

THERE ARE SIX ACTIONS UNDER THIS TAB, A CONSENT AGREEMENT DATED 3/23/99, A BOARD DECISION AND ORDER DATED 7/19/01, A CONSENT AGREEMENT FOR INACTIVE LICENSE DATED 12/10/02, A CONSENT AGREEMENT FOR CONDITIONAL LICENSE DATED 6/30/03, A NOTICE OF AUTOMATIC SUSPENSION OF LICENSE EFFECTIVE 3/5/04 AND A DECISION AND ORDER OF THE BOARD DATED 4/13/04.

MAINE STATE BOARD OF LICENSURE IN MEDICINE

IN RE: Licensure Disciplinary Action)
)
E. Jeffrey Violette, M.D.) DECISION AND ORDER

I. PROCEDURAL HISTORY

Pursuant to the authority found in 32 M.R.S.A. Sec. 3263, *et seq.*, 5 M.R.S.A. Sec. 9051, *et seq.* and 10 M.R.S.A. Sec. 8001, *et seq.*, the Board of Licensure in Medicine (Board) met in public session at the Board's offices located in Augusta, Maine on April 13, 2004. The purpose of the hearing was to review the Board's preliminary decision to suspend Dr. Violette's license to practice medicine as a physician and to determine whether further disciplinary action was warranted. A quorum of the Board was in attendance during all stages of the proceedings. Participating and voting Board members were Chairman Edward David, M.D., J.D., Gary Hatfield, M.D., Bettsanne Holmes (public member), Sandra Tuttle (public member), Kimberly K. Gooch, M.D., Sheridan R. Oldham, M.D., Cheryl D. Clukey (public member). Ruth McNiff, Ass't. Attorney General, presented the State's case. Dr. Violette appeared *pro se*. James E. Smith, Esq. served as Presiding Officer. George Dreher, M.D. recused himself from the proceedings. Subsequently, there were no conflicts of interest found to disqualify any member of the Board from participating in this hearing.

State's Exhibits 1-7 were admitted into the Record. Following the State's opening statement, the taking of testimony, submission of exhibits, and the closing arguments by both parties, the Board deliberated and made the following findings of fact by a preponderance of the credible evidence regarding the violations alleged in the Complaint.

II. FINDINGS OF FACT

Jeffrey Violette has been licensed in Maine as a physician since 1986 with a practice specializing in psychiatry. He signed a Consent Agreement with the Board in 1999 due to his inappropriate prescribing and billing practices. In 2001, the Board issued a Decision and Order suspending his license for 360 days for, among other things, cannabis/alcohol abuse. Dr. Violette subsequently received a complete psychological and physical evaluation as well as ongoing therapy. He returned to the Board in June 2002 to discuss the possible reinstatement of his license. However, a July 2002 test was positive for marijuana. As a result, Dr. Violette signed a second Consent Agreement which placed his license indefinitely on inactive status.

The Board was kept abreast of Dr. Violette's progress on several occasions during 2002-2003. In June of 2003, the Board ordered that Dr. Violette's license to practice medicine be restored to active status with conditions recited in the second Consent Agreement. One of the conditions was that he "completely abstain from the use of any and all Prohibited Substances" which included marijuana. The Consent Agreement clearly stated that "failure to comply with any of the following conditions shall **irrevocably result in the non-renewal or revocation** of the Licensee's license to practice medicine in the State of Maine." Additionally, Dr. Violette agreed in that document that "any evidence of use at any time in the future, whether in Maine or elsewhere, of any Prohibited Substance shall constitute a violation of the Consent Agreement, which SHALL

RESULT IN THE IMMEDIATE, INDEFINITE AUTOMATIC SUSPENSION OF LICENSURE, AND PROOF OF USE SHALL RESULT IN AUTOMATIC REVOCATION/NON-RENEWAL OF LICENSURE.”

A random urine test taken on February 24, 2004 reported positive for marijuana on March 4 of this year. At the instant hearing, Dr. Violette admitted to having smoked some of that substance and did not contest the positive findings. However, he testified that he currently was attending AA meetings and had family support in his struggle to overcome his alcohol/substance abuse problems. He stated his desire to continue working as a psychiatrist and would strive to attain that goal.


III. CONCLUSIONS OF LAW

The Board, by a vote of 7-0, concluded that E. Jeffrey Violette, M.D. violated the terms of the Consent Agreement by testing positive for marijuana. The Board further found that Dr. Violette was both untrustworthy and unreliable and had been given several opportunities by the Board during the past 5 years to come into compliance with licensing standards, all to no avail.

Wherefore, based on the terms of the Consent Agreement, the Board, by a vote of 7-0, orders that: the license of E. Jeffrey Violette to practice medicine is hereby immediately revoked. The Board will not entertain reapplication for licensure until at least 5 years from the date of the instant hearing.

SO ORDERED.

Dated: April 26, 2004



Edward David, M.D., J.D., Chairman
Maine Board of Licensure in Medicine

IV. APPEAL RIGHTS

The terms of the Consent Agreement do not allow for an appeal of this Decision. However, in the event that an appeal is taken, pursuant to the provisions of 5 M.R.S.A. Sec. 10051.3 and 10 M.R.S.A. Sec. 8003, any party must file a Petition for Review in the Superior Court or a Complaint in the District Court within 30 days of receipt of this Order. The venue is unclear so a cautious appellant should file in both. 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 and Complaint 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
137 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0137

JOHN ELIAS BALDACCI
GOVERNOR

EDWARD DAVID, M.D.J.D.
CHAIRMAN

RANDAL C. MANNING
EXECUTIVE DIRECTOR

March 5, 2004

***CERTIFIED MAIL 7003 1680 0000 0245 4187
RESTRICTED DELIVERY, RETURN RECEIPT REQUESTED***

E. Jeffrey Violette, M.D.
Bio-Psychosocial Institute
RR 4 Box 8130
Winslow, ME 04901

Re: Automatic suspension of license

Dear Dr. Violette:

This letter will serve as official notice that your license to practice medicine and/or surgery in the State of Maine is **automatically suspended, effective March 5, 2004**, for violation of your Consent Agreement. The Board received notification from the Physician Health Program that your recent urine test was positive for use of a prohibited substance, marijuana. In accordance with Article 3, K of your Consent Agreement, please respond to this action.

An Adjudicatory Hearing on this matter will be scheduled for an upcoming Board meeting. The following issue will be considered by the Board at the Adjudicatory Hearing:

- A. Whether you have violated the terms of your Consent Agreement by using a prohibited substance, as defined by your Consent Agreement.

If the Board finds the above allegation is true, the Board shall then determine whether to take any action against your license. The Board may take such action as the Consent Agreement empowers it to take, including, but not limited to, reprimand, fine, suspension, probation, non-renewal, revocation or any combination thereof, as deemed appropriate by the Board.

The Adjudicatory Hearing shall be held pursuant to the Maine Administrative Procedures Act, 5 M.R.S.A., §9051, *et. seq.* You have the right to be represented by counsel of your choosing, and you should appear at the hearing accompanied by an attorney. You have the right to testify under oath, call witnesses, cross-examine witnesses and enter documents into evidence.

OFFICE LOCATION: TWO BANGOR STREET, AUGUSTA, ME

PHONE: (207) 287-3601

FAX: (207) 287-6590

Letter to E. Jeffrey Violette, M.D.
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The Adjudicatory Hearing will be held in Public Session of the Board.

If you have any questions, please contact the Board's attorney, Assistant Attorney General Ruth McNiff at (207) 626-8494.

Sincerely,



Randal C. Manning
Executive Director

RCM/msl

7003 1680 0000 0245 4187

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Certified Fee	2.30
Return Receipt Fee (Endorsement Required)	1.15
Restricted Delivery Fee (Endorsement Required)	3.50
Total Postage & Fees	\$ 10.72



Sent To E. Jeffrey Violette M.D.
 Street, Apt. No., or PO Box No. Bio-psychosocial Institute
RR 4 Box 8130
 City, State, ZIP+4 Winslow ME 04901

PS Form 3800, June 2002 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

E. Jeffrey Violette M.D.
 Bio-Psychosocial Institute
 RR 4 Box 8130
 Winslow ME 04901

2. Article Number (Transfer from) 7003 1680 0000 0245 4187

COMPLETE THIS SECTION ON DELIVERY

A. Signature E. Jeffrey Violette Agent Addressee

B. Received by (Printed Name) E. Jeffrey Violette C. Date of Delivery

D. Is delivery address different from item 1? Yes No
 if YES, enter delivery address below:

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

**STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE**

IN RE: E. JEFFREY VIOLETTE, M.D.)
)
) **CONSENT AGREEMENT
) FOR
) **CONDITIONAL LICENSE****

This document is a Consent Agreement and Order, effective when signed by all parties, regarding the issuance of a conditional license to practice medicine in the State of Maine to E. Jeffrey Violette, M.D.. The parties to the Consent Agreement are E. Jeffrey Violette, M.D. (the "Licensee"), the State of Maine Board of Licensure in Medicine (the "Board") and the Maine Department of Attorney General.

FACTUAL BACKGROUND

1. E. Jeffrey Violette, M.D. has been licensed as a physician in the state of Maine since 1986. His primary area of practice has been psychiatry.
2. In 1999, Dr. Violette, M.D. signed a consent agreement related to his prescribing and billing practices. In 2001, the Board issued a decision and order suspending Dr. Violette's license for 360 days. The Board also ordered a complete psychological and physical evaluation, ongoing therapy and prohibited self-prescribing. Before he could return to practice, Dr. Violette was required to satisfy the Board that he was fit to practice medicine.
3. Dr. Violette appeared before the Board in June, 2002, to discuss the terms of his reinstatement and conditions of practice. However, in July 2002, Dr. Violette tested positive for marijuana. He signed another consent agreement which placed his license in inactive status indefinitely.
4. After several appearances before the Board in 2002 and 2003, the Board, in June 2003, ordered Dr. Violette's license reinstated to active status with conditions.

CONDITIONS OF LICENSURE

The Licensee and the Board agree and understand that maintenance of his license shall be conditioned upon the Licensee's compliance with the following conditions of licensure. Except as may be specified below, failure to comply with any of the following conditions shall irrevocably result in the non-renewal or revocation of the Licensee's license to practice medicine in the State of Maine.

1. **ABSTINENCE.** The Licensee agrees that henceforth he shall completely abstain from the use of any and all Prohibited Substances. "Prohibited Substances" as used throughout this Consent Agreement shall mean: opiates; alcohol; cocaine; fentanyl; mood, consciousness or mind-altering substances, whether illicit or not; and all drugs which are dispensed to or prescribed for the Licensee by anyone other than a treating physician knowledgeable of the Licensee's history of substance abuse, unless the circumstances constitute a genuine medical or surgical emergency.

A. Prescription Medication. If any controlled drug is dispensed or prescribed for the Licensee for a personal medical condition, the Licensee or the Supervising Physician shall notify the Board by telephone and in writing within 48 hours or as soon thereafter as possible. This notice shall be followed by a written summary of all pertinent circumstances. The Supervising Physician shall be apprised every five days of all continuing pertinent circumstances regarding continued use of the controlled drug, and a written report thereof shall be submitted to the Board for every five days that the use of the controlled drug continues after the initial 48-hour report.

B. Future Use of Prohibited Substances Shall Result in Loss of Licensure. The Licensee agrees and understands that any evidence of use at any time in the future, whether in Maine or elsewhere, of any Prohibited Substance shall constitute a violation of this Consent Agreement, which SHALL RESULT IN THE IMMEDIATE, INDEFINITE AUTOMATIC SUSPENSION OF LICENSURE, AND PROOF OF USE SHALL RESULT IN AUTOMATIC REVOCATION/NON-RENEWAL OF LICENSURE.

2. **SANCTION FOR VIOLATION OF LICENSE MODIFICATIONS AND/OR CONDITIONS.**

A. Automatic Suspension. Any oral or written report to the Board of violation, technical or otherwise, of these License Modifications and/or Conditions shall result in the immediate, indefinite and automatic suspension of the Licensee's license. The automatic suspension of the Licensee's license shall become effective at the time the Licensee receives actual notice from the Board that a report of violation has been made. Actual notice can be provided by telephone, in person, in writing, by another means or any combination of the above-referenced means. The indefinite, automatic suspension shall continue until the Board holds a hearing on the matter, unless the Board earlier determines that the report is without merit or decides that no further sanction is warranted.

B. Continued Suspension; Other Sanctions. The Licensee's indefinite automatic suspension shall continue for such time until the Board holds a hearing and reaches a decision. The Board shall attempt to hold a hearing within 60 days of the automatic suspension or as soon thereafter as practicable (unless both the Licensee and the Board agree to hold the hearing later) and shall be held pursuant to the Maine Administrative Procedure Act. The Board may impose such other discipline, including without limitation, fines, further suspension, probation, non-renewal or revocation, as the

Board after hearing deems appropriate. By this Consent Agreement, the Licensee expressly accords the Board jurisdiction, concurrent with the Courts, to revoke his license if the Board deems is appropriate.

3. SUBSTANCE MONITORING. The Licensee understands and agrees that he may, for the remainder of his career as a licensed physician, undergo some level of substance monitoring to test whether the Licensee has used a Prohibited Substance, as defined in Paragraph 1. The monitoring shall be through urinalysis testing and/or blood testing, and any other reliable method which may later be developed and approved by the Board.

The Licensee irrevocably agrees that the Board and the Maine Department of Attorney General must have full access to all test data and reports.

Changes in testing to more reliable methods of detection of usage may be proposed by the Licensee or the board and changes shall be made in the Board's discretion, with or without a hearing. It is the Licensee's obligation to ensure that the plan for testing, as stated herein, is complied with in full.

A. Supervising Physician. The Licensee shall propose a Supervising Physician, who shall be approved by the Board (the "Supervising Physician") and who shall have the Licensee appear and provide samples as provided below. The Supervising Physician may appoint designees, who must also be physicians and who must also be approved in advance by the Board.

1. It is the responsibility of the Licensee to ensure that the Supervising Physician or one of the Supervising Physician's approved designees is available to have the Licensee appear and provide urine samples as required by the Consent Agreement. In the event neither the Supervising Physician nor any designee is available (or anticipated to be available) at the given time to be responsible for urine monitoring, the Licensee shall contact by telephone as soon as possible (followed up within 24 hours by writing) the Board Executive Director or Assistant Executive Director. The Licensee shall by telephone resolve with the Board Executive Director or Assistant Executive Director a plan for urine monitoring to be used for the duration of time that the Supervising Physician and all designees are unavailable. Under no circumstances shall the Licensee fail to provide a urine sample to some person pursuant to the plan which is preapproved by the Board Executive Director or Assistant Executive Director.

B. Process. All urine and blood samples shall be handled through legal chain of custody methods. All samples provided shall be analyzed by a certified laboratory which regularly handles these types of tests, and tests shall be conducted by such reliable methods as exist. Any changes must be approved by the Board.

C. Frequency of Urine Testing. It is the Licensee's obligation to ensure that all

the samples are given and test occur as specified and that the random samples are in fact random and that they are provided within six (6) hours after notice to the Licensee (without any foreknowledge by the Licensee) and are of at least the frequency required. Failure to maintain this schedule or the random nature of the tests shall be cause for suspension, non-renewal or revocation of Dr. Violette, M.D.'s license, unless proof of genuine emergent medical circumstances (for the Licensee or a patient of his) exist which warrants less serious disciplinary actions being taken by the Board.

1. For a period of five (5) years from the effective date of this Agreement, urine samples shall be provided at least once each month. Further, the Board or the Supervising Physician may request random samples drawn at any time.

2. Following the period of five (5) years from the effective date of this Agreement, the Board or the Supervising Physician may request random samples provided at any time.

3. The frequency of urine testing shall continue as outlined herein even while the Licensee is on vacation or other leave of absence. He shall be responsible for making arrangements such that the testing is carried out with the frequency and standards outlined in this Consent Agreement.

D. Blood Testing. It is the Licensee's obligation to ensure that all of the samples are given and tests occur as specified and that the random samples are in fact random and that they are provided within six (6) hours after notice to the Licensee (without any foreknowledge by the Licensee) and are of at least the frequency required. Failure to maintain this schedule or the random nature of the tests shall be cause for suspension, non-renewal or revocation of Dr. Violette, M.D.'s license, unless proof of emergent medical circumstances (for the Licensee or his patient) exist which warrants less serious disciplinary action being taken by the Board.

1. Frequency of Blood Samples and Testing.

a. Blood samples must be drawn any time a test evidences any level of a Prohibited Substance.

b. Blood samples must be drawn any time the Supervising Physician or the Board deems one is warranted.

E. Visual Samples. The Licensee shall provide each urine and blood sample in the physical presence and under the direct observation of the Supervising Physician or his/her designee who shall visually observe the Licensee providing the sample. Otherwise, the sample shall be deemed unacceptable and the Licensee shall immediately provide another sample. Any such occurrence shall be reported to the Board by the Licensee and

by the Supervising Physician, both by telephone and in writing within 24 hours or as soon thereafter as possible. In addition, the unacceptable sample shall be retained and tested, with the intention that the tests of the unacceptable and the acceptable samples both be sent upon completion to the Board.

F. Second Sample. At the same time as each urine and blood sample is taken, the Licensee must provide a second sample (or shall have provided sufficient quantity to constitute a valid second sample), which shall also be taken in the physical presence and under the visual observation of the person collecting the sample. Responsibility for providing a second sample shall be the Licensee's. The second urine or blood sample shall be frozen (or maintained by other appropriate means approved by the Board), stored in a controlled setting, kept under a legal chain of custody, inaccessible to the Licensee, and shall be stored for subsequent testing in the event the first sample tests positive for a Prohibited Substance.

(1) Testing the Second Sample. The Executive Director of the Board shall designate where the test of the second sample shall be executed.

G. Standards for Tests. Standards for detectable levels of Prohibited Substances for which the urine and blood samples shall be tested shall be set forth in the Licensee's written, preapproved plan for substance monitoring.

H. Reporting Test Results.

1. Immediate Report of Positive Test Results. Any test result evidencing any level of a Prohibited Substance, whether by urine sample, intoxilyzer sample, or blood sample, shall be reported to the Board by the Supervising Physician by telephone and in writing within 24 hours or as soon thereafter as possible.

2. Reporting Negative Test Results. Written reports of all tests shall be sent to the Board monthly by the Supervising Physician, together with an explanation of the dates and times samples were provided and tests made, the type(s) of tests made, and the substances tested for (together with detectable levels tested for), and the test results. The Licensee shall ensure that all reports are made to the Board in a timely fashion.

3. Confidentiality Waived. With regard to the Board and its agents and any process to be pursued by the Board, the Licensee hereby waives all claims of confidentiality and privilege with respect to all tests taken pursuant to this Consent Agreement.

4. Retention of Reports. All original laboratory data and test reports shall be permanently retained by the Supervising Physician.

I. Rebuttable Presumption Raised by Positive Test. It is agreed and

understood that a test (whether by urine sample or blood sample) evidencing any Prohibited Substance, when confirmed, shall raise a rebuttable presumption that the Licensee in fact used such substance. Such a positive test result shall alone be sufficient to prove the use of the Prohibited Substance by the Licensee. The Licensee further agrees that the result of the test may be admitted into evidence in any proceeding regarding the Licensee's license, whether before the Board or before a Court of competent jurisdiction. The confirmatory test shall be performed immediately upon any initial positive test result.

J. Immediate, Indefinite, Automatic Suspension for Positive Test. If any urine or blood test is positive (i.e., in any manner evidences any use of any Prohibited Substance), then the result shall be the immediate, indefinite, automatic suspension of the Licensee's license, which shall continue until the Board holds a hearing on the matter, unless the Board, or the Board Secretary and the Department of Attorney General, earlier determine that the report is without merit. The suspension shall begin the moment the Licensee first learns of a positive test or report of a positive test to the Board, whether from the Supervising Physician or his/her designee, from the Board or from any other source in writing, orally or by any other means. This shall include non-confirmed, positive tests.

K. Board Hearing to Determine if Licensee Used Any Prohibited Substance. After receiving a positive report evidencing use by the Licensee of any Prohibited Substance, the Board shall investigate the situation, including demanding a response from the Licensee. The Board shall attempt to hold a hearing within 60 days of the automatic suspension or as soon thereafter as practicable (unless both the Licensee and the Board agree to hold the hearing later) and it shall be held pursuant to the Maine Administrative Procedure Act. By this Consent Agreement, the Licensee expressly accords the Board jurisdiction, concurrent with the Courts, to revoke his license if it determines he used any Prohibited Substance.

L. Failure to Maintain Sampling Schedule or Failure to Appear or to Provide Sample. Failure by the Licensee: to maintain the sampling schedule; to appear when demanded to provide a sample; to appear within two hours of being so notified; or to provide samples upon being demanded to do so shall be dealt with as follows:

1. Failure to Maintain Sampling Schedule. It is the Licensee's responsibility to ensure that both the schedule for sampling and the random sampling required are maintained.

a. Report. If the scheduled samples or the random samples are not drawn as required, then the Supervising Physician or his/her designee and the Licensee (and any other person knowledgeable of such failure) must telephone the Board as soon as possible and send to the Board a written report of such failure within 48 hours.

b. Suspension. An immediate, indefinite suspension of licensure

shall result from any failure by the Licensee to comply with the mandated schedule of samples or if the random samples are not provided as required. The suspension shall begin the moment the Licensee actually learns a report has been made or sent to the Board.

c. Meeting with Board. Both the Licensee and the Supervising Physician (and the responsible designee, if any) shall appear before the Board regarding this situation at its next regularly scheduled Board meeting, unless the next meeting is to be held within 15 days of the suspension, in which case they may be scheduled to appear at the subsequent regularly scheduled Board meeting.

d. Board Action. The Board may order the Licensee's license reinstated or, if appropriate, may continue the suspension and may set the matter for hearing. The Board shall attempt to hold a hearing within 60 days of the automatic suspension, or as soon thereafter as practicable, at which time it may take such action as it deems appropriate, including without limitation reinstatement, fines, probation, suspension, non-renewal and revocation.

2. Failure to Appear.

a. Report and Meeting with Board. The Licensee and the Supervising Physician (and the responsible designee, if any) must, telephone the board as soon as possible and send to the board a written report of such occurrence within 48 hours, and both the Licensee and the Supervising Physician shall appear before the Board, regarding any failure to appear when demanded to provide a sample, at the next regularly scheduled Board meeting, unless the next meeting is to be held within 15 days of the report, in which case they may be scheduled to appear at the subsequent regularly scheduled Board meeting.

b. Suspension. An immediate, indefinite suspension of licensure shall result from any failure by the Licensee to appear for a scheduled or randomly ordered test, unless the Licensee and the Supervising Physician present the failure as having been caused by a genuinely emergent circumstance beyond the Licensee's control, as long as the Licensee appeared within six hours of the resolution of the emergency. Except in this instance, the suspension shall begin the moment the Licensee actually learns a report has been made or sent to the Board.

c. Board Action. The Board may order the Licensee's license reinstated or, if appropriate, may continue the suspension and set the matter for hearing. The Board shall attempt to hold a hearing within 60 days of the automatic suspension, or as soon thereafter as practicable, at which time it may take such action as it deems appropriate, including without limitation reinstatement, fines, probation, suspension, non-renewal and revocation.

3. Failure to Provide Sample.

a. Report and Meeting with Board. The Licensee and the Supervising Physician (and the responsible designee, if any) shall telephone the Board as soon as possible and send to the Board a written report of any occurrence regarding failure or refusal to provide a sample within 48 hours, and both the Licensee and the Supervising Physician shall appear before the Board at the next regularly scheduled Board meeting, unless the next meeting is to be held within 15 days of the report, in which case they may be scheduled to appear at the subsequent regularly scheduled Board meeting.

b. Second Opportunity to Provide Urine Sample. If the Licensee appears when scheduled or ordered, but fails to provide an adequate sample, then with regard to urine, after accurate notation of any and all substances consumed (no substance shall be consumed which might affect the accuracy of the tests to be performed), a second opportunity to provide a urine sample shall be given after a reasonable time, not to exceed two hours. A repeat failure, or any refusal, shall result in an immediate, indefinite suspension of licensure. The suspension shall begin the moment of the occurrence.

c. Board Action. The Board may order the Licensee's license reinstated, or, if appropriate, may continue the suspension and set the matter for hearing. The Board shall attempt to hold a hearing within 60 days of the automatic suspension, or as soon thereafter as is practicable, at which time it may take such action as it deems appropriate, including without limitation reinstatement, fines, probation, suspension, non-renewal and revocation.

M. Amendment of Testing Provisions. Upon written application by the Licensee to the Board, the Board may amend the above agreed conditions for testing as long as such changes are otherwise consistent with the schedule set forth in this Consent Agreement. Amendment from the conditions shall be in the discretion of the Board and shall be based upon such information as the Board deems pertinent. A decision may be made by the Board, in its discretion, with or without providing a hearing. The Board can propose Amendment(s), which may or may not be agreed to by the Licensee.

N. Increasing Testing. For good cause shown (i.e., questionable reports or problems with providing samples), the Board can, in its discretion, without hearing, unilaterally increase the frequency of testing to the highest levels contemplated by this Consent Agreement, and may also add an additional four random tests per month. In addition, the Board may, in its discretion, without a hearing, extend the periods of testing by up to an additional five years.

4. PROFESSIONAL MANAGEMENT.

A. Aftercare Treatment Sessions. The Licensee agrees to submit for Board approval the name of a licensed individual or agency in the treatment of substance abuse

with whom the Licensee shall consult and counsel for the purpose of working on all issues pertaining to the Licensee's chemical dependency, including the Licensee's compliance with this Consent Agreement, which consultations shall be monthly for one year beginning on the effective date of this Agreement and at least annually for the following four years.

B. Amendment of Aftercare Treatment Requirements. After three years, upon written application to the Board by the Licensee, the Board may amend this schedule. Amendment shall be in the discretion of the Board and shall be based upon such information as the Board deems pertinent. A decision may be made with or without providing a hearing.

C. Change of Specialist. If the Licensee proposes to change the Specialist, then the Licensee shall make written application to the Board, including among other things a letter from the Licensee regarding his reasons for requesting such change and separate letters from the current Specialist and the proposed new Specialist relative to their understanding of the reasons for this request and, to the extent applicable, any concerns they may have. The Board may in its discretion grant or deny such request with or without providing a hearing. If the request is denied, nothing precludes the Licensee from proposing another Specialist. In requesting a change of Specialist, the Licensee understands that the Board may inquire into any issues it deems pertinent with any person, including, without limitation, the current Specialist.

D. Reports from the Specialist. Beginning one month from the date hereon and continuing every three months thereafter, the Specialist shall submit to the Board a written report regarding the Licensee's compliance with his schedule of meetings, the Licensee's competency to continue practicing medicine, and the prognosis of the Licensee's continued recovery.

E. Board Investigation. At any time the Board may deem appropriate, the Board or its agent may contact the Licensee and/or the Specialist to receive further information relative to the Licensee. In addition, if the Board deems it appropriate, it may meet to inquire directly of the Specialist about the Licensee's progress.

5. SELF-HELP GROUP MEETINGS.

A. Attendance at AA and NA. The Licensee agrees to attend Alcoholics Anonymous ("AA") a minimum of three times each week through one year from the effective date of this agreement, and at least once each week through four years thereafter.

B. Impaired Physicians Self-Help Group. The Licensee agrees that he shall attend self-help group meetings of an impaired medical professional group, if available, on a regular basis for the term of this agreement, which is 5 years. Meetings of the impaired professional self-help groups may be substituted on a one-for-one basis with

meetings of AA or NA.

C. Reports of Attendance. Beginning three months from the date hereon and continuing every three months thereafter, the Licensee shall submit to the Board a signed, written quarterly report of his attendance at AA, NA or impaired professional self-help group meetings. Any instances of failure to attend the required numbers of meetings shall be noted, together with specific explanation detailing reasons.

D. Failure to Meet This Requirement. It is the parties' understanding that periodically reasonable explanations may exist for occasionally missing a meeting; however, unexcused continuous or repeated failures to comply with the requirements of this section of the Consent Agreement shall constitute a violation of the Consent Agreement which, after hearing before the Board, can result in licensure discipline, including without limitation a fine, suspension, non-renewal, probation or revocation of the Licensee's conditional, probational license.

6. MAINTENANCE OF OBLIGATIONS WHEN AWAY FROM MAINE OR HOME. It is the intention of the parties that the Licensee's obligations regarding substance monitoring and self-help group meetings shall be maintained regardless of whether the Licensee is in Maine. For instance, if the Licensee is going on a business trip or a vacation, it shall be the Licensee's and the Supervising Physician's obligation to ensure that arrangements are made consistent with this Consent Agreement in such other location(s) to ensure the continuation and satisfaction of his obligations under this Consent Agreement. Any such occurrences shall be noted in writing sent to the Board explaining the arrangements made, followed by a separate writing detailing how the arrangements were carried out.

A. It is the parties' intention that the Licensee notify the Board in writing in advance of departure regarding the arrangements made. Failure to do so in advance shall be excused only for good cause shown.

B. Failure to meet the conditions outside of Maine shall be dealt with in the same manner as failure otherwise to maintain the obligations of this Consent Agreement.

7. INVOLVEMENT IN THE MAINE COMMITTEE ON PHYSICIANS' HEALTH. The Licensee shall continue his contractual involvement with the Maine Committee on Physicians' Health as long as any term of this Consent Agreement remains in force. The Licensee is encouraged to actively participate in the Committee.

8. MONITORING OF BEHAVIOR. The Licensee agrees that his behavior will be monitored by a physician, approved by the Board, who is in contact with the Licensee on an average of four or five times a week. This physician will agree to inform the Board if the Licensee demonstrates any signs of withdrawal or behavior change which could result from the use of a Prohibited Substance. The monitoring physician shall report such information by telephone and in writing within 24 hours or as soon thereafter as possible.

9. **NOTICE TO HOSPITALS.** Within 10 days after execution of this agreement by the Board and approved by the Department of Attorney General, the Licensee shall provide a copy of this Consent Agreement to:

A. **The Hospital.** Notice to all hospitals at which the Licensee shall practice be provided, at a minimum, to the Hospital CEO and the Chief of Medicine.

B. **Others.** Any other entity or person involved in the monitoring or treatment process which or whom the Board deems appropriate shall receive and review this Consent Agreement.

10. **DESIGNATED COPY OF CONSENT AGREEMENT.**

A. **Reading and Signing the Consent Agreement by Others.** The Licensee shall have each person set forth in Paragraph 9 above read, date, and sign a copy of the Consent Agreement (the "Designated Copy"). The Designated Copy shall also be read and signed by the Supervising Physician, all designees and by the Evaluator. The original Designated Copy which is signed by the above-referenced persons shall at all times be kept on file at the Licensee's office and shall be subject to inspection upon request of the Board or its agent. A copy of the signature page shall be made and sent to the Board. The Licensee agrees that if new individuals assume the roles set forth in Paragraph 9 during the existence of this Agreement, such individuals shall also read, date and sign the Agreement.

11. The Licensee shall be required to maintain his Maine license to practice as a physician for as long as this Agreement is in effect. In the event that Dr. Violette, M.D. applies for licensure in other jurisdictions during the pendency of this Agreement, he shall notify said jurisdiction of the existence of this Agreement.

12. **REQUIREMENT REPORT.** The Licensee agrees and hereby irrevocably directs that IF ANYONE HAS REASON TO SUSPECT THAT THE LICENSEE HAS USED A PROHIBITED SUBSTANCE OR HAS OTHERWISE VIOLATED THIS CONSENT AGREEMENT, SUCH PERSON MUST REPORT THE LICENSEE TO THE BOARD WITHIN 24 HOURS OR AS SOON THEREAFTER AS POSSIBLE, SUCH REPORT SHALL BE MADE BY TELEPHONE AND IN WRITING. ALL PERTINENT FACTS AND CIRCUMSTANCES SHALL BE REPORTED TO THE BOARD.

13. **WAIVER OF CONFIDENTIALITY AND RELEASE OF RECORDS.** The Licensee agrees and understands that the Board and the Department of Attorney General shall have complete access to the Licensee's present and future personal medical and counseling records regarding chemical dependency and to all otherwise confidential data pertaining to treatment or monitoring of the Licensee for chemical dependency.

14. **BOARD'S JURISDICTION.** The Licensee acknowledges that the Board has jurisdiction over his license. In consideration for the Board's issuing to the Licensee his license pursuant to this Consent Agreement, the Licensee agrees that, as regards any alleged violation of this Consent Agreement, the Board is granted jurisdiction to revoke his license or take such other disciplinary action as is available to the Courts. The Board may also, if it deems it preferable, refer such matter for action in Court.

15. **MISCELLANEOUS PROVISIONS.**

A. **Notice.** Unless otherwise specified in this Consent Agreement, written notice shall be deemed served upon mailing by first class mail, postage prepaid.

1. **Notice to the Board:**

State of Maine Board of Licensure in Medicine
Attention: Executive Director
137 State House Station
Augusta, Maine 04333-0137
Telephone: (207) 287-3601

2. **Notice to the Licensee:**

E. Jeffrey Violette, M.D.
P.O. Box 719
Oakland, ME 04963

B. **Address Change.** If the Licensee changes jobs, moves his residence, moves his office practice, changes telephone numbers at work or at home, or secures privileges at a hospital, the Licensee shall provide notice to the Board within two weeks after such occurrence.

C. **Costs.** All costs incurred in performance of the Modifications and Conditions of this Consent Agreement shall be borne by the Licensee. If a violation of this Consent Agreement is proven to have occurred, regardless of the sanctions imposed, the Licensee shall reimburse the Board for all costs and attorney's fees incurred in proving such violation.

D. **Hearings.** Unless otherwise specified, hearings shall be held consistent with the Maine Administrative Procedure Act.

E. **Severance.** If any clause of this Consent Agreement is deemed illegal or

invalid, then that clause shall be deemed severed from this Consent Agreement.

16. AMENDMENT OF CONSENT AGREEMENT. This Consent Agreement cannot be amended orally. It can be amended only by a writing signed by the parties hereto and approved by the Department of Attorney General.

A. Requests for amendments made by the Licensee shall be made in writing submitted to the Board.

B. The Board may also propose amendments by sending a written proposal to the Licensee.

17. ADVICE OF COUNSEL. The Licensee has been informed that he has the right to legal counsel.

18. WAIVER OF RIGHT TO APPEAL BOARD'S DECISION AND CERTAIN FUTURE BOARD DECISIONS. In regard to all terms and conditions of this Consent Agreement, the Licensee waives any further hearings or appeal to the Court regarding his Application for Licensure and the Conditional License issued hereunder. Nothing in this paragraph shall be deemed a waiver of the Licensee's rights under rule, statute or the Maine or United States Constitutions, to appeal a decision or action later taken by the Board subsequent to licensure except as the Licensee may have agreed herein, such as with discretionary decisions by the Board and which may occur with or without a hearing, increased jurisdiction of the Board to revoke his license for violation of this Consent Agreement. The Licensee agrees that this Consent Agreement and Order is a final order resolving the Licensee's application for Licensure.

I, E. JEFFREY VIOLETTE, M.D., HAVE READ AND UNDERSTAND THE FOREGOING CONSENT AGREEMENT. I UNDERSTAND THAT BY SIGNING, I WAIVE CERTAIN RIGHTS. I SIGN IT 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: 6/19/03

 M.D.

STATE OF MAINE
Kennebec, ss.

Dated: 6/19/03

Personally appeared before me the above named E. Jeffrey Violette, 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.

Notary Public

Gayle L. Michaud

APPROVED:

GAYLE L. MICHAUD
Notary Public, Maine
My Commission Expires December 3, 2009

**STATE OF MAINE BOARD OF
LICENSURE IN MEDICINE**

By: *Ed David*
Edward David, M.D., Chairman

APPROVED: Effective *6/30/03*

**STATE OF MAINE DEPARTMENT
OF ATTORNEY GENERAL**

Dated: *6/19/03*

By: *Ruth E. McNiff*
Ruth E. McNiff
Assistant Attorney General

STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

In re:)
E. Jeffrey Violette, M.D.) CONSENT AGREEMENT
FOR INACTIVE LICENSE

This document is a Consent Agreement entered into by E. Jeffrey Violette, 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. This Consent Agreement is effective when signed by all parties and is entered into pursuant to 10 M.R.S.A. § 8003(5)(B) and 32 M.R.S.A. §§ 3280-A and 3282-A.

STATEMENT OF FACTS

1. By a Decision and Order dated July 19, 2001, the Board suspended the Licensee's license for 360 days and imposed additional sanctions and conditions for reinstatement .
2. In July, 2002, the Licensee appeared before the Board and agreed to provide the Board with specific information before he would be reinstated to active status. The Licensee also agreed to remain in INACTIVE status pending reinstatement of his license.
3. On July 30, 2002, the Board received a urinalysis report which was positive for marijuana.

AGREEMENT

The Licensee, the Board and the Department of the Attorney General agree to the following:

The Licensee will remain in INACTIVE status. He will appear before the Board at its meeting on March 11, 2003 to discuss his compliance with this agreement and whatever conditions the Board deems appropriate before he is reinstated to active practice.

I, E. JEFFREY VIOLETTE, M.D., HAVE READ AND UNDERSTAND THE FOREGOING CONSENT AGREEMENT. I UNDERSTAND THAT BY SIGNING IT, I WAIVE CERTAIN RIGHTS. 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: Nov 5, 2002


E. JEFFREY VIOLETTE, M.D.

STATE OF Maine
004-58-6287, S.S.

Personally appeared before me the above-named E. Jeffrey Violette, 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: 11-5-02

Francis M. Dunbar
NOTARY PUBLIC
Francis M. Dunbar
Commission Expires 3-20-03

STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

DATED: 12/10/02

Edward David
EDWARD DAVID, M.D., Chairman

STATE OF MAINE DEPARTMENT
OF THE ATTORNEY GENERAL

DATED: 12/10/02

Ruth E. McNIFF
RUTH E. McNIFF
Assistant Attorney General

APPROVED
EFFECTIVE: 12/10/02

(AMHI). Dr. Violette assured her that the appropriate prescriptions would be mailed to her and that he would arrange for treatment of EW in Bangor, Maine. Despite a follow up phone call by EW's guardian on August 12, 1999, Dr. Violette did not send the prescriptions, arrange for therapy sessions or forward EW's records to another provider.

On September 24, 1999, the Board sent Dr. Violette a letter informing him that a complaint had been issued against him by the Board for not cooperating with the latter's attempts to review his records in accordance with the terms of the Consent Agreement. In its letter, the Board notified the Respondent that the applicable law required him to respond to the charges within 30 days which he did not do.

Dr. Violette was employed at AMHI from July 1999 until August 4, 2000. Pursuant to the terms of the Consent Agreement, on August 3, 2000, 5 closed and 5 open charts of Dr. Violette's patients at AMHI were reviewed by a Board psychiatrist. No significant problems were noted as a result of that review.

The Clinical Director at AMHI issued a complaint against Dr. Violette dated September 25, 2000. The complaint was from a professional colleague of the Respondent's who desired to remain anonymous. That individual alleged that Dr. Violette's conduct towards his peers was unprofessional and that he had made inappropriate comments directed towards a patient. According to the Clinical Director, Dr. Violette's employment was terminated due to a contractual dispute although Dr. Violette expressed his opinion that he had been fired. Dr. Violette was informed by the Board by letter dated January 2, 2001 that the Board had issued a complaint against him based on the preceding AMHI allegations and that he was required to respond thereto within 30 days. Instead, he responded three weeks before the present hearing.

A telephone conversation took place between a Board investigator and the Respondent on November 15, 2000. Dr. Violette admitted during the conversation that he was aware that he had not paid the Consent Agreement fine and neither had he responded to the Board's complaints against him involving the Consent Agreement violation nor the complaint concerning the abandonment of patient EW. However, he assured the investigator that he would pay the fine and respond to the complaints.

Dr. Violette testified that he has been the subject of major depression on three occasions, the most recent of which began apparently in the Fall of 1998. He began treating with a psychiatrist, George Dreher, M.D. in August of 1999 by which time he had developed problems with the amount of alcohol that he began consuming as well as a habit of smoking marijuana from early 1999 until May 2001. Dr. Dreher diagnosed Dr. Violette as having a major depressive disorder with possible psychotic features, anxiety and cannabis/alcohol abuse. Dr. Dreher prescribed medications and continuing therapy but noted that Dr. Violette periodically discontinued treatment at times for several months and that he was unaware of the Respondent's drug abuse until recently. After January 2001, Dr. Violette did not reappear for treatment with Dr. Dreher until June 15, 2001, shortly before the instant proceeding.

Dr. Dreher stated his opinion that Dr. Violette's ability to think and function as a psychiatrist were not significantly impaired. However, he expressed his concern regarding the amount of marijuana that Dr. Violette had consumed as well as his habit of drifting away from treatment after instant crises had passed. He further testified that Dr. Violette needed a program to monitor his actions to make sure that he was free from abusing substances and appropriately taking the correct prescriptive medications. He advised Dr. Violette to continue treating with

another practitioner for substance abuse and contact the Committee on Physician's Health for its assistance in dealing with his problems.

STATUTES

32 M.R.S.A. Sec. 3282-A(2)(E)(1). "Incompetence in the practice for which the licensee is licensed. A licensee is considered incompetent in the practice if the licensee has:

- (1) Engaged in conduct that evidences a lack of ability or fitness to discharge the duty owed by the licensee to a client or patient to the general public; or
- (2) Engaged in conduct that evidences a lack of knowledge or inability to apply principles or skills to carry out the practice for which the licensee is licensed."

32 M.R.S.A. Sec. 3282-(A)(2)(F). "Unprofessional conduct. A licensee is considered to have engaged in unprofessional conduct if the licensee violated a standard of professional behavior that has been established in the practice for which the licensee is licensed."

CONCLUSIONS OF LAW

The Board, by a vote of 8-0, concluded that Dr. Violette violated the provisions of the above statutes by:

1. Failing to notify patient EW of the closure of his office.
2. Failing to provide EW with medications when requested.
3. Failing to provide EW with his medical records.
4. Failing to respond in writing to the Board's complaint regarding patient EW.
5. Violating the terms of the March 23, 1999 Consent Agreement by not paying the \$1 ,500 fine in a timely manner.
6. Violating the terms of the March 23, 1999 Consent Agreement by not allowing for the inspection of his professional treatment records on August 5, 1999.
7. Failing to respond in writing to the Board's complaint regarding the violation of the Consent Agreement.
8. Failing to respond in writing to the Board's complaint regarding the allegations made by the Clinical Director at AMHI.


The Board, by a vote of 8-0, imposed the following sanctions:

1. Dr. Violette's license to practice is suspended for 360 days from the date of this Decree.
2. During the 360 days, Dr. Violette shall pay for a professional evaluation approved by the Board including neuropsychological testing, personality testing and a physical examination.
3. Dr. Violette shall engage in therapy/treatment with providers approved by the Board. The providers shall be required to communicate with each other regarding the therapy/treatment.
4. If after 360 days Dr. Violette receives his license to practice, he shall not self- prescribe medications.

5. Prior to the expiration of the 360 day suspension, Dr. Violette must satisfy the Board that he is fit to practice medicine in this State. The Board shall reevaluate Dr. Violette as regards his illnesses and evaluate his practice plan and site of practice at that time.

SO ORDERED.

Dated July 19, 2001



Edward David, M.D., J.D., Chairman
Maine Board of Licensure in Medicine

APPEAL RIGHTS

Pursuant to the provisions of 5 M.R.S.A. Sec. 10051.3 and 10 M.R.S.A. Sec. 8003, any party that appeals this Decision and Order must file a Petition for Review in the Maine 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.

4. The Licensee prescribed antibiotics for Patient's A two children without examining them. He also prescribed medication for Patient A's wife. Neither Patient A's wife nor his children were patients of the Licensee.

5. The Licensee would often see Patient A for two-hour sessions and then bill the insurer for two separate one-hour sessions. In order to document the bills which were submitted to the insurer, the Licensee altered the dates of treatment in the medical record in order to make the record correspond with the submitted medical bills.

6. There were numerous instances of discussions between the Licensee and Patient A which were questioned as extraneous to the therapeutic process and possible boundary violations between patient and physician. The Board reviewed these instances with the Licensee and concluded that they were appropriate conversations in the context of Patient A's history and present needs.

AGREEMENT

In lieu of proceeding to an adjudicatory hearing, the Licensee, the Board and the Department of Attorney General agree to the following:

1. The Licensee's conduct in prescribing the amount and types of medication for Patient A without any base line laboratory testing and prescribing for individuals who were not his patients violates the provisions of 32 M.R.S.A. § 3282-A(2)(E)(2) because the Licensee failed to demonstrate the degree of knowledge and ability to apply principles or skills to carry out the practice of medicine.

2. The Licensee's billing practices with respect to Patient A were improper

and constitute unprofessional conduct as defined by 32 M.R.S.A. § 3282-A(2)(F).

3. The Licensee agrees to accept a reprimand from the Board.
4. The Licensee agrees to pay a fine of One Thousand Five Hundred Dollars (\$1,500.00).
5. The Licensee agrees to a random, prospective review of his records by one of the Board's psychiatrists for a two year period.
6. The Licensee waives his right to a hearing before the Board or any court regarding all findings, terms and conditions of this Consent Agreement.
7. The Licensee has been represented by Glenn Porter, Esq., who has participated in the negotiation of the terms of this agreement.

I, E. JEFFREY VIOLETTE, M.D., HAVE READ AND UNDERSTAND THE FOREGOING CONSENT AGREEMENT. I UNDERSTAND THAT BY SIGNING IT, I WAIVE CERTAIN RIGHTS. I SIGN THIS CONSENT AGREEMENT VOLUNTARILY, WITHOUT ANY THREAT OR PROMISE.

DATED:

2/8/99


E. JEFFREY VIOLETTE, M.D.

STATE OF MAINE

Penobscot, S.S.

Personally appeared before me the above-named E. Jeffrey Violette, 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: 2/8/99

Nicole Behr
NOTARY PUBLIC

Nicole Behr
Notary Public
State of Maine
Comm. Exps. Dec. 10, 2002

STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

DATED: 3/23/99

Edward David
EDWARD DAVID, M.D., Chairman

STATE OF MAINE
DEPARTMENT OF THE
ATTORNEY GENERAL

DATED: 3/23/99

Ruth E. McNiff
RUTH E. McNIFF
Assistant Attorney General

APPROVED
EFFECTIVE: 3/23/99