6:12 p.m.

**PURPOSE**

Call to Order  
Out of Executive Session  
Mr. Smith & Ms. Genova – MMA Prescribing Contract  
Out of Executive Session  
Public Session  
Public Session  
Public Session  
Public Session  
Public Session

**EXECUTIVE SESSION**

9:12 a.m. – 10:20 a.m.  
11:13 a.m. – 12:22 p.m.  
1:07 p.m. – 2:34 p.m.  
3:11 p.m. – 4:30 p.m.

A&D, Progress Reports  
Informal Conference  
Informal Conference & New Complaints  
Informal Conference

**RECESS/LUNCH**

10:21 a.m. – 10:41 a.m.  
12:23 p.m. – 1:06 p.m.  
2:34 p.m. – 2:47 p.m.  
3:08 P.M. – 3:10 P.M.

Luncheon Honoring Dr. Onion

4:31 p.m. – 4:43 p.m.

I. CALL TO ORDER: Dr. Hatfield called the meeting to order.

A. AMENDMENTS TO THE AGENDA

1. Consent Agreement – Ronald Kessler, PA
2. Amendment to Secretary's Report, List A to add Mohamed Naris Khan, M.D.

B. LUNCHEON RECOGNIZING DR. ONION FOR HIS SERVICE ON THE BOARD

The Board recognized Dr. Onion for his service on the Board from April 21, 2004 to June 30, 2009. Dr. Hatfield presented a plaque to Dr. Onion which acknowledged and thanked him for his work as a Board member and his service of protecting the health and safety of the people of the State of Maine. Dr. Onion reflected on his term on the Board.

EXECUTIVE SESSION

II. ASSESSMENT & DIRECTION

A. AD 09-149 (CR 09-218)

Dr. Dreher moved to issue a complaint in the matter of AD 09-149 (CR 09-218). Dr. Nyberg seconded the motion, which passed unanimously.

B. AD 09-113 (CR 09-219)

Dr. Onion moved to issue a complaint in the matter of AD 09-113 (CR 09-219), to report to DHHS Licensing Division the hospital's failure to report an issue of which they had knowledge and to send notice of the complaint to all other State Boards where the physician holds a license. Dr. Dreher seconded the motion, which passed 6-0. Ms. Clukey was out of the room.

C. AD 09-171 (CR 09-217)

Dr. Gleaton moved to issue a complaint in the matter of AD 09-171 (CR 09-217). Dr. Nyberg seconded the motion, which passed 5-0-0-1 with Dr. Hatfield recused. Ms. Clukey was out of the room.

D. AD 09-184

Dr. Dreher moved to investigate further AD 09-184. Dr. Onion seconded the motion, which passed unanimously.

E. AD 09-192 (CR 09-220)

Dr. Dreher moved to issue a complaint in the matter AD 09-192 (CR 09-220). Dr. Nyberg seconded the motion, which passed unanimously.

F. AD 09-068

Dr. Nyberg moved to file AD 09-068 if the licensee sends the Board a letter voluntarily surrendering his license, prior to Friday, June 12, 2009 at 5:00 p.m. Dr. Gleaton seconded the motion which passed 6-0-0-1 with Dr. Dreher recused.

This action closes the investigation prior to June 12, 2009 at 5:00 p.m. so the licensee is able to surrender his license voluntarily while not under investigation.

III. PROGRESS REPORTS

A. CR 08-422

Dr. Hatfield moved to dismiss CR 08-422. Dr. Dreher seconded the motion, which passed unanimously.

The complainant feels that his traumatic wrist fracture was not treated appropriately, with a second surgical procedure eventually needed. A review of the records and x-ray films by an outside expert shows that a very severe fracture was well treated within the standards of care. The eventual need to revise a small fracture that later became unhinged after the patient began to use the wrist does not indicate poor care.

B. CR 08-423

Dr. Hatfield moved to dismiss CR 08-423. Dr. Gleaton seconded the motion, which passed unanimously.

The complainant feels that his son was poorly treated, as a thumb fracture was missed during a hospitalization for multiple injuries after his ATV collided with an 18-wheel truck. Injuries included a severe compound ankle fracture requiring two open surgical procedures as well as a mid-shaft radial fracture requiring open reduction surgery. An outside expert reviewed the chart and the x-rays, and feels that the care of this patient was within the standards of care. It is not unusual to miss a minor fracture in the survey of multiple traumas, and this fracture was not easily seen. The thumb fracture required a surgical procedure, which was successful and should lead to no permanent problem with the thumb

C. CR 08-425

Dr. Onion moved to order an Informal Conference in the matter of CR 08-425. Dr. Nyberg seconded the motion, which passed unanimously.

D. CR 08-446

Dr. Dreher moved to table CR 08-446 for one month. Ms. Holmes seconded the motion, which passed unanimously.

E. CR 09-003

Dr. Dreher moved to order an Informal Conference in the matter of CR 09-003 with all parties present. Ms. Holmes seconded the motion, which passed unanimously.

F. CR 09-005

Ms. Clukey moved to dismiss CR 09-005. Dr. Nyberg seconded the motion which passed 6-0-0-1 with Dr. Gleaton recused.

This case involves two physicians, the complainant and his former partner who dissolved their medical practice, and a third physician who worked at the medical practice but later left to join the newly formed practice. The complainant alleges that the physician who left the practice violated a separation agreement contacting former patients and encouraging them to switch to the new practice. The complainant states that the separation agreement stipulates all assets of the company, including the patient list, shall remain with the company. The third physician stated she obtained the list of patients, which includes her own patients as well as others, through staff while she was still employed at the medical practice, for the purpose of providing continuing care. The parties are urged to resolve this dispute through mediation as outlined in the separation agreement.

G. CR 09-006

Ms. Clukey moved to dismiss CR 09-006. Dr. Nyberg seconded the motion which passed 6-0-0-1 with Dr. Gleaton recused.

This case involves two physicians who dissolved their medical practice. The second physician started another practice. The complainant alleges his former partner violated the separation agreement by contacting former patients and encouraging them to switch treatment to his new practice. The complainant states that the separation agreement stipulates all assets shall remain with the company. The physician states he obtained the list of patients while he was still working at the medical practice and while he still had legal access to the computer. The parties are urged to resolve this dispute through mediation as outlined in the separation agreement.

H. COMPLAINT STATUS REPORT

The Board reviewed the Complaint Status Report.

I. REVIEW DRAFT LETTERS OF GUIDANCE

Dr. Nyberg moved to accept the draft letters of guidance. Dr. Dreher seconded the motion which passed 6-0-0-1 with Dr. Hatfield recused.

J. CONSUMER ASSISTANT FEEDBACK

Mr. Terranova reported feedback from a complainant.

IV. NEW COMPLAINTS

A. CR 09-030

Dr. Nyberg moved to dismiss CR 09-030. Dr. Gleaton seconded the motion, which passed 4-1-0-1 with Ms. Holmes recused.

The 90 year-old patient's daughter complains that the physician changed her father's code status from Full Code to DNR/DNI without discussing the decision with the family. The physician explains that it is his ethical and legal obligation to comply with his patient's own decision about code status, if the patient has the capacity to make such a decision. In a private conversation between the two, the physician determined that the patient did have the capacity, and that his decision was to be DNR/DNI. Given the patient's age, grave medical condition, and extremely poor prognosis, the physician understood and agreed with this decision. It would have been better to inform the family about the decision and the way it was made, and it would have been better to involve another physician or medical staff person in witnessing the conversation, and it would have been better to make a complete note of the process in the patient's chart. Assessing capacity in a 90 year-old with possible dementia and many debilitating physical conditions is not easy. Assuming the patient did in fact have capacity to make his own decision in this matter; the physician did the right thing, although he could have done it better if he had involved others and kept a more detailed record of the process.

B. CR 09-043

Dr. Onion moved to dismiss CR 09-043. Dr. Gleaton seconded the motion, which passed unanimously.

The spouse of a patient was concerned that the patient was subject to emergent abdominal surgery without a second opinion, was intubated for what she understood was for rest but that was medically listed as respiratory failure, and that the hospital discharge summary was a month late being dictated after inter-hospital transfer. The Board received the records and found the care appropriate. Acute bowel perforations and volvulus don't allow time for second opinions. Intubations for respiratory failure are necessary forms of "rest" therapy in layman's terms.

C. CR 09-020

Dr. Onion moved to dismiss CR 09-020. Dr. Gleaton seconded the motion, which passed 5-0-0-1 with Ms. Holmes recused.

The patient alleges the physician acted unprofessionally and discriminated against her. The patient was referred to this physician for a consultation. The patient alleges the physician would not prescribe narcotics based on illegal narcotics problems within the county of her residence. The patient also alleges that other physicians will not accept her as a patient due to certain comments in her medical records. The patient was referred to this physician for a consultation and should go back to her primary care physician for pain prescriptions and change of lifestyle information to improve her health. The physician did not discharge the patient and acted appropriately.

D. CR 09-057

Dr. Gleaton moved to dismiss CR 09-057. Dr. Nyberg seconded the motion, which passed 5-0-0-1 with Dr. Hatfield recused.

A patient complains about a family physician regarding the timeliness of renewing his antidepressant medication. The process was complicated by his being placed on Maine Care recently and needing prior authorization to be able to continue that particular medication. The physician rightfully acknowledges that improvements will be made in his office to complete prior authorization forms more efficiently. This patient also alleges that the medical staff released confidential patient information; there is no evidence of this in the records. The physician and practice have gone out of their way to care for and accommodate this patient and have offered to continue his care because of transportation hardships for the patient. Despite the physician feeling and recommending that the patient seek more psychiatric expertise and support, the patient declines. Laudably, the physician will not abandon the patient's care.

E. CR 09-062

Dr. Hatfield moved to dismiss CR 09-062. Dr. Onion seconded the motion, which passed unanimously.

The complainant feels that the physician caring for her gave her too much of a certain medication, leading to difficulties with mental and physical abilities. The physician responds that the treatment was appropriate, but that it is possible that side-effects from the medication may have caused some or all of the patient's symptoms.

A review of the records shows that the physician's treatment of this patient was appropriate. The patient has an extremely difficult form of a disease to treat, and the physician consulted with national experts in order to find the best possible treatments for the patient. It is possible that the patient experienced toxicity from her medication, but this does not represent poor treatment. It is also possible the treatment was not the cause of some or all of her symptoms.

F. CR 09-064

Dr. Gleaton moved to dismiss CR 09-064. Dr. Nyberg seconded the motion, which passed unanimously.

An elderly patient with multiple medical problems complains that his new physician did not continue to supply him with sufficient pain medication for his comfort. A careful review of the circumstances, well-documented records and events show that the physician rendered appropriate, reasonable care and communicated well with colleagues and the patient. The patient was assisted in seeking care elsewhere.

G. CR 09-081

Ms. Holmes moved to dismiss CR 09-081. Dr. Dreher seconded the motion, which passed 5-1.

The Board generated this complaint for alleged fraud or deceit in obtaining a license based upon the physician's alleged failure to file a "completed" application for a permanent Maine medical license within 14 days of receiving an emergency Maine medical license. Investigation revealed that the physician filed the permanent license application on 9/11/07, and that he subsequently filed his application for an emergency license on 10/01/07. According to Board records, as of 11/5/07 the only items missing from the physician's permanent license application were verification from FCVS and original source materials, which information would not have been available to the physician at the time he filed his application for a permanent medical license. Therefore, the Board dismissed the complaint.

H. CR 09-004

Dr. Onion moved to dismiss CR 09-004. Ms. Holmes seconded the motion, which passed unanimously.

The parent of an infant who developed diarrhea complains to the Board that her child was not offered a rotavirus immunization series in 2008 when seen by a Physician Assistant (PA) in a pediatric practice. The child developed an acute diarrheal syndrome which eventually proved not to be rotavirus, but led to the parent's calling the practice about rotavirus immunization practices. She was told that that immunization was recommended for MaineCare patients only in that practice in 2008.

The PA and the practice responded with the evidence basis for their 2008 policies. Given the adverse outcomes with previous rotavirus vaccines and the disease's epidemiology, the Board found the practice's conservative policy with the new vaccine in 2008 reasonable. However, the practice staff's explanation of that policy, when challenged by the complainant, may have been insufficient and inflammatory.

I. CR 09-028 (Tabled)

J. CR 09-029 (Tabled)

K. CR 09-085

Dr. Nyberg moved to dismiss CR 09-085 with a letter of guidance. Dr. Gleaton seconded the motion which failed 3-2-0-1 with Ms. Holmes recused. The motion failed to pass because a majority (4) of the six persons present and able to vote did not vote in favor of the motion.

Dr. Nyberg moved to dismiss CR 09-085. Dr. Gleaton seconded the motion which passed 5-0-0-1 with Ms. Holmes recused.

The complainant underwent a complete hysterectomy on January 26, 2009 and made multiple requests for a copy of the surgical report in the ensuing weeks. She did not receive the report until sometime after March 6, 2009. The physician explains that he spoke with the patient's husband following the surgery and added a brief note to her chart but did not dictate a surgical report because he assumed the resident who assisted would do so. The resident evidently was unaware of this responsibility and did not dictate the report. Three and a half weeks after the surgery, the physician left the country and did not return until March 2 when he learned of the problem. He dictated the report on March 6. Hospital policy states that surgical reports are to be dictated and signed within two weeks after surgery. This report was dictated six weeks after the surgery. The physician, who is Chief of Ob-Gyn at his hospital, blames the resident and describes the six week hiatus as a "brief delay." The physician should have been aware he had not signed a surgical report before he left the country, three and a half weeks after the surgery (well beyond the two week standard). It is the physician's responsibility to make sure such matters are attended to properly and not to blame others, especially a resident doing a one-month rotation who was not well informed.

L. CR 09-089

Dr. Gleaton moved to dismiss CR 09-089. Dr. Nyberg seconded the motion, which passed unanimously.

The complainant alleges her physician told her she had breast cancer after a simple exam. Two months after a normal mammogram, the complainant found a large lump in her breast. Her physician examined her and referred her immediately to the Breast Cancer Center. The physician explained extensive information, described several possible options and expressed concern. The physician also explained the variety of procedures that would ensue at the Breast Cancer Center based on two scenarios: a cyst or a malignancy. The patient's medical records confirm these discussions and the referral to the Breast Cancer Center. The physician acted responsibly and reasonably with the patient by providing extensive information and an immediate follow-up evaluation. This occurred under the most stressful/anxious conditions for the patient. There is no evidence to support this allegation of unprofessionalism.

M. CR 09-092

Dr. Onion moved to investigate further CR 09-092. Dr. Gleaton seconded the motion, which passed unanimously.

N. CR 09-093

Dr. Onion moved to investigate further CR 09-093. Ms. Holmes seconded the motion, which passed unanimously.

O. CR 09-097

Dr. Onion moved to investigate further CR 09-097. Dr. Gleaton seconded the motion, which passed 4-1-0-1 with Ms. Holmes recused.

P. CR 09-134

Dr. Hatfield moved to dismiss CR 09-134. Dr. Nyberg seconded the motion which passed unanimously.

The complainant states that his son's records have been destroyed by his former physician, and that he suspects this destruction was done to cover up poor medical care. The physician points out that the records have not been destroyed, but in fact stored away since the patient transferred his care elsewhere in 2007. As well, a copy of the chart was forwarded to his son's new physician, as is documented in the records.

The complainant also states that perhaps the physician missed a diagnosis of spinal abnormalities for too long, making therapy more difficult. The records show that the physician referred the patient to a surgeon in 2004, after a routine physical examination. The physician claims and the records confirm that the patient had not been seen for about 2 and ½ years at the clinic, during a time of fast growth. It is not clear why this occurred. The complaint does not appear justified.

V. INFORMAL CONFERENCE(S)

A. CR 07-386 SIMON T. EISEN, M.D.

Dr. Dreher moved to dismiss the complaint against Simon T. Eisen, M.D. (CR 07-386), with a letter of guidance. Dr. Gleaton seconded the motion, which passed 5-2.

This complaint arose after a guardian noticed that changes in the treatment of her ward were made without her consent. She also has concerns that the physician did not discuss the case with outpatient covering physicians or request current records from the outpatient clinic to better understand the patient's needs. In addition, the guardian's request that Dr. Eisen not be involved in subsequent care was not adhered to. Dr. Eisen's documented comment regarding the guardian being invested in the patient being severely mentally ill was not supported in the provided records.

Dr. Eisen is therefore advised:

1. To ensure that he directly involve any patient guardian in any major treatment decisions.
2. To ensure that he make meaningful contact with the primary treating physician's office to obtain records and/or have direct conversations with outpatient providers regarding patients for whom he is providing acute care.
3. That he, and his treatment system, respect the request of a guardian to remove himself from care of a patient or, if that is not feasible, negotiate another solution with the guardian such as transferring the patient to another hospital.
4. That he not make comments in the chart regarding the relationship between significant others and the patient without documenting the reasoning behind such comments.

B. CR 08-160

Dr. Nyberg moved to dismiss CR 08-160. Dr. Gleaton seconded the motion, which passed unanimously.

The Board members reviewed this complaint, the physician's written response, and any appropriate records. The Board members understand the complainant's concern that the physician did not provide adequate informed consent prior to performing an injection. The Board invited both the physician and the complainant to an Informal Conference on June 9, 2009, to discuss the complaint. The complainant chose not to attend the Informal Conference. The physician attended the Informal Conference and discussed the process by which he obtained informed consent from patients prior to this complaint. In addition, the physician described how his process of obtaining informed consent has changed since receiving the complaint. Furthermore, the physician expressed his willingness to utilize new informed consent guidelines the Board is currently reviewing. Therefore, after careful consideration and thorough discussion, the Board concluded that the facts of the complaint did not warrant disciplinary action.

C. CR 09-007

Dr. Hatfield moved to table CR 09-007 with the understanding the clinician will seek education regarding treating seizure disorders in the emergency room within the next six months. Dr. Gleaton seconded the motion, which passed unanimously.

## PUBLIC SESSION

### VI. MINUTES

#### A. MINUTES OF MAY 12, 2009

Dr. Gleaton moved to approve the minutes of May 12, 2009. Ms. Holmes seconded the motion, which passed 5-0-1.

#### B. PROPOSED AMENDMENT TO APRIL 14, 2009 MINUTES

Dr. Gleaton moved to accept the proposed amendment to the April 14, 2009 minutes. Dr. Hatfield seconded the motion, which passed 4-0-2.

VII. NEW BUSINESS (none)

VIII. BOARD ORDERS & CONSENT AGREEMENT MONITORING AND APPROVAL

A. BOARD ORDERS

CR 08-030 & CR 08-052 JAROSLAV P. STULC, M.D. [See Appendix A Attached]

Dr. Gleaton moved to accept the Decision and Order in the matter of Jaroslav P. Stulc, M.D. Dr. Nyberg seconded the motion, which passed 5-0-1.

B. CONSENT AGREEMENT MONITORING & APPROVAL

1. CR 08-287 BENJAMIN BROWN, M.D.

Dr. Gleaton moved to approve the proposed practice monitor for Dr. Brown and the proposed PRIME Course. Dr. Dreher seconded the motion, which passed 5-0-0-1 with Dr. Onion recused.

2. CR 08-316 RONALD KESSLER, PA [See Appendix B Attached]

Dr. Onion moved to approve the Consent Agreement in the matter of Ronald Kessler, P.A. (CR 08-316). Dr. Gleaton seconded the motion, which passed unanimously.

IX. ADJUDICATORY HEARING (NONE)

X. REMARKS OF CHAIRMAN (NONE)

XI. EXECUTIVE DIRECTOR'S MONTHLY REPORT

A. MONTHLY REPORT

The Board accepted the monthly report of the Executive Director.

XII. REMARKS OF ASSISTANT ATTORNEY GENERAL (NONE)

XIII. SECRETARY'S REPORT

A. LIST A

1. LIST A LICENSES for RATIFICATION

Ms. Holmes moved to ratify the Board Secretary's action in granting initial licensure to the physicians on List A. Dr. Dreher seconded the motion, which passed unanimously.

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

<u>NAME</u>	<u>SPECIALTY</u>	<u>LOCATION</u>
Aines, Jason, M.	Emergency Medicine	Biddeford
Arrow, Seth K.	Pediatrics	Not Listed
Berman, Mark A.	Family Medicine	Not Listed
Bloom-Foster, Jessica L.	Family Medicine	Bangor
Cardona, Susan	Pediatrics	Calais Regional Hospital
Castrucci, William A.	Radiation Oncology	Bangor/Brewer
Corea, Michael E.	Urology	Portland
Feliciano, Melvyn A.	Diagnostic Radiology	Teleradiology
Filardi, Gerald A.	Urology	Bangor
Friedel, Gregory	Diagnostic Radiology	Lewiston
Garaza, Elwyn A.	Pediatrics	Brunswick
Garcia, Margaret Joy G.	Family Medicine	Not Listed
Hartford, Orville A.	Dermatology	Bangor
McCarty, Gale A.	Rheumatology	Ellsworth
Melman, Davis S.	Psychiatry	Portland
Nasir Khan, Mohammad U.	Vascular Surgery	Portland
Nichols, Guy E.	Pathology/Hematology	Not Listed
Phillips, Fredric J.	Psychiatry	Augusta
Schilling, Traci, B.	Neurology	Waterville
Schmid, Anna M.	Emergency Medicine	Portland
Schlauder, Scott M.	Anatomic/Clinical Pathology	Not Listed
Vargo, Jeffrey P.	Diagnostic Radiology	Telemedicine
Ward, Stephen M.	Internal Medicine	CMMC
Wu, Leslie S. P.	General Surgery	Portland

2. P.A. LIST A LICENSES FOR RATIFICATION (NONE)

B. LIST B APPLICATIONS FOR INDIVIDUAL CONSIDERATION

1. CHRISTABOL ALVARADO, M.D. – TEMPORARY APPLICATION

The Licensure Committee moved to investigate further the temporary application of Christabol Alvarado, M.D. The motion passed unanimously.

2. EDWARD FELS, M.D.

The Licensure Committee moved to approve the license application of Edward Fels, M.D. The motion passed unanimously.

3. CLARK D. HABER, M. D. - TEMPORARY APPLICATION

The Licensure Committee moved to approve the license application of Clark D. Haber, M.D. The motion passed unanimously.

4. DOUGLAS C. MacMICHAEL, M.D.

The Licensure Committee moved to approve the license application of Douglas C. MacMichael, M.D. The motion passed unanimously.

5. RONALD L. RISH, M.D.

The Licensure Committee moved to approve the license application of Ronald L. Rish, M.D. The motion passed unanimously.

6. ROBERT E. STERLING, M.D.

The Licensure Committee moved to approve the application for licensure of Robert E. Sterling, M.D. conditioned by a Consent Agreement whereby Dr. Sterling will be required to enroll in the Maine Professionals Health Program under the same timeframe as the Consent Order he is now under with the State of Connecticut. The Connecticut Order was effective September 1, 2008 and runs for five years. The motion passed unanimously.

7. EDWARD P. ZARCZYNSKI, M.D.

The Licensure Committee moved to approve the license application of Edward P. Zarczynski, M.D. provided the Board receives confirmation from Dr. Zarczynski's current treating neurologist that his seizure disorder is being managed and that he is safe to practice medicine. Also Dr. Zarczynski must provide the Board with the name of the neurologist in Maine who will be managing his care. Once the confirmation is received the Board Secretary is authorized to issue his license. The motion passed unanimously.

C. LIST C APPLICATIONS FOR REINSTATEMENT (NONE)

D. LIST D WITHDRAWALS

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

2. LIST D (2) WITHDRAW LICENSE FROM REGISTRATION

Dr. Gleaton moved to approve the physicians on List D (2) to withdraw from licensure. Dr. Nyberg seconded the motion, which passed unanimously.

The following physicians have applied to withdraw their licenses from registration:

<u>NAME</u>	<u>LICENSE NUMBER</u>
Conway, Benjamin J.	016836
Stucki, Paul	005083
Cook, Peter	013550
Traweek, Stephen	016927
Little, Charles W.	006435
Theodosiou, Elena N.	016524
DiBona, Gerald F.	012861
Hamilton, Virginia	015302
McLean, Robert	011716

3. LIST D (3) WITHDRAW LICENSE FROM REGISTRATION FOR INDIVIDUAL CONSIDERATION

a. PETER KELLY, M.D.

Dr. Gleaton moved to accept the request of Peter Kelly, M.D. to voluntarily surrender his licensure effective June 12, 2009 at 5:00 p.m. Dr. Nyberg seconded the motion which passed 6-0-0-1 with Dr. Dreher recused.

E. LIST E LICENSES TO LAPSE BY OPERATION OF LAW

The following physician licenses lapsed by operation of law effective June 8, 2009. (Licenses expired on February 28, 2009 and March 31, 2009.)

<u>NAME</u>	<u>LICENSE NO.</u>
Ajmal, Muhammad	016770
Arroyo, Pedro	017755
Aydin, Mustafa	005957
Buski, John Z.	008010
Cherascu, Bogdan N.	016094
Danehy, Edward J.	015763
Esmail, Salim M.	011363
Goddhue, Peter A.	008717
Green, Robert A.	008326
Gregoire, Alain D.	016959
Gregory, Jerry G.	016657
Gupta, Pratap C.	008328
*Hardy, Roger I.	014680
Jackson, Richard A.	011045
James, John A.	004188
Johnson, Jamilk O.	017282
Kriz, Petra	017195
Kwan, Eddie S.	015102
Lanni, John P.	004883
Liao, Robert H.	010143

Lucas, Maureen C.	015834
Maskill, John D.	017156
Passer, Alice A.	014504
Punwani, Manisha R.	016850
Rokavec, Kathleen A.	017294
Sayat, Edna R.	016757
Shennib, Hani A.	011432
Sobowale, Olumide O.	014221
Walker, Jr., George A.	014873
Walker, Matthew W.	016204
*Walsh, Susanna	013499
Young, Stanley E.	005289

\*Dr. Susanna Walsh and Dr. R. Ian Hardy were inadvertently included on this lapse list. It was found their completed renewals were submitted to the Board within the 30 day window of time allowed from the date on the letter notifying them that their licenses had been administratively suspended and the date of the letter notifying them that their licenses had lapsed but the renewals had not been processed. Therefore, both Dr. Walsh and Dr. Hardy have been appropriately renewed.

F. LIST F LICENSEES REQUESTING TO CONVERT TO ACTIVE STATUS (NONE)

G. LIST G – RENEWAL APPLICATIONS FOR REVIEW (NONE)

H. LIST H – DELEGATED PRACTITIONER SCHEDULE II REQUESTS (RATIFICATION)

Dr. Gleaton moved to ratify Dr. Hatfield's approval of the requests for Schedule II privileges. Dr. Dreher seconded the motion, which passed unanimously.

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

<u>NAME</u>	<u>PSP</u>	<u>LOCATION</u>
Keely Kopp, PA-C	Konrad Barth, M.D.	Scarborough
Charles McNeer, PA-C	Larry D. Flanagan, M.D.	Bangor
Lisa Keene, PA-C	Robert Beekman, M.D.	Ellsworth
Gale Tinker, PA-C	Andrew Sherwood, M.D.	Bangor
Lori Ann Knowles, CPNP	Robert Beekman, M.D.	Ellsworth
Alison Wood, PA-C	Deborah Peabody, M.D.	Belfast
Marjorie Baker, FNP-C	John Baker, M.D.	Newport
Ben T. Hieronymus, ANP	John Baker, M.D.	Newport

SCHEDULE II RENEWAL REQUESTS

Dr. Gleaton moved to ratify Dr. Hatfield's approval of the requests for Schedule II privileges. Dr. Dreher seconded the motion, which passed unanimously.

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

<u>NAME</u>	<u>PSP</u>	<u>LOCATION</u>
Michael R. Dore, PA-C	Stephen J. Kelly, MD	Portland
Kristina Kramer, PA-C	Kirk G. Asherman, MD	Portland

XIV. STANDING COMMITTEE REPORTS

A. PHYSICIAN ASSISTANT ADVISORY COMMITTEE

1. PROPOSED NEW MEMBERS OF PA ADVISORY COMMITTEE

Dr. Dreher moved to approve Christopher R. Ross, PA-C to fill a vacancy on the PA Advisory Committee. Dr. Gleaton seconded the motion which passed 5-0-0-1 with Dr. Onion recused.

2. PA ADVISORY COMMITTEE FORMS NOMINATING SUBCOMMITTEE

Dr. Onion reported the PA Advisory Committee has formed a nominating committee to gather potential members to serve on the committee.

3. PA ADVISORY COMMITTEE FORMS SUBCOMMITTEE TO REVIEW PLANS OF SUPERVISION

Dr. Onion reported the PA Advisory Committee has formed a subcommittee to review "Plans of Supervision" and provide feedback to practices.

XV. BOARD CORRESPONDENCE (none)

XVI. FYI

XVII. FSMB MATERIAL - FYI

XVIII. OTHER BUSINESS

A. REQUEST TO RENEW BOARD FUNDED PROJECT

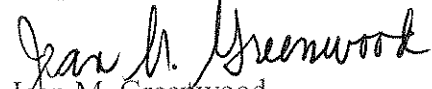
Gordon Smith and Noel Genova, PA-C appeared to report on the Board funded project "Managing Chronic Pain While Avoiding Prescription Diversion" and to request continued funding.

Dr. Dreher moved to extend the current contract with the Maine Medical Association project "Managing Chronic Pain While Avoiding Prescription Diversion." Dr. Gleaton seconded the motion which passed unanimously.

XIX. ADJOURNMENT – 6:12 P.M.

Dr. Onion moved to adjourn. Dr. Dreher seconded the motion, which passed unanimously.

Respectfully submitted,



Jean M. Greenwood  
Administrative Assistant  
Board Coordinator



## II.

### FINDINGS OF FACT -Complaint # CR-08-052

1. Jaroslav P. Stulc, M.D., was first licensed as a physician in 1973. He became a surgeon and eventually developed a specialty in surgical oncology. Dr. Stulc was employed as a surgeon by the Trover Foundation in 1990, with surgical privileges at the Trover Foundation Regional Hospital in Madisonville, Kentucky. In 2000, he became a solo practitioner until 2007 when he departed from Kentucky to establish a practice in Maine.

2. On or about June 27, 2007, the Maine Board of Licensure in Medicine received an application from Dr. Stulc for a Permanent Maine medical license. On June 21, 2007, Dr. Stulc executed an affidavit as part of the application, which read in part:

I have carefully read the questions in this application and have answered them completely, without reservations of any kind, and declare under penalties 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 grounds 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.

3. On his application for a Permanent medical license, **Dr. Stulc answered “No”** to the following question: “Have you EVER had your hospital, HMO, or other health care entity privileges revoked, suspended, restricted, limited in any way, or withdrawn involuntarily?” (emphasis added)

4. On or about August 20, 2007, while still in the process of obtaining information regarding Dr. Stulc’s application for a Permanent Maine medical license, the Board received an application from him for an Emergency (100 day) medical license. Unlike a Permanent medical license, the Board may issue an Emergency medical license without having all verifying background information regarding the applicant. On August 18, 2007, Dr. Stulc executed an affidavit as part of that application, which read in part:

I have carefully read the questions in this application and have answered them completely, without reservations of any kind, and declare under penalties 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 grounds 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.

5. On the application for an Emergency medical license, **Dr. Stulc answered “No”** to the following question: “Have you EVER had your hospital, HMO, or other health care entity privileges revoked, suspended, restricted, limited in any way, or withdrawn involuntarily?” (emphasis added)

6. On August 20, 2007, based upon Dr. Stulc’s representations on his application, the Board staff issued Dr. Stulc an Emergency (100 day) medical license, which would not have been issued without review by the entire Board if Dr. Stulc had answered “Yes” to the above question.

7. On January 22, 2008, based upon Dr. Stulc’s representations on his application, the Board staff issued Dr. Stulc a Permanent medical license, which would not have been issued without review by the entire Board if Dr. Stulc had answered “Yes” to the above question.

8. On or about January 24, 2008, the Board received information indicating that:

A. On May 20, 1996, Teresa Vincent, R.N., C.N.O.R. of the Madisonville Health Technology Center in Madisonville, Kentucky, sent a letter to Mohan Rao, M.D., of Trover Clinic in Madisonville, Kentucky regarding inappropriate comments and actions allegedly attributed to Dr. Stulc. The allegations involved three different surgical technology students, including: Student #1 who complained that Dr. Stulc attempted to secure an Allis Clamp on the breast area of her gown. Student #2 alleged that Dr. Stulc squirted saline from the Aspeto on the left breast area of her gown. Student #3 Student complained that she accidentally brushed up against Dr. Stulc during a procedure. Dr. Stulc stated, “Are you playing with me.” The Student replied, “No sir, I am not.” Dr. Stulc replied, “Would you like to play with me.” The Student replied, “No sir, but I will hold this rake for you.” The rake was for retraction at the operative site. The letter concluded by stating,

“I would like to stress at this time the above incidents are just inappropriate. Attached is the Kentucky Tech Sexual Harassment Policy.”

B. On or about April 19, 2006, Dr. Stulc’s clinical privileges at Trover Foundation Regional Hospital in Madisonville, Kentucky were renewed with the following restrictions/limitations:

1. That he undergo a psychological evaluation.

2. That failure to complete the evaluation or comply with other recommendations of the medical executive committee would result in the precautionary suspension of his “medical staff privileges.”

3. That he comply with a performance improvement plan for one year with “zero tolerance for validated behavioral occurrences.” The performance improvement plan required Dr. Stulc to:

a. “Conduct himself in a professional manner at all times, ensuring appropriate communication and interactions with patients, visitors, colleagues, and staff.”

b. “Be consistently available to hospital staff, colleagues, and for patient interactions while on call/on duty, and will respond in a timely and appropriate manner.”

c. “Adhere to all safety standards and patient safety protocols.”

9. On or about February 27, 2007, Dr. Stulc received a letter from the Medical Executive Committee of the Trover Foundation Regional Medical Center located in Madisonville, Kentucky, which stated in part: “The undersigned have received credible information that you have violated the terms of your Medical Staff PI (Performance Improvement) Plan entered into March 13, 2006 by making inappropriate, rude or offensive communications, behavior, or actions with any medical or hospital staff member. Specifically, on February 24, 2007... you in an unprofessional manner, loudly raised your voice (yelled) at a hospital nurse who had telephoned you for instructions concerning pain medication administration to your patient. Violation of your Performance Improvement Plan has been considered to be disruptive to the orderly operations of the hospital. Pursuant to the terms of said Performance Improvement Plan, any validated breach of expectations, actions, or described behaviors will result in immediate precautionary suspension and after due consideration, the undersigned have determined that such suspension is warranted. **This precautionary suspension shall become effective immediately, shall be deemed an interim precautionary action and not a professional review action, and shall not imply any final**

**finding of responsibility for the situation that caused the suspension.** This precautionary suspension shall remain in effect, unless or until modified by the Chief Executive Officer or Board of Directors.

10. On or about March 23, 2007, Dr. Stulc received a letter from the Medical Executive Committee of the Trover Foundation Regional Medical Center located in Madisonville, Kentucky, which stated in part: “[T]he Committee has received additional credible information that you have violated the terms of your Medical Staff PI (Performance Improvement) Plan entered into March 13, 2006 as well as the Medical Staff Values and Experiences. Specifically, two complaints have been received. The first complaint asserts that you visited an employee while she was a maternity patient following delivery in the hospital who was not your patient. During the visit, it is reported that you kissed her on the cheek, put your hands under the sheet and mashed around on her stomach, and prior to leaving the room, kissed her on the forehead. Upon the employee’s return to work, over the course of time, she asserts that you have rubbed your privates up against her, as well as rubbed your rear end across hers, smacked her on the behind with your hand several times...The second complaint asserts that you repeatedly contacted a patient, also an employee, and repeatedly requested of the employee... to be present during her urethropexy surgical procedure. In addition, the employee states that you have taken pictures of her backside with your cell phone, and brushed up against her. Such actions are considered of a sexual nature constituting sexual harassment and violate the terms of your Medical Staff PI (Performance Improvement) Plan entered into March 13, 2006 as well as the Medical Staff Values and Expectations. Violation of your Performance Improvement Plan is considered to be disruptive to the orderly operations of the hospital. Pursuant to the terms of said Performance Improvement Plan, any validated breach of expectations, actions, or described behaviors will result in immediate precautionary suspension and after due consideration, the undersigned have determined that such suspension is warranted. **This precautionary suspension shall become effective immediately, shall be deemed an interim precautionary action and not a professional review action, and shall not imply any final finding of responsibility for the situation that caused the suspension.** This precautionary suspension shall remain in effect, unless or until modified by the Chief Executive Officer or Board of Directors.

11. On or about May 30, 2007, Dr. Stulc, while represented by legal counsel, received a letter from an attorney representing Trover Foundation Regional Medical Center, which indicated that the **precautionary suspension of his clinical privileges was lifted subject to the following restrictions/limitations:** 1. That Dr. Stulc undergo a psychiatric evaluation. 2. That Dr. Stulc enter the Kentucky Physicians Health Foundation. 3. That Dr. Stulc attend and complete a formal educational course in “Maintaining Proper Boundaries.” 4. That a strong letter of private admonition be issued to Dr. Stulc. 5. That Dr. Stulc have a chaperone accompany him “at all times while he is in the hospital... The validated failure to ensure accompaniment by a chaperone while in the hospital will result in immediate precautionary suspension and shall be grounds for termination. 6. That Dr. Stulc avoid unnecessary contact with hospital employees. 7. That Dr. Stulc be prohibited from taking pictures with his camera phone or any other device within the hospital. 8. That Dr. Stulc remain on a “performance improvement plan for an indefinite period of time with zero tolerance for validated behavioral occurrences... Any validated behavioral occurrences shall result in a minimum 31 day suspension and shall be reported to the National Practitioner Data Bank...” 9. That Dr. Stulc “shall tender his resignation from the Medical Staff of Regional Medical Center to become effective September 1, 2007 and shall agree not to reapply for privileges indefinitely.” 10. The records of Trover Health System reflect that Dr. Stulc was placed on a work improvement plan. An investigation into his conduct was completed. No final adverse action was taken against Dr. Stulc’s privileges which therefore were in good standing at that time.

12. The Maine Board found that the language in the above paragraph 10 amounted to a *quid pro quo* in order to secure Dr. Stulc’s resignation.

13. On June 10, 2007, Dr. Stulc submitted an application as a physician to Redington-Fairview General Hospital. In that application, he responded “Yes” to the following question: “Have you ever had your clinical privileges or employment at any hospital or any other health care facility limited, suspended, revoked, not renewed or made subject to probationary conditions or otherwise adversely affected?” Dr. Stulc stated therein that “I voluntarily accepted a probationary status last year at Regional Medical Center due to anger management issues...I sought psychological evaluation for anxiety, stress and anger therapy...” Dr. Stulc neglected to mention any sexually-

related complaints or the course on Maintaining Proper Boundaries which he was ordered to complete.

14. On or about June 3, 2008, the Board received a response from Dr. Stulc to complaint CR 08-052. In his response, Dr. Stulc indicated that, through therapy, he came to understand “a pattern of self-deception and denial of deeply rooted behavioral issues” and stated, I now realize and accept that the complaints raised at Trover were not entirely unfounded and the proceedings were significant events that I should have fully disclosed on my applications for licensure. It was not my intent to deceive the Board, but I had deceived myself into believing these events were not important.

15. Dr. Stulc further admitted that he “sprayed all of the students present – male and female” with saline – but denied any “sexual connotation.”

16. Dr. Stulc additionally confirmed that, prior to coming to Maine, Trover Hospital in Kentucky had imposed “precautionary suspensions” of his clinical privileges, placed him on a performance improvement plan, and required that he obtain counseling for anger management. Dr. Stulc admitted that, while at Trover, he “had inappropriately brushed up against... two women in a flirtatious manner,” that “there was an air of constant flirtation” [at Trover], and that he did not maintain proper boundaries with staff.

17. Dr. Stulc repeatedly denied that he had intended to practice fraud or deceit in obtaining his Maine medical license and preliminarily focused the blame for this omission on the Board’s application form. He argued that the application did not contain the word “provisionally.” In other words, the application’s language did not ask: “Have you EVER had your hospital, HMO, or other health care entity privileges revoked, PROVISIONALLY suspended, PROVISIONALLY restricted, limited in any way, or withdrawn involuntarily?”

18. Dr. Stulc further testified that he was led to believe that his practice problems at Trover were not reportable to the National Practitioner Data Bank, and that the investigation at Trover did not result in any adverse action against his privileges. Therefore, he did not report the administrative

action taken against him at Trover despite being ordered to: undergo a psychiatric evaluation; to attend and complete a formal educational course in “Maintaining Proper Boundaries;” to be the subject of a strong letter of private admonition; and to be restricted by having a chaperone accompany him “at all times while he is in the hospital... The validated failure to ensure accompaniment by a chaperone while in the hospital will result in immediate precautionary suspension and shall be grounds for termination.” Dr. Stulc testified that he currently would not answer the same question on his application with the previous answer.

### **III. CONCLUSIONS OF LAW RE: CR-08-052**

The Board found Dr. Stulc’s reasoning to be fallacious and incredible, and accordingly determined by a vote of 8-0, that based on the above cited evidence, Dr. Stulc violated the provisions of 32 M.R.S. §3282-A(2)(A)(The practice of fraud or deceit in obtaining a license under this chapter). Additionally, other examples of misleading or deceptive answers occurred throughout this hearing. For instance, Dr. Stulc’s Curriculum Vitae listed him as the editor of the “Kentucky Medical Association Journal,” whereas he was actually the scientific editor of that publication. Additionally, several articles were listed in his Curriculum Vitae under the heading “Publications,” whereas the articles had not been published. Some had languished for more than 20 years and Dr. Stulc was unaware of the final disposition of those articles. In response, Dr. Stulc testified that he had not updated his Curriculum Vitae since 2007. That testimony was also false in that he listed in that document his research and professional experience from 2008 forward.

### **IV. FINDINGS OF FACT -Complaint # CR-08-030**

1. Prior to moving to Maine in late August 2007, Dr. Stulc had attended a three-day course in “Professional Boundaries & Ethics Program” in Atlanta, Georgia. The three-day course, held on August 17-19, 2007, included lectures and discussions on the following topics: (1) Ethics and the Hippocratic Oath-Betraying Professional Trust; (2) Boundary theory and boundary dynamics; (3) Differentiating boundary drifts, crossings and violations; (4) Defining non-sexual and sexual boundary violations; (5) Psychodynamics of violations; (6) Laws and Legal Consequences of Boundary Violations; (7) Relapse Prevention; (8) Enactment Dynamics and Sexual Misconduct; (9)

Victimization, Victim Impact and Victim Empathy; and (10) Implementing your Boundary Protection Plan.

2. Dr. Stulc began his employment as a surgeon at Redington-Fairview General Hospital (Redington-Fairview) for one week in August 2007 and full-time on September 19 of that year.

3. On or about September 24, 2007, while discussing a colonoscopy procedure with a male patient, and in the presence of medical assistant Danielle Gagnon, an employee of Redington-Fairview General Hospital, Dr. Stulc made a sexualized comment to the patient, to wit: "about going where his wife hadn't (meaning the patient) and stating that he allows his wife to go there."

4. That on or about September 26, 2007, Dr. Stulc screamed at medical assistant Danielle Gagnon, "Why do you people keep calling me? I know where I'm supposed to be" after she had paged him because he was an hour late for a patient appointment. Dr. Stulc subsequently arrived at the office and was very hostile and rude to medical assistant Daniele Gagnon.

5. That on or about October 1, 2007, Dr. Stulc stated out loud, while walking by a female patient who was being taken from the medical office by paramedics to the hospital, that "she is nothing but a whiner baby." This comment was overheard by medical office manager Tanya Daigle and medical assistant Danielle Gagnon. The patient was being transferred due to low blood sugar and being cold with clammy skin.

6. Dr. Stulc first testified that he never used the word "whiner baby" but later admitted that he may have used it one time.

7. That on or about October 10, 2007, while using the medical office computer at Redington Medical Primary Care, medical office of Redington-Fairview, Dr. Stulc downloaded and printed out pornographic images of women.

8. Dr. Stulc performs breast examinations, perineum examinations, and other examinations on female patients.

9. That on or about October 10, 2007, Dr. Stulc viewed pornographic images using the medical office computer at Redington Medical Primary Care both before and after seeing patients (including women) of Redington-Fairview.

10. The medical office computer used by Dr. Stulc to download pornographic images was also used by female employees of Redington-Fairview (Tanya Daigle and Danielle Gagnon), who were exposed to the pornographic images, including raw images of sexual acts, down-loaded or printed by Dr. Stulc, including:

- a. Observing the pornographic images on the medical office computer screen at the time Dr. Stulc was using the computer;
- b. Inadvertently discovering copies of pornographic images which were face-up in his desk drawer. In this regard, Dr. Stulc's testimony at first focused not on his actions but rather challenged the witness as to why she was opening his desk drawer. The reason was that Dr. Stulc had requested that she deposit a receipt and change in that drawer.
- c. Discovering copies of pornographic images on the back-side of patient forms when using the office printer (i.e. the pornographic images were placed in the paper tray of the office printer).<sup>1</sup>

11. Tanya Daigle and Daniele Gagnon subsequently reported Dr. Stulc's pornographic downloads to the medical director at Redington-Fairview.

12. That on or about October 12, 2007, Dr. Stulc admitted to the medical director of Redington-Fairview, that while using the medical office computer, he had been downloading and viewing pornographic images of women during office hours. He stated at that meeting words to the effect that "I'm just a guy" in order to explain his actions. His apology, according to Ms. Gagnon, did not appear to be sincere.

13. On or about October 15, 2007, Dr. Stulc was advised by the administration of Redington-Fairview that it would have "zero tolerance" for using the medical office computer to download and view pornographic images of women during office hours.

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<sup>1</sup> There was no evidence to suggest that Dr. Stulc intended for the pornographic materials to be viewed by others.

14. On or about October 26, 2007, Dr. Stulc, stated to a 15 year-old female patient, "boy, they sure didn't make'em like that when I was younger" (Referring to the fact that the young girl's breasts were well-developed for her age). The girl's mother was present and told Diane Gagnon that she felt "uncomfortable."

15. Between on or about November 13, 2007 and November 20, 2007, Dr. Stulc made rude and inappropriate comments towards medical staff, including stating to Tanya Daigle in front of patients in a "degrading tone of voice," that she "needed to go back to school."

16. On or about November 20, 2007, Dr. Stulc, while using the medical office computer during office hours and prior to performing a procedure on a female patient, downloaded and viewed pornographic images of women.

17. On or about November 21, 2007, Tanya Daigle accessed the medical office computer used by Dr. Stulc to download the medical dictation from the previous day. When Ms. Daigle moved the computer mouse, she observed the following image: a medical procedure room with a woman in a Johnny sitting and posing provocatively on the exam table. The caption over the woman was "CASUAL SEX."

18. On or about November 21, 2007, Tanya Daigle contacted the medical director at Redington-Fairview concerning the above image on the office computer used by Dr. Stulc. The medical director came to the office and viewed the image. At that time, Tanya Daigle and Danielle Gagnon also observed on the computer screen "a side bar of latest websites [and] there were several nude and raw pornography photos."

19. On November 26, 2007, Dr. Stulc was notified by letter from Redington-Fairview that he was under investigation for downloading pornography for a second time and that the hospital was "suspending his employment with pay, effective immediately." Dr. Stulc did not report this to the Board.

20. On December 2, 2007, the Emergency Medical License issued to Dr. Stulc expired. He filed an

amendment to his Permanent License application on January 3, 2008, in which he corrected his previous “No” answer regarding a medical malpractice question but did not correct or update his answer to number 9 regarding the suspension of his hospital privileges, even though his privileges had been suspended at Redington-Fairview five weeks before.

21. From December 12 – December 19, 2007, Dr. Stulc underwent an evaluation at the Professional Renewal Center (Center) in Lawrence, Kansas. He was thereafter treated at the Center from January 2, 2008 until February 15, 2008. He was diagnosed with low level depression with borderline personality traits, including obsessive and narcissistic traits. He made significant progress regarding his anger management and sexual maladaptive behavior although Dr. Stulc had a tendency to say what he thought the staff and others wanted to hear and that he had a tendency to blame others for his misfortunes. On discharge, the Center’s staff decided on 16 recommendations. In the Center’s opinion, Dr. Stulc would be eligible to return to work as a physician if he complied with those recommendations.

22. Tanya Daigle, following Dr. Stulc’s suspension from Redington-Fairview, was cleaning out a closet which Dr. Stulc shared with former locum tenens practitioners. While performing that chore, she noticed several overturned boxes and more pornographic pictures. On cross-examination at this hearing, Dr. Stulc attempted to place the blame for these pictures on Ms. Daigle due to her cleaning out the closet.

23. On or about May 8, 2008, the Board received a letter from Redington-Fairview indicating that Dr. Stulc had formally resigned from the medical staff at the hospital while under investigation “regarding possible failure to be forthright on his initial application for Medical Staff membership and privileges regarding prior disciplinary action and unprofessional behavior.”

24. On or about June 9, 2008, the Board received a response from Dr. Stulc to Complaint CR 08-030. Dr. Stulc admitted that, while on duty and at work as a physician at Redington-Fairview, he downloaded, and in some instances printed, pictures of nude and semi-nude women. Dr. Stulc admitted that he continued to engage in this conduct, despite female employees’ knowledge of his conduct and after being confronted about the inappropriateness of this conduct by hospital

administration. In addition, Dr. Stulc admitted that one of the images he kept on his computer in the hospital was the image of a woman in a hospital gown sitting on an exam table with the words “casual sex” posted onto the image. Although Dr. Stulc indicated that this image was e-mailed to him by a colleague, he failed to delete the image.

25. At this hearing, Dr. Stulc stated that he had not practiced medicine for many months and had no interest to returning to his profession except in a non-clinical capacity.

V. CONCLUSIONS OF LAW RE: CR-08-030

The Board, exercising its knowledge, experience, and training, regarding this complaint concluded by the votes noted in parentheses that Dr. Jaroslav Stulc violated the following provisions of Board statutes and Rules, except for allegation # 4.

1. 32 M.R.S. §3282-A(2)(E) Incompetence: By engaging in conduct that evidences a lack of ability or fitness to discharge the duty owed by the licensee to a client or patient or to the general public. (7-1)

2. 32 M.R.S. §3282-A(2)(F) Unprofessional conduct: By violating a standard of professional behavior, including engaging in disruptive behavior, that has been established in the practice of medicine. “Disruptive behavior” means aberrant behavior that interferes with or is likely to interfere with the delivery of care. (8-0)

3. 32 M.R.S. §3282-A(2)(F) (Unprofessional conduct: By violating a standard of professional behavior, including engaging in disruptive behavior, that has been established in the practice of medicine. The violated standard is found as follows in the Code of Medical Ethics of the American Medical Association, Principles of Medical Ethics:

A. A physician shall be dedicated to providing competent medical care, with compassion and respect for human dignity and rights.

B. A physician shall uphold the standards of professionalism, be honest in all professional

interactions, and strive to report physicians deficient in character or competence, or engaging in fraud or deception; to appropriate entities

C. A physician shall respect the rights of patients, colleagues, and other health care professionals.

D. A physician shall, while caring for a patient, regard responsibility to the patient as Paramount. (8-0)

4. 32 M.R.S. §3282-A(2)(H): A violation of the Board’s statutes or rules;

1. Board Rule, Chapter 10, Sexual Misconduct:

a. Section 1(3) “Physician sexual misconduct” is behavior that exploits the physician-patient relationship in a sexual way. This behavior is non-diagnostic and/or nontherapeutic, may be verbal or physical, and may include expressions or gestures that have a sexual connotation or that a reasonable person would construe as such. Sexual misconduct is considered incompetence and unprofessional conduct as defined by 32 M.R.S. §3282-A(2).

b. Section 1(3)(B) – “Sexual impropriety” is behavior, gestures, or expressions by the physician that are seductive, sexually suggestive, or sexually demeaning to a patient, including but not limited to:

i. Subjecting a patient to an examination in the presence of another when the physician has not obtained the verbal consent of the patient or where the consent has been withdrawn.

ii. Inappropriate comments about or to the patient, including but not limited to making sexual comments about a patient’s body or underclothing; making sexualized or sexually demeaning comments to a patient... (8-0).

5. 32 M.R.S. §3282-A(2)(C)(A professional diagnosis of a mental or physical condition that has resulted or may result in the licensee performing services in a manner that endangers the health or safety of patients). This allegation was dismissed by a vote of 6-2.

## VI. SANCTIONS

As the result of the above Findings and Conclusions, the Board by the vote of 8-0 ordered that Dr. Stulc’s license be **IMMEDIATELY REVOKED**.<sup>2</sup> The Board considered the fact that Dr.

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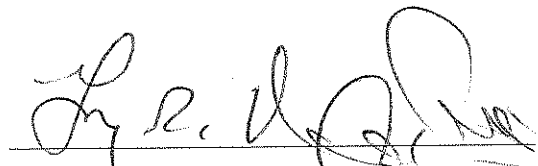
<sup>2</sup> Dr. Stulc was advised following the hearing to explore the possibility of applying for an administrative license.

Stulc's competency as a surgeon was not challenged. However, 10 M.R.S. Sec. 8008 states the purpose of occupational and professional regulatory boards to be as follows:

"The sole purpose of an occupational and professional regulatory board is to protect the public health and welfare. A board carries out this purpose by ensuring that the public is served by competent and **honest practitioners** and by establishing minimum standards of proficiency in the regulated professions by examining, licensing, regulating and disciplining practitioners of those regulated professions. Other goals or objectives may not supersede this purpose." The Board found it abundantly clear that Dr. Stulc was neither honest in his practice of medicine nor trustworthy.

**So Ordered.**

Dated: June 9, 2009



Gary Hatfield, M.D., Secretary & Chairman Pro Tem  
Maine Board of Licensure in Medicine

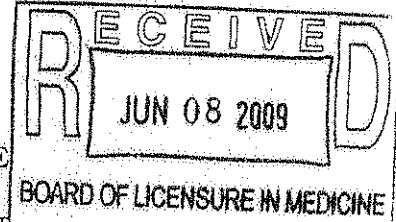
**VII.**

**APPEAL RIGHTS**

Pursuant to the provisions of 5 M.R.S. Sec. 10051.3 and 10 M.R.S. Sec. 8003 (5)(G) and (5-A), any party that appeals this Decision and Order must file a Petition for Review in the District 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.

# APPENDIX B

STATE OF MAINE  
BOARD OF LICENSURE IN MEDICINE



In re: )  
Ronald Kessler, P.A.-C ) CONSENT  
Complaint CR08-316 ) AGREEMENT

This document is a Consent Agreement, effective when signed by all parties, regarding disciplinary action against the license to practice as a physician assistant in the State of Maine formerly held by Ronald Kessler, P.A.-C. The parties to the Consent Agreement are: Ronald Kessler, P.A.-C ("Mr. Kessler"), the State of Maine Board of Licensure in Medicine ("the Board") and the State of Maine Department of the Attorney General ("the Attorney General"). This Consent Agreement is entered into pursuant to 10 M.R.S. § 8003(5)(B) and 32 M.R.S. § 3282-A.

## STATEMENT OF FACTS

1. The Board first issued Mr. Kessler a license to practice as a physician assistant in the State of Maine on July 6, 1987.
2. On June 19, 2008, the Board received information from Correctional Medical Services (C.M.S.) that it had terminated Mr. Kessler's employment as a physician assistant on May 30, 2008, based in part upon the substandard medical care that he provided to patient L.C. on April 22, 2008. According to C.M.S., Mr. Kessler's substandard care for patient L.C. included: (a) failure to consult the patient's chart; (b) failure to perform further diagnostic work-up or refer the patient immediately to the hospital emergency department; (c) failure to consult with his supervising physician; and (d) failure to create a contemporaneous progress note or written order. According to

C.M.S., Mr. Kessler saw patient L.C. at approximately 1:30 p.m. on April 22, 2008, during which time patient L.C.'s vital signs were: (a) blood pressure 80/60; (b) pulse rate of 130 beats per minute; (c) respirations of 30 per minute; and (d) temperature of 100.6 degrees Fahrenheit. According to C.M.S., patient L.C. died on April 23, 2008.

3. On or about September 11, 2008, the Board initiated a complaint against Mr. Kessler's physician assistant license pursuant to 32 M.R.S. § 3282-A based upon the information received from C.M.S. The Board docketed the complaint as CR08-316.

4. On September 18, 2008, the Board investigator hand-delivered complaint CR08-316, together with a copy of the letter received from C.M.S., to Mr. Kessler's son at Mr. Kessler's last known address on file with the Board. The complaint directed Mr. Kessler to respond in writing to the Board within thirty (30) days of his receipt thereof.<sup>1</sup> To date, the Board has not received a response from Mr. Kessler to complaint CR08-316.

5. On January 13, 2009, Mr. Kessler entered into a consent agreement with the Board regarding a separate complaint, CR08-196. Pursuant to that consent agreement, Mr. Kessler conceded that the Board possessed sufficient evidence to conclude that on multiple occasions he issued prescriptions for controlled substances without possessing a valid DEA registration. As discipline for that conduct, Mr. Kessler agreed to the

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<sup>1</sup> 32 M.R.S. § 3282-A required Mr. Kessler to respond to the complaint within thirty (30) days.

permanent revocation of his Maine physician assistant's license effective January 13, 2009.

6. On February 24, 2009, the Board received the medical records of patient L.C. from the Maine State Prison. In addition, it received copies of the interviews conducted of the nursing and medical staff regarding the care and treatment of patient L.C. between April 22-23, 2008. A review of these materials indicated the following with regard to Mr. Kessler's medical care and record keeping regarding patient L.C. between April 22-23, 2008:

- a. Between February 26, 2008 and April 11, 2008, patient L.C.'s blood pressure and pulse were recorded on four occasions and were all within normal ranges.
- b. On April 22, 2008, patient L.C. requested medical assistance.
- c. Patient L.C.'s vital signs on April 22, 2008, were all outside of the normal ranges: (a) blood pressure 80/60; (b) pulse rate of 130 beats per minute; (c) respirations of 30 per minute; and (d) temperature of 100.6 degrees Fahrenheit.
- d. Patient L.C. underwent an electrocardiogram (E.C.G.), which rendered an "autodiagnosis" of "Abnormal ECG" and "Sinus tachycardia, rate 136; right axis deviation; diffuse T wave abnormalities; cannot exclude ischemia." "Ischemia" is defined as an insufficient supply of blood to an organ.

e. Patient L.C.'s vital signs on April 22, 2008, were medically indicative of septic shock requiring immediate emergent medical care to prevent serious illness or death.

f. Mr. Kessler examined patient L.C. on April 22, 2008, and was advised of patient L.C.'s vital signs. Mr. Kessler did not re-check patient L.C.'s vital signs. Mr. Kessler diagnosed patient L.C. with a lung infection and prescribed Tylenol and an antibiotic as treatment. Mr. Kessler failed to create a contemporaneous medical record of his examination, diagnosis and treatment for patient L.C.

g. Patient L.C. was returned to his cell, where he died at approximately 0530 hours on April 23, 2008.

h. On April 23, 2008, following patient L.C.'s death, Mr. Kessler created a "late" medical entry note regarding his evaluation and treatment of patient L.C. on April 22, 2008.

7. On or about March 13, 2009, the Board received a copy of the medical examiner's report with regard to the cause of death of patient L.C. According to the report, the immediate cause of death of patient L.C. was "Sepsis." "Sepsis" is defined as the presence of bacteria or other infectious organisms or their toxins in the blood or in other tissue of the body that is a serious, life-threatening condition requiring urgent and comprehensive medical care.

8. On April 14, 2009, following its initial review of complaint CR08-316, the Board voted to schedule complaint CR08-316 for an adjudicatory

hearing. In the course of making this decision, the Board was aware of Mr. Kessler's permanent license revocation on January 13, 2009 for separate conduct in complaint CR08-196. The Board has interpreted the initiation of a complaint pursuant to 32 M.R.S. § 3282-A(1) as the commencement of "disciplinary proceedings and sanctions." In addition, the Board has consistently maintained that it retains the jurisdiction to discipline a licensee or former licensee for acts or omissions committed by the licensee at the time that the licensee held a valid license issued by the Board. Thus, since Mr. Kessler possessed an active and valid physician assistant license issued by the Board at the time of his medical treatment of and record keeping regarding patient L.C. on April 22-23, 2008, the Board determined that it retained jurisdiction to discipline his physician assistant license for that conduct.

9. This Consent Agreement has been negotiated by Mr. Kessler and legal counsel for the Board in order to resolve complaint CR08-316 without an adjudicatory hearing. Absent ratification of this proposed Consent Agreement by a majority vote of the Board on June 9, 2009, the matter will be scheduled for an adjudicatory hearing.

10. By signing this Consent Agreement, Mr. Kessler waives any and all objections to, and hereby consents to allow the Board's legal counsel to present this proposed Consent Agreement to the Board for possible ratification on June 9, 2009. Mr. Kessler waives forever any arguments of bias or otherwise against any of the Board members in the event that the Board fails to ratify this proposed Consent Agreement.

## COVENANTS

11. Mr. Kessler concedes that, with regard to complaint CR08-316, the Board possesses sufficient evidence from which it could reasonably conclude by the preponderance of the evidence that:

a. Mr. Kessler provided substandard medical care to patient L.C. by failing to: (i) consult the patient's chart; (ii) recognize that the patient was in "septic shock" and refer the patient immediately to the hospital emergency department; and (iii) consult with his supervising physician. Mr. Kessler admits that such conduct constitutes gross incompetence and unprofessional conduct and grounds to discipline his Maine physician assistant's license pursuant to 32 M.R.S. § 3282-A(2)(E) & (F).

b. Mr. Kessler violated the standard of care for medical record keeping by failing to create a contemporaneous progress note or written order regarding his examination, diagnosis, and treatment of patient L.C. on April 22, 2008. Mr. Kessler admits that such conduct constitutes incompetence and unprofessional conduct and grounds to discipline his Maine physician assistant's license pursuant to 32 M.R.S. § 3282-A(2)(E) & (F).

12. As discipline for the conduct described in paragraph 11 above, Mr. Kessler agrees to the PERMANENT REVOCATION of his physician assistant's license.

13. Mr. Kessler waives his right to a hearing before the Board or any court regarding all facts, terms and conditions of this Consent Agreement. Mr. Kessler agrees that this Consent Agreement is a final order resolving complaint

CR08-316. 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. Any decision by the Board as a result of Mr. Kessler's request to modify this Consent Agreement need not be made pursuant to an adjudicatory hearing and is not appealable to any court.

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

15. This Consent Agreement constitutes discipline and is an adverse licensing action that is reportable to the National Practitioner Data Bank (NPDB), the Healthcare Integrity and Protection Data Bank (HIPDB), and the Federation of State Medical Boards (FSMB).

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

17. The Board and Mr. Kessler agree that the Board will not impose any other disciplinary sanction (i.e. fine, reprimand, etc) against his Maine physician assistant's license based solely upon the facts described in this Consent Agreement.

18. Mr. Kessler 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.

I, RONALD KESSLER, P.A.-C, 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 LEGAL 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: 6/5/09 Ronald Kessler  
RONALD KESSLER, P.A.-C

STATE OF MAINE  
CUMBERLAND COUNTY, S.S.

Personally appeared before me the above-named Ronald Kessler, P.A.-C, and swore to the truth of the foregoing based upon his own personal knowledge, or upon information and belief, and so far as upon information and belief, he believes it to be true.

DATED: 6-5-09 Diane Clark  
NOTARY PUBLIC/ATTORNEY  
MY COMMISSION ENDS: 7-11-2013

DIANE CLARK  
Notary Public, Maine  
My Commission Expires July 11, 2013


STATE OF MAINE  
BOARD OF LICENSURE IN MEDICINE

DATED: 6/9/09 Sheridan R. Oldham ACTING  
SHERIDAN R. OLDDHAM, M.D., Chairman  
GARY R. HATFIELD, M.D.

STATE OF MAINE DEPARTMENT  
OF THE ATTORNEY GENERAL

DATED:

6/9/09

  
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DENNIS E. SMITH  
Assistant Attorney General

Effective Date: