APPROVED NOVEMBER 9, 2010

State of Maine
Board of Licensure in Medicine
137 State House Station, 161 Capitol Street
Augusta, Maine 04333-0137
Minutes of October 12, 2010
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APPROVED NOVEMBER 9, 2010

State of Maine
Board of Licensure in Medicine
137 State House Station, 161 Capitol Street
Augusta, Maine 04333-0137
Minutes of October 12, 2010

BOARD MEMBERS PRESENT
Sheridan R. Oldham, M.D., Chairman
Gary R. Hatfield, M.D., Board Secretary
Cheryl Clukey
George K. Dreher, M.D.
David H. Dumont, M.D.
Maroulla Gleaton, M.D.
David Nyberg, Ph.D.

BOARD STAFF PRESENT
Randal C. Manning, Executive Director
Mark C. Cooper, M.D., Medical Director
Dan Sprague, Assistant Executive Director
Jean M. Greenwood, Administrative Assistant
Tim Terranova, Consumer Assistant

ATTORNEY GENERAL'S OFFICE
Dennis Smith, Assistant Attorney General
Detective Peter Lizanecz

Dr. Jones was excused from the meeting.

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. §405, 10 M.R.S. §8003-B, 22 M.R.S. § 1711-C, and 24 M.R.S. § 2510. 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 PowerPoint projection.

PUBLIC SESSIONS	PURPOSE
9:06 a.m. – 9:07 a.m.	Call to order.
10:46 a.m. – 10:50 a.m.	Motions on Progress Reports & New Complaints
11:08 a.m. – 11:48 a.m.	MMA & MPHP Discussion
11:53 a.m. – 11:54 a.m.	Public Session
12:44 p.m. – 12:46 p.m.	Motion on Informal Conference
1:16 p.m. – 1:20 p.m.	Public Session - Motion on CR 10-260
1:29 p.m. – 1:48 p.m.	Adjudicatory Hearing
1:48 p.m. – 2:12 p.m.	Off the Record to Read Exhibits
2:12 p.m. – 2:54 p.m.	Adjudicatory Hearing
3:02 P.M. – 5:23 p.m.	Adjudicatory Hearing
5:27 p.m. – 6:45 p.m.	Adjudicatory Hearing
6:58 p.m. – 7:37 p.m.	Public Session
7:45 p.m. 7:47 p.m.	Motions on Assessment & Direction
7:47 p.m.	Adjournment

EXECUTIVE SESSION	
9:07 a.m. –10:46 a.m.	Progress Reports & New Complaints
11:54 a.m. – 12:44 p.m.	Informal Conference CR 09-441
7:37 p.m. – 7:45 p.m.	Assessment & Direction

RECESS

10:50 a.m. – 11:08 a.m.
11:48 a.m. – 11:53 a.m.
12:46 p.m. – 1:16 p.m. Noon Recess
1:20 p.m. – 1:29 p.m.
2:54 p.m. – 3:02 p.m.
5:23 p.m. – 5:27 p.m.
6:45 p.m. – 6:58 p.m.

I. CALL TO ORDER

Dr. Oldham called the meeting to order at 9:06 a.m.

A. AMENDMENTS TO AGENDA (NONE)

B. SCHEDULED AGENDA ITEMS

1. 11:00 a.m. MMA & MPHP

2. 11:30 a.m. Informal Conference CR 09-441

3. 1:00 p.m. Adjudicatory Hearing CR09-003 & 10-135 James C. Cooper, M.D.

EXECUTIVE SESSION

II. PROGRESS REPORTS

1. CR 09-300

Dr. Dreher moved to dismiss CR 09-300. Dr. Dumont seconded the motion, which passed unanimously.

An employer reported dismissal of a physician after a brief period of employment because he had missed a mandatory training and was not available to see patients as scheduled. The physician reported that he had attended the training and that his schedule was altered without his knowledge which caused him to miss appointments. The physician's employee file was reviewed and found to have no documentation of any concerns regarding his function. Statements from other employees involved in the case could not be verified because appointments made by the Board's investigator to interview them were later canceled by the employer. The Board is concerned with the employer's lack of documented due process and lack of cooperation in the investigation and is left with inadequate information to carry the case forward.

2. CR 10-091

Dr. Hatfield moved to dismiss CR 10-091. Dr. Dreher seconded the motion, which passed unanimously.

This complaint was issued by the Board after receiving information that the physician was incorrectly prescribing narcotics to a patient. A review of this initial case had showed evidence of poor management of pain medications, particularly with the amount of medication prescribed and the monitoring of these medications. Consultants had repeatedly indicated that the patient's use of pain medication was out of proportion to the objective findings. For this reason, four other random charts of patients using narcotics chronically were reviewed by the Board. These charts did not reveal major issues with the prescribing of pain medications, and showed better monitoring and better use of consultants. The Board would take this opportunity to point out to the physician that when a patient does not respond to a narcotic, simply increasing the narcotic dosage is usually not going to be of much help functionally or with pain perception; this is repeatedly emphasized by the pain consultants utilized in these cases.

3. CR 10-049

Dr. Gleaton moved to order an informal conference in the matter of CR 10-049. Dr. Dumont seconded the motion, which passed 5-0-0-2 with Dr. Hatfield and Dr. Dreher recused.

4. CR 10-258 JEAN S. BENSON, M.D.

Dr. Gleaton moved to dismiss CR 10-258. Dr. Hatfield seconded the motion, which failed 3-4.

Dr. Gleaton moved to dismiss CR 10-258 Jean S. Benson, M.D. with a letter of guidance. Dr. Dumont seconded the motion, which passed 6-1.

A patient complained that her new primary care physician inaccurately filled out her Bureau of Motor Vehicles medical form. This resulted in the patient being requested to take a vision and road test. The physician admits the mistake and tried to discuss this with the patient and her son, but the patient still felt dissatisfied. The physician needs to be more careful and thorough when completing the Bureau of Motor Vehicles examination forms for patients. She has ensured this with new policies and procedures in her clinic setting, but she also needs to take full personal responsibility for accurately filling out Bureau of Motor Vehicles examination forms. The physician appropriately contacted the Bureau of Motor Vehicles to explain the inaccuracies in the submitted form and advocate in the patient's behalf.

5. COMPLAINT STATUS REPORT (FYI)

6. CONSUMER ASSISTANT FEEDBACK (FYI)

7. REVIEW DRAFT LETTERS OF GUIDANCE

   A. CR 08-446 CALVIN P. FUHRMANN, M.D.

   Dr. Dreher moved to approve the letter of guidance to Dr. Fuhrman as amended. Dr. Nyberg seconded the motion, which passed unanimously.

B. CR 10-247 DAVID B. ROBINSON, M.D.

Dr. Nyberg moved to approve the letter of guidance to Dr. Robinson. Dr. Dreher seconded the motion, which passed unanimously.

C. CR 10-361 STEVEN J. ARNOLD, M.D.

Dr. Hatfield moved to approve the letter of guidance to Dr. Arnold as amended. Dr. Dumont seconded the motion, which passed unanimously.

D. CR 10-468 JOHN A. BOOTHBY, M.D.

Dr. Dumont moved to approve the letter of guidance to Dr. Boothby as amended. Dr. Dreher seconded the motion, which passed unanimously.

III. NEW COMPLAINTS

8. CR 10-178

Dr. Dumont moved to dismiss CR 10-178. Dr. Nyberg seconded the motion, which passed unanimously.

This case involves a patient with a known Methicillin-resistant Staphylococcus aureus (MRSA) infection that had not been adequately treated and who subsequently developed a leg injury with a resulting hematoma that also became infected for which he required hospitalization. The patient alleges a delay in care and treatment and that the supervising physician should have done more.

Review of the institution's records indicates that care was appropriate although there may have been some lapses in communication and follow-up which in this case probably did not affect the patient's outcome. The physician supervisor of the clinic was not involved with this patient clinically until after he returned from the hospital. In this single visit care was appropriate.

The nurse practitioners and nursing staff might have benefitted from increased supervision from the physician in this case but it is understood that this can be difficult in a large institution.

9. CR 10-295

Dr. Hatfield moved to dismiss CR 10-295. Dr. Nyberg seconded the motion, which passed unanimously.

The patient was seen in the emergency room (ER) 11 days after being diagnosed with pneumonia. A repeat chest X-ray was performed and interpreted by the radiologist as normal. The complainant feels that an incorrect interpretation of this chest X-ray led to the patient not being diagnosed for several more months with an underlying lung cancer. The physician feels that in retrospect there is likely a small abnormality that he missed on the chest X-ray, and offers

his apologies to the family. The Board feels that this is an unfortunate occurrence, but that a single X-ray misinterpretation does not warrant Board discipline.

10. CR 10-296

Dr. Hatfield moved to dismiss CR 10-296. Dr. Dumont seconded the motion, which passed unanimously.

The patient was seen in the emergency room (ER) with chest and pulmonary symptoms, and was diagnosed with pneumonia. The radiologist interpreting the chest X-ray felt there was patchy right lower lobe parenchymal disease of unknown age or etiology. This physician was not otherwise involved in the care of the patient, and was not responsible for any follow-up. No other obvious disease is seen on the chest X-ray.

11. CR 10-290

Ms. Clukey moved to investigate further CR 10-290. Dr. Nyberg seconded the motion, which passed unanimously.

12. CR 10-329

Dr. Dreher moved to dismiss CR 10-329. Dr. Hatfield seconded the motion, which passed unanimously.

This physician performed a cardiac valve replacement on a patient who had complications involving numerous consultations and interventions with the patient eventually dying five days after the initial surgery. A review of the records does not indicate problems with the quality of care provided which included a through pre-operative consent process with the patient including discussion of the considerable risks in his case. The physician did discuss the situation with the available family after a second emergent surgery was performed with the patient then stabilizing for several days before a fatal complication occurred while this physician was away.

13. CR 10-260 ELIZATETH A. McBRIDE, M.D.

Dr. Gleaton moved to summarily suspend the license of Elizabeth A. McBride, M.D. in the matter of CR 10-260 and order a 3286 evaluation including psychiatric, physical, and substance abuse issues. Dr. Dumont seconded the motion, which passed unanimously.

14. CR 10-146

Dr. Nyberg moved to investigate further CR 10-146. Dr. Gleaton seconded the motion, which passed unanimously.

15. CR 10-177

Dr. Dreher moved to dismiss CR 10-177. Dr. Dumont seconded the motion, which passed unanimously.

The patient complains that his physician refused to continue the provision of controlled medications after he tested positive for cannabis for which he had obtained a certificate for use by another physician. A review of the records indicates the patient had been informed in advance that his continued use of cannabis would result in the cessation of prescriptions for controlled medications. When later testing confirmed ongoing cannabis use, the prescription was halted.

It is the treating physician's option to restrict the provision of a medication if other factors make its use questionable or against the policy of the system within which the physician is employed. The patient has the option of seeking medications from other sources including the physician who provided him the cannabis certificate.

16. CR 10-219

Ms. Clukey moved to dismiss CR 10-219. Dr. Nyberg seconded the motion, which passed unanimously.

The complaint alleges that the physician inappropriately stopped prescribing him medication and forced him to sign a prescription drug contract that required him to keep his prescription medication in a secure location. The physician responded by explaining why he made the decision not to prescribe the patient additional medication, and provided a copy of the prescription drug contract. A review of the records supports the physician's initial decision not to further prescribe the patient medication, and contradicts the patient's assertion that he was forced to sign a prescription drug contract. In addition, the records indicate that the physician offered to continue prescribing medication to the patient pursuant to a new agreement, which the patient chose not to accept.

17. CR 10-241

Dr. Hatfield moved to dismiss CR 10-241. Dr. Nyberg seconded the motion, which passed unanimously.

The complainant feels that the physician has been unable to diagnose her condition, changing the patient's diagnosis several times. She also feels the physician is insensitive to her complaints of pain and does not return phone calls in a timely manner. The physician responds that a diagnosis was in fact established, and that a second diagnosis was subsequently added. He feels that phone calls were returned promptly and that he was sensitive to and addressed the patient's pain complaints. A review of the records supports the physician's statements, and also outlines the difficulties in making a definitive diagnosis in this case. The Board does suggest that an arthrocentesis be performed when a patient presents with a red swollen joint such as the one this patient presented.

18. CR 10-250

Dr. Dumont moved to dismiss CR 10-250. Dr. Gleaton seconded the motion, which passed 6-0-0-1 with Dr. Oldham recused.

In this case the patient complains that nasal surgery in 2005 has resulted in more drainage, headaches, and infections. Eventually the patient sought an opinion from another surgeon and the patient now feels the original surgery was not performed correctly.

Review of the patient's records shows that surgery was performed after a thorough documentation of possible complications. The patient did require a second "revision" surgery in 2005 and she seemed to improve after that and was not seen again for consultation for 2 years. Further testing was suggested at this time. The patient was then not seen again for a year and declined the suggested treatment course. The patient was subsequently seen by another surgeon who does not note problems with the original surgery but did suggest other medical reasons for the patient's ongoing nasal symptoms.

The care in this case seems appropriate but unfortunately did not alleviate the patient's symptoms

19. CR 10-281

Dr. Gleaton moved to investigate further CR 10-281 and order a 3286 evaluation. Dr. Dreher seconded the motion, which passed unanimously.

20. CR 10-291

Dr. Gleaton moved to dismiss CR 10-291. Dr. Dumont seconded the motion, which passed unanimously.

The complaint alleges that the physician was verbally abusive and hostile during his interaction with the patient. In addition, it alleges that the physician made no offer to determine why the patient continued to have persistent back pain. The physician provided a detailed response regarding his medical treatment of the patient, including diagnostic and treatment modalities made to address the patient's back pain. The patient did not provide a release for the Board to review her medical records; however, the physician's detailed description of the care and treatment of the patient appears reasonable. The Board is unable to determine the tone of the communication that occurred between the physician and patient.

21. CR 10-294

Dr. Dreher moved to investigate further CR 10-294. Dr. Nyberg seconded the motion, which passed 6-0-0-1 with Dr. Dumont recused.

22. CR 10-297 KURT W. OSWALD, M.D.

Ms. Clukey moved to dismiss CR 10-297 Kurt W. Oswald, M.D. with a letter of guidance. Dr. Gleaton seconded the motion, which passed 6-0-0-1 with Dr. Hatfield recused.

The complaint alleges the physician neglected, after two requests, to fill out required insurance forms that would allow the patient access to Family Medical Leave Act (FMLA) benefits. This was the second time in three years the patient had experienced this physician not completing required FMLA forms for benefits which the patient is entitled to when requested. The physician admits to his delay in completing the requested paperwork and his dislike for the FMLA forms. The physician's medical care of this patient is not in question, merely his lack of attention and unwillingness to complete the medical forms and return them in a timely manner. The physician concedes his need to improve his response time to medical forms required by insurance companies when requested by patients.

23. CR 10-311

Ms. Clukey moved to dismiss CR 10-311. Dr. Dumont seconded the motion, which passed unanimously.

The complaint alleges that the physician placed inappropriate information in the patient's medical record, and inappropriately discharged the patient. In addition, the complaint alleges that the physician referred the patient to other physicians who were rude and hurtful. The physician responded by indicating that the alleged inappropriate information -- a note created by a receptionist concerning the patient's conduct -- was placed in the patient's medical file but not provided to any other physicians. In addition, the physician explained that his decision to discontinue the physician/patient relationship was based upon loss of the patient's trust. A review of the records supports the physician's response.

24. CR 10-325

Dr. Dumont moved to dismiss CR 10-325. Dr. Nyberg seconded the motion, which passed unanimously.

In this case the mother of a 2-year old accuses an allergist of not treating her daughter appropriately. The patient underwent skin testing and subsequently developed increasing facial swelling, conjunctivitis, and nasal discharge. She was then diagnosed by her primary care physician and an optometrist with an allergic reaction despite the normal skin tests. The complaint alleges the physician acted in an unprofessional manner, did not return calls, and was uncaring.

Review of the medical record indicates appropriate evaluation and testing. The issue of foremost concern appears to be that the mother made several calls to the physician's office that were handled by staff when the family really wanted to have more of a conversation with, or be seen again by, the allergist. It did take 2 days of progressive symptoms before the physician called the family back. Medical care was most likely appropriate but not adequately explained, especially when the patient got worse after testing.

This complaint was exacerbated by the perception that the physician did not care, as she did not personally get involved with the follow-up until the mother took issue with the care. When patients, or in pediatric situations their parents, have reasonable concerns, the physician should make every effort as time allows to be accessible and work on improving communication. Office staff cannot always adequately address all situations without physicians being directly involved.

25. CR 10-341

Dr. Dumont moved to investigate further CR 10-341. Dr. Hatfield seconded the motion, which passed unanimously.

26. CR 10-351

Dr. Dreher moved to dismiss CR 10-351. Dr. Nyberg seconded the motion, which passed unanimously.

The mother of a 6-year-old child complained that his underwear was not removed during the course of an admission and orthopedic surgical repair of a femur fracture, and this resulted in a buttock pressure ulcer. A review of the records indicates that the patient was seen by several physicians during the pre-op portion of his admission with complete physicals and his pre-op preparation included his affected extremity and hip with no mention made of any of clothing being observed. The parents never mentioned their concerns to the physician during the child's hospitalization, nor did the nursing notes indicate their awareness of the mother's statement that she pointed out this problem to one of the nursing staff. A later note from another hospital emergency room visit for initial evaluation of the buttock sore includes a comment that the parents said they did not know how the sore might have occurred.

IV. ASSESSMENT & DIRECTION

27. AD 10-364

Dr. Gleaton moved to file AD 10-364. Dr. Dumont seconded the motion, which passed unanimously.

28. AD 10-367 (CR 10-474)

Dr. Dreher moved to issue a complaint in the matter of AD 10-367. Dr. Hatfield seconded the motion, which passed unanimously.

29. AD 10-402 (CR 10-475)

Dr. Dumont moved to issue a complaint in the matter of AD 10-402. Dr. Gleaton seconded the motion, which passed unanimously.

30. AD 10-422 (CR 10-471)

Dr. Gleaton moved to issue a complaint in the matter of AD 10-422 and combine with CR 10-260. Dr. Dreher seconded the motion, which passed unanimously.

31. AD 10-423

Dr. Gleaton moved to file AD 10-423. Dr. Hatfield seconded the motion, which passed unanimously.

32. AD 10-424 (CR 10-476)

Dr. Gleaton moved to issue a complaint in the matter of AD 10-424. Dr. Dumont seconded the motion, which passed unanimously.

V. INFORMAL CONFERENCE 11:30 a.m.

A. CR 09-441 RYAN D. HERRINGTON, M.D.

Dr. Dumont moved to dismiss with a letter of guidance CR 09-441 Ryan D. Herrington, M.D. Ms. Clukey seconded the motion, which passed 4-3.

This case involves a patient who complains that his institution's clinic did not follow a consultant's recommendations. The patient was supposed to be on a self-catheterization schedule which the clinic did not follow and this resulted in significant pain and urinary retention. His sick call notices were then not adequately responded to and this aggravated his symptoms.

After meeting with the clinic director it became clear that the institution did not meet this patient's needs and this resulted in patient harm. The clinic director was not immediately involved in these decisions. He did not, however, adequately supervise the institution's system and the patient's need for follow-up. The physician is no longer working as clinic director but should be aware of his responsibilities in future employment.

NOON MEAL

PUBLIC SESSION

VI. MINUTES OF SEPTEMBER 14, 2010

Ms. Clukey moved to approve the minutes of September 14, 2010 as amended. Dr. Dreher seconded the motion, which passed unanimously.

VII. BOARD ORDERS AND CONSENT AGREEMENT MONITORING & APPROVAL

A. BOARD ORDERS (NONE)

B. CONSENT AGREEMENT MONITORING & APPROVAL

1. CR 10-248 MICHAEL FESTINO, M.D. [SEE APPENDIX A - ATTACHED]

Dr. Nyberg moved to approve the consent agreement in the matter of CR 10-248 Michael Festino, M.D. Dr. Dreher seconded the motion, which passed unanimously.

VIII. ADJUDICATORY HEARING

A. CR 09-003 & CR 10-135 JAMES C. COOPER, M.D.

An Adjudicatory Hearing was held in the matter of James C. Cooper, M.D. CR 09-003 and CR 10-135. An official Board Order will be prepared by the Hearing Officer and presented to the Board for review at the November 9, 2010 meeting.

IX. REMARKS OF CHAIRMAN (NONE)

X. EXECUTIVE DIRECTOR'S MONTHLY REPORT

The Board accepted the report of the Executive Director.

A. COMPLAINT STATUS REPORT (FYI)

B. POLICY REVIEW – CME TAKEN IN OTHER COUNTRIES

The Board reaffirmed the above policy.

C. PROPOSED POLICY – COMPLAINT RESPONSE EXTENSIONS

Dr. Dreher moved to approve the proposed policy entitled Complaint Response Extensions. Dr. Gleaton seconded the motion, which passed unanimously.

D. MAPSA PREVENTION CONVENTION (FYI)

E. DRAFT LETTERS OF GUIDANCE DISCUSSION (TABLED)

XI. MEDICAL DIRECTOR'S REPORT (NONE)

XII. REMARKS OF ASSISTANT ATTORNEY GENERAL

A. LICENSE DISQUALIFICATION ON BASIS OF CRIMINAL RECORD
5 M.R.S.A. Chapter 341, Section(s) 5301 - 5304

Assistant Attorney General Smith advised the Board regarding the applicability of Title 5 M.R.S.A. Chapter 341, Section(s) 5301 – 5304 (Occupational License Disqualification on the

Basis of Criminal Record) as it applies to the Board of Licensure in Medicine and as referred to in Title 32 M.R.S.A. §3282-A(2)G.

Section 5301 allows the Board to impose discipline for criminal convictions in some cases. Under section 5301, an actionable criminal conviction must: relate to the profession of medicine; or involve a crime of dishonesty (moral turpitude), false statement, or sexual misconduct; or the conviction needs to be punishable by more than a year in jail (considered felony convictions).

Section 5302 specifically states that disqualifying/suspending/revoking a license based upon criminal record is discretionary – not mandatory. The Board "may refuse to grant or renew, or may suspend, revoke or take other disciplinary action against any occupational license, registration or permit on the basis of the criminal history record…"

Section 5303 sets the time limit on consideration of prior criminal convictions. The Board can consider an actionable criminal conviction for up to 10 years after the person's "final discharge" from the correctional system (including any probation period).

XIII. SECRETARY'S REPORT

A, LIST A

1. M.D. List A LICENSES FOR RATIFICATION

Ms. Clukey moved to ratify the physicians on M.D. List A for licensure. Dr. Gleaton seconded the motion, which passed unanimously.

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

NAME	SPECIALTY	LOCATION
Arshad, Ahmed B.	Internal Medicine/Neurology	Augusta
Baumer, Joane E.	Family Medicine	Mobile Unit
Brandon, William	Family Medicine	South Berwick
Callison, Mary L.	Family Medicine	Waterboro/York County
Connolly, Mary J.	Family Practice	Gorham/Portland
Curtis, Michael R.	Urology	Greater Portland Area
Day, Thomas G.	Family Medicine	Augusta
DeLaney, Matthew C.	Emergency Medicine	Portland
Doornbos, Daniel C.	IM/Critical Care/Pulmonary Disease	Waterville/Augusta
Edholm, Karli	Internal Medicine	Not listed
Gasper, Jonathan L	Family Practice	Uncertain
George, Argilla R.	Family Practice	York
Hammour, Tarek	Pathology	Portland
Heffez, Jordan L.	Ophthalmology	Presque Isle
Hemlock, Camille	Internal Medicine/Psychiatry	Not Listed

Kayali, Nazir Y.	Pediatrics	Not Listed
Kuftinec, Dubravko M.	Psychiatry	Not Listed
Lavender, Louis M.	OB/GYN	Belfast
Lockhart, Paula J.	Psychiatry	Not Listed
Luck, Michael D.	Diagnostic Radiology	Southern Maine
Mangini, Joseph A.	Family Medicine	Bangor/Presque Isle
Martin, William	Gastroenterology/Internal Medicine	Bangor
Menon, Nathan G.	Plastic & Reconstructive Surgery	Bangor
Mirmanesh, Shapour S.	Internal Medicine	Locum Tenens
Nilson, Richard E.	Psychiatry	Rockland
Nilson, Susan H.	Psychiatry	Damariscotta
Ntiforo, Kwesi A.	Family Medicine	Not Listed
O'Brien, Timothy C.	General Surgery	Augusta/Waterville
Raju, Shubha V.Y.	Anesthesiology/Pain Medicine	Bangor
Reynolds, John W.	Family Practice	York
Rossi, Ana P.	Internal Medicine	Portland
Rotolo, Alyssa	Emergency Medicine	Portland
Russell, Victoria	Psychiatry	Not Listed
Shah, Himani	Internal Medicine	Not Listed
Shapiro, Deborah L.	Internal Medicine	Ellsworth
Shulman, Ned I.	Internal Medicine	Caribou
Singh, Loveena	Family Medicine	Not Sure
Turner, William C.	Emergency Medicine	Machias
Vaddineni, Sarat K.	General/Vascular Surgery	Lewiston
Villamarin, Carlos F.	Family Medicine	Lewiston
White, Julie	General/Vascular Surgery	Not Sure
Zamos, David T.	Diagnostic Radiology	Bangor

2. P.A. LIST A LICENESES FOR RATIFICATION

Dr. Gleaton moved to ratify the Physician Assistants on P.A. List A for licensure. Ms. Clukey seconded the motion, which passed unanimously.

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

NAME	LICENSE	PSP	LOCATION
Auer, David	Active	Michael Gibb, M.D.	Portland
Dunn, Joel	Active	Kevin Kane, M.D.	Augusta
Fiore, AnnMarie	Inactive	NONE	NONE
DeBiasio, Mark	Active	Paul S. Harrod-Kim, M.D.	S. Portland

B. LIST B APPLICATIONS FOR INDIVIDUAL CONSIDERATION

1. GERALD P. BAILEY, M.D.

The Licensure Committee moved to approve the license application of Gerald P. Baily, M.D. The motion passed unanimously.

2. JAMES A. CHEVERIE, M.D.

The Licensure Committee moved to preliminarily deny, with leave to withdraw, the license application of James A. Cheverie, M.D. The motion failed 3-4.

Dr. Gleaton moved to invite Dr. Cheverie to meet with the Licensure Committee before making a decision. Ms. Clukey seconded the motion, which passed 5-2.

3. NEELIMA M. GANTA, M.D.

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

4. DAVID GRODSKY, M.D. (TABLED)

5. CHARLES C. LAM, M.D. (TABLED)

6. ANDREW D. PAULI, M.D. (TABLED)

7. CHRISTOPHER MANNARI, P.A.-C

The Licensure Committee moved to approve the license application of Christopher Mannari, P.A.-C. The motion passed unanimously.

C. LIST C APPLICATIONS FOR REINSTATEMENT

1. LIST C APPLICATIONS FOR REINSTATEMENT

Dr. Gleaton moved to approve the licensee on List C for reinstatement. Dr. Dreher seconded the motion, which passed unanimously.

The following license reinstatement application has been approved by Board Secretary Gary R. Hatfield, M.D. without reservation:

NAME	SPECIALTY	LOCATION
Horne, David F.	Dermatology	Presque Isle

2. LIST C APPLICATIONS FOR REINSTATEMENT FOR INDIVIDUAL CONSIDERATION (NONE)

D. LIST D WITHDRAWAL APPLICATIONS

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

2. LIST D (2) WITHDRAW LICENSE FROM REGISTRATION

Dr. Gleaton moved to approve the licensees on List D (2) to withdraw from license registration.

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

NAME	LICENSE NUMBER
Allen, Tracy	PA-440
Lyons, Thomas	014281
Nathan, Girija	009586
Pole, Chakrabarty L.	011245
Vascan, Andreea	016260

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

E. LIST E LICENSES TO LAPSE BY OPERATION OF LAW (FYI)

The following physician licenses lapsed by operation of law effective September 15, 2010

NAME	LICENSE NO.
Abney-Lidahl, Deborah L.	017672
Bayan, Nami	017328
Elhag, Mohamed A.	014601
Goldschmitt, David	014195
Gordon, Tawanna O.	018249
Greer, David M.	017576
Haglund, Nicholas A.	017923
Halberg, Michael	017907
Hartman, Jennifer R.	016096
Hogan, J. Michael	010505
Jensen, Judd M.	014777
Kalvoda, Donald	011950
Kim, Shine H.	018272
Kobeissi, Zoulficar A.	016593
Lozada, Leonardo J.	016447
Ma, Marcus	017582
Scheffs, Jan S.	006342
Whalen, Patrick	018240
Wilkinson, Barbara J.	009640
Williams, Marcus R.	017861
Wrigley, John V.	018085

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

G. LIST G RENEWAL APPLICATIONS FOR INDIVIDUAL REVIEW

1. NAK CHIN CHUNG, M.D.

The Licensure Committee moved to renew the inactive license of Nak Chin Chung, M.D. The motion passed unanimously.

H. LIST H PHYSICIAN ASSISTANT SCHEDULE II AUTHORITY REQUESTS FOR RATIFICATION

Dr. Gleaton moved to ratify the Physician Assistant Schedule II request on List H. Ms. Clukey seconded the motion, which passed unanimously.

LIST H NEW PHYSICIAN AASSISTANT SCHEDULE II REQUESTS

NAME	PSP	LOCATION
Shawn McMahon, P.A.-C	Carlo Gammaitoni, M.D.	Lewiston
Sarah Lavoie, P.A.-C	Stephen Kelly, M.D.	Portland
Joseph Sorbello, P.A.-C	Stephen Kelly, M.D.	Portland
Kristin Hall, P.A.-C	David Burke, M.D.	Bangor
Peter Wheeler, P.A.-C	Eric Hoffman, M.D.	Portland

XIV. STANDING COMMITTEE REPORTS

A. ADMINISTRATION, POLICY & RULES COMMMITTEE

1. FY 2010 YEAR END REPORT

Dr. Dumont presented the FY 2010 Year End Report which showed income was down $143,330 from the budgeted projection, expenses came in $70,837 under budget, and other expenses came in $34,228 under budget resulting in a reduction of the cash reserves of $38,264.

2. PUBLIC MEMBER VACANCY

The committee is concerned about the public member seat on the Board being vacant with the retirement of Ms. Holmes.

3. BOARD GOALS & GOALS FOR EXECUTIVE DIRECTOR

The committee discussed setting goals for both the Board and the Executive Director and presented a draft document with suggested goals. The Board was invited to bring suggestions to the November meeting of the Board.

B. LEGISLATIVE & REGULATORY COMMITTEE

The Board is submitting to the upcoming legislature a proposal to clarify who can perform psychiatric evaluations under Title 32 Section 3286, as part of a legislative proposal submitted by the Board of Osteopathic Licensure to also enhance their evaluation processes.

C. PHYSICIAN ASSISTANT ADVISORY COMMITTEE

1. DRAFT MINUTES OF SEPTEMBER 2010 MEETING (FYI)

XV. BOARD CORRESPONDENCE (NONE)

XVI. FYI

XVII. FSMB MATERIAL (NONE)

XVIII. OTHER BUSINESS

A. MAINE MEDICAL ASSOCIATION

1. DISCUSSION OF PRESS RELEASE POLICY

The Board had a conversation about the Board's press release policy and instructed staff to propose revisions to the policy at the November meeting.

2. MPHP FORENSIC TOXICOLOGY

Mindy Armstrong, RN, MSN, CARN presented a report on improved forensic toxicology testing being used for monitoring in the Maine Professionals Health Program (MPHP) in terms of early intervention and detection after the fact. The new tests can detect alcohol in the system for a much longer period of time than more commonly used testing methods.

XIX. ADJOURNMENT 7:47 p.m.

Dr. Gleaton moved to adjourn. Dr. Dumont seconded the motion, which passed unanimously.

Respectfully submitted,

Joan M. Greenwood

Joan M. Greenwood, Administrative Assistant
Board Coordinator
Maine Board of Licensure in Medicine

APPENDIX A

STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

In re:	)	CONSENT
Michael J. Festino, M.D.	)	AGREEMENT
Complaint No. CR10-248	)	

This document is a Consent Agreement, effective when signed by all parties, regarding a disciplinary action concerning the license to practice medicine in the State of Maine held by Michael J. Festino, M.D. The parties to the Consent Agreement are: Michael J. Festino, M.D. ("Dr. Festino"), the State of Maine Board of Licensure in Medicine ("the Board") and the State of Maine Department of the Attorney General. This Consent Agreement is entered into pursuant to 10 M.R.S. § 8003(5)(B) and 32 M.R.S. § 3282-A.

STATEMENT OF FACTS

1. Dr. Festino has held a license to practice medicine in the State of Maine since September 18, 1967. Dr. Festino specializes in Internal Medicine and Cardiovascular Diseases.

2. On or about January 29, 2010, the Board received an application from Dr. Festino to renew his Maine medical license. On that application, Dr. Festino answered "yes"[1] to questions 14.13 and 14.14, which asked if he had had any medical malpractice suits or claims filed against him since his last renewal or any open malpractice claims. Dr. Festino provided a written explanation for his "yes" responses to these questions. According to Dr. Festino, H.D., his former fiancée, filed a lawsuit against him for the medical

[1] The form instructs applicants who answer "yes" to any questions to provide a full, written explanation.

care and treatment that he provided for her during the time that they were a couple. Dr. Festino admitted that H.D. was not a patient of his, that he never assumed the role of primary care provider for her, and that his provision of some medical care and treatment of her – at her request – was an error in judgment. Dr. Festino also admitted that: he prescribed controlled substances to H.D. at her request during his relationship with her; and he was embarrassed that he allowed his close, emotional relationship with H.D. to cloud his judgment. According to Dr. Festino, all of the prescriptions for controlled substances that he issued to H.D. were "medically appropriate."

3. Based upon Dr. Festino's "yes" responses and his detailed written explanation, the Board staff initiated an investigation of this matter. As part of the investigation, Board staff requested a report from the Prescription Monitoring Program (P.M.P.) regarding Dr. Festino, and requested that a subpoena be issued to Dr. Festino for the complete medical records regarding his treatment of H.D.

4. The P.M.P. report confirmed that Dr. Festino had prescribed controlled drugs to H.D. on eight (8) occasions between June 2008 and January 2009. In addition, the P.M.P. report indicated that Dr. Festino had self-prescribed a controlled substance on three (3) occasions between March 2008 and June 2009. In response to the Board subpoena for H.D.'s medical records, Dr. Festino provided laboratory and diagnostic reports regarding H.D., but no clinical records.

5. On May 10, 2010, the Board reviewed the foregoing information and voted to initiate a complaint against Dr. Festino's Maine medical license pursuant to 32 M.R.S.A. § 3282-A. The Board docketed the complaint as CR10-248.

6. On August 9, 2010, the Board received a response from Dr. Festino to complaint CR10-248.

a. Self-Prescribing (Self-Treatment). In his response, Dr. Festino admitted that he had self-prescribed, Lorazepam, a controlled drug for the past ten years, and that doing so was wrong. Dr. Festino explained that these prescriptions for controlled substances were not new, and were in the same amount and dosages as had been prescribed for him by his primary care provider beginning in 1995. Dr. Festino indicated that he has since had his primary care provider assume this responsibility, including a review of the appropriateness of this medication – including the amount and dosage - which his primary care provider determined to be medically appropriate. Dr. Festino apologized to the Board for his failure to realize that self-prescribing controlled substances was inappropriate, and assured the Board that it would never again occur.

b. Treating Family/Close Persons (Treatment of H.D.). In his response, Dr. Festino admitted that he had treated H.D. and that doing so was wrong. Dr. Festino admitted that he should not diagnose, treat or prescribe any medications to any person with whom he has a close, personal relationship. Dr. Festino admitted that he was in a close, personal relationship

with H.D. and that he was not her primary care provider. According to Dr. Festino, his personal feelings for H.D. caused him to make decisions – such as prescribing her controlled substances – that he should not have made. According to Dr. Festino, he has come to understand the boundary that he violated when he treated and prescribed for H.D. by attending a three day course in boundaries at Vanderbilt University Medical Center called "Maintaining Proper Boundaries."

c. Medical Record Keeping. In his response, Dr. Festino admitted that he failed to create and maintain medical records to support his medical treatment of H.D., including his prescribing her controlled drugs. Dr. Festino admitted that he prescribed controlled drugs to H.D. on multiple occasions and failed to create any medical records to explain why he prescribed them. Dr. Festino admitted that he should have created and maintained medical records regarding his treatment of H.D., including the medical decision-making regarding his prescribing her controlled substances, which he asserts was medically appropriate.

7. On or about September 14, 2010, the Board reviewed Complaint CR10-248, and voted to schedule the matter for an adjudicatory hearing. In addition, the Board authorized its legal counsel to negotiate a consent agreement with Dr. Festino that resolved Complaint CR10-248 without an adjudicatory hearing.

8. This Consent Agreement has been negotiated by counsel for Dr. Festino and counsel for the Board in order to resolve complaint CR10-248

without an adjudicatory hearing. Absent Dr. Festino's acceptance of this Consent Agreement by signing and dating it in front of a notary and returning it to the Board on or before October 11, 2010, the matter will proceed to an adjudicatory hearing. In addition, absent the Board's acceptance of this Consent Agreement by ratifying it on October 12, 2010, the matter will proceed to an adjudicatory hearing.

9. By signing this Consent Agreement, Dr. Festino and his legal counsel waive any and all objections to, and hereby consent to the presentation of this Consent Agreement to the Board for possible ratification. Dr. Festino and his legal counsel also forever waive 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

In lieu of proceeding to an adjudicatory hearing in this matter, Dr. Festino agrees to the following:

10. Dr. Festino admits that with regard to complaint CR10-248 the Board has sufficient evidence from which it could reasonably conclude that he: (a) self-prescribed controlled drugs (engaged in self-treatment); (b) provided medical treatment, including prescribing controlled drugs to H.D., with whom he had a close, personal relationship; and (c) failed to create and maintain appropriate medical records regarding his treatment of H.D. and his prescribing controlled drugs to H.D. Dr. Festino admits that such conduct

constitutes unprofessional conduct and grounds for discipline of his Maine medical license pursuant to 32 M.R.S. § 3282-A(2)(F).

11. For the conduct described in paragraphs 1-10 above, Dr. Festino agrees to accept, and the Board agrees to issue, the following discipline:

a. A REPRIMAND. Dr. Festino agrees that self-treating/self-prescribing controlled drugs, treating/prescribing controlled drugs to someone with whom he is in a close personal relationship, and failing to create medical records is in appropriate. Dr. Festino admits that such conduct negatively reflects upon the practice of medicine. Dr. Festino shall take all measures necessary to ensure that such conduct does not again occur.

b. A MONETARY PENALTY of One Thousand Dollars and Zero Cents ($1,000.00). Dr. Festino shall ensure that he pays the monetary penalty within thirty (30) days following the execution[2] of this Consent Agreement. Payment shall be made by certified check or money order made payable to "Treasurer, State of Maine," and be remitted to Maureen Lathrop, Investigative Secretary, Maine Board of Licensure in Medicine, 137 State House Station, Augusta, Maine 04333-0137.

c. Within twelve (12) months of the execution of this Consent Agreement, Dr. Festino shall successfully complete a course pre-approved by the Board in medical record-keeping, and shall provide written (documentary) proof of his successful completion of the foregoing pre-approved course to the Board. This course, which shall be paid for by Dr. Festino, shall <u>not</u> be

[2] For the purposes of this Consent Agreement, "execution" means the date on which the final signature is affixed to this Consent Agreement.

creditable towards continuing medical education required for Dr. Festino's medical re-licensure.

12. Upon the execution of this Consent Agreement, the Board agrees to grant Dr. Festino's pending application to renew his Maine medical license.

13. Dr. Festino waives his right to a hearing before the Board or any court regarding all findings, terms and conditions of this Consent Agreement. Dr. Festino agrees that this Consent Agreement is a final order resolving Complaint CR10-248. This Consent Agreement is not appealable.

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

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

16. 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.

17. This Consent Agreement constitutes disciplinary 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).

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

19. The Board and Dr. Festino agree that no further agency or legal action will be initiated against him by the Board based upon the facts described herein, except or unless he fails to comply with the terms and conditions of this Consent Agreement. The Board may however consider the conduct described above in the event that allegations are brought against Dr. Festino in the future. The Board may also consider the fact that discipline was imposed by this Consent Agreement in determining appropriate discipline in any further complaints against Dr. Festino's license.

20. Dr. Festino 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.

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

I, MICHAEL J. FESTINO, 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: 9/29/2010

MICHAEL J. FESTINO, M.D.

STATE OF Maine

Cumberland, S.S.

Personally appeared before me the above-named Michael J. Festino, M.D., 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: 9-29-10

~~NOTARY PUBLIC~~/ATTORNEY

Maine Bar Number: 4525

~~MY COMMISSION ENDS.~~

DATED: September 29, 2010

KENNETH LEHMAN, ESQ.
ATTORNEY FOR DR. FESTINO

STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

DATED: 10/12/2010

SHERIDAN R. OLDHAM, M.D., Chairman

STATE OF MAINE DEPARTMENT
OF THE ATTORNEY GENERAL

DATED: 10/12/10

DENNIS E. SMITH
Assistant Attorney General

Effective Date: 10/12/10