

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

IN RE:) **AMENDMENT OF**
) **CONSENT AGREEMENT**
Stephen H. Nightingale, M.D.)
Complaint No. CR12-63)

This document is an amendment to a Consent Agreement effective May 14, 2013, regarding a disciplinary action concerning the license to practice medicine in the State of Maine to Stephen H. Nightingale, M.D. The parties to that Consent Agreement are: Stephen H. Nightingale, M.D. (“Dr. Nightingale”), the State of Maine Board of Licensure in Medicine (“the Board”), and the Office of the Attorney General (the “Attorney General”).

BACKGROUND

1. On May 14, 2013, the parties entered into a Consent Agreement regarding a disciplinary action concerning the license to practice medicine in the State of Maine held by Dr. Nightingale. The Consent Agreement imposed a one-year period of probation with conditions requiring that Dr. Nightingale submit documentary proof to the satisfaction of the Board that his practice meets certain expectations concerning initial patient consultations, informed consent and documentation. In addition, the Consent Agreement provided Dr. Nightingale the opportunity to request early termination of the probation.

2. On September 10, 2013, the Board reviewed a request by Dr. Nightingale for early termination of his probation based upon his full compliance with the conditions of his probation. Following its review of his request, during which it concluded that Dr. Nightingale had fully complied with the conditions of the probation, the Board voted to

grant Dr. Nightingale's request to terminate the probation effective September 10, 2013.

COVENANT


3. Dr. Nightingale, the Board, and the Office of Attorney General hereby agree to amend the Consent Agreement effective May 14, 2013, by terminating the probation effective September 10, 2013.

I, STEPHEN H. NIGHTINGALE, M.D., HAVE READ AND UNDERSTAND THE FOREGOING AMENDMENT TO THE CONSENT AGREEMENT AND AGREE WITH ITS CONTENTS AND TERMS. I ACKNOWLEDGE THAT I HAVE HAD THE OPPORTUNITY TO DISCUSS THIS AGREEMENT WITH LEGAL COUNSEL PRIOR TO SIGNING IT.

DATED: 9/23/13


STEPHEN H. NIGHTINGALE, M.D.

DATED: 9/25/13


ELIZABETH A. OLIVIER, ESQ.
ATTORNEY FOR DR. NIGHTINGALE


STATE OF MAINE
BOARD OF LICENSURE IN
MEDICINE

DATED: 9/30/13


MAROULLA S. GLEATON, M.D.,
Chairman

STATE OF MAINE OFFICE
OF THE ATTORNEY GENERAL

DATED: 9/30/13


DENNIS E. SMITH
Assistant Attorney General

Effective Date: 09/10/13

STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

In re:)	CONSENT
Stephen H. Nightingale, M.D.)	AGREEMENT
Complaint No. CR12-63)	

This document is a Consent Agreement, effective when signed by all parties, regarding a disciplinary action concerning the license to practice medicine in the State of Maine held by Stephen H. Nightingale, M.D. The parties to the Consent Agreement are: Stephen H. Nightingale, M.D. (“Dr. Nightingale”), 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. Nightingale has held a license to practice medicine in the State of Maine since September 28, 1992. Dr. Nightingale specializes in Internal Medicine and Pediatrics in both of which he is Board Certified.

2. In October 2002, Dr. Nightingale founded the Coastal Skin Center, which specializes in cosmetic dermatology and is a division of Coastal Health Center. According to Coastal Skin Center’s website, the staff of the center includes Dr. Nightingale and a medical assistant/medical aesthetician/laser technician. According to Dr. Nightingale, the staff also includes a registered nurse (RN) and a licensed practical nurse (LPN), though they are not listed on the website.

3. On or about April 26, 2012, the Board received a complaint from Patient A against Dr. Nightingale. Patient A alleged that he went to Coastal Skin Center seeking laser hair removal. Patient A alleged that he met with a technician at Coastal Skin Center, who failed to inform him that laser treatment would be ineffective on persons with blonde or light hair. According to Patient A, he underwent several months of laser treatment by the technician without any measurable results. Patient A subsequently learned that laser treatment to remove hair is ineffective for persons with blonde or light hair, and sent an email to Coastal Skin Center requesting a refund of monies paid for the ineffectual treatment. According to Patient A, he received an email response from Coastal Skin Center that included the following:

Our billing policy also clearly states that no refunds are given once treatment has started. Hair removal does not work on people who have blonde or white hair and that is one of the reasons that we have a consultation visit as patients are informed of this at the consultation. The laser hair removal works best on dark hair.

As a result, patient A alleged that Coastal Skin Center was aware that its laser treatment to remove his hair would be completely ineffective because it is obvious that he has blonde/light hair. Patient A felt this was particularly egregious because his laser treatments spanned several months during which time he was never told that his blonde/light hair would make laser hair removal ineffective. The Board docketed the complaint as Complaint No. CR12-63 and sent it to Dr. Nightingale for a response.

4. On June 1, 2012, the Board received a written response from Dr. Nightingale to Complaint No. CR12-63. In his response, Dr. Nightingale

explained that Coastal Skin Center's clinic uses laser technology to remove hair. Dr. Nightingale explained the medical and technological basis for laser hair removal. Dr. Nightingale explained that prior to receiving laser hair removal treatment, Patient A filled out "a patient information questionnaire and health history," which included a Fitzpatrick skin type. According to Dr. Nightingale, Patient A's answers on the questionnaire and health history indicated that he had a "type 3+ bordering on type 4," which showed the presence of "fairly significant pigmentation." Dr. Nightingale stated that his "medical technician determined that there was adequate pigmentation in [Patient A's] hair and felt that treatment was warranted." At no point in his response did Dr. Nightingale indicate that he had seen or evaluated Patient A prior to his treatment. Dr. Nightingale indicated that "based on the examination and the recollection of the technician as well as the Fitzpatrick skin type indexing that was completed by the patient, [the patient] was appropriate for laser hair removal." Dr. Nightingale provided a copy of Patient A's record of treatments at Coastal Skin Center, including "informed consent and informed consent treatment logs." According to Dr. Nightingale, "We... try to guide patients based on our experience as to which modality would be most effective for them" and that it was not their policy to deceive patients.

5. On June 8, 2012, the Board received a reply from Patient A to Dr. Nightingale's response. In his reply, Patient A provided the Board with a copy of the email that he sent to Coastal Skin Center on April 21, 2012, and Coastal Skin Center's response to his email on April 23, 2012, which corroborated his

claim that he had attempted to resolve this matter with them prior to filing his complaint with the Board. Patient A also noted that his patient chart did not contain a “physical examination form” prior to his treatment, and reasserted that Coastal Skin Center performed “a medical procedure they knew would be ineffective.”

6. On September 11, 2012, the Board reviewed the foregoing information and voted to further investigate the matter by sending Dr. Nightingale a letter requesting additional information, including a specific explanation of his informed consent process to include a detailed description of what occurs at the patient’s first visit.

7. On October 22, 2012, the Board received a response from Dr. Nightingale to its request for additional information. In his response, Dr. Nightingale described the general consent form signed by patients at Coastal Skin Center, which the patient is directed to read in its entirety. According to Dr. Nightingale, “very few people read this consent.” Dr. Nightingale explained the informed consent process as follows:

The patient is asked to read and sign the consent when they check in. [The medical assistant] brings them back to the room. She often asks how they did following their last session, unless this is the first treatment. She explains what she will be doing and will answer any questions that the patient may have. They will ask her if the laser hurts, etc. She inspects the area to be treated, then applies a clear gel to the skin. Protective goggles/glasses are put on, the treatment settings are made and the procedure begins. Afterwards, the client is cleaned off and any further questions are answered. They then check out with the receptionist and schedule the next session as indicated. Once the client/patient is at this point, he/she has had a formal consultation.

8. On November 13, 2012, the Board reviewed Complaint CR12-63, and voted to invite Dr. Nightingale to attend an informal conference to discuss the following issues:

- a. Whether or not Patient A met the criteria for treatment;
- b. The informed consent process;
- c. Medical record documentation; and
- d. Whether the technician made independent diagnostic and treatment decisions.

9. On February 12, 2013, the Board held an informal conference with Dr. Nightingale regarding the issues it identified regarding Complaint No. CR12-63. Following the informal conference, the Board voted to schedule the matter for an adjudicatory hearing. In addition, it authorized its assigned legal counsel to negotiate a consent agreement to resolve Complaint No. CR12-63 without further proceedings.

10. This Consent Agreement has been negotiated by counsel for Dr. Nightingale and counsel for the Board in order to resolve complaint CR12-63 without an adjudicatory hearing. Absent Dr. Nightingale's acceptance of this Consent Agreement by signing and dating it in front of a notary and returning it to the Board on or before April 23, 2013, the matter will proceed to an adjudicatory hearing. In addition, absent the Board's acceptance of this Consent Agreement by ratifying it, the matter will proceed to an adjudicatory hearing.

11. By signing this Consent Agreement, Dr. Nightingale and his legal counsel waive any and all objections to, and hereby consent to the presentation of this Consent Agreement to the Board for possible ratification. Dr. Nightingale and his legal counsel also forever waive 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.

COVENANTS

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

12. Dr. Nightingale admits that with regard to complaint CR12-63 the Board has sufficient evidence from which it could reasonably conclude that: (a) Laser hair removal was one of a number of "dermatologic services" provided by "Coastal Skin Center", a division of Coastal Health Center, of which Dr. Nightingale was listed as "staff" and identified as "board certified in both Internal Medicine and Pediatrics with a special interest in cosmetic dermatology;" (b) Dr. Nightingale did not conduct an initial consultation or examination of Patient A before his medical assistant performed laser hair removal treatment on Patient A; (c) Dr. Nightingale did not obtain adequate informed consent from Patient A prior to his medical assistant performing laser hair removal treatment on Patient A; and (d) Dr. Nightingale did not create and maintain an adequate medical record for Patient A. Dr. Nightingale admits that the Board could conclude that such conduct constitutes

unprofessional conduct and grounds for discipline of his Maine medical license pursuant to 32 M.R.S. § 3282-A(2)(F).

13. For the conduct described in paragraphs 1-10 above, Dr. Nightingale agrees to accept, and the Board agrees to issue, the following discipline:

a. A WARNING. Dr. Nightingale agrees that he cannot delegate to a medical assistant the ability to perform medical consultations, examinations or to obtain informed consents to medical treatment. Dr. Nightingale shall take all measures necessary to ensure that such conduct does not again occur.

b. A LICENSE PROBATION for One (1) year following the execution of this Consent Agreement with the condition that within sixty (60) days following the execution of this Consent Agreement he provide the Board with documentary proof to the satisfaction of the Board that:

(i) He is performing a consultation with and/or an examination of all patients who undergo any "dermatologic services" provided at Coastal Skin Center, which is a division of Coastal Health Center;

(ii) He is obtaining adequate informed consent from all patients who undergo any "dermatologic services" provided at Coastal Skin Center; and

(iii) He is creating and maintaining adequate patient records for all patients who undergo any "dermatologic services" provided at Coastal Skin Center.

In complying with this condition, Dr. Nightingale shall provide the Board with:

- (i) A letter explaining the changes he has made to his practice to conform to the requirements identified above;
- (ii) A copy of his new office policy implementing the requirements identified above; and
- (iii) Copies of five redacted patient records demonstrating that the requirements identified above are being met.

14. In the event that Dr. Nightingale satisfies all of the conditions of his probation, he may request that the Board terminate his probation early. The Board shall retain the sole discretion to grant or deny any such request without hearing or judicial review.

15. Dr. Nightingale waives his right to a hearing before the Board or any court regarding all findings, terms and conditions of this Consent Agreement. Dr. Nightingale agrees that this Consent Agreement is a final order resolving Complaint CR12-63. This Consent Agreement is not appealable and can only be amended or rescinded in writing by all of the parties hereto.

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

17. Dr. Nightingale 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 the Board to take additional disciplinary action against his Maine medical license, including but not limited to an order, after hearing, modifying, suspending, or revoking his license.

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

19. This Consent Agreement constitutes disciplinary 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).

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

21. The Board and Dr. Nightingale 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 in the event that allegations are brought against Dr. Nightingale 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. Nightingale's license.


22. Dr. Nightingale 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.

23. Dr. Nightingale has been represented by Elizabeth A. Olivier, Esq., who has participated in the negotiation of the terms of this Consent Agreement.

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

I, STEPHEN H. NIGHTINGALE, 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: 4/22/13

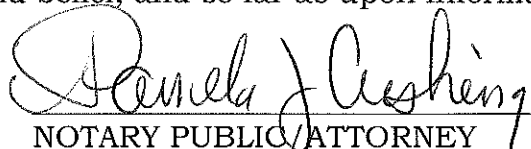

STEPHEN H. NIGHTINGALE, M.D.

STATE OF Maine

_____, S.S.

Personally appeared before me the above-named Stephen H. Nightingale, 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.

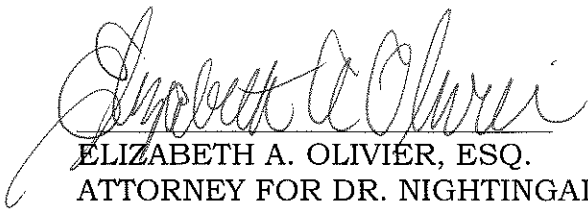
DATED: 4-22-13


NOTARY PUBLIC/ATTORNEY

MY COMMISSION ENDS: ~~PAMELA JEAN CUSHING~~
NOTARY PUBLIC
State of Maine
My Commission Expires
November 14, 2014

DATED:

April 23, 2013


ELIZABETH A. OLIVIER, ESQ.
ATTORNEY FOR DR. NIGHTINGALE

STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

DATED:


5/14/13


GARY R. HATFIELD, M.D., Chairman

STATE OF MAINE DEPARTMENT
OF THE ATTORNEY GENERAL

DATED:

5/14/13


DENNIS E. SMITH
Assistant Attorney General

Effective Date: 5/14/13