

STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

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| In re: |) | CONSENT |
| Mark A. Spear, M.D. |) | AGREEMENT |
| Complaint No. CR10-092 |) | |

This document is a Consent Agreement, effective when signed by all parties, regarding disciplinary action against the license to practice as a physician in the State of Maine held by Mark A. Spear, M.D. The parties to the Consent Agreement are: Mark A. Spear, M.D. ("Dr. Spear"), the State of Maine Board of Licensure in Medicine ("the Board"), and the State of Maine Office of the Attorney General ("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. At all times relevant to the complaint, Dr. Spear was an applicant or licensee of the Board. The Board first licensed Dr. Spear a medical license on March 17, 2006. Dr. Spear specializes in Psychiatry.
2. On or about May 19, 2009, the Board received an on-line application from Dr. Spear for the renewal of his Maine medical license. On the renewal application, Dr. Spear certified - subject to penalties of perjury - that all of his answers to questions of the on-line renewal application were "true and correct." In addition, Dr. Spear certified that "all CME credits reported are a true and correct report of my CME activity."
3. On the on-line renewal application Dr. Spear answered "No" to the following question:

Since your last application have you suffered from any physical, psychiatric, or addictive disorder that would impair or require limitations on your functioning as a physician or that resulted in the inability to practice medicine for more than 30 days?

4. On the on-line renewal application Dr. Spear reported that he had earned forty (40) category I CME credits and sixty (60) category II credits within the previous twenty-four (24) months. The on-line application included a notice that the Board routinely and regularly audits CME credits claimed and that the practice of fraud or deceit in obtaining a license constituted grounds for discipline.

5. On May 19, 2009, based upon Dr. Spear's representations on the on-line renewal application, the Board issued the renewal of Dr. Spear's Maine medical license.

6. Board staff subsequently had a telephone conversation with Dr. Spear during which he disclosed that he had not completed the CME required for re-licensure and had taken a three-month medical leave of absence.

7. On or about January 8, 2010, the Board received correspondence from Dr. Spear in which he indicated that:

a. When he received the notification from the Board that his license was due for renewal, he realized that he had not completed the required continuing medical education (CME). In addition, according to Dr. Spear he was on medical leave of absence, and believed that he could complete the CME in a timely fashion. As a result, Dr. Spear explained that he indicated on the license renewal application that he had completed the CME when, in fact, he

had not. Dr. Spear expressed shame and remorse for this action, and requested that the Board grant him an extension of time to complete the CME.

b. He had taken a three-month leave of absence from work due to a medical condition. Dr. Spear explained that he did not understand that he needed to disclose this on his application for re-licensure because he did not consider himself impaired to the point of being able to effectively and competently practice medicine.

8. On February 9, 2010, the Board reviewed the foregoing information and, pursuant to 32 M.R.S. § 3282-A, voted to issue a complaint against Dr. Spear for alleged fraud or deceit in obtaining the renewal of his Maine medical license. The Board docketed that complaint as CR10-092.

9. On March 29, 2010, the Board received a written response from Dr. Spear to complaint CR10-092. In his response, Dr. Spear did not deny that he engaged in fraud or deceit on his on-line renewal application by reporting that he had completed the necessary CME. In addition, however, Dr. Spear denied any intent to defraud the Board by failing to report his three-month medical leave of absence. According to Dr. Spear, he thought the question referred to his "ability" to practice medicine, which he believed was never in question.

10. On April 13, 2010, the Board reviewed complaint CR10-092, including Dr. Spear's response to the complaint, and voted to schedule complaint CR10-092 for an adjudicatory hearing. In addition, it authorized its

legal counsel to negotiate a consent agreement with Dr. Spear in order to resolve complaint CR10-092 without an adjudicatory hearing.

11. This Consent Agreement has been negotiated by Dr. Spear and legal counsel for the Board in order to resolve this matter without an adjudicatory hearing. Absent Dr. Spear's acceptance of this Consent Agreement by signing it, dating it, having it notarized, and returning it to Maureen Lathrop, Investigative Secretary, Maine Board of Licensure in Medicine, 137 State House Station, Augusta, Maine 04333-0137 on or before June 4, 2010, the Board will resolve this matter by holding an adjudicatory hearing at a later date.

12. By signing this Consent Agreement, Dr. Spear 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 on June 8, 2010. Dr. Spear 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.

COVENANTS

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

13. Dr. Spear neither admits nor denies the basis of complaint CR10-092. However, Dr. Spear concedes that the Board has evidence from which it could conclude by the preponderance of the evidence that the alleged conduct

occurred and could constitute fraud or deceit in obtaining a license and grounds for discipline pursuant to 32 M.R.S. § 3282-A(2)(A).

14. As discipline for complaint CR10-092, Dr. Spear agrees to:

a. Accept a REPRIMAND. Dr. Spear is hereby reprimanded for the conduct described in this Consent Agreement, and the negative impact of the conduct upon himself, the Board, and physicians and the practice of medicine.

b. Pay a civil penalty of five hundred dollars (\$500.00).

Payment of the fine shall be made by certified check or money order made payable to "Treasurer, State of Maine," and be remitted to Maureen Lathrop, Investigative Secretary, Maine Board of Licensure in Medicine, 137 State House Station, Augusta, Maine 0433-0137. Payment of the fine shall occur on or before July 6, 2010.

15. Dr. Spear waives his right to a hearing before the Board or any court regarding all findings, terms and conditions of this Consent Agreement. Dr. Spear agrees that this Consent Agreement and Order is a final order resolving the complaint CR10-092. 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.

16. The Board and the Office of the Attorney General may communicate and cooperate regarding Dr. Spear 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. This Consent Agreement 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).

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

19. The Board and Dr. Spear agree that no further agency or legal action will be initiated against him by the Board based upon complaint CR10-092, except or unless he fails to comply with the terms and conditions of this Consent Agreement.

20. Dr. Spear 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.

21. Dr. Spear 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, MARK A. SPEAR, 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: 5/27/10 
MARK A. SPEAR, M.D.

STATE OF Maine
Pendscot, S.S.

Personally appeared before me the above-named Mark A. Spear, 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: 5/27/10 
NOTARY PUBLIC/ATTORNEY

MY COMMISSION ENDS: **Julie L. Vinson**
Notary Public • State of Maine
My Commission Expires 10/21/2010

STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

DATED: 6/8/10 
SHERIDAN R. OLDHAM, M.D., Chairman

STATE OF MAINE OFFICE
OF THE ATTORNEY GENERAL

DATED:

6/8/10



DENNIS E. SMITH
Assistant Attorney General

Effective Date:

6/8/10