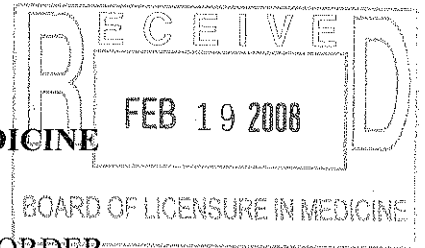


MAINE STATE BOARD OF LICENSURE IN MEDICINE



IN RE: Scott Diering, M.D.) DECISION AND ORDER

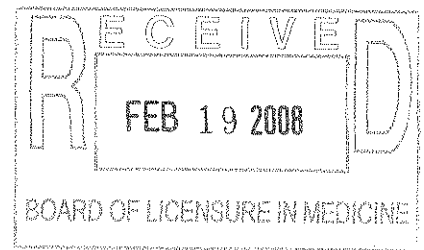
Complaint No. CR 07-112- Disciplinary Action)

I. PROCEDURAL HISTORY

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

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

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



II.

FINDINGS OF FACT

A. Preliminary Findings

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

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

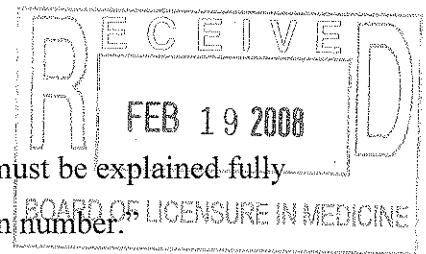
3. Dr. Diering then signed the following affidavit, which, in relevant part reads:

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

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

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

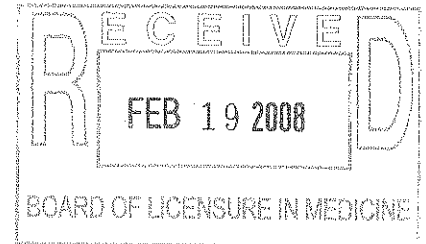
6. On his application for re-licensure, Dr. Diering circled the word "Yes" in response to question number 15-5, which asked, "Since last renewal, have you had any of the following occurrences: Suffered from any physical, psychiatric, or addictive disorder that would impair or require limitations on your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



7. The application for re-licensure mandated that any “Yes’ response must be explained fully on a separate, attached 8 x 11 sheet of paper cross-referenced by the question number.
8. Dr. Diering attached a separate, attached sheet of paper to his application for re-licensure to explain his “Yes” response to question 15-5. Dr. Diering’s explanation indicated that he had been hospitalized in February 2005 for “aspiration pneumonitis and Adult Respiratory Distress Syndrome,” that he was scheduled for “ventral hernia repair on November 17, 2005” and expected “to make a full recovery.” Finally, Dr. Diering indicated that he was under care for depression.
9. The renewal application required Dr. Diering to execute an affidavit which read in part:

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

10. On his application for re-licensure, Dr. Diering circled the word “No” in response to question number 15-6, which asked, “Have you ever been indicted, arrested or convicted of any criminal offense (including motor vehicle offenses but not including minor traffic or parking violations).”
11. On December 1, 2005, the Board renewed Dr. Diering’s Maine medical license based upon Dr. Diering’s representations on his application for re-licensure. His current license expires on November 30, 2007.
12. On or about February 16, 2007, the Board staff received a copy of an Order issued by the Missouri State Board of Registration For the Healing Arts (Missouri Board) dated February 2, 2007. According to that order, Dr. Diering: (a) had “a past history of alcohol abuse which culminated in his experimenting with cocaine in 2005;” (b) overdosed on cocaine in February 2005; (c) enrolled in Crossroads Centers for chemical dependency in July 2005; and (d) was placed on criminal probation for eighteen (18) months on August 23, 2005, for the criminal charge of paraphernalia possession.
13. On March 9, 2007, the Board received a letter from Dr. Diering. In that letter, Dr. Diering stated in part:



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

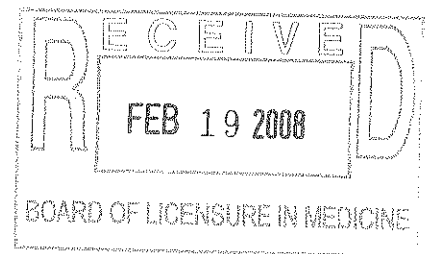
14. The Board staff reviewed all of the information previously provided to it by Dr. Diering, and discovered that Dr. Diering had not notified it of his chemical dependency. On or about April 18, 2007, the Board reviewed the foregoing information, and voted to initiate a complaint against Dr. Diering's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

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

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

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

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



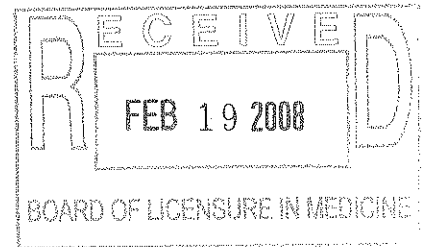
B. Dr. Diering's Testimony

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

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

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

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



C. The Board's Concerns

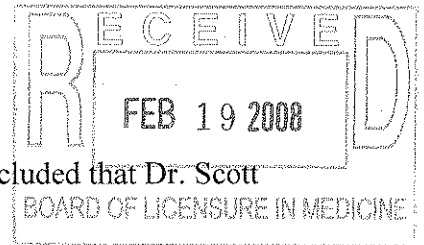
The Board was concerned that Dr. Diering was less than forthcoming regarding whether he had violated the Board's statutes and Rules as alleged in the Notice of Hearing. More specifically, several of his answers could be accurately described as "the truth, but not the whole truth." For example, he felt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

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

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

III. CONCLUSIONS OF LAW

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



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

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

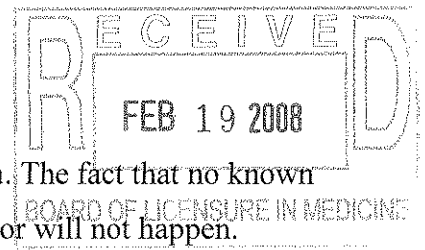
More specifically, Dr. Diering committed fraud or deceit in obtaining his original Maine medical license by denying on his original application dated November 26, 2002, and approved on November 16, 2004, the fact that he had “EVER suffered from any physical, psychiatric, or addictive disorder that would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

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

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

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

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



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

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

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

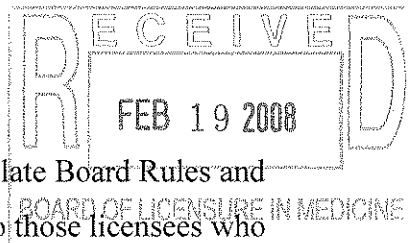
3. 32 M.R.S. Sec. 3282-A(2)(F) by engaging in unprofessional conduct. A licensee is considered to have engaged in unprofessional conduct if the licensee violates a standard of professional behavior that has been established in the practice for which the licensee is licensed.

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

IV. SANCTIONS

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

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



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

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

SO ORDERED.

Dated: February 12, 2008

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

V. **RIGHTS OF APPEAL**

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