

STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

In re:)	CONSENT
Patrick Fallon, M.D.)	AGREEMENT
Complaint No. CR10-163)	

This document is a Consent Agreement, effective when signed by all parties, regarding a disciplinary action concerning and conditions imposed upon the license to practice medicine in the State of Maine held by Patrick Fallon, M.D. The parties to the Consent Agreement are: Patrick Fallon, M.D. ("Dr. Fallon"), the State of Maine Board of Licensure in Medicine ("the Board") and the State of Maine Department of the Attorney General. This Consent Agreement is entered into pursuant to 10 M.R.S. § 8003(5)(B) and 32 M.R.S. § 3282-A.

STATEMENT OF FACTS

1. Dr. Fallon has held a license to practice medicine in the State of Maine since July 21, 1994, and specializes in Orthopedic Surgery.
2. On or about May 10, 2010, the Board received a complaint from RB, who alleged that his wife, AB, was a patient of Dr. Fallon and that Dr. Fallon was having an inappropriate relationship with her. The Board docketed that complaint as CR10-163, and sent it to Dr. Fallon for a response.
3. On or about May 27, 2010, the Board received a written response from Dr. Fallon to complaint CR10-163. In his response, Dr. Fallon admitted that AB had been his patient, denied having an inappropriate relationship with AB, described his business relationship with AB – including face to face

meetings at various public locations - and stated that "the only other communications we have had include one or two brief phone conversations."

4. On or about June 16, 2010, the Board received additional information from RB, including copies of GPS records for the vehicle driven by AB, and a copy of telephone records that indicated over 60 telephone calls between AB and Dr. Fallon between October 2009 and January 2010. Based upon this new information, the Board staff requested a subpoena to obtain the cell phone records of Dr. Fallon.

5. On or about December 3, 2010, the Board staff obtained copies of Dr. Fallon's telephone records, which indicated multiple telephone and text contacts with AB.

6. On or about February 8, 2011, the Board reviewed complaint CR10-163, including Dr. Fallon's response and all investigative information obtained to date, and voted to investigate the matter further by conducting an interview with AB and Dr. Fallon regarding the telephone records. Board staff subsequently contacted Dr. Fallon, through his legal counsel, to schedule an interview.

7. On or about February 24, 2011, the Board received a letter from Dr. Fallon. In that letter, Dr. Fallon expressed tremendous remorse about providing the Board with misinformation in his initial response to the complaint. Dr. Fallon then admitted the facts set forth in RB's complaint and that he pursued a relationship with AB who was also a patient. Dr. Fallon

admitted that he was “completely and totally wrong” with respect to his actions, expressing sincere regret for his actions.

8. On March 8, 2011, the Board again reviewed complaint CR10-163, including Dr. Fallon’s letter received on or about February 24, 2011. Following its review, the Board voted to schedule the matter for an adjudicatory hearing. In addition, the Board authorized its assigned legal counsel to negotiate a consent agreement to resolve complaint CR10-163 without hearing.

9. This Consent Agreement has been negotiated by and between legal counsel for Dr. Fallon and legal counsel for the Board in order to resolve complaint CR10-163 without an adjudicatory hearing. Absent Dr. Fallon’s acceptance of this Consent Agreement by signing and dating it in front of a notary and mailing it to Maine Board of Licensure in Medicine, 137 State House Station, Augusta, Maine 04333-0137 on or before April 29, 2011, the matter will be scheduled for an adjudicatory hearing. In addition, absent the Board’s acceptance of this Consent Agreement by ratifying it on May 10, 2011, the matter will be scheduled for an adjudicatory hearing.

10. By signing this Consent Agreement, Dr. Fallon and his legal counsel waive any and all objections to, and hereby consent to the presentation of this Consent Agreement to the Board by its assigned legal counsel for possible ratification on May 10, 2011. Dr. Fallon and his legal counsel also forever waive any arguments of bias or otherwise against any of the Board members based solely upon the Board’s failure to ratify this proposed Consent Agreement.

COVENANTS

In lieu of proceeding to an adjudicatory hearing in this matter, Dr. Fallon agrees to the following :

11. Dr. Fallon admits that with regard to complaint CR10-163 the Board has sufficient evidence from which it could reasonably conclude that he engaged in unprofessional conduct by: (a) engaging in an inappropriate relationship with patient AB, with whom he had a physician-patient relationship; and (b) providing the Board with false information in his response to the complaint. Dr. Fallon admits that the Board has sufficient evidence from which it could conclude that such conduct constitutes unprofessional conduct and grounds for discipline of his Maine medical license pursuant to 32 M.R.S.A. § 3282-A(2)(F).

12. As discipline for the conduct described in paragraph 11 above, Dr. Fallon agrees to accept, and the Board agrees to issue, the following discipline effective upon execution¹ of this Consent Agreement:

a. A REPRIMAND. Dr. Fallon is hereby reprimanded by the Board for engaging in unethical and unprofessional conduct both with regard to his inappropriate relationship with patient AB and his providing false and misleading information to the Board. As Dr. Fallon acknowledged in his letter dated February 24, 2011, this conduct resulted in a breach of trust on multiple levels. Dr. Fallon agrees never to engage in this type of conduct again.

¹ For the purposes of this Consent Agreement, "execution" shall mean the date on which the final signature is affixed to this Consent Agreement.

b. Pay a FINE of Ten Thousand Dollars and Zero Cents (\$10,000.00). However, payment of Four Thousand Dollars (\$4,000.00) of the fine is suspended so long as Dr. Fallon complies with all of the terms and conditions of this Consent Agreement, including all of the reporting requirements. Dr. Fallon shall ensure that he pays the unsuspended monetary fine Of Six Thousand Dollars (\$6,000.00) within six (6) months following the execution of this Consent Agreement. Payment shall be made by certified check or money order made payable to "Treasurer, State of Maine," and be remitted to Maria MacDonald, Investigator, Maine Board of Licensure in Medicine, 137 State House Station, Augusta, Maine 04333-0137. Dr. Fallon agrees that, in the event that he fails to meet any of the reporting or other time requirements set out in this Consent Agreement (without having requested an extension prior to the due date and having that request granted by the Board), the Board may, in its sole discretion, summarily and without an adjudicatory hearing, "activate" any or all of the amount of the suspended fine. The Board shall notify Dr. Fallon in writing of the activation of all or a portion of the suspended fine. Dr. Fallon agrees and understands that he must pay the amount of the fine "activated" by the Board within 30 days of receiving notice that the fine was activated. Payment shall be by cashier's check or money order made out to "Treasurer, State of Maine." In addition, the parties agree and understand that the Board's decision not to "activate" all or a portion of the suspended fine for one instance of noncompliance with a reporting or other time requirement does not constitute a waiver of the Board's right to "activate"

all or a portion of the fine regarding a subsequent instance of non-compliance. If Dr. Fallon fails to pay an "activated" fine within the 30 days as provided by this section, the Board may "activate" all or a portion of the remaining portion of the "suspended" fine. Any decision by the Board pursuant to this section does not require an adjudicatory hearing and is non-appealable.

c. A LICENSE SUSPENSION of thirty (30) days commencing upon the execution of this Consent Agreement.

d. A LICENSE PROBATION for five (5) years following the execution of this Consent Agreement. As specific conditions of probation, Dr. Fallon shall:

(i) Notify the Board in writing of any and all current locations where he practices medicine. In complying with this condition, Dr. Fallon shall notify the Board in writing of any change(s) in the location(s) of his practice of medicine within seven (7) days of any such change(s).

(ii) Permit the Board or its agent(s) complete access to Dr. Fallon's portion of any medical practice where he is employed, including but not limited to all patient records.

(iii) Permit the Board or its agent(s) to conduct random and/or announced inspections of Dr. Fallon's portion of any medical practice where he is employed. Dr. Fallon shall bear the cost of any such inspection(s) by the Board or its agent(s).

(iv) Enroll in, attend, and successfully complete a Board-approved substantive course in medical ethics and boundaries within six (6)

months following the execution of this Consent Agreement. The ethics and boundaries course must cover the topic of appropriate patient-physician boundaries. Dr. Fallon shall provide the Board with documentation of the successful completion of this course in medical ethics and boundaries within six (6) months following the execution of this Consent Agreement.

(vi) Within thirty (30) days following the execution of this Consent Agreement, Dr. Fallon must have a Board-approved practice monitor who shall monitor his medical practice. In complying with this requirement, Dr. Fallon shall submit to the Board for its approval the name of a proposed practice monitor, whom the Board has the sole discretion to approve or deny. The monitoring physician must be in direct contact with Dr. Fallon and observe him within his medical practice at least once a week, and inform the Board if Dr. Fallon demonstrates any issues with regard to isolation, inappropriate boundaries or decision-making, incompetence, unprofessionalism or any other concerns. The monitoring physician shall report such information to the Board by telephone and in writing within 24 hours or as soon thereafter as possible. Dr. Fallon understands that the monitoring physician will be an agent of the Board pursuant to Title 24 M.R.S. § 2511. Dr. Fallon shall permit the monitoring physician full access to his medical practice, including but not limited to all patient information. The Board-approved monitor shall provide the Board with reports regarding Dr. Fallon's medical practice on or before October 9th, January 9th, April 9th, and July 9th of each year following the execution of this Consent Agreement.

(vii) Within one (1) year of the execution of this Consent Agreement, Dr. Fallon shall reimburse the Board One Thousand Dollars and Zero Cents (\$1,000.00) as the actual costs incurred by the Board for the investigation of this matter. Payment shall be made by certified check or money order made payable to "Maine Board of Licensure in Medicine" and be remitted to Maria MacDonald, Investigator, Maine Board of Licensure in Medicine, 137 State House Station, Augusta, Maine 04333-0137.

13. Violation by Dr. Fallon of any of the terms or conditions of this Consent Agreement shall constitute grounds for discipline, including but not limited to modification, suspension, or revocation of licensure or the denial of re-licensure.

14. Pursuant to 10 M.R.S.A. § 8003(5) the Board and Dr. Fallon agree that the Board has the authority to issue an order, following notice and hearing, modifying, suspending or revoking his license in the event that he fails to comply with any of the terms or conditions of this Consent Agreement.

15. Dr. Fallon waives his right to a hearing before the Board or any court regarding all findings, terms and conditions of this Consent Agreement. Dr. Fallon agrees that this Consent Agreement and Order is a final order resolving complaint CR10-163. 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. Fallon shall be made in writing and

submitted to the Board. Dr. Fallon may, at reasonable intervals, petition the Board for amendment of the terms and conditions of this Consent Agreement. Upon making such a petition, Dr. Fallon shall bear the burden of demonstrating that the Board should amend the Consent Agreement. The Board shall have the discretion to: (a) deny Dr. Fallon's petition; (b) grant Dr. Fallon's petition; and/or (c) grant Dr. Fallon's petition in part as it deems appropriate to ensure the protection of the public. Any decision by the Board on this issue need not be made pursuant to a hearing and is not appealable.

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

17. This Consent Agreement is a public record within the meaning of 1 M.R.S. § 402 and will be available for inspection and copying by the public pursuant to 1 M.R.S. § 408.

18. This Consent Agreement constitutes discipline and is an adverse licensing action that is reportable to the National Practitioner Data Bank (NPDB), the Healthcare Integrity and Protection Data Bank (HIPDB), and the Federation of State Medical Boards (FSMB).


19. Nothing in this Consent Agreement shall be construed to affect any right or interest of any person not a party hereto, including any and all medical practice partners. If any clause of this Consent Agreement is deemed illegal or invalid, then that clause shall be deemed severed from this Consent Agreement.

20. The Board and Dr. Fallon agree that no further agency or legal action will be initiated against him by the Board based upon the facts described herein, except or unless he fails to comply with the terms and conditions of this Consent Agreement. The Board may however consider the conduct described above as evidence of a pattern of misconduct in the event that similar proven allegations are brought against Dr. Fallon in the future. The Board may also consider the fact that discipline was imposed by this Consent Agreement in determining appropriate discipline in any further complaints against Dr. Fallon's license.

21. Dr. Fallon acknowledges by his signature hereto that he has read this Consent Agreement, that he has had an opportunity to consult with an attorney before executing this Consent Agreement, that he executed this Consent Agreement of his own free will and that he agrees to abide by all terms and conditions set forth herein.

22. Dr. Fallon has been represented by James F. Martemucci, Esq., who has participated in the negotiation of the terms of this Consent Agreement.

I, PATRICK FALLON, 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: April 26/11 
PATRICK FALLON, M.D.

STATE OF Maine
_____, S.S.

Personally appeared before me the above-named Patrick Fallon, M.D., and swore to the truth of the foregoing based upon his own personal knowledge, or upon information and belief, and so far as upon information and belief, he believes it to be true.

DATED: 4-26-11 
NOTARY PUBLIC/ATTORNEY

MY COMMISSION ENDS: 10-19-2017

DATED: 4/28/11 
JAMES F. MARTEMUCCI, ESQ.
ATTORNEY FOR PATRICK FALLON, M.D.

STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

DATED: 5/10/2011 
SHERIDAN R. OLDHAM, M.D., Chairman

STATE OF MAINE DEPARTMENT
OF THE ATTORNEY GENERAL

DATED: 5/10/11



DENNIS E. SMITH
Assistant Attorney General

Effective Date: 5/10/11

RECEIVED
MAY 11 2011
OFFICE OF THE ATTORNEY GENERAL