# MAINE STATE BOARD OF LICENSURE IN MEDICINE

IN RE: Licensure Disciplinary Action )
) DECISION AND ORDER
Jenie M. Smith, M.D. )

## I. PROCEDURAL HISTORY

Pursuant to the authority found in 32 M.R.S.A. Sec. 3263, et seq., 5 M.R.S.A. Sec. 9051, et seq. and 10 M.R.S.A. 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 April 12, 2005. The purpose of the hearing was two fold: first, to decide whether Dr. Smith engaged in unprofessional conduct based on her actions which led to her arrest for operating a motor vehicle while under the influence of alcohol and her subsequent unwillingness to participate in a Board sponsored recovery program. Second, whether Dr. Smith engaged in habitual substance or alcohol abuse that has resulted or is foreseeably likely to result in her performing services in a manner that endangers the health or safety of patients.

A quorum of the Board was in attendance during all stages of the proceedings. Participating and voting Board members were Edward David, M.D., J.D., Chairman, Bettsanne Holmes (public member), David Nyberg, Ph. D., (public member), Kimberly K. Gooch, M.D., Sheridan R. Oldham, M.D., George Dreher, M.D., and Cheryl Clukey (public member). Ruth McNiff, Ass't. Attorney General, presented the State's case. Dr. Smith was present and represented by Ken Lehman, Esq. James E. Smith, Esq. served as Presiding Officer. There were no conflicts of interest found to disqualify any member of the Board from participating in this proceeding. The State's exhibits 1-10 and Respondent's A-E, G-J were admitted into the Record.

## II. FINDINGS OF FACT

Jenie M. Smith, M.D., 39 years of age, graduated from medical school and subsequently completed her internship in internal medicine. She earned the position of chief resident followed by two years as a nephrology fellow and then a two year stint in critical care. She moved to Maine and

was licensed to practice medicine in this State on August 25, 2000. Dr. Smith then began her employment as a nephrologist with Androscoggin Clinical Associates in the same year. This practice employs 6 physicians, 4 of whom are nephrologists who treat the practice's 1600 patients.

Dr. Smith serves as the medical director of the largest of the five dialysis clinics operated by Androscoggin Clinical Associates and is also in charge of quality review for the renal failure clinic. Additionally, Androscoggin Clinical Associates engages in a continuing quality improvement program with peer review. According to her fellow physicians, Dr. Smith is an excellent practitioner who is widely respected and appreciated by both her colleagues and patients. In that regard, there is no record before the Board of any concerns regarding quality of care issues as they pertain to Dr. Smith.

Despite the relatively close contact that physicians in this medical practice have with one another, Dr. Smith's drinking problem appears to have basically escaped notice until her arrest for OUI on March 18, 2003.[1] At the time of her arrest, Dr. Smith's medical practice was busy but satisfying as was her relationship with her peers. However, earlier in the month, her fiancé was diagnosed with poly-arthritis (now in remission) and needed almost total care. On March 18, Dr. Smith was taking Depakote and Effexor for her bipolar illness.[2] She also consumed an unknown quantity of wine before driving to meet her fiancé at approximately 10:00 p.m. when she drove her car into a snow bank. She denied to the police that she had consumed any alcohol that evening. The police administered a breath alcohol test which resulted in a .21% reading on the intoxilizer which is far in excess of the minimum standard of .08% which creates a presumption of operating under the influence of intoxicants.

Following her arrest, Dr. Smith promptly notified her peers at Androscoggin Clinical Associates. At least one partner stated that she had noticed episodes of what she considered to be Dr. Smith's excessive drinking on some social occasions but that there was no noticeable effect on her practice of medicine. The group was supportive of the Respondent's plans to abstain and allowed her to remain in the practice with the understanding that they would not tolerate any repeat similar episodes.

On August 1, 2003, Dr. Smith filed her renewal application for licensure as a physician in Maine. She admitted that she had been convicted of OUI and attached a letter which explained her

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[1] According to the June 24, 2004 report of Dr. George Nowak, psychiatrist, Dr. Smith felt that she "crossed the line into addictive drinking in 1999."

[2] Dr. Smith's bipolar illness has had no demonstrable negative effect on her competency to diagnose and treat patients.

version of the events of March 18. In that letter, she admitted having consumed wine with her dinner. Subsequently, she admitted to Dr. David Simmons, Clinical Director of the Maine Physician Health Program (PHP), that she had 2 glasses of wine at around 7:00 p.m. on March 18. The Board reviewed the application and responded to her in a letter dated September 23, 2003. In that correspondence, the Board, among other things, stated that:

"The Board strongly supports the current Physician Health Program managed by David Simmons, M.D. to help evaluate and provide support, when appropriate, to health professionals. Please contact Dr. Simmons at …to schedule an evaluation. Dr. Simmons will provide his report directly to the Board. The Board urges you to work closely with him."

The Board placed the application for renewal on pending status and kept Dr. Smith's license in active status allowing her to continue her practice.

Dr. Smith apparently maintained sobriety after her arrest for the next several months. However, she continued to drink alcohol in November and December 2003, which drinking escalated to the point of a bottle of wine several times per week. Her husband threatened to leave her if she did not stop abusing alcohol and on December 23, 2003, arrived home and found her to be intoxicated. The next day, she continued her drinking and, according to the report of Dr. Nowak, "became overwhelmed with feelings of depression and tearfulness. She broke down and decided that she needed help." At the hearing in this matter, Dr. Smith admitted that she is an alcoholic and has not had an alcoholic beverage since the end of December 2003.

On January 12, 2004, the Board received a letter from Dr. Simmons. Dr. Simmons wrote that he had interviewed Dr. Smith on November 10, 2003 and that she had elected not to enroll in the PHP since she was under the care of a psychiatrist and had established her own program of abstinence and counseling. This physician further stated that he would continue to be in contact with Dr. Smith and "make the resources of the program available to her on a voluntary basis." Dr. Simmons clarified some statements in this letter by sending another one to the Board dated January 21, 2004 with a copy to Dr. Smith. Dr. Simmons made clear that he had recommended enrollment in the PHP to Dr. Smith and that she had decided that she "was not comfortable with the terms of enrollment" and had elected to design her own program of counseling and abstinence.

Dr. Smith did not respond to the Board's September 23 letter until January 25, 2004. In her letter, she noted that she had "avoided the use of alcohol altogether," and had substituted a different and more effective medication for the Depakote. She stated that she was continuing to be treated by her psychiatrist on a regular basis and was also "seeing a clinical social worker licensed in drug and alcohol therapy…once or twice a week and are most helpful." She had also completed the Secretary of State's Drug Evaluation and Education Program which she found useful and helpful. The Respondent further wrote that she had "crafted an 'alternative sentence'" for her OUI convictions. She planned to make formal presentations to "white-collar" professionals in her community regarding her experience and missteps with alcohol and the importance of avoiding any use at all given the pressures of the profession. Additionally, Dr. Smith had met with Dr. Simmons and made efforts to communicate with him at least once per week. However, she had not been formally evaluated by Dr. Simmons and requested that the Board allow her to proceed with her own treatment program for a minimum of six months with a reassessment at that time. She further stated that: "Rather than forced enrollment in the PHP I wish to continue proceeding with a treatment program which involves one-on-one interaction, in company with my husband, with a clinical therapist trained in drug and alcohol work."

The Board responded to Dr. Smith's letter with one dated February 12 and received by her on February 17, 2004. That letter outlined the Board's decision to file a complaint against her for failure to follow the Board's request for enrollment in a Board sponsored recovery program for alcoholics. Dr. Smith then enrolled in the Maine Physician Health Program on March 8, 2004 and signed the required 5-year contract with the PHP. As of July 1, 2004, Dr. Simmons of the PHP wrote to the Board that Dr. Smith was in good standing with the program including abstinence from drugs and alcohol, random urine toxicology monitoring, and ongoing counseling. He further stated his opinion that Dr. Smith was fit for duty as a practicing nephrologist.

On June 4, 2004, Dr. Smith participated in psychological testing administered by Harry Tracy, Ph. D. The tests resulted in several recommendations, among them being that "[g]iven her attachment and dependency issues, **working in a supportive group of professional peers might be useful**. Her marked reluctance needs to be better understood, by her and those working with her in treatment/assessment." (emphasis added)

On June 24, 2004, Dr. Smith participated in an addiction and psychiatric evaluation by Dr. George Nowak. Dr. Nowak voiced his opinion that "Overall, I see Dr. Smith as highly motivated,

and she has started a wonderful recovery program. **She needs to be more active with other physicians in the Caduceus meetings, and AA meetings, to round out her program**...Overall, I expect her chances of recovery to be excellent." (emphasis added)

Dr. Smith testified that she would have signed a contract with PHP had she known that her refusal to sign would result in possible disciplinary action. However, she would have and does object to participating in group self-help meetings such as Alcoholics Anonymous (AA) or those of impaired professionals which are required by the Board in virtually all cases of alcohol abuse. Dr. Smith's objections regarding attendance at AA meetings, which she has never attended, mostly center on surrendering oneself to a higher power and AA's reference to God as a part of its 12 step program. She doesn't believe that she is powerless and, in fact, exerted her power to devise a treatment program which she hoped will enable her to maintain sobriety.

A Board approved alternative to AA is the Caduceus program which is a 12 step based fellowship program that is much less religion based and is restricted to members of the medical profession. Dr. Simmons stated that AA is the most effective tool in treating alcoholism but that its program and 1-1/2 hour meetings don't work for everyone. Although both programs are recognized as important tools for alcoholics to utilize in maintaining sobriety, the PHP does not have the power to order an individual to join either or both. Dr. Simmons testified that he has reviewed numerous consent agreements from the Board regarding health professionals who have abused alcohol, and all have required participation in AA or an acceptable alternative. He further stated that 85% of the PHP participants have achieved more than 5 years of sobriety but that that percentage of success would have been difficult to achieve without participation in the AA or Caduceus programs.

Dr. Simmons further testified that he accepted Dr. Smith's choice to participate in the Women For Sobriety, Inc.'s internet program as an alternative to AA or Caduceus even though he was not that familiar with the program. His acceptance was primarily based on Dr. Smith's success to date in maintaining sobriety, her negative urine monitoring, and her continuing active participation in counseling and sessions with her psychiatrist. However, Dr. Simmons recognized that one year was only a good first step to maintaining sobriety.

Dr. Smith also began treating in late December 2003, with Marilyn Maher, a licensed clinical social worker and alcohol and substance abuse counselor. Dr. Smith's counseling has been consistent on a weekly basis and Ms. Maher feels as though Dr. Smith's treatment plan has been

extremely effective. Although this counselor supports AA as a treatment modality, she also approves of Women For Sobriety. She was, however, unaware of the chatrooms utilized by Women For Sobriety and acknowledged that group work is an important component in the treatment of alcoholics. This counselor also testified that she is currently signing up a four woman group of recovering alcoholics which includes the Respondent. The first session is scheduled for April 23, 2005.

James Fine, M.D., is a psychiatrist who specializes in substance abuse evaluation and treatment. He disagreed with many of the findings in Dr. Nowak's and psychologist Tracy's reports. Additionally, although he has referred thousands of individuals to AA, he stated that "[c]oerced attendance at AA would negatively impact Dr. Smith's current high level of function and solid recovery." Dr. Fine's report dated April 11, 2005 also cited support for other self-help groups which have been "demonstrated to enhance outcomes" in the treatment of alcoholics. Dr. Fine voiced his approval of Dr. Smith's choice of Women For Sobriety. However, he further testified that **she should attend live group therapy**.

Dr. Smith included Women For Sobriety, Inc. in her treatment program after September 2004 for several reasons. First, she has access to the program at any time over the internet. Many of its members are professional women who live in rural areas of this country and the world. She receives approximately 300 e-mails a day sent en masse and responds to some on a regular basis. Second, fixed topics are discussed in controlled groups with the number of participants limited. These chatrooms are either 30 minutes or one hour in duration. A member is locked out of the chatroom if she does not participate and phone numbers may be shared with the consent of the requesting members. Third, Women For Sobriety also posts a variety of educational material for its members, and Dr. Smith attributed the rediscovery of her creative side to participation in one of the offered programs. Fourth, the program uses non-religious based statements as opposed to religious based steps.

Dr. Smith plans to continue her treatment and therapy with her current providers and is aware of the possibility that she may suffer a relapse in her efforts to maintain sobriety. She is participating in weekly urine monitoring and agreed that failure to participate with the PHP program would result in Board disciplinary action. She remains opposed to AA and continues to object to participation in Caduceus as she wants non-physician alcoholics as her peer group although recognizes that physicians' coping methods may be of some value. Her fellow

nephrologists and a cardiologist testified that they had an increased awareness of her problem with alcohol and would report Dr. Smith to the Board and relevant others if they had any suspicions of her consuming alcohol. However, they also admitted that they did not recognize the extent of Dr. Smith's drinking either prior to her arrest in March of 2003 or subsequent thereto in November and December of that year.

## IV. CONCLUSIONS OF LAW

The relevant statutes in this matter contain the following language as grounds for disciplinary action:

1. 32 M.R.S.A. Sec. 3282-A(2)(F) – "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."

2. 32 M.R.S.A. Sec. 3282-A(2)(B) – "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, by a vote of 7-0, based on the above findings and applying its training and experience, concluded that Jenie M. Smith, M.D. violated 32 M.R.S.A. Sec. 3282-A(2)(F) in two ways. First, she engaged in unprofessional conduct based on her actions which led to her arrest for operating a motor vehicle while under the influence of alcohol. Second, she subsequently was unwilling to participate in a Board sponsored recovery program which required personal attendance at a recognized self-help group. Operating an automobile while under the influence can result in serious bodily injury and damage to property. Practicing medicine while under the influence can have disastrous consequences as well. Without participation in a treatment program which has met the test of time, injury or damage may occur to the public due to ineffective treatment modalities. At some time in the future, perhaps Women For Sobriety will be accepted by the Board as an addition to its list of accepted self-help programs, but, for the time being, it is flawed by not affording in person group meetings.

Additionally, the Board, by the identical vote, and based on the above findings, concluded that Jenie M. Smith, M.D. violated 32 M.R.S.A. Sec. 3282-A(2)(B) by habitual alcohol abuse which, if recurrent, is foreseeably likely to result in her performing services in a manner that

endangers the health or safety of patients. Although there is no proof that this danger is present, it is always foreseeable as there is no known permanent cure for alcoholism, and relapse occurs in approximately 15% of physicians even after attending approved programs for at least 5 years.

Preliminarily, the Board agrees that Dr. Smith's attendance at AA would most likely not benefit her. However, although the treatment plan authored by Dr. Smith may suit her needs, it does not address the needs of the Board whose primary charge is to protect the public. While it is acknowledged that she possesses exceptional skills as a nephrologist and critical care physician, Dr. Smith also displayed a talent and skill for hiding her addiction from alcohol from those who worked most closely with her. Moreover, she most likely would not have voluntarily signed the PHP contract and received urine monitoring if not for the Board's filing of the subject complaint.

Dr. Smith's attempt to fully control her treatment was demonstrated by her refusal to attend in person group meetings of a physician alcoholics group. This was due, in part, to her opposition to surrendering to a higher power. She disregards the fact that there are several self-help groups that are not religion based and refused to even attend Caduceus to ascertain its usefulness as part of her treatment program. The Board, in its decisions and consent agreements regarding alcoholic physicians, has uniformly required attendance at either AA or Caduceus. Previous agreements allowing for self-designed programs have not met with success.

The Board specifically agrees with the report of Dr. Nowak that regular attendance by Dr. Smith at a group of her peers such as Caduceus would benefit both her and the public. Dr. Fine also recommended that Dr. Smith attend in person a self-help group in addition to Women For Sobriety. A benefit of Caduceus is that Dr. Smith's peers are used to the unique pressures of her profession and also the various defenses that medical professionals may employ to deflect attention if they fail to maintain sobriety.

The Board further concludes that non-punitive disciplinary action in this matter is appropriate and necessary to construct a record of the above violations. Without such a record, Dr. Smith could leave the State of Maine and practice in other states without disclosing her history of alcoholism.

## V. ORDER

The Board, by a vote of 7-0, orders that:

1. Dr. Smith enter into a contract with the Physicians' Health Plan for a period of 5 years beginning May 10, 2005. She shall agree to weekly urine monitoring for a period of one year after which she may petition the Board for lesser monitoring.
2. Dr. Smith shall attend at least 2 Caduceus meetings per month for one year. She may petition the Board after 6 months to reduce or terminate this requirement.
3. Dr. Smith shall continue her current treatment with her current providers including her psychiatrist, Marilyn Maher, L.C.S.W., L.A.D.C. and the group proposed by Ms. Maher.
4. ABSTINENCE. Dr. Smith shall henceforth completely abstain from the use of any and all Prohibited Substances. "Prohibited Substances" as used throughout this Decision and Order shall mean: opiates; alcohol; cocaine; fentanyl; mood, consciousness or mind-altering substances, whether illicit or not; and all drugs which are dispensed to or prescribed for the Licensee by anyone other than a treating physician knowledgeable of the Licensee's history of alcohol abuse, unless the circumstances constitute a genuine medical or surgical emergency.

A. Prescription Medication. If any controlled drug is dispensed or prescribed for the Licensee for a personal medical condition, the Licensee or the Supervising Physician shall notify the Board by telephone and in writing within 48 hours or as soon thereafter as possible. This notice shall be followed by a written summary of all pertinent circumstances. The Board shall be apprised every five days of all continuing pertinent circumstances regarding continued use of the controlled drug, and a written report thereof shall be submitted to the Board for every five days that the use of the controlled drug continues after the initial 48-hour report.

B. Future Use of Prohibited Substances May Result in Loss of Licensure. The Licensee understands that any reliable evidence of use at any time in the future, whether in Maine or elsewhere, of any Prohibited Substance shall constitute a violation of this Decision and Order, which SHALL RESULT IN THE IMMEDIATE, AUTOMATIC SUSPENSION OF LICENSURE, AND PROOF OF USE MAY RESULT IN REVOCATION/NON-RENEWAL OF LICENSURE.

5. SANCTION FOR VIOLATION OF LICENSE CONDITIONS.

A. Automatic Suspension. Any reliable oral or written report to the Board of violation of these License Conditions shall result in the immediate, indefinite, and automatic suspension of the Licensee's license. The automatic suspension of the Licensee's license shall become effective at the time the Licensee receives actual notice from the Board that a report of violation has been made. Actual notice may be provided by telephone, in person, in writing, by another means or any combination of the above-referenced means. The automatic suspension shall continue until the Board holds a hearing on the matter within 30 days or otherwise as the law may require, unless the Board earlier determines that the report is without merit or decides that no further sanction is warranted.

B. The Board may impose such other discipline, including without limitation, fines, further suspension, probation, non-renewal or revocation, as the Board after hearing deems appropriate.

6. SUBSTANCE MONITORING. The Licensee's monitoring shall be through urinalysis testing and/or blood testing, and any other reliable method which may later be developed and approved by the Board and the Board and the Maine Department of Attorney General will have full access to all test data and reports. Reasonable changes in testing to more reliable methods of detection of usage may be proposed by the Licensee or the Board and changes shall be made in the Board's discretion, with or without a hearing. It is the Licensee's obligation to ensure that the plan for testing, as stated herein, is complied with in full.

A. Process. All urine and/or blood samples shall be handled through legal chain of custody methods. All samples provided shall be analyzed by a certified laboratory, which regularly handles drug monitoring tests. The Board must approve any changes.

B. Frequency of Urine Testing. It is the Licensee's obligation to ensure that all the samples are given and tests occur as specified in this Decision and Order. Samples are to be randomly scheduled. The Board may request a sample at any time. Failure to maintain this schedule or the random nature of the tests may be cause for suspension, non-renewal or revocation of the

Licensee's license, unless proof of genuine emergent medical circumstances (for the Licensee or a patient) exist which warrant less serious disciplinary actions being taken by the Board.

1. For a period of one (1) year from the signing of this Decision and Order urine samples shall be provided once a week.

2. For the second year of monitoring, urine samples will be provided twice a month.

3. For the remainder of the term of this agreement, urine samples will be provided once a month. The frequency of urine testing shall continue as outlined herein even while the Licensee is on vacation or on a leave of absence. She shall be responsible for making arrangements to ensure that the testing is carried out with the frequency and standards outlined in this Decision and Order.

C. Reporting Test Results. It is the Licensee's responsibility to ensure that all test results are reported promptly to the Board.

1. Immediate Report of Positive Test Results. Any test result evidencing any level of a Prohibited Substance, whether by urine or other sample, shall be reported to the Board by telephone and in writing within 24 hours or as soon thereafter as possible.

2. Reporting Negative Test Results. Written reports of all tests shall be sent to the Board monthly, together with an explanation of the dates and times samples were provided and tests made, the type(s) of tests made, and the substances tested for (together with detectable levels tested for), and the test results. The Licensee shall ensure that all reports are made to the Board in a timely fashion.

D. Immediate, Indefinite, Automatic Suspension for Positive Test. If any urine or blood test is positive (i.e., in any manner evidences any use of any Prohibited Substance), then the result shall be the immediate, automatic suspension of the Licensee's license, which shall continue until the Board holds a hearing on the matter within 30 days, or otherwise as the law may require, unless the

Board, or the Board Secretary and the Department of Attorney General, earlier determine that the report is without merit. The suspension shall begin the moment the Licensee first learns of a positive test or report of a positive test to the Board, whether from the Supervising Physician or the Licensee's designee, from the Board or from any other source in writing, orally or by any other means. This shall include non-confirmed, positive tests.

E. Board Hearing to Determine if Licensee Used Any Prohibited Substance. After receiving a positive report evidencing use by the Licensee of any Prohibited Substance, the Board shall investigate the situation, including demanding a response from the Licensee. The Board shall hold a hearing within 30 days of the automatic suspension or otherwise as the law may require, (unless both the Licensee and the Board agree to hold the hearing later) and it shall be held pursuant to the Maine Administrative Procedure Act.

F. Failure to Maintain Sampling Schedule or Failure to Appear or to Provide Sample. Failure by the Licensee to maintain the sampling schedule; to appear when demanded to provide a sample; or to provide samples upon being demanded to do so shall be dealt with as follows:

1. Failure to Maintain Sampling Schedule. It is the Licensee's responsibility to ensure that both the schedule for sampling and the random sampling required are maintained.

a. Report. If the scheduled samples or the random samples are not drawn as required, then the Monitoring Physician and the Licensee (and any other person knowledgeable of such failure) must telephone the Board as soon as possible and send to the Board a written report of such failure within 48 hours.

b. Suspension. An immediate suspension of licensure shall result from any failure by the Licensee to comply with the mandated schedule of samples or if the random samples are not provided as required. The suspension shall begin the moment the Licensee actually learns a report has been made or sent to the Board.

c. Meeting with Board. Both the Licensee and the Monitoring Physician (and the responsible designee, if any) shall appear before the Board regarding this situation at its next regularly scheduled Board meeting, unless the next meeting is to be held within 15 days of the suspension, in which case they may be scheduled to appear at the subsequent regularly scheduled Board meeting if the law permits.

d. Board Action. The Board may order the Licensee's license reinstated or, if appropriate, may continue the suspension and may set the matter for hearing. The Board shall hold a hearing within 30 days of the automatic suspension, or as soon thereafter as the law may require, at which time it may take such action as it deems appropriate, including without limitation, reinstatement, fines, probation, suspension, non-renewal and revocation.

2. Failure to Appear.

a. Report and Meeting with Board. The Licensee and the Monitoring Physician (and the responsible designee, if any) must telephone the board as soon as possible and send to the board a written report of such occurrence within 48 hours, and both the Licensee and the Monitoring Physician shall appear before the Board, regarding any failure to appear when demanded to provide a sample, at the next regularly scheduled Board meeting, unless the next meeting is to be held within 15 days of the report, in which case they may be scheduled to appear at the subsequent regularly scheduled Board meeting if the law permits.

b. Suspension. An immediate 30 day suspension of licensure shall result from any failure by the Licensee to appear for a scheduled or randomly ordered test, unless the Licensee and the Supervising Physician present the failure as having been caused by a genuinely emergent circumstance beyond the Licensee's control, as long as the Licensee appeared within six hours of the resolution of the emergency. Except in this instance, the suspension shall begin the moment the Licensee actually learns a report has been made or sent to the Board.

c. Board Action. The Board may order the Licensee's license reinstated or, if appropriate, may continue the suspension and set the matter for hearing. The Board shall hold a

hearing within 30 days of the automatic suspension, or as soon thereafter as the law may require, at which time it may take such action as it deems appropriate, including without limitation reinstatement, fines, probation, suspension, non-renewal and revocation.

3. Failure to Provide Sample.

a. Report and Meeting with Board. The Licensee and the Monitoring Physician (and the responsible designee, if any) shall telephone the Board as soon as possible and send to the Board a written report of any occurrence regarding failure or refusal to provide a sample within 48 hours, and both the Licensee and the Monitoring Physician shall appear before the Board at the next regularly scheduled Board meeting, unless the next meeting is to be held within 15 days of the report, in which case they may be scheduled to appear at the subsequent regularly scheduled Board meeting.

b. Second Opportunity to Provide Urine Sample. If the Licensee appears when scheduled or ordered, but fails to provide an adequate sample, then with regard to urine, after accurate notation of any and all substances consumed (no substance shall be consumed which might affect the accuracy of the tests to be performed), a second opportunity to provide a urine sample shall be given after a reasonable time, not to exceed two hours. A repeat failure or any refusal shall result in an immediate, indefinite suspension of licensure. The suspension shall begin the moment of the occurrence.

c. Board Action. The Board may order the Licensee's license reinstated, or, if appropriate, may continue the suspension and set the matter for hearing. The Board shall attempt to hold a hearing within 30 days of the automatic suspension, or as soon thereafter as the law may require, at which time it may take such action as it deems appropriate, including without limitation reinstatement, fines, probation, suspension, non-renewal and revocation.

4. Reports of Attendance. The Licensee shall submit a signed, written quarterly report of the Licensee's attendance at Caduceus and the Maher group meetings to the Board beginning three months after the signing of this Decision and Order. Any instances of failure to

attend the required numbers of meetings shall be noted, together with a specific explanation detailing reasons.

A. Failure to Meet This Requirement. It is the parties' understanding that, periodically, reasonable explanations may exist for occasionally missing a meeting. However, unexcused continuous, or repeated failures to comply with the requirements of this section of the Decision and Order shall constitute a violation of the same which, after hearing before the Board, can result in licensure discipline, including without limitation a fine, suspension, non-renewal, probation or revocation of the Licensee's license.

7. MAINTENANCE OF OBLIGATIONS WHEN AWAY FROM MAINE OR HOME. The Licensee agrees to maintain her obligations regarding substance monitoring and self-help group meetings at all times. The Licensee will notify the Director of the Physician's Health Program sufficiently in advance of travel to make whatever arrangements the Director deems appropriate for monitoring before she leaves. It shall be the Licensee's obligation to ensure that arrangements are made consistent with this Decision and Order in such other location(s) to ensure the continuation and satisfaction of the Licensee's obligations under this Decision and Order. Any such occurrences shall be noted in writing sent to the Board explaining the arrangements made and how the arrangements were carried out.

Failure to meet the conditions outside of Maine shall be dealt with in the same manner as failure otherwise to maintain the obligations of this Decision and Order.

8. INVOLVEMENT IN THE MAINE COMMITTEE ON PHYSICIANS' HEALTH. The Licensee shall continue her contractual involvement with the Maine Committee on Physicians' Health as long as this Decision and Order remains in force. The Licensee is encouraged to actively participate in the Committee's program.

9. MAINTENANCE OF LICENSE. The Licensee shall be required to maintain her Maine license to practice medicine for as long as this Agreement is in effect. In the event that the Licensee applies

for licensure in other jurisdictions during the pendancy of this Decision and Order, the Licensee shall notify said jurisdiction of the existence of this Agreement.

10. NOTICE TO THE BOARD

A. Address Change. If the Licensee changes jobs, moves her residence or practice, changes telephone numbers at work or at home, or secures privileges at a hospital, the Licensee shall provide notice to the Board.

B. Costs. All costs incurred in performance of this Decision and Order shall be borne by the Licensee.

C. Hearings. Unless otherwise specified, hearings shall be held consistent with the Maine Administrative Procedure Act.

**SO ORDERED.**

Dated: May 10, 2005

Edward David, J.D., M.D. Chairman
Maine Board of Licensure in Medicine

## VI. 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.