



JOHN ELIAS BALDACCI  
GOVERNOR

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

SHERIDAN R. OLDHAM, M.D.  
CHAIRMAN

RANDAL C. MANNING  
EXECUTIVE DIRECTOR

July 14, 2008

Walter Hearn, P.A.-C.  
13 Caly Hollow Rd.  
Kennebunk, ME 04043

**Re: Completion of Consent Agreement**

Dear Mr. Hearn:

This is to inform you that the Board of Licensure in Medicine reviewed your request to be released from your Consent Agreement at the July 2008 Board meeting. Based on the information provided to the Board, they agreed that you have complied with the terms of your Consent Agreement and have successfully completed its requirements effective July 8, 2008.

The Board will make reports to the National Practitioner Data Bank and to the Federation of State Medical Boards documenting your successful fulfillment and the resulting closure of the Consent Agreement.

Please feel free to contact me at (207) 287-6931 if you have any questions or concerns.

Sincerely,

Maria A. MacDonald  
Investigator

Cc: David Simmons, M.D.  
Maureen Lathrop, Administrative Secretary  
CR 06-001

THERE ARE THREE ACTIONS UNDER THIS TAB: A CONSENT AGREEMENT EFFECTIVE MAY 13, 2003; A NOTICE OF AUTOMATIC SUSPENSION AND SCHEDULING OF ADJUDICATORY HEARING DATED NOVEMBER 17, 2003 AND A DECISION AND ORDER OF THE BOARD DATED DECEMBER 23, 2003

MAINE STATE BOARD OF LICENSURE IN MEDICINE

IN RE: Licensure Disciplinary Action )  
 ) DECISION AND ORDER  
Walter N. Hearn, P.A.-C. )

**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 December 9, 2003. The purpose of the hearing was to review the Board's preliminary decision to suspend Mr. Hearn's license to practice medicine as a physician assistant and to determine whether further disciplinary action was warranted. 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, George K. Dreher, M.D., Gary Hatfield, M.D., Bettianne Holmes (public member), Sandra Tuttle (public member), Kimberly K. Gooch, M.D., and Sheridan R. Oldham, M.D. Ruth McNiff, Ass't. Attorney General, presented the State's case. Walter Hearn appeared *pro se*. James E. Smith, Esq. served as Presiding Officer. There were no conflicts of interest found to disqualify any member of the Board from participating in this proceeding.

State's Exhibits 1-9 and Respondent's Exhibit 1 were admitted into the Record. Subsequent to the State's opening statement, the taking of testimony, submission of exhibits, and the closing arguments by both parties, the Board deliberated and made the following findings of fact by a preponderance of the credible evidence regarding the violations alleged in the Complaint.

**II. FINDINGS OF FACT**

Walter Hearn has been licensed in Maine as a physician's assistant since 1978. Between October 2001 and December 2002, Mr. Hearn was arrested three times for operating under the influence of alcohol. On December 31, 2002, he entered the Farley Center in Virginia for intensive inpatient rehabilitation for substance abuse and depression. He successfully completed the program and was discharged on April 3, 2003. The above facts were brought before the Board in regards to Mr. Hearn's license as a physician's assistant. The Board, Attorney General's Office and Walter Hearn agreed to resolve the licensure issues by means of a Consent Agreement (Agreement) effective May 13, 2003. In that document, Walter Hearn agreed to submit weekly urine samples during the first year and once per month for the next four years. In the event that any of the tests proved positive for any prohibited substance, the Agreement authorized the Board to automatically suspend Mr. Hearn's P.A.-C. license.

Positive test results with draw dates of June 25 and July 8, 2003, were reported to the Board. The prohibited substance found was Tramadol. The drug had been prescribed for Mr. Hearn by his employer and supervising physician, Dr. Shill. Dr. Shill was apparently unaware that the Agreement required the prescription of a drug to Mr. Hearn to be reported to the Board. Dr. Shill did not believe that Tramadol was a controlled substance as it did not appear on the Federal Drug Administration's controlled substance list. The Tramadol was requested by Mr. Hearn because it

relieved his back problems which were related to his periodic bicycling some 25-40 miles on a given day. Mr. Hearn testified that this exercise greatly reduced his stress.

A representative of the Board, following receipt of the above noted test results, spoke with Mr. Hearn on July 10, 2003 and advised against him taking any more Tramadol. Additionally, David Simmons, M.D., Clinical Director of the Maine Physician Health Program, spoke with both Walter Hearn and Dr. Shill and cautioned them both that he "did not feel that continued use of Tramadol would be in Walter's best interest and would not comply with his agreement with the Physician Health Program." Subsequently, a negative test result was reported followed by a positive result on July 30, 2003.

The licensee's license was suspended on November 12, 2003 following receipt of Dr. Simmons' October 15, 2003 correspondence and administrative discussion of the matter. The main issues before the Board at hearing were Walter Hearn's failure to follow the dictates of the Agreement by ingesting Tramadol after having been twice told that Tramadol was a prohibited substance and his failure to have Dr. Shill notify the Board of the prescription for that drug.

At the hearing in this matter, Walter Hearn did not clearly explain his reasons for taking the Tramadol. The best explanation, besides a gross error in judgment, appeared to be related to his need to continue his bicycling which he could not do without some pain relief. Other evidence revealed that he has not tested positive since July 30, 2003 and his rehabilitation counselor as well as an alcohol and substance abuse physician testified that Mr. Hearn was not addicted and was adhering to all aspects of the Agreement. Additionally, Walter Hearn's record does not reveal any prior discipline before the Agreement and various witnesses attested to his caring and competent treatment of his patients.

### III.

### CONCLUSIONS OF LAW

The Board, by a vote of 7-0, concluded that Walter Hearn violated the terms of the Agreement both by ingesting Tramadol, especially after having been twice advised not to do so, and not reporting same. Wherefore, the Board orders that:

1. Walter Hearn's license to practice as a physician's assistant is hereby **suspended for a period of 28 days**. Since he is credited for the 28 days during which his license has been suspended, he is **eligible to resume his practice as of December 9, 2003**.
2. Walter Hearn is hereby **Reprimanded** for the above violations.
3. Walter Hearn is placed on Probation pursuant to the same terms of the Consent Agreement except that such terms shall begin from December 9, 2003 forward.

**SO ORDERED.**

Dated: December 23, 2003



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

**IV.**

**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.



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

JOHN ELIAS BALDACCI  
GOVERNOR

November 17, 2003

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

RANDAL C. MANNING  
EXECUTIVE DIRECTOR

Walter N. Hearn, P.A.-C.  
13 Caly Hollow Road  
Kennebunk, ME 04043

CERTIFIED MAIL # 7003 1680 0000 0245 3791  
RETURN RECEIPT REQUESTED

**RE: Automatic Suspension of License and  
Adjudicatory Hearing Scheduling**

Dear Mr. Hearn:

This letter will serve as official notice that your license to practice medicine and/or surgery as a physician assistant in the State of Maine is automatically suspended, effective November 12, 2003, for violation of your Consent Agreement. The Board received multiple laboratory reports which were positive for use of a prohibited substance, Ultram. These positive samples were drawn on June 25, 2003, July 8, 2003 and July 30, 2003. Both Dr. David Simmons and I spoke to you and informed you that Ultram is a prohibited substance under your Consent Agreement and should not be taken. According to the test results, you continued your use of Ultram. In accordance with Article 3, K of your Consent Agreement, please respond to this action.

An Adjudicatory Hearing on this matter will convene on Tuesday, December 9, 2003 at 3:00 P.M., or as soon thereafter as possible. The hearing will be held in the conference room at the office of the Board of Licensure in Medicine, lower level, located at 2 Bangor Street, Augusta, Maine.

The following issue will be considered by the Board at the Adjudicatory Hearing:

- A. Whether you have violated the terms of your Consent Agreement by using a prohibited substance, as defined in your Consent Agreement.

If the Board finds that the above allegation is true, the Board shall then determine whether to take any action against your license. The Board may take such action as the Consent Agreement empowers it to take, including, but not limited to, reprimand, fine, suspension, probation, nonrenewal, revocation or any combination thereof, as deemed appropriate by the Board.

OFFICE LOCATION: TWO BANGOR STREET, AUGUSTA, ME

PHONE: (207) 287-3601

FAX: (207) 287-6590

Walter N. Hearn, P.A.-C

November 17, 2003

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The Adjudicatory hearing shall be held pursuant to the Maine Administrative Procedures Act, 5 M.R.S.A., § 9051, et seq. You have the right to be represented by counsel of your choosing, and you should appear at the hearing accompanied by an attorney. You have the right to testify under oath, call witnesses, cross-examine witnesses, and enter documents into evidence.

The Adjudicatory Hearing will be held in Public Session of the Board.

Should you fail to appear for the Adjudicatory Hearing, the Board may hold the Hearing in your absence, or the Board may enter a default judgment. Finally, any request that you might have to serve subpoenas should be made as soon as possible, but in no event later than November 28, 2003.

If you have any questions, please contact the Board's attorney, Assistant Attorney General Ruth McNiff at (207) 626-8800.

Very truly yours,

A handwritten signature in black ink, appearing to read "Dan Sprague", written over a horizontal line.

Dan Sprague  
Assistant Executive Director

**STATE OF MAINE  
BOARD OF LICENSURE IN MEDICINE**

IN RE: WALTER N. HEARN, P.A.-C.     )  
  )  
  )     **CONSENT AGREEMENT  
FOR DISCIPLINE AND  
MODIFICATION OF LICENSE**

This document is a Consent Agreement and Order, effective when signed by all parties, regarding discipline and the modification of a license to practice as a Physician Assistant in the State of Maine held by Walter N. Hearn, P.A.-C. The parties to the Consent Agreement are Walter N. Hearn, P.A.-C (the "Licensee"), the State of Maine Board of Licensure in Medicine (the "Board") and the Maine Department of Attorney General.

**FACTUAL BACKGROUND**

1. Walter N. Hearn, P.A.-C has been licensed as a physician assistant in the State of Maine since May 25, 1978.
2. In a period of less than eighteen months, between October, 2001 and December, 2002, Mr. Hearn was arrested three times for operating under the influence of alcohol.
3. On December 31, 2002, Mr. Hearn entered the The Farley Center in Virginia for intensive inpatient rehabilitation for substance abuse and depression. He successfully completed the program and was discharged on April 3, 2003.

**DISCIPLINE.**

Based on Mr. Hearn's acceptance of responsibility for his actions, his continuing treatment of his substance abuse problem and depression and the understanding and agreement between Mr. Hearn and the Board that any future use of any Prohibited Substance or alcohol by Mr. Hearn shall result in revocation of his license, the Board will issue and Mr. Hearn will agree to accept the following discipline and modifications to his license.

The Licensee is hereby **reprimanded**.

**CONDITIONS OF LICENSURE**

The Licensee and the Board agree and understand that maintenance of his license



shall be conditioned upon the Licensee's compliance with the following conditions of licensure. Except as may be specified below, failure to comply with any of the following conditions shall irrevocably result in the non-renewal or revocation of the Licensee's license to practice medicine in the State of Maine.

1. **ABSTINENCE.** The Licensee agrees that henceforth he shall completely abstain from the use of any and all Prohibited Substances. "Prohibited Substances" as used throughout this Consent Agreement shall mean: opiates; alcohol; cocaine; fentanyl; mood, consciousness or mind-altering substances, whether illicit or not; and all drugs which are dispensed to or prescribed for the Licensee by anyone other than a treating physician knowledgeable of the Licensee's history of substance abuse, unless the circumstances constitute a genuine medical or surgical emergency.

A. **Prescription Medication.** If any controlled drug is dispensed or prescribed for the Licensee for a personal medical condition, the Licensee or the Supervising Physician shall notify the Board by telephone and in writing within 48 hours or as soon thereafter as possible. This notice shall be followed by a written summary of all pertinent circumstances. The Supervising Physician shall be apprised every five days of all continuing pertinent circumstances regarding continued use of the controlled drug, and a written report thereof shall be submitted to the Board for every five days that the use of the controlled drug continues after the initial 48-hour report.

B. **Future Use of Prohibited Substances Shall Result in Loss of Licensure.** The Licensee agrees and understands that any evidence of use at any time in the future, whether in Maine or elsewhere, of any Prohibited Substance shall constitute a violation of this Consent Agreement, which SHALL RESULT IN THE IMMEDIATE, INDEFINITE AUTOMATIC SUSPENSION OF LICENSURE, AND PROOF OF USE SHALL RESULT IN AUTOMATIC REVOCATION/NON-RENEWAL OF LICENSURE.

2. **SANCTION FOR VIOLATION OF LICENSE MODIFICATIONS AND/OR CONDITIONS.**

A. **Automatic Suspension.** Any oral or written report to the Board of violation, technical or otherwise, of these License Modifications and/or Conditions shall result in the immediate, indefinite and automatic suspension of the Licensee's license. The automatic suspension of the Licensee's license shall become effective at the time the Licensee receives actual notice from the Board that a report of violation has been made. Actual notice can be provided by telephone, in person, in writing, by another means or any combination of the above-referenced means. The indefinite, automatic suspension shall continue until the Board holds a hearing on the matter, unless the Board earlier determines that the report is without merit or decides that no further sanction is warranted.

B. **Continued Suspension; Other Sanctions.** The Licensee's indefinite automatic suspension shall continue for such time until the Board holds a hearing and

reaches a decision. The Board shall attempt to hold a hearing within 60 days of the automatic suspension or as soon thereafter as practicable (unless both the Licensee and the Board agree to hold the hearing later) and shall be held pursuant to the Maine Administrative Procedure Act. The Board may impose such other discipline, including without limitation, fines, further suspension, probation, non-renewal or revocation, as the Board after hearing deems appropriate. By this Consent Agreement, the Licensee expressly accords the Board jurisdiction, concurrent with the Courts, to revoke his license if the Board deems is appropriate.

**3. SUBSTANCE MONITORING.** The Licensee understands and agrees that he may, for the remainder of his career as a licensed physician assistant, undergo some level of substance monitoring to test whether the Licensee has used a Prohibited Substance, as defined in Paragraph 1. The monitoring shall be through urinalysis testing and/or blood testing, and any other reliable method which may later be developed and approved by the Board.

The Licensee irrevocably agrees that the Board and the Maine Department of Attorney General must have full access to all test data and reports.

Changes in testing to more reliable methods of detection of usage may be proposed by the Licensee or the board and changes shall be made in the Board's discretion, with or without a hearing. It is the Licensee's obligation to ensure that the plan for testing, as stated herein, is complied with in full.

**A. Supervising Physician.** The Licensee shall propose a Supervising Physician, who shall be approved by the Board (the "Supervising Physician") and who shall have the Licensee appear and provide samples as provided below. The Supervising Physician may appoint designees, who must also be physicians and who must also be approved in advance by the Board.

1. It is the responsibility of the Licensee to ensure that the Supervising Physician or one of the Supervising Physician's approved designees is available to have the Licensee appear and provide urine samples as required by the Consent Agreement. In the event neither the Supervising Physician nor any designee is available (or anticipated to be available) at the given time to be responsible for urine monitoring, the Licensee shall contact by telephone as soon as possible (followed up within 24 hours by writing) the Board Executive Director or Assistant Executive Director. The Licensee shall by telephone resolve with the Board Executive Director or Assistant Executive Director a plan for urine monitoring to be used for the duration of time that the Supervising Physician and all designees are unavailable. Under no circumstances shall the Licensee fail to provide a urine sample to some person pursuant to the plan which is preapproved by the Board Executive Director or Assistant Executive Director.

**B. Process.** All urine and blood samples shall be handled through legal chain

of custody methods. All samples provided shall be analyzed by a certified laboratory which regularly handles these types of tests, and tests shall be conducted by such reliable methods as exist. Any changes must be approved by the Board.

**C. Frequency of Urine Testing.** It is the Licensee's obligation to ensure that all the samples are given and test occur as specified and that the random samples are in fact random and that they are provided within 2 to 6 hours after notice to the Licensee (without any foreknowledge by the Licensee) and are of at least the frequency required. Failure to maintain this schedule or the random nature of the tests shall be cause for suspension, non-renewal or revocation of Mr. Hearn's license, unless proof of genuine emergent medical circumstances (for Mr. Hearn or a patient of his) exist which warrants less serious disciplinary actions being taken by the Board.

1. For a period of one (1) year from the effective date of this Agreement, urine samples shall be provided at least once each week. Further, the Board or the Supervising Physician may request random samples drawn at any time.

2. Following the period of one year from the effective date of this Agreement, and for a period of four (4) years thereafter, urine samples shall be provided at least once each month. Further, the board or the Supervising Physician may request random samples drawn at any time.

3. Following the period of five (5) years from the effective date of this Agreement, the Board or the Supervising Physician may request random samples provided at any time.

4. The frequency of urine testing shall continue as outlined herein even while the Licensee is on vacation or other leave of absence. He shall be responsible for making arrangements such that the testing is carried out with the frequency and standards outlined in this Consent Agreement.

**D. Blood Testing.** It is the Licensee's obligation to ensure that all of the samples are given and tests occur as specified and that the random samples are in fact random and that they are provided within two to six hours after notice to the Licensee (without any foreknowledge by the Licensee) and are of at least the frequency required. Failure to maintain this schedule or the random nature of the tests shall be cause for suspension, non-renewal or revocation of Mr. Hearn's license, unless proof of emergent medical circumstances (for Mr. Hearn or his patient) exist which warrants less serious disciplinary action being taken by the Board.

1. Process. If a Blood Sample is provided for this purpose, the Licensee shall remain present until the test results of the blood sample are available to ensure the Licensee's presence if the sample tests positive and a second blood sample is then needed as specified in this Consent Agreement for further testing.

2. Frequency of Blood Samples and Testing.

a. Blood samples must be drawn any time a test evidences any level of a Prohibited Substance.

b. Blood samples must be drawn any time the Supervising Physician or the Board deems one is warranted.

**E. Visual Samples.** The Licensee shall provide each urine and blood sample in the physical presence and under the direct observation of the Supervising Physician or his/her designee who shall visually observe the Licensee providing the sample. Otherwise, the sample shall be deemed unacceptable and the Licensee shall immediately provide another sample. Any such occurrence shall be reported to the Board by the Licensee and by the Supervising Physician, both by telephone and in writing within 24 hours or as soon thereafter as possible. In addition, the unacceptable sample shall be retained and tested, with the intention that the tests of the unacceptable and the acceptable samples both be sent upon completion to the Board.

**F. Second Sample.** At the same time as each urine and blood sample is taken, the Licensee must provide a second sample (or shall have provided sufficient quantity to constitute a valid second sample) which shall also be taken in the physical presence and under the visual observation of the person collecting the sample. Responsibility for providing a second sample shall be the Licensee's. The second urine or blood sample shall be frozen (or maintained by other appropriate means approved by the Board), stored in a controlled setting, kept under a legal chain of custody, inaccessible to the Licensee, and shall be stored for subsequent testing in the event the first sample tests positive for a Prohibited Substance.

(1) Testing the Second Sample. The Executive Director of the Board shall

designate where the test of the second sample shall be executed.

**G. Standards for Tests.** Standards for detectable levels of Prohibited Substances for which the urine and blood samples shall be tested shall be set forth in the Licensee's written, preapproved plan for substance monitoring.

**H. Reporting Test Results.**

1. Immediate Report of Positive Test Results. Any test result evidencing any level of a Prohibited Substance, whether by urine sample, intoxilyzer sample, or blood sample, shall be reported to the Board by the Supervising Physician by telephone and in writing within 24 hours or as soon thereafter as possible.

2. Reporting Negative Test Results. Written reports of all tests shall be sent to the Board monthly by the Supervising Physician, together with an explanation of the dates and times samples were provided and tests made, the type(s) of tests made, and the substances tested for (together with detectable levels tested for), and the test results. The Licensee shall ensure that all reports are made to the Board in a timely fashion.

3. Confidentiality Waived. With regard to the Board and its agents and any process to be pursued by the Board, the Licensee hereby waives all claims of confidentiality and privilege with respect to all tests taken pursuant to this Consent Agreement.

4. Retention of Reports. All original laboratory data and test reports shall be permanently retained by the Supervising Physician.

**I. Rebuttable Presumption Raised by Positive Test.** It is agreed and understood that a test (whether by urine sample or blood sample) evidencing any Prohibited Substance, when confirmed, shall raise a rebuttable presumption that such substance was in fact used by the Licensee. Such a positive test result shall alone be sufficient to prove the use of the Prohibited Substance by the Licensee. The Licensee further agrees that the result of the test may be admitted into evidence in any proceeding regarding the Licensee's license, whether before the Board or before a Court of competent jurisdiction. The confirmatory test shall be performed immediately upon any initial positive test result.

**J. Immediate, Indefinite, Automatic Suspension for Positive Test.** If any urine or blood test is positive (i.e., in any manner evidences any use of any Prohibited Substance), then the result shall be the immediate, indefinite, automatic suspension of the Licensee's license, which shall continue until the Board holds a hearing on the matter, unless the Board, or the Board Secretary and the Department of Attorney General, earlier determine that the report is without merit. The suspension shall begin the moment the Licensee first learns of a positive test or report of a positive test to the Board, whether from

the Supervising Physician or his/her designee, from the Board or from any other source in writing, orally or by any other means. This shall include non-confirmed, positive tests.

**K. Board Hearing to Determine if Licensee Used Any Prohibited Substance.**

After receiving a positive report evidencing use by the Licensee of any Prohibited Substance, the Board shall investigate the situation, including demanding a response from the Licensee. The Board shall attempt to hold a hearing within 60 days of the automatic suspension or as soon thereafter as practicable (unless both the Licensee and the Board agree to hold the hearing later) and it shall be held pursuant to the Maine Administrative Procedure Act. By this Consent Agreement, the Licensee expressly accords the Board jurisdiction, concurrent with the Courts, to revoke his license if it determines he used any Prohibited Substance.

**L. Failure to Maintain Sampling Schedule or Failure to Appear or to Provide Sample.** Failure by the Licensee: to maintain the sampling schedule; to appear when demanded to provide a sample; to appear within two to six hours of being so notified; or to provide samples upon being demanded to do so shall be dealt with as follows:

1. Failure to Maintain Sampling Schedule. It is the Licensee's responsibility to ensure that both the schedule for sampling and the random sampling required are maintained.

a. Report. If the scheduled samples or the random samples are not drawn as required, then the Supervising Physician or his/her designee and the Licensee (and any other person knowledgeable of such failure) must telephone the Board as soon as possible and send to the Board a written report of such failure within 48 hours.

b. Suspension. An immediate, indefinite suspension of licensure shall result from any failure by the Licensee to comply with the mandated schedule of samples or if the random samples are not provided as required. The suspension shall begin the moment the Licensee actually learns a report has been made or sent to the Board.

c. Meeting with Board. Both the Licensee and the Supervising Physician (and the responsible designee, if any) shall appear before the Board regarding this situation at its next regularly scheduled Board meeting, unless the next meeting is to be held within 15 days of the suspension, in which case they may be scheduled to appear at the subsequent regularly scheduled Board meeting.

d. Board Action. The Board may order the Licensee's license reinstated or, if appropriate, may continue the suspension and may set the matter for hearing. The Board shall attempt to hold a hearing within 60 days of the automatic suspension, or as soon thereafter as practicable, at which time it may take such action as it deems appropriate, including without limitation reinstatement, fines, probation,

suspension, non-renewal and revocation.

2. Failure to Appear.

a. Report and Meeting with Board. The Licensee and the Supervising Physician (and the responsible designee, if any) must, telephone the board as soon as possible and send to the board a written report of such occurrence within 48 hours, and both the Licensee and the Supervising Physician shall appear before the Board, regarding any failure to appear when demanded to provide a sample, at the next regularly scheduled Board meeting, unless the next meeting is to be held within 15 days of the report, in which case they may be scheduled to appear at the subsequent regularly scheduled Board meeting.

b. Suspension. An immediate, indefinite suspension of licensure shall result from any failure by the Licensee to appear for a scheduled or randomly ordered test, unless the Licensee and the Supervising Physician present the failure as having been caused by a genuinely emergent circumstance beyond the Licensee's control, as long as the Licensee appeared within six hours of the resolution of the emergency. Except in this instance, the suspension shall begin the moment the Licensee actually learns a report has been made or sent to the Board.

c. Board Action. The Board may order the Licensee's license reinstated or, if appropriate, may continue the suspension and set the matter for hearing. The Board shall attempt to hold a hearing within 60 days of the automatic suspension, or as soon thereafter as practicable, at which time it may take such action as it deems appropriate, including without limitation reinstatement, fines, probation, suspension, non-renewal and revocation.

3. Failure to Provide Sample.

a. Report and Meeting with Board. The Licensee and the Supervising Physician (and the responsible designee, if any) shall telephone the Board as soon as possible and send to the Board a written report of any occurrence regarding failure or refusal to provide a sample within 48 hours, and both the Licensee and the Supervising Physician shall appear before the Board at the next regularly scheduled Board meeting, unless the next meeting is to be held within 15 days of the report, in which case they may be scheduled to appear at the subsequent regularly scheduled Board meeting.

b. Second Opportunity to Provide Urine Sample. If the Licensee appears when scheduled or ordered, but fails to provide an adequate sample, then with regard to urine, after accurate notation of any and all substances consumed (no substance shall be consumed which might affect the accuracy of the tests to be performed), a second opportunity to provide a urine sample shall be given after a reasonable time, not to exceed two hours. A repeat failure, or any refusal, shall result in an immediate, indefinite

suspension of licensure. The suspension shall begin the moment of the occurrence.

c. Board Action. The Board may order the Licensee's license reinstated, or, if appropriate, may continue the suspension and set the matter for hearing. The Board shall attempt to hold a hearing within 60 days of the automatic suspension, or as soon thereafter as is practicable, at which time it may take such action as it deems appropriate, including without limitation reinstatement, fines, probation, suspension, non-renewal and revocation.

M. Amendment of Testing Provisions. Upon written application by the Licensee to the Board, the Board may amend the above agreed conditions for testing as long as such changes are otherwise consistent with the schedule set forth in this Consent Agreement. Amendment from the conditions shall be in the discretion of the Board and shall be based upon such information as the Board deems pertinent. A decision may be made by the Board, in its discretion, with or without providing a hearing. The Board can propose Amendment(s), which may or may not be agreed to by the Licensee.

N. Increasing Testing. For good cause shown (i.e., questionable reports or problems with providing samples), the Board can, in its discretion, without hearing, unilaterally increase the frequency of testing to the highest levels contemplated by this Consent Agreement, and may also add an additional four random tests per month. In addition, the Board may, in its discretion, without a hearing, extend the periods of testing by up to an additional five years.

#### 4. PROFESSIONAL MANAGEMENT.

A. Aftercare Treatment Sessions. The Licensee agrees to submit for Board approval the name of a licensed individual or agency in the treatment of substance abuse with whom the Licensee shall consult and counsel for the purpose of working on all issues pertaining to the Licensee's chemical dependency, including the Licensee's compliance with this Consent Agreement, which consultations shall be monthly for one year beginning on the effective date of this Agreement and at least annually for the following four years.

B. Amendment of Aftercare Treatment Requirements. After three years, upon written application to the Board by the Licensee, the Board may amend this schedule. Amendment shall be in the discretion of the Board and shall be based upon such information as the Board deems pertinent. A decision may be made with or without providing a hearing.

C. Change of Specialist. If the Licensee proposes to change the Specialist, then the Licensee shall make written application to the Board, including among other things a letter from the Licensee regarding his reasons for requesting such change and separate letters from the current Specialist and the proposed new Specialist relative to their understanding of the reasons for this request and, to the extent applicable, any concerns



they may have. The Board may in its discretion grant or deny such request with or without providing a hearing. If the request is denied, nothing precludes the Licensee from proposing another Specialist. In requesting a change of Specialist, the Licensee understands that the Board may inquire into any issues it deems pertinent with any person, including, without limitation, the current Specialist.

**D. Reports from the Specialist.** Beginning one month from the date hereon and continuing thereafter, within a month after every session, the Specialist shall submit to the Board a written report regarding the Licensee's compliance with his schedule of meetings, the Licensee's competency to continue practicing medicine, and the prognosis of the Licensee's continued recovery.

**E. Board Investigation.** At any time the Board may deem appropriate, the Board or its agent may contact the Licensee and/or the Specialist to receive further information relative to the Licensee. In addition, if the Board deems it appropriate, it may meet to inquire directly of the Specialist about the Licensee's progress.

## **5. SELF-HELP GROUP MEETINGS.**

**A. Attendance at AA and NA.** The Licensee agrees to attend Alcoholics Anonymous ("AA") a minimum of three times each week through one year from the effective date of this agreement, and at least once each week through four years thereafter.

**B. Impaired Physicians Self-Help Group.** The Licensee agrees that he shall attend self-help ground meetings of an impaired medical professional group, if available, on a regular basis for the term of this agreement which is 5 years. Meetings of the impaired professional self-help groups may be substituted on a one-for-one basis with meetings of AA or NA.

**C. Reports of Attendance.** Beginning three months from the date hereon and continuing every three months thereafter, the Licensee shall submit to the Board a signed, written quarterly report of his attendance at AA, NA or impaired professional self-help group meetings. Any instances of failure to attend the required numbers of meetings shall be noted, together with specific explanation detailing reasons.

**D. Failure to Meet This Requirement.** It is the parties' understanding that periodically reasonable explanations may exist for occasionally missing a meeting; however, unexcused continuous or repeated failures to comply with the requirements of this section of the Consent Agreement shall constitute a violation of the Consent Agreement which, after hearing before the Board, can result in licensure discipline, including without limitation a fine, suspension, non-renewal, probation or revocation of the Licensee's conditional, probational license.

**6. MAINTENANCE OF OBLIGATIONS WHEN AWAY FROM MAINE OR HOME.** It is the intention of the parties that the Licensee's obligations regarding substance monitoring and self-help group meetings shall be maintained regardless of whether the Licensee is in Maine. For instance, if the Licensee is going on a business trip or a vacation, it shall be the Licensee's and the Supervising Physician's obligation to ensure that arrangements are made consistent with this Consent Agreement in such other location(s) to ensure the continuation and satisfaction of his obligations under this Consent Agreement. Any such occurrences shall be noted in writing sent to the Board explaining the arrangements made, followed by a separate writing detailing how the arrangements were carried out.

**A.** It is the parties' intention that the Licensee notify the Board in writing in advance of departure regarding the arrangements made. Failure to do so in advance shall be excused only for good cause shown.

**B.** Failure to meet the conditions outside of Maine shall be dealt with in the same manner as failure otherwise to maintain the obligations of this Consent Agreement.

**7. INVOLVEMENT IN THE MAINE COMMITTEE ON PHYSICIANS' HEALTH.** The Licensee shall continue his contractual involvement with the Maine Committee on Physicians' Health as long as any term of this Consent Agreement remains in force. The Licensee is encouraged to actively participate in the Committee.

**8. MONITORING OF BEHAVIOR.** The Licensee agrees that his behavior will be monitored by a physician, approved by the Board, who is in contact with the Licensee on an average of four or five times a week. This physician will agree to inform the Board if the Licensee demonstrates any signs of withdrawal or behavior change which could result from the use of a Prohibited Substance. The monitoring physician shall report such information by telephone and in writing within 24 hours or as soon thereafter as possible.

9. **NOTICE TO HOSPITALS.** Within 10 days after execution of this agreement by the Board and approved by the Department of Attorney General, the Licensee shall provide a copy of this Consent Agreement to:

A. **The Hospital.** Notice to all hospitals at which the Licensee shall practice be provided, at a minimum, to the Vice President of Medical Affairs (or the equivalent position) of such Hospital.

B. **Others.** Any other entity or person involved in the monitoring or treatment process which or who the Board deems appropriate shall receive and review this Consent Agreement.

10. **DESIGNATED COPY OF CONSENT AGREEMENT.**

A. **Reading and Signing the Consent Agreement by Others.** The Licensee shall have each person set forth in Paragraph 9 above read, date, and sign a copy of the Consent Agreement (the "Designated Copy"). The Designated Copy shall also be read and signed by the Supervising Physician, all designees, by the Specialist, and by the Monitoring Physician under paragraph 8. The original Designated Copy which is signed by the above-referenced persons shall at all times be kept on file at the Licensee's office and shall be subject to inspection upon request of the Board or its agent. A copy of the signature page shall be made and sent to the Board. The Licensee agrees that if new individuals assume the roles set forth in Paragraph 9 during the existence of this Agreement, such individuals shall also read, date and sign the Agreement.

11. The Licensee shall be required to maintain his Maine license to practice as a physician assistant for as long as this Agreement is in effect. In the event that Mr. Hearn applies for licensure in other jurisdictions during the pendency of this Agreement, he shall notify said jurisdiction of the existence of this Agreement.

12. **REQUIREMENT REPORT.** The Licensee agrees and hereby irrevocably directs that IF ANYONE HAS REASON TO SUSPECT THAT THE LICENSEE HAS USED A PROHIBITED SUBSTANCE OR HAS OTHERWISE VIOLATED THIS CONSENT AGREEMENT, SUCH PERSON MUST REPORT THE LICENSEE TO THE BOARD WITHIN 24 HOURS OR AS SOON THEREAFTER AS POSSIBLE, SUCH REPORT SHALL BE MADE BY TELEPHONE AND IN WRITING. ALL PERTINENT FACTS AND CIRCUMSTANCES SHALL BE REPORTED TO THE BOARD.

13. **WAIVER OF CONFIDENTIALITY AND RELEASE OF RECORDS.** The Licensee agrees and understands that the Board and the Department of Attorney General shall have complete access to the Licensee's present and future personal medical and counseling records regarding chemical dependency and to all otherwise confidential data pertaining to

treatment or monitoring of the Licensee for chemical dependency.

**14. BOARD'S JURISDICTION.** The Licensee acknowledges that the Board has jurisdiction over his license. In consideration for the Board's issuing to the Licensee his license pursuant to this Consent Agreement, the Licensee agrees that, as regards any alleged violation of this Consent Agreement, the Board is granted jurisdiction to revoke his license or take such other disciplinary action as is available to the Courts. The Board may also, if it deems it preferable, refer such matter for action in Court.

**15. MISCELLANEOUS PROVISIONS.**

**A. Notice.** Unless otherwise specified in this Consent Agreement, written notice shall be deemed served upon mailing by first class mail, postage prepaid.

1. Notice to the Board:

State of Maine Board of Licensure in Medicine  
Attention: Executive Director  
137 State House Station  
Augusta, Maine 04333-0137  
Telephone: (207) 287-3601

2. Notice to the Licensee:

Walter Hearn, PA-C  
13 Caly Hollow Road  
Kennebunk, ME 04043

**B. Address Change.** If the Licensee changes jobs, moves his residence, moves his office practice, changes telephone numbers at work or at home, or secures privileges at a hospital, the Licensee shall provide notice to the Board within two weeks after such occurrence.

**C. Costs.** All costs incurred in performance of the Modifications and Conditions of this Consent Agreement shall be borne by the Licensee. If a violation of this Consent Agreement is proven to have occurred, regardless of the sanctions imposed, the Licensee shall reimburse the Board for all costs and attorney's fees incurred in proving such violation.

**D. Hearings.** Unless otherwise specified, hearings shall be held consistent with the Maine Administrative Procedure Act.

**E. Severance.** If any clause of this Consent Agreement is deemed illegal or invalid, then that clause shall be deemed severed from this Consent Agreement.

**16. AMENDMENT OF CONSENT AGREEMENT.** This Consent Agreement cannot be amended orally. It can be amended only by a writing signed by the parties hereto and approved by the Department of Attorney General.

**A.** Requests for amendments made by the Licensee shall be made in writing submitted to the Board.

**B.** The Board may also propose amendments by sending a written proposal to the Licensee.

**17. ADVICE OF COUNSEL.** The Licensee has been informed that he has the right to legal counsel. He has consulted with an attorney who has negotiated this Consent Agreement on his behalf.

**18. WAIVER OF RIGHT TO APPEAL BOARD'S DECISION AND CERTAIN FUTURE BOARD DECISIONS.** In regard to all terms and conditions of this Consent Agreement, the Licensee waives any further hearings or appeal to the Court regarding discipline for the Facts set forth in this Consent Agreement and the Conditional License issued hereunder. Nothing in this paragraph shall be deemed a waiver of the Licensee's rights under rule, statute or the Maine or United States Constitutions, to appeal a decision or action later taken by the Board subsequent to licensure except as the Licensee may have agreed herein, such as with discretionary decisions by the Board and which may occur with or without a hearing, increased jurisdiction of the Board to revoke his license for violation of this Consent Agreement. The Licensee agrees that this Consent Agreement and Order is a final order resolving the Licensee's application for Licensure.

**I, WALTER N. HEARN, P.A.-C., HAVE READ AND UNDERSTAND THE FOREGOING CONSENT AGREEMENT. I UNDERSTAND THAT BY SIGNING, I WAIVE CERTAIN RIGHTS. I SIGN IT 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: 5-12-03

  
Walter N. Hearn, P.A.-C.

STATE OF MAINE  
Cumberland, ss.

Dated: May 12, 2003

Personally appeared before me the above-named Walter N. Hearn, P.A.-C. 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.



Notary Public *Attorney at Law*

APPROVED:



Kenneth W. Lehman  
Counsel to Walter N. Hearn, P.A.-C.

**STATE OF MAINE BOARD OF  
REGISTRATION IN MEDICINE**

By:   
Edward David, M.D., Chairman

APPROVED: Effective 5/13/03

**STATE OF MAINE DEPARTMENT  
OF ATTORNEY GENERAL**

Dated: 5/13/03

By:   
Ruth E. McNiff, Assistant Attorney General