

MAINE STATE BOARD OF LICENSURE IN MEDICINE

IN RE: Wesley A. McEldoon, M.D.) DECISION AND ORDER
 DISCIPLINE)

I. PROCEDURAL HISTORY

Pursuant to the authority found in 32 M.R.S. § 3282-A, *et seq.*, 5 M.R.S. § 9051, *et seq.* and 10 M.R.S. § 8001, *et seq.*, the Board of Licensure in Medicine (Board) met in public session at the Board's offices located in Augusta, Maine at 1:00 p.m. on January 10, 2012. The purpose of the meeting was to conduct an adjudicatory hearing to decide whether Wesley McEldoon, M.D. violated Board statutes and/or Rules as alleged in the Notice of Hearing. A quorum of the Board was in attendance during all stages of the proceedings. Participating and voting Board members were Chairman Gary R. Hatfield, M.D., public member David Nyberg, Ph. D., Maroulla S. Gleaton, M.D., David H. Dumont, M.D., David D. Jones, M.D., Louisa Barnhart, M.D., public member Dana D. Dyer, and David R. Andrews, M.D. Dr. McEldoon did not appear and neither was he represented by legal counsel. Dennis Smith, Ass't. Attorney General, presented the State's case. James E. Smith, Esq. served as Presiding Officer.

The Board convened the hearing and first determined that there were no conflicts of interest or bias on behalf of any Board member. The Board then took administrative notice of its statutes and Rules. State's exhibits 1-21 were admitted into the Record and the Board determined that service of the notice of hearing had been duly perfected at least by First Class mail on or about December 6, 2011. Subsequent to the State's opening statement, the taking of testimony, admission of exhibits, and the State's closing argument, the Board deliberated and made the following conclusions of law, and findings of fact by a preponderance of the credible evidence.

II. FINDINGS OF FACT

1. On or about November 4, 2009, the Board received Dr. Wesley McEldoon's application for a Maine emergency medical license. On that application, Dr. McEldoon executed an affidavit in

which he affirmatively stated in writing that “I will file a completed application for a permanent Maine [medical] license within 14 days of having been issued an emergency license.”

2. On November 16, 2009, relying upon Dr. McEldoon’s affirmation, the Board staff issued him an emergency medical license that allowed Dr. McEldoon to practice medicine in the State of Maine. The license expired on February 24, 2010.

3. Board staff contacted Dr. McEldoon via e-mail on November 3, 2010 to notify him that no permanent Maine medical license application had been received. The e-mail further stated that if he did not respond by November 30, 2010, the matter would be referred to the Board for review.

4. The Board reviewed the matter at their meeting on February 8, 2011 and voted to issue a complaint against Wesley McEldoon, M.D. alleging unprofessional conduct and fraud or deceit in obtaining the emergency medical license based on his failure to complete the process for a permanent Maine medical license as he represented he would.

5. A notice of complaint was sent to the Respondent’s contact address via certified mail, return receipt requested, on March 15, 2011. The notice was returned to the Board on April 14, 2011.

6. A notice of complaint was sent to Respondent McEldoon’s contact address via certified mail, return receipt requested, on May 4, 2011. The notice was returned to the Board on June 13, 2011 marked “unclaimed”.

7. A notice of complaint was sent to Respondent McEldoon’s contact address via first class mail on June 28, 2011.

8. An e-mail was also sent to Dr. McEldoon on June 28, 2011 informing him that the Board was attempting to contact him via certified letters to his home and requesting that he contact the Board.

9. Dr. McEldoon finally contacted Board staff on June 28, 2011 and requested that a copy of the complaint be sent to him via e-mail. His request was complied with that day. At the same time, a request was made of him to respond in writing to the complaint within thirty (30) days.

10. Board staff contacted Dr. McEldoon via e-mail on July 29, 2011 to check on the status of his response to the complaint. Dr. McEldoon responded via e-mail that day and indicated that he no longer wished to have a Maine medical license. Board staff responded to his e-mail and indicated that a response to the complaint was still required. Board staff received no response from Dr. McEldoon.

11. Randal C. Manning, Executive Director of the Maine Board of Licensure in Medicine, contacted Respondent McEldoon via e-mail on August 3, 2011 and explained possible action that the Board might take if he did not respond to the complaint. Mr. Manning informed the Respondent that the matter would be presented to the Board at their September meeting and requested that he respond no later than August 12, 2011. Mr. Manning added: "The emergency license was granted. Even if the physician no longer works in this state, Board laws and rules are taken seriously, and the obligation of the Board to fully verify credentials is clear. Your choice not to return to Maine does not satisfy the attestation." Mr. Manning further informed Dr. McEldoon that "a Board finding of discipline always has profound and extremely long lasting ramifications on the licensee."

12. To date the Board has not received a response to the complaint.

III. CONCLUSIONS OF LAW

The Board, by the vote of 8-0, concluded as a result of the above factual findings that Dr. Wesley McEldoon violated the following two Board statutes.

A. Dr. McEldoon engaged in unprofessional conduct in violation of 32 M.R.S. § 3282-A(2)(F) by violating a standard of professional behavior that has been established in the practice for which the licensee is licensed.

B. Dr. McEldoon engaged in the practice of fraud or deceit in obtaining a license under this chapter or in connection with services rendered within the scope of the license issued in violation of 32 M.R.S. §3282-A(2)(A).

IV.

SANCTIONS

Based on the above evidence and other evidence found in the record but not alluded to herein, and having considered that the Board's sole purpose is to protect the public health and welfare, the Board voted 8-0:¹


1. To **REPRIMAND** Wesley A. McEldoon, M.D.

2. To require Dr. McEldoon to **pay a fine** of fifteen hundred dollars (\$1500.00) prior to May 15, 2012 per each of the above two violations for a **total of three thousand dollars**. Payment shall be by certified check or money order made payable to: "Treasurer, State of Maine" and remitted to Randal C. Manning, Executive Director, 137 State House Station, Augusta, Maine. 04333-0137.

3. To require Dr. McEldoon to reimburse the Board by May 15, 2012 for the costs of the hearing and also the hearing record and transcription costs in the event of an appeal by him. The costs will be attached to this decision. 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. Additionally, this proceeding could most probably been avoided if the Respondent had responded and made a serious attempt at resolving the issues.

¹ "The sole purpose of an occupational and professional regulatory board is to protect the public health and welfare. A board carries out this purpose by ensuring that the public is served by competent and honest practitioners and by establishing minimum standards of proficiency in the regulated professions by examining, licensing, regulating and disciplining practitioners of those regulated professions. Other goals or objectives may not supersede this purpose."

Dated: February 14, 2012



Gary R. Hatfield, M.D., Chairman
Maine Board of Licensure in Medicine

V.

APPEAL RIGHTS

Pursuant to the provisions of 5 M.R.S. § 10051.3 and 10 M.R.S. § 8003 (5)(G) and (5-A), 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.

MAINE BOARD OF LICENSURE IN MEDICINE
 COSTS OF INVESTIGATION AND ENFORCEMENT

CR:2011-61

Wesley McElidoon, M.D.

prepared

15-Feb-12 update

STAFF TIME				Hrs	Min	Rate	Amt	TOTAL
Consumer Assistant				0		\$35.00	\$0.00	
Investigator				0		\$27.00	\$0.00	
hearing Officer				5	0	\$115.00	\$575.00	\$575.00
OUTSIDE REVIEWS & EVALUATIONS								
3286 evaluation							\$0.00	
Expert Review							\$0.00	
Expert Witness							\$0.00	\$0.00
PUBLIC NOTICE								
Bangor Daily News				0		\$0.00	\$123.00	
Kennebec Journal				0		\$0.00	\$58.89	
Lewiston Sun Journal				0		\$0.00	\$21.52	
Portland Press Herald				0		\$0.00	\$70.88	\$274.29
SUPPLIES								
covers						\$3.00	\$0.00	
copies						\$0.25	\$0.00	
						\$0.25	\$0.00	
exhibits						\$0.25	\$0.00	
med record						\$0.25	\$0.00	\$0.00
HEARING RECORD								
recording fee				0		\$200.00	\$0.00	
transcription (estimated)						\$6.25	\$0.00	
						\$0.25	\$0.00	\$0.00
GRAND TOTAL							\$849.29	