

MAINE STATE BOARD OF LICENSURE IN MEDICINE

IN RE: Licensure Disciplinary Action)
Sarah E. Babine, M.D.) DECISION AND ORDER
Complaint No. CR05-040)

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 July 11, 2006. The purpose of the meeting was to conduct an adjudicatory hearing to decide whether Sarah E. Babine, M.D. violated Board statutes and Rules as alleged in the Notice of Hearing.¹ A quorum of the Board was in attendance during all stages of the proceedings. Participating and voting Board members were Edward David, M.D., J.D., Chairman, Gary Hatfield, M.D., Bettsanne Holmes (public member), David Nyberg, Ph. D., (public member), Kimberly K. Gooch, M.D., Sheridan R. Oldham, M.D., George Dreher, M.D., and Cheryl Clukey (public member). Dennis Smith, Ass't. Attorney General, presented the State's case. Dr. Babine was present and represented by Kenneth Lehman, Esq. James E. Smith, Esq. served as Presiding Officer.

The Board convened the hearing and first determined that there were no conflicts of interest or bias on behalf of any Board member. The hearing then proceeded forward and State's Exhibits 1-26 and 28 and Respondent's A-F were admitted into the Record. Subsequent to the opening statements by the parties, 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.

¹ Prior to the hearing, and following both written and oral argument, several motions were ruled on by the Presiding Officer outside of the presence of the Board, which procedure was approved with the concurrence of the Board Chairman and counsel. A separate record was made of that proceeding.

II.

FINDINGS OF FACT

A. Factual History

Sarah Babine, M.D., graduated from medical school in 1993. She has a specialty in the field of psychiatry which she has practiced for approximately 13 years. Dr. Babine was first licensed as a physician in the State of Maine on June 6, 2003 and her current license expires on January 31, 2007. Dr. Babine has been employed at The Medical Group in Kittery, Maine, which employs some 50 staff members ranging from non-health professionals to physicians. She is the sole psychiatrist in that practice and treats a wide variety of patients including mostly adults and the elderly. Dr. Babine is well respected by her fellow colleagues who testified at this hearing and according to them there have been no indications that she has been impaired at work or has a substance abuse problem.

Dr. Babine lives alone at home with her dog. Following her usual Monday-Friday work day from 7:30 a.m. -5:00 p.m., she gardens in season and has other talents and interests which include the restoration of an antique automobile and the installation of new floors in her home. Dr. Babine admitted in her response to the Board's inquiry that "I like a regular glass of wine" but stated that she has never been impaired while treating patients.

On or about September 24, 2004, at approximately between 9:30 p.m. and 10:15 p.m. while on call, Dr. Babine consumed approximately a 6 ounce glass of wine at her home in Kennebunk, Maine. One hour later, she was requested to travel to Southern Maine Medical Center in order to deal with one of her patients who had been voluntarily admitted but who had changed her mind and wanted to be released. After arriving at the hospital, several of the nursing staff reported smelling alcohol on Dr. Babine's breath. Shortly thereafter, Dr. Babine admitted to consuming a glass of wine during a discussion with the supervising nurse. The licensee then was informed that the Chief of the Medical Staff, Dr. Terry Sheehan, wanted to speak with her by telephone. Dr. Babine spoke to this individual and was advised to turn over the patient to the Chief of Psychiatric Services. Dr. Babine was then assessed for impairment by the nursing supervisor who noted no impairment in her functioning.

The following Sunday, Dr. Babine met with Dr. Sheehan who informed her that although the hospital did not have an absolute policy regarding the consumption of alcohol while on call, it was not considered to be a good idea. Dr. Sheehan then suggested that she contact the Maine

Physician Health Program (PHP) in case someone reported the incident to the Board. Subsequently, Dr. Babine was able to contact David Simmons, M.D., Clinical Director of the PHP. She met with Dr. Simmons for approximately 1 1/2 to 2 hours on October 2, 2004 at which time she agreed to a substance abuse evaluation with the physician recommended by Dr. Simmons. However, Dr. Babine was concerned that it appeared as though Dr. Simmons was "not able to differentiate me from his own issues or the issues of others. I began to write down the things that bothered me about our interactions. In that second meeting I felt he became coercive, and he wrote a follow up letter which was clearly coercive."

Dr. Babine was evaluated by the recommended physician. She stated in her response to the Board that this individual was also biased based on his experience with recovery and 12 step programs. She wrote that she reviewed his evaluation and "was astounded to find it full of errors of fact, omission, and commission, creating a very negative distortion of who I am, where I've been, and what I've done with my life, and where I am now. I let him know that this was exactly the kind of distortion and pathologizing that I avoid in my work..."

The evaluation was forwarded to Dr. Simmons who recommended that Dr. Babine enroll in the PHP program. On February 5, 2005, Dr. Simmons wrote the Board (in compliance with the protocol between the PHP and the Board) and informed it that Dr. Babine had refused to enter into a contract with that program. On February 15, 2005, the Board sent Dr. Babine a letter requesting an explanation for her failure to enroll in the PHP program. One month later, the Board received Dr. Babine's reply in which she stated that "in the absence of any evidence that I am in any way impaired in my ability to safely practice medicine, I must express my concern that [Dr. Simmons and the PHP] have behaved unprofessionally and unethically in violating my confidentiality." She further stated that "I have no further information to provide or release."

On March 16 and 18, 2005, Board staff telephoned Dr. Babine with requests for her to call the Board. The calls were not returned and the licensee testified that she never received them. On April 19, 2005, the Board sent Dr. Babine a complaint against her license which she received on April 23. The complaint alleged, among other things, unprofessional conduct and habitual substance abuse and requested a response within 30 days. Despite Board reminders that the response had not been received, Dr. Babine waited until June 8, 2005 before responding by e-mail. She had previously stated that the Board complaint was "somewhat vague and difficult to respond to and that she had been busy caring for her patients."

On June 17, 2005, the Board sent Dr. Babine a written request for a copy of the substance abuse evaluation which she referred to in her response to the Board complaint. Dr. Babine did not respond and neither did she raise any issues related to confidentiality pursuant to federal law. On August 8, 2005, the Board's Executive Director sent Dr. Babine a second request for the substance abuse report. In that letter, the licensee was informed that failure to produce same would most likely result in a Board order requiring that she undergo a full substance and psycho-social evaluation at her own expense. Dr. Babine, once again, did not respond to this request.

As a result, the Board, on September 27, 2005, sent Dr. Babine a letter directing her to "undergo a psychological and substance abuse evaluation" which she agreed to have performed by Jonathan Siegel, Ph.D. She requested, however, that she be permitted to review with him the accuracy of his report prior to releasing same to the Board. Dr. Siegel denied the request as it was contrary to the accepted standard of practice.

On November 18, 2005, Dr. Siegel conducted the evaluation during which he requested the name of the prior evaluator who had performed the evaluation through PHP and also that she provide him with a copy of that evaluation. Dr. Babine refused these requests on the basis that the evaluator was "biased" and that "it would be inappropriate to allow inaccurate information [to] become part of my official record."

Significantly, Dr. Babine revealed to Dr. Siegel that Dr. Simmons had quoted a diagnosis of "alcohol abuse" from the report and then written a letter indicating that the expert had said something "between abuse and dependency." She then confirmed with Dr. Siegel that the expert had specifically stated to her that Dr. Babine had an alcohol abuse problem.

On February 27, 2006, the Board received a copy of Dr. Siegel's evaluation which was then forwarded on to Dr. Babine. The Board then scheduled the matter for hearing prior to which the State subpoenaed the PHP expert's evaluation which was not provided by the licensee despite being ordered to provide same following argument between the parties just before the hearing.

B. Dr. Babine's Testimony

Dr. Babine mostly reiterated her written response to the Board. She further explained that the first evaluation indicated that she had a problem related to the abuse of alcohol but that the report was inaccurate and contained boundary issues around the evaluator's own personal history. She testified that she was more objective regarding the alcohol issue as it pertained to her than the experts and that she did not have an alcohol related problem. She repeated her belief that Dr.

Simmons was coercive, threatening, and misconstrued the expert's report. She accused the expert evaluator of bias and with errors of omission and commission, distortions and pathologizing, and labeling her with a diagnosis detrimental to her reputation. She also commented that her skills were better than some of her colleagues.

Dr. Babine also expressed her dissatisfaction with Dr. Siegel and his evaluation. She felt that his signature of "Jonathan" on one of his cover letters to her was too personal and therefore inappropriate. Although Dr. Babine claimed that Dr. Siegel's report contained many factual inaccuracies, she was hard pressed at the hearing to give examples of any significance.

Dr. Babine also discussed her reasons for refusing to participate in the Minnesota Multiphasic Personality Inventory (MMPI) test which Dr. Siegel determined was a necessary component to a valid evaluation. She testified that she was aware of the test's benefits in that the results could be of value in certain types of major diagnostic categories and personalities and could assist in determining differential diagnoses including personality disorders. However, she testified that the test was inappropriate for her since she believed that the norm was based on individual subjects who had achieved only 2/3rd's of her educational level and were of a lower socio-economic status. Additionally, she was concerned that the test could be interpreted in a number of ways and the results of the K scale interpretation, which measures defensiveness, could be skewed to her detriment. However, Dr. Babine did not bring those concerns to Dr. Siegel's attention since she stated that he might think she was "difficult" and would risk "antagonizing" him if she questioned him regarding how the results of the MMPI would be interpreted.

Dr. Babine also felt that Dr. Siegel had been dismissive of her when he declined to allow her to review the results of the evaluation before the Board obtained a copy of same. She didn't feel safe or comfortable with Dr. Siegel due to a concern that the information which she gave to him would not "be understood and recorded in a manner that represented who I am." This concern partially arose when she informed Dr. Siegel that her brother was schizophrenic and had been in a forensic facility during the past 30 years. Dr. Siegel recognized the facility as one where individuals are sentenced to if found not guilty by reason of insanity but neglected to explore the reasons why the brother was at that institution except to confirm that the brother must have "done something bad." In fact, the brother had killed their father and grandmother when Dr. Babine was

19 years old.² Dr. Babine further testified that the effect of Dr. Siegel's failure to follow up on his questioning regarding this topic made her feel as though the purpose of the evaluation was not to gain a full understanding of who she was and where she was but rather to "give the Board the answer they wanted." She additionally testified that she thought that the Board wanted to hear that "I had a problem" when it requested the evaluation which would be paid for by the Board and could not accept any bona fide reason for the Board's ordering the evaluation except for her drinking the one glass of wine.

Dr. Babine has not attended any AA or Caduceus meetings or received substance abuse counseling. At the end of her testimony, Dr. Babine reiterated that she had not consumed alcohol on call since September 2004 but, when asked by the Board, stated that she had consumed alcohol "once or twice" while on call before that time. She stated that it was bad judgment to have had alcohol while on call. She then decided to reveal the name of her first evaluator. However, she continued to deny the Board access to her evaluation and would not issue a release to enable that physician to send a copy of or to discuss the evaluation with the Board.

Dr. Babine concurred that any amount of alcohol could be interpreted as being a risk to the patient populace. She stated that her "colleagues will tell you how I am" in response to the Board questioning how, without testing and evaluation, it could be assured that there wasn't a problem. Dr. Babine was also made aware by the Board that testing and evaluation may reveal a person different from who she thinks she is and that the fact that all psychological testing is open to interpretation is no reason under the circumstances to refuse to be tested.

C. Colleagues' Testimony

Dr. Babine called three individuals to testify on her behalf. All stated that she was a competent practitioner and that they had never seen nor suspected her to be impaired or to have a substance abuse problem. However, one of her fellow physicians agreed that substance abuse may go undetected and another admitted to being surprised when he discovered that a patient was a substance abuser.

D. Testimony of Jonathan Siegel, Ph. D.

Dr. Siegel was qualified as an expert through his vast experience, education and training. He has performed more than 800 treatment evaluations and testified in at least 200 court

² Dr. Siegel testified that the brother's incarceration was irrelevant to his evaluation since Dr. Babine did not react to that tragedy by turning to alcohol or drugs or recognize any problem with the latter.

proceedings as a psychologist. He has provided at least 10 evaluations similar to the one requested regarding Dr. Babine. Dr. Siegel testified that the standard of practice regarding these evaluations requires that he conduct clinical interviews, consider prior evaluations, perform psychological testing and make contact with collateral references. Dr. Siegel was confident in his ability to perform an unbiased evaluation and Dr. Babine did not express any concern to him on that issue.

Dr. Siegel requested that Dr. Babine provide him with the prior evaluation since it would most likely factor into his evaluation. She refused stating that the prior evaluation contained erroneous conclusions. In response, Dr. Siegel stated that he would give her the opportunity to review those inaccuracies with him but she declined and explained that it was inappropriate to let incorrect information be a part of her official record. Dr. Babine did disclose that the prior evaluator "has stated she had an alcohol abuse problem specifically." Dr. Babine also disclosed that she had told the evaluator that she consumed "one to three glasses of wine several times a week" and that in the past, her consumption had been higher and that she had "cut back." She also confided that she told the expert that "I suppose I'd probably feel better if I didn't drink at all."

Dr. Siegel further testified that the MMPI is the most accepted and well researched objective personality test and is accepted as the gold standard of any forensic evaluation. He testified that Dr. Babine was totally incorrect in her assertion regarding the underlying norms and in how the responses are interpreted. Moreover, the test would render unbiased results and would be scored by the only professional so authorized. Although Dr. Babine refused to participate in this test, she did offer to take the Wechsler Adult Intelligence Scale. Dr. Siegel demurred as Dr. Babine's level of intellectual functioning was not in question.

Dr. Siegel was somewhat incredulous regarding Dr. Babine's testimony that she felt unsafe and uncomfortable during the evaluation. Dr. Siegel stated that toward the end of their interview, Dr. Babine chose to share with him pictures of an old house that she hoped to restore that used to be in her family. There was nothing in her manner to indicate that she was not comfortable. This expert added that Dr. Babine's explanation that Dr. Siegel made her feel uncomfortable and unsafe as a reason for her refusal to take the MMPI and her choice not to disclose her brother's horrific crime or pursue discussing the effects of same were examples of her blaming others for her decisions.

Dr. Siegel was also disturbed by other actions demonstrated by Dr. Babine. For example, she displayed pictures of several patients whom she had successfully treated in California after

other practitioners had not met with success. The lack of respect for their confidentiality was problematic as was her perceived need for praise and affirmation. Dr. Siegel testified that individuals such as Dr. Babine may undergo deflation and a sense of having been dismissed, humiliated, and placed in a shameful position if the above needs are not met. He stated that Dr. Babine presented as though others were deceiving her and that she had probable narcissistic dynamics in her personality and viewed the process as a narcissistic injury. In that regard, he noted that it was dramatic for him to witness her "extraordinary difficulty" in dealing with some of the State's and Board's questions whereas she exhibited a "remarkable turnaround" when praised by her colleagues.

In summation, Dr. Siegel did not feel as though he had obtained enough information and data without the prior evaluation and MMPI test scores to offer an informed opinion as to whether Dr. Babine has a substance abuse problem. He further stated that her resistance to the testing and release of the prior evaluation could or could not be related to substance abuse.

III. CONCLUSIONS OF LAW

The Board, exercising its knowledge, experience, and training, and having considered all of the evidence, and particularly having had the opportunity to observe Dr. Babine's demeanor during this proceeding including her occasional vague responses to questions, hereby unanimously concludes that the State has met its burden of proof by a preponderance of the evidence that Sarah Babine, M.D., violated the provisions of 32 M.R.S.A. Sec. 3282-A(2)(F)³ by her unprofessional conduct which is defined as a violation of the standard of professional behavior that has been established in the practice for which the licensee is licensed. More specifically, Dr. Babine violated this section by her failure to fully comply with a mental examination by Dr. Jonathan Siegel as ordered by the Board pursuant to 32 M.R.S.A. Sec. 3286⁴ in that she refused to produce the prior substance abuse evaluation and refused to undergo the MMPI as recommended by the examiner.

The Board additionally concluded by a vote of 7-1 that Dr. Babine violated the provisions of 32 M.R.S.A. Sec. 3282-A(2)(B) by engaging in habitual substance abuse that has resulted in or

³ The Board also unanimously concluded that Dr. Babine violated the provisions of 32 M.R.S.A. Sec. 3282-A(2)(H) by violating any Board statute or Rule: to wit, the same sections 3282-A(2)(F) and 3286.

⁴ The Board by a vote of 7-1, concluded that Dr. Babine's refusal to fully comply with a mental examination constituted an admission as authorized by this section to the allegations in the complaint.

is foreseeably likely to result in her performing medical services in a manner that endangers the health or safety of patients. In support of its conclusion, the Board reasoned that:

1. The prior evaluation as confirmed by Dr. Babine identified her as having an alcohol abuse problem.
2. Dr. Simmons apparently agreed that there was a substance abuse problem since he requested that Dr. Babine sign a contract with the Physicians' Health Program.
3. Dr. Babine refused to participate in the PHP program.
4. Dr. Babine refused to submit a copy of said report to either Dr. Siegel or the Board. This refusal effectively and intentionally stymied Dr. Siegel from completing his evaluation as did her refusal to take the MMPI which may have disclosed substance abuse and/or other serious personality issues.
5. Dr. Babine admitted in her response to the Board's complaint that she enjoys a regular glass of wine and that she informed Dr. Siegel that she had told the evaluator that she consumed "one to three glasses of wine several times a week" and that in the past, her consumption had been higher and that she had "cut back." She also confided that she told the expert that "I suppose I'd probably feel better if I didn't drink at all."
6. Dr. Babine appeared at Southern Maine Medical Center to attend to a patient while on call after consuming approximately 6 ounces of wine.
7. Dr. Babine insisted that she is able to view herself more objectively than experts skilled in substance abuse and other related mental health fields.

In this regard, the Board was particularly concerned that Dr. Babine appeared to find fault with or bias regarding professionals who suspected or diagnosed that she had a substance abuse problem. She claimed that Dr. Siegel was dismissive of her, that he did not provide her the opportunity to be transparent in that she felt uncomfortable and unsafe, that he and others failed to accurately report her history, and that Dr. Simmons was coercive and threatening while the first expert was guilty of inaccuracies, distortion and pathologizing.

IV.

SANCTIONS

The Board has as its primary duty the protection of the public. The Board strives to achieve this mandate by effectively regulating those practitioners who it licenses. The Board could not effectively regulate physicians if the licensees were allowed to pick and choose which tests and

evaluations they would participate in during Board ordered examinations. Moreover, for the Board to obtain a full understanding of an alleged substance abuse or other serious problem, physicians cannot be allowed to hide allegedly damaging evaluations and produce those that are favorable to them.

As a result of the above violations, the Board, exercising its knowledge, experience, and training, and having considered all of the evidence, and particularly having had the opportunity to observe Dr. Babine's demeanor, by the following votes ordered the below sanctions regarding Dr. Babine's license to practice medicine.

1. Dr. Babine shall receive a written **Reprimand** due to the above cited violations. These violations go to the heart of the Board's regulatory responsibilities and represent a calculated, deliberate obstruction of the Board's orders and a refusal by the licensee to be regulated. (8-0)

2. Dr. Babine's license to practice medicine is hereby placed on probation for a period of five (5) years. During that time, she shall, at her own expense:

a. Enlist in the Physicians' Health Program by July 18, 2006 and fully cooperate with the provisions of that program.⁵

b. Fully cooperate in an evaluation pursuant to 32 M.R.S.A. Sec. 3286 to be conducted by an evaluator selected by the licensee by September 11, 2006 but pre-approved by the Board before any services are rendered. The licensee shall have the opportunity to present to the Board two individuals who she deems acceptable to provide the service. In the event that the Board does not approve either, the Board shall select the evaluator. The licensee shall provide the evaluator with copies of Dr. Johnson's and Dr. Siegel's evaluations as well as all other evaluations and documents that the evaluator requests. The testing shall include but not be limited to the MMPI as well as projective testing. The evaluator shall issue within 10 days of his/her selection a schedule outlining dates by which the goals of the evaluation will be reached, including the final report. The schedule shall be pre-approved by the Board. In the event that the Sec. 3286 evaluation reveals mental health issues that need to be addressed, Dr. Babine shall retain a counselor pre-approved by the Board to provide such counseling and to provide quarterly reports to the Board regarding the progress of the sessions. (8-0)

⁵ Both Dr. Babine and her legal counsel were present at all times during these proceedings including when the Board voted on these sanctions. Therefore, they were aware that the Board expected compliance with the dates noted herein even though the Decision had not been reduced to writing or signed by the time that the hearing adjourned.

3. Dr. Babine shall **pay by July 11, 2007, the Board's costs of this hearing not to exceed \$3,000⁶** with the exception that she shall pay for any additional costs of transcribing the hearing testimony at her request or if she appeals. Payment of the \$3,000 shall be by certified 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 due to the failure of the licensee to cooperate with Dr. Siegel's examination and failure to provide a copy of the prior evaluation. Had the licensee cooperated, a hearing may have been avoided, or at least, a proceeding which consumed much less time would have most likely occurred. The costs are also 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. Full costs were not ordered by the majority since Dr. Babine will have associated costs in complying with the conditions of probation. (5-3). (The dissenting members would assess the full costs of the hearing).

SO ORDERED.

Dated: September 12, 2006



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

V.

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 Superior Court within 30 days of receipt of this Order. The petition shall specify the person seeking review, the manner in which they are aggrieved and the final agency action which they wish reviewed. It shall also contain a concise statement as to the nature of the action or inaction to be reviewed, the grounds upon which relief is sought and a demand for relief. Copies of the Petition for Review shall be served by Certified Mail, Return Receipt Requested upon the Maine State Board of Licensure in Medicine, all parties to the agency proceedings and the Attorney General.

⁶ The costs including those of Dr. Siegel, the investigator, publication of the notice of hearing, and presiding officer exceed \$6,000.



STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE
137 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0137

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

RANDAL C. MANNING
EXECUTIVE DIRECTOR

JOHN ELIAS BALDACCI
GOVERNOR

September 19, 2006

**SENT VIA FIRST CLASS AND CERTIFIED MAIL 7003 3110 0004 1522 7460
RESTRICTED DELIVERY, RETURN RECEIPT REQUESTED**

Sarah E. Babine, M.D.
The Medical Group
3 Shape Dr
Kennebunk, ME 04043

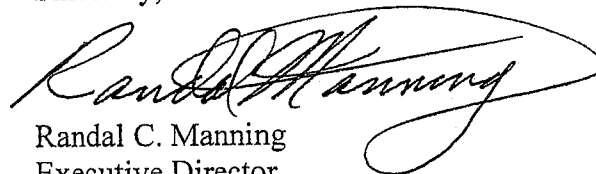
Re: Summary suspension of Maine medical license

Dear Dr. Babine:

This letter is to inform you that at the September 19, 2006 meeting of the Board of Licensure in Medicine the Board reviewed information regarding your failure to comply with the Board Order dated September 12, 2006. Pursuant to Title 5 M.R.S.A. 10004(3) the Board voted to suspend your medical license effective immediately based upon the immediate jeopardy that your continued practice of medicine poses to the safety of the public. Your license is suspended effective September 19, 2006, for a period of thirty (30) days. An Adjudicatory Hearing will take place at a later date. Notice of the time date and location of the Adjudicatory Hearing will be sent to you forthwith.

Because your license is under suspension, immediately return the license to this office at the address above.

Sincerely,



Randal C. Manning
Executive Director

RCM/msl

cc: Dennis E. Smith, AAG

Kenneth W. Lehman, Esq. (7003 3110-0004 1522 7453)

MAINE STATE BOARD OF LICENSURE IN MEDICINE

IN RE: Licensure Disciplinary Action)
Sarah E. Babine, M.D.) INTERLOCUTORY DECISION AND ORDER II
Complaint No. CR06-319)

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 closed session at the Board's offices located in Augusta, Maine on January 9, 2007. The purpose of the meeting was to conduct an adjudicatory hearing to decide whether Sarah E. Babine, 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 were Chairman Edward David, M.D., J.D., Sheridan R. Oldham, M.D., Kimberly K. Gooch, M.D., Gary Hatfield, M.D., Bettsanne Holmes (public member), George Dreher, M.D., Cheryl Clukey (public member), David Nyberg, Ph. D., (public member), and Daniel Onion, M.D. Dennis Smith, Ass't. Attorney General, presented the State's case. Dr. Babine was present and chose to represent herself. James E. Smith, Esq. served as Presiding Officer.

The Board convened the hearing and first determined that there were no conflicts of interest or bias on behalf of any Board member and took administrative notice of its statutes and rules. The hearing then proceeded forward and State's Exhibits 1-26 and Respondent's Exhibit 1 were admitted into the Record. Subsequent to the opening statement by the State, 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 FACT¹

A. A Review of Some Conclusions and Sanctions Contained in the Board's September 12, 2006 Decision and Order

The Board, in its prior decision, unanimously concluded that the "State had met its burden of proof by a preponderance of the evidence that Dr. Babine violated the provisions of 32 M.R.S.A. Sec. 3282-A(2)(F)² by her unprofessional conduct which is defined as a violation of the standard of professional behavior that has been established in the practice for which the licensee is licensed. More specifically, Dr. Babine violated this section by her failure to fully comply with a mental examination by Dr. Jonathan Siegel as ordered by the Board pursuant to 32 M.R.S.A. Sec. 3286³ in that she refused to produce the prior substance abuse evaluation and refused to undergo the MMPI as recommended by the examiner. The Board additionally concluded by a vote of 7-1 that Dr. Babine violated the provisions of 32 M.R.S.A. Sec. 3282-A(2)(B) by engaging in habitual substance abuse that has resulted in or is foreseeably likely to result in her performing medical services in a manner that endangers the health or safety of patients. In support of its conclusions, the Board reasoned that:

1. The prior evaluation as confirmed by Dr. Babine identified her as having an alcohol abuse problem.
2. Dr. Simmons apparently agreed that there was a substance abuse problem since he requested that Dr. Babine sign a contract with the Physicians' Health Program (PHP).
3. Dr. Babine refused to participate in the PHP program.
4. Dr. Babine refused to submit a copy of the prior evaluation to either Dr. Siegel or the Board. This refusal effectively and intentionally stymied Dr. Siegel from completing his evaluation as did her refusal to take the MMPI which may have disclosed substance abuse and/or other serious personality issues.

¹ The September 12, 2006 Board Decision and Order regarding Dr. Babine is hereby incorporated in and made a part of this Decision and Order. The reader of the instant Decision is urged to review that Decision and Order to gain a full understanding of the history of this case and the Board's reasoning in its prior Decision.

² The Board also unanimously concluded that Dr. Babine violated the provisions of 32 M.R.S.A. Sec. 3282-A(2)(H) by violating any Board statute or Rule: to wit, the same sections 3282-A(2)(F) and 3286.

³ The Board by a vote of 7-1, concluded that Dr. Babine's refusal to fully comply with a mental examination constituted an admission as authorized by this section to the allegations in the complaint.

5. Dr. Babine admitted in her response to the Board's complaint that she enjoys a regular glass of wine and that she informed Dr. Siegel that she had told the evaluator that she consumed "one to three glasses of wine several times a week" and that in the past, her consumption had been higher and that she had "cut back." She also confided that she told the expert that "I suppose I'd probably feel better if I didn't drink at all."

6. Dr. Babine appeared at Southern Maine Medical Center to attend to a patient while on call after consuming approximately 6 ounces of wine.

7. Dr. Babine insisted that she was able to view herself more objectively than experts skilled in substance abuse and other related mental health fields.

In this regard, the Board was particularly concerned that Dr. Babine appeared to find fault with or bias regarding professionals who suspected or diagnosed that she had a substance abuse problem. She claimed that Dr. Siegel was dismissive of her, that he did not provide her the opportunity to be transparent in that she felt uncomfortable and unsafe, that he and others failed to accurately report her history, and that Dr. Simmons was coercive and threatening while the first expert was guilty of inaccuracies, distortion and pathologizing."

The Board then reiterated that its primary duty is the protection of the public and that "the Board strives to achieve this mandate by effectively regulating those practitioners who it licenses. The Board could not effectively regulate physicians if the licensees were allowed to pick and choose which tests and evaluations they would participate in during Board ordered examinations. Moreover, for the Board to obtain a full understanding of an alleged substance abuse or other serious problem, physicians cannot be allowed to hide allegedly damaging evaluations and produce those that are favorable to them."

As a result of the above violations, the Board, exercising its knowledge, experience, and training, and having considered all of the evidence, and particularly having had the opportunity to observe Dr. Babine's demeanor, ordered, among other sanctions, that Dr. Babine's license to practice medicine be placed on probation for a period of five (5) years. "During that time, she shall, at her own expense:

a. Enlist in the Physicians' Health Program by July 18, 2006 and fully cooperate with the provisions of that program.⁴

Fully cooperate in an evaluation pursuant to 32 M.R.S.A. Sec. 3286 to be conducted by an evaluator selected by the licensee by September 11, 2006 but pre-approved by the Board before any services are rendered. The licensee shall have the opportunity to present to the Board two individuals who she deems acceptable to provide the service. In the event that the Board does not approve either, the Board shall select the evaluator. The licensee shall provide the evaluator with copies of Dr. Johnson's and Dr. Siegel's evaluations as well as all other evaluations and documents that the evaluator requests. The testing shall include but not be limited to the MMPI as well as projective testing. The evaluator shall issue within 10 days of his/her selection a schedule outlining dates by which the goals of the evaluation will be reached, including the final report. The schedule shall be pre-approved by the Board. In the event that the Sec. 3286 evaluation reveals mental health issues that need to be addressed, Dr. Babine shall retain a counselor pre-approved by the Board to provide such counseling and to provide quarterly reports to the Board regarding the progress of the sessions."

B. Documental History Subsequent to the Board's September 12, 2006 Decision and Order

In a letter received by the Board on September 11, 2006, Dr. Babine proposed a choice of evaluators⁵ and indicated that she signed the Physicians' Health Program (PHP) contract and would be meeting with Dr. Simmons to finalize the terms of her participation. However, the Board received information from the PHP program which indicated that the licensee had neither begun urine monitoring nor enrolled in the urine monitoring program in contravention of the Board's Order that she be enrolled by July 18, 2006. The Board then voted to immediately suspend Dr. Babine's license for 30 days pursuant to the provisions of 5 M.R.S.A. § 10004(3) and scheduled a hearing for October 10, 2006.⁶ The Board further informed Dr. Babine that the summary

⁴ Both Dr. Babine and her legal counsel were present at all times during these proceedings including when the Board voted on these sanctions. Therefore, they were aware that the Board expected compliance with the dates noted herein even though the Decision had not been reduced to writing or signed by the time that the hearing adjourned.

⁵ The Board approved Dr. Babine's selection of Dr. Donald Meyer to evaluate her.

⁶ The hearing was continued with the consent of the parties until January 9, 2007 in order to afford Dr. Meyer the necessary time to conduct his evaluation and prepare his report for the Board.

suspension would be rescinded upon confirmation that she had “enrolled in the PHP urine monitoring program and undergone a urine test from that program, which urine test is negative.”

On October 5, 2006, Southern Maine Medical Center (SMMC) summarily suspended Dr. Babine’s privileges “for her continued failure to complete medical records documentation.” She subsequently completed all outstanding medical records documentation within 7 days. On October 5, Dr. Babine resigned from the Medical Staff at SMMC “while under investigation for clinical competence.” On October 9, 2006, the Board received a facsimile letter from Dr. Simmons stating that a urine sample collected on September 29, 2006 resulted in a positive result for alcohol. On October 25, 2006, Dr. Babine wrote to the Board in response to the Board’s complaint in this matter and stated that “I am resolved to be abstinent going forward, and will henceforth fully comply with the contract with the PHP.”

The Board then received a second letter from Dr. Simmons dated November 8, 2006 regarding a second positive urine test. Although Dr. Babine had stated that this result was attributed to her ingestion of an over the counter decongestant taken to treat allergies, the test lab found that the result was due to the presence of amphetamines. Dr. Simmons further informed the Board that “In addition to the two failed tests, Dr. Babine unilaterally suspended her participation in the random urine-testing program. She refused to call in last week and has missed another scheduled test today...She must be considered out of compliance with her PHP contract.”

C. Facts Based on January 9, 2007 Testimony of Dr. Babine and Dr. Meyer

At the hearing in this matter, Dr. Babine testified that she was no longer taking any medications and neither was she being treated by a physician. However, she did admit in response to questioning to having recently self-medicated by ingesting both Wellbutrin and Adderall without current prescriptions and absent the required supervision of a treating physician. The former was obtained by taking samples from the clinic where she was employed and the latter pursuant to a March 26, 2003 prescription from her former California psychiatrist. The medication dispensed pursuant to that prescription and filled by Dr. Babine in New Hampshire had an expiration date of November 2004. She stopped taking Adderall in mid-2003 and began again for a few weeks in October 2006. Wellbutrin, and more particularly, Adderall, a schedule II drug, have a high potential

for abuse with the latter being most commonly prescribed for attention deficit disorder and also to augment the effectiveness of other drugs for treating the symptoms of vegetative depression.

Dr. Babine did not consume Adderall in combination with other medications or for her depression but thought that the drug would enable her to concentrate better on documenting her patient files in a timely fashion. She admitted that she acted inappropriately by not notifying the Board of her ingestion of these drugs, which admission the Board particularly noted since she was aware that allegations of substance abuse had been made in the Notice of Hearing. In fact, the Board first became aware of this violation through Dr. Meyer's report.

Other concerns regarding Dr. Babine involve her credibility regarding her true intentions to become abstinent. These concerns include her statement in her October 25, 2006 letter to the Board that "I am resolved to be abstinent going forward, and will henceforth fully comply with the contract with the PHP," whereas approximately two weeks later she failed her urine test having tested positive for amphetamines. Additionally, she at first told Dr. Simmons and subsequently Dr. Meyer that the November positive urine test was probably a false positive due to ingesting the decongestant pseudoephedrine. Dr. Meyer then consulted a lab which informed him that this was highly unlikely whereupon Dr. Babine confessed that she had taken Adderall which had been prescribed several years before for her depression.

Dr. Babine admitted that it was an error to treat herself without a current prescription. Dr. Babine further testified that she was "immobilized" at least by October 5, 2006 by her depression. She has sought treatment for this condition on three occasions since 1984 and did not feel that she was ready to resume her practice as of the date of this hearing. Although unwilling to attend AA or Caduceus meetings,⁷ the licensee stated her intent to abide by the recommendations of Dr. Meyer which included abstaining from proscribed substances for at least 6 months with urine monitoring. Dr. Babine agreed that she needs supervised treatment for depression and has scheduled an appointment in late January 2007 with a psychiatrist. She realized that her behavior had been inappropriate and obstructive and apologized to the Board.

Dr. Donald Meyer, a forensic psychiatrist, testified that Dr. Babine had a diagnosis of a major depressive disorder, recurrent and a personality disorder not otherwise specified. He further stated that although Dr. Babine might possibly have a substance abuse problem and/or substance dependence issue, and the Board should be concerned, her symptoms and history did not satisfy the

⁷ Caduceus is a substance abuse program offered to health professionals in recovery.

DSM IV requirements to support that diagnosis. Dr. Meyer testified that any substance abuse problem may be a result of the above two found diagnoses but was not supported as a diagnosis in and of itself. Dr. Meyer also supported the latter opinion in part on Dr. Babine's Minnesota Multiphasic Personality Inventory-2 (MMPI) test results which indicated "a low probability of Dr. Babine having a substance use disorder."

Dr. Meyer was aware that Dr. Babine had been treated by Dr. Christopher Larsen until spring 2003 when he prescribed the Adderall. Dr. Larsen, without the benefit of his notes, informed Dr. Meyer that he "never had any concerns about her professional competence or impairment" but that "with some frequency she would come to appointments [which were after her last patient of the day] having had a drink or two." He added that they talked about it but it "was not something that she thought of as a problem." On the same subject, based on both the MMPI and the Rorschach test results, Dr. Meyer wrote in his report that a "lack of self-awareness protects her from recognizing aspects of herself that she does not like or finds painful. She is apt to use denial, disavowal, and externalization of blame as defenses to keep certain aspects of her experience out of conscious awareness."

Dr. Meyer also was informed of concerns regarding elements of Dr. Babine's practice that were voiced and written by her superiors at Southern Maine Medical Center. For example, apparently by October 5, 2006, she had become "professionally difficult to work with" and evidenced serious chronic delinquencies in her medical records that ultimately led to her being suspended from the medical staff. One supervisor believed that in Dr. Babine's role as in-patient psychiatrist, her patients were overrepresented of those requiring seclusion and restraint which he attributed to her under-medication of potentially disruptive patients. This individual also wrote Dr. Babine a letter in the fall of 2006 in which he alleged that she was absent from her employment and had not provided adequate coverage for that absence. The supervisor further noted Dr. Babine's "voluminous neglect in dictating psychiatric histories and subsequent discharge summaries" and that on "more than one occasion, she has taken vacation without arranging coverage." The current supervisor was never concerned about Dr. Babine's abilities, but that in the last year "her record keeping spun out of control." The hospital executive committee's ad hoc subcommittee "felt that she wasn't taking ownership of the issue."

Dr. Meyer in his December 30, 2006 report recommended that Dr. Babine was fit to practice at the current time⁸ “with monitoring of the physician’s clinical practice and of the physician’s health” to address:

1. Dr. Babine’s personality and depressive disorders;
2. The resolution of residual concerns of an undiagnosed alcohol abuse disorder;
3. Monitoring of Dr. Babine’s clinical practice to assure compliance with records keeping and coverage requirements; and
4. Assessment of whether there is a pattern of under use of medication for potentially violent patients.

III.

CONCLUSIONS OF LAW

The Board, exercising its knowledge, experience, and training, and having considered all of the evidence, and particularly having had the opportunity to observe Dr. Babine’s demeanor, concludes by the following votes that Dr. Sarah Babine violated the provisions of:

A. 32 M.R.S.A., Section 3282-A(2)(F), “Unprofessional conduct,” by violating a standard of professional behavior that has been established in the practice for which the licensee is licensed. (9-0). The bases for the alleged unprofessional conduct are that:

1. On or about September 30, 2006, Dr. Babine submitted to a urine screen for the presence of alcohol; on or about October 7, 2006, the urine screen was positive for Ethyl Glucuronide, a chemical marker of recent alcohol exposure; and Dr. Babine’s admission to Dr. Simmons that she had consumed alcohol in violation of the Board’s September 12, 2006 Decision and Order; and
2. On or about October 12, 2006, Dr. Babine submitted to a urine screen which tested positive for the presence of an amphetamine, a drug that was not prescribed to her; and:
3. On or about November 9, 2006, Dr. Babine unilaterally suspended her participation in the random urine testing program of the Maine PHP, thereby failing to comply with and fully cooperate with the provisions of the PHP.

⁸ This recommendation was contrary to Dr. Babine’s testimony that she was not fit to practice at the current time.

B. 32 M.R.S.A., Section 3281-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. (6-3). The bases for this conclusion are that:

1. The prior evaluation by Dr. Johnson and as confirmed by Dr. Babine identified her as having an alcohol abuse problem.
2. Dr. Simmons apparently agreed that there was a substance abuse problem since he requested that Dr. Babine sign a contract with the Physicians' Health Program.
3. Dr. Babine refused at first to participate in the PHP program.
4. Dr. Babine refused to submit a copy of Dr. Johnson's report to either Dr. Siegel or the Board. This refusal effectively and intentionally stymied Dr. Siegel from completing his evaluation as did her previous refusal to take the MMPI.
5. Dr. Babine admitted in her response to the Board's initial complaint that she enjoys a regular glass of wine and that she informed Dr. Siegel that she had told the evaluator that she consumed "one to three glasses of wine several times a week" and that in the past, her consumption had been higher and that she had "cut back." She also confided that she told Dr. Siegel that "I suppose I'd probably feel better if I didn't drink at all."
6. Dr. Babine after consuming approximately 6 ounces of wine appeared at Southern Maine Medical Center while on call to attend to a patient.
7. Dr. Babine insisted before the January 9, 2007 hearing that she was able to view herself more objectively than experts skilled in substance abuse and other related mental health fields.
8. On or about September 30, 2006, after entering into a contract with the PHP program pursuant to the September 12, 2006 Board Order, Dr. Babine submitted to a urine screen for the presence of alcohol; on or about October 7, 2006, the urine screen was positive for Ethyl Glucuronide, a chemical marker of recent alcohol exposure; Dr. Babine admitted to Dr. Simmons that she had consumed alcohol;
9. On or about November 9, 2006, Dr. Babine unilaterally suspended her participation in the random urine testing program of the Maine PHP, thereby failing to comply with and fully cooperate with the provisions of the PHP.
10. Dr. Larsen's statement to Dr. Meyers that "with some frequency, Dr. Babine would come to appointments [which were after her last patient of the day] having had a drink or two." Dr. Larsen added that they talked about it but it "was not something that she thought of as a problem."

11. Dr. Babine met the criteria of DSM-IV for substance abuse. Dr. Babine was aware that the continued use of alcohol could worsen her depression. She demonstrated a maladaptive pattern of continuing to use alcohol and a drug(s) despite a history of undesirable persistent consequences resulting in clinically significant impairment or distress as manifested by her depression and recurrent inability or failure to maintain at least her major professional obligation of documenting patient records. This omission ultimately led to her being suspended from SMMC's medical staff. Additionally, in Dr. Babine's role as in-patient psychiatrist, her patients were alleged to have been overrepresented regarding patients requiring seclusion and restraint which was attributed to her under-medication of potentially disruptive patients. Dr. Babine was also informed by a letter in the fall of 2006 of the allegation that she was absent and had not provided adequate patient coverage for that absence. A supervisor further noted Dr. Babine's "voluminous neglect in dictating psychiatric histories and subsequent discharge summaries" and that on "more than one occasion, she has taken vacation without arranging coverage."

12. On or about October 12, 2006, Dr. Babine submitted to a urine screen which tested positive for the presence of an amphetamine (Adderall), a drug that was not timely prescribed to her by her treating physician and was ingested without the supervision of her treating physician;

13. The above substance is a schedule II medication meant to be used in combination with another antidepressant, not to receive the amphetamine effect of "being uplifted" to accomplish certain tasks.

14. Dr. Babine's attempt to explain the positive test to Dr. Simmons and Dr. Myer by asserting that it resulted from her ingestion of an over the counter decongestant medication which was not the truth.

C. 10 M.R.S.A. § 8003(5)(A-1)(4), by her failure to comply with the conditions of probation which is a ground for disciplinary action against a licensee. (9-0). Those failures are demonstrated by:

1. Dr. Babine's failure to enlist in the Physicians' Health Program by July 17, 2006;
2. Dr. Babine's failure to fully cooperate with the provisions of the PHP program, including total abstinence from the use of alcohol and non-prescribed medications; and

3. Dr. Babine's unilateral suspension of her participation in the random urine testing program of the Maine PHP, thereby failing to comply with and fully cooperate with the provisions of the PHP.

D. 32 M.R.S.A. § 3282-A(2)(C), by having been diagnosed with a mental or physical condition that has resulted or may result in Dr. Babine's performing services in a manner that endangers the health or safety of patients. Dr. Babine's acknowledgment that she is currently not fit to practice medicine due to depression (9-0) and the Board's above conclusion in paragraph B (6-3) support this conclusion.

IV.

SANCTIONS

The Board, exercising its knowledge, experience, and training, and having considered all of the evidence, and particularly having had the opportunity to observe Dr. Babine's demeanor, ordered, in addition to those ordered but not yet complied with in the Board's September 12, 2006 Decision and Order, that

1. Dr. Babine's license to practice medicine is suspended until such time as she moves the Board to resume this hearing at which time a final Decision and Order shall issue. Such motion shall not be granted by the Board until at least four months have elapsed from her January 26, 2007 appointment with her Board pre-approved treating psychiatrist and until she submits written statements from the PHP, her treating psychiatrist, and Dr. Meyer that she is fit to return to practice at least on a part time basis. Dr. Babine shall execute any and all releases necessary for the Board to directly contact Dr. Meyer and her treating psychiatrist(s) in order to assure that there can be direct contact between the Board and her psychiatrist and relevant records. Additionally, Dr. Babine shall forward to the Board and to Dr. Meyer her treating psychiatrist's treatment plan by February 5, 2007. The licensee shall provide her treating psychiatrist with copies of Dr. Johnson's, Dr. Siegel's, and Dr. Meyer's evaluations as well as all other evaluations and documents that the psychiatrist requests.

2. The Board reserves the right to amend the sanctions and terms stated herein after taking additional evidence.

3. Dr. Babine shall assure that her treating psychiatrist submits to the Board a written report by March 13, 2007 detailing the progress of her treatment.

4. After March 13, 2007, Dr. Babine shall assure that her treating psychiatrist file a quarterly report with the Board and Dr. Meyer detailing the progress of her treatment

5. Dr. Babine shall enlist in the Physicians' Health Program⁹ by January 26, 2007 and fully cooperate with the provisions of that program including weekly urine monitoring.¹⁰

Dr. Babine's current license to practice medicine in the State of Maine expires on January 31, 2007. The decision whether to renew her license to practice medicine will depend on the final Board decision regarding this proceeding. In the meantime, Dr. Babine's license continues in full force and effect subject to Board ordered sanctions and conditions.

SO ORDERED.

Dated: February 20, 2007



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

V.

APPEAL RIGHTS

To the extent that an appeal may be authorized from this Interlocutory Decision, 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 Superior Court within 30 days of receipt of this Order. The petition shall specify the person seeking review, the manner in which they are aggrieved and the final agency action which they wish reviewed. It shall also contain a concise statement as to the nature of the action or inaction to be reviewed, the grounds upon which relief is sought and a demand for relief. Copies of the Petition for Review shall be served by Certified Mail, Return Receipt Requested upon the Maine State Board of Licensure in Medicine, all parties to the agency proceedings and the Attorney General.

⁹ Dr. Babine and the State stipulated that Dr. Simmons would testify that the PHP would be willing to enter into another contract with Dr. Babine.

¹⁰ Dr. Babine was present at all times during these proceedings including when the Board voted on these sanctions. Therefore, she is aware that the Board expected compliance with the dates noted herein even though the Decision may not be reduced to writing or signed by the time that some of the conditions are to be complied with.

STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

| | | |
|-----------------------|---|-----------|
| In re: |) | CONSENT |
| Sarah E. Babine, M.D. |) | AGREEMENT |
| Complaint CR06-319 |) | |

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 Sarah E. Babine, M.D. The parties to the Consent Agreement are: Sarah E. Babine, M.D. ("Dr. Babine"), 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. Babine has held a license to practice medicine in the State of Maine since June 6, 2003. Dr. Babine has practiced medicine in Kennebunk, Maine, and specializes in Psychiatry.
2. On September 12, 2006, following an adjudicatory hearing that took place on July 11, 2006, the Board issued a written Decision and Order concerning Complaint CR05-040, a previous complaint filed against Dr. Babine's Maine medical license. In that Decision and Order, the Board found that Dr. Babine had committed unprofessional conduct by failing to fully comply with the Board's request that she undergo an evaluation with a Board-approved individual, and engaging in habitual substance abuse that was foreseeably likely to result in patient harm. As a result, the Board, among

other things, placed Dr. Babine's Maine medical license on probation with conditions, including a condition that she enroll in and fully cooperate in the Physicians Health Program.¹ A copy of the Decision and Order regarding Complaint CR05-040 is attached to and incorporated into this Consent Agreement as "Exhibit A."

3. On September 19, 2006, the Board summarily suspended Dr. Babine's Maine medical license based upon her failure to comply with the Board's order that she enroll in and fully cooperate in the Physicians Health Program.² The Board also voted to initiate a new complaint against Dr. Babine's Maine medical license based upon her failure to comply with the conditions of her probation. The Board docketed that complaint as CR06-319.

4. On October 9, 2006, the Board received a facsimile letter from Dr. David Simmons, M.D., who reported that a urine sample obtained from Dr. Babine on September 29, 2006, tested positive for alcohol.

5. On October 25, 2006, the Board received a written response from Dr. Babine to the Board issued Complaint CR06-319. In her response, Dr. Babine indicated that she would abstain from alcohol and fully cooperate with the Physicians Health Program.

6. On November 9, 2006, the Board received a facsimile letter from Dr. David Simmons, M.D. of the Physicians Health Program, who reported that a urine sample obtained from Dr. Babine tested positive for amphetamines.

¹ On July 11, 2006, following hearing, the Board ordered Dr. Babine to enroll in and fully cooperate in the Physicians Health Program by July 18, 2006.

² The Board also voted to rescind the summary suspension upon proof that Dr. Babine was enrolled in the Physicians Health Program and submitted a urine sample that tested negative for alcohol.

Dr. Simmons also reported that Dr. Babine attributed the positive urine test to an over the counter decongestant called Phenyleprine; however, according to NCPS, the testing agency, Phenyleprine could not have caused the positive urine test for amphetamines. Finally, Dr. Simmons reported that Dr. Babine had refused to undergo additional urine testing, and had unilaterally suspended her participation in the Physicians Health Program.

7. On January 9, 2007, the Board held an adjudicatory hearing regarding Complaint CR06-319. During the hearing, Dr. Babine admitted that she had self-medicated by ingesting Wellbutrin in the past and more recently Adderall without current prescriptions and without supervision of a treating physician. In addition, the evidence revealed that Dr. Babine had told both Dr. Simmons and Dr. Donald Meyer, M.D.³ that the positive urine test for amphetamines had resulted from her ingestion of pseudoephedrine. Dr. Meyer then confronted Dr. Babine, who admitted that she had, in fact, ingested Adderall, a drug prescribed for her several years earlier for depression. During the hearing, Dr. Babine admitted that it was inappropriate for her to treat herself with prescription medications without a treating physician. Dr. Babine also admitted that she was not ready to resume the practice of medicine.

8. At the conclusion of the adjudicatory hearing on January 9, 2007, the Board found that Dr. Babine had: engaged in habitual substances abuse that was foreseeably likely to result in her performing medical services in a manner that endangers the health or safety of patients; violated the conditions

³ Dr. Donald Meyer, M.D. performed a substance abuse and psychiatric evaluation of Dr. Babine pursuant to 32 M.R.S. § 3286.

of probation by failing to enroll in and fully cooperate in the Physicians Health Program; and had been diagnosed with a mental or physical condition that may result in Dr. Babine performing medical services in a manner that endangers the health or safety of patients. The Board ordered that: Dr. Babine comply with the conditions imposed in its previous Decision and Order dated September 12, 2006; Dr. Babine's Maine medical license be suspended for at least four months from January 26, 2007, and until such time as she moved the Board to resume the adjudicatory hearing; Dr. Babine ensure that her treating physician submit to the Board by March 13, 2007, a written report regarding the progress of her treatment; Dr. Babine ensures that her treating psychiatrist files a quarterly report with the Board regarding her treatment; and Dr. Babine enroll in and fully cooperate with the Physicians Health Program by January 26, 2007, including weekly urine monitoring. A copy of the Board's Interlocutory Decision and Order II dated February 20, 2007, is attached to and incorporated into this Consent Agreement as "Exhibit B."

9. On March 8, 2007, the Board received a report from Dr. Howard T. Rosenfield, M.D., Dr. Babine's treating psychiatrist, regarding the progress of her treatment.

10. On May 15, 2007, the Board received a written request from Dr. Babine to resume the adjudicatory hearing. In support of her request, Dr. Babine asserted that she was: in compliance with Board's Decision and Order; in compliance with the Physicians Health Program; in treatment with Dr.

Rosenfield since January 11, 2007; currently on prescribed medications to treat her depression; and eager to return to the practice of medicine.

11. On June 6, 2007, the Board received a report from Dr. Simmons that Dr. Babine was a participant in good standing in the Physicians Health Program, and in compliance with the terms of her written agreement with that program.

12. On June 7, 2007, the Board received a letter from Dr. Rosenfield indicating that he continues to treat Dr. Babine with a combination of psychotherapy and pharmacotherapy for major depression, recurrent in remission and personality disorder not otherwise specified.

13. On or about June 11, 2007, the Board received a report from Dr. Meyer, who opined that there is no current psychiatric barrier to Dr. Babine's return to the active practice of medicine. In addition, however, Dr. Meyer recommended that Dr. Babine return to work on a part-time basis for 8-12 weeks with oversight in place to detect any reoccurrence of symptoms.

14. This Consent Agreement has been negotiated by Dr. Babine and counsel for the Board in order to resolve Complaint CR06-319 without an additional adjudicatory hearing. Absent ratification of this proposed Consent Agreement by a majority vote of the Board on July 10, 2007, the matter will hold an additional adjudicatory hearing on that date.

15. By signing this Consent Agreement, Dr. Babine waives any and all objections to, and hereby consents to the presentation of this proposed Consent Agreement to the Board for possible ratification. Dr. Babine waives

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

16. Dr. Babine concedes that there is sufficient basis for the Board's written Decision and Orders that are attached to and incorporated into this Consent Agreement. Dr. Babine admits that she has violated the Board statutes cited in those Decisions and Orders, and that such violations constitute grounds to discipline her Maine medical license pursuant to 32 M.R.S. § 3282-A.

17. In order to avoid the necessity of an additional adjudicatory hearing concerning this matter, to impose discipline, and to facilitate Dr. Babine's return to the active practice of medicine, the Board agrees to issue, and Dr. Babine agrees to accept a medical license subject to the following: A five (5) year license probation⁴, effective retroactively to January 9, 2007, with the following specific conditions:

- (a) Dr. Babine shall abstain from the use of alcohol and any prescription medication that is not specifically prescribed to her by either her primary care provider or her treating psychiatrist. Any report received by the Board that Dr. Babine has failed to abstain for the use of alcohol or any prescription drug not specifically prescribed to her shall result in the immediate summary suspension of her Maine

⁴ In the event that Dr. Babine successfully completes the five (5) year term of probation, the probation and conditions shall terminate.

medical license in accordance with paragraph 18 below. Dr. Babine understands and agrees that a test evidencing the presence of alcohol or any prescription medication not specifically prescribed to Dr. Babine, when confirmed, shall raise a rebuttable presumption that such substance was in fact used by Dr. Babine. Such a positive test result shall alone be sufficient to prove the use by Dr. Babine of alcohol or any prescription medication not specifically prescribed to her. Dr. Babine further agrees that the result(s) of the test(s) referred to in this paragraph are admissible into evidence in any proceeding regarding her Maine medical license, whether before the Board or before a Court of competent jurisdiction.

(b) Dr. Babine shall fully participate and cooperate in the Physicians Health Program, including but not limited to urine testing and monitoring for the presence of alcohol and/or non-prescribed medications, and shall meet all of the requirements of that program. Any credible report received by the Board that Dr. Babine has failed to fully cooperate with the Physicians Health Program shall result in the immediate summary suspension of her Maine medical license in accordance with paragraph 18 below.

(c) Dr. Babine shall ensure that the Physicians Health Program provides the Board with quarterly reports regarding

her compliance with that program, including her abstention from the use of alcohol and non-prescribed medications, and the frequency and results of urine monitoring.

(d) Dr. Babine shall continue treatment with Dr.

Rosenfield or another psychiatrist pre-approved by the Board.

(e) Dr. Babine shall ensure that her treating psychiatrist, Dr. Rosenfield or another psychiatrist pre-approved by the Board, provides the Board and Physicians Health Program with quarterly reports regarding her treatment, including but not limited to the current diagnosis, current treatment modalities, current prescription medications, frequency and number of treatment sessions, and current prognosis.

In complying with this requirement, Dr. Babine shall execute any and all releases necessary in order to permit the Board or its agent(s) to obtain these reports from her treating psychiatrist and to contact and communicate directly with her treating psychiatrist concerning her diagnosis and treatment.

(f) Dr. Babine shall ensure that for the first ten (10) weeks following her return to the active practice of medicine that she works no more than twenty (20) hours per week.

(g) Dr. Babine agrees that her medical practice will be monitored by a physician or physicians pre-approved by the Board. The physician(s) must be in direct contact with Dr. Babine and observe her within her medical practice at least once a week, and inform the Board if Dr. Babine demonstrates any issues with regard to her ability to safely and competently practice medicine. The monitoring physician shall report any concerns to the Board by telephone and in writing within 24 hours or as soon thereafter as possible. Dr. Babine shall, prior to resuming the active practice of medicine, provide the Board with the name, telephone number, and office address of her proposed monitoring physician or physicians for approval.⁵

(h) Dr. Babine acknowledges that the monitoring physician(s) is/are an agent of the Board. Dr. Babine shall execute any and all releases necessary for the Board or its agents to directly contact the monitoring physician(s) about Dr. Babine and/or her medical practice. In addition, Dr. Babine shall execute any and all releases necessary to ensure that her monitoring physician(s) has/have complete access to her patients and patient records.

⁵ Dr. Babine understands and agrees that, pursuant to this paragraph, she may not practice medicine until the Board approves her proposed monitoring physician(s).

(i) Dr. Babine 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.

(j) Dr. Babine 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.

18. Any report received by the Board that Dr. Babine has failed to comply with any of the conditions of her probation as set out in paragraph 17(a-j) above, shall result in the immediate summary suspension of Dr. Babine's Maine medical license. Such suspension shall be effective upon oral or written notification from the Board to Dr. Babine that it has received a report of non-compliance. In the event that the Board summarily suspends Dr. Babine's Maine medical license pursuant to this paragraph, the Board shall hold an adjudicatory hearing

within sixty (60) days of the suspension.

19. Dr. Babine waives her right to a hearing before the Board or any court regarding all facts, terms and conditions of this Consent Agreement. Dr. Babine agrees that this Consent Agreement is a final order resolving complaint CR06-319. 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. Babine shall be made in writing and submitted to the Board. Dr. Babine may, at reasonable intervals, petition the Board for amendment of the terms and conditions of this Consent Agreement. Upon making such a petition, Dr. Babine shall bear the burden of demonstrating that the Board should amend the Consent Agreement. The Board shall have the discretion to: (a) deny Dr. Babine's petition; (b) grant Dr. Babine's petition; and/or (c) grant Dr. Babine'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. Babine's request to modify this Consent Agreement need not be made pursuant to a hearing and is not appealable to any court.

20. Dr. Babine acknowledges that, pursuant to Title 10 M.R.S. § 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.

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

22. 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.

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

24. The Board and Dr. Babine 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.

25. Dr. Babine 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.

I, SARAH E. BABINE, 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:

7/10/07


SARAH E. BABINE, M.D.

STATE OF Maine
Kennebec, S.S.

Personally appeared before me the above-named Sarah E. Babine, 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: 7/10/2007

Jean M. Greenwood
NOTARY PUBLIC/ATTORNEY
MY COMMISSION ENDS: 9/25/2007

STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

DATED: 7/10/2007

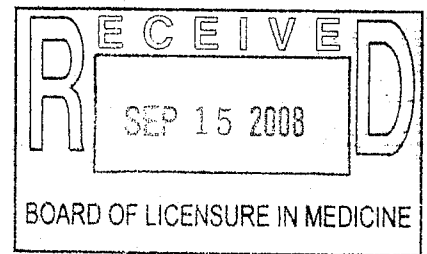
Sheidan R. Aldham, MD
M.D., Chairman

STATE OF MAINE DEPARTMENT
OF THE ATTORNEY GENERAL

DATED: 7/10/07

[Signature]
DENNIS E. SMITH
Assistant Attorney General

Effective Date:



MAINE STATE BOARD OF LICENSURE IN MEDICINE

IN RE: Licensure Disciplinary Action) DECISION AND ORDER
Sarah E. Babine, M.D.)
Complaint No. CR06-319)

I. PROCEDURAL HISTORY

Pursuant to the authority found in 32 M.R.S. Sec. 3263, *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 on July 8, 2008. The purpose of the meeting was to conduct an adjudicatory hearing to decide whether Sarah E. Babine, M.D. violated Board statutes and Rules as alleged in the Notice of Hearing. The matter was previously scheduled to be heard on April 8, 2008, but the Board, mindful that Dr. Babine's license to practice medicine was under suspension, granted her request for a continuance so that she could obtain the services of an attorney.

A quorum of the Board was in attendance during all stages of the proceedings. Participating and voting Board members were Chairwoman Sheridan R. Oldham, M.D., Gary Hatfield, M.D., Bettsanne Holmes (public member), George Dreher, M.D., Cheryl Clukey (public member), David Nyberg, Ph. D. (public member), Maroulla Gleaton, M.D., and David Dumont, M.D. Dennis Smith, Ass't. Attorney General, presented the State's case. Dr. Babine was not present and not represented by legal counsel. James E. Smith, Esq. served as Presiding Officer.

The Board convened the hearing and first determined that there were no conflicts of interest or bias on behalf of any Board member and then took administrative notice of its statutes and Rules. The hearing then proceeded forward and State's Exhibits 1, 1A-18 were admitted into the Record. The Board then found that Sarah Babine, M.D. had been duly and seasonably served with the Notice of Hearing by certified mail on June 4, 2008, and by first class mail on or about that date. Subsequent to the taking of testimony, exhibits, and closing argument, the Board deliberated and made the following findings of fact by a preponderance of the credible evidence.

II.

FINDINGS OF FACT¹

A. A Review of Some Conclusions and Sanctions Contained in the Board's September 12, 2006 Decision and Order and February 20, 2007 Interlocutory Decision and Order

The Board, in its prior decisions, unanimously concluded that the "State had met its burden of proof by a preponderance of the evidence that Dr. Babine violated the provisions of 32 M.R.S. Sec. 3282-A(2)(F)² by her unprofessional conduct which is defined as a violation of the standard of professional behavior that has been established in the practice for which the licensee is licensed. More specifically, Dr. Babine violated this section by her failure to fully comply with a mental examination by Dr. Jonathan Siegel as ordered by the Board pursuant to 32 M.R.S. Sec. 3286³ in that she refused to produce a prior substance abuse evaluation and refused to undergo the MMPI as recommended by Dr. Siegel. The Board additionally concluded by a vote of 7-1 that Dr. Babine violated the provisions of 32 M.R.S. Sec. 3282-A(2)(B) by engaging in habitual substance abuse that has resulted in or is foreseeably likely to result in her performing medical services in a manner that endangers the health or safety of patients. In support of its conclusions, the Board reasoned that:

1. Dr. Christopher Larsen, a physician who treated Dr. Babine years before, "never had any concerns about her professional competence or impairment" but that "with some frequency she would come to appointments [which were after her last patient of the day] having had a drink or two." He added that they talked about it but it "was not something that she thought of as a problem."
2. On the evening of September 24, 2004, Dr. Babine had alcohol on her breath after consuming approximately 6 ounces of wine when she appeared on call to treat a patient at Southern Maine Medical Center.
3. Dr. Babine was referred for a substance abuse evaluation shortly thereafter.

¹ The September 12, 2006 Board Decision and Order and the February 20, 2007 Interlocutory Decision and Order regarding Dr. Babine are hereby incorporated in and made a part of this Decision and Order. The reader of the instant Decision is urged to review those Decisions and Orders to gain a full understanding of the history of this case and the Board's reasoning in its prior Decisions.

² The Board also unanimously concluded that Dr. Babine violated the provisions of 32 M.R.S.A. Sec. 3282-A(2)(H) by violating any Board statute or Rule: to wit, the same sections 3282-A(2)(F) and 3286.

³ The Board by a vote of 7-1, concluded that Dr. Babine's refusal to fully comply with a mental examination constituted an admission as authorized by this section to the allegations in the complaint.

4. The finding by Dr. Johnson in his substance abuse evaluation in the fall of 2004 identified Dr. Babine as having an alcohol abuse problem. Dr. Babine disagreed with the finding.
5. Dr. David Simmons, Director of the Maine Medical Association's Physician's Health Program (PHP), apparently agreed that there was a substance abuse problem since he requested that Dr. Babine sign a contract with that program in the latter part of 2004.
6. Dr. Babine refused to participate in the PHP program as of February 5, 2005.
7. Dr. Babine refused to submit a copy of Dr. Johnson's evaluation to either Dr. Siegel or the Board which had ordered her on September 27, 2005, to be evaluated by Dr. Siegel. This refusal effectively and intentionally stymied Dr. Siegel from completing his evaluation as did Dr. Babine's refusal to take the MMPI, which may have disclosed substance abuse and/or other serious personality issues.
8. Dr. Babine admitted in her response to the Board's initial complaint that she enjoys a regular glass of wine and that she informed Dr. Siegel that she had told Dr. Johnson that she consumed "one to three glasses of wine several times a week" and that in the past, her consumption had been higher and that she had "cut back." She also confided that she told the latter that "I suppose I'd probably feel better if I didn't drink at all."
9. Dr. Babine insisted that she was able to view herself more objectively than experts skilled in substance abuse and other related mental health fields.
10. In a letter received by the Board on September 11, 2006, Dr. Babine proposed a choice of evaluators⁴ and indicated that she signed the Physicians' Health Program contract and would be meeting with Dr. Simmons to finalize the terms of her participation. However, the Board received information from the PHP program which indicated that the licensee had neither begun urine monitoring nor enrolled in the urine monitoring program in contravention of the Board's Order that she be enrolled by July 18, 2006.
11. One of Dr. Babine's supervisors at Southern Maine Medical Center wrote Dr. Babine a letter in the fall of 2006 in which he alleged that she was absent from her employment and had not provided adequate coverage for that absence. The supervisor further noted Dr. Babine's "voluminous neglect in dictating psychiatric histories and subsequent discharge summaries" and that on "more than one occasion, she has taken vacation without arranging coverage." The current supervisor was never concerned about Dr. Babine's abilities, but that in the last year "her record keeping spun out of

⁴ The Board approved Dr. Babine's selection of Dr. Donald Meyer to evaluate her.

control.” The hospital executive committee’s ad hoc subcommittee “felt that she wasn’t taking ownership of the issue.”

12. On October 5, 2006, Dr. Babine resigned from the Medical Staff at SMMC “while under investigation for clinical competence.”

13. On October 9, 2006, the Board received a facsimile letter from Dr. Simmons stating that a urine sample collected on September 29, 2006 resulted in a positive result for Ethyl Glucuronide, a chemical marker of recent alcohol exposure.

14. On October 25, 2006, Dr. Babine wrote to the Board in response to the Board’s complaint in this matter and stated that “I am resolved to be abstinent going forward, and will henceforth fully comply with the contract with the PHP.”

15. The Board then received a second letter from Dr. Simmons dated November 8, 2006, regarding a second positive urine test. Although Dr. Babine had stated that this result was attributed to her ingestion of an over the counter decongestant taken to treat allergies, the test lab found that the result was due to the presence of amphetamines. Dr. Simmons further informed the Board that “In addition to the two failed tests, Dr. Babine unilaterally suspended her participation in the random urine-testing program. She refused to call in last week and has missed another scheduled test today...She must be considered out of compliance with her PHP contract.”

16. On or about November 9, 2006, Dr. Babine unilaterally suspended her participation in the random urine testing program of the Maine PHP, thereby failing to comply with and fully cooperate with the provisions of the PHP.

17. Dr. Babine admitted at the January 9, 2007 Board hearing that she had self-medicated by ingesting both Wellbutrin and Adderall without current prescriptions and absent the required supervision of a treating physician. She at first told Dr. Simmons and subsequently Dr. Meyer that the November positive urine test was probably a false positive due to ingesting the decongestant pseudoephedrine. Dr. Meyer then consulted a lab which informed him that this was highly unlikely whereupon Dr. Babine then confessed that she had taken Adderall which had been prescribed several years before for her depression.

18. Although unwilling to attend AA or Caduceus meetings,⁵ the licensee stated her intent to abide by the recommendations of Dr. Meyer which included abstaining from proscribed substances for at least 6 months with urine monitoring. Dr. Babine agreed that she needed supervised treatment for

⁵ Caduceus is a substance abuse program offered to health professionals in recovery.

depression and scheduled an appointment in late January 2007 with a psychiatrist. She realized that her behavior had been inappropriate and obstructive and apologized to the Board.

19. Dr. Babine has been diagnosed with a mental or physical condition that has resulted or may result in her performing services in a manner that endangers the health or safety of patients. Dr. Babine acknowledged that as of January 9, 2007, she was currently not fit to practice medicine due to depression.

B. Post-January 9, 2007

The Board, following the January 9, 2007 hearing, issued an interlocutory decision by which, among other provisions, it suspended Dr. Babine's license to practice medicine until such time as she filed a motion with the Board to resume the hearing. She had been informed that the motion would not be granted by the Board until at least four months had elapsed from her January 26, 2007 appointment with her Board pre-approved treating psychiatrist and until she submitted written statements from the PHP, her treating psychiatrist, and Dr. Meyer that she was fit to return to practice, at least on a part time basis. Dr. Babine was ordered to once again enlist in the Physicians' Health Program⁶ by January 26, 2007 and fully cooperate with the provisions of that program including weekly urine monitoring.

The January 9, 2007 interlocutory decision was succeeded by a Consent Agreement (Agreement)⁷ signed by Dr. Babine, the Board, and the Attorney General's Office, effective July 10, 2007. That Agreement was prompted by Dr. Babine's May 15, 2007 request to resume the January 9 hearing. The Agreement, among other provisions, required Dr. Babine to "fully participate and cooperate in the Physicians' Health Program, including but not limited to urine testing and monitoring for the presence of alcohol and/or non-prescribed medications..." and to "abstain from the use of alcohol and any prescription medication that is not specifically prescribed to her..." The Agreement further stated that "Any report received by the Board that Dr. Babine has failed to abstain from the use of alcohol ... shall result in the immediate summary suspension of her Maine medical license..."

⁶ Dr. Babine and the State stipulated that Dr. Simmons would testify that the PHP would be willing to enter into another contract with Dr. Babine.

⁷ The July 10, 2007 Consent Agreement regarding Dr. Babine is hereby incorporated in and made a part of this Decision and Order. The reader of the instant Decision is urged to also review this document.

Dr. Babine stated that she was in compliance with the interlocutory decision and supported her assertions by submitting favorable letters from the PHP, her treating psychiatrist/substance abuse specialist, Dr. Meyer, and another psychiatrist, Dr. Howard Rosenfield. The Board considered, and with the execution of the Agreement, granted Dr. Meyer's recommendation that Dr. Babine be permitted to resume her medical practice on a part-time basis especially since there was currently no psychiatric barrier to her return to her profession.

Subsequently, Dr. Babine did not attend a random urine screen on January 2 or 3rd, 2008. She attributed her absences to a lack of financial ability to pay the \$22 fee for the testing. Dr. Babine apparently was not engaged in patient care, as of at least January 3, 2008. On January 14, 2008, Dr. Babine submitted to a urine screen for the presence of alcohol. On or about January 16, the test results revealed a positive finding of the presence of Ethyl Glucuronide which is a chemical marker demonstrating the recent use of alcohol. The test results totaled 5500 ng/ml as opposed to the cutoff of 250. Dr. David Simmons testified that this indicated that Dr. Babine had ingested approximately 6 ounces of alcohol during the 24 hours prior to the test. According to Dr. Simmons, Dr. Babine denied her "significant" use of alcohol and could not explain the result. She also expressed her ambivalence regarding whether to continue the practice of medicine. The Board, pursuant to the Consent Agreement, suspended her license to practice medicine effective January 31, 2008.

III.

CONCLUSIONS OF LAW

The Board, exercising its expertise and training, and having considered the evidence noted above and elsewhere in the record, voted 8-0 that:

1. Sarah Babine, M.D. violated the provisions of 32 M.R.S. Section 3282-A.(2)(F), "Unprofessional conduct," by violating a standard of professional behavior that has been established in the practice for which the licensee is licensed.

More specifically, Dr. Babine tested positive for the use of alcohol on January 14, 2008 and failed to submit to the randomly scheduled urine tests on January 2 and 3, 2008 in contravention of paragraph 17 (b) of the July 10, 2007 Consent Agreement. Dr. Babine further violated the

provisions of that same paragraph by failing to fully cooperate and participate in the Maine Medical Association Physicians' Health Program.

2. Sarah Babine, M.D. also violated the conditions of probation agreed to in the July 10, 2007 Consent Agreement as noted in the above paragraph.


IV.

SANCTIONS

The Board, by a vote of 8-0, and respecting that its primary duty is the protection of the public, and further considering the numerous opportunities which had been offered to Dr. Babine to receive treatment for her alcohol/substance abuse, concluded that authorizing the licensee to continue her practice of medicine in this state would constitute a serious threat of harm to the public health and safety. Therefore, the license of Sarah E. Babine, M.D. to practice medicine in the State of Maine is hereby **REVOKED, effective July 8, 2008.**

So Ordered.

Dated: September 9, 2008



Sheridan Oldham, M.D., Chairwoman
Maine Board of Licensure in Medicine

V.

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.



STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE
137 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0137

SHERIDAN R. OLDHAM, M.D.
CHAIRMAN

JOHN ELIAS BALDACCI
GOVERNOR

RANDAL C. MANNING
EXECUTIVE DIRECTOR

CERTIFIED MAIL# 70062150000569403671
REGULAR MAIL
RETURN RECEIPT REQUESTED

February 1, 2008

Sarah E. Babine, M.D.
1 Rusty Bucket Lane
Kennebunk, ME 04043

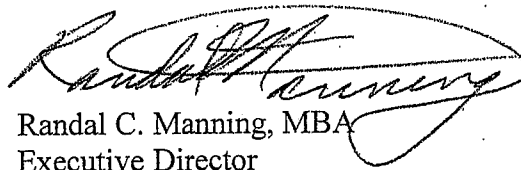
Re: Summary Suspension of Maine Medical License

Dear Dr. Babine:

This letter is to inform you that on January 31, 2008 the Board of Licensure in Medicine the Board received information from The Physicians Health Program stating the urine sample you provided on January 14, 2008 was positive for Ethyl glucuronide, and your failure to submit to two other randomly ordered tests. Pursuant to paragraph, 18 of your Consent Agreement dated July 10, 2007, any failure to comply with the conditions of your Consent Agreement shall result in the immediate summary suspension of your medical license.

Your license is suspended effective January 31, 2008. Notice of the time date and location of the Adjudicatory Hearing will be sent to you forthwith. Because your license is now under suspension, immediately return the license to this office at the address above.

Sincerely,


Randal C. Manning, MBA
Executive Director

RCM/mm
cc: Dennis E. Smith, AAG