

MAINE STATE BOARD OF LICENSURE IN MEDICINE

IN RE: Mitchell G. Moffat, M.D.)
Appeal of Denial of Licensure) **DECISION AND ORDER**

I. PROCEDURAL HISTORY

Pursuant to the authority found in 32 M.R.S. § 3282-A, *et seq.*, 5 M.R.S. § 9051, *et seq.* and 10 M.R.S. § 8001, *et seq.*, the Board of Licensure in Medicine (Board) met in public session at the Board's offices located in Augusta, Maine at 2:00 p.m. on January 11, 2011. The purpose of the meeting was to conduct an adjudicatory hearing to decide whether to grant Mitchell G. Moffat, M.D.'s appeal of the Board's preliminary decision to deny his application for licensure as a Maine physician. A quorum of the Board was in attendance during all stages of the proceedings. Participating and voting Board members were Chairman Sheridan Oldham, M.D., Gary R. Hatfield, M.D., George Dreher, M.D., public member David Nyberg, Ph. D., public member Cheryl Clukey, Maroulla S. Gleaton, M.D., David H. Dumont, M.D., and David Jones, M.D. Dr. Moffat appeared without legal counsel. Dennis Smith, Ass't. Attorney General, presented the State's case. James E. Smith, Esq. served as Presiding Officer.

The Board convened the hearing and first determined that there were no conflicts of interest or bias on behalf of any Board member. The Board then took administrative notice of its statutes and Rules. State's exhibits 1-32 and Appellant's exhibits A1-A4 were admitted into the Record.¹ Subsequent to the parties' opening statements, the taking of testimony, admission of exhibits, and closing arguments, the Board deliberated and made the following conclusions of law, and findings of fact by a preponderance of the credible evidence.

¹ The following 2 grounds for possible denial of Dr. Moffat's application were added by agreement of the parties to the Notice of Hearing. C. 32 M.R.S. § 3282-A(2)(J): Prescribing narcotic or hypnotic drugs or other drugs listed as controlled substances by the Drug Enforcement Administration for other than accepted therapeutic purposes; D. 32 M.R.S. § 3282-A(2)(M): revocation, suspension or restriction of a license to practice medicine or other disciplinary action by another state if the conduct resulting in the disciplinary action would, if committed in this state, constitute grounds for discipline.

II.

FINDINGS OF FACT

1. Mitchell Moffat, 62 years of age, is a resident of Post Falls, Idaho.
2. Dr. Moffat is an emergency room and family practice doctor who was first licensed as a physician in California in 1983. He currently is licensed to practice medicine in Connecticut.
3. Dr. Moffat is currently employed as a *locum tenens* physician with the Indian Health Service at the Norton Sound Hospital in Nome, Alaska.
4. Dr. Moffat submitted an application to the Board for licensure in Maine received on May 29, 2009.
5. The application contained 15 questions primarily regarding whether an applicant has violated laws or standards which would weigh negatively on his character. The appellant answered "yes" to nine of the questions, and was aware of the wording on the form which required "Every 'Yes' response to be fully explained by written statement on a separate 8.5" x 11" sheet of white paper...."
6. Dr. Moffat answered "Yes" to question number 7, but didn't fully explain the circumstances since he failed to mention that he had illegally obtained more than 1000 drugs, or that he had prescribed them for his addicted brother-in-law, or that the pills were equally divided between the two of them. Those facts were also missing from Dr. Moffat's 5 page timeline which is in evidence.
7. The Board, in its September 11, 2009 letter to Dr. Moffat, notified him that it had preliminarily denied his application based on the following past behavior, each example of which constitutes grounds for the Board to refuse to issue a medical license.

A. 32 M.R.S. § 3282-A(2)(B): by engaging 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.

B. 32 M.R.S. § 3282-A(2)(F): by engaging in unprofessional conduct by violating a standard of professional behavior that has been established in the practice of medicine by: issuing fraudulent prescriptions for narcotic drugs; dispensing narcotic drugs to his brother-in-law without a valid physician-patient relationship or without a legitimate medical purpose; prescribing and/or dispensing narcotic drugs for his own personal use; and the revocation of his hospital privileges at the Naval Hospital, Camp Pendleton.

C. 32 M.R.S. § 3282-A(2)(J): Prescribing narcotic or hypnotic drugs or other drugs listed as controlled substances by the Drug Enforcement Administration for other than accepted therapeutic purposes.

D. 32 M.R.S. § 3282-A(2)(M): revocation, suspension or restriction of a license to practice medicine or other disciplinary action by another state if the conduct resulting in the disciplinary action would, if committed in this state, constitute grounds for discipline.

8. The above transgressions were admitted to by Dr. Moffat whose beginning history of alcohol and drug abuse can be traced at least to 1967.

9. The habitual substance abuse occurred while serving as a medical officer at Camp Pendleton, California. Dr. Moffat received in-patient treatment for alcoholism and last consumed alcohol on June 25, 1985. He was discharged from the Navy in May 1986. The appellant also stopped using illegal drugs on June 25, 1985 but resumed his habit in late 2001.

10. Dr. Moffat attended Alcoholics Anonymous meetings twice per week from May 1988 until 1994.

11. At some time in the year 2000, Dr. Moffat received a 2 week suspension from his employment at W.W. Backus Hospital emergency room and was required to take a one-day re-education seminar in "Post-Modern Multiculturalism and Diversity." This disciplinary sanction arose when he asked a pregnant non-English speaking patient through her interpreter why she didn't speak English. She in turn questioned why he didn't learn Spanish. He then replied: "Because this is my f----g country, and we speak English here." The patient refused further treatment and eventually a formal complaint was issued against the hospital.

12. In late 2001, Dr. Moffat began his use of narcotics. He convinced his addicted brother-in-law to agree with a plan whereby Dr. Moffat would write a prescription for Tramadol for his brother-in-law who would then get the drug and share ½ with Dr. Moffat. This lasted until June 2006 when Dr. Moffat self-detoxed at home and also at the inpatient unit at the Betty Ford Clinic in California.

13. Dr. Moffat commenced attending AA meetings on a regular basis in September 2006. He also was subject to twice-weekly urine screens, quarterly meetings with his psychiatrist, and weekly Caduseus meetings. Currently, he attends AA meetings, is assessed by his psychiatrist on a quarterly basis, and is subject to weekly urine screens which have been negative.

14. Dr. Moffat returned to work at W.W. Backus on November 3, 2006 but resigned after a few days to work on his recovery. He remained unemployed until May 2007.

15. On March 20, 2007, a formal felony charge described by the appellant as "Prescription Fraud" was issued against Dr. Moffat in Connecticut for writing illegal narcotics prescriptions for his addicted brother-in-law and himself involving more than 1,000 pills. He received a suspension of the charges which authorized them to be expunged including all related criminal proceedings if Dr. Moffat followed his recovery plan for 2 years. Those records were, in fact, expunged on August 14, 2009.

16. On November 20, 2007, Dr. Moffat became the subject of a Connecticut Consent Order whereby he agreed, among other things, to participate in a monitoring program. Of further interest in this document is the list of the charges which lead to Dr. Moffat's arrest in addition to "Prescription Fraud." More accurately, he apparently was also arrested for "illegally prescribing **and dispensing** controlled substances including oxycontin, endocet, percocet, and oxycodone." The court records also reveal that Dr. Moffat was charged with Failure to Keep Records, Insurance Fraud, and Sale of Certain Illegal Drugs. Despite these charges, the appellant at this hearing mentioned only the prescription fraud charge and neglected to name the illegally prescribed drugs except for Tramadol.

17. On December 1, 2007, the state of Connecticut re-activated his medical license.

18. Dr. Moffat was hired by the North Idaho Medical Care Center on July 24, 2008.

19. On October 28, 2008, the Connecticut Consent Order was amended to allow out-of-state monitoring for the Appellant.

20. Dr. Moffat on December 1, 2008, began his participation in the Network Physician Recovery Program (Recovery Program) in Idaho which included eight to ten 12-step meetings per month, regular meetings with overall peer/worksites monitor, regular meetings with a psychiatrist, urine screens, etc.

21. Appellant Moffat was issued an Idaho Medical License in January 2009 and began working fulltime at North Idaho Medical Care Center in several Idaho locations.

22. Dr. Moffat subsequently complained regarding the requirement that he attend weekly meetings of the Recovery Program. He then was allowed to begin participation in January 2009 in the Washington Physician Health Program (WPHP) in Spokane, Washington, which was more convenient.

23. On September 21, 2009, Dr. Moffat requested that he only attend one meeting per month in Spokane.

24. During November 2 and 3, 2009, this request was denied in that a new contract offered to the appellant still required one meeting per week. Dr. Moffat then amended the proposed contract to suit his needs and sent it back. He then agreed to attend one more regular meeting and thereafter proceed as if his amendment had been agreed to by the Recovery Program.

25. On November 4, 2009, Dr. Moffat informed the Recovery Program that he had a job offer in Alaska and proposed his own schedule to comply with the Idaho Recovery Program.

26. On November 16, 2009, Dr. Moffat was referred back to the Idaho Recovery Program since he allegedly “has not bonded with the group members and expresses the problems of his life as the action of others. His attendance at the weekly groups appears to be an inconvenience, and his participation is not helpful to the group...”

27. On November 23, 2009, the clinical director of the Washington PHP wrote to Dr. Moffat and explained that “You have expressed your unhappiness or resentment for having to attend these groups...and we do not want our groups exposed to a participant that is not able to work out the resentments associated with their disease and consequences...”

28. Dr. Moffat responded in a long e-mail which assessed blame for the failure of his relationship with the programs as mostly their fault. For example, he stated that “I fully expect that the stigmata which PRN and WPHP have attached to me ...will forever remain a bad odor in my record.” He added that he tried to educate the group in his assumed role as mentor but his “efforts were consistently rebuffed, undermined, and even ridiculed, being perceived, I can only assume, as challenges to the therapist.” He went on to add that I “found myself an instigator, a hothead, a malcontent and a foe of AA,” and gave his opinion that the therapist felt his authority was undermined. He admitted that his own actions had a deleterious effect on the group and that he should have made a stronger effort to be in a more advanced group.

29. On December 7, 2009, the Idaho Board was informed by the Recovery program that Dr. Moffat was out of compliance since he was expelled from the Washington PHP and further that the Idaho Recovery Network could not support Dr. Moffat’s acceptance of the Alaska position based on the Washington experience. Dr. Moffat accepted the position anyway, and the Board offered a Consent Order for Dr. Moffat to permanently surrender his Idaho license.

30. Connecticut, meanwhile, had agreed to reassume the responsibility for overseeing Dr. Moffat’s rehabilitation which would keep him in compliance with the terms of his Connecticut license.

31. Dr. Moffat therefore permanently surrendered his Idaho license. He signed the Consent Order effective February 10, 2010, but wrote in his Maine application that the “surrender was an administrative technicality, only...” which disregards his conduct as the real reason for the surrender.

32. When Dr. Moffat submitted his curriculum vitae into evidence in this proceeding, the fact that he surrendered his Idaho license was not mentioned. He merely stated “Previously licensed in California and Idaho.”

33. Dr. Moffat represented in the timeline which he submitted to the Board that he had been offered employment as a physician in Dover-Foxcroft, Maine at the Mayo Hospital. That assertion was untrue.

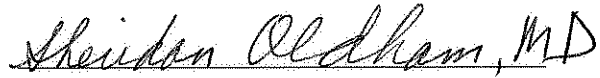
III. CONCLUSIONS OF LAW

The Board, based on the above evidence and other evidence found in the record but not alluded to herein, and further on observations of the licensee’s demeanor, voted 7-1 to deny Mitchell Moffat, M.D.’s appeal and therefore his application for licensure.

The licensure denial was not due to any lack of practice skills. Additionally, several of Dr. Moffat’s fellow staff members at the Norton Sound Hospital wrote letters in glowing terms in support of his application. However, the Board was particularly disturbed that Dr. Moffat, as noted in several of the above paragraphs, was not forthright regarding his past conduct. Additionally, he testified that he had “nothing to hide,” yet did not divulge relevant, significant information regarding his application. He stated that he got along with everyone, yet the evidence demonstrated that he used foul language to the pregnant patient who did not speak English and also voiced his disdain for the other participants in the Washington PHP.

“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 found it clear that Dr. Moffat was neither honest nor trustworthy.

Dated: February 8, 2011



Sheridan Oldham, M.D., Chairman

Maine Board of Licensure in Medicine

IV.

APPEAL RIGHTS

Pursuant to the provisions of 5 M.R.S. § 10051.3 and 10 M.R.S. § 8003 (5)(G) and (5-A), any party that appeals this Decision and Order must file a Petition for Review in the Superior Court within 30 days of receipt of this Order. The petition shall specify the person seeking review, the manner in which they are aggrieved and the final agency action which they wish reviewed. It shall also contain a concise statement as to the nature of the action or inaction to be reviewed, the grounds upon which relief is sought and a demand for relief. Copies of the Petition for Review shall be served by Certified Mail, Return Receipt Requested upon the Maine State Board of Licensure in Medicine, all parties to the agency proceedings and the Attorney General.