

STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

IN RE:)	CONSENT AGREEMENT
ALBERT ANIEL, M.D.)	FOR DISCIPLINE AND
Complaint No. CR11-136)	RESTRICTED/CONDITIONAL
)	LICENSURE

This document is a Consent Agreement For Discipline and Restricted/Conditional Licensure, effective when signed by all parties, regarding discipline imposed upon and the issuance of an active conditional license to practice medicine in the State of Maine to Albert Aniel, M.D. The parties to this Consent Agreement are: Albert Aniel, M.D. ("Dr. Aniel"), the State of Maine Board of Licensure in Medicine (the "Board") and the Maine Office of the Attorney General.

STATEMENT OF FACTS

1. The Board first issued Dr. Aniel a medical license on March 10, 1981. Dr. Aniel specializes in Cardiovascular Diseases.
2. On March 22, 2011, the Board reviewed a complaint from patient RW regarding Dr. Aniel. RW alleged that Dr. Aniel had prescribed an inappropriate medication to her and did not listen to her concerns about the side-effects she was experiencing from the medication. RW alleged that Dr. Aniel ordered tests to determine if she had Lyme disease, that all of the tests came back negative, but Dr. Aniel still prescribed Zithromax, an antibiotic. RW alleged that she complained of headaches, nausea, diarrhea, fevers, hives, and shortness of breath, but Dr. Aniel told her that she was feeling poorly because

the Zithromax was working. RW was told by a pharmacist that she may be experiencing a reaction to the medication, so RW stopped taking it and felt much better. The Board docketed the complaint as CR 11-136, and sent it to Dr. Aniel for a response.

3. On June 6, 2011, the Board received a written response to complaint CR11-136. In his response, Dr. Aniel explained that the reason he prescribed Zithromax to RW was to treat a diagnosis of Lyme disease, which he made based upon the patient's physical complaints and the fact that RW reported that her mother and a dog had Lyme disease. Dr. Aniel stated that he ordered tests for Lyme disease, the results of which were negative. Dr. Aniel subsequently met with RW, advised her of the negative test results for Lyme disease, but also advised her that "such disease is also based on the clinical setting" and that RW agreed to a trial of Zithromax for possible Lyme disease because RW "felt better previously when she was on Zithromax." Dr. Aniel stated that at patient RW's last appointment, he spent 40 minutes "reviewing her symptomatology and rationale for Lyme treatment."

4. In addition to Dr. Aniel's written response, the Board received a copy of Dr. Aniel's medical records regarding patient RW. Those records show that:

- a. Dr. Aniel saw patient RW on August 31, 2010, at which time she was treated for anxiety.
- b. On October 14, 2010, Dr. Aniel saw patient RW, who

complained of feeling sick, having a low-grade fever, a low immune system and fatigue. At that time, the records show that Dr. Aniel noted that: RW's fatigue might be related to her low weight due to inadequate dietary intake; RW's fever may be related to frequent analgesic use; and RW's fatigue may be attributable in part to her prescription medications. In addition, the medical records indicate, "rule out Lyme in view of multi organ c/o's, mother and her dog had lyme." Labs drawn on patient RW on that date included the following "CD57+/CD3-negative NK cells 60 Abs./cm, which fell within the following comment: "0-60 is seen in chronic lyme disease."

c. On October 18, 2010, RW called Dr. Aniel's office and requested the results of her lyme test. At that time, Dr. Aniel's office note indicated "lab data could be compatible with Lyme... schedule Lyme Western blot lgg and lgm." On October 19, 2010, 3 separate tests for Lyme disease were performed on RW's blood, all of which were negative.

d. On October 22, 2010, RW called Dr. Aniel's office requesting the results of her Lyme disease tests and stating that she was not on antibiotics. The phone note describes RW as "VERY NERVOUS."

e. On October 29, 2010, RW called Dr. Aniel's office stating that she was too sick to attend her medical appointment with Dr. Aniel. The phone note stated in relevant part: "She is too sick to keep appt today. Has a sore throat, swollen glands, a fever - ? how high. What can

dr suggest.” In response, Dr. Aniel prescribed Zithromax 250 mg for 5 days without first examining RW. In addition, the phone note does not indicate why Dr. Aniel prescribed Zithromax to RW on October 29, 2010, or explain his medical decision making.

f. On November 2, 2010, RW called Dr. Aniel’s office indicating that she had completed taking the antibiotics, had a “small sore throat” but was “feeling fine,” and was “wondering if the test results are back and what else dr wants her to do.” In response, Dr. Aniel indicated that the “lyme test negative as long as she feels fine no further Rx.”

g. On November 10, 2010, RW called Dr. Aniel’s office indicating that she was “feeling horrible, same feeling as before” and requesting antibiotics for her chronic Lyme disease. In response, Dr. Aniel indicated that RW needed to be scheduled for an office visit.

h. On November 15, 2010, Dr. Aniel saw RW in his office. The medical records indicated “discussed her lab results and reviewed her symptomatology” which included “severe fatigue,” “some arthralgia involving the wrist,” and “difficulty with memory” – all which started 2 years previous when she lived in a house infested with mice. In addition, the medical record indicated “having episodes of fever.” In response, Dr. Aniel prescribed Zithromax (250 mg tablets #60 1 tab 2x a day) and Hydroxychloroquine Sulfate (plaquenil)(100 mg tablets (#60) 1 tab 2x a day). The medical record for that date indicates as follows:

Problem #5: LYME DISEASE (ICD-088.81) ??????????

Orders:

Level 4 (99214)(CPT-99214)

Trial of zithromax and plaquenil since she felt better when was on zithromax

The medical record does not contain any medical rationale or decision-making regarding Dr. Aniel's diagnosis that RW suffered from chronic Lyme disease; nor does it explain why he was prescribing medications for Lyme disease in light of four laboratory tests results that were negative for Lyme disease.

i. On November 17, 2010, RW called Dr. Aniel's office to relay that the new medications were not agreeing with her. RW indicated that she was "very dizzy" and "in bed all day" feeling awful (headache but no vomiting), and requesting advice. In response, Dr. Aniel directed that RW stop taking the Hydroxychloroquine Sulfate and "just take the Zithro for now."

j. On November 19, 2010, RW called Dr. Aniel's office and asked if she should continue taking the Zithromax as it was causing her to have diarrhea. In response, Dr. Aniel directed that RW stop the Zithromax and come in for an office visit.

k. On November 23, 2010, RW called Dr. Aniel's office asking if she could "stay on zithromax because she was real sick this morning after not taking last night. Swollen glands, sore throat & headache." In

response, Dr. Aniel directed that RW “stay on zithro 1 bid.”

1. On November 30, 2010, RW called Dr. Aniel’s office complaining of pain, fatigue, memory issues, and “wondering if she could get her Azithromcin [sic] increased as she is tolerating it well.” In response, Dr. Aniel directed that RW come in for an office visit.

m. On December 20, 2010, RW saw Dr. Aniel. The medical record for that date indicates that it was an office visit to follow up “lyme disease” and that Dr. Aniel “spent 40 minutes with patient reviewing her Lyme symptomatology and the rationale for treatment modalities.” In addition, the medical records indicate under “Impression & Recommendations”:

Problem # 1: LYME DISEASE (ICD-088.81)

Orders:

Lab, Other (OTHER) Babesia, Bartonella titers¹

Lab, Other (OTHER) Erlichia titers²

Zithromax 250 mg 1 twice daily

Mepron 1 tsp twice daily

Amantadine 100 mg 1 twice daily

Suggested magnesium 250 mg daily

Vitamin B complex 1 a day

Acidophilus 2 twice daily with food

The medical record does not contain any medical rationale or decision-making regarding Dr. Aniel’s diagnosis that RW suffered from Lyme disease; nor does it explain why he was prescribing medications for Lyme

¹ The lab result for this test was negative.

² The lab result for this test was negative.

disease in light of four previous laboratory tests results that were negative for lyme disease. In addition, on December 6 & 9, 2010, Dr. Aniel electronically signed the laboratory test results showing that RW was negative for Babesia, Bartonella, and Erlichia titers.

n. On December 13, 2010, RW called Dr. Aniel's office requesting the results of her laboratory testing and "waiting to hear to take meds." In response, Dr. Aniel indicated that the lab results were "negative but finish off the mepron continue zithromax and amantadine until next ov (office visit)."

o. On March 1, 2010, RW called Dr. Aniel's office from Florida requesting a refill of Zithromax as she was having a hard time finding a doctor in Florida. In response, Dr. Aniel prescribed Zithromax 250 mg (#60) 1 tab twice a day. The medical record does not contain any rationale explaining why Dr. Aniel prescribed this medication to RW.

p. On March 15, 2010, RW called Dr. Aniel's office from Florida indicating that she "has been worse day by day," was unable to turn her head side to side and had swollen muscles around her face. In addition, RW indicated that she had gone to the ER but they did not do anything. RW felt that they did not "know much about lyme disease," and asked for pain medication. In response, Dr. Aniel indicated that he could not prescribe pain medication to RW while she was in Florida and that RW needed to see medical providers in that state. In reply, RW indicated to

Dr. Aniel's staff that "her muscles were so tight and swollen she can barely turn her head... feels that possibly the lyme is progressing, feels the docs in FLA don't know what to do for lyme. has thought of killing herself as she feels so debilitated [sic]. Joints are really bothering her that is her main concern."

5. On July 12, 2011, the Board reviewed complaint CR11-136, and voted to invite Dr. Aniel to an informal conference to discuss his diagnosis and treatment of RW, specifically: his diagnosis and treatment of Lyme disease, and his alleged improper/off-label use of medications.

6. On March 12, 2012, the Board held an informal conference with Dr. Aniel regarding Complaint No. CR11-136. Following the informal conference, the Board voted to further investigate Dr. Aniel's medical record keeping and medical decision making by requesting a representative sampling of 10 of Dr. Aniel's patient charts for review.

7. On June 12, 2012, the Board re-convened the informal conference with Dr. Aniel and reviewed with him the representative sampling of 10 patient charts, which provided the Board with a more comprehensive look at Dr. Aniel's medical record keeping and decision making. During its review, the Board had concerns regarding record keeping and medical decision making regarding four of the medical records, one of which involved the diagnosis of Lyme disease. The Board concluded that Dr. Aniel's medical charting was inadequate as it did not reflect his medical thinking or decision making (i.e.

why and how he is treating the patient in a certain way). The Board was also concerned that Dr. Aniel prescribed high dosages of narcotics and benzodiazepines without employing "universal precautions" (i.e. written pain contracts, pill counts, urine drug screens, etc). Following the informal conference, the Board voted to schedule Complaint CR11-136 for an adjudicatory hearing. In addition, the Board voted to offer this Consent Agreement to Dr. Aniel to resolve Complaint CR11-136 without further proceedings.

8. This Consent Agreement has been negotiated by and between legal counsel for Dr. Aniel and the Maine Office of the Attorney General in order to resolve complaint CR11-136 without an adjudicatory hearing. Absent Dr. Aniel's acceptance of this Consent Agreement by signing it, dating it, having it notarized, and returning it to the Maine Board of Licensure in Medicine, 137 State House Station, Augusta, Maine 04333-0137 on or before August 21, 2013, the Board will resolve this matter by holding an adjudicatory hearing at a later date.

9. By signing this Consent Agreement, Dr. Aniel waives any and all objections to, and hereby consents to allow the Board's legal counsel to present this proposed Consent Agreement to the Board for possible ratification. Dr. Aniel also forever waives 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.

10. Dr. Aniel affirmatively represents that, with the limited exception of interpreting laboratory and other test results, he will be retiring from the active practice of medicine (i.e. actively treating patients) effective December 31, 2013.

COVENANTS

In lieu of proceeding to an adjudicatory hearing the Board and Dr. Aniel agree to the following disposition.

11. Dr. Aniel concedes that based upon the facts described in paragraphs 1 to 9 above that the Board has sufficient evidence from which it could conclude that he violated the standard of care regarding: (a) medical record keeping, (b) diagnosing and treating Lyme disease, and (c) prescribing controlled drugs to the patients for the treatment of nonmalignant chronic pain. Dr. Aniel concedes that such conduct, if proven, could constitute grounds for discipline of and the denial of his application to renew his Maine medical license pursuant to 32 M.R.S.A. § 3282-A(2)(F).

12. As discipline for the conduct admitted above, Dr. Aniel agrees to:

a. Accept a WARNING. As a medical professional, Dr. Aniel was responsible for being aware of and complying with accepted standards of care for medical record keeping and the diagnosis and treatment of chronic pain with narcotics and benzodiazepines.

b. Reimburse the Board Four Hundred Eighty-Six Dollars and Forty Cents (\$486.40) as the actual costs of the investigation of this matter.

Dr. Aniel shall ensure that he makes full payment of reimbursement to the

Board within thirty (30) days following the execution of this Consent Agreement. Payment shall be made by certified check or money order made payable to "Maine Board of Licensure in Medicine," and be remitted to the Maine Board of Licensure in Medicine, 137 State House Station, Augusta, Maine 04333-0137.

c. Successfully complete a Board-approved course on medical record keeping within six (6) months following the execution of this Consent Agreement. For the purposes of this Consent Agreement, the term "execution" means the date on which the final signature is affixed to this Consent Agreement.

d. Effective November 1, 2013, accept the following license restrictions and conditions, which shall remain in effect unless or until this Consent Agreement is rescinded or amended by all of the parties hereto and with which Dr. Aniel must comply during the time that he is actively practicing medicine:

(i) Dr. Aniel shall not prescribe any controlled medications, including all opiates and benzodiazepines, for the treatment of chronic pain except for:

- (a) Patients in skilled nursing facilities or long-term care facilities;
- (b) Patients in hospice care; or
- (c) Patients with metastatic cancer.

In complying with this restriction, Dr. Aniel shall ensure that any and all prescriptions that he issues for the three excepted categories of patients identified above are annotated with the words “skilled nursing facility/long-term care” or “hospice care” or “metastatic cancer” as applicable to each patient.

(ii) Dr. Aniel may prescribe controlled substances for no more than ten (10) consecutive days to treat acute conditions. In addition, to the extent that Dr. Aniel prescribes any controlled drugs to patients for acute pain, Dr. Aniel agrees that he shall comply with Board Rule, Chapter 21, “Use of Controlled Substances For Treatment of Pain.”

(iii) Dr. Aniel shall not diagnose or treat Lyme disease except with approved peer-reviewed modalities,³ which shall be appropriately recorded in the patient’s medical record.

(iv) In order to ensure his compliance with the restriction on his ability to prescribe controlled drugs for the treatment of chronic pain, Dr. Aniel agrees to fully cooperate with the Board and to permit the Board or its agent(s) to inspect his medical practice, including allowing the Board or its agents full access to and copying of the patient medical records of his medical practice pursuant to subpoena.

³ Such a peer reviewed modality may be found in the following November 2006 publication of the Infectious Disease Society of America: “The Clinical Assessment, Treatment, and Prevention of Lyme Disease, Human Granulocytic Anaplasmosis, and Babesiosis: Clinical Practice Guidelines by the Infectious Diseases Society of America.”

13. Dr. Aniel waives his right to a hearing before the Board or any court regarding all findings, terms, restrictions and conditions of this Consent Agreement. Dr. Aniel agrees that this Consent Agreement is a final order resolving complaints CR11-136. This Consent Agreement is not appealable and is effective until or unless modified or rescinded in writing 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.

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

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

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

17. The Board and Dr. Aniel agree that no further agency or legal action will be initiated against him by the Board based upon complaint CR11-136, except or unless he fails to comply with the terms and conditions of this

Consent Agreement.

18. Dr. Aniel acknowledges that, pursuant to Title 10 M.R.S. § 8003(5)(B), his failure to comply with any of the terms or conditions of this Consent Agreement shall constitute grounds for additional disciplinary action against his Maine medical license, including but not limited to an order, after hearing, imposing additional fines and costs.

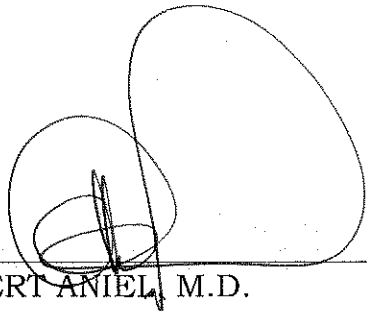
19. Dr. Aniel acknowledges and agrees that, pursuant to Title 10 M.R.S. § 8003(5), the Board has the authority to suspend or revoke his medical license in the event that he fails to comply with any terms or conditions of this Consent Agreement.

20. Dr. Aniel has been represented by Christopher D. Nyhan, Esq., who has participated in the negotiation of this Consent Agreement.

21. Dr. Aniel 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.

I, ALBERT ANIEL, M.D., HAVE READ AND UNDERSTAND THE FOREGOING CONSENT AGREEMENT AND AGREE WITH ITS CONTENTS AND TERMS. I FURTHER UNDERSTAND THAT BY SIGNING IT, 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: 8/20/13



ALBERT ANIEL, M.D.

STATE OF MAINE

557-76-6282, S.S.

Personally appeared before me the above-named, Albert Aniel, 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: Aug. 20, 2013


NOTARY PUBLIC/ATTORNEY

MY COMMISSION ENDS:

11-29-2014

Dated: 8/26/13


CHRISTOPHER D. NYHAN, ESQ.
Attorney for Albert Aniel, M.D.

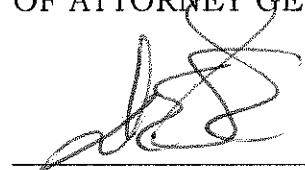
STATE OF MAINE BOARD OF
LICENSURE IN MEDICINE

Dated: 9/10/13


MAROULLA S. GLEATON, M.D., Chairman

STATE OF MAINE DEPARTMENT
OF ATTORNEY GENERAL

Dated: 9/10/13


DENNIS E. SMITH
Assistant Attorney General

Effective Date: 9/10/13