

STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

In re Marc J. Gorayeb, M.D.)
)
Appeal of Preliminary Denial)
of Application for Renewal of)
Licensure)

DECISION AND ORDER

I. PROCEDURAL HISTORY

Pursuant to the authority found in 10 M.R.S. Section 8003(5) and 32 M.R.S. Sections 3269 and 3282-A, the Maine Board of Licensure in Medicine (“Board”) met in public session at its offices in Augusta, Maine, on May 14, 2019. The purpose of the meeting was to determine whether to affirm the preliminary denial of the application for renewal of licensure of Marc Gorayeb, M.D. (“Licensee”).

On April 12, 2018, the Licensee applied for renewal of licensure as an active medical doctor. On May 29, 2018, the Board issued a preliminary denial of the Licensee’s renewal application. On March 6, 2019, a Notice of Adjudicatory Hearing was issued setting the hearing in this matter for April 9, 2019. A Scheduling Order was issued on March 10, 2019. On March 18, 2019, a telephonic prehearing conference was convened. On March 19, 2019, a Conference Order was issued setting deadlines for the submission of witness lists and exhibits. In the Conference Order, the Licensee’s request to continue the hearing date was granted over the State’s objection. On March 20, 2019, a Notice of Continued Adjudicatory Hearing was issued rescheduling the hearing for May 14, 2019.

On May 5, 2019, an Evidentiary Order was issued addressing the State’s objections to the Licensee’s witnesses and exhibits. On May 9, 2019, an Order on Motions was issued resolving several prehearing motions filed by the Licensee.

The Licensee bore the burden to prove by a preponderance of the evidence that he met the continuing clinical competency requirement for renewal of licensure although the State bore the burden to prove by a preponderance of the evidence the alleged violations of Board statutes that could form the basis of denial of renewal of licensure or of discipline.

A quorum of the Board was in attendance during all stages of the proceedings. Participating and voting Board members were Louisa Barnhart, M.D.; Susan Dench, Public Member; Timothy Fox, M.D.; Peter Sacchetti, M.D.; Brad E. Waddell, M.D.; Lynn M. Weinstein, Public Member; Miriam Wetzel, Ph.D., Public Member; and Maroulla Gleaton, M.D., Chair. The Licensee was present at the hearing and represented himself. Michael Miller, Esq., Assistant Attorney General, represented the State of Maine. Rebekah Smith, Esq., served as Hearing Officer. The hearing was held in accordance with the requirements of the Maine Administrative Procedure Act, 5 M.R.S. Section 9051 to Section 9064.

State Exhibits #1 to #15 and Licensee Exhibit #24 were admitted without objection. The admitted exhibits are identified as follows:

- State Exhibit #1: Notice of Continued Adjudicatory Hearing issued on March 20, 2019
- State Exhibit #2: ALMS License Information for Licensee
- State Exhibit #3: Licensee Application for Renewal of Licensure filed on April 12, 2018
- State Exhibit #4: Email from Board Staff to Licensee dated April 13, 2018
- State Exhibit #5: Memorandum from Board Staff to Licensure Committee and Board dated May 8, 2018
- State Exhibit #6: Email from Board Staff to Licensee dated May 9, 2018
- State Exhibit #7: Licensee Complaint and Request for Relief filed on May 17, 2018
- State Exhibit #8: Email from Board Staff to Licensee dated May 17, 2018
- State Exhibit #9: Preliminary Denial of License Renewal issued on May 29, 2018
- State Exhibit #10: Licensee Notice of Appeal filed on June 26, 2018
- State Exhibit #11: Board Rules Chapter 1
- State Exhibit #12: 10 M.R.S. § 8003
- State Exhibit #13: 32 M.R.S. § 3269
- State Exhibit #14: 32 M.R.S. § 3280-A
- State Exhibit #15: 32 M.R.S. § 3282-A
- Licensee Exhibit #1: Email generated from Maine.gov to Licensee dated March 1, 2018

The Board took notice of its statutes and rules and confirmed that no participating member had any conflict of interest or bias that would prevent him or her from rendering an impartial decision in this matter. The parties filed written opening statements that were provided to the Board in advance of hearing. The State presented the Licensee as a witness. The Licensee presented the following witnesses: Nikolette Alexander, Investigative Secretary for the Board; Tracy Morrison, Licensure Specialist for the Board; and Dennis Smith, Esq., Executive Director of the Board. Each party made a closing argument. The Board then deliberated and made the following findings of fact and conclusions of law by a preponderance of the credible evidence regarding the allegations against the Licensee and his eligibility for renewal of licensure.

II. FINDINGS OF FACTS

The Licensee received a degree in medicine from McGill University in 1981. (Testimony of Licensee.) He subsequently practiced medicine in various hospitals full-time until 2002, when he began to attend law school. (Testimony of Licensee.) The Licensee continued to practice medicine part-time while he attended law school, from which he graduated in 2005. (Testimony of Licensee.) The Licensee then spent three years practicing law during which he did not practice medicine. (Testimony of Licensee.) Beginning in 2008, the Licensee went to work as a patent attorney for a medical device company, Deka Research and Development in Manchester, New Hampshire, where he remains employed. (Testimony of Licensee.) During the first few years that he worked for Deka Research and Development, the Licensee resumed part-time emergency room practice on the weekends. (Testimony of Licensee.)

The Licensee was first licensed as a medical doctor in Maine in April 2010. (State Exh. #2.) His most recent license expired on April 30, 2018, although because he filed a timely renewal application his license has remained active pending the issuance of the Board's final decision on his application pursuant to 5 M.R.S. Section 10002. (State Exh. #2.) The Licensee has previously held

medical licenses in Louisiana, Colorado, Massachusetts, and Pennsylvania, all of which have expired. (State Exh. #3.) The Licensee currently holds a medical license in New Hampshire. (State Exh. #3; Testimony of Licensee.)

On April 12, 2018, the Licensee filed an application for renewal of his Maine medical license. (State Exh. #3.) The Licensee indicated that his specialty was emergency medicine and he was ABMS Board Member certified, although at hearing he acknowledged that this certification had expired in 2015 because he did not see enough patients to maintain the certification. (State Exh. #3; Testimony of Licensee.) The application stated as follows: "If an applicant has not engaged in the active practice of clinical medicine during the 24 months immediately preceding the filing of the application, the Board may determine on a case by case basis in its discretion whether the applicant has adequately demonstrated continued clinical competency to practice clinical medicine." (State Exh. #3.) The Licensee stated on the application that he had not practiced clinical medicine in the prior 24 months. (State Exh. #3.) The Licensee stated that he was not practicing medicine because he was the Medical Director at a medical device company. (State Exh. #3.) The Licensee described the company as an "engineering company that designs, builds and markets medical devices including hemodialysis and peritoneal dialysis systems, infusion devices, artificial pancreas devices, and tissue engineering devices." (State Exh. #3.) At hearing, the Licensee testified that he gave himself the title of Medical Director because he is the only medical doctor who works there and he writes prescriptions for pharmaceuticals that are used in research, even though his official title at the company is Patent Attorney. (Testimony of Licensee.) The Licensee does not recall precisely when he ceased practicing part-time in emergency rooms and could not recall the last time that he saw a patient in a clinical setting. (Testimony of Licensee.) The Licensee does not hold staff privileges at any hospital or otherwise maintain any hospital affiliations. (Testimony of Licensee.)

On April 13, 2018, Board staff informed the Licensee via email that given his lack of recent clinical practice, he could renew his license on an inactive status or convert his license to an emeritus license. (State Exh. #4.) The Licensee then requested that the Board refund his license renewal fee because he had not realized he would not be eligible for an active license. (State Exh. #5.) On May 9, 2018, Board staff informed the Licensee via email that the Board had denied his request for a refund of the application fee and his application for an active license but offered the Licensee an administrative or emeritus license. (State Exh. #6.) The email informed the Licensee that if he did not choose either an administrative or emeritus license, his application for renewal of an active license would be denied. (State Exh. #6.) On May 17, 2018, the Licensee filed a written submission indicating that he rejected the offer of any license other than an active license, which Board staff acknowledged via email on the same day. (State Exhs. #7 & #8.)

On May 29, 2018, the Board issued a preliminary denial of the Licensee's application for renewal of his active medical license. (State Exh. #9.) The preliminary denial identified the reason for the denial as the Licensee's failure to demonstrate continued competency to practice clinical medicine and also cited the Board's statutory incompetence standards. (State Exh. #9.) The preliminary denial reiterated the Licensee's option to convert and renew his license to an emeritus or administrative license within 30 days. (State Exh. #9.) On June 26, 2018, the Licensee filed an appeal of the preliminary denial. (State Exh. #10.)

At hearing, the Licensee testified that he would not be willing to undertake the requirements indicated in the Board's reentry to practice guidelines, such as a special purpose examination, a mini residency, mentorship, or monitoring. (Testimony of Licensee.) The Licensee acknowledged that he had not engaged in clinical medical in the 24 months preceding his application and that he would not meet the requirements for reinstatement of licensure. (Testimony of Licensee.) The Licensee's annual salary is approximately \$130,000, potentially with additional bonuses.

(Testimony of Licensee.) The Licensee owns his home, three cars, and a boat, and he maintains retirement funds. (Testimony of Licensee.)

III. GOVERNING STATUTES AND RULES

1. The Board's sole purpose is to protect the public health and welfare. 10 M.R.S. § 8008.
2. The Board may refuse to renew a license or may impose discipline upon a licensee if the licensee exhibited incompetence by engaging in conduct that evidenced a lack of ability or fitness to discharge the duty owed by the licensee to a client or patient or the general public. 32 M.R.S. § 3282-A(2)(E)(1).
3. The Board may refuse to renew a license or may impose discipline upon a licensee if the licensee exhibited incompetence by engaging in conduct that evidenced a lack of knowledge or inability to apply principles or skills to carry out the practice for which the licensee is licensed. 32 M.R.S. § 3282-A(2)(E)(2).
4. The Board may refuse to renew a license or may impose discipline upon a licensee if the licensee violates a Board rule. 32 M.R.S. § 3282-A(2)(H).
5. The Board shall deny a license renewal application if the Board finds cause that may be considered grounds for refusal to renew the license pursuant to 32 M.R.S. Section 3282-A. 32 M.R.S. § 3280-A(2)(A).
6. A licensee seeking renewal of licensure must demonstrate continuing clinical competency. (02-373) Rules of Board of Licensure in Medicine ("Board Rules"), Chapter 1, § 8(3)(A)(4) & (9). If an applicant has not engaged in the active practice of clinical medicine during the 24 months immediately preceding the filing of the application, the Board may determine on a case by case basis in its discretion whether the applicant has adequately demonstrated continued competency to practice clinical medicine. Board Rules, Chapter 1, § 9(1)(A).

7. Where there is a finding of a violation, the Board may assess the licensee all or part of the actual expenses incurred by the Board for investigation and enforcement duties, including hourly costs of hearing officer services, costs associated with record retrieval, and the costs of transcribing or reproducing the administrative record. 10 M.R.S. § 8003-D.

IV. CONCLUSIONS OF LAW

The Board, considering the above facts and those alluded to in the record but not referred to herein and in light of its sole purpose of protecting the public health and welfare, concluded that it had jurisdiction over the Licensee and found as follows:

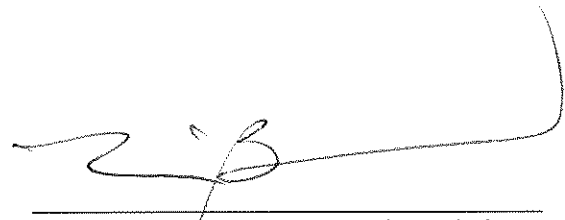
1. By unanimous vote, the Licensee did not exhibit incompetence by engaging in conduct that evidenced a lack of ability to discharge the duty owed by the licensee to a client, patient, or the general public, and as such he was not subject to discipline pursuant to 32 M.R.S. Section 3282-A(2)(E)(1).
2. By unanimous vote, the Licensee did not exhibit incompetence by engaging in conduct that evidenced a lack of knowledge and an inability to apply the principles or skills to carry out the practice of medicine, and as such he was not subject to discipline pursuant to 32 M.R.S. Section 3282-A(2)(E)(2).
3. By unanimous vote, the Licensee had not been engaged in active clinical medicine during the 24 months preceding his application and did not otherwise demonstrate continuing clinical competency as required for renewal of licensure pursuant to Board Rules Chapter 1, Sections 8(3)(A)(4) and 9, subjecting him to discipline pursuant to 32 M.R.S. Section 3282-A(2)(H). On this basis, by unanimous vote, the Board denied the Licensee's appeal from the preliminary denial of his application for renewal of licensure.
4. By a vote of five to three, given the Licensee's ability to pay the costs of hearing as evidenced by his testimony regarding financial resources, the Board imposed half of the

Board's total cost for hearing officer services in this matter. As such, the Licensee must submit \$1,672.50 within four months of the effective date of this Decision and Order.

Payment shall be remitted to the attention of Nikolette Alexander, Investigative Secretary, Maine Board of Licensure in Medicine, 137 State House Station, Augusta, Maine 04333-0137, by check or money order payable to the Treasurer, State of Maine.

The effective date of this Decision and Order is the date on which it is signed by the Board Acting Chair.

Dated: 6 - 11, 2019



Louisa Barnhart, M.D., Acting Chair
State of Maine Board of Licensure in Medicine

V. APPEAL RIGHTS

Pursuant to the provisions of 10 M.R.S. Section 8003(5) and 5 M.R.S. Section 11002(3), 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 State of Maine Board of Licensure in Medicine, all parties to the agency proceedings, and the Attorney General.