

STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

In re:)	CONSENT
Ellen E. Michalowski, M.D.)	AGREEMENT
Complaint Nos. CR06-225/07-035)	

This document is a Consent Agreement, effective when signed by all parties, regarding disciplinary action against and conditions imposed upon the license to practice medicine in the State of Maine held by Ellen E. Michalowski, M.D. The parties to the Consent Agreement are: Ellen E. Michalowski, M.D. (“the Licensee”), 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.A. § 8003(5)(B) and 32 M.R.S.A. § 3282-A.

STATEMENT OF FACTS

1. Dr. Michalowski has held a license to practice medicine in the State of Maine since 1996. Dr. Michalowski practices medicine in Presque Isle, Maine, and specializes in Obstetrics and Gynecology.

2. On July 11, 2006, the Board reviewed information indicating that, over a two-year period, Dr. Michalowski had been obtaining narcotic prescriptions from multiple different healthcare providers¹, including obtaining narcotics and other prescription medications on the same or the next day and/or prior to the anticipated refill date. As a result of reviewing this

¹ According to the investigative information, Dr. Michalowski received narcotic prescriptions from over a dozen different medical providers.

information, the Board voted to initiate a complaint against Dr. Michalowski's Maine medical license. The Board docketed the complaint as CR06-225.

3. On September 25, 2006, the Board received Dr. Michalowski's response to complaint CR06-225. In her response, Dr. Michalowski alleged that she did not realize that she had received so many narcotic prescriptions. According to Dr. Michalowski, she had a long-standing knee injury that caused her severe pain and led to a total knee replacement in December 2005. Although Dr. Michalowski admitted that the Board information makes it appear that she was "doctor-shopping," she denied any such action. Dr. Michalowski admitted that she obtained narcotic prescriptions from multiple medical providers, including people with whom she worked, including a nurse midwife. Dr. Michalowski admitted that asking some of these medical providers to prescribe narcotics for her was inappropriate. In addition, Dr. Michalowski alleged that Dr. David Simmons of the Maine Committee on Physician Health felt that she was not addicted to narcotics, but had a "pseudo-addiction related to poor pain control management of long-standing knee pain."

4. On October 30, 2006, the Board sent Dr. Michalowski a letter requesting clarification of her written response to the Board. Specifically, the Board asked for explanations of narcotic prescriptions that she obtained from four medical providers, as well as an explanation of her obtaining narcotic prescriptions from a nurse practitioner, for whom Dr. Michalowski was the supervising physician.

5. On November 9, 2006, the Board received a reply from Dr. Michalowski to its October 30, 2006 request for clarification. In her reply, Dr. Michalowski admitted that: she asked her practice partner for narcotic pain prescriptions, and that it was “bad judgment” on her part; she asked a long-term *locum tenens* in her group practice for narcotic pain prescriptions on two occasions, and that it was “poor judgment” on her part; sometimes she went to other providers in her medical practice to obtain narcotic prescriptions when she was unable to reach her treating physician; her medical records regarding the prescription of narcotic medications to her by various medical providers are “not complete;” she has entered the Maine Physician Health Program.

6. On December 20, 2006, the Board received written notification from The Aroostook Medical Center (TAMC) indicating that it had imposed an administrative suspension upon Dr. Michalowski on October 4, 2006. The administrative suspension, described as non-punitive was based upon a report by a Certified Nurse Midwife with whom Dr. Michalowski had no provider/patient relationship. According to the report, Dr. Michalowski requested that the Certified Nurse Midwife provide her with a prescription for non-narcotic medication despite being advised by TAMC to use only one pharmacy and one provider for all of her prescription needs.

7. On January 10, 2007, the Board received a written notification from TAMC indicating that Dr. Michalowski was placed on medical leave from December 28, 2006 to February 18, 2007.

8. On February 13, 2007, the Board reviewed the written notifications from TAMC and voted to initiate another complaint based upon them. The Board docketed the complaint as CR07-035.

9. On January 29, 2007, after obtaining two opinions recommending repeat surgery on her knee, Dr. Michalowski underwent revision of the left total knee replacement. During the revision, it was found that there was no bone in-growth of the prosthesis to the bone and that the synovial fluid cultures taken at the time of surgery grew out staph species, requiring Dr. Michalowski to undergo six weeks of intravenous antibiotic therapy through a central line. These findings are consistent with Dr. Michalowski experiencing prolonged and more than normal post-operative pain following the December 2005 knee replacement surgery.

10. This Consent Agreement has been negotiated by counsel for Dr. Michalowski and counsel for the Board in order to resolve all matters pending before the Board, including complaints CR06-225 and CR07-035 without an adjudicatory hearing. Absent ratification of this proposed Consent Agreement by a majority vote of the Board on March 13, 2007, the matter will be scheduled for an adjudicatory hearing.

11. By signing this Consent Agreement, Dr. Michalowski waives, in her personal capacity and through legal counsel, any and all objections to, and hereby consents to the presentation of this proposed Consent Agreement to the Board for possible ratification. Dr. Michalowski waives, in her 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 proposed Consent Agreement.

COVENANTS

12. Dr. Michalowski admits that with regard to CR06-225 that the Board has sufficient evidence from which it could reasonably conclude that she inappropriately obtained narcotic pain medication from multiple medical providers, including physicians with whom she worked or was in practice and a nurse practitioner whom she supervised, in order to self-manage her chronic knee pain. Dr. Michalowski admits that such conduct constitutes unprofessional conduct and grounds for discipline of her Maine medical license pursuant to 32 M.R.S.A. § 3282-A(2)(F). Dr. Michalowski admits that with regard to CR07-035 that the Board has sufficient evidence from which it could reasonably conclude that she attempted to inappropriately obtain prescription medication from a medical provider with whom she did not have a provider/patient relationship. Dr. Michalowski admits that such conduct constitutes unprofessional conduct and grounds for discipline of her Maine medical license pursuant to 32 M.R.S.A. § 3282-A(2)(F).

13. As discipline for the conduct described in paragraph 11 above, Dr. Michalowski agrees to:

- a. Accept a REPRIMAND. Dr. Michalowski agrees that henceforth:
 - (i) She shall not obtain prescription medications from physicians, physician assistants, or advance nurse practitioners within her same medical practice;

- (ii) She shall only obtain her prescription medication(s) from a single primary care physician approved by the Board;
- (iii) She shall only obtain her prescription medications from a single pharmacy designated by her primary care physician; and
- (iii) She shall comply with the conditions of probation set out below.

b. Accept a five (5) year license probation², effective the date of the execution³ of this Consent Agreement, with the following specific conditions:

- (i) Dr. Michalowski shall establish and maintain a patient relationship with a single primary care physician approved by the Board, and if that physician is unavailable, then from a covering physician approved in advance by the Board. Dr. Michalowski shall ensure that her Board-approved primary care physician and/or covering physician:

- (a) Is outside of Dr. Michalowski's own medical practice, and will provide all of Dr. Michalowski's primary medical care⁴, prescriptions, and pain

² In the event that Dr. Michalowski successfully completes the five (5) year term of probation, the probation and conditions shall terminate.

³ For purposes of this Consent Agreement, "execution" shall mean the date on which the last signature is affixed to this Consent Agreement.

⁴ The sole exception to this provision is that Dr. Michalowski may continue to receive OB/GYN treatment from Dr. Joyce Herbert, M.D. However, Dr. Herbert will not provide or prescribe any medications for Dr. Michalowski, who will receive all prescription medications from the primary care physician or covering physician approved by the Board.

medications, and appropriate referral and coordination of specialty medical care;

(b) Is the sole prescriber of Dr. Michalowski's narcotic pain medication(s) and any other prescription medication(s);

(c) Requires Dr. Michalowski to enter into a written pain contract;

(d) Requires Dr. Michalowski to undergo random urine testing pursuant to the written pain contract;

(e) Immediately reports in writing to the Board concerning any failure by Dr. Michalowski to submit to the urine testing or regarding any abnormality regarding a urine test result; and

(f) Immediately reports in writing to the Board concerning any failure by Dr. Michalowski to comply with the written pain contract.

(ii) Dr. Michalowski shall engage in counseling and treatment regarding chronic pain and substance use and depression with a Board-approved individual or individuals;

(iii) Dr. Michalowski shall ensure that, for twelve (12) months following the execution of this Consent Agreement, her Board-approved treatment provider(s) furnishes the Board with monthly reports concerning Dr. Michalowski's

counseling and treatment. Thereafter, Dr. Michalowski shall ensure that her Board-approved treatment provider(s) furnishe(s) the Board with reports quarterly;

(iv) Dr. Michalowski agrees and understands that the Board and the Office of Attorney General shall have complete access to her present and future personal medical and counseling records, and shall execute any and all releases so that the Board and the Office of the Attorney General may access and/or obtain copies of her medical and/or counseling and treatment records in order to ensure her compliance regarding the issues identified in this Consent Agreement;

(v) Dr. Michalowski agrees that her medical practice will be monitored by a physician or physicians approved by the Board. This physician must be in direct contact with Dr. Michalowski and observe her within her medical practice at least once a week, and inform the Board if Dr. Michalowski demonstrates any issues with regard to isolation and inappropriate boundaries. The monitoring physician shall report such information by telephone and in writing within 24 hours or as soon thereafter as possible. Dr. Michalowski shall, within thirty days following the execution of this Consent Agreement, provide the Board with the name,

telephone number, and office address of her proposed monitoring physician or physicians;

(vi) Dr. Michalowski acknowledges that the monitoring physician is an agent of the Board. Dr. Michalowski shall execute any and all releases necessary for the Board or its agents to directly contact the monitoring physician about Dr. Michalowski;

(vii) Dr. Michalowski shall permit the Board or its agent(s) to inspect her medical practice at random intervals as determined by the Board or its designee to ensure her compliance with the terms and conditions of this Consent Agreement. Such inspection shall include but not be limited to access to all areas and records of the medical practice;

(viii) Dr. Michalowski shall not prescribe any medications for herself or her family members;

(ix) Dr. Michalowski agrees and understands that her use and/or filling of prescription medications will be monitored during the period of probation, and shall cooperate with the Board by whatever means necessary to effectuate this process;

(x) Dr. Michalowski agrees to abstain from the use or ingestion of alcohol or prescription medications that are not

specifically prescribed to her by her sole primary care physician or covering physician approved by the Board; and

(xi) Dr. Michalowski shall fully participate in the Maine Physician Health Program, and meet all of the conditions and requirements of that program.

14. Nothing in this Consent Agreement shall prohibit Dr. Michalowski from qualifying for approval as a primary supervising physician for a licensed Physician Assistant or for a licensed Advanced Practice Registered Nurse pursuant to Board Rules, Chapters 2 and 3.

15. Dr. Michalowski waives her right to a hearing before the Board or any court regarding all facts, terms and conditions of this Consent Agreement. Dr. Michalowski agrees that this Consent Agreement is a final order resolving the complaints CR06-225 and CR07-035. 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. Requests for amendments by Dr. Michalowski shall be made in writing and submitted to the Board. Dr. Michalowski may, at reasonable intervals, petition the Board for amendment of the terms and conditions of this Consent Agreement. Upon making such a petition, Dr. Michalowski shall bear the burden of demonstrating that the Board should amend the Consent Agreement. The Board shall have the discretion to: (a) deny Dr. Michalowski's petition; (b) grant Dr. Michalowski's petition; and/or (c) grant Dr. Michalowski's

petition in part as it deems appropriate to ensure the protection of the public. Any decision by the Board as a result of Dr. Michalowski's request to modify this Consent Agreement need not be made pursuant to a hearing and is not appealable to any court.

16. Dr. Michalowski acknowledges that, pursuant to Title 10 M.R.S.A. § 8003(5)(B), her failure to comply with any of the terms or conditions of this Consent Agreement or of her probation shall constitute grounds for additional disciplinary action against her Maine medical license, including but not limited to an order, after hearing, modifying, suspending, or revoking her license.

17. The Board and the Office of the Attorney General may communicate and cooperate regarding Dr. Michalowski 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. Michalowski agree that no further agency or legal action will be initiated against her by the Board based upon the facts described herein, except or unless she fails to comply with the terms and conditions of this Consent Agreement.

21. Dr. Michalowski acknowledges by her signature hereto that she has read this Consent Agreement, that she has had an opportunity to consult

with an attorney before executing this Consent Agreement, that she executed this Consent Agreement of her own free will and that she agrees to abide by all terms and conditions set forth herein.

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

I, ELLEN E. MICHALOWSKI, 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: 3/23/07

Ellen E. Michalowski, MD
ELLEN E. MICHALOWSKI, M.D.

STATE OF Maine
Browstook, S.S.

Personally appeared before me the above-named Ellen E. Michalowski, 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: 3-23-07


Jennifer Wilson
NOTARY PUBLIC/ATTORNEY
MY COMMISSION ENDS: 5-13-07

DATED: March 28, 2007

KW Lehman
KENNETH W. LEHMAN, ESQ.
Attorney for Ellen E. Michalowski, M.D.

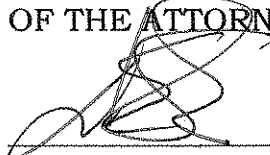
STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

DATED: April 10, 2007


EDWARD DAVID, M.D., Chairman

STATE OF MAINE DEPARTMENT
OF THE ATTORNEY GENERAL

DATED: 4/10/07


DENNIS E. SMITH
Assistant Attorney General

Effective Date: