

MAINE STATE BOARD OF LICENSURE IN MEDICINE

IN RE: Ellen E. Michalowski, M.D.)
Licensure Disciplinary Action) **DECISION AND ORDER**
Complaint CR-08-315)

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 13, 2010 and July 13, 2010. The purpose of the meeting was to conduct an adjudicatory hearing to decide whether Ellen E. Michalowski, M.D. violated Board statutes and Rules as alleged in the Notice of Hearing. A quorum of the Board was in attendance during all stages of the proceedings. Participating and voting Board members attending both sessions were Chairman Pro Tem Gary R. Hatfield, M.D., Bettsanne Holmes, (public member), David Nyberg, Ph. D., (public member), Maroulla S. Gleaton, M.D., and David H. Dumont, M.D. George Dreher, M.D. and Cheryl Clukey, public member, attended only the first session and did not deliberate or vote in this matter. Dennis Smith, Ass't. Attorney General, presented the State's case. James E. Smith, Esq. served as Presiding Officer.

Dr. Michalowski appeared at the first session and was represented by Eric Mehnert, Esq. Dr. Michalowski chose not to appear at the second session but her closing argument was read by the Board members. Mr. Mehnert briefly appeared by telephone at the second session to argue some outstanding motions similar to those denied by the Federal District Court,¹ and one additional motion concerning lack of jurisdiction for the Board to hear this matter. The motions were denied by the presiding officer for the reasons expressed on the record.

¹ On July 7, 2010, Dr. Michalowski filed a complaint in the United States District Court of Maine requesting a Temporary Restraining Order (TRO) to enjoin the Board from proceeding with the adjudicatory hearing. In brief, the complaint alleged bias based on the AAG assuming the role of prosecutor in this case and generally providing legal counsel to the Board although the presiding officer assumed that role during these proceedings. Comments made by Board members were also alleged to have created a bias against the respondent. The Court denied the TRO based on the doctrine of abstention as articulated in *Younger v. Harris*, 401 U.S. 37 (1971). The District Court, in related language, stated that "In sum, Dr. Michalowski's evidence of bias has not nearly risen to the level of bias that would justify exception to the *Younger* abstention doctrine."

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 1-56 and Respondent's exhibits 1-18 were admitted into the Record. Subsequent to the parties' opening statements, the taking of testimony, exhibits, and closing arguments, the Board deliberated and made the following findings of fact by a preponderance of the credible evidence.

II. FINDINGS OF FACT

1. Ellen Michalowski, 52 years of age, is a resident of Presque Isle, Maine.
2. Dr. Michalowski is a Board Certified specialist in Obstetrics and Gynecology and was first licensed as a physician in Arizona in 1985 and subsequently in Maine in 1996.
3. Dr. Michalowski, in her July 7, 2009 response to the Board's correspondence, wrote that she had sustained a left knee injury in the past while skiing. The injury eventually produced considerable pain which ultimately resulted in a total replacement of that knee in December 2005.
4. Following the knee surgery, Dr. Michalowski had nine follow-up visits with her surgeon to address her complaints of continuing knee pain.
5. In July 2006, Dr. Michalowski was prescribed Kadian, a long-acting opiate for her pain.
6. In October 2006, Dr. Michalowski entered into a drug monitoring contract with the Maine Medical Association's Medical Professionals Health Program (MPHP).
7. In November 2006, she transferred her care to another surgeon who discovered a significant loosening of the knee implant and performed a revision of the surgery at which time a staph infection was noted in the area of the original replacement. Dr. Michalowski continued to receive prescription medications.
8. On April 10, 2007, Dr. Michalowski entered into a Consent Agreement with the Board that imposed discipline upon her Maine medical license. The day prior thereto she had prescribed Percocet or Endocet (opiates) for "TJ" to be filled at a Presque Isle pharmacy.²
9. The basis for the 2007 Consent Agreement was that Dr. Michalowski had been obtaining narcotic prescriptions over a two-year period from multiple different healthcare providers,

² Dr. Michalowski pled the 5th Amendment when asked whether her signature appeared on a number of prescriptions.

including obtaining narcotics and other prescription medications on the same or the next day and/or prior to the anticipated refill date.

10. In the 2007 Consent Agreement, licensee Michalowski admitted that the Board had sufficient evidence from which it could reasonably conclude that she: (a) inappropriately obtained narcotic pain medication from multiple medical providers, including physicians with whom she worked or were in practice and a nurse practitioner whom she supervised; and (b) she attempted to inappropriately obtain prescription medication from a medical provider with whom she did not have a provider/patient relationship. She also admitted that such conduct amounted to unprofessional conduct.

11. In the 2007 Consent Agreement, Dr. Michalowski agreed to the following:

a. Paragraph 13(a)(ii) – “only obtain her prescription medication(s) from a single primary care physician approved by the Board.”

b. Paragraph 13(a)(iii) – “only obtain her prescription medications from a single pharmacy designated by her primary care physician.”

c. Paragraph 13(b) – a five year license probation with conditions.

d. Paragraph 13(b)(i)(a) – “shall establish and maintain a patient relationship with a single primary care physician approved by the Board...[who] is outside of Dr. Michalowski’s own medical practice, and will provide all of Dr. Michalowski’s primary medical care, prescriptions, and pain medications, and appropriate referral and coordination of specialty medical care.”

e. Paragraph 13(b)(i)(b) – “shall establish and maintain a patient relationship with a single primary care physician approved by the Board...[who] is the sole prescriber of Dr. Michalowski’s narcotic pain medication(s) and any other prescription medication(s).”

f. Paragraph 13(b)(ix) – “agrees and understands that her use and/or filling of prescription medications will be monitored during the period of probation, and shall cooperate with the Board by whatever means necessary to effectuate this process.”

g. Paragraph 13(b)(x) – “abstain from the use or ingestion of alcohol or prescription medications that are not specifically prescribed to her by her sole primary care physician or covering physician approved by the Board.”

h. Paragraph 13(b)(xi) – “shall fully participate in the Maine Physician Health Program, and meet all of the conditions and requirements of that program.”

i. Paragraph 16 – “failure to comply with any of the terms or conditions of this Consent Agreement or of her probation shall constitute grounds for additional disciplinary action against her Maine medical license, including but not limited to an order, after hearing, modifying, suspending, or revoking her license.”

12. From July 2007 until July 2008, the licensee was employed as a physician at Northern Maine Medical Center (NMMC) in Fort Kent, Maine.

13. From October 15 until October 19, 2007, Dr. Michalowski underwent a drug addiction evaluation at the Talbot Recovery Center (Talbot) in Atlanta, Georgia.

14. Dr. Michalowski was untruthful when she reported at Talbot that she had never self-prescribed medications or wrote medications for herself.

15. On July 24-25, 2008, the Board staff received information from NMMC that Dr. Michalowski had been crossing the United States border into Canada in order to obtain narcotic medications from Canadian pharmacies. According to Peter Sirois, Associate Director at NMMC, Dr. Michalowski had obtained six thousand pills from multiple pharmacies in Canada. Mr. Sirois confronted the licensee and she denied the accusation until Mr. Sirois presented her with the documentation he obtained from the Canadian pharmacies. After being confronted with the documentation, Dr. Michalowski appeared to Mr. Sirois and another witness to admit having obtained the prescription medication from the Canadian pharmacies. The licensee denied at the hearing that she had admitted this but that denial is not found to be credible.

16. On July 30, 2008, the Board received a letter from the Maine Medical Association’s Medical Professionals Health Program. According to that letter, Dr. Michalowski had obtained opiate analgesics from a Canadian pharmacy without knowledge of the MPHP or her primary care physician which is a violation of the Consent Agreement and the MPHP contract.

17. On July 31, 2008, the Board staff received documentation from Northern Maine Medical Center that indicated Dr. Michalowski had issued prescriptions (telephone and/or in writing) in the name and date of birth of “TJ” for narcotic/opioid medications to the following Canadian pharmacies on the following dates:

a. Shoppers Drug Mart, Edmundston, New Brunswick

07/17/07	01/28/08	05/01/08
11/14/07	02/14/08	05/13/08

11/27/07	02/25/08	05/23/08
12/05/08	03/06/08	06/04/08
12/18/08	03/20/08	06/12/08

b. Shoppers Drug Mart, Edmundston, New Brunswick con't

12/26/08	04/03/08	06/18/08
01/18/08	04/17/08	07/17/08

c. Pharmacie Eric Lee, Clair, New Brunswick

12/27/07	03/21/08	05/29/08
01/03/08	03/27/08	06/06/08
01/10/08	04/07/08	06/13/08
01/23/08	04/15/08	06/20/08
02/06/08	04/23/08	07/11/08
02/25/08	05/07/08	07/19/08
03/04/08	05/20/08	

d. The DrugStore Pharmacy, Grand Falls, New Brunswick

01/21/08	05/12/08	07/03/08
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e. The DrugStore Pharmacy, Edmundston, New Brunswick

02/29/08	05/02/08
03/07/08	05/15/08
03/25/08	05/22/08
04/04/08	06/10/08
04/15/08	06/20/08
04/24/08	07/16/08

f. Wal-Mart Pharmacy, Grand Falls, New Brunswick

04/08/08

06/16/08

07/07/08

g. Wal-Mart Pharmacy, Edmundston, New Brunswick

12/04/07

04/10/08

12/13/07

04/26/08

12/28/07

05/09/08

01/15/08

05/21/08

02/01/08

05/30/08

03/01/08

06/11/08

03/28/08

06/26/08

h. Pharmacie Jean Coutu, Edmundston, New Brunswick

06/05/08

07/09/08

06/17/08

06/24/08

18. According to the Canadian pharmacy records, between July 2007 and July 2008, Dr. Michalowski issued prescriptions for 6,685 tablets of narcotic/opiate medication in the name and date of birth of "TJ."

19. On August 4, 2008, the Board issued subpoenas to Dr. Michalowski and NMMC to produce any and all records relating to "TJ." NMMC advised the Board staff that it did not have any medical records regarding patient "TJ."

20. On or about August 14, 2008, Board staff received information that Dr. Michalowski had been prescribing narcotic/opioid medication to "TJ" at the following United States pharmacies:

- a. City Drug Store in Presque Isle, Maine
- b. Rite Aid Pharmacy in Presque Isle, Maine
- c. Wal-Mart Pharmacy in Presque Isle, Maine

21. According to that information, Dr. Michalowski had prescribed 1070 tablets of narcotic/opioid medication under the name and date of birth of "TJ."

22. On September 4, 2008, the federal DEA received a written statement from "TJ." According to that written statement:

a. Dr. Michalowski had been her friend and neighbor for 11 years, and that Dr. Michalowski offered to write her prescriptions for her health issues.

b. All of the prescriptions that "TJ" ever received from Dr. Michalowski were filled at three pharmacies located in Presque Isle, Maine.

c. At no time did "TJ" ever fill any prescriptions outside of the United States.

d. Dr. Michalowski called "TJ" in July 2008 and advised that she had been caught presenting a prescription in "TJ"'s name at a Canadian pharmacy.

23. On September 9, 2008, the Board and Dr. Michalowski entered into another Consent Agreement whereby she agreed to temporarily suspend her medical practice until final Board resolution of the pending issues. On September 16, 2008, the Board initiated a complaint against Dr. Michalowski's Maine medical license.

24. On June 17, 2009, the licensee surrendered her federal DEA registration. In a letter dated June 12, 2009, to the federal DEA, Dr. Michalowski stated that she was "presently disabled, and unable to work in the near future, so there is no sense in defending myself at this point."

25. On July 7, 2009, the Board received a written response from Dr. Michalowski to the complaint which had been filed 10 months previous. In her written response, she admitted that she was addicted to narcotic/opiate medication. According to her response, she "restarted Percocet" because she was "miserable" and her primary care physician was gone on vacation. According to her response, "The next week, I was confronted by members of the NMMC staff and administration concerning my opiate usage. They placed me on medical leave..." At no point in her written response did Dr. Michalowski deny the allegations of the Board's complaint that she had been obtaining narcotic/opiate medication for her own personal use from multiple Canadian pharmacies in the name of "TJ."

26. The State, a few days prior to the first session on April 13, 2010, subpoenaed any medical records from Dr. Michalowski regarding her prescribing of narcotic/opioid medication to "TJ."

As of April 13, 2010, the date of the first session of this hearing, the Board had not received those records.

27. At this hearing, Dr. Michalowski testified that she had provided some after-hours medical care to "TJ" at the hospital and that the hospital's manager had given her permission to do so and to keep the created records private.

28. Dr. Michalowski further testified that "TJ" had instructed her not to disseminate the records under any circumstances due to extremely significant personal information that she had shared with the doctor.

29. Dr. Michalowski additionally testified that members of her family had cleaned out her office at NMMC and brought the cabinet containing the alleged records to her home. The licensee then testified that she destroyed the records of "TJ" and those of another "private" patient.

30. Dr. Michalowski's testimony regarding records and treatment of "TJ" is incredible in at least two regards. First, "TJ's" credible testimony established that she was never given a physical by Dr. Michalowski, was totally unaware of any records produced by that physician, and further that she did not share any significant personal information with Dr. Michalowski that she feared would be divulged to others. In fact, Dr. Michalowski was prescribing medication to ease "TJ's" migraine headaches. The most persuasive evidence is that Dr. Michalowski did not author any treatment records for "TJ."

31. Second, the hospital's managers testified that they had not and would not have given permission to Dr. Michalowski to treat her private patients or create private charts for them at the hospital. Dr. Michalowski's office was cleaned out by the hospital's practice manager and Peter Sirois, Chief Operating Officer at NMMC. No records of "TJ" were located during a very thorough search, thereby effectively refuting the licensee's testimony that her family had brought her a cabinet containing "TJ's" records.

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, concluded by the vote of 5-0, that Ellen Michalowski, M.D. violated the following Board Rules and statutes.

1. 32 M.R.S. § 3282-A(2)(A): by engaging in the practice of fraud or deceit in connection with service rendered within the scope of her Maine medical license by:

A. Between on or about July 2007 and July 2008, on multiple occasions, issuing (telephoning, faxing, or writing) prescriptions for narcotic medication to seven different Canadian pharmacies in the name and date of birth of "TJ," going into Canada, picking up the medication, and bringing it back into the United States for her own personal use. She was able to accomplish this using her "border area" license issued by the Province of New Brunswick only because she held a valid Maine medical license.

B. Between on or about July 2007 and July 2008, on multiple occasions, obtaining narcotic medication from Canadian pharmacies by fraud or deceit, to wit:

- a. By telephoning/faxing illegitimate prescriptions for narcotic medications to Canadian pharmacies;
- b. By personally picking up the illegitimate prescriptions for narcotic medications;
- c. By misrepresenting to the Canadian pharmacies that Dr. Michalowski was patient "TJ" or was acting on behalf of "TJ."

2. 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 in violation of by:

A. Between on or about July 2007 and July 2008, on multiple occasions, issuing (telephoning or writing) prescriptions for narcotic medication to seven different Canadian pharmacies in the name and date of birth of "TJ," and then going into Canada, picking up the medication, and bringing it back into the United States for Dr. Michalowski's own personal use.

B. Prescribing narcotic medication for "TJ" without having a legitimate doctor-patient relationship with "TJ."

C. Prescribing narcotic medication for "TJ" without conducting an evaluation of "TJ," including a pain history, assessment of impact of the pain, a directed physical examination, a review of previous diagnostic studies, a review of previous interventions, a drug history, and an assessment of coexisting diseases or conditions of "TJ" – all in contradiction of the "Principles of Proper Patient Management" of Board Rule, Chapter 11, Section 2(A).

D. Prescribing narcotic medication for "TJ" without creating a treatment plan in contradiction of the "Principles of Proper Patient Management" of Board Rule, Chapter 11, Section 2(B).

E. Prescribing narcotic medication for "TJ" without conducting a periodic review of

treatment efficacy, including the functional status of the patient, continued analgesia, controlled substances side effects - in contradiction of the “Principles of Proper Patient Management” of Board Rule, Chapter 11, Section 2(E).

F. Prescribing narcotic medication for “TJ” without creating a treatment plan in contradiction of the “Principles of Proper Patient Management” of Board Rule, Chapter 11, Section 2(B).

G. Prescribing narcotic medication for “TJ” without conducting a periodic review of treatment efficacy, including the functional status of the patient, continued analgesia, controlled substances side effects- in contradiction of the “Principles of Proper Patient Management” of Board Rule, Chapter 11, Section 2(E).

H. Prescribing narcotic medication for “TJ” without creating and maintaining a medical record or documentation of the evaluation, the reason for the controlled substances prescribing, the overall pain management treatment plan, any consultations received, periodic review of the status of the patient, drug treatment outcomes and rationale for changes, and all prescriptions - in contradiction of the “Principles of Proper Patient Management” of Board Rule, Chapter 11, Section 2(F).

3. 32 M.R.S. 3282-A(2)(E): incompetence by engaging in conduct that evidences a lack of ability or fitness to discharge the duty owed by the licensee to a client or patient or the general public by:

See 2(A) – (H) above.

4. 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.

See 1 and 2 (A)-(B) above. Moreover, Dr. Michalowski apparently traveled on occasion to Canada to illegally secure narcotics in the early morning and noontime hours before treating patients. Although there was no proof at this hearing of patient harm, it is more likely than not that such harm to the public is and was foreseeable and may have indeed occurred.

5. 32 M.R.S. § 3282-A(2)(H): by violating any rule adopted by the Board by:

See 2 (B)-(H) above.

6. The Consent Agreement of April 10, 2007 by: violating a condition of probation as imposed by the Consent Agreement which constitutes grounds for disciplinary action pursuant to 10 M.R.S. § 8003(5).

See 1(B), 2(A) above.

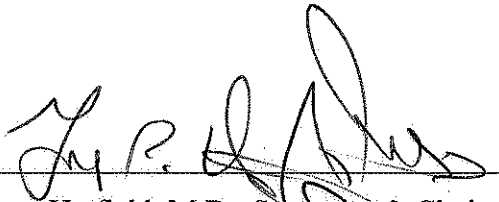
IV.

SANCTIONS

The Board voted 5-0 to order the following sanctions based on the egregiousness of the above violations. The Board was particularly disturbed that Dr. Michalowski on several occasions told falsehoods regarding her drug addiction and blatantly lied under oath during this hearing on April 13, 2010 regarding the compilation of and destruction of "TJ's" records. "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. Michalowski was neither honest in her practice of medicine nor trustworthy.

Wherefore, the Board orders that Ellen Michalowski, M.D.'s license to practice medicine in the State of Maine is hereby **REVOKED**. Dr. Michalowski is further ordered to pay the costs of this hearing, not to exceed \$14,000, by September 14, 2011 or to show cause by that date why she is not financially able to comply with this order. Ellen Michalowski shall pay for any additional costs of transcribing the hearing testimony at her request or if she appeals. Payment of the costs shall be by check or money order **made payable to: "Maine Board of Licensure in Medicine"** and remitted to Randal C. Manning, Executive Director, 137 State House Station, Augusta, Maine 04333-0137. Costs are ordered consistent with past Board practices and because Board licensees who obey Board statutes and Rules should not be obligated to pay for the costs of those who don't.

Dated: September 14, 2010



Gary Hatfield, M.D., Secretary & Chairman Pro Tem
Maine Board of Licensure in Medicine

V.

APPEAL RIGHTS

Pursuant to the provisions of 5 M.R.S. Sec. 10051.3 and 10 M.R.S. Sec. 8003 (5)(G) and (5-A), any party that appeals this Decision and Order must file a Petition for Review in the District 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:) INTERIM CONSENT AGREEMENT
Ellen E. Michalowski, M.D.) FOR DISCIPLINE AND MODIFICATION
Complaint No. CR06-225/CR07-035) OF MEDICAL LICENSURE

This document is an Interim 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 Ellen E. Michalowski, M.D. The parties to the Consent Agreement are: Ellen E. Michalowski, M.D. ("Dr. Michalowski"), the State of Maine Board of Licensure in Medicine ("the Board") and the State of Maine Department of 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. Michalowski has held a license to practice medicine in the State of Maine since 1996. Dr. Michalowski practices medicine in Presque Isle, Maine, and specializes in Obstetrics and Gynecology.
2. On or about April 10, 2007, Dr. Michalowski entered into a Consent Agreement with the Board regarding complaints CR06-225 and CR07-035. In that Consent Agreement, Dr. Michalowski admitted to obtaining narcotic prescriptions from multiple different healthcare providers, including her practice partner and others with whom she worked, including a nurse practitioner whom she supervised, but did not have an established physician-patient relationship. In addition, Dr. Michalowski admitted that she had a pseudo-addiction related to poor pain control for a long-standing knee injury.

In the Consent Agreement, Dr. Michalowski agreed that “she shall only obtain her prescription medication(s) from a single primary care physician approved by the Board... [and] shall only obtain her prescription medications from a single pharmacy designated by her primary care physician.” In addition, Dr. Michalowski agreed that she “shall not prescribe any medications for herself or her family members” and would “abstain from the use or ingestion of alcohol or prescription medications that are not specifically prescribed to her by her sole primary care physician.” A copy of that Consent Agreement is attached to and incorporated into this Interim Consent Agreement as “Exhibit A.”

3. On or about July 24, 2008, the Board received information indicating that Northern Maine Medical Center (NMMC) had suspended Dr. Michalowski’s hospital privileges based upon information that Dr. Michalowski had been issuing prescriptions to a pharmacy in New Brunswick, Canada for narcotic medication for a fictitious patient, and picking up the narcotic medication herself. According to the information from NMMC, Dr. Michalowski admitted to this conduct when confronted with the information.

4. This Interim Consent Agreement has been negotiated by legal counsel for Dr. Michalowski and legal counsel for the Board. Absent acceptance of this Interim Consent Agreement by Dr. Michalowski by signing it and dating it in front of a notary 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 September 2, 2008, the Board

may take any action permitted by law regarding Dr. Michalowski's Maine medical license.

5. By signing this Consent Agreement, Dr. Michalowski waives, in her personal capacity and through legal counsel, any and all objections to, and hereby consents to the presentation of this proposed Interim Consent Agreement to the Board for possible ratification. Dr. Michalowski waives, in her personal capacity and through legal counsel, forever any arguments of bias or otherwise against any of the Board members in the event that the Board fails to ratify this proposed Interim Consent Agreement.

COVENANTS

6. The Board and Dr. Michalowski agree that it would be in Dr. Michalowski's and the public's best interest for her to temporarily suspend her ability to practice medicine in the State of Maine prior to the Board's ultimate disposition of this new information regarding Dr. Michalowski's alleged self-prescribing of narcotic medication.

7. Dr. Michalowski agrees to the temporary suspension of her license to practice medicine in the State of Maine until such time as the Board takes final action – either by hearing and decision and order or by Consent Agreement – regarding Dr. Michalowski's alleged self-prescribing of narcotic medication. Dr. Michalowski understands and agrees that she will not practice medicine or render any professional health care services to any person in the State of Maine or in any other location under her Maine medical license.

In the meantime, Dr. Michalowski shall return her Maine medical license to the Board pending final resolution of these new allegations.

8. Violation of any of the terms or conditions of this Interim Consent Agreement by Dr. Michalowski shall constitute unprofessional conduct and grounds for additional discipline of her Maine medical license, including but not limited to possible fines, suspension, and revocation.

9. Dr. Michalowski has been represented by legal counsel, Kenneth W. Lehman, Esq. with respect to the terms of this Interim Consent Agreement.

10. This Interim Consent Agreement is not appealable, constitutes interim disciplinary action, is reportable to the National Practitioner Data Bank, the Federation of State Medical Boards, and other licensing jurisdictions, and is effective until the Board holds an adjudicatory hearing and/or fully and finally resolves this matter with a final Consent Agreement or by other lawful means.

11. This Interim 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.

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

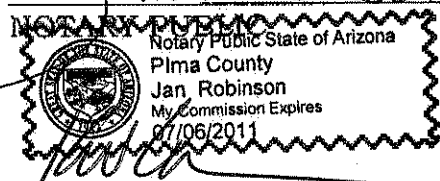
I, ELLEN E. MICHALOWSKI, M.D., HAVE READ AND UNDERSTAND THE FOREGOING INTERIM CONSENT AGREEMENT. I UNDERSTAND THAT BY SIGNING IT, I WAIVE CERTAIN RIGHTS. I SIGN THIS INTERIM CONSENT AGREEMENT VOLUNTARILY, WITHOUT ANY THREAT OR PROMISE. I UNDERSTAND THAT THIS INTERIM CONSENT AGREEMENT CONTAINS THE ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF ANY KIND, VERBAL, WRITTEN OR OTHERWISE.

DATED: 8/26/08 Ellen E. Michalowski, M.D.
ELLEN E. MICHALOWSKI, M.D.

STATE OF Arizona
Pima County, S.S.

Personally appeared before me the above-named Ellen E. Michalowski, M.D., and swore to the truth of the foregoing based upon her own personal knowledge, or upon information and belief, and so far as upon information and belief, she believes it to be true.

DATED: 8/26/08 Jan Robinson



DATED: 9/2/2008
KENNETH W. LEHMAN, ESQ.
Attorney for Dr. Michalowski

STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

DATED: 9/9/08 Sheridan R. Oldham, M.D.
SHERIDAN R. OLDHAM, M.D., Chairman

STATE OF MAINE DEPARTMENT
OF THE ATTORNEY GENERAL

DATED: 9/9/08
DENNIS E. SMITH
Assistant Attorney General

APPROVED
EFFECTIVE:

STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

In re:)	CONSENT
Ellen E. Michalowski, M.D.)	AGREEMENT
Complaint Nos. CR06-225/07-035)	

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 Ellen E. Michalowski, M.D. The parties to the Consent Agreement are: Ellen E. Michalowski, M.D. (“the Licensee”), the State of Maine Board of Licensure in Medicine (“the Board”) and the State of Maine Department 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. Michalowski has held a license to practice medicine in the State of Maine since 1996. Dr. Michalowski practices medicine in Presque Isle, Maine, and specializes in Obstetrics and Gynecology.

2. On July 11, 2006, the Board reviewed information indicating that, over a two-year period, Dr. Michalowski had been obtaining narcotic prescriptions from multiple different healthcare providers¹, including obtaining narcotics and other prescription medications on the same or the next day and/or prior to the anticipated refill date. As a result of reviewing this

¹ According to the investigative information, Dr. Michalowski received narcotic prescriptions from over a dozen different medical providers.

information, the Board voted to initiate a complaint against Dr. Michalowski's Maine medical license. The Board docketed the complaint as CR06-225.

3. On September 25, 2006, the Board received Dr. Michalowski's response to complaint CR06-225. In her response, Dr. Michalowski alleged that she did not realize that she had received so many narcotic prescriptions. According to Dr. Michalowski, she had a long-standing knee injury that caused her severe pain and led to a total knee replacement in December 2005. Although Dr. Michalowski admitted that the Board information makes it appear that she was "doctor-shopping," she denied any such action. Dr. Michalowski admitted that she obtained narcotic prescriptions from multiple medical providers, including people with whom she worked, including a nurse midwife. Dr. Michalowski admitted that asking some of these medical providers to prescribe narcotics for her was inappropriate. In addition, Dr. Michalowski alleged that Dr. David Simmons of the Maine Committee on Physician Health felt that she was not addicted to narcotics, but had a "pseudo-addiction related to poor pain control management of long-standing knee pain."

4. On October 30, 2006, the Board sent Dr. Michalowski a letter requesting clarification of her written response to the Board. Specifically, the Board asked for explanations of narcotic prescriptions that she obtained from four medical providers, as well as an explanation of her obtaining narcotic prescriptions from a nurse practitioner, for whom Dr. Michalowski was the supervising physician.

5. On November 9, 2006, the Board received a reply from Dr. Michalowski to its October 30, 2006 request for clarification. In her reply, Dr. Michalowski admitted that: she asked her practice partner for narcotic pain prescriptions, and that it was “bad judgment” on her part; she asked a long-term *locum tenens* in her group practice for narcotic pain prescriptions on two occasions, and that it was “poor judgment” on her part; sometimes she went to other providers in her medical practice to obtain narcotic prescriptions when she was unable to reach her treating physician; her medical records regarding the prescription of narcotic medications to her by various medical providers are “not complete;” she has entered the Maine Physician Health Program.

6. On December 20, 2006, the Board received written notification from The Aroostook Medical Center (TAMC) indicating that it had imposed an administrative suspension upon Dr. Michalowski on October 4, 2006. The administrative suspension, described as non-punitive was based upon a report by a Certified Nurse Midwife with whom Dr. Michalowski had no provider/patient relationship. According to the report, Dr. Michalowski requested that the Certified Nurse Midwife provide her with a prescription for non-narcotic medication despite being advised by TAMC to use only one pharmacy and one provider for all of her prescription needs.

7. On January 10, 2007, the Board received a written notification from TAMC indicating that Dr. Michalowski was placed on medical leave from December 28, 2006 to February 18, 2007.

8. On February 13, 2007, the Board reviewed the written notifications from TAMC and voted to initiate another complaint based upon them. The Board docketed the complaint as CR07-035.

9. On January 29, 2007, after obtaining two opinions recommending repeat surgery on her knee, Dr. Michalowski underwent revision of the left total knee replacement. During the revision, it was found that there was no bone in-growth of the prosthesis to the bone and that the synovial fluid cultures taken at the time of surgery grew out staph species, requiring Dr. Michalowski to undergo six weeks of intravenous antibiotic therapy through a central line. These findings are consistent with Dr. Michalowski experiencing prolonged and more than normal post-operative pain following the December 2005 knee replacement surgery.

10. This Consent Agreement has been negotiated by counsel for Dr. Michalowski and counsel for the Board in order to resolve all matters pending before the Board, including complaints CR06-225 and CR07-035 without an adjudicatory hearing. Absent ratification of this proposed Consent Agreement by a majority vote of the Board on March 13, 2007, the matter will be scheduled for an adjudicatory hearing.

11. By signing this Consent Agreement, Dr. Michalowski waives, in her personal capacity and through legal counsel, any and all objections to, and hereby consents to the presentation of this proposed Consent Agreement to the Board for possible ratification. Dr. Michalowski waives, in her personal capacity and through legal counsel, forever any arguments of bias or otherwise

against any of the Board members in the event that the Board fails to ratify this proposed Consent Agreement.

COVENANTS

12. Dr. Michalowski admits that with regard to CR06-225 that the Board has sufficient evidence from which it could reasonably conclude that she inappropriately obtained narcotic pain medication from multiple medical providers, including physicians with whom she worked or was in practice and a nurse practitioner whom she supervised, in order to self-manage her chronic knee pain. Dr. Michalowski admits that such conduct constitutes unprofessional conduct and grounds for discipline of her Maine medical license pursuant to 32 M.R.S.A. § 3282-A(2)(F). Dr. Michalowski admits that with regard to CR07-035 that the Board has sufficient evidence from which it could reasonably conclude that she attempted to inappropriately obtain prescription medication from a medical provider with whom she did not have a provider/patient relationship. Dr. Michalowski admits that such conduct constitutes unprofessional conduct and grounds for discipline of her Maine medical license pursuant to 32 M.R.S.A. § 3282-A(2)(F).

13. As discipline for the conduct described in paragraph 11 above, Dr. Michalowski agrees to:

- a. Accept a REPRIMAND. Dr. Michalowski agrees that henceforth:
 - (i) She shall not obtain prescription medications from physicians, physician assistants, or advance nurse practitioners within her same medical practice;

- (ii) She shall only obtain her prescription medication(s) from a single primary care physician approved by the Board;
- (iii) She shall only obtain her prescription medications from a single pharmacy designated by her primary care physician; and
- (iii) She shall comply with the conditions of probation set out below.

b. Accept a five (5) year license probation², effective the date of the execution³ of this Consent Agreement, with the following specific conditions:

- (i) Dr. Michalowski shall establish and maintain a patient relationship with a single primary care physician approved by the Board, and if that physician is unavailable, then from a covering physician approved in advance by the Board. Dr. Michalowski shall ensure that her Board-approved primary care physician and/or covering physician:

- (a) Is outside of Dr. Michalowski's own medical practice, and will provide all of Dr. Michalowski's primary medical care⁴, prescriptions, and pain

² In the event that Dr. Michalowski successfully completes the five (5) year term of probation, the probation and conditions shall terminate.

³ For purposes of this Consent Agreement, "execution" shall mean the date on which the last signature is affixed to this Consent Agreement.

⁴ The sole exception to this provision is that Dr. Michalowski may continue to receive OB/GYN treatment from Dr. Joyce Herbert, M.D. However, Dr. Herbert will not provide or prescribe any medications for Dr. Michalowski, who will receive all prescription medications from the primary care physician or covering physician approved by the Board.

medications, and appropriate referral and coordination of specialty medical care;

(b) Is the sole prescriber of Dr. Michalowski's narcotic pain medication(s) and any other prescription medication(s);

(c) Requires Dr. Michalowski to enter into a written pain contract;

(d) Requires Dr. Michalowski to undergo random urine testing pursuant to the written pain contract;

(e) Immediately reports in writing to the Board concerning any failure by Dr. Michalowski to submit to the urine testing or regarding any abnormality regarding a urine test result; and

(f) Immediately reports in writing to the Board concerning any failure by Dr. Michalowski to comply with the written pain contract.

(ii) Dr. Michalowski shall engage in counseling and treatment regarding chronic pain and substance use and depression with a Board-approved individual or individuals;

(iii) Dr. Michalowski shall ensure that, for twelve (12) months following the execution of this Consent Agreement, her Board-approved treatment provider(s) furnishes the Board with monthly reports concerning Dr. Michalowski's

counseling and treatment. Thereafter, Dr. Michalowski shall ensure that her Board-approved treatment provider(s) furnishe(s) the Board with reports quarterly;

(iv) Dr. Michalowski agrees and understands that the Board and the Office of Attorney General shall have complete access to her present and future personal medical and counseling records, and shall execute any and all releases so that the Board and the Office of the Attorney General may access and/or obtain copies of her medical and/or counseling and treatment records in order to ensure her compliance regarding the issues identified in this Consent Agreement;

(v) Dr. Michalowski agrees that her medical practice will be monitored by a physician or physicians approved by the Board. This physician must be in direct contact with Dr. Michalowski and observe her within her medical practice at least once a week, and inform the Board if Dr. Michalowski demonstrates any issues with regard to isolation and inappropriate boundaries. The monitoring physician shall report such information by telephone and in writing within 24 hours or as soon thereafter as possible. Dr. Michalowski shall, within thirty days following the execution of this Consent Agreement, provide the Board with the name,

telephone number, and office address of her proposed monitoring physician or physicians;

(vi) Dr. Michalowski acknowledges that the monitoring physician is an agent of the Board. Dr. Michalowski shall execute any and all releases necessary for the Board or its agents to directly contact the monitoring physician about Dr. Michalowski;

(vii) Dr. Michalowski shall permit the Board or its agent(s) to inspect her medical practice at random intervals as determined by the Board or its designee to ensure her compliance with the terms and conditions of this Consent Agreement. Such inspection shall include but not be limited to access to all areas and records of the medical practice;

(viii) Dr. Michalowski shall not prescribe any medications for herself or her family members;

(ix) Dr. Michalowski agrees and understands that her use and/or filling of prescription medications will be monitored during the period of probation, and shall cooperate with the Board by whatever means necessary to effectuate this process;

(x) Dr. Michalowski agrees to abstain from the use or ingestion of alcohol or prescription medications that are not

specifically prescribed to her by her sole primary care physician or covering physician approved by the Board; and

(xi) Dr. Michalowski shall fully participate in the Maine Physician Health Program, and meet all of the conditions and requirements of that program.

14. Nothing in this Consent Agreement shall prohibit Dr. Michalowski from qualifying for approval as a primary supervising physician for a licensed Physician Assistant or for a licensed Advanced Practice Registered Nurse pursuant to Board Rules, Chapters 2 and 3.

15. Dr. Michalowski waives her right to a hearing before the Board or any court regarding all facts, terms and conditions of this Consent Agreement. Dr. Michalowski agrees that this Consent Agreement is a final order resolving the complaints CR06-225 and CR07-035. This Consent Agreement is not appealable and is effective until modified or rescinded by the parties hereto. This Consent Agreement cannot be amended orally. It can only be amended by a writing signed by the parties hereto and approved by the Office of Attorney General. Requests for amendments by Dr. Michalowski shall be made in writing and submitted to the Board. Dr. Michalowski may, at reasonable intervals, petition the Board for amendment of the terms and conditions of this Consent Agreement. Upon making such a petition, Dr. Michalowski shall bear the burden of demonstrating that the Board should amend the Consent Agreement. The Board shall have the discretion to: (a) deny Dr. Michalowski's petition; (b) grant Dr. Michalowski's petition; and/or (c) grant Dr. Michalowski's

petition in part as it deems appropriate to ensure the protection of the public. Any decision by the Board as a result of Dr. Michalowski's request to modify this Consent Agreement need not be made pursuant to a hearing and is not appealable to any court.

16. Dr. Michalowski acknowledges that, pursuant to Title 10 M.R.S.A. § 8003(5)(B), her failure to comply with any of the terms or conditions of this Consent Agreement or of her probation shall constitute grounds for additional disciplinary action against her Maine medical license, including but not limited to an order, after hearing, modifying, suspending, or revoking her license.

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

18. 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.

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

20. The Board and Dr. Michalowski agree that no further agency or legal action will be initiated against her by the Board based upon the facts described herein, except or unless she fails to comply with the terms and conditions of this Consent Agreement.

21. Dr. Michalowski acknowledges by her signature hereto that she has read this Consent Agreement, that she has had an opportunity to consult

with an attorney before executing this Consent Agreement, that she executed this Consent Agreement of her own free will and that she agrees to abide by all terms and conditions set forth herein.

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

I, ELLEN E. MICHALOWSKI, 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: 3/23/07 Ellen E. Michalowski, MD
ELLEN E. MICHALOWSKI, M.D.

STATE OF Maine
Browstook, S.S.


Personally appeared before me the above-named Ellen E. Michalowski, M.D., and swore to the truth of the foregoing based upon her own personal knowledge, or upon information and belief, and so far as upon information and belief, she believes it to be true.

DATED: 3-23-07 Jennifer Wilson
NOTARY PUBLIC/ATTORNEY
MY COMMISSION ENDS: 5-13-07

DATED: March 28, 2007 KW Lehman
KENNETH W. LEHMAN, ESQ.
Attorney for Ellen E. Michalowski, M.D.

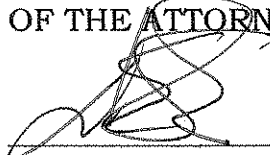
STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

DATED: April 10, 2007


EDWARD DAVID, M.D., Chairman

STATE OF MAINE DEPARTMENT
OF THE ATTORNEY GENERAL

DATED: 4/10/07


DENNIS E. SMITH
Assistant Attorney General

Effective Date: