

STATE OF MAINE BOARD OF LICENSURE IN MEDICINE

In Re: Michael B. Loewinger, M.D.

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Complaint No. CR12-126

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DECISION AND ORDER

I. PROCEDURAL HISTORY

Pursuant to the authority found in 32 M.R.S. § 3282-A and 10 M.R.S. § 8003(5), the State of Maine Board of Licensure in Medicine met in public session at its offices in Augusta, Maine, on March 12, 2013. The purpose of the meeting was to conduct an adjudicatory hearing to determine whether grounds exist to impose discipline on licensee Michael Loewinger.

A quorum of the Board was in attendance during all stages of the proceedings. Participating and voting Board members were David Nyberg, Ph.D.; Louisa Barnhart, M.D.; David Andrews, M.D.; Maroulla Gleaton, M.D.; David Dumont, M.D.; Dana Dyer, Public Member; Cheryl Clukey, Public Member; David Jones, M.D.; and Chair Gary Hatfield, M.D. Dr. Loewinger was present. Dennis Smith, Esq., Assistant Attorney General, represented the State of Maine. Rebekah J. Smith, Esq., served as Presiding Officer. The hearing was held in accordance with the requirements of the Administrative Procedures Act, 5 M.R.S. § 9051 et seq.

Dr. Loewinger stipulated that he received the documents at State Exhibits #1, #2, #4 through #9, and #19. Dr. Loewinger stipulated that he received the messages documented at State Exhibit #3. Dr. Loewinger stipulated that the documents at State Exhibits #10 through #14 contained correct information. Finally, Dr. Loewinger stipulated that he received any document sent by certified mail that was signed for by his parents. The Board admitted into evidence State Exhibits #1 through #19 without objection. Both parties presented opening statements. The State presented Dr. Loewinger as a witness. Both parties made closing statements. The Board took

notice of its statutes and rules and confirmed that no members had any conflict of interest or bias relating to the licensee. The Board then deliberated and made the following findings of fact and conclusions of law by a preponderance of the credible evidence regarding Dr. Loewinger's alleged violation of the statutes and rules governing the State of Maine Board of Licensure in Medicine.

II. FINDINGS OF FACT

1. Dr. Loewinger currently resides in Tarrytown, New York. (Testimony of Loewinger.) He previously resided at 7 Ditzel Farm Road in Scotch Plains, New Jersey, which was his childhood home in which his parents continue to reside. (Testimony of Loewinger.)
2. Dr. Loewinger currently practices general medicine at a hospital in Sleepy Hollow, New York. (Testimony of Loewinger.) He has been at that practice for approximately a year. (Testimony of Loewinger.)
3. Prior to his current practice, Dr. Loewinger worked in Maine, at the Maine State Prison, for a period of four or five weeks on a temporary basis. (Testimony of Loewinger.) It was his first job following his residency. (Testimony of Loewinger.)
4. On January 6, 2012, Dr. Loewinger was granted an emergency license as a medical doctor by the Board. (State Exh. #11.) On February 1, 2012, Dr. Loewinger was granted a regular license with an expiration date of October 31, 2013. (State Exh. #11.)
5. On April 12, 2012, by certified mail, the Board sent Dr. Loewinger a copy of Complaint CR12-40 and requested a response. (State Exh. #2.) The letter also informed Dr. Loewinger that he was required to respond to the complaint within 30 days. (State Exh. #2.)
6. Dr. Loewinger was practicing in Sleepy Hollow at the time that he received the Board's April 12, 2012, letter and a copy of Complaint CR12-40. (Testimony of Loewinger.) He

had never before, and has not since, received a complaint from a licensing board.

(Testimony of Loewinger.)

7. On May 24 and May 25, 2012, Board staff left voicemail messages for Dr. Loewinger.
(State Exh. #3.)
8. On June 8, 2012, the Board emailed Dr. Loewinger to inform him that although more than 30 days had passed since the certified mail letter dated April 12, 2012, was accepted and signed for, the Board had not received a response to the complaint from Dr. Loewinger.
(State Exh. #4.)
9. On June 19, 2012, Board staff left a voicemail message for Dr. Loewinger. (State Exh. #3.)
10. On July 19, 2012, the Board wrote to Dr. Loewinger to inform him that at its meeting on July 10, 2012, the Board had reviewed information presented by Board staff regarding his failure to respond to the complaint. (State Exh. #5.) The Board noted that it had not received any response to its letter and multiple email and phone messages to Dr. Loewinger. (State Exh. #5.) In the letter, the Board informed Dr. Loewinger that it had voted to issue a complaint against him, Complaint CR12-126, alleging unprofessional conduct and a violation of the Board's statutes based on his failure to respond to the notice of complaint. (State Exh. #5.) The letter reiterated Dr. Loewinger's statutory obligation to respond to the new complaint against him within 30 days. (State Exh. #5.)
11. On September 12, 2012, the Board notified Dr. Loewinger that the original complaint, Complaint CR12-40, had been dismissed after the Board's review of the complaint and related records. (State Exh. #6.)
12. Also on September 12, 2012, the Board notified Dr. Loewinger that it had voted to conduct an adjudicatory hearing in the matter of Complaint CR12-126 regarding his failure to

respond to Complaint CR12-40. (State Exh. #7.)

13. On January 18, 2013, the Board sent by certified mail a notice of hearing to Dr. Loewinger indicating that the hearing in this matter had been scheduled for March 12, 2013. (State Exh. #1.)

14. March 7, 2013, Board staff emailed Dr. Loewinger to ask if he planned to attend the March 12 hearing. (State Exh. #19.) The same day, Dr. Loewinger emailed a response indicating that he would be attending. (State Exh. #19.)

15. Dr. Loewinger testified that he did not respond to communications from the Board because he was distracted trying to locate employment. (Testimony of Loewinger.) Dr. Loewinger testified that he believed his behavior was irresponsible and that he did not have an excuse for his failure to respond. (Testimony of Loewinger.) Dr. Loewinger attended the hearing in order to take responsibility for his lack of response. (Testimony of Loewinger.) Dr. Loewinger testified that he would not fail to respond to a letter from a licensing board in the future. (Testimony of Loewinger.)

III. GOVERNING STATUTES AND RULES

1. A licensee of the State of Maine Board of Licensure in Medicine must respond to a complaint within 30 days. 32 M.R.S. § 3282-A(1).
2. The State of Maine Board of Licensure in Medicine may modify, restrict, suspend, revoke or refuse to renew a license if the licensee engaged in unprofessional conduct. 32 M.R.S. § 3282-A(2)(F). A licensee is considered to have engaged in unprofessional conduct if he violates a standard of professional behavior that has been established in the practice for which he is licensed. 32 M.R.S. §3282-A(2)(F).

3. The State of Maine Board of Licensure in Medicine may modify, restrict, suspend, revoke or refuse to renew a license if the licensee committed a violation of statutes governing the Board or a rule adopted by the Board. 32 M.R.S. § 3282-A(2)(H).
4. The State of Maine Board of Licensure in Medicine may issue letters of guidance or concern to a licensee. 10 M.R.S. § 8003(5)(E). A letter of guidance or concern may be used to educate, reinforce knowledge regarding legal or professional obligations and express concern over action or inaction by the licensee that does not rise to the level of misconduct sufficient to merit disciplinary action. 10 M.R.S. § 8003(5)(E).
5. The State of Maine Board of Licensure in Medicine may impose on the licensee a civil penalty of up to \$1,500 for each violation of applicable laws, rules and conditions of licensure. 10 M.R.S. § 8003(5)(A-1)(3).
6. The State of Maine Board of Licensure in Medicine may impose on the licensee the actual expenses it occurred for the investigation and prosecution of a matter. 10 M.R.S. § 8003-D.

IV. CONCLUSIONS OF LAW

The Board, considering the above facts and those alluded to in the record but not referred to herein, concluded that it had jurisdiction over the licensee and determined as follows:

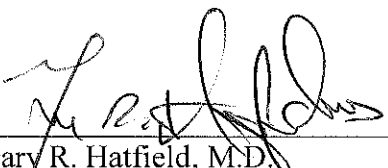
1. By a vote of 9-0, that Dr. Michael Loewinger engaged in unprofessional conduct by not responding to Board communications in violation of 32 M.R.S. § 3282-A(1).
2. By a vote of 9-0, that a fine of \$500 for each violation (a total of \$1,000) would be imposed on Dr. Loewinger.
3. By a vote of 9-0, that Dr. Michael Loewinger failed to respond to a complaint within 30 days in violation of 32 M.R.S. § 3282-A(2)(H), but determined that this did not rise to a

level of discipline, and by a vote of 9-0, that a letter of guidance should be issued to Dr. Loewinger.

4. By a vote of 9-0, that the actual costs of \$1,683.56 for this proceeding would be imposed on Dr. Loewinger.

So Ordered.

Dated: April 9, 2013



Gary R. Hatfield, M.D.
Chair, State of Maine Board of Licensure in Medicine

V. APPEAL RIGHTS

Pursuant to the provisions of 10 M.R.S. § 8003(5) and 5 M.R.S. § 11002(3), any party that appeals this Decision and Order must file a Petition for Review in the District Court within 30 days of receipt of this Order. The petition shall specify the person seeking review, the manner in which they are aggrieved and the final agency action which they wish reviewed. It shall also contain a concise statement as to the nature of the action or inaction to be reviewed, the grounds upon which relief is sought and a demand for relief. Copies of the Petition for Review shall be served by certified mail, return receipt requested, upon the State of Maine Board of Licensure in Medicine, all parties to the agency proceedings, and the Attorney General.