

STATE OF MAINE BOARD OF LICENSURE IN MEDICINE

In Re: Carl T. Folkemer, M.D.)
)
) DECISION AND ORDER
)
 Complaint CR 14-194 and Review of Application)
 for License Renewal)

I. PROCEDURAL HISTORY

Pursuant to the authority found in 5 M.R.S. §§ 9051 et seq., 10 M.R.S. § 8003(5), and 32 M.R.S. § 3282-A, the State of Maine Board of Licensure in Medicine (“Board”) met in public session at its offices in Augusta, Maine, on October 13, 2015. The purpose of the meeting was to conduct an adjudicatory hearing to determine whether grounds existed to impose discipline on the medical license of Carl T. Folkemer, M.D. (“Licensee”), and to determine whether his application for renewal of his medical license should be granted.

By letter dated September 8, 2015, the Licensee was notified of the date of the hearing. On September 14, 2015, following a prehearing conference, a Conference Order was issued setting deadlines for the submission of exhibits and witness lists.

A quorum of the Board was in attendance during all stages of the proceedings. Participating and voting Board members were Louisa Barnhart, M.D.; David H. Dumont, M.D.; David D. Jones, M.D.; David Nyberg, Ph.D., Public Member; Christopher R. Ross, P.A.-C; Peter J. Sacchetti, M.D.; Lynne Weinstein, Public Member; and Chair Maroulla Gleaton, M.D. Dr. Folkemer was present and represented himself. Robert Perkins, 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 Administrative Procedures Act, 5 M.R.S. §§ 9051 et seq.

Joint Exhibits #1 to #22 were admitted without objection. Joint Exhibits (“Jt. Exh.”) #3 and #9 are hereby marked as confidential due to the fact that they contain identifying patient information. 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. Each party presented an opening statement. The State presented the Licensee and Gage Blair, Compliance Analyst at the Maryland Board of Physicians, as witnesses. The Licensee presented Dr. Kunmi Majekodunmi, his former supervisor, as a witness. Ms. Blair and Dr. Majekodunmi testified by telephone. Each party made a closing statement. 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 Dr. Folkemer and his eligibility for renewal of his license.

II. FINDINGS OF FACTS

1. The Licensee entered into a Consent Order with the Maryland Board of Physicians (“Maryland Board”) in February 2000 after the Board found as a matter of law that the Licensee had violated the terms and conditions of a May 27, 1998, Corrective Action Agreement and had failed to meet appropriate standards for delivery of quality medical and surgical care in violation of the Maryland Health Occupations Code. (Jt. Exh. #2.)
2. The Licensee was granted a Maine license on March 10, 2010.
3. On November 18, 2010, the Maryland Board issued a Consent Order in which it concluded that the Licensee had failed to meet appropriate standards for the delivery of quality medical care and failed to keep adequate medical records with regard to several patients in violation of the Maryland Health Occupations Code. (Jt. Exh. #2.) The Maryland Board suspended the Licensee’s license for a minimum period of one year with all but ninety days stayed and placed the Licensee on probation for a minimum period of three years. (Jt. Exh.

- #2.) The Licensee was required to complete a tutorial in medical record keeping as well as a course in appropriate prescribing practices involving opioid medication and benzodiazepines and appropriate pain management practices. (Jt. Exh. #2.) The Licensee was also restricted from practicing pain management medicine and was not allowed to dispense or prescribe any opiates or benzodiazepine medications to any patient or individual for longer than three days and only in an emergency situation. (Jt. Exh. #2.)
4. Effective July 21, 2011, the Licensee entered into a Consent Agreement with the State of Maine Board of Licensure in Medicine. (Jt. Exh. #4.) In the Consent Agreement, the Licensee admitted that his recent discipline by the Maryland Board, together with the facts and circumstances underlying that discipline, constituted unprofessional conduct and grounds for the Maine Board to impose discipline pursuant to 32 M.R.S. § 3282-A(2)(F). (Jt. Exh. #4.) The Licensee agreed to complete a medical recordkeeping course as well as a course in appropriate prescribing practices involving opioid medications and benzodiazepines and appropriate pain management practices. (Jt. Exh. #4.) The Licensee, upon commencement of an active medical practice in Maine, would be placed on probation for three years with a restriction that he not practice pain management medicine and not dispense or prescribe any opiates or benzodiazepine medications to any patient for longer than three days and only in emergency situations. (Jt. Exh. #4.)
5. The Licensee worked in the office of Dr. Kunmi Majekodunmi in Maryland for approximately three years without pay while he was on probation under the Maryland Board's Consent Order. (Testimony of Majekodunmi.) The Licensee undertook this unpaid work to show the Maryland Board that he was seeing patients, was keeping good records, and was not prescribing narcotics. (Testimony of Majekodunmi.) Dr. Majekodunmi was approved by the Maryland Board to be the Licensee's supervisor under

the Consent Order. (Testimony of Blair.) The Licensee would see a patient and then Dr. Majekodunmi would enter the treatment room to review what was decided during the visit and ask the patient if he or she had any questions. (Testimony of Majekodunmi.) Dr. Majekodunmi issued quarterly reports to the Maryland Board over the course of the three years, with the last report issued on June 30, 2014, after which the Licensee relocated to Maine. (Testimony of Majekodunmi.) While working in Dr. Majekodunmi's office, the Licensee did not write prescriptions for narcotics or any controlled substances. (Testimony of Majekodunmi.)

6. In early December 2013, the Maryland Board became aware of the Licensee's employment at a pain clinic during an investigation of Dr. Amile Korangy, who ran the clinic and whose license was suspended by the Maryland Board in November 2013. (Testimony of Blair.) The Maryland Board was informed that a patient had tried to fill a prescription for oxycodone on which Dr. Korangy's name was crossed off and the Licensee's name was written in. (Testimony of Blair.)
7. On March 18, 2014, the Licensee wrote a letter to the Maryland Board representing that he had faithfully and completely complied with the Consent Order issued by the Board in November 2010. (Jt. Exh. #22.) The Licensee requested that the Maryland Board meet with him at its earliest opportunity to have the Consent Order acknowledged as satisfied. (Jt. Exh. #22.) On March 25, 2014, the Maryland Board notified the Licensee that it was not able to consider his request to end his probation because there was a patient complaint pending against him. (Jt. Exh. #7.)¹
8. During an interview with the Maryland Board on June 20, 2014, the Licensee reported that he had worked for Dr. Korangy three days a week starting December 2, 2013, then one day

¹ The substance of that unrelated complaint was not at issue in the present proceeding.

a week, with the last day being at least six weeks prior to his interview. (Jt. Exh. #9.) The Licensee admitted during the interview that in early December 2013, he had issued prescriptions for pain management medications in violation of his terms of probation. (Jt. Exh. #9.) Although Gage Blair, Compliance Analyst at the Maryland Board of Physicians, had several conversations in December 2013 with the Licensee about his work at Dr. Korangy's office and the Board's concerns about that office, the Licensee did not disclose that he had written prescriptions in violation of the Consent Order. (Testimony of Blair.) In fact, the Licensee indicated that Dr. Korangy had asked him to write such prescriptions but he had refused. (Testimony of Blair.)

9. At 2:24 p.m. on July 16, 2014, staff at the Maryland Board faxed to the Licensee's Maryland attorney a Cease and Desist Order. (Jt. Exh. #10.) At 2:32 p.m. on July 16, 2014, the Cease and Desist Order was emailed to the Licensee's Maryland attorney. (Jt. Exh. #10.) The Order required that the Licensee cease and desist from practicing pain management medicine and prescribing opiates or benzodiazepine medications to any patient or individual for longer than three days and only in emergency situations. (Jt. Exh. #10.) The Maryland Board found that in his interview, taken under oath, the Licensee acknowledged that he had prescribed opioid medications on his first practice day at the office of Dr. Korangy in December 2013 and that although the Licensee stated that he thereafter refused to prescribe further opioids while working in that medical office, he had in fact written at least one prescription for opioids and several for benzodiazepines after his first day at the practice. (Jt. Exh. #10.) Specifically, the Maryland Board found that the Licensee had written prescriptions for medications he was prohibited from prescribing on December 2, December 3, and December 8, 2013. (Testimony of Blair.) The Maryland Board concluded that the Licensee had violated a condition of the Consent Order by

practicing pain management medicine and prescribing opiates and benzodiazepines to patients for longer than three days and in non-emergency situations. (Jt. Exh. #10.) The Maryland Board did not investigate the Licensee's prescriptions after December 8, 2013. (Testimony of Blair.) The Maryland Board concluded that the Licensee was guilty of unprofessional conduct in the practice of medicine and posed a serious risk to the health, safety, and welfare of patients. (Jt. Exh. #10.)

10. At 4:28 p.m. on July 16, 2014, the Licensee emailed staff at the Maine Board of Licensure in Medicine to request that the Maine Board terminate his Consent Order on the basis that he had met the requirements of that Order and he was unable to obtain employment in Maine while the Order stood. (Jt. Exh. #11.) Because the Licensee had never practiced in Maine, the practice restrictions in the Maine Board's Consent Agreement had never been applied. (Jt. Exh. #4.)

11. On July 28, 2014, through a disciplinary alert report, the Maine Board was notified that the Maryland Board had issued a Cease and Desist Order against the Licensee. (Jt. Exh. #12.)

12. On August 6, 2014, the Licensee wrote to the Maine Board to indicate that he had complied with the Maryland Board Consent Order for more than three years but that he made a mistake in early December 2013 when pressured by Dr. Korangy to provide pain medications for patients. (Jt. Exh. #13.) The Licensee acknowledged that he prescribed narcotics inappropriately on his first day in Dr. Korangy's office but stated that he did not remember prescribing Xanax inappropriately three times during his initial days in Dr. Korangy's office. (Jt. Exh. #13.)

13. On October 23, 2014, after a Show Cause Hearing, the Maryland Board issued an Order holding that the preponderance of the evidence supported a conclusion that the Licensee had written ten prescriptions for opiates and three prescriptions for benzodiazepines to be

taken for longer than three days in the case of non-emergencies in December 2013. (Jt. Exh. #14.) The Maryland Board noted that the Licensee had explained that he violated the Consent Order due to tremendous financial pressure. (Jt. Exh. #3.) The Board held that given the Licensee's long disciplinary history, his violation of the Consent Order demonstrated a lack of judgment necessary to practice medicine in the State of Maryland and permanently revoked his license. (Jt. Exh. #14.)

14. By letter dated November 18, 2014, the Maine Board notified the Licensee that a complaint was pending against him based on his conduct in Maryland and his efforts to lift the restrictions on his Maine license. (Jt. Exh. #15.)

15. The Licensee's current Maine license expired on June 30, 2015, but remains active pursuant to 5 M.R.S. § 10002 due to his submission of a timely renewal application submitted on July 2, 2015. (Jt. Exh. #19.) In his renewal application, the Licensee indicated that he had been subject to disciplinary action. (Jt. Exh. #19.) In his description of that disciplinary action, he referenced the 2010 Consent Order from the Maryland Board. (Jt. Exh. #19.) The Licensee indicated that he had complied with all parts of the Consent Order except one, stating that on December 3, 2013, he had written ten narcotic prescriptions that were for more than three days. (Jt. Exh. #19.) He indicated that he had advised the Maryland Board of his mistake, corrected it, and not repeated it, but the Maryland Board had revoked his license regardless. (Jt. Exh. #19.) The Licensee reported that he had turned in his DEA license so that he could not make that mistake again. (Jt. Exh. #19.)

16. At hearing, the Licensee testified that because of the Maryland Consent Order, he was not able to get a paid position and as a result had no income for three years. (Testimony of Licensee.) He underwent a foreclosure on his home and bankruptcy. (Testimony of

Licensee.) The Licensee testified that when Dr. Korangy offered him a position in his pain management clinic, Dr. Korangy indicated that he was trying to transition his office to provide primary care. (Testimony of Licensee.) Although it was not consistent with the testimony of Ms. Blair, the Licensee testified that he checked in with the Maryland Board every day that he went to work at Dr. Korangy's office. (Testimony of Licensee.) The Licensee testified that all the patients that he saw on his first day in Dr. Korangy's office sought narcotics and Dr. Korangy pressured him to provide prescriptions. (Testimony of Licensee.) The Licensee testified that he was not sure if he had informed Dr. Korangy of his practice restriction not to prescribe narcotics. (Testimony of Licensee.) The Licensee testified that he informed Dr. Korangy on his second day in the office that he would not be prescribing narcotics again. (Testimony of Licensee.) The Licensee acknowledged but could not explain how he had prescribed another prohibited substance on December 8. (Testimony of Licensee.) The Licensee testified that he knew that Dr. Korangy was having difficulty with the Maryland Board but did not know that Dr. Korangy's license had been suspended when he began to work in his office. (Testimony of Licensee.) Although it was contrary to Ms. Blair's testimony, the Licensee testified that he was fairly certain he told the Maryland Board of his mistake prior to his interview with them on June 20, 2014. (Testimony of Licensee.)

III. GOVERNING STATUTES AND RULES

1. The State of Maine Board of Licensure in Medicine may modify, restrict, suspend, revoke, or refuse to renew a license if the licensee engaged in the practice of fraud, deceit, or misrepresentation in obtaining a license or in connection with service rendered within the scope of the license issued. 32 M.R.S. § 3282-A(2)(A).

2. The Board may modify, restrict, suspend, revoke, or refuse to renew a license if the licensee demonstrated incompetence in the practice for which he is licensed. A licensee is considered incompetent in the practice if he engaged 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 or if he engaged in conduct that evidenced a lack of knowledge or inability to apply principles or skills to carry out the practice for which he is licensed. 32 M.R.S. § 3282-A(2)(E)(1) & (2).
3. The Board may modify, restrict, suspend, revoke, or refuse to renew a license if the licensee engaged in unprofessional conduct. A licensee is considered to have engaged in unprofessional conduct if he violates a standard of professional behavior that has been established in the practice for which he is licensed. 32 M.R.S. § 3282-A(2)(F).
4. The Board may modify, restrict, suspend, revoke, or refuse to renew a license on the basis of a revocation, suspension, or restriction of a license to practice medicine or other disciplinary action; denial of an application for a license; or surrender of a license to practice medicine following the institution of disciplinary action by another state if the conduct resulting in disciplinary or other action involving the license would, if committed in the State of Maine, constitute grounds for discipline under the laws or rules of the State Maine. 32 M.R.S. § 3282-A(2)(M).
5. The Board may modify, restrict, suspend, revoke, or refuse to renew a license on the basis that a licensee engaged in an activity requiring a license under the governing law of the Board that is beyond the scope of acts authorized by the license held. 32 M.R.S. § 3282-A(2)(N).

6. The Board may modify, restrict, suspend, revoke, or refuse to renew a license on the basis that a licensee did not comply with an order or consent agreement of the Board. 32 M.R.S. § 3282-A(2)(P).

IV. CONCLUSIONS OF LAW

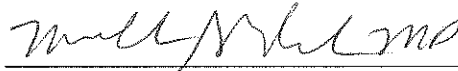
The Board, considering the above facts and those alluded to in the record but not referred to herein, determined that it had jurisdiction over Licensee Carl T. Folkemer, M.D., and concluded as follows with regard to the allegations in the notice of hearing:

1. By unanimous vote, that the Licensee engaged in the practices of fraud, deceit, and misrepresentation in attempting to obtain a change in his conditions of licensure and to renew his license to practice medicine in the State of Maine in violation of 32 M.R.S. § 3282-A(2)(A).
2. By a vote of seven to one, that the Licensee demonstrated incompetence in the practice for which he is licensed by engaging in conduct that evidenced a lack of principles or skills to carry out the practice for which he is licensed, specifically by failing to remember his history of prescription writing that was in violation of his limited license in the State of Maryland and by prescribing medications that he was not authorized to prescribe in order to alleviate his financial situation in violation of 32 M.R.S. § 3282-A(2)(E)(1) & (2).
3. By unanimous vote, that the Licensee engaged in unprofessional conduct by violating his 2010 Consent Order with the State of Maryland, which was a violation of a standard of professional behavior in the practice of medicine. 32 M.R.S. § 3282-A(2)(F).
4. By unanimous vote, that the Licensee was the subject of disciplinary action in Maryland for conduct that would, if committed in the State of Maine, constitute grounds for discipline, including incompetence; unprofessional conduct; engaging in activity requiring a license under the governing law of the Board that was beyond the scope of acts authorized by the

license; and noncompliance with an order or consent agreement of the Board. 32 M.R.S. §§ 3282-A(2)(M), 3282-A(2)(E), 3282-A(2)(F), 3282-A(2)(N) & 3282-A(2)(P).

5. By unanimous vote, denied the Licensee's renewal application.

Dated: November 18, 2015



Maroulla S. Gleaton, M.D.
Chair, State of Maine Board of Licensure in Medicine

V. APPEAL RIGHTS

Pursuant to the provisions of 10 M.R.S. § 8003(5) and 5 M.R.S. § 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.