MAINE STATE BOARD OF LICENSURE IN MEDICINE

IN RE: Cesar Garcia, M.D.	)	**FINAL**
Licensure Disciplinary Action/Renewal	)	**DECISION AND ORDER**
Complaint No. CR10-476	)	

I. PROCEDURAL HISTORY

Pursuant to the authority found in 32 M.R.S. Sec. 3282-A, *et seq.*, 5 M.R.S. Sec. 9051, *et seq.* and 10 M.R.S. Sec. 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 April 10, 2012 and at 1:00 p.m. on September 11, 2012. The purpose of the meeting was to conduct a consolidated adjudicatory hearing to decide the following three issues. First, whether Cesar Garcia, M.D. violated Board statutes and Rules as alleged in the Notice of Hearing which would subject him to disciplinary sanctions. Second, whether the Board would grant Dr. Garcia's request for renewal of his license to practice medicine in this state.[1] Third, whether the Board intended certain language in the November 14, 2006 Consent Agreement to place a restriction on Dr. Garcia's license to practice medicine.[2]

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., public member, Cheryl Clukey, 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. Garcia appeared but was not represented by an attorney. 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 1-40 and Respondent's exhibits 1-5 were admitted into the Record. Subsequent to the parties' opening statements, the taking of testimony, exhibits, and closing

[1] The State filed a Motion to Consolidate which was granted without objection at the hearing.
[2] The parties agreed at the September 11, 2012 session to submit this issue for the Board's consideration.

arguments, the Board deliberated and made the following findings of fact by a preponderance of the credible evidence.

II. FINDINGS OF FACT

1. Dr. Cesar Garcia, 52 years of age, has held a license to practice medicine in the State of Maine since September 21, 1999. Dr. Garcia specializes in Emergency Medicine.

2. On November 14, 2006, Dr. Garcia entered into a Consent Agreement with the Board and Department of the Attorney General regarding Complaint CR04-120, which involved a lumbar puncture procedure performed by Dr. Garcia at Maine General Medical Center, Thayer Campus, in Waterville, Maine. In that Consent Agreement, Dr. Garcia admitted that the Board had sufficient evidence from which it could reasonably conclude that he: (a) was responsible for normal saline arriving at the laboratory instead of CSF (cerebral spinal fluid); (b) was responsible for miscommunications with the physicians who followed up with this incident; (c) was responsible for failing to create a procedure note for the lumbar puncture; and (d) was responsible for the techniques he employed in performing the lumbar puncture.

The above incident also resulted in the conclusion of Thayer's medical director that he and the medical director of the emergency room could no longer trust Dr. Garcia since he changed his story several times regarding his handling of the subject cerebral spinal fluid specimen. The lack of trust resulted in the termination of Dr. Garcia's employment at Thayer.

3. Dr. Garcia admitted that the above conduct fell below the standard of care and constituted unprofessional conduct and grounds for discipline of his Maine license pursuant to 32 M.R.S. § 3282-A(2)(F). As discipline for that conduct, Dr. Garcia accepted a reprimand and agreed to follow the guidelines for the standard resident work hours so that he did not become excessively fatigued, which the Board concluded was the cause of Dr. Garcia's conduct.

4. On or about September 20, 2010, the Board received information from Bayne-Jones Army Community Hospital (BJACH) in Fort Polk, Louisiana, that it had removed Dr. Garcia from providing services in the Emergency Department on September 13, 2010, as a result of his presenting to work with obvious signs of intoxication. According to this same information, Dr. Garcia had been previously counseled about the use of alcohol in July 2010.

5. On September 20, 2010, Mark Cooper, M.D., Medical Director for the Board, spoke with Dr. Garcia by telephone. According to Dr. Cooper, Dr. Garcia did not dispute the information received from BJACH. Dr. Garcia stated that the past years have been increasingly stressful both mentally and financially. According to Dr. Garcia, as a result of the prior consent agreement with the Maine Board, he was unable to be licensed in Arizona, his home state, and has only been able to obtain work at various governmental facilities around the country while working under his Maine license. According to Dr. Garcia, the constant traveling and lack of a steady paycheck have created a great deal of stress for him and his family.

6. Dr. Garcia explained during the September 20, 2010 telephone conversation with Dr. Cooper that on July 20, 2010, he had driven straight from Arizona to Fort Polk, Louisiana to make his scheduled shift at the BJACH emergency room. He only had a few hours after arriving before he was to report for work. He subsequently went to work in the BJACH emergency room and shortly thereafter passed out. A blood sample was drawn which allegedly revealed benzodiazepine medication (prescribed sleep aid) and alcohol. Dr. Garcia stated that his syncopal episode was due to his serum creatinine being 1.7 when his blood was tested and that he was extremely dehydrated from the drive.

7. Dr. Garcia, during the above phone call, also discussed with Dr. Cooper another episode which occurred on September 13, 2010. Dr. Garcia stated that he went out in the morning to unwind with some of the ER staff after a night shift. Dr. Garcia admitted consuming alcohol. Dr. Garcia went home to sleep and returned to work at the ER for the night shift when he was confronted about being intoxicated. According to Dr. Garcia, he requested a breath or blood test at that time, but his request was refused. Instead, he was advised to seek counseling. Dr. Garcia told Dr. Cooper that shortly thereafter he enrolled in the Maricopa County detoxification program. Dr. Cooper discussed the Arizona Physician Health Program and informed Dr. Garcia how to contact them.

8. On September 23, 2010, Dr. Garcia spoke again with Dr. Cooper by telephone. Dr. Garcia informed Dr. Cooper that the Arizona Physician Health Program referred him to the Sundance Center for an intake evaluation which occurred later that day. On September 28, 2010, Dr. Cooper received a letter from the Sundance Center that confirmed Dr. Garcia's enrollment and participation.

9. On November 5, 2010, the Board received a letter from Dr. Garcia dated October 12, 2010 which contained a different account of his activities during September 13, 2010. According to Dr. Garcia, on that day, he finished his second night shift at BJACH in the early morning. After work, Dr. Garcia went to Wal-Mart and bought a flask of whiskey, which he brought back to his hotel room. There, he drank "two small cups of Coca-Cola, mixed with ice, and whisky, and watched television before going to sleep." At approximately 2:30 p.m., Dr. Garcia awoke and "took another drink to go back to sleep." Dr. Garcia later woke up and went to the ER for his shift at 6:00 p.m. According to Dr. Garcia, the department head, who had been "cued" by another physician, asked Dr. Garcia if he had been drinking. According to Dr. Garcia, he "explained the timing and quantity of the drinks conveying… that [he] did not have any intention of coming to work with an alcohol level." According to Dr. Garcia, the department head told him to take a few hours off and denied his requests to test his blood-alcohol level.

10. In his letter dated October 12, 2010, Dr. Garcia confirmed BJACH's report that he fainted in the ER on July 20, 2010 and was tested as having a "creatinine level of 2.0 [and] an alcohol level of 0.02, and urine positive for benzodiazepines." When confronted by the hospital staff, Dr. Garcia "confirmed that the benzodiazepines were prescription, and that the drink had been before going to sleep for [his] shift." According to Dr. Garcia, the "concern that [he] had drank alcohol purposefully before work was allayed and my renal failure explained how [he] had a prolonged trace alcohol level, [so] they decided to give [him] another chance." Dr. Garcia admitted that he "began to drink alcohol on flights to work and in [his] hotel after work to decompress from stress over the last one-half year's period."

11. Dr. Garcia also in the above correspondence described the steps that he had taken to address his use of alcohol after being terminated from BJACH. The actions included total abstinence, attending a substance abuse addiction program, treating with an addiction psychologist, and addressing his anxiety. Dr. Garcia described the stressors in his life that he believed led to his use of alcohol. He also fully recognized that his actions were not appropriate and accepted responsibility for what transpired.

12. On October 12, 2010, the Board reviewed the information provided by BJACH and Dr. Garcia, and, pursuant to 32 M.R.S. § 3282-A, voted to initiate a complaint against Dr. Garcia's Maine medical license alleging unprofessional conduct and habitual substance abuse that was

foreseeably likely to result in Dr. Garcia performing services in a manner that endangered the health or safety of patients. The Board docketed the complaint as CR10-476.

13. On or about December 1, 2010, the Board received a response from Dr. Garcia to complaint CR10-476. In his response, Dr. Garcia indicated that he had completed the intensive outpatient program at the Sundance Center, and had received substance abuse supplementary services at the Community Bridges Outpatient program. In addition, Dr. Garcia indicated that he was undergoing monitoring for alcohol consumption, and was abstinent from alcohol. According to the November 30, 2010 Community Bridges Outpatient treatment team notes, Dr. Garcia was making progress, but had not as yet achieved the goals articulated in his individualized treatment plan.

14. Dr. Garcia, in his December 1, 2010 response, again attributed his positive alcohol test at BJACH in July 2010 as a "primary medical problem, like any other organ failure... [and that] trace alcohol was detected because of [his] renal failure."

15. The above letter also contained Dr. Garcia's third different rendition of the September 13, 2010 incident at BJACH. Dr. Garcia disclosed to the Board for the first time that he "complained of feeling drugged by Benadryl and feeling anticholinergic symptoms of dry mouth and slurring speech and dizziness" during the event. According to Dr. Garcia, before work on September 13, 2010, he had taken his "first dose of a sample of Seroquel that was a much higher milligram dosage with new extended-release activity." Dr. Garcia asserted that the "side effects of a sudden escalation of a Seroquel dose would lead to the anticholinergic complaints [he] had." He wrote that "when I arrived at work and was asked if I was drunk, I knew that I was not, and said I wasn't." This was the first time that Dr. Garcia disclosed to the Board or its agents that he was being prescribed Seroquel at the time of this incident. Significantly, there were possible synergistic effects that Seroquel and benzodiazepines could have produced with the alcohol consumed by Dr. Garcia before reporting to work at BJACH.[3] Dr. Garcia did not address this issue in his response.

16. Dr. Garcia's supervising physician, Dr. Troy Prairie, Chief Primary Care Dept., countered Dr. Garcia's recollection of his condition on September 13, 2010. He recalled that Dr. Garcia had presented to work "with obvious signs of intoxication," which was confirmed by two physicians and a military police officer. He was removed from service and advised to get help with his

[3] The pharmaceutical warnings regarding Seroquel XR include the ingestion of alcohol which may make one or more of the side effects worse-e.g. "... movements you cannot control in your face, tongue, or other body parts."

addiction. On the positive side, Dr. Prairie noted that "Dr. Garcia's performance as a physician in the BJACH emergency room was, at times, outstanding."

17. On or about December 13, 2010, the Board received Dr. Jon Solberg's letter regarding Dr. Garcia. Dr. Solberg, Chief of Emergency Medicine at BJACH, revealed information relevant to the allegations that Dr. Garcia had engaged in habitual substance abuse on July 20 and September 13, 2010. This correspondence was supplemented by an e-mail from Dr. Solberg to Dr. Garcia dated April 5, 2012 in which the former addressed his recollections of the events of September 13, 2010. He wrote: "I do not remember all the events of the night your employment was terminated. I do remember that you appeared under the influence of something and were not your normal and articulate self, as your speech was markedly slurred and you appeared pale...I do remember you saying that you had taken some medication, that your mouth felt extremely dry, and that you suspected this was the cause of your symptoms. I do not remember what specific medication we discussed as there were no confirmatory studies done...."[4]

18. Dr. Solberg additionally described Dr. Garcia as an "efficient and clinically sound physician. He consistently displayed good interpersonal skills with patients and was known by staff as a pleasant and even enjoyable physician to work with." Dr. Solberg further commented in his April 5, 2012 email that "...I remain confident that you are an excellent physician, one whom I'd entrust my own family to..." These positive comments were also consistent with those made by several of Dr. Garcia's former peers at Thayer Hospital, Waterville, Maine before his termination at that facility.

19. Dr. Mark Cooper, M.D. expressed his opinions at the April 10, 2012 session that Dr. Garcia's actions on July 20, 2010 and September 13, 2010 were unprofessional and demonstrated evidence of 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. At the very least, Dr. Garcia's alcohol and substance abuse and lack of awareness that he is impaired while functioning as a physician in a hospital setting supports Dr. Cooper's opinions regarding Dr. Garcia's medical practices.

[4] Dr. Garcia was of the opinion that Dr. Solberg's April 5, 2012 email fully supported his explanation that he was under the influence of Seroquel and not alcohol. However, the Board took note that 3 individuals detected the odor of alcohol emanating from Dr. Garcia at the hospital on September 13, 2010 and that Dr. Solberg noticed "markedly slurred speech..."

20. The Board, taking the above facts and opinions detailed in paragraphs 1-19 into consideration, and based on the recited evidence and other evidence found in the record but not alluded to herein, and further on observations of the licensee's demeanor, concluded by the vote of 9-0 on April 10, 2012, that Cesar Garcia, M.D. violated the following statutory provisions.

1. Pursuant to 32 M.R.S. §3282-A.(2)(F), Dr. Garcia is considered to have engaged in unprofessional conduct since he violated a standard of professional behavior that has been established in the practice for which the licensee is licensed.

2. Pursuant to 32 M.R.S. §3282-A.(B), Dr. Garcia engaged 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.

21. On April 10, 2012, the Board as the result of the above findings, voted 9-0 to issue an Interlocutory Decision and thereafter continue the matter pending Dr. Garcia's actions in accordance therewith. The Board conveyed to Dr. Garcia that its decision would provide him with the opportunity to comply with the following Board requirements which were necessary to be met for licensure renewal before the Board could be reassured that the public health and safety were not at risk. First, Dr. Garcia requires counseling to aid him to cope effectively with the many stressors, including those in his medical practice, which negatively affect his life. Second, Dr. Garcia requires professional assistance to help him deal with alcohol and substance abuse issues. Third, Dr. Garcia requires professional therapy to assist him to avoid his denial of problems such as alcohol and substance abuse and deflection of criticism rather than taking personal responsibility. Fourth, Dr. Garcia needs to have counseling regarding his lack of introspection and awareness that he may be impaired without realizing it.

22. The Board concluded that Dr. Garcia would be best served by removing himself temporarily from the stress of his practice and entering and completing an intensive residential treatment program to be preapproved by Board Chairman Dr. Gary Hatfield **followed by "intensive monitoring as ordered by the Maine Professional Health Program or similar organization.**" (emphasis added)

23. The Board "reserved all rights regarding the decision whether to deny Dr. Garcia's application for licensure renewal and/or to order additional conditions and sanctions should Dr. Garcia fail to satisfactorily complete the above program in a timely manner."

24. In compliance with the terms listed in the Interlocutory Decree, Dr. Garcia enrolled in The Decision Point Center, Prescott, Arizona on May 21, 2012. This licensed treatment facility provides long term extended care treatment for men and women 18 years old and older with substance and alcohol abuse and psychological issues.

25. On June 21, 2012, Dr. Garcia successfully completed the program's 30 day primary program.

However, it was noted that he "could have benefitted from an extended stay" but was "unwilling to do so due to finances. Prognosis would appear to be poor."

26. Subsequently, Dr. Garcia chose a lab and requested screenings for substances including opiates and alcohol. The screenings, performed on June 29, July 7, 16, and 24, 2012 and August 8 and 23, 2012 revealed negative results.

27. On July 6, 2012, Dr. Garcia forwarded a letter to the Board in which he listed the following future medical providers in accordance with the Board's Interlocutory Decree. Dr. Garcia wrote that:

A. Dr. Larry Waldman "has agreed to be my **treating psychiatrist**" beginning August 1, 2012. Dr. Garcia was examined by Dr. Waldman on August 10, 13, and 27, 2012. Dr. Waldman is not a psychiatrist but is a psychologist. **Dr. Garcia is no longer a patient of this practitioner.**

B. "Felice Goff, MS, LCSW will be my therapist. I have an initial appointment with her on August 1, 2012."

C. "Dr. David Greenberg has referred me for Caduceus support groups."

D. "My continuing drug testing is performed by the AZ Clinical Services Scottsdale. My results since discharge from the Decision Point Center are enclosed. **I have asked Dr. M. Palmer of Maine to supervise it..."**

E. **"Dr. Palmer of the Maine PHP has assisted me at every step of the process since September 2010. She is informed of my plan and agrees with it." (emphases added)**

28. Subpoenas requesting relevant records pertaining to Dr. Garcia's treatment were served on the above five subjects. The Maine PHP by its Director, Lani Graham, M.D., M.P.H, responded that Dr. Garcia "never shared any evaluation or treatment records with the program and never entered into a monitoring contract with the Program." Therefore, there were no documents to share with the Board. However, Margaret Palmer, Ph. D., Senior Clinical Associate at the Maine PHP,

responded on September 5, 2012 that "**Over a year ago**, I did have a conversation with Dr. Garcia about what I thought he could do in Arizona to help himself...So, I guess one could say that I did help him, but **it's quite a stretch to state that I have worked with him every step of the way. I was not aware of his formalized plan...I have not approved of the treatment team there** nor have I seen any urine drug screens for him." (emphasis added)

29. Social worker Goff was contacted on September 4, 2012 by a Board investigator. She did not recall Dr. Garcia and stated that she would remember if she saw a Mexican physician. Dr. Garcia testified that he had scheduled an appointment with her but that she must have misplaced documentation of that contact.

III. CONCLUSIONS OF LAW AND SANCTIONS

10 M.R.S. §8008. "Purpose of occupational and professional regulatory boards. 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."

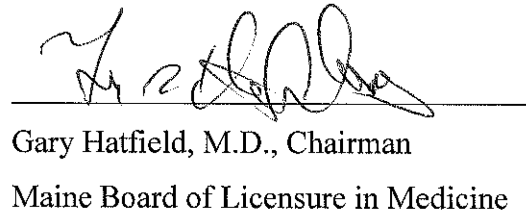
The Board, keeping in mind the above language, first deliberated the issue of whether it intended certain language in the November 14, 2006 Consent Agreement to place a restriction on Dr. Garcia's license to practice medicine. The subject wording involved Dr. Garcia's agreement to follow the guidelines for the standard resident work hours so that he did not become excessively fatigued. The Board determined by a unanimous vote of 9-0 that it had restricted Dr. Garcia's hours worked, and therefore it was a restriction on his license.

The Board also unanimously voted 9-0 not to renew Dr. Garcia's license to practice medicine in Maine. The Board reasoned, among other things, that Dr. Garcia was not trustworthy as demonstrated by his statements concerning the day to day involvement of the Maine PHP in his treatment program whereas the PHP had little or no contact with him. Similarly, Ms. Goff most likely had never heard of him, much less scheduled an appointment to counsel him. The continued threat of alcohol abuse for which Dr. Garcia has twice in the past 3 years received considerable in-patient treatment also supports the Board's decision to deny renewal of his medical license.

Although Dr. Garcia requested further direction and focus from the Board, the Board determined that it had rendered enough guidance to him during the past 3 years and Dr. Garcia himself must learn to focus.

The third issue concerns whether sanctions other than non-renewal are appropriate in this matter. The Board did not entertain a motion to this effect so no additional sanctions were ordered.

Dated: October 9, 2012



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

IV. APPEAL RIGHTS

Pursuant to the provisions of 5 M.R.S. Sec. 11001, 11002, and 10 M.R.S. 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.

STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

In re:	)	CONSENT
Cesar O. Garcia, M.D.	)	AGREEMENT
Complaint No. CR04-120	)	

This document is a Consent Agreement, effective when signed by all parties, regarding disciplinary action against and conditions imposed upon the license to practice medicine in the State of Maine held by Cesar O. Garcia, M.D. The parties to the Consent Agreement are: Cesar O. Garcia, M.D. ("Dr. Garcia"), the State of Maine Board of Licensure in Medicine ("the Board") and the State of Maine Office of the Attorney General ("the Attorney General"). This Consent Agreement is entered into pursuant to 10 M.R.S.A. § 8003(5)(B) and 32 M.R.S.A. § 3282-A.

STATEMENT OF FACTS

1. Dr. Garcia has held a license to practice medicine in the State of Maine since 1999. Since that time, he has practiced medicine in Waterville and Augusta, Maine, and is Board Certified in Internal Medicine.

2. On September 17, 2004, the Board received information from Maine General Medical Center pursuant to the Maine Health Security Act that indicated that Dr. Garcia had been released from employment "based upon a significant clinical event" that involved Dr. Garcia performing a lumbar puncture on a patient, adding saline to the specimen[1] collected from the lumbar puncture, and sending it to the hospital laboratory for evaluation. As a

[1] According to Dr. Garcia, this occurred accidentally.

result of Dr. Garcia's actions, Maine General Medical Center terminated his employment and reported the matter to the Board as required by law.

3. In October 2004, the Board reviewed the information received from Maine General Medical Center and initiated a complaint against Dr. Garcia's Maine medical license. The Board docketed the complaint as CR04-120 and sent Dr. Garcia a copy of the complaint.

4. On November 30, 2004, the Board received Dr. Garcia's written response to the complaint CR04-120. In his response, Dr. Garcia described the procedure that he employed in performing the lumbar puncture on the patient. Dr. Garcia stated that, after attempting the procedure, he "decided that there was not sufficient fluid (cerebral spinal fluid [CSF]) in either of the two tubes (tube 1 and tube 2) to send to the lab for cell analysis." Dr. Garcia stated that he intended to pick up a syringe which he believed to contain CSF, but may have mistakenly picked up a syringe with saline in it and emptied it into another tube (tube 3). Thereafter, Dr. Garcia stated that he then "combined the fluid in tube one into tube two hoping that the cumulative fluid would be sufficient for cell analysis." After combining the fluid, Dr. Garcia decided that he still did not have enough CSF for cell analysis, so he added the fluid from tube 3, which he thought contained CSF but which in fact contained saline. After combining the fluids from the three tubes, Dr. Garcia stated that he thought that he "now had sufficient fluid for cell analysis." As a result of reviewing Dr. Garcia's response, the Board ordered further investigation.

5. On January 5, 2005, the Board received additional information concerning complaint CR04-120 from Stephen D. Sears, M.D., Chief Medical Officer for Maine General Medical Center. In his letter, Dr. Sears indicated that the only material detected in the specimen Dr. Garcia submitted to the hospital laboratory following the lumbar puncture was saline, and that the specimen contained no sugar, no cells, and no glucose. In addition the specimen was colorless.

6. On March 16, 2005, the Board received copies of interviews of witnesses conducted by Attorney General Investigator Seth Blodgett. Those interviews included interviews of: Lawrence Kassman, M.D., Emergency Department Director at the Maine General Medical Center Thayer Unit in Waterville, Maine; Scott Kemmerer, M.D., Director of the Emergency Department at Maine General Medical Center in Augusta, Maine; Charles Sweigert, R.N., who assisted Dr. Garcia with the lumbar puncture, and who has been a registered nurse since 1973 and has been involved in hundreds of lumbar puncture procedures; and Connie Dumais-Felt, R.N., who assisted Dr. Garcia with the lumbar puncture procedure, and who has been a nurse for sixteen years. The interviews supported Maine General Medical Center's concerns regarding Dr. Garcia's procedures involving the lumbar puncture and his submission of fluid to the hospital's laboratory for analysis.

7. On May 9, 2006, the Board held an informal conference with Dr. Garcia concerning complaint CR04-120. During that informal conference, the Board noted that the patient record contained no procedure note by Dr. Garcia

concerning his performance of the lumbar puncture on the patient. Dr. Garcia had no explanation for the lack of any procedure note. Following the informal conference, the Board voted to set the complaint for an adjudicatory hearing, and authorize its legal counsel to proffer a Consent Agreement to Dr. Garcia that would resolve complaint CR04-120 without hearing.

8. Absent Dr. Garcia's acceptance of this Consent Agreement by signing it, dating it, having it notarized, and returning it to Maureen Lathrop, Investigative Secretary, Maine Board of Licensure in Medicine, 137 State House Station, Augusta, Maine 04333-0137 on or before November 13, 2006, the Board will resolve this matter by holding an adjudicatory hearing.

COVENANTS

9. Dr. Garcia admits that the Board has sufficient evidence from which it could reasonably conclude that he: (1) was responsible for normal saline arriving at the laboratory instead of CSF; (2) was responsible for miscommunications with the physicians who followed up with this incident; (3) was responsible for failing to create a procedure note for the lumbar puncture; and (4) was responsible for the techniques he employed in performing the lumbar puncture. Dr. Garcia admits that such conduct falls below the standard of care and constitutes unprofessional conduct and grounds for discipline of his Maine license pursuant to 32 M.R.S.A. § 3282-A(2)(F).

10. As discipline for the conduct admitted in paragraph 9 above, Dr. Garcia agrees to:

a. Accept a REPRIMAND from the Board. Dr. Garcia shall not engage in this type of conduct again, and shall ensure that he properly performs and documents all lumbar puncture procedures in the future; and

b. Dr. Garcia agrees to follow the guidelines for the standard resident work hours so that he does not become excessively fatigued, which the Board concludes was the cause of Dr. Garcia's conduct.

11. Dr. Garcia has been represented by Kenneth W. Lehman, Esq., who has participated in the negotiation of the terms of this Consent Agreement.

12. Dr. Garcia waives his right to a hearing before the Board or any court regarding all findings, terms and conditions of this Consent Agreement.

13. This Consent Agreement is a final order resolving complaint CR04-120, is not appealable, and is effective until modified or rescinded in writing by all of the parties hereto.

14. The Board and the Office of the Attorney General may communicate and cooperate regarding Dr. Garcia or any other matter relating to this Consent Agreement.

15. This Consent Agreement is a public record within the meaning of 1 M.R.S.A. § 402 and will be available for inspection and copying by the public pursuant to 1 M.R.S.A. § 408.

16. Nothing in this Consent Agreement shall be construed to affect any right or interest of any person not a party hereto.

17. The Board and Dr. Garcia agree that no further agency or legal action will be initiated against him by the Board based upon the facts described herein, except or unless he fails to comply with the terms and conditions of this Consent Agreement. The Board may however consider the conduct described above as evidence of a pattern of misconduct in the event that similar true allegations are brought against Dr. Garcia in the future. The Board may also consider the fact that discipline was imposed by this Consent Agreement in determining appropriate discipline in any further complaints against Dr. Garcia's Maine medical license.

I, CESAR O. GARCIA, M.D., HAVE READ AND UNDERSTAND THE FOREGOING CONSENT AGREEMENT AND AGREE WITH ITS CONTENTS AND TERMS. I FURTHER UNDERSTAND THAT BY SIGNING THIS AGREEMENT, I WAIVE CERTAIN RIGHTS, INCLUDING THE RIGHT TO A HEARING BEFORE THE BOARD. I SIGN THIS CONSENT AGREEMENT VOLUNTARILY, WITHOUT ANY THREAT OR PROMISE. I UNDERSTAND THAT THIS CONSENT AGREEMENT CONTAINS THE ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF ANY KIND, VERBAL, WRITTEN OR OTHERWISE.

DATED: 11-10-06 Cesar O. Garcia

CESAR O. GARCIA, M.D.

STATE OF Arizona

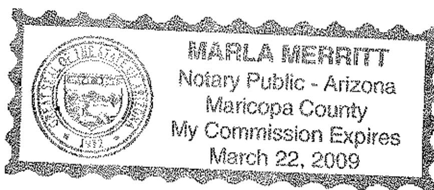
MARICOPA, S.S.

Personally appeared before me the above-named Cesar O. Garcia, M.D., and swore to the truth of the foregoing based upon his own personal knowledge, or upon information and belief, and so far as upon information and belief, he believes it to be true.

DATED: 11-10-06 Marla Merritt

NOTARY PUBLIC/ATTORNEY

MY COMMISSION ENDS: 3-22-09

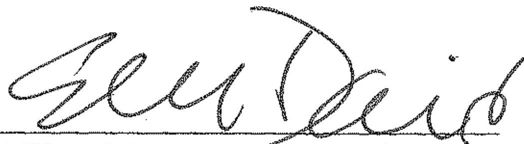


DATED: 11/1/2006

KENNETH W. LEHMAN, ESQ.
Attorney for Cesar O. Garcia, M.D.

STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

DATED: 11/14/06



EDWARD DAVID, M.D., Chairman

STATE OF MAINE OFFICE
OF THE ATTORNEY GENERAL

DATED: 11/14/06

DENNIS E. SMITH
Assistant Attorney General

Effective Date: