



STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE
137 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0137

SHERIDAN R. OLDHAM, M.D.
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GOVERNOR

RANDAL C. MANNING
EXECUTIVE DIRECTOR

June 12, 2008

**SENT VIA FIRST CLASS MAIL AND CERTIFIED MAIL 7006 0810 0002 6819 0194
RESTRICTED DELIVERY, RETURN RECEIPT REQUESTED**

Carlos A. Ahumada, MD
22 Spring Street
Calais, ME 04619

Subject: Suspension of License effective 4:00 pm Thursday, June 12, 2008

Dear Dr. Ahumada:

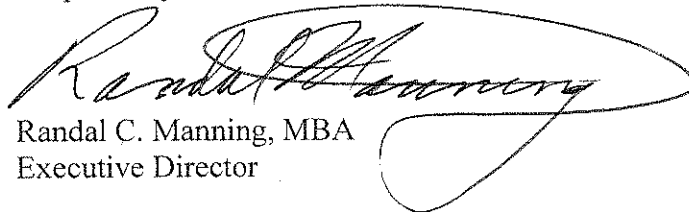
This letter shall serve as official notice that, in accordance with the written decision of the Maine Board of Licensure in Medicine dated June 9, 2008, your license to practice medicine in the State of Maine will be suspended effective at 4:00 pm EDT, on Thursday June 12, 2008.

As you are aware, on May 13, 2008, the Board held an Adjudicatory Hearing concerning a complaint against your Maine medical license. At the conclusion of that hearing, the Board ordered you to immediately enroll and participate in the total Physician's Health Program, including monitoring for substances including alcohol. In addition, the Board advised you that if you failed to enroll forthwith, your license to practice medicine would be immediately suspended. On Tuesday, June 10, 2008, the Board ratified a written decision prepared by the Hearing Officer. That decision, which has been sent to you under separate cover, memorialized the Board's order of May 13, 2008.

By telephone conversation with me yesterday, June 11, 2008, at about 1:00 pm, EDT, you confirmed that you have not enrolled in the Physician's Health Program and do not intend to do so. You also confirmed that you have not scheduled the substance abuse evaluation, which was also ordered by the Board. You are, therefore, in non-compliance with the Board's decision.

Your Maine medical license shall remain suspended until you present proof acceptable to the Board that you are in compliance with all of the terms of the Board's decision.

Respectfully,



Randal C. Manning, MBA
Executive Director

CR 07-391
cc: Dennis Smith, AAG

Dakota beginning in 1980 for 26 years except for an interim practice in Maine¹ and Iowa during the late 1980's. More recently, he was hired as a staff pediatrician at the Calais Regional Hospital and clinic in September 2006.

Soon thereafter in October 2006, Dr. Ahumada was informed by Dr. Michael Kessler, the hospital's Chief of Staff, that he "may have smelled of alcohol while participating as a Neonatal Pediatrician, in a Cesarean-Section in Labor and Delivery." Two other incidences of suspected alcohol on Dr. Ahumada's breath have also been reported by nurses. However, there is nothing in the record to reveal that he has been the subject of any prior disciplinary action.

On Monday, December 15, 2006, Dr. Ahumada began seeing patients by 9:00 a.m. He was requested to report to Dr. Kessler at approximately 10:30 a.m. The request was based on a statement by a hospital employee in the pediatrics section that Dr. Ahumada had alcohol on his breath. Dr. Ahumada admitted that he had been drinking alcohol with friends until approximately 4:00 a.m. that morning. Dr. David Simmons, Medical Director of the Physicians' Health Program, was at the Calais Hospital at the time and joined Dr. Kessler and Dr. Ahumada in Dr. Kessler's office. Apparently, Dr. Ahumada believed that Dr. Simmons was the Medical Director of the clinic where Dr. Ahumada mostly practiced. Dr. Simmons smelled alcohol on Dr. Ahumada's breath. Dr. Kessler testified that he did not but was not physically close to the respondent. Dr. Ahumada consented to having his blood drawn by Dr. Simmons at approximately 11:00 a.m. that morning to determine his blood alcohol content (b.a.c). The b.a.c. result was .021² as of 11:00 a.m. Thereafter, Dr. Kessler offered to have the hospital pay for an out of state Chemical Dependency Evaluation which, according to Dr. Kessler, the respondent ultimately rejected after stating that it would violate his privacy.³

Robert Blaik, D.O., M.P.H., Ph.D, is a psychiatrist with a subspecialty in addiction psychiatry who has performed some 15,000 chemical dependency evaluations Dr. Blaik determined that Dr. Ahumada had a b.a.c. of .08 at 9:00 a.m. on December 15 when the latter arrived at the clinic and began treating patients. The estimated b.a.c. would mean that Dr. Ahumada was legally intoxicated at that time. If he did not appear to be impaired, the likelihood was that he had built up

¹ Dr. Ahumada was first issued a license to practice medicine in Maine on January 18, 1989. His most recent license was issued on February 21, 2007 and expires December 31, 2008.

² Dr. Simmons did not recall in testimony that he stated that b.a.c. to Dr. Ahumada. Unfortunately, a written report was not requested that day and as a result does not exist.

³ Dr. Ahumada attributed his decision not to follow through on this offer to an administrative problem.

a large tolerance to alcohol as a result of long time consumption. Following the blood test, the respondent demonstrated no signs of impairment and was permitted to continue treating patients.

Dr. Kessler then forwarded a written referral to Dr. Simmons at the Physicians' Health Program. Dr. Simmons sent a written request to the respondent to undergo a Chemical Dependency Evaluation (CDE). Dr. Ahumada did not agree at that time. Initially, Dr. Simmons decided to give the respondent the benefit of the doubt and did not advise Dr. Ahumada to cease his alcohol consumption but rather to limit it to 2 ounces every 24 hours, and no alcohol within 12 hours of reporting for duty as a physician. Dr. Ahumada continued to consume 2 glasses of wine at home on most days, and went on vacation to Chile for one month, returning to Calais in March 2007. The following month, Dr. Ahumada agreed to sign a one year contract with the PHP to cooperate with a once per week random Urine Drug Screen. Dr. Simmons advised Dr. Ahumada that he should not consume alcohol.

On October 17, 2007, Dr. Simmons contacted Dr. Ahumada after he had taken another trip to Chile. Dr. Simmons asked whether he had been drinking alcohol. The respondent replied that he drank no more than two glasses of wine 50% of the days that he was away. Dr. Simmons then informed Dr. Ahumada that the Urine Drug Screen performed on September 17, 2007, four days prior to his leaving for Chile, returned positive for ethyl glucuronide. The test results measured 1160 nanograms which is in excess of the 500 nanograms that require a report to be made to the Board. Dr. Ahumada admitted that he had consumed a glass of wine at the invitation of a relative on the evening of September 16. Dr. Simmons then reiterated his request for a CDE and Dr. Ahumada agreed to participate. Dr. Ahumada testified that he thought Dr. Simmons had advised him that he could consume alcohol when out of the United States. The Board did not find this part of the testimony credible.

The Chemical Dependency Evaluation on Dr. Ahumada was performed by Dr. Blaik on November 2, 3, 2007. In the ""Formulation"" section of his evaluation report, Dr. Blaik stated that:

“At the very least, Dr. Ahumada suffers from Alcohol Abuse, bordering on Alcohol Dependence, as elucidated below in the “Diagnosis” section. He is in absolute denial that he meets the criteria for either alcohol disorder. Even allowing for his explanation of “cultural differences in the use of alcohol, there can be no justification for any physician, while on duty, having alcohol on his breath, whether it be in his Country Of Origin, Chile, or in the U.S.A.”

On December 19, 2007, the Board wrote to Dr. Ahumada and informed him that by letter dated December 4, 2007, Dr. Simmons had reported a positive test for ethyl glucuronide and had included Dr. Blaik's diagnosis of alcohol abuse and possible early dependence. The Board voted to initiate a complaint against the respondent alleging unprofessional conduct and habitual substance abuse based on alcohol abuse issues. Dr. Ahumada was told in the letter to respond, in writing, within 30 days. Two days later, a second letter from the Board was sent to Dr. Ahumada "directing [him to] undergo an inpatient psychological and substance abuse evaluation" based on Dr. Simmons's referral. Dr. Ahumada was given the choice of being evaluated at either a facility in Williamsburg, VA or Atlanta, GA.

Dr. Ahumada timely responded to the above cited Board's letters by correspondence dated January 23, 2008. He requested a review of the Board's requirement for an out of state evaluation and stated that "it would be extremely expensive and in view of my retirement on June 15, 2008 would not in my opinion be helpful." Dr. Ahumada subsequently sent several more letters to the Board alleging various improprieties primarily regarding Dr. Blaik, Dr. Simmons, and Dr. Kessler.

At this hearing, Dr. Ahumada acknowledged that he had been drinking alcohol during the evening and early morning hours on December 15, 2006. He disputed the .021 lab result reported by Dr. Simmons and acknowledged that he should have known better than to drink until 4:00 a.m. and report to the clinic with the remnants of alcohol on his breath. Dr. Ahumada did not agree that his actions should require him to attend counseling sessions and AA or CADUSEUS meetings. In short, he felt that the punishment did not fit the crime and that Dr. Blaik, rather than alcohol, was the reason for the Board's hearing.

Dr. Ahumada further testified that he has not consumed alcohol since November 2007. There have been no other related reports of substance abuse from the hospital staff. Additionally, on March 31, 2008, Chief of Staff Michael Kessler wrote a letter to the Board on behalf of the medical staff and executive committee. In that letter, Dr. Ahumada's skills and collegiality were vouched for, and he was described as "one of the most skilled [pediatricians] that we have encountered," especially when working in conjunction with ob/gyn staff. Dr. Kessler further stated that "there has never been an episode of impairment of behavior noted by any of our personnel or our medical staff on the part of Dr. Ahumada. This includes many times on call at night and on weekends." The letter also noted that the hospital would monitor Dr. Ahumada daily and urged Dr. Ahumada to cooperate with the recommendations of the Board.

III.

CONCLUSIONS OF LAW

The Board, exercising its knowledge, experience, and training, concluded by a vote of 7-1⁴ that Dr. Carlos Ahumada violated the provisions of 32 M.R.S. Sec. 3282-A(2)(F) by engaging in unprofessional conduct when he:

1. Practiced medicine while under the influence of alcohol;
2. Violated the terms of his PHP contract;
3. Returned to the use of alcohol on or about September 17, 2007;
4. Failed to submit to the Board ordered evaluation, which failure was not attributable to circumstances beyond his control.

The Board further concluded by a vote of 6-2⁵ that Dr. Carlos Ahumada violated the provisions of 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. The Board reasoned that there is zero tolerance for alcohol in a physician's blood while on duty. The Board was concerned both that Dr. Ahumada appeared to have a major denial problem regarding his use of alcohol and that he had difficulty admitting that having alcohol on his breath in a practice setting was unprofessional conduct. Such conduct would most likely negatively affect Dr. Ahumada's relationship with fellow practitioners and staff and the perception by and treatment of his patients.

IV.

SANCTIONS

As a result of the above Findings and Conclusions, the Board by the vote of 8-0 orders the following sanctions.⁶

1. Dr. Ahumada shall immediately enroll and participate in the total Physicians' Health Program which shall require urine testing for substances including alcohol wherever Dr. Ahumada

⁴ The dissenting Board member had serious doubts regarding the validity of the blood test results.

⁵ One dissenting Board member was not persuaded that there was a violation due to Dr. Ahumada's unblemished record during his 30 years of practice. The second member required an out of state Sec. 3286 evaluation to help resolve issues surrounding Dr. Ahumada's consumption of alcohol.

⁶ Additional sanctions are not warranted due to the large amount of support Dr. Ahumada has received from his colleagues.

may be located. In the event that Dr. Ahumada does not enroll forthwith, his license to practice medicine shall be immediately suspended.

2. Dr. Ahumada shall, at his own expense, undergo a psychological and substance abuse evaluation pursuant to 32 M.R.S. Sec. 3286, which shall be completed by June 13, 2008. The evaluation may occur at either The Farley Center, Williamsburg, VA. or the Talbott Recovery Campus, Atlanta, GA.

So Ordered.

Dated: June 10, 2008



Sheridan R. Oldham, M.D. Chairman

Maine Board of Licensure in Medicine

V.

APPEAL RIGHTS

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.