

MAINE STATE BOARD OF LICENSURE IN MEDICINE

IN RE: James C. Cooper, M.D.)
Licensure Disciplinary Action) **DECISION AND ORDER**
Complaint CR-09-003/CR 10-135)

I. PROCEDURAL HISTORY

Pursuant to the authority found in 32 M.R.S. Sec. 3282-A, *et seq.*, 5 M.R.S. Sec. 9051, *et seq.* and 10 M.R.S. Sec. 8001, *et seq.*, the Board of Licensure in Medicine (Board) met in public session at the Board's offices located in Augusta, Maine at 1:00 p.m. on October 12, 2010. The purpose of the meeting was to conduct a consolidated adjudicatory hearing to decide the following two issues. First, whether James Cooper, M.D. violated Board statutes and Rules as alleged in the Notice of Hearing which would subject him to disciplinary sanctions. Second, whether the Board would grant Dr. Cooper's appeal from the Board's preliminary decision to deny his application for a permanent license to practice medicine in this state. A quorum of the Board was in attendance during all stages of the proceedings. Participating and voting Board members were Chairman Sheridan Oldham, M.D., Gary R. Hatfield, M.D., George Dreher, M.D., public member, David Nyberg, Ph. D., public member, Cheryl Clukey, Maroulla S. Gleaton, M.D., and David H. Dumont, M.D. Dr. Cooper appeared but was unrepresented by an attorney. Dennis Smith, Ass't. Attorney General, presented the State's case. James E. Smith, Esq. served as Presiding Officer.

The Board convened the hearing and first determined that there were no conflicts of interest or bias on behalf of any Board member. The Board then took administrative notice of its statutes and Rules. State's exhibits 1-26 and Respondent's exhibits 1-3 were admitted into the Record. Subsequent to the parties' opening statements, the taking of testimony, exhibits, and closing arguments, the Board deliberated and made the following findings of fact by a preponderance of the credible evidence.

II.

FINDINGS OF FACT

James Cooper, M.D., has been a licensed adult, child, and adolescent psychiatrist since 1974. He is currently licensed to practice medicine in Idaho, Indiana, and Vermont and seeks to be permanently licensed in Maine. Dr. Cooper resides in Boise, Idaho and most recently has been employed as a *locum tenens* psychiatrist. He served in that capacity while assigned to Pen Bay Medical Center (Pen Bay) in Rockport, Maine and its subsidiary, Mid-Coast Mental Health (Mid-Coast) in Rockland, Maine from October 6, 2008 until April 3, 2009.

CR, at the relevant time regarding this hearing, was a 12 year old boy with longstanding behavioral and developmental issues, among them being easily frustrated and angry and “easily upset about the least of things.” CR had been treated on September 8, 2008, at Mid-Coast by psychiatrist Ledro Justice, M.D. 2 1/2 months before his appointment with Dr. Cooper. This session had been requested by CR’s primary care provider who was prescribing psychotropic medications. CR also was receiving counseling from his therapist. Both CR’s primary care physician and his therapist had concerns regarding CR’s depression which they gave as the primary reason for their referral to Dr. Cooper since Dr. Justice was unavailable.

Dr. Justice, at the September 8, 2008 session, described CR in part as being “easy to engage...he seemed anxious to please and mildly anxious, initially. He relaxed rather quickly, responding to assurance that no harm was intended...” CR was further described by Dr. Justice as having “some insight and his judgment is fair. Impulse control and overall behavior was quite appropriate in the office...” Perhaps most importantly, CR denied any suicidal or homicidal ideation. His Axis I diagnoses were Anxiety Disorder not otherwise specified (NOS), Mixed-Receptive Expressive Language Disorder, rule out; Developmental Disorder (NOS); Attention Deficit Hyperactivity Disorder, provisional; and Mood Disorder (NOS), rule out. The assessment of risk concerns were a possible increase in disruptive behaviors and deterioration in academic performance. No concerns were stated regarding CR’s mother, TR, related to parenting skills or lack of involvement with her son.

CR was accompanied by TR, on November 21, 2008 when he was seen in consultation by Dr. Cooper at Mid-Coast Mental Health. Since Dr. Cooper did not appear to know why CR had been referred to him or for what reason, TR requested the consultation be postponed until Dr. Cooper could confer with CR’s referring providers. Dr. Cooper ignored the request. He testified

that he had not contacted the referring professionals since Sally Cooper, M.D.¹, was going to do that. Sally Cooper, M.D., was more credible at this hearing when she testified that no such agreement took place and that she would have expected Dr. James Cooper to have contacted the referral resources and other collateral resources before the session.

During the 60 minute session, CR presented as upset, tearful at times, verbalized that no one liked him, and acknowledged that he sometimes wished he would die and could not express a reason to continue living. At some point in the session, CR excused himself and went to the bathroom.

Dr. Cooper was very concerned about CR's presentation and determined that a reasonable outpatient safety plan had not been arranged. He then recommended, in the presence of CR and his mother, that CR be hospitalized. Dr. Cooper had not reviewed Dr. Justice's notes and neither had he contacted CR's primary care physician or therapist. This recommendation proved to be unfortunate since CR's mother became enraged, CR began crying, and both communicated unwillingness for CR to be hospitalized. Dr. Cooper reacted by stating that unless CR was hospitalized, he would need to report CR's situation to the Maine Department of Health and Human Services (DHHS) which might take custody of CR and his brother. Dr. Cooper thought that this comment perhaps would produce fear in TR so that she would cooperate. This statement was interpreted by CR and his mother as a threat to remove custody from her and resulted in further harm as CR began pounding his fists and jumping up and down screaming and crying.

The session ended shortly thereafter. Dr. Cooper followed-up with his stated intention to call DHHS and reported that CR's mother was neglecting her son by failing to follow Dr. Cooper's medical recommendation that she agree to CR's psychiatric hospitalization for his safety. Dr. Cooper also made arrangements for a crisis management team "to attempt to follow-up with the family if they will accept it." CR's mother also made a phone call to DHHS and explained her version of events regarding the consultation. DHHS made a brief investigation and, finding no jeopardy, closed the case.

Dr. Cooper, at this hearing and in his response to the complaint, testified that CR was full of hopelessness. TR, however, voiced her opinion that Dr. Cooper's comments in front of CR regarding hospitalizing him and/or the possibility of DHHS taking custody of him exacerbated CR's hopelessness. Dr. Cooper also had stated that he has never seen, in his 30 years of psychiatric

¹ Sally Cooper, M.D. is not related to James Cooper, M.D.

practice, “a mother who was as detached, cold and unresponsive to her child as Mrs. R was on November 21, 2008.” Dr. Cooper further described her as being “unable or unwilling to look after the best interests or safety of her minor child.” These comments were belied by the fact that TR has faithfully sought competent care for her son as evidenced by treatment and evaluations by at least one therapist, two psychiatrists, and the family doctor. TR’s caring for her son was further evidenced by her well-founded concern that Dr. Cooper was unprepared to consult with her at the November 21, 2008 session. Additionally, TR may have appeared “cold” due to there being no rapport between the licensee and her.

One month later on December 19, 2008, CR was reevaluated by psychiatrist Sally Cooper who described CR as “smiling readily” and “being hopeful about the future.” The boy stated to this professional that he did ponder the idea of “killing oneself” but would never do that as it would cause his family pain and sadness. In short, the problems exhibited in his session with Dr. James Cooper were mostly absent in his session with Dr. Sally Cooper who stated no concerns regarding TR’s parenting skills.

On January 7, 2009, TR filed the present complaint with the Board. Dr. Cooper responded on February 2, 2009, and the Board on April 14, 2009 ordered but did not schedule an informal conference with Dr. Cooper who voiced several concerns regarding his attendance at same. Eventually, the Board scheduled an informal conference for December 8, 2009 which Dr. Cooper allegedly did not receive notice of until December 2, 2009. He wrote the Board on that day that he could not attend on such short notice and that: “I very much would relish the opportunity to address all of this with the Maine Board of Licensure in Medicine and I would appreciate an opportunity to review the facts with the Board and perhaps introduce some unknown facts about Mrs. R and her family that might suggest some motives in her complaint and her behaviors. **I especially would enjoy watching Mrs. R in action again and to have a chance to confront her.**” (emphasis added). He requested a continuance until after the winter but the Board instead voted to deny his application.

Judy A. Burk, M.D., is a psychiatrist with 21 years of experience. She testified as an expert witness in this matter and rendered her opinion that Dr. James Cooper violated the following standards of practice in his profession according to the Standards of the American Psychiatric Association.

1. Dr. Cooper failed to establish and/or maintain adequate rapport with patient CR or his mother;
2. Dr. Cooper failed in his evaluation of CR's potential for suicide to seek information from the referring sources (CR's therapist and primary care provider who was prescribing psychotropic medication);
3. Dr. Cooper failed to document that he sought information regarding CR's potential for suicide from the referring sources;
4. Dr. Cooper failed to ascertain the availability and presence in the home of firearms and lethal medication;
5. Dr. Cooper failed to document the availability and presence in the home of firearms and lethal medication;
6. Dr. Cooper failed to explicitly advise CR's mother to remove firearms and lethal medication from the home;
7. Dr. Cooper failed to document that he advised CR's mother to remove firearms and lethal medication from the home;
8. Dr. Cooper failed to communicate his concerns about CR's safety in a timely way to CR's referring providers;
9. Dr. Cooper failed to document that he communicated his concerns about CR's safety in a timely way to CR's referring providers;
10. Dr. Cooper's behavior caused harm to CR (communicating to CR's mother in the presence of CR that CR needed to be hospitalized and then stating that refusal to be hospitalized would be reported to appropriate Maine authorities, and then predicting that CR's mother would lose custody of both children) ;
11. The statement that CR's mother would lose custody of both children had a negative impact upon the therapeutic relationship that Dr. Cooper was supposed to have with CR.

III.

CONCLUSIONS OF LAW

According to the language of 10 M.R.S. §8008, "The sole purpose of an occupational and professional regulatory board is to protect the public health and welfare. A board carries out this purpose by ensuring that the public is served by competent and honest practitioners and by

establishing minimum standards of proficiency in the regulated professions by examining, licensing, regulating and disciplining practitioners of those regulated professions. Other goals or objectives may not supersede this purpose.”

The Board, taking the above stated purpose into consideration, and based on the recited evidence and other evidence found in the record but not alluded to herein, and further on observations of the licensee’s demeanor, concluded by the vote of 7-0, that James Cooper, M.D. violated the provisions of 32 M.R.S. §3282-A(2)(F): by engaging in unprofessional conduct by the acts and omissions detailed in paragraphs numbered 1-11 above.

The Board reasoned, among other things, that TR’s and Dr. Burk’s testimony was credible. Dr. Cooper’s request to hospitalize CR was not unreasonable except in conjunction with his threat to report the mother to DHHS. However, coupled with Dr. Cooper’s hyperbole that this was the worst case that he had seen in thirty years, involuntary commitment of CR should most likely have taken place. The failure to communicate with the mother in an effective manner but instead to use the threat of social services reporting to try to manipulate the situation in the child’s presence constituted unprofessional communication with the patient and the mother, especially since Dr. Cooper could have raised the issue of DHHS in private with the mother when CR was in the bathroom.

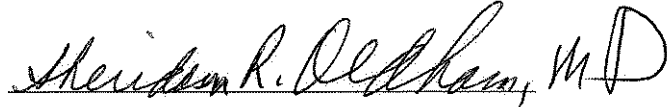
Dr. Cooper also was arrogant and disparaged both the mother and Dr. Burk’s honest attempts to try to provide information requested by the Board. Dr. Cooper further did not take responsibility for any of the negative results of the November 21, 2008 session. He also demonstrated his lack of insight in at least two instances. First, when he remarkably appeared to take credit for CR’s noted improvement at CR’s subsequent session with another psychiatrist. Second, when Dr. Cooper testified that his primary regret regarding CR was that he did not hug CR at the session.

IV. SANCTIONS

The Board, based on the recited evidence and other evidence found in the record but not alluded to herein, and further on observations of the licensee’s demeanor, voted 7-0 not to support Dr. Cooper’s application for permanent licensure and to order that he be sanctioned based on the egregiousness of the above violations.

Wherefore, the Board orders that James C. Cooper, M.D.'s **APPEAL** from the Board's preliminary denial of his application for a permanent license to practice medicine in the state of Maine is hereby **DENIED**. James C. Cooper is also hereby **REPRIMANDED** for the above unprofessional conduct which occurred while temporarily licensed as a physician in Maine.

Dated: November 9, 2010



Sheridan Oldham, M.D., Chairman

Maine Board of Licensure in Medicine

V.

APPEAL RIGHTS

Pursuant to the provisions of 5 M.R.S. Sec. 11001, 11002, and 10 M.R.S. 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.